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WRIT OF ERROR

NEW JERSEY, *ss.*

The State of New Jersey to William S. Gummere, Esquire, one of the Justices of the Su-
(SEAL) preme Court of the State of New Jersey, and to the Judges of the Court of Common Pleas of Essex County, constituting the Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, of the Term of September, 1925.

Because in the record and proceeding, and also in the giving of judgment upon a certain indictment against Harrison W. Noel, late of the Town of Montclair, in the County of Essex aforesaid:

"For that said Harrison W. Noel on the 3d day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty-five, in the Township of Cedar Grove, in the County of Essex aforesaid, did wilfully, feloniously and of malice aforethought, kill and murder Raymond Pierce contrary to the form of the statute in such case and made provided, and against the peace of this State, and the government and dignity of the same."

Pro ut the said indictment and the several counts therein, whereof, before you, he, the said Harrison W. Noel, hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey, and the said Harrison W. Noel, as it is said, manifest error hath intervened to the great damage of the said Harrison W. Noel, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Harrison W. Noel, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the Twenty-ninth day of December next, and this writ, that the record and proceedings as

aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS, Edwin Robert Walker, Esq., our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton, New Jersey, this ninth day of December, 1925.

THOMAS F. MARTIN,

Clerk.

WILLIAM A. WACHENFELD,

Attorney for Defendant.

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 first Tuesday in April, in the year of Our Lord one thousand nine hundred and twenty-five, by the Honorable William S. Gummere, 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 Walter C. Jacobs, Henry C. Rodemann, R. Mattison Melbourne, Roland A. Jacobus, Timothy M. Manning, Frederick H. Eisele, Herman Harris, Charles A. Foster, Joseph H. McCormick, Emil Wolfarth, Frank W. Pepple, William H. Kelly, William F. Christiansen, James P. Dalley, Edward P. Ward, William A. Cummings, Arthur P. Heyer, John Coughlin, James S. E. Freel, Louis F. Bird, Herbert S. Palmer, William Neill and Charles G. Bacht, good and lawful men of the said County of Essex, duly summoned and then and there duly sworn, and charged to enquire 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 County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Harrison W. Noel on the third day of September, in the year of our Lord one thousand nine hundred and twenty-five, at the Township of Cedar Grove in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Raymond Pearce 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.

J. O. BIGELOW,

Prosecutor of the Pleas.

Plea.

And on the tenth day of September A. D. Nineteen hundred and twenty-five, on which day the said Indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer, Honorable Dallas Flannagan, Judge of the Court of Common Pleas and Quarter Sessions Court and holding the Oyer and Terminer did then and there order the said Indictment to be delivered to the Clerk of the Court of Oyer and Terminer in and for said County and then and there the said Indictment was delivered and duly filed by said clerk and an entry of such delivery and filing was then and there 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, at the same session of the Court of Oyer and Terminer holden at Newark on the twenty-first day of September A. D. Nineteen hundred and twenty-five, before the Hon. Edwin C. Caffrey, Judge of the Common Pleas and Quarter Sessions Courts holding the Oyer and Terminer Court comes the said Harrison W. Noel in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, in the above custody in the Jail of the County aforesaid, he has been before committed for the cause aforesaid being brought to the Bar of this Court in his own proper person by the said Sheriff to whom he is also committed and having heard the Indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, he the said defendant, Harrison W. Noel refusing to plead to the said Indictment, the Court Judge Edwin C. Caffrey, Ordered a plea of Not-Guilty entered. Merritt Lane, Esq. of Counsel for the defendant objected to the entering of the plea which objection was over-ruled by the Court, and therefore, for good and evil, he. the said Harrison W. Noel puts himself upon the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Return.

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the twenty-sixth day of October A. D. Nineteen hundred and twenty-five, twelve free and lawful men each of whom shall be a citizen of this State and a resident within the County of Essex 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 Harrison W. Noel, to recognize upon their oath, whether the said Harrison W. Noel is Guilty of the Murder in this Indictment aforesaid specified or Not Guilty because as well the said John O. Bigelow, prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said Harrison W. Noel has put himself upon the Jury, and the same day is given to the parties aforesaid, at the same place. At which day, to wit, the ninth day of November A. D. Nineteen hundred and twenty-five, to which day said trial was postponed, at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Edwin C. Caffrey, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes as well the said John O. Bigelow, Prosecutor of the Pleas who prosecutes aforesaid, and the said Harrison W. Noel, in custody of Harry B. O'Connell, Sheriff of the County aforesaid, being brought to the bar in his own proper person, by the said Sheriff. And the Jurors of the Jury by the said Sheriff for this purpose empanelled and returned, after the following challenges were exhausted, by the State 12, the Defendant 20, for Cause 1, by the Court 4, by consent 3, to wit: John Alfred Nelson, George F. Kast, Joseph J. Hart, Frank P. Hess, Albert O. Petit, Allen E. Clough, William Kay, Henry Conover, Alfred M. Hartley, Russell R. Conklin, H. Jeffrey Barkalow, William J. Fisher, Jr., being called come and were sworn on that Jury who to speak the truth of, and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and Jury, from day to day, until the sixteenth day of November, A. D. nineteen hundred and twen-

ty-five, at Newark, aforesaid, the Jury in the meantime being all that time kept together and in the care of Officers of the said Court, who were selected and duly sworn by said Court for that purpose, at which last mentioned day the said issue after a charge from said court was submitted to the said jury, and the said jury in charge of said officers of said Court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said Jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor John O. Bigelow, and the said Harrison W. Noel, say that the said Harrison W. Noel is Guilty of Murder in first degree. By request of defendant's counsel, William A. Wachenfeld, jury was polled and each man for himself said "I find the defendant Guilty of Murder in the first degree" and so they say all.

Judgment Signed,
Nov. 23, 1925.

EDWIN C. CAFFREY,
Judge.

Whereupon, all and singular, the premises being seen and by the Court now here fully understood, it is on this twenty-third day of November A. D. Nineteen hundred and twenty-five Ordered and Adjudged that Harrison W. Noel be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the Sheriff within ten days after the issuing of the warrant to him for that purpose, and delivered to the principal keeper of the State Prison, to be kept by him in solitary confinement until the week beginning January tenth A. D. Nineteen hundred and twenty-six, and upon some day within the said week, at his discretion, as to the time within the walls of the buildings pro-

Return.

vided, by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State Prison shall execute the punishment of death upon the said Harrison W. Noel, by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said Harrison W. Noel be dead.

And may the Lord have Mercy upon his soul.

Return of the Judge

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

I, Edwin C. Caffrey, Judge of the Court of Common Pleas and Quarter Sessions holding the Court of Oyer and Terminer in and for Essex County, New Jersey Do Hereby Certify and return to the Court of Errors and Appeals, the Court of last resort in this state the Indictment, Judgment Record and Proceedings and the entire record of the Proceedings had at the trial together with all things touching and concerning the same as by the within Writ to me directed, I am commanded.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at Newark, N. J., this 21st day of December A. D. 1925.

(SEAL)

EDWIN C. CAFFREY,
Judge of the Court of Common Pleas,
Court of Quarter Sessions hold the Oyer
and Terminer Court Essex Co., N. J.

ESSEX COUNTY COURT OF OYER AND TERMINER

Friday, September 18, 1925.

STATE OF NEW JERSEY *vs.* HARRISON W. NOEL.	On Indictment No. 85, Sep. T. 1925, for *MURDER*

Before Edwin C. Caffrey, Judge.

For the State appears J. Victor D'Aloia, Assistant Prosecutor of the Pleas for Essex County.

For the defendant appears Merritt Lane, Esq.

Mr. Lane. Before this defendant is called upon to plead, I desire to bring to the attention of the court—under the decision of the Supreme Court of Errors and Appeals, the case of State vs. Peacock—a situation which I think requires that before a pleading, or before any other act be performed in this prosecution, a proceeding be taken by the court to inquire into the sanity of the defendant.

I appear here representing Mr. Carpenter, who cannot be present this morning, as he did not have notice of this proposed arraignment until five minutes of ten this morning, when he was found at the Court House in Hackensack, where he was trying a case, and Mr. Carpenter appears for the natural guardian of the defendant, who is likewise the next friend of the defendant, and has been detained to the extent that it is impossible for him to come to represent the defendant.

I present to the court an adjudication made upon the 24th day of March, 1925, by the Essex County Juvenile Court, under the statute. That adjudication adjudicated that the court does hereby determine that said Harrison W. Noel is insane, and a proper person to be confined in one of the institutions for the insane of this State; that said patient or the person or persons legally liable for support, have sufficient estate to pay for full maintenance in such hospital—which is of no concern to your Honor—"order that said Harrison W.

Noel be finally committed to the Essex County Hospital for the Insane, there to remain at the charge and expense of Dix W. Noel, father of said patient, who is hereby ordered to pay $10 a week, pursuant to the statute in such case made and provided, until restored to reason or until further order of a court of competent jurisdiction or until removed or discharged according to law; and this shall be sufficient warrant and authority for such confinement, detention and maintenance."

The cases all hold, and I will submit them to your Honor, if your Honor desires them, that a condition of insanity once adjudicated by a court of competent jurisdiction is presumed, in law, to continue until the contrary be proven, and after such an adjudication in all cases the burden is upon he who asserts sanity to prove sanity.

I also direct your Honor's attention to the provisions of the 437th section of the Criminal Procedure Act—I think it is—which provides if any person in confinement, under commitment, indctment or sentence, or under process, shall appear to be insane, and so forth, the Justice of the Supreme Court, or a judge of the Court of Common Pleas, shall begin, and so forth, an inquiry into his sanity. And I direct your Honor's attention to the fact that the order, which is made under the provisions of Section 437, is in terms, precisely the same order which, under the provisions of the general act concerning lunacy, is made by any court that has jurisdiction to adjudicate insanity.

Now, whatever the procedure may be, State v. Peacock states that the law will never proceed against and the law will never try an insane person, and that, if it is made to appear to the court—this, now, wholly irrespective of the statute—wherever it is made to appear to the court reasonable that there is a question of the sanity or insanity of a defendant proceeded against, there is nothing for the court to do except to initiate a commission to determine whether the person be sane or insane.

I point out to your Honor in this case that it now appears to your Honor that by former adjudication in precisely the same words as the statute— of Section

437, of the Criminal Procedure Act it was adjudicated that on the 24th day of March, 1925, this man was insane and that he was thereupon committed to the authorities at Overbrook, there to remain until restored to reason or discharged. He has never been discharged by due course of law. He is still, under the law, in the Overbrook Asylum. The technical, legal possession of the defendant at this minute, under the statute, is in the authorities in Overbrook.

I direct your Honor's attention to those cases which hold that where a condition of insanity is once shown to exist the presumption of insanity prevails until overthrown, and upon the presentation of this adjudication, I, at this time, protest against this defendant being called upon to plead until your Honor shall have initiated such an inquiry as your Honor thinks proper. The method and means of it is entirely within your Honor's control to determine whether or not this man is legally sane.

Assuming for the moment—and that question I likewise desire to raise—as to whether this court has any jurisdiction under the present posture of this case to proceed against this defendant where the legal custody of this defendant is now, by law, vested in the authorities in Overbrook.

I ask that this adjudication to which I have referred be marked.

(Paper marked Ex. D1)

ESSEX COUNTY JUVENILE COURT

In the matter of the application for the commitment to and confinement in the Essex County Hospital for the insane of
HARRISON W. NOEL
an alleged insane person.

FINAL ORDER OF COMMITMENT.

I, DANIEL J. BRENNAN, Judge of the Juvenile Court of the County of Essex, having examined a copy of the application in writing, certificates of George W. Davies and Alan S. Kirkwood, two duly qualified physicians, and the temporary order of commitment, for the admission to and confinement in the Essex County Hospital for the insane of Harrison W. Noel as an insane patient, said application, certificates and order having been certified by the Medical Superintendent of said hospital under his hand and seal of said institution, and it appearing therefrom and from the testimony of Anna W. Noel, mother, and of John M. Thompson M. D., two creditable witnesses called and examined upon oath at the final hearing held this day before me, touching the indigence, legal settlement and sanity of said patient, that said patient is insane; and not deeming it necessary to call a jury to determine the matter, DO HEREBY DETERMINE that said Harrison W. Noel is insane and a proper person to be confined in one of the institutions for the insane of this State; that said patient or the person or persons legally liable for support, have—sufficient estate to pay for full maintenance in such hospital, that said patient has a legal settlement in the County of Essex, State of New Jersey, that notice of the time and place of final hearing was given as required by law to said wife and to said patient, proof of service of which was made at said hearing that said patient is now and should be confined in the Essex County Hospital for the Insane; and I do hereby

ORDER that said Harrison W. Noel

be finally committed to the Essex County Hospital for the Insane, there to remain at the charge and expense of Dix W. Noel, father of said patient, who is hereby ordered to pay $10 a week pursuant to the statute in such case made and provided,

until restored to reason or until further order of a court, of competent jurisdiction, or until removed or discharged according to law; and this shall be sufficient warrant and authority for such confinement, detention and maintenance.

(SEAL) DANIEL, J. BRENNAN, J.

Dated, Newark, N. J., March 24, 1925

[Endorsement on reverse side]

15055

FINAL ORDER OF COMMITMENT

OF

HARRISON W. NOEL

to

ESSEX COUNTY HOSPITAL

at Overbrook

Filed June 30, 1925

John H. Scott, Clerk.

ESSEX COUNTY CLERK'S OFFICE

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

I, JOHN H. SCOTT, Clerk of the Court of Common Pleas, in and for the County of Essex in the State of New Jersey.

DO HEREBY CERTIFY that the foregoing is a true and correct copy of the Final Order of Commitment for the confinement in the Essex County Hospital for the insane of HARRISON W. NOEL, filed in this office June 30, 1925.

and the same is taken from and compared with Original Order on file in my office and as the same now remains on the files of said office.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, N. J., this Twelfth day of September A. D., 1925.

(Signed) JOHN H. SCOTT,
Clerk.

Mr. Lane. I do not desire any question raised as to the—although this could not be a technical matter,—any question raised as to the—I say it could not be technical matter, because I assume that neither the State nor anyone else desires to try an insane person.

I offer at the same time the files of the Juvenile Court, the entire record of these procedings. I do not think it is necessary, but the court is a court of competent jurisdiction.

The Court. Well, it is a part of the record of this court.

Mr. Lane. I desire to state to your Honor that this defendant has been interviewed by Mr. Barber on two occasions and that my information from Mr. Carpenter is that the defendant is not in such a condition of sanity as to be able to assist counsel in the defense of the case.

Mr. D'Aloia. We have not heard one syllable that Mr. Barber has produced to the effect that he did not understand his client or his client did not understand him. On the other hand, the first conference Mr. Barber had with his client, Mr. Barber came down and gave us a very lucid account of what had been talked about and what had been said, and a great many things were told the prosecution by Mr. Barber which confirmed the fact that we are on the right track in assuming that this man was sane on the 3rd day of September, 1925. This document Mr. Lane presents speaks of a day in March, 1925. Since that time we have had on record a part of a record of a senior resident physician of Overbrook that some time in June this defendant was not insane. He was allowed to leave the institution, whether it was in accordance with the rules or not we do not know, but he left the institution with his brother and, at that time, in the opinion of the doctor in whose custody he was, he was harmless and not a lunatic.

Now, if your Honor please, I think this plea of not guilty should be entered to this indictment, and the other I am not going to urge. That plea can be withdrawn at any time for the purpose of any motion that Mr. Lane or counsel for the defense might make, or for the purpose of instituting any proceedings which Mr. Lane thinks might be instituted. Now, I say for the time being this plea is not going to injure the defendant in any way. This adjudication is of a par-

ticular date. Subsequent to that date there were events which were such as to indicate that on September 3rd, 1925, the date laid in this indictment, this defendant was not insane, but legally sane, that he knew the distinction between right and wrong and, under those circumstances, this plea ought to be entered today, and if any motion is to be made with reference to the indictment to the mental condition of the defendant, the plea can be withdrawn for that purpose at any time.

Mr. Lane. An insane man cannot plead. Either this man is insane now or he is not. If he is insane he cannot plead.

Under the case of State v. Peacock, the burden is passed upon your Honor, upon the fact being brought to your Honor's attention, raising a question as to his sanity, to determine by a proper proceeding for yourself before you call upon this man to take any action, whether you are calling upon an insane man or upon a sane man. That is the case.

There is no motion by the defense necessary. It is a mere bringing to the attention of the court this situation.

The Prosecutor seems to overlook that while this adjudication speaks as of the 24th day of March, 1925, under the law it speaks as to every date thereafter until the contrary be proven, and, if he was sane on the 3rd day of September, 1925, or if he is sane now, the burden is upon the State to prove, under the cases, just as if there were no adjudication of insanity, the presumption of sanity would continue: But if that presumption is destroyed and the presumption of insanity takes its place, I know of nothing in the record, I know of nothing in the newspapers, to the effect of a statement by anybody that this man was sane at the time he escaped from the asylum. I have not seen any such statement by anybody. The statement was that they thought that it might alleviate his condition and might help, perhaps, in his recovery by permitting him to go loose, as I read it, but I find no statement by anybody yet to the effect, as I say, that he was sane on the 3rd day of September, 1925, or this date.

The Court. Your motion at this time will prevail and I will defer consideration of the plea until Monday morning. This applies to both indictments.

ADJOURNED until Monday, September 21st, 1925, at ten o'clock A. M.

SECOND DAY.

Monday, September 21st, 1925.

STATE OF NEW JERSEY	On Indictment No. 85, Sep. T.,
vs.	1925,
HARRISON W. NOEL.	*FOR MURDER.*

Appearances as before stated.

Mr. D'Aloia. I move the pleading of Harrison W. Noel to indictment No. 514 of the April Term, 1925, of the Court of Oyer and Terminer.

Mr. Lane. Before the pleading, I ask your Honor to make a part of the record an affidavit I hand your Honor.

The Court. Yes. This will be incorporated in the record.

[Paper marked Ex. D2]

"STATE OF NEW JERSEY
COUNTY OF ESSEX } ss:

HOWARD CLARK BARBER, of full age, being duly sworn according to law upon his oath, deposes and says:

I am a member of the bar of the State of New York and have been a member of the bar for upwards of 15 years. I know Harrison W. Noel. I know his family and have known his family and been a friend of the family for upwards of 20 years. I am familiar with the past history of Harrison W. Noel. I am associated with cousel representing the father, Dix W. Noel, in the present matter pending against Harrison W. Noel.

I saw Harrison W. Noel at the jail on September 10th. At that time I was accompanied by a detective

of the Prosecutor's office. I remained with Noel and the detective for a period of about thirty minutes. Again on September 12th I was with Harrison W. Noel at the jail and was with him for one hour. At that time I was supposed to have a private conversation with Noel as I went there in my capacity as associate counsel. Upon the first occasion I was instructed by the Prosecutor's office not to discuss the crime. Upon the second occasion I was uninstructed. During the time that I was with Harrison W. Noel I attempted to discuss the crime. I attempted to ascertain whether or not he could comprehend the situation and his position and could intelligently confer with counsel with respect to his defense. I found that he was unable to comprehend his position and that he could not intelligently assist counsel in the defense.

From my knowledge of Harrison W. Noel acquired by me during the many years that I have intimately known him and from my observation of him at the time I talked with him after the commission of the crime at the county jail as aforesaid I am of the opinion that Harrison W. Noel is insane and has been insane for upwards of two years and is at the present time unable to comprehend his position and is at the present time, because of insanity, unable to assist counsel with his defense and unable to make a defense, I add that my knowldge of Harrison W. Noel's condition goes back to the attack which he made upon his father which resulted in his being confined in a sanitorium at Beacon, New York, where I saw him upon several occasions.

The information which I here have stated, I have given to Mr. Carpenter who has been retained by the father of the said Harrison W. Noel to represent him to the extent possible.

(Signed) HOWARD CLARK BARBER.

Sworn and subscribed to
before me this 21st day
of September, 1925.
Thos. H. Haggerty
Commissioner of Deeds of
New Jersey."

Mr. Lane. If your Honor has concluded to let this defendant plead, I ask your Honor to permit us an exception.

The Court. Yes. I have decided the defendant shall enter a plea.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

Mr. D'Aloia. The Grand Jurors of this county have presented this indictment against you and it charges that on the 3rd day of September, in the year, 1925 at the township of Cedar Grove in the County of Essex, you did wilfully, feloniously and with malice aforethought kill and murder Raymond Pearce, contrary to the form of the statute in such case made and provided and against the peace and dignity of the same. How do you plead?

The Court. The defendant does not answer. A plea of not guilty will be entered.

Mr. Lane. Is that the only indictment?

Mr. D'Aloia. That is the only indictment I am going to ask him to plead to.

The Court. I might add, I am going to take testimony beginning Thursday for you to determine whether or not the defendant is able to go on with the trial under the plea to this indictment.

Mr. D'Aloia. That is Thursday morning, at ten o'clock.

The Court. Yes.

ADJOURNED until Thursday, September 24, 1925.

ESSEX COUNTY COURT OF OYER AND TERMINER

September 24, 1925.

STATE OF NEW JERSEY *vs.* HARRISON W. NOEL.	On Indictment No. 85, Sept. T., 1925, for *MURDER.*

Preliminary examination to determine defendant's mental condition and his ability to consult counsel in the preparation of his defense.

Before Hon. Edwin C. Caffrey, Judge.

For the State Appears J. Victor D'Aloia, Assistant Prosecutor of the Pleas for Essex County.

For the defendant appears Merritt Lane, Esq.

LEROY G. KIRKMAN sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Are you a regularly licensed physician?

A Yes.

Q How long have you been such?

A Twenty years.

Q At the request of the Prosecutor's office recently did you have occasion to examine the defendant, Harrison W. Noel?

A I did.

Q Where did you make such an examination?

A I beg pardon!

Q Where did you make such an examination?

A At the Essex County Jail.

Q And on what date, please?

A I examined him on September 12th, 14th, 16th, 17th and 19th.

Q Now, from your examination and from your observation during those examinations and from your experience of twenty years as a physician, can you tell whether or not the defendant, Harrison W. Noel is mentally capable of appreciating the predicament he is in?

A I think he is.

Q Is he capable of appreciating that he is charged with murder and that he may be convicted of murder on the charge and that he may be sentenced to death?

A I think he is.

Q From your observation and from your examination of the defendant, Harrison W. Noel, can you tell the court whether he is mentally capable of conferring with his counsel in aiding his counsel to prepare a defense for him of the charge that is now pending against him?

A I think he is.

Cross Examination by Mr. Lane.

Q Doctor, is Harrison W. Noel sane or insane, in your opinion?

A I think he is suffering from mental deterioration.

Q I didn't ask you that, sir. I assume that you know what sane or insane means. Is he sane or insane?

A I think he is insane.

Q And the form of insanity from which you think he is suffering is what?

A I think he is suffering from dementia praecox.

Q And you say that, in your opinion, that as a Doctor, that a person, whom you believe to be suffering from the disease of dementia praecox, is still capable of rationally appreciating his position, the predicament in which he is, and in rationally consulting with his counsel and in rationally preparing a defense?

A I think he is able to consult with his counsel.

Q I didn't ask you that. Can you not answer the question?

Mr. Lane. I object to that. The State did not include in the question, "rationally" and I ask you whether you cannot answer the question yes or no.

A I think this boy's intellectual ability is such that he is able to rationally consult with his counsel.

Q Is that the only answer that you can make to my question? You fully understand my question, do you not?

A I think so.

Q You know, of course, I suppose, in your medical experi-

ence, that insane persons can talk and can talk sometimes intelligently. Is that what you mean when you say he is capable of appreciating his position and consulting with his counsel in preparation of a defense?

A I mean that at the time I examined this boy he impressed me as being able to rationally consult with his counsel.

Q Rationally?

A Yes.

Q Sanely?

A Yes.

Q So that this insane boy, suffering with this disease of dementia praecox, is in a position, as I understand you where he can rationally prepare a defense, is that right?

A At the time I examined him that was the impression I got from him.

Q Well, wholly irrespective now—I will withdraw that. Do you base your conclusion simply upon your examination?

A That was all I had to base my conclusions upon at the time of the examinations.

Q Well, I am asking you now whether you base your conclusions simply upon that examination?

A Upon that examination and his conduct at the time I examined him.

Q Is that the sole basis of your statement?

A I don't think solely; no, sir.

Q Well, I am trying to get at what the basis of your conclusion is?

A That the report of the boy—the story of the boy as told by him covering the period of time when these events happened and considering that story and the method in which it was told and not being able to find any delusions or hallucinations which would leave him otherwise, not finding any confusion of his mental processes, not finding any mixed personalities in the boy, that was what has lead me to my opinion of him.

Q So that your opinion is based solely upon what information you acquired at the examination?

A At the examination and reading the boy's description of his crime.

Q What do you mean reading it, where, in some newspapers?

A No, sir.

Q Where?

A No, what I saw of his statement to the Prosecutor.

Q O, his confession, so-called?

A His statement to the Prosecutor.

Q Well, his statement. Now, is that all you base your conclusions on?

A Yes, sir.

Q So, that you are willing, as a professional man, to say, based only upon two examinations which you made of this man, if I recollect correctly—

A Five.

Q How many?

A Five.

Q —five examinations of this man and what he told you at that time and his confession or statement what he made to the Prosecutor, you are willing to say that although this man is, in your judgment, insane, nevertheless, he may rationally appreciate his position and rationally consult with counsel in the preparation of a defense to a trial for murder, is that right?

A I think so, yes.

Q One of the elements, distinguishing features of dementia praecox, is a split personality, isn't that right?

A Split what?

Q A split or mixed, if you prefer the term, personality?

A I don't know.

The Court. The Doctor is not qualifying as an expert.

Q Oh, you do not qualify as an alienist?

The Court. No, he is just qualifying as a practitioner.

Mr. Lane. I want the record to distinctly show that Doctor does not qualify as an alienist. If that is no, I am through.

The Court. Yes, sir.

Edward W. Markens, Direct.

EDWARD W. MARKENS sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are a regularly licensed physician?
A Yes, sir.
Q How long have you been licensed to practice medicine?
A Over twenty years.
Q What position do you occupy, if any, in the county?
A Physician at the Essex County Prison.
Q Have you been at the Essex County Jail since the defendant Harrison W. Noel has been in custody?
A Yes, sir.
Q And have you seen him from day to day?
A Every day.
Q Have you talked to him?
A Yes, sir.
Q Examined him?
A Examined him.
Q And observed him?
A Observed him, yes, sir.
Q Right up until yesterday?
A Up until last night.
Q From your examination of Harrison W. Noel, and from your observation, would you say that he is mentally capable of appreciating his position, or the predicament he is in; that he is charged with murder; that he is likely to stand trial on that charge and that the possible punishment is death?
A I know he can, he said so.
Q Now, from your observation of him, from day to day, and your examination and your experience as a physician, do you think he is mentally capable of consulting with his counsel in order to aid them in the preparation of his defense?
A I feel sure he is.

Cross Examination by Mr. Lane.

Q Do you qualify as an alienist, Doctor?

A No, sir.

Q In your opinion, Doctor, is Harrison Noel sane or insane?

A I think he is legally sane.

Mr. Lane. I move that that be stricken out.

The Court. It will be stricken out.

Q I did not ask you to qualify as a lawyer or as a court.

Mr. D'Aloia. That is an expression that is used in medicine, too, the doctors know of it.

Mr. Lane. Whether or not he is legally sane or insane depends upon the judgment of the court and not upon the opinion of any medical expert.

The Court. The answer has been stricken out.

Q Is he sane or insane?

A Now?

Q Now.

A I think he is sane now.

Q You think he is sane?

A Yes, sir.

Q Do you think he was ever insane?

A I don't know.

Q Have you seen the records in this case?

A No, sir.

Q Have you had his past history as developed in the record of the case?

A No, sir.

Q So that you, as a physician, and not an alienist are willing to express an opinion, without any knowledge of the past history of this man, without any knowledge of the records of his case, based solely upon your observation that this man is perfectly sane? Is that right?

A Now, yes, sir.

WALTER S. WASHINGTON sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are a regularly licensed physician?

A Yes, sir.

Q And how long have you been licensed as a physician?

Direct.

Mr. Lane. I will admit the qualifications of Dr. Washington as a physician and an alienist if the court desires to call him as an alienist.

Mr. D'Aloia. Yes, I will save time if you make that admission, Mr. Lane.

Q Doctor, at the request of the Prosecutor's office, did you make an examination of the defendant, Harrison W. Noel?

A I did.

Q How many times did you examine him?

A I saw him three times.

Q Where did those examinations take place?

A In the County Jail or Prison.

Q Was there one in this building?

A Oh, yes, I beg your pardon. The first one was here at the Court House, and the other two were at the jail.

Q Now, from your examination of Harrison W. Noel, can you tell us whether he is mentally capable to appreciate the position he is in, the fact that he is charged with murder, and that he is likely to be tried on that charge and that the possible punishment is death?

A Yes, sir.

Q Do you think he is capable, mentally, of consulting with his attorneys and aiding them in the preparation of a defense under that charge?

A I do.

Cross Examination by Mr. Lane.

Q Doctor Washington, in the making up of your opinion, did you take into consideration the past history of this defendant?

A I did.

Q Did you have before you, at the time you made the examination, a record, or at any time before you reached your final conclusion, this record which I show you, which purports to be the history of the case and the findings, when Harrison

W. Noel was committed to, and while he remained in, the custody of the Essex County Hospital for the Insane?

A Yes. I saw the record of the Essex County Hospital for the Insane, and also the record of his being in Beacon, New York.

Q I will ask you to identify these papers, if you will, as the record that you saw.

The Court. Are those the originals, Mr. Lane?

Mr. Lane. I think they they are the originals, they were handed to me as the originals.

Mr. D'Aloia. They are.

A Yes, I think this is the one, Mr. Lane, without going over it.

Mr. Lane. I don't want any mistake to be made. I think the Prosecutor is under a misapprehension as to the records which I have shown the witness, as being the ones which came from his office. Those, I understand, are the originals which were handed to me this morning.

The Court. The County Counsel's office have those.

Mr. Lane. Yes, whereas the Prosecutor's office has a copy.

Mr. D'Aloia. Well, those are the originals and I haven't any objection to them.

Q You saw those records?

A Yes.

Mr. Lane. I would ask them to be marked for identification.

[Three separate papers are marked for identification as follows:

D1A
D1B
D1C]

Q You spoke, Doctor, of a record in Beacon, New York?

A Yes, sir.

Q Did you see that record?

A I did.

Q Do you know where it is or where did you see it?

A The one that was shown to me by the Prosecutor's office, I don't know anything about it outside of that.

Q Well, is it a report which is included in this record or is it something different? Whatever it is, we have not been able to get that record.

Mr. D'Aloia. I think the Doctor is mistaken.

Q You may refer to a letter written by Dr. Slocum of Beacon, New York, to the Essex County Hospital, which I think is part of that record?

A I think, Mr. Lane, that the information that I got is contained in this record. I don't think it was a separate one.

The Court. Do you refer to the letter, Doctor?

Witness. No, I have not seen the letter. I will just look to see if I can find the letter.

Q Well, Doctor, at any rate, you knew generally somehow or another there is a letter from Mr. Slocum, because I saw it this morning. I think it is that last page attached there, that?

A Oh, yes.

Q That purports to give a history of the case?

A Yes. I think I saw this. Yes, that is what it was.

Q With that information I will also ask you whether you saw this, which appears to be the testimony of Dr. Thompson before the County Adjuster on the 17th day of March, 1925, not a part of the hospital records, but in the files of the Prosecutor's office?

A Yes. I suppose I saw that in the newspapers. I do not remember seeing it otherwise.

Q At any rate, that is one of the pieces of information you had?

A No, not at the time I examined him.

Q Not at the time?

A No.

Q Now, with that information which you have, would you say, Doctor, that Harrison Noel is sane or insane?

A Not from that.

Q What? A Not from that. Oh, I would say he is insane from that, of course.

Q Well, when you determine whether or not a man is

sane or insane, alienists do not make up their opinions solely upon the examination of a patient, do they?

A Sometimes that would be the last test, the ultimate test, and the one he would be guided by, the examination of the condition he found him in at that time. It would not make any difference about the other.

Q Of the patient himself?

A Yes.

Q So you would, as an alienist, venture to determine the sanity or insanity of a person from your observation of that person without any knowledge of his history?

A In some cases.

Q In most cases.

A Well, I would not say most cases. They would always be considered. But the ultimate test would be the condition I found at the time of the examination; no matter what the previous history showed, especially in dementia praecox.

Q Have you any doubt, Doctor, that Harrison N. Noel was at the time of your examination, what you have read and these findings that you have read, insane at that time?

A None whatever.

Q And the form of insanity from which he was suffering was what?

A Was dementia praecox catatonia.

Q Can you tell me when, assuming him to be insane at the time of those examinations, suffering from dementia praecox, he became, if ever, sane?

A I cannot.

Q Do you consider that at the present time he is not suffering from dementia præcox, but he recovered?

A I think he has recovered at present.

Q So that, in your opinion, this man, who was at that time suffering from dementia praecox, in March, 1925, and down to the 25th of June, I think, 1925, the last he was at the hospital, has completely recovered from that condition of dementia praecox and is now, in all respects, a sane man?

A I think he is.

Q And will you tell me upon what you base that conclusion of recovery?

A From examination of him.

Q Well, what was there in your examinations of him which indicated a change from the condition shown existing on the 25th day of June and 17th of March?

A I found that his apprehension was good, his orientation was perfectly normal, his memory, especially for recent events was quite remarkable for anyone who has suffered from dementia praecox. I found he gave a connected, coherent statement of his personal history, his family history, what he had done and what he expected to be the result, probably, of his acts. He told me what they were—no, he didn't tell me what they were, but he spoke of knowing what they were—what the punishment was and what was his attitude at that time.

Q I want you to—is that all?

A Well, that is, in a general way.

Q I want you to bear in mind, Doctor, I am not asking you the question, nor do I want you to answer the question, whether in your opinion he is legally sane or legally insane; I want you to keep that out of your mind. I am talking now of medical insanity, not legal insanity, but I want to know whether you are satisfied to venture your professional opinion that this gentleman, from a medical standpoint, as from the 14th of March or 25th of June; recovered, medically, from this condition of dementia praecox?

A I think he has.

Q Did you find any difficulty at any time during your examinations of getting responses from this Mr. Noel?

A I did.

Q That is one symptom of dementia praecox, or what you may call it, from a medical standpoint of dementia praecox?

A It is at times.

Q Well, as a matter of fact, a dementia praecox has, within its concept, usually a split or mixed personality, has it not?

A It has.

Q And the reason why you get this lack of response is because at the particular moment the personality that is then in the insane man is unconcerned with outward things and you could make no impression upon the real person, that is true, isn't it?

A That is true, but this delay in answering, or inability to get an answer is not altogether depending upon that.

Q Oh, certainly not. It may be feigned?

A Yes.

Q I am not answering you whether this man is feigning this condition from which he was suffering from March 17th, 1925, which you say was in actual effect in June or March—my statement with respect to the reason for this lack of response, is true, is it not?

A Yes.

Q Did you notice that in the course of your examination, when this murder was discussed, that there was a total lack of emotion displayed by the murderer?

A Yes, there was no marked emotion.

Q That also is a symptom of the disease dementia praecox and is caused by practically the same reason that the lack of response is caused by; that is true, is it not?

A That is so.

Q Did you also notice, upon your examination, that upon some occasions when asked a question, as, for instance—not using the question, but this is a sample, we will say, that it was actually asked, "Why did you kill this girl," and after a wait without emotion of a minute or so "what time is it?" Did you notice that, in the course of your examination, on a certain number of occasions, Harrison W. Noel responded to questions in that way, which had absolutely no relevancy to the question you asked him?

A No.

Q During the entire course of your examination you did not notice that thing?

A No.

Q That thing, if it occurred, is another symptom of dementia praecox, and for the same reason that the lack of response is, is it not?

A Yes.

Q Did you notice, during the course of your examination wholly apart, now, from any specific question, a general condition of apathy?

A No, I didn't. Sometimes he would seem not very much

interested, but at other times he spoke very frely, without any difficulty whatever and responsibility.

Q That also, the fact that at times he would apparently have no difficulty and answer responsively and at other times he would appear to be apathetic, without interest in his surroundings, that is also one of the symptoms of the disease known as dementia praecox, is it not?

A If it is continuous; not when it is split up in the way you speak of.

Q Well, may it not be split up depending entirely upon the question, again, which one of these split or mental peculiarities is then operating in his brain?

A No, I don't think so.

Q You do not concede that a dementia praecox may not, particularly the catatonia variety, or the paranoid may not at times show apathy, depression, and on other times show outbursts of emotion?

A Oh, yes, that is a different matter.

Q That is a symptom of the disease?

A Oh, yes, that is, in that sense.

Q You observed nothing of that kind?

A No, not at any time I saw him.

Q How many times did you see him?

A Three times.

Q And how long was your examination the first time?

A A little over an hour.

Q And where?

A In the Court House here.

Q And who was present?

A Mr. Fishkind, the stenographer, Detective Dimond, and the guard, I think it was. I do not know who it was. I do not remember anyone else.

Q And your second time?

A Was at the county jail. Mr. Fishkind was present and one of the guards. I do not know his name.

Q If there is a recovery from dementia praecox, is it generally slow or is it a thing of suddenness?

A It is usually slow.

Q And you say that if there was a recovery between June, 1925 and September, or, rather, at the present time, 1925, or

a period of three months, or four months, that that would be a rather rapid recovery?

A Yes.

Q And to what would you attribute this rapid recovery?

A There is no method of knowing the cause of the rapid recovery any more than there is in knowing why there is a recovery at all, but in a great many cases they grow rapidly and in other cases they are slow. Some never get entirely well and some get so that you cannot distinguish them from a normal individual.

Q Could you attribute his mental recovery to a sudden shock?

A I don't know, I think that might have some influence on it, again it might have made it worse, I couldn't say.

Q Well, so far as your knowledge of the history of this man is concerned, between March and June, and this date, is there anything to which you could attribute this unusual, to say the least, sudden recovery, except sudden shock?

A The length of time which had elapsed, and there also is a history of the facts, that he was out of the asylum, and that he was considered so well by his father, at least, that he was not put back again, and went around without any difficulty whatever.

Q I don't assume that you are, in making your conclusion as to whether this man is sane at the present time and has recovered,—I don't suppose you are basing your conclusion at all upon what the father did, are you?

A Pardon me?

Q Upon what the father did or what the father thought?

A No, I don't think I am, but at the same time I am answering that as some reason why he has recovered to the extent, as I say I think he has, and also as to the length of time it took for recovery. I would have to go back farther than just the official time stated. I think I am entitled to take that into consideration.

Q You are entitled to take into consideration as to what the father thought of this boy?

A Well, oh, maybe not. I don't suppose I ought to take that into consideration.

Q I am asking you to exclude anything the father did or what the father may have done, except so far as it may be

attributed to the recovery of the boy in trying to find a reason why there should be an apparently sudden recovery of his condition from March and June and the condition that you find existing now?

A I suppose I am not allowed to take that into consideration, although as a matter of fact it ought to be taken into consideration.

Q What the father said?

A The fact that he was out and not sent back again and that he was considered a great deal better and was better.

Q You don't think the father was a proper judge as to whether his son was sane or insane, do you?

A No, I don't think so.

Q I am asking you from a medical standpoint.

A Still, you know lay testimony is accepted on that—

The Court. Answer the question, Doctor.

Q What I am asking you to do now, is, as a Doctor with a patient, assuming that you had this boy as a patient and that you had diagnosed his complaint and had what knowledge you now have from the records as to the condition existing in March and June of 1925, and you find him today, on the 28th of September, or the 24th day of September sane, what you would, in your own mind, as a physician, attribute that recovery to, or wouldn't you know under all the circumstances in the case?

A I would not know, nor would anybody else.

Q Is there any reasonable explanation for it if it exists, and I want it distinctly understood that I do not contend that it exists, excepting the shock that may have happened to him during that time. In other words, according to Dr. Thompson's theory.

A None, except the fact that some get well or better faster than others and that it is the natural course of the disease in many cases.

Q One other thing, Doctor, in response to one of my ques-

tions you said he had recovered to the extent that you said he had or that you thought he had. I understood your testimony to be unqualified, and I want it certain that from a medical standpoint this man was now fully sane?

A Yes, sir.

Q Did you observe him in the court the first day he was brought to be arraigned?

A I did.

Q Did you observe him the second day he was brought to be arraigned?

A No, I was not here.

Q During the course of your examination, you have noticed, have you not, upon several occasions a tendency on the part of Noel to remain mute?

A I have.

Q Mutuism is one of the symptoms of dementia praecox, is it not?

A Yes, sir.

Q Well, Doctor, now, you have told me that you observed a tendency to remain mute, upon occasions and you have observed a lack of response to questions, you have observed the general condition of apathy upon occasions. I think there was one more, it may have slipped my mind, which you say are symptoms of dementia praecox, and yet you say notwithstanding the fact this man suffered from dementia praecox in March or June, that he is not now suffering from it. Will you tell me the lack of one symptom, what it is that you would expect to find in a dementia praecox that you do not find in this case now at the present moment?

A I don't know but what that is his natural condition—

Q You don't know but what what is?

A That that is his normal condition, apathy. He may be one of that type that does not make much fuss at any time. It may be purely that, something normal with him without being a pathological condition. So far as asking questions is concerned, there were only some times he did not respond, the first time I saw him. The second time he did not at all, but the last time I examined him he answered promptly, without any difficulty, and as cheerfully as any one possibly could, without

any hesitation and without any signs of any more apathy than at any other time.

Q Exactly, but you have already said, as I understood it, on my examination, that that was a condition that you might expect in dementia praecox, depending upon which personality was in the ascendant at the particular moment?

A Yes, sir.

Q What I am trying to get at is whether these symptons of dementia praecox, as you have stated you would find present, all of them present at some time or another, I am asking you what other symptom is there of dementia praecox that you do not find existing at the present time?

A You do not find any evidences of delusions or hallucinations; you do not find a lack of apprehension of his position; his condition; what he has done; you do not find any disorientation; his attention is good; he follows questions and answers responsively. You do not find any mood of depression at any time. You do not find any of the active symptoms of exalted character, and things of that kind, that you would expect to find in a dementia praecox.

Q Except with respect to the last, if my recollection of your prior testimony is correct, you do find every single one of them at certain times?

A At certain times.

Q Now, as a matter of fact, in a dementia praecox aren't you liable to find these symptoms present at certain times?

A Only during the active stage, but sometimes in some cases we do not have them at all.

Q And these are some stages in some cases where you have them alternately and sometimes not?

A During the active course of the disease, but not after they have recovered.

Q No, but you are basing your idea that this man has recovered his sanity upon a condition of affairs, which, if I construe your testimony correctly, indicates that there are still present at times these symptoms?

A Yes, but I do not admit that these symptoms as they are present, as you speak of them now, necessarily indicate anything about it.

Q All right. I suppose these symptoms might be present

at any time and a man not be suffering from dementia praecox, and in that particular man it might be his normal characteristic?

A Yes, sir.

Q Do you know whether that condition of affairs was the normal characteristic in this man prior to his suffering from dementia praecox?

A No, I do not.

Q So, you don't know, but it is not the normal condition of the ordinary man, is it?

A In an ordinary man it is the normal condition.

Q Then, these symptoms that I have referred to, which are said to be by you, and in books, symptoms of dementia praecox, are not symptoms at all?

A Sometimes they are not.

Q And in this case they are not?

A In my judgment they are not.

Q Why not?

A Because of the general examination and the responses that I got in my examination of him.

Q Do you think the present—assuming it not to be feigned—attitude of Noel, conducting himself here during this examination, is that of a normal rational man, where a proceeding is underway which might result in his electrocution?

A I think so. I don't think it anything abnormal at all.

Q And did you notice at the time that you examined him, at the time he was first in court, that there was a tendency to keep his hand to his mouth?

A I think there was.

Q That also is a symptom of dementia praecox, isn't it?

A I don't think so.

Q Don't the books all agree, doesn't that come within the category of a peculiar mannerism and grimace combined?

A Well, I didn't notice that.

Q You didn't notice it?

A No, grimace at all, and the habit of putting your hand up to your mouth or your face it not an unusual one in a large number of people.

Q Now, Doctor, I know that, but do you think that in the

way in which you saw Mr. Noel, or Harrison W. Noel, put his hand to his mouth was the way in which the normal man puts his hand to his mouth in an unconscious moment?

A I think it is.

Q And you would say that there was nothing, absolutely nothing, in the course of your examination or in the attitude of Mr. Noel in court, that would indicate to your mind that there might be a condition still extant of dementia praecox?

A No, I think not at the present time.

Q He is a normal man?

A Yes, sir.

Q Do you agree with Dr. White?

A Who?

Q Who?

A I don't know whether I will agree with him or not.

Q Of course not, until I have read what he says. "That failure of voluntary attention and the lack of interest which these patients show, both in themselves and their surroundings, is a symptom of dementia praecox"?

A Maybe, not always.

Q No, not always?

A It may be so, but not always.

Q Do you agree that one of the symptons of catatonia dementia praecox is negativism?

A Well, in its active stage, yes.

Q Do you agree that one of the symptoms of catatonia—by the way, Doctor, catatonia dementia praecox has sometimes been called assaultive dementia præcox?

A I never heard that, I don't remember.

Q Or assaultative?

A I don't remember having heard that name used.

Q Do you agree that "one of the symptons and one of the effects of catonic dementia praecox is that the patient will suddenly, and with absolutely no warning whatever commit some act of violence, such as assaulting another patient or breaking a window"?

A Yes, in the active stage.

Q It is a symptom of the disease?

A Yes, sir.

Q Do you also agree that "one of the symptons is that a

patient will at times, and unexpectedly become unresponsible and hide behind an "I don't know" or complete silence"?

A In the active stages, yes, sir.

Q And do you also agree that "these attacks come out of the clear sky, cannot be foreseen and make these patients at times very dangerous"?

A In the active stage it is true.

Q In the active stage, you say. Is there an active and passive stage in dementia praecox?

A There is an active stage and a stage where they get better.

Q And a stage when they get worse?

A Oh, yes, but we have to judge that by what we find.

Q Doctor, isn't it a matter of fact, generally recognized in medicine, that there is grave doubt as to any complete recovery from a condition of true dementia praecox, as distinguished from neurasthenia, or a disease of similar character?

A Well, there is a great deal of difference of opinion, Mr. Lane, on that point. Some consider that anyone who has suffered from the active neurasthenic form of dementia praecox never completely recovers. Others, that they completely recover, and as a matter of fact there are cases of recovery well known in the institutions and reports. It is a difference of opinion largely.

Q And might not the difference of opinion be attributed to a mistake in the original diagnosis between true dementia praecox and a neurasthenic or paranoid condition of the mind, which is curable, as all concede?

A Well, doctors and specialists both make mistakes and have differences of opinions.

Q Dementia praecox carries with it the idea, true, dementia praecox carries with it the idea, of a physical deterioration of the brain, does it not?

A Oh, yes.

Q It is organic?

A Oh, yes.

Q So that anyone who has suffered from dementia praecox has suffered absolute, physical deterioration of the brain?

A As a rule, in time, there is, of course, it depends on

how long they have had it and how severe they have had it. Apparently we are unable to determine or to find out what the change is except in a few cases, but cases have been known where there has been quite a severe, apparently a severe mental attack from which they have recovered, and in those cases they can be no important deterioration of the brain.

Q There cannot be a recovery if the deterioration of the brain itself occurs?

A No, unless it is a mild deterioration.

Q Well, it has got to be so mild as to be almost infinitesimal. If there is once deterioration of the brain you have a condition from which medical experts agree that there cannot be a full recovery?

A There is not likely to be, but we find cases where they have recovered, where they have completely recovered.

Q But, Doctor, isn't it perfectly explainable that where there has been a complete recovery, the doctor who made the original diagnosis did not properly distinguish between a condition of dementia præcox which concedes an organic disease affecting the brain materially, and neuresthenia or a paranoid condition, the symptons of which may in the early stage, be somewhat alike?

A Well, I don't know whether they made a mistake in the diagnosis or not, but the fact is that there are a large number of cases which have recovered, that have recovered, by all appearances, where they can again be about and take their places in life with others, as they had done before, and yet, all of these men could not have made mistakes, I don't think, in the diagnosis. There is a great deal of difference, you know, between neurethenia and dementia præcox.

Q Of course, there is. I know there is a difference. The whole basis of my question is based upon the difference in the two diseases. I am not talking about the difference in the disease. I am talking about the similarity of some of the symptoms, some of the results created by the two diseases.

A Yes, sir.

Q The great distinction between the two, the fundamental, underlying distinction between the two is that one does not presuppose anything organic and material destruction or de-

terioration of the brain, whereas the other does?

A One is functional and the other is organic.

Q You defined the functional and the organic?

A Yes.

Q You have spoken about recovery from dementia praecox. There have been a great many of these cases in which there have been apparent recoveries and then sudden reverses, have there not?

A Yes.

Q So that a dementia praecox, who may appear, to all outward examination, of the catatonia variety, may move along and makes his way after a fashion and suddenly, for no apparent reason whatever, breaks out into an assault or what-not, without apparent reason?

A Yes.

Q Well, if there is a recovery, that means that there has never been a complete recovery.

A Well, it would look like it, or it might be another attack of the same character. It may be dementia praecox again, another attack of dementia praecox.

Q Now, Doctor, you would not venture the opinion, would you, that there could have been this actual deterioration of the brain, dementia praecox ensued, and an apparent recovery, and then a recurrence. You would not say that person was completely cured and the brain restored to where it was before the recurrence and the repetition of the outward symptoms is caused by another new attack of the dementia praecox causing the brain cells to again break down, would you?

A It may have been entirely cured and have the second attack, because the first attack was not sufficient to produce the marked depression in the cells themselves. That might appear, and it might be true that the deterioration was such that although there was not a positive cure, but to all appearances, from an examination, you could not tell the person from one who was absolutely sane or otherwise. You could not tell the difference.

Q So that in this disease of dementia praecox, in the course of the disease, the person may become in such condition that you could not tell the difference whether he is insane or sane, and still suffering from the disease, and shortly

thereafter, he may clearly indicate by some act performed by him that he is still suffering from that disease?

A I would not put it that way. I would say that there might have been some mental deterioration from which the man has apparently recovered, at least, recovered to such an extent that you could not determine him from an ordinary healthy, normal person, and yet in the presence of some depression, there might be another attack made on top of that, but we could not call that man insane. The symptoms which distinguish dementia præcox would be present in some form, but if there is a complete cure, they would be such that there wouldn't be anything left.

Q Now, let me put this question to you, Doctor, that this man is perfectly sane; let us assume that this man is not guilty of the crime which is charged against him, because of insanity, and, therefore, he would not be convicted of that crime, would you say, in your opinion, that that man today is so sane that he should be left without restraint?

A Well, that is a different proposition.

Q No, sir. It is exactly the same proposition, because if that man is, as you say, he is sane.

A I am not thinking that this man, when he became sane, whether he was at the time he committed the crime or not, I am not making any such statement.

Q I am not asking you to. I am now assuming, as a hypothetic question, for the purpose of testing the strength of your belief—of your statement, rather, that this man is now perfectly sane and ask you to assume that in this case this man be found insane at the time of the commission of the crime, which would be a perfect defense for the action, is, he in your opinion, in such circumstances that he should be left without restraint?

A I think he might be.

Q You think he should be?

A Yes.

Q You think him perfectly sane?

A Yes.

Q Assuming him to be insane at the time of the commission of this crime, to go scot free?

A Yes. I say, as far as his condition is concerned, to go free.

Q And not be likely, in your opinion, to break out in any such assaultive characteristic as happened when he assaulted his father and as happened when he committed the crime for which he stands charged?

A No, I wouldn't say that. I would not say what a man who has suffered from catatonia dementia praecox would do any time afterwards. I would not be satisfied with that.

Q Why not, if he is perfectly sane and fully recovered?

A Because sometimes after they have been perfectly recovered, that is, so far as we can find medically, I am speaking of that part of it, they may have a recurrence of the same thing or the deterioration may have stopped short and then gone on again.

Q Well, the net result of that is that you do not know whether he is medically sane or not today.

A Well, I only say I think so. That is my judgment.

Q And that is your judgment notwithstanding the presence of some of the symptoms of catatonia dementia praecox?

A Yes.

Q One of the results, I don't know whether you call it a result or cause or what, of dementia praecox, is the split personality, isn't it?

A Yes.

Q A dementia praecox is, because of this condition of split personality, incapable, is he not, to rationally appreciate his condition and surroundings —

A During the time he is suffering from it—

Q Wait a minute.

A I beg your pardon!

Q —and rationally able to consult with counsel and prepare a defense?

A At the time he is suffering from it, certainly.

Q And whether he is suffering from it or not, this so called split personality is a matter, I suppose, that no one knows.

A It evidently disappears when they get well.

Q Then you would say, would you not, that a true dementia praecox, suffering now from dementia praecox as the organic disease, would not be able rationally to appreciate

his condition and consult with counsel with a view to properly aiding and rationally aiding his defense?

A No, he would not.

The Court. I take it that your conception that this man is suffering from dementia praecox is based entirely upon the findings of the physicians who committed him.

The Witness. Yes, entirely.

The Court. You, yourself—

The Witness. I know nothing about that.

AMBROSE F. DOWD sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Mr. D'Aloia. Are the doctor's qualifications admitted as a physician and alienist?

Mr. Lane. Not as an alienist. I do not happen to know Mr. Dowd.

Q Doctor, you are a practicing physician?

A Yes.

Q And you have had experience in mental diseases and nervous diseases?

A Yes.

Q Do you specialize in those cases?

A I do.

Q How long have you been practicing and specializing in neurotic and mental diseases?

A Fifteen years.

Q Now, at the request of the Prosecutor's office, did you make an examination of Harrison W. Noel?

A I did.

Q During those fifteen years you told us about, will you tell us, please, what experience you had with cases of the same kind I mentioned?

A I had experience in Westchester Hospital, New York, Manhattan State Hospital, Newark City, St. James', Irvington General, Bethany Home, New Jersey Rehabilitation Commission, and United States Army, Gettysburg Observation,

Camp Meade, Maryland, Columbia Barracks, Ohio, and overseas.

Q Now, at the request of the Prosecutor's office, did you make an examination of the defendant, Harrison W. Noel?

A I did.

Q Where did you make such an examination?

A At the Essex County jail.

Q What did your examination of Harrison W. Noel consist of?

A My examination of Harrison W. Noel consisted of an inquiry into the family history, his personal history, and an examination of his present mental condition, after reading a record of his commitment to the Essex County Hospital at Overbrook and Beacon, New York.

Q Now, from your examination, taking into consideration all the information you gathered about his history, what would you say as to whether Harrison W. Noel is mentally capable of appreciating his position, that he is charged with murder, and that he is likely to be tried on that indictment for murder and that the possible punishment may be death?

A I think he appreciates the predicament in which he is.

Q You think he appreciates the position in which he is?

A In which he is.

Q What would you say as to his mental capability of consulting with his counsel in order to aid his counsel in the preparation of a defense for him?

A I think he can aid counsel in the preparation of a defense.

Q Now, upon what do you base those two conclusions which you have given as answers to my last two questions?

A Upon the examinations I made of Noel on September 16, 19th and 17th.

Q Now, will you please detail, if you will, your examination of September 16th?

A September 16th?

Q The first date in September?

A I saw Noel at the County jail. He said that his full name was Harrison Webster Noel. He lived 295 North Mountain avenue, Montclair, New Jersey. He was born in New York City April 16th, 1905 His New Jersey

residence has been approximately fifteen years. And I then asked the question, "All that time in Montclair?" and he replied that that has been my official residence. Here, that is. I asked him how long he had been in the jail and he said, "I have been here for ten days. It was wrong to do it. I am sorry. It was wrong to take the little girl. It was made that way. I am sorry. I don't know why. I know how the parents were. I have a sister fourteen years old. It would not be right for anyone to take my sister. It would hurt me. I remember taking the little girl. I would feel bad if my sister was taken. It would be wrong if my sister was taken. It was not right for me to do it. I knew it was not right when I did it. I know how I felt when I did it. I knew it was wrong. I felt it was wrong. I remember going up on the lawn and putting her in the car. I know my predicament and I want my friends to help. I haven't any plans. Do you want me to answer your questions? I had an automatic pistol. I had shot tin cans with that." And he then indicated the length of the pistol and it was about eight inches. I had the pistol. "I was afraid Mr. Breaten or Mr. Cox would come from Overbrook and get me. If I couldn't run I was going to shoot them. It is wrong to kill another individual. It depends on the person who was killed and the person who did the killing. It would not be right for you to kill me. I ought to be defended. Do you think you are sane or insane?

The Court. Is this a question?

Witness. This is a question.

A (continuing) Do you think you are sane or insane? and he laughed. I do not think my mind is all right. My mind is different from yours and my brother's. I do not know right and wrong in the same way that you do. I do not understand that kind of wrong. I know it is wrong to shoot anyone. Blackmail is wrong. It would be wrong to shoot the man from Overbrook if they came to me. This is the Essex County jail. September 16th, 1925.

Q Now, will you kindly turn to the next examination and tell us if you can, what the conservation between yourself and Harrison W. Noel was on that occasion.

A I saw Noel early in the morning on January 17th.

He replied to the usual salutations and said that he had slept well that night and that he was glad to see us, and he said, "This is not the place for me to be. I should be at home. I know there was somebody there. I didn't know who it was. I feel all right. He referred to somebody coming to see him. I would like to go home. I know that you are helping me. A whole lot of things in the world make it worth living. I would like to go back to my mother and sister. I do not think I should be deprived of my liberty. It would be wrong for me to kill another human being. I think it would be wrong to go out and shoot another little girl. I wouldn't know why I would do it." That was the result of the examination.

Q On the 17th?

A No, there is some more on that.

Q When did you next see him?

A On the 19th.

Q Will you kindly tell us what he said on the 19th?

A On the 19th Noel maintained for several minutes a persistent silence. He then started to talk and talked freely. "Were you at the jail yesterday," I asked. "I was taken to the Court House." "Were you there alone?" "I was handcuffed to two or three others and there were two or three guards." "Where did you go at the Court House?" The lawyers made speeches. I didn't say anything. My lawyer told the judge that nothing could be done because of the act of the Juvenile Court. He said a lot of things but I didn't hear them all. Did you expect to plead to a charge? Yes, I was to plead to a charge for murder and kidnapping. But you did not plead? A No. The lawyers are going to renew their argument on Monday. I don't know whether I will be taken down or not. How are you going to plead? It doesn't make any difference how I plead. They have my signed confession. Captain Mason has it. Do you know right from wrong? Yes, just as anyone else knows it. It may be hard to explain, but I know it. I know the Ten Commandments and that is enough. What do they do with murderers? Should you be executed? No. *Questions* Why? *Answers* I don't think I should be, Why not? I don't know. What would you like to have done with you? Whatever my people want. I would like to go free. Do you realize what may happen to you?

Yes. I might be executed, found guilty. I might go to prison. I might go to an asylum. I would rather go back to prison than back at Ward 32 at Overbrook. Did you see anyone in the courtroom you knew? Yes. Mr. Barber. Can you name the Judge whom you saw yesterday? No. Can you remember if he wore glasses? I think he did. Do you think you will go free? No. Did you kill anyone? They say I did. Don't you know. No answer. Did you telephone anyone demanding money? Yes. Why? I did not want to get caught. Have you seen Mr. Barber? No. Do you wish to see him? Yes. You have confidence in Mr. Barber? Yes. Why did you refuse to answer questions during the early part of this examination? I thought you were trying to put something over on me.

Q Is that the last examination?

A The last examination.

Q Now, from those examinations and those conversations that you had would you say that it is your opinion that he is mentally capable of appreciating his position, the predicament he is in, and mentally capable of consulting his attorneys in the preparation of his defense?

A Yes.

Cross Examination by Mr. Lane.

Q Have you ever been connected with an Insane Asylum?

A Yes, Manhattan Hospital, Ward Island, New York, Psychopathic Institute on that Island.

Q In what capacity?

A I was associated with Dr. Holke.

Q In what capacity, as what?

A Capacity? I was there to learn nervous and mental diseases.

Q And have you ever been connected with any other insane asylum?

A Westchester County Hospital, New York.

Q In what capacity?

A As a physician.

Q And any other insane asylum?

A Taking care of patients in the Newark City Hospital, and with mental cases in the army.

Q You are a nerve specialist?

A Nervous and mental, yes, sir.

Q You are particularly a nerve specialist?

A Nervous and mental diseases.

Q Isn't your particular vocation that of nerve specialist as distinguished from that of an alienist?

A As I understand it, most nervous diseases are mental diseases.

Q Yes, but you know the distinction between a person who devotes himself to nervous diseases, as such, and a person who devotes himself to nervous diseases in the sense of being an alienist?

A I have devoted myself to both for fifteen years.

Q These questions or answers which you have read, do you mean to tell, as would appear from your conversation, that Mr. Noel made those statement without any questions being asked in between?

A No, the questions were asked—where were you, what did you see, what happened?

Q Where are the questions?

A I did not write the questions down. I have to write this down in long hand.

Q I know, Doctor, but as an alienist, determining the man's condition, do you think you can determine anything from the answers that you have given us with us without having the questions he answered?

A Oh, yes, if I am there examining him.

Q I know, but we want it for our information.

A The questions are not written down. Some of them are.

Q And you know as a matter of fact that to judge anything from a man's mentality, you cannot judge from the answers without having the questions, can you?

A Yes, I think you can.

Q You can.

A I can

Q I am not talking about you. Can I do it?

A I don't think you can.

Q Certainly I can't and no one else can?

A Oh, I think so.

Q Do you think Dr. Washington, for instance, who is an

alienist, might judge from those answers, without the questions, anything with respect to the mental condition of this man?

A I think he could.

Q You think so?

A Yes.

Q Well, suppose you asked him whether or not he slept last night and he replied "I killed the girl." The statement "I killed the girl" replying to that question, "How did you sleep last night?" would indicate a definite form of mentality, would it not?

A Why, it might indicate that and it might indicate anything. It might indicate deliberate malingering.

Q Certainly, it might indicate an attempt to fool the doctor or it might indicate that something is the matter with his mentality, might it not?

A Yes, sir.

Q Then, how can Dr. Washington or anyone else, or I, say anything about these answers which you have given without knowing what the questions were?

A I think that they can.

Q Assuming that the questions were in proper form, and that the answers were responsive, do you consider that those answers are the answers of a normal mind?

A Oh, he is not normal.

Q He is not normal?

A Oh, no.

Q Now, at some stages of that examination, or those answers, you had the typical responses of a dement praecox, didn't you?

A There were some indications of dementia praecox in some of his answers.

Q And one of those answers in which you found that was, "Oh, yes, I know right from wrong and I know I shouldn't do those things, but it depends entirely on who the person was?"

A Oh, yes, a dement praecox might very well say that.

Q It is typical of a split personality, isn't it?

A I would not say it is typical, it very frequently does occur.

Q And so what he said with respect to right and wrong

it would make a difference not only as to who did the killing, but as to who was killed?

A That might be a praecox or it might not. That is a fact, it does make a difference who does the killing.

Q But it is something that you would expect to find upon the examination of a true dementia praecox?

A Oh, I might find it in a perfectly normal individual. I might.

Q Now, without any feigning, just excluding the idea that this man is feigning—

A I haven't any such idea, Mr. Lane.

Q You don't think he is feigning?

A No, sir.

Q So, that that would have no effect?

A Yes, sir.

Q You don't think he is feigning?

A No.

Q Do you think that a normal man would say, a normal man, a man who is rational, would say, "I don't know the difference between right and wrong".

A I do.

Q "But, I want you to understand that the difference between right and wrong depends entirely upon the person who commits the act." Do you think that that is the answer of a normal man?

A I don't think an absolutely normal man would answer that way.

Q Another thing, when he was asked—assuming that there were no questions asked, and of course, I am at a perfect loss, because I don't know how many questions were asked, or what not—but assuming there were no questions asked and the man made those statements rather in a running form you would have an absolutely typical, so-called, word salad?

A Yes, but that is not the situation.

Q But, you would have, if you did not ask the questions, you have the typical word salad, which is referred to by all the authors as indicative of dementia praecox?

A Yes, sir.

Q Another thing that he stated there, that was also indicative, or might well be present in a case of dementia praecox,

was when he was asked, or when he stated, rather he should not be in jail, notwithstanding the commission of this crime, he should not be in jail, but he should be home with his father and mother?

A At one time he did.

Q And that was also one of the things you would expect to find in a case of dementia praecox?

A Yes, sir.

Q And that is attributed to the split personality as an indication of dementia praecox?

A Yes, sir.

Q Now, another thing would perhaps offer a reasonable explanation for his act, or for going over the course that he apparently had gone, would be his retirement to the "I don't know".

A He becomes seclusive and shut in and makes no replies.

Q He just retires to himself and says, "I don't know."

A Yes, sir.

Q And another indication which you found present, and which is also found present in dementia praecox, is the fact that he remained mute and would not talk at all?

A Yes, sir.

Q And mutism is an indication of dementia praecox?

A Yes, sir.

Q Will you tell me, Doctor, what was there present at this examination of yours that was not likely to be found in a person, or in a case of dementia praecox?

A What was there present?

Q Either what there was present or what there was absent which you would expect to find in a case of dementia praecox?

A The things indicative of the fact that this boy is suffering from dementia praecox, has not totally recovered from his dementia praecox, are his inhibition, his mutism, his emotional dullings?

Q And that you found?

A Yes, all present.

Q Then, he is suffering from dementia praecox?

A He has many of the characteristics at this time of a

dementia praecox, and I don't believe that he has recovered from it.

Q Now, Doctor, I suppose you also had or examined the record of the Essex County Hospital?

A I examined the record of the Essex County Hospital and the New York Institution in which he was.

Q Would you say, Doctor, that a person suffering from dementia praecox, which involves, I understand, the concept of the split personality, was in a position where he could readily appreciate the conditions and rationally consult with counsel with respect to his defense on a charge of murder?

A Oh, yes, many praecox cases are in a position at times to do that.

Q Well, whether he could intelligently consult with counsel and whether he could appreciate the conditions surrounding him, which, of course, would be necessary to consult with counsel, would depend entirely upon whether, during the course of the trial at one moment whether he was personality No. 1 or at another moment he was personality No. 2.

A It depends upon, I think, to some extent—it depends upon that, but I don't think the alterations ordinarily occur so rapidly.

Q But they may occur rapidly, and of course, if he is in personality No. 1, which we will assume to be abnormal, he is in no condition to go forward with his trial, is he?

A My opinion has to be based, of course, upon the three examinations which I made.

Q I am not confining you now to the examination of this particular man, I am testing out the dementia praecox generally, as to whether a dement praecox is capable, or whether you agree with Dr. Washington, that if a person is suffering from dementia praecox, he is not in a position to fully appreciate, or to readily appreciate the circumstances surrounding him and to rationally consult with counsel?

A A praecox may do so.

Q You think a praecox may do so?

A Yes, unquestionably.

Q At times?

A Yes, at times.

Q And you think, of course—your opinion now is more

the opinion of a layman, perhaps, than it is of a doctor, would you think that where a man is on trial for his life, and is in such a condition of mental disease that he may change from time to time, subject to a split personality, that that man can be said to be in a fit condition to go through the trial, consuling with counsel every minute of the time, advising with them as to what should be done here and there, during the course of that trial, do you think that that is a reasonable thing?

A Yes, sir.

Q You do?

A Yes.

Q Well, will you tell me why you do?

A Because of my experience in cases of dementia praecox and the results of my examination in this case.

Q I am not asking you now—

A (interrupting) I may as a result of my examination from this case—

Q I am not asking you anything from the result of your examination in this case, I am asking you the general question.

The Court. Mr. Lane, your question is "Why" and it gives the Doctor considerable latitude.

Mr. Lane. I am not criticising his answer, but I am pointing out that that is not what I am directing my attention to. I am not directing my attention particularly to Harrison W. Noel, but I am directing my attention to the dementia praecox, who is actually suffering from dementia praecox, where a man who is suffering from this disease, which carries the concept of split personality, may rationally consult with counsel during the progress of the trial so as to make a proper defense of a case involving his life.

Witness. He may do so.

Q Is it likely to expect him to do so?

A Likely to expect him to do so?

Q Yes, is it likely to expect a man who is laboring under such a disease to do so?

A I think he probably will do so. It is likely to, yes, to expect the man to do so.

Q Then, you think you can say that during the progress of

the trial, which may last for a week or two, that this man will be so sane and retain himself during that trial to the personality which you say may be normal, so that he can, during the course of that trial consult with counsel intelligently and rationally?

A I think that that is likely, but by no means certain.

Q And as a matter of fact it is a very uncertain quantity, isn't it?

A It is probable. It is possible that that may not happen at all.

Q Why, the very nature of the disease is organic, isn't it?

A Well, that is a much disputed question. A very much disputed question.

Q What is your opinion, Doctor, whether it is organic, or whether it is not?

A Why, the theories as to the causation of this disease are very largely speculative.

Q I know, but you are an alienist and you have had experience and I am asking you your opinion?

A I think it is probably some psycho-biological mal-adaptation.

Q That is a very long word and it does not tell me whether it is organic or what?

A I think it is functional.

Q Functional rather than organic?

A It may be infectious; some hold to that theory.

Q But it is a disease?

A It is a disease unquestionably, and the boy is now mentally sick.

Q And that disease is divided into four classes, each overlapping?

A Generally so divided, and sometimes they remain an entity.

Q And in the catatonic variety you have the elements of the paranoid?

A You may show that.

Q And you might not?

A You might not.

Q This boy is suffering from the catatonic sub-division of that disease, is he not?

A There is no evidence of catatonic at the time I examined him, but the record so indicates.

Q I am not asking you now to take into consideration your examination, but the history of the entire case.

A Yes, sir.

Q Now, in the catatonic dementia praecox there may be this rigidity which has the elements of catalepsy?

A True.

Q And there may be cases which are put in the category of catatonic dementia praecox which have no rigidity or catalepsy?

A True.

Q And the general idea of the catatonic condition is that there may be at sometime a condition of depression, or what not, and at another time there may be a condition of sudden outbursts?

A They have such outbursts, well known and recognized.

Q And those cases are put in the catatonic condition?

A Yes, sir.

Q And it is also one of the conditions of praecox, generally, and of catatonic dementia praecox, that there is a negativism present?

A Yes, sir.

Q A withdrawal in themselves and a failure to respond?

A True.

Q Also a tendency to peculiar mannerisms?

A True.

Q Such as either scowling or keeping the eyes tightly closed, or the cheeks puffed out, or the lips closed, or putting the hands to the mouth?

A All sorts of mannerisms, gestures and grimaces.

Q Peculiar grimaces?

A Yes, sir.

Q Peculiar mannerisms?

A Yes, sir.

Q There is also peculiarly attached to the catatonic subdivision, impulsive acts, usually?

A Yes, there is a catatonia and perhaps other forms of practices which occur.

Q That is, they will suddenly, without warning and abso-

lutely without warning, and for no apparent reason sometimes commit acts of violence and assault?

A True.

Q And after the impulse has extended itself come back and retire into a passive condition again of negativism?

A That is true.

Q And that situation, that condition is so well settled that the authorities all agree that the patient suffering from a catatonic form of dementia praecox is extremely dangerous?

A Quite right.

Redirect Examination by Mr. D'Aloia.

Q Doctor, would the mental ailment you found him suffering prevent him from realizing his position or realizing the wrongfulness of the act which brought about his predicament?

A I think that he realizes his position, I have so testified.

Q Now, does whatever mental ailment that you found him suffering from prevent him from being able to aid his counsel in the preparation of his defense?

A Not in my opinion.

Recross Examination by Mr. Lane.

Q When you are answering these questions as to the appreciation of right and wrong, do you mean to say that if Harrison W. Noel suffers from a disease which makes him think what is right and wrong depends upon the individual involved, that he can appreciate the normal distinction between right and wrong ?

A He can.

Q And don't all the books state that where you are considering a question of a praecox, involving the split personality, you must, in order to determine the ability of the person to distinguish from right and wrong put yourself in the position of the personality which he thinks he is in?

A I try to do that.

Q And you haven't been able to, have you?

A I tried, and I may have succeeded.

Q In other words, if he has a delusion that he is not in this case, but he has the delusion that he is Julius Caeser, the question as to whether he could distinguish between right and

wrong would be as to what was right and wrong for Julius Caeser?

A I think if he had the delusion that he was Julius Caeser and killed someone he would still be capable.

Q The theory upon which you have answered the questions with respect to the ability of this man to distinguish between right and wrong is that if he did, in fact, by reason of the disease, or lack of mentality, actually think himself to be Julius Caeser, that he would still be amenable to be called upon to distinguish between the normal right and wrong?

A Yes, sir.

Redirect Examination by Mr. D'Aloia.

Q Did you find any evidence in your talk with Noel of any split personality?

A No, he is pretty well associated at this time. His trend of thought is pretty well associated.

Recross Examination by Mr. Lane.

Q How do you account for his statement that what is wrong for one is not wrong for another?

A I assume he may have had in mind his presence at one time, his presence in the Essex County Hospital for the Insane.

Q Did you try to find out if he had that in mind?

A Yes, sir.

Q And you did?

A Yes.

Q What did he say?

A He said that his mind was different then than ours, and in a subsequent examination he corrected it by saying it was the same as ours.

Q He said his mind was different than yours?

A Yes, sir.

Q Why?

A Because of the fact that he had been sent to the institution, he said he was sane when he was sent there.

Ambrose F. Dowd, Recross.

Q He said he was sane when he was sent there?
A Yes, sir, that was his opinion.
Q And most insane persons think they are sane, don't they?
A He said he became insane there.
Q Most insane persons think they are sane, don't they?
A Many of them have insight and recognize the fact that they are absolutely abnormal.
Q And many of them think they are sane?
A Yes, sir.

Redirect Examination by Mr. D'Aloia.

Q And there are a lot of sane persons who think they are perfect, too, aren't there?
A Right.
The Court Thereupon Took a Recess until two o'clock P. M.

AFTER RECESS

Continued pursuant to adjournment.

Present, conusel as before stated.

CHRISTOPHER C. BELING sworn in behalf of State.

Direct Examination by Mr. D'Aloia.

Q Doctor, how long have you been practicing as a registered physician?
A I have been practicing medicine since 1897?
Mr. Lane. Dr. Beling's qualifications are admitted.
Mr. D'Aloia. Both as a physician and an alienist?
Mr. Lane. Yes.
Q Now, Doctor, at the request of the Prosecutor's office, did you make an examination of Harrison W. Noel?
A I did.
Q Where did that examination take place?
A At the Essex County Jail, September 21st.
Q How many times did you examine Noel?

A Twice.
Q The first time was on September 21st?
A Yes.
Q And the second time was when?
A September 22nd.
Q The next day after?
A Yes.
Q Will you please tell the court what, if any, conversation took place during your examination of Noel on September 21st, 1925, at the Essex County jail?
A I saw Mr. Noel in the deputy's office and began my examination about twenty-five minutes after four. I asked him his name and he said his name was Harrison W. Noel, and his age twenty years. He was born in New York City. I asked him the day of his birth and he delayed his answer and then he asked me, "Do you know if Mr. Barber is coming to see me?" I asked him "Who is Mr. Barber?" He said, "He is a friend of the family's. I have known him a long time and my father knew him before I was born." I said, "Has he been to see you before?" He said, "Yes." Then I began to inquire into his family history. He replied to questions and he said that his father was living. His name was Dix Noel and his age 52. I said, "Where was your father born?" He said, "I think Mr. Barber is going to bring me some money to buy a pie." I repeated the question. He said, "My father was born in Illinois. He is a lawyer." I said, "Is your mother living?" He said, "Yes." "What is her name?" "Her name is Annie." I said, "What was her maiden name?" He said, "I don't like to answer questions." I repeated the question and he said, "Annie Webster." "How old is she?" "I think she is forty-eight years old." "Have you any brothers and sisters?" "I have one brother and one sister. My brother is nineteen and my sister is fourteen years old." I proceeded to investigate his personal history and I asked him "What is your earliest recollection of yourself?" He said, "I don't know. I remember kindergarten in Montclair. I remember making words with paper, letters on the table, building with blocks, singing in the morning." "How old were you then?" "I was five years old?" "How long were you in the kindergarten"? "It was about a year." I asked him then, "Where did you go to school?" He said, "I continued in the same school, the Mt.

Hebron School in Upper Montclair." How long did you go to this school?" He said, "Why do you ask all these questions?" And I told him I was studying his mental condition. He asked "Why did you have to come here?" I said, "I was sent by Mr. D'Aloia." He said, "Who is Mr. D'Aloia?" I was just going to ask you who was Mr. D'Aloia." I said, "He is Assistant Prosecutor of the Pleas of Essex County, New Jersey, and I informed him again that I was inquiring into his mental condition, and he said that he understood what I had said to him. I asked him "How did you come to be here in jail?" He said, "That is a very long story." I said, "Please tell it to me." He said, "It is not a nice story." He shook his head and remained silent. Then he said, "Will you lend me twenty-five cents until Mr. Barber comes, I want to buy pie with it and a newspaper?" He kept biting his right thumb—his thumbnail and staring out of the window. Immediately after asking the questions where I came from he became shut-in and did not want to talk, so I asked him had he had any pie recently. He said, "The day before yesterday," and then he proceeded to talk again. I asked him "Are you hungry?" He said, "Yes, I think it is my supper time." I said, "Would you like your supper now?" This was five minutes after five.

Q Five minutes after five, P. M.?

A Yes. He said, "Yes," will you lend me twenty-five cents until Mr. Barber comes or my father," and I made no reply to his request and I asked him would he rather go and have his supper," and he said, "I don't want to talk with you at all." Will you lend me twenty-five cents?" He got up and walked towards the door of the deputy's office and he kept walking around, and I then asked one of the keepers who came in and the assistant to the deputy warden, Mr. Mulvaney came in, and I asked him if it was possible to get him a newspaper.

Q To get Noel a newspaper?

A Yes, to get Mr. Noel a newspaper and some pie, and he said he thought he could do it, so he brought him two pieces of pie and a newspaper and he proceeded to carry the two pieces of pie and the newspaper, to carry the two pieces of pie on a plate and the Newark Evening News, and then I asked him "Are they treating you well in the institution?" He said he had no complaint. I asked him, "Did you hear any voice,

have you heard any voices here in the institution?" He said he heard voices on the outside before he came here. I tried to find out what these voices were. He would not tell these voices or what these voices were, what they said to him, and he thanked me for the pie and the paper—thanked both of us, and he went to his cell and I followed him and watched him and he sat there quietly and he ate his supper. Then I asked him about his beard, the little hair he had on his chin was rather long and I asked him how often he shaved and he said, "Why, I shave about three times a month", and I told him I would call on him again and I left him.

Q When next did you call on him, did you go to see him the next day?

A Yes, sir.

Q What time was it?

A The second examination was just about four o'clock on the next day, four o'clock in the evening, four P. M. He was in his cell, the cell door was open and I walked in and I sat down on the bench beside him and wished him a good evening and he responded. I asked him how he felt, and he said, "I feel pretty good". I said, "Do you feel like talking to me today?" And he said, "Yes, I do," and as I talked I took my card out and started to write, and he said, "I don't want to write down anything." I said, "Well, if you don't want you to write down anything." I said, "Well, if you don't talk to me I will talk to you", and he talked freely and I asked him regarding his personal life, his sex life, and he said that as a boy he had masterbated a few times, but that he had not done that in a long time, but outside of that there was no sexual irregularities. I asked him how he came to do what he had done and he said, "Well, do you want me to tell you? I planned to get the money". I said, "You tell me your story," and then he started to tell me what he did." He said, that after he had committed the crime, he said after he had killed the little girl, he had gone to the bank—he had gone to the post office and deposited a postal card informing Edward Brown that they must get the money next day and take the 8.22 train in the morning going to Philadelphia, and when they saw a red balloon at the railroad track they were to throw this money out, $4,000. He said he had gone

there and waited and had held up the balloon and nobody threw the money, so he came back. I asked him, "How did you conceive this idea of taking this child, kidnapping this child for ransom?" "I remember" he said, "The Philadelphia case where two men who used a buggy and kidnapped a child. Of course, I did not use a buggy," he said, "I used an automobile." I asked him also how he felt about himself, as far as his own health was concerned and he said, "I feel all right," he said, "I never felt right ever since they did a puncture on my spine in the hospital, and when I came out of the hospital I felt that the top of my head was off. I had a sensation in my head." He said when he went to the hospital he was all right, he knew everything that transpired in the hospital, except for a few days when he was very much excited, when he did not have his clear recollection. I asked him if he know that it was wrong to kill a child and he said, "Yes, I know it is wrong." I said, "Why did you kill her?" "Because I did not want to be seen with her. If I had been seen with her they would have got me." I said, "Do you know what the punishment is for killing a person?" He said, "Yes, it is the electric chair."

Q I said, "Do you think you should be punished?" He said, "No, I think they ought to let me go. If they do, why, I would not do it again."

Q He would not do it again?

A Yes. I endeavored to find out whether there was any change in his personality, that is, whether he recognized himself as himself. He did that clearly. Then I began to make a physical examination of him. I found that he had a cynanosis, or bluish red condition of both hands, the circulation of his hands were bad, and he said that he could not smell. I inquired into the question of smell and he said, "I could differentiate ordors, but I have some trouble with my nose." An examination of his eye ground, because of the fact that he did say he could not smell, did not reveal any evidence of abnormal eye grounds.

Q Was there anything any further conversation between you and Noel?

A No, I talked with him about a few more things, you know, along the same lines, to ascertain whether he knew

who he was and he knew what he did and whether why he was in the jail and whether he appreciated those things.

Q He appreciated them?

A Yes, sir.

Q He understood you?

A Yes, sir.

Q At any time did he talk in any incoherent manner so that you could not understand him?

A No, his answers were coherent, at times they were retarded and at times, as in the instance of the pies, he wanted the pie.

Q He wanted the pie and did not want to talk to you and answer your questions.

A But when I repeated the questions to him he then answered the questions.

Q Now, from your examination of Harrison W. Noel, and your observation and your talk to him, and your conversation with him, is he, in your opinion, mentally capable of appreciating or realizing the predicament he is in, charged with murder, likely to go to trial and possibly condemned to die?

A I think he can appreciate that.

Q In your opinion, Doctor, basing it upon your examinations of Noel and your observations and your experience, and your conversations with him, is he mentally capable of aiding his counsel or his attorney in the preparation of a defense to this charge?

A I think so.

Cross Examination by Mr. Lane.

Q Doctor, in your opinion, is Mr. Noel sane or insane?

A I think that Noel shows certain symtoms that would indicate to me that he is mentally abnormal? That is the best answer I can make to that.

Q You have practiced your profession and have acted in the examination of insane persons, as alienist, for upwards of a period of how many years?

A About twenty-five years.

Q You have had the history of this case as disclosed by the records of Essex County in the Hospital for the insane?

A No, sir.

Q You have not seen them?

A No, sir.

Q You do not consider that they would be useful, supplementing at least your personal observation of this man, who, as I understand it, was confined on two different occassions?

A I was interested in his present mental status.

Q And I suppose an alienist, in determining the present mental status of a man, ignores his history?

A No, not necessarily, he may take it into consideration and he may not.

Q Well, you did not take it into consideration, is that right?

A I did not take it into consideration, I was examining him as to his present mental status.

Q I fully appreciate that, but do you mean to tell me, as an alienist, that you can express an opinion as to the present mental status of a person without some regard to his history?

A I think I may be able to, Mr. Lane.

Q At least you will concede that the history of the man is some importance?

A I think history is valuable at times and at times it may not enter into the question at all.

Q The symptoms that you found, or rather the conversation that you had with him, indicated, in and of itself symptoms of dementia praecox, did it not?

A Yes, there were certain symptoms which I will retail to you which I think made me feel that I would be disposed, without any knowledge of the case of a dementia praecox, that he has mental retardation.

Q I am not asking you that, Doctor. When I want an explanation I will ask you. All I am asking you now is whether the symptoms were not present in your examination of dementia praecox?

A There are some symptoms which may make me think he was the subject of dementia praecox.

Q And if you had a history of his case which indicated that he was, in fact, suffering from dementia praecox in March and June of 1925, it would very materially assist you in determining as to whether he was suffering from dementia

praecox at the particular time of your examination, would it not?

A Yes, it would strengthen my conviction.

Q And you would then be willing, on the symptoms you observed, plus the history of the case, assuming that the history of the case showed a well defined case of dementia praecox in March and June, you would be willing to say that he was suffering from dementia praecox?

A No, I would not. I would say there was a residue of symtoms of dementia praecox, but not a clear cut picture.

Q What would you require to make a complete diagnosis as to whether or not he is at the present time suffering from dementia praecox more than what you got, assuming the history of the case?

A I don't know anything about the history of the case.

Q Then, as I understand it, you are in a situation where you are unable to determine, even assuming that he was suffering from dementia praecox in March or June, whether at the present time he is suffering from dementia praecox or not?

A No, I said assuming—you asked me to assume that I knew the history of the case. That I didn't know, but if you will make the diagnosis for me of dementia praecox from March, 1925—

Q That is exactly what I am doing.

A If you will make the diagnosis—

Q That is what I am asking you.

A Yes, that is all right, but you asked me if I knew the history of the case. I did not know the history of the case and I don't know the history of the case now.

The Court. Why do you not ask the Doctor, and I assume the Prosecutor will not object—incorporate in your question the findings—

Mr. Lane. The difficulty of that, I don't want to take the time to do it. If I do that, in order to make a proper question, I would have to read this entire diagnosis. What I am asking—and I do not think that is a necessary thing at this time to do, because we shall call, if the state insists, the doctors who made the diagnosis.

The Court. The difficulty is the doctor said he can-

not answer. He does not know the history. Now, you are assuming the diagnosis, and I think he ought to be given the symptoms.

Mr. Lane. No, I am cutting that out.

Q I am asking now, Doctor, to assume, as a medical man—if I do not prove it, then there is nothing to question it—assuming that this man was suffering in March and June from a condition of dementia praecox—assume that—then are you willing or can you, assuming that, determine whether or not he is suffering from dementia praecox?

A I would, from my examination, say that except for a few symptoms of dementia praecox—that may be dementia praecox and it may not be, but it makes me suspicious of dementia praecox, that he was in possession of all his mental faculties—

Q Now, Doctor, you have not answered the question.

A And I do not think, therefore, that he is suffering from—he has practically recovered from his acute dementia praecox.

Q Then your diagnosis is, as I understand it, that notwithstanding the existence at the present time of the symtoms, or some of them, the dementia praecox, he recovered, if he ever suffered from dementia praecox, is that right?

A No, I think he has some residue symptoms and very often in dementia praecox we have recoveries which are complete and we have recoveries with defects. A good many dementia praecox cases get well, but there are some residue symptoms left, and in this case I see some residue of symptoms in regard to emotional conditions, a slowness, retardation, and except for that I find him—the other mental faculties are not touched.

Q Doctor, I am not attempting to ascertain what this man's mental faculties are. I am not attempting to define what the term dementia praecox means, and I am asking you now, from a medical standpoint only, that, assuming this man suffered from dementia praecox in March, 1925, it is your opinion that he has now recovered from that disease?

A Largely, though he shows certain traces of dementia praecox as yet.

Q If he shows certain traces of dementia praecox, it shows he is suffering from certain traces of the disease?

A I would not say is suffering from the disease. He has gotten over the disease, except he has not completely gotten over the disease.

Q Will you tell me what the condition is between the still suffering from the disease to some extent and not completely gotten over it?

A Well, there are certatin symptoms, cyanosis, as we see, of the hands, a little disinclination to answer questions promptly. Now, considering what he is confronted with, I wouldn't be sure that that inhibition was not somewhat voluntary. I wish to give this situation as I find it and I do not want to minimize any of the things that this boy has and I want to present it so that it may be clearly understood.

Q Does the existence of the symptoms—does the continuing of the symptoms indicate a continuance of the disease?

A In a more or less degree.

Q Yes. Then he is still suffering from the disease is he not?

A Yes, more or less.

Q All right, now. He is. Then he still is a dementia praecox. The extent of the impairment of his faculties being another matter?

A Yes, he is classed as a case of dementia praecox or adolescent insanity or heferphrenia.

Q Adolescent insanity is another term of dementia praecox?

A Schizophrenia.

Q And that term implies another form of the dementia praecox?

A Yes, achistozopkenia is a distinguishing of the processes of the mind.

Q And that word was invented by Buller. You know who I mean?

A Yes.

Q For the purpose of indicating by the name of the disease the idea of the split personality and the disassociation of the ideas?

A Yes.

Q He taking the position that the word dementia praecox was a misnomer?

A Yes. I took that position in 1906.

Q And so that you believe in the use of this term, which begins with an "s," which I cannot pronounce, as indicative of that disease?

A Yes, that is a good term.

Q And it is a good term because in the elements of this disease there is a good idea of a split personality and the inability to coordinate?

A Not the strict use. I am using the thing in the association of ideas, which is entirely different from split personalities.

Q Well, you have seen most of the authors upon the subject use the term "split personality?"

A Well, split personality really is characteristic of disassociated mental subjects, such as history, and sometimes in praecox we get a split of the personality and that is indicated in what the patient says and comes clearly to the surface on examination.

Q You told me that you asked him whether he heard voices?

A Yes, sir.

Q And he said he had not, or rather, he had heard voices on the outside?

A Yes.

Q And you asked him what those voices were?

A Yes.

Q And he would not tell you?

A Oh, yes, and I omitted to say that in the second examination I asked him about the voices again and he said that he heard the voices in the hospital. I asked him what kind of voices were they, the voices of people in the hospital or were they outside. He said they were not the ordinary conversation of people. I asked him were they male or female voices and he said they were both male and female voices. I said, "What did they say to you?" They were "Asking me for help," and that is as far as I could get in his hallucination, and I said, "Did you hear any voices after

you got out of the hospital?" And he said, "No, I have not heard any voices since then."

Q Now, assuming that he was telling what he thought to be the truth with respect to these voices, it was a pure hallucination?

A Yes, evidently.

Q And that is also a symtom of dementia praecox?

A Yes, that is right.

Q And based upon those voices which he may have heard or thought he heard, there may be built up by the patient a fixed delusion, may there not?

A There may be built up almost anything on that, on the voices. He may react to the voices.

Q He may react to the voices and the command of the voices, or what not, as a foundation that may build up a logical, concrete attempt to satisfy the demand?

A Yes, in praecox cases we see the mechanism.

Q It is also true, is it not, that in praecox cases it is quite difficult to get from the patient an account of the voices that they hear, or anything of that kind which has to do with what the patient considers to be the inner man?

A Well, at the time they are hallucinating it is easy to get it.

Q Yes. I am talking about the time when they are not.

A After the hallucination disappears and they get better and improve, then they try to suppress those things as being disagreeable.

Q These hallucinations that you talk about are not a constant thing in a case of dementia praecox?

A No. They are very frequently. At the on set of the disease you have these delusions.

Q Yes, they come and they go?

A They may appear and reappear and disappear.

Q And when they—of course, you say that when they—you may easily determine that they are under an hallucination when, as a matter of fact, they are acting under the hallucination, because then they are acting then in the very person created by the hallucination and you can observe what they do, but after that hallucination has passed and they are

not in the hallucination it is extremely difficult to get from the patient a history of those things?

A Yes. Sometimes it depends upon the kind of patient, and it depends on how much the patient wishes to be pressed, and then, you see, normal conditions come back to the patient and the patient may not want to speak of the disagreeable things they saw or heard at the time.

Q Isn't it a symptom of this diesase, or concommitant of the disease, that patients, rather, are not likely to respond to outward efforts, are likely to keep within themselves?

A Well, in all praecox cases there is more or less shutin personality?

Q Yes.

A Well, you frequently see that even in normal people.

Q I am not asking you about normal people. I am asking you about abnormal people or dementia praecox patients. Now, is that what is called autistic thinking?

A No, not at all.

Q Well, the definition of autistic thinking from this book is that the individual interests are withdrawn from reality and he occupies himself with himself to the more or less complete exclusion of the outside world. This author says that this is typical of dementia praecox. Do you agree with him?

A Well, you see evidence of autistic thinking in dementia praecox?

Q Well, do you agree with him that it is a usual coucommitant of that disease that the individual's interest is withdrawn from reality and he occupies himself with himself to the more or less complete exclusion of the outside world?

A Well, that is a condition which appears in dementia praecox.

Q Do you also agree that the symptoms are dependent upon a disintegration of the personality, a disintegration of the personality, a disintergration of consciousness, with a consequent impairment of the functions of the real, and that reality is unable to correct or adequately to modify the delusional idea?

A Such a mechanism exists in dementia praecox, that is all I can say.

Q Do you also agree that in dementia praecox there is usually emotional dullness and uncertainty of emotional responses?

A Yes, there is an emotional—I think in dementia praecox one of the frequent, in fact, almost constant symtoms, is a change in the emotional make-up of the individual.

Q Do you also agree that a patient is very likely to be happy when he should be sad, sad when he should be happy, angry without cause, without reason, and for the most part cold and impassive, and for the most part so depressed as to make an accentuated emotionalism?

A That may be present. Conditions like that may be present in dementia praecox.

Q Do you also agree that this withdrawal, this looking within, occupying themselves with themselves, no longer subject to the corrective influences of the outside world, producing many surface indications, among which are failure of attention, lack of interest, disorientation and disorders of memory—

A I don't know about the disorders of memory, but I think that the other conditions exist sometimes in praecox.

Q A praecox is very apt to have a very acute memory with respect to long past events and a very defective memory with respect to recent events, isn't that so?

A Well, now, with regard to the memory of a praecox where there is a complete confusion of state, the memory may be cloudy and there may not be a recollection of things which took place in this clouding of consciousness, but as a general rule, memory in dementia praecox cases, until they become very much dilapidated, is well preserved.

Q So that the memory of this man, as indicated by your examination, would not at all indicate to you anything which would operate against a diagnosis of dementia praecox?

A No, I can't say that it would.

Q Have you examined this patient sufficiently to determine, in your own mind, whether the form of dementia, from

which he has to some extent recovered, as you say, is the catatonic variety?

A No, I can't say that I could.

Q Catatonic dementia praecox is usually, or usually causes, or is concommittant with, impulsive acts, isn't that so?

A Sometimes.

Q Do you agree with this author, "that quite charteristic of this condition," speaking of catatonic dementia, too, "are the impulsive acts of these patients. They will suddenly, and with absolutely no warning, commit some act of violence, such as assaulting another patient and breaking out a window and quite as suddenly lapse into their previous state. It is quite impossible to get any adequate information as to this act of the patient * * * and they hide behind a 'I don't know' or complete silence. These attacks come out of a clear sky, cannot be forseen, and make these patients, at times, very dangerous." Do you agree with that?

A I don't know that author whom you are talking about.

Q Well, irrespective of who the author is, do you agree with his expression?

A Well, I think with regard to catatonia, that is catatonia dementia praecox, or catatonia, there is a very definite picture that one has to consider before agreeing with that situation. The picture to the effect that these patients are absolutely tied up, rigid, stereotyped, and are incapable of giving much response, and so in the case of Noel—

Q I haven't asked you a word about this case. I asked you whether or not in catatonic dementia praecox you would expect this situation to exist?

A Yes, that could exist, very largely.

Q Now, do I understand, from your last answer, which was not in response to any question of mine, that you conceive a person, to fall within the class of catatonic dementia praecox, must, at some stage or another show some condition that is equivalent to a catalepsy.

A Not necessarily catalepsy, but certain physical evidences of rigidity, of waxed rigidity and forms of attitude, stereotyped attitude, ability of what we would call to mould the limbs in certain positions, and so forth.

Q Don't you know that the term, "catatonic dementia praecox" has been applied to cases where there is no such condition physically, but where there is a tendency to burst out in sudden outbursts of emotionalism, succeeded by a period of depression, and that this class of cases has been placed by some physicians in the branch of catatonic dementia praecox, and by other physicians in the class of the paranoid division of dementia pracox?

A No, I don't agree with that, in my own opinion. I feel that in most cases of dementia praecox, whether there are heberphenic, simple, catatonic or paranoid, or whatever other classification or sub-division of this big classification of dementia praecox, that we get episodes in all of these types, but the thing that distinguishes a catatonic dementia praecox is the catatonic condition, a catatonic condition as seen largely in physical manifestations of the individual.

Q You said you get episodes from all of these facts. What do you mean by episodes?

A Well, they may have periods of excitement and depression and alteration of moods, and so on, and may react with hallucinations and may become excited and depressed.

Q Dementia praecox is a distinct disease of the brain and those suffering from it are recognized as insane are they not?

A Dementia praecox is a term invented by a psychatrist, Kraeplin, to designate a large group of mental disorders occuring during the period of adolescence and since Kraeplin's conception of dementia praecox there have been many diferent classifications and splitting up of the group, so that there is no definite agreement as to what dementia praecox really means, except that it comprises a group of disorders within the period of adolescence.

Q Well, those persons who are comprised within the medical group of dementia praecox, are insane, are they not?

A Yes, we consider them insane.

Q And it is recognized, is it not, as an organic rather than a functional disease?

A No, that is a question. That is an unsettled question.

Q Are you willing to express any opinion, in your opinion, as to whether it is organic or functional.

A In my opinion I think it is largely functional, and as it goes on and continues it may develop organic features.

Q Now, does this man, in your opinion, consider himself sane at the present time?

A He said there is nothing the matter with him, that he knew his situation.

Q And he also told you that when he was taken to the hospital he thought there was nothing the matter with him?

A Yes, except the time when he was excited, and for a short period there when he could not recall what happened.

Q And he also said there was nothing the matter with him mentally at any time except that time in the hospital, did he not?

A Yes, sir.

Q And he made those statements to you as if he actually believed them?

A I think so.

Q And you thought that he believed them?

A I think so.

Q Is that right?

A Yes, I think he feels that he is all right, except as he stated to me, that since the lumbar puncture was done in the hospital he did not feel well, he did feel as if the top of his head had come off. I recognized that as a lumbar puncture—

Q I am not talking now at all of physical matters, I am talking of his mentality, as to whether he thought he was at all out of his head at any time except the time when he was in that hospital?

A Yes, sir.

Q Now, Doctor, will you tell me, as a doctor, just how a person who considers himself sane at the present time, and who considers at the present time that he was sane at all times, including the time of the commission of this crime, can rationally cooperate with counsel in an attempt to prove that at the time of the commission of this crime he was insane, so that when he himself believes, and honestly believes, that at the time of the commission of the crime he was sane?

A That is not a matter for me to determine.

Q But you have, as an expert—stated that, in your expert opinion, that man was perfectly competent to confer with

counsel and go to trial where the issue is insanity, and he now believes he was sane at that time. I ask you how that can be done?

A I don't know. But I know he has mental capacity enough to understand when he is asked to respond to questions. He is somewhat retarded, he is disinclined to answer. When he does not want to answer, he does not answer, but he knows his surroundings, he is orientated as to time, places and persons. I find this emotional status, but outside of that I find that his condition is such that he is capable of conferring with counsel.

Q Of course, he is capable of talking, but the question is whether he is capable of rationally cooperating with counsel in an attempt to prove him insane at the time of the commission of this crime when he himself now believes he was sane at that time.

A I do, but I cannot help counsel out in trying to prove him insane if he feels he is sane.

Q I am not asking you to help me out, I am asking you to tell me how my client can help me out, because you say my client can?

A Because he has capacity, in my opinion.

Q If he believes himself to be sane now, and if it be a fact that he is insane, and he believes himself to have been sane in March and June, and if it be a fact that in March and June of this year he was insane, the idea now, that he was sane then, is a delusion, isn't it ?

Mr. D'Aloia. No, I object to that.

A No, he may have had insight in March and he has insight now.

Q You say he may have insight now?

A No, he had insight to realize even at that time in the hospital, that there was a period when he was confused and he did not know what was the matter with him, so he had insight at that time, and then he also had insight to recognize that he had hallucinations at the time, and he had insight now to know that he had delusions of the memory and the thought is disagreeable and he does not want to talk of it. He has insight into the situation, his memory and his understanding in regard to what he had done.

Q Did he give you any reasonable explanation as to why he thought he should not be punished for what he had done.

A That he would not do it again, he said.

Q Did you consider that that is the reason that would be given by a normal man?

A That is his way of thinking.

Q Of course, but I am asking you if that is the opinion of a normal man.

A That may be his point of view.

Q Yes, and that point of view is due to the disease, isn't it.

A I can't say that.

Q You can't say it, even assuming, as I ask you to assume that he was suffering from dementia praecox in March, you would not say that that thought was not the result of a diseased mind?

A I would be willing to say that it shows a certain absurdity.

Q And that absurdity is purely a reason, and as the books put it, it is one of the conditions or symptoms of a person suffering from dementia praecox, is it not?

A We see such absurdities in dementia praecox.

Q And with respect to distinguishing between right and wrong, to which you refer, do you mean to say that Harrison W. Noel, at the present time, can distinguish between right and wrong as a normal man would?

A His emotional reaction to it might not be normal, but he knows the difference between right and wrong.

Q I did not ask you that. Would he know the difference between right and wrong as a normal person would, or would he, in determining his own course of conduct, be affected by the disease from which he was suffering so that he considered the abstract right and wrong did not apply to him?

A I think it is a conception of right and wrong, both concrete and abstract.

Q Is his conception of the concrete right and wrong the same as his abstract conception?

A Well, it can necessarily be the same.

Q Do you not think in a normal man the concrete conception is the same as the abstract conception?

A Well, I should agree with you on that, yes.

Q And you say he could?

A No, I would not say that. I think he can both in the concrete and the abstract.

Q At least you say that his concrete conception of right and wrong would not necessarily be the abstract conception of right and wrong, what do you mean by that?

A Well, I would do that in my agreement with you. I said—

Q No, you did not do it in an agreement with me at all. I think your first answer was correct and not your second. Do you withdraw your statement that his concrete conception might not be the same as the abstract conception?

A Of course, the conception of right and wrong might be divided into an abstract and concrete conception.

Q The abstract conception would apply to all persons?

A The conception of right and wrong could not be anything else but the conception of right and wrong.

Q Do you think so?

A I think so.

Q Now, don't you know that in dementia praecox, although the patient may have absolute conception of right and wrong abstractly, he may, by reason of his disease, consider himself to be such a personality as not in any wise to be bound by any such laws, and that with respect to him, right or wrong, or the abstract conception of right and wrong, do not apply?

A Yes, I agree to that.

Q That may be so?

A Yes, sir.

Q And how can you say that is not so in the case of Noel?

A Because he said that it was wrong to kill, that he was Noel himself and he wasn't anybody else but Noel, and there is no change in his personality as far as I can ascertain, and that is as far as I can go.

Q Did he tell you at any time there had been a change in his personality?

A No, I was unable to obtain that.

Q If there had been at any time a change in his personality would you have expected him to tell you?

A Yes, if he wanted to, he may have been able to tell me, and he may not have been able to tell.

Q The likelihood is that he would not have been able to tell?

A He may or may not, I can't say.

Q Or, as the authors say the two trends of thought go on, side by side, and one not know what the other is doing, you cannot associate them, there is no bridge between them.

A You mean in dual personalities?

Q I am not talking about dual personalities, I am talking about the disassociation of ideas, or the split personality rather than the dual personality?

A Oh, yes, in a split personality you can get automatic thinking and automatic acting.

Q Did he tell you what the result of his puncture in the hospital was, the purpose of it, what he thought the purpose was?

A No, he said that it was done to examine him, and I asked him if anybody had done him any harm or any injury, or whether any personal influences were at work, which we find usually in praecox,—and as I said some of these symtotms led me to question him in regard to his ideas of personal influence and I could not obtain any.

Q Did he give you any reason why he thought they had made this puncture in the hospital?

A No, I could not get any reason from him. I asked him what they did and he said they examined him, "They punctured my spine and ever since my head felt bad."

Q Did he tell you that after that spinal puncture he became another person?

A No, he didn't tell me that. He felt very badly. He said, "I felt very badly."

Q Did you attempt to probe his mind to get his idea as to why it was this spinal puncture was made?

A Yes, I asked him, and that's all I could get out of him.

Q I will ask you the same question, Doctor, that I asked Dr. Washington. If this man should be tried for this offense and acquitted on the ground of insanity, do you consider him in such condition of mind as though he is proper

to be let loose?

A Not in view of what has happened.

Q I am not talking now from the criminal angle, I am talking from the medical angle.

A No, I am talking from the medical angle, I am not invading the legal side. That is all I am trying to speak about, the medical aspect, as a doctor. I think in view of what has occurred, in view of some of the symptoms I have observed, that he should be under observation, care and treatment.

Q He is sufficiently insane at least, to be deprived of his liberty on that ground alone?

A The prevous history, taken together with the slight indications of emotional indifference and retardation leads me to feel, that is, as I feel in many other cases, that there is a potentiality here of trouble which must be taken care of for the benefit of society.

Q And therefore I take it that you would not hesitate for a moment to sign his commitment?

A Oh, yes, there in some way—you see there is always danger in signing a commitment and I have had some bitter experiences.

Q You would not hesitate to express it as your professional opinion that this man is in such a state mentally that he should not be permitted to go among his fellows?

A He needs treatment, care and observation, and some supervision.

Q And confinement in the meantime?

A That would be very helpful to him in the proper surroundings and environments. It may result in his complete cure.

Q You think that he is sufficiently impaired mentally so that his liberty might, in the interest of society, be taken from him, but that he is sane enough to cooperate with counsel and to prepare a defense in a trial for murder?

A Not exactly, I feel that he is still a big boy. I think he needs to be looked after and treated so that he may have a chance to get well. I feel that he has, at present, such faculties as to be able to cooperate in his treatment and to cooperate in receiving and giving advice.

Q I understand you to say, Doctor, that he mentioned Judge D'Aloia's name?

A Yes.

Q That he wanted to know who D'Aloia was?

A Yes.

Q Well, assuming that he had been in court two or three days before and had participated in a pleading, listened to counsel, and so forth, and saw the assistant Prosecutor, don't you think that was an indication of a lack of attention on his part to a matter which involved his life and death?

A You mean not knowing Judge D'Aloia's name?

Q Yes.

A I do not think that is very peculiar.

Q Do you think his attitude today in the courtroom is such to indicate that he is paying much attention or capable of paying much attention to what is going on here, which may involve his life or death?

A Well, now, with regard to his attitude in court, there are certain complexities in regard to drawing conclusions as to his attitude and what it may mean. It may mean that he is indifferent, withdrawn from reality and behaving as a praecox would behave, or it may mean he has a realization of his situation, remorse, sorrow, downcast, so that that of itself is not sufficient for me to conclude.

Q Well, if his attitude in court, as you have observed it today is the former and not the latter—due to the former and not the latter, he certainly is not in a condition, do you think, to consult with his counsel and to actively cooperate in defending him?

A No.

Q Counsel would be at some disadvantage to have a client of that kind to defend him for his life, wouldn't he?

A Yes, I agree with you.

Q And that attitude has been maintained by him all during the course of this proceeding?

A Oh, not that bad.

Q Well, something akin to it?

A I have observed him having an interest at different times and putting his head down, and I have seen that so frequently in people.

Q That also is what you would expect a dementia praecox to do—April weather—change from one thing to the other?

A Oh, I would expect that in a normal person who has remorse and regret.

Q Well, did you observe in any one of your conversations the slightest emotion or regret or remorse over his crime?

A Yes, he felt very sorry.

Q Was there any expression thereof which indicated any sorrow or remorse over the commission of this crime?

A Yes, to a certain extent that was manifested, and there ing.

Q Well, that was not only a certain degree of blunting, was, as I said, I observed a certain degree of emotional blunt- but it was apparent?

A I mean you see these different people react in different ways. This boy has apparently been an exciting personality and his reaction may be due to that. It may be due to his mental condition. As I said, my general impression of him was that there was a certain amount of emotional blunting.

Q Then you could not very well, or would not, rather, attribute his conduct in court to emotion, would you, where the emotions are, in your opinion, blunted?

A Well, I would not say he was so blunted. I would say in degree. I would say that he reacted very strongly when I spoke to him about the commission of the crime and the killing of the child; for instance, I asked him about the girl and he said, "I am sorry I killed her, but I had to get rid of her because I would be found out."

Q Well, did you think that is an expression of emotion?

A No, but that is an instinct of self preservation; that is a very important instinct in the human being.

Q I am not talking of anything but emotions now. When he said that, he said it absolutely without emotion; he said, "I killed her, I am sorry I killed her, but I had to do it."

A Yes, he said he had to do it, but he said he had to do it because he would be found out, and that was the way out for him.

Q Yes, but was there any emotion displayed about it, any sorrow or real remorse for that crime that you would expect in a normal person?

A There was not a shedding of tears or flushing of the face, but there was a statement—

Q Bare statement of the boy.

A Bare statement of the boy and his reason for it.

Q Now, would you expect a normal person who committed that crime to react that way?

A Yes. Some people have very blunted emotions.

Q At least, for a normal person to act that way, they would have very blunted emotions.

A Yes.

Q This man's emotions are therefore blunted. Now, I ask you whether you attributed his conduct to remorse or whether you attributed it to a withdrawal into himself?

A Well, I do not think it is a withdrawal into himself, because he said he felt very badly about it.

Q You still have not answered my question. I am asking you, as a doctor, to what you attribute this present condition?

The Court. You mean his mannerisms?

Mr. Lane. What the doctor said he observed.

A I would think there was a combination of the two, as far as emotional reactions are concerned. That is the best I can say. I cannot go into his own emotions. I can only judge.

Q We can only judge from outward manifestations.

A Yes, and, to be fair to him, I would say from my observation and examination that there is this element of emotional blunting.

Q What I am trying to get from you is whether you attribute his present attitude and his attitude during today with respect to this proceeding going on involving his life or death to remorse or emotion or to simply a disregard of what is going on, which is one of the things which we expect to have present in a case of dementia praecox.

A I would say from all my examinations of him and my observation that I would think there are both elements present. I cannot tell you how much of one or how much of the other, because he has expressed himself in that way to me and I would think that under the circumstatnces being here,

that his condition would be aggravated due to the fact that he realizes his situation.

Q You heard what he told you as to what transpired in court when he was here before in the course of your examination?

A I don't think so.

The Court. Dr. Dowd?

Witness. Dr. Dowd.

Mr. Lane. Oh, I beg your pardon.

Q How long did your first examination take?

A About an hour.

Q And how long was your second examination?

A I think about and hour.

Q Who was present on the first examination?

A No one was present but myself.

Q Who was present on the second examination?

A No one.

Q How far did you progress in your physical examination?

A I did not make any physical examination the first time.

Q The second time what physical examination did you make?

A I examined his eyebrows. I used the opthalmoscope and looked in the back of his eyes.

Q What condition did you find?

A I found that they were normal. His pupils were normal. The reflexes were normal.

Q Did you find reflexes at all?

A I found reflexes.

Q You did?

A Yes.

Q Only one time, because you only examined him once and you say the reflexes are normal?

A I didn't find any pathological condition in his reflexes—

Q Well, if it be a fact that you found a condition of normal reflexes on the 21st and on the 22nd, when he was examined, there was an absence of the reflexes, to what would you, as a doctor, attribute that?

A What reflexes?

Q Knee reflexes.

A Oh, well, knee reflexes are open to a different interpretation from technique—

Q Well, let's get down to bottom rock as to what reflexes you were referring to when you said that?

A The pupils, that is reflexes—the reflexes of his upper extremity and his knee reflexes.

Q Did you find knee reflexes?

A Yes, knee reflexes on proper stimulation were proper.

Q How did you stimulate them?

A By tapping.

Q Well, did you do anything else?

A Yes, by reinforcing.

Q How?

A By getting him to grab things.

Q Did you find the reflexes as you would find them in a normal person?

A Well, there was nothing about those reflexes to indicate there was any abnormal condition.

Q I am asking you whether you found the reflexes in the way in which you would ordinarily test a normal person?

A Yes, to my mind they were not pathological.

The Court. You asked him did he resort to the same method.

Witness. Yes. My observation satisfied me that his reflexes were normal.

The Court. And you used the same method.

Witness. I used the usual methods of obtaining them.

Q Now, the method that is usually employed to obtain the reflexes is by tapping with the hands?

A No. I use a hammer very often.

Q Well, the first thing you do is to use the hand?

A Yes.

Q And that is the way you start?

A Yes.

Q And you expect a normal person to respond?

A Yes.

Q When you did that thing to this man did he respond?

A Yes.

Q Then why did you tell me all about a few moments ago that he responded when it was stimulated and reinforced, and when you made him grasp objects?

A I didn't say grasp objects. I said the knee reflexes were present.

Q My recollection is that you said a few moments—

A No, I didn't understand you. I thought you wanted to know the method and I told you. I simply tapped his knees and got the reflexes.

Q Now, on the 21st of September, when you tapped his knees, you got the reflexes?

A Yes.

Q Could you explain the fact how you got the reflexes on the 21st day of September and the next day no reflexes could be obtained in any way, shape or form?

A I could not tell you.

Q Is the condition in the reflexes at different times concomittant with the existence of dementia praecox?

A No, I do not think the reflexes have anything to do with dementia praecox.

Q Is there any other physical examination that you made?

A No, except to note the cyanosis in his hands.

Q One of the things that you are likely to find in dementia praecox is a refusal to respond to ordinary inquiries, withdrawal into one's self and then sometimes the ability to get a response by giving some—or by injecting some unimportant thing which staves off the trend of thought of the patient, isn't that so?

A Just what do you men?

Q Well, I will give you a concrete illustration. If you had talked to this gentleman, or attempted to talk to this gentleman and he had not responded to you, was, in fact, suffering from dementia praecox, you might very well start him talking by saying, "Well, I think you are mute, physically a mute, and I am going to operate on you right away," or words to that effect, you might get him to talk then, wouldn't you?

A You mean the stimulas?

Q Yes, the stimulas of some such statement as that?

A Well, I think that would be quite natural.

Q You think so?

Christopher C. Beling, Cross.

A In lots of people—would produce—I mean that is not any symptom.

Q I didn't say it was any symptom of anything. I said you would be quite likely to get that response to that perfectly absurd suggestion from a dementia praecox?

A I don't know. It all depends on the setting of that suggestion, what it was.

Q Well, to get down to the case of dementia praecox, they sometimes respond for a perfectly inadequate, or what would be a perfectly inadequate reason to the normal person?

A Oh, if you just present that to me as adequate or inadequate, I don't know about that, but if you simply make the statement that sometimes praecox cases respond to inadequate stimuli, they do.

Q Stimuli that would not stimulate any normal person.

A Yes, and sometimes they do not respond and spontaneously express themselves.

Q Would you expect a normal person to respond to the stimuli I have indicated, a perfectly normal person who was able to appreciate his surroundings, knowing full well that he was not mute and knowing that you knew and that you could not operate at all?

A Well, if I knew that he was not mute and did not want to talk, that is a different matter. I think you may see that in a normal person. You may see that in a praecox or in a paretic, or anything else.

Redirect Examination by Mr. D'Aloia.

Q Did you, in your examination of Harrison W. Noel, discover any disorders of memory?

A I did not.

Q In your examination of Harrison W. Noel did you discover any disorders of orientation?

A No.

Q In what he told you as to what he did in describing his conduct on certain dates did he tell you of anything which indicate dimpulsive action, irresistable impulsive action such

as has been described by Mr. Lane in classifying dementia praecox—catatonic dementia praecox?

A No, I didn't.

Q Doctor, does whatever abnormality which you say exists possibly in Harrison W. Noel prevent him from realizing his position or from realizing the wrongfulness of the act which brought about his predicament?

A I think he may not feel just the same about it, but he has the capacity to realize.

Q In your opinion whatever mental abnormality you have been describing in giving your answers to Mr. Lane, that abnormality does not prevent him from realizing his predicament, or the predicament he is in?

A No.

Q Now, that same mental abnormality, does that prevent him from conferring with counsel or aiding in preparing a defense?

A I have already stated that.

Q No. I am now including in my question this little bit of mental abnormality that you found?

A Yes.

Q Now, I am specifically asking does that abnormality prevent Noel or his counsel—in aiding them in preparing his defense?

A I don't think so.

Recross Examination by Mr. Lane.

Q Did he tell you about this assault—about an assault which he had committed on his father when they were out camping up in New York somewhere?

A No.

Q He did not tell you about that?

A No.

Q If it were a fact that he had assaulted his father, being on good terms with his father, ate with him and gone to bed, both of them, and suddenly in the night he got up and assaulted his father with a hatchet and his father awakes by finding himself assaulted by the son and the son by physical

force is prevented from doing injury, and after it is all over the son says that I am sorry, "what did you do it for?" "I had indigestion", well, if that condition actually occurred, it is one of those so-called impulsive acts which is usual or which is an indication of catatonic dementia praecox, isn't it?

A Yes, I would say that it is indicative of praecox, dementia praecox, not catatonic.

Q Well, dementia praecox—I don't care what class you put it in.

A Yes.

Q He described, if I recollect correctly, how he had written a letter in which some railroad train was going to be stopped by a balloon. Did he explain how it was that this train was going to be stopped by the displaying of this baloon along the railroad track, or what not, or how that thing was going to be worked out?

A Yes. He told me they were to go and get this money from the bank and they were to take the 8:22 train and as the train was passing along they were to look along the tracks and as they saw the balloon the $4000 was to be thrown there.

Q You are smiling now. I am wondering whether you consider that a reasonable plan of collecting ransom?

A No. I think there was certain absurdity about that.

Q There was also a certain absurdity for the reason he gave in killing this girl, that he killed the girl, because, as I understand it, if they caught him with the girl, or if he was with the girl, that they would catch him?

A In that particular he seemed to feel that he would be detected and that he would be caught if he were seen with the girl and he felt that by killing the girl he could get away with it and concealing it.

Q Considering a normal kidnapper, who is going to get ransom, that is a pretty logical method of dealing with the situation.

A Yes, I think there would be some feeling about that, and yet you cannot tell how a person may feel, because we know of instances where they have gotten rid of people after kidnapping them. That does not seem to me to be so absurd.

Q Did he tell you why it was that he shot the colored man?

A Just to get away from him.

Q Just to get the car?

A Yes.

Q Well, the normal man, setting out on the commission of a crime of that kind, do you think that is a normal thing to do, kill a man in order to get a car?

Q Just to get a car to kill a man, is that normal?

A Well, a man may kill another man to start some proceedings. I don't know. I could not say that. Neither you nor I would want to kill a man to get a car to kidnap a child.

Q I am talking about the normal man who is about the commission of a crime, they would not attempt to do it in that way, would they?

A No, I wouldn't say they would; I don't think the majority would.

Q No, but even if they did intend to commit the crime, there are easier ways?

A Many easier ways. All I can say is that he did.

Q And in your opinion the reasons he gave for his acts were mentally inadequate?

A I could not say that.

Q Then I do not understand.

A I could say it is not the ordinary thing to do, but some times people do abnormal things.

Q Dementia praecoxs are quite likely to do those things, aren't they?

A Yes, I would say so.

Q The interruption when you asked him the question, if I recollect it, what is the age of your father? "Will you lend me twenty-five cents?" That is another thing that you might expect from a dementia praecox patient, is it not?

A Yes. There was a diversion there. He was hungry.

Q And yet this man is capable, in your opinion, of going to trial and defending himself for his life and keeping his attention on the case so as to properly and adequately and rationally defend himself?

A Well, that was such a mild bit of distractability for any young fellow who was hungry and would want pie, and it was supper time, I wouldn't stress that so much.

Q I am not stressing the particular thing.

A I am only saying I gave you these as I found them and I repeated the question and he come right back and was very concentrated, and before he come back with it if he had come back to some foolish thing which had no relation to this, then I would think there was some very serious situation, but he kept to the very thing he wanted, the twenty-five cents and pie and papers, and when I gave him the pie and papers, he was satisfied, so you see from that he had a definite idea in his mind he carried.

Q You did not put the idea in his mind ?

A I did not.

Q You tried to put something else in his mind?

A I was not trying to put any idea in his mind.

Q Well, you were—

A Well, just a little—

Q I don't mean you were suggesting anything. I mean you were trying to put some idea in his mind.

A Maybe that was a little defense on my part.

Q But notwithstanding that fact and notwithstanding you asked the question directly, he got this one idea in his mind that showed he had some other outward symptoms?

A No, it didn't show he had.

Q And a few minutes after he asked you to lend him twenty-five cents?

A No. He was able to answer the question I asked him and even answered it after he had made his request.

By The Court.

Q You mentioned something about Noel stating to you that he expected to go home?

A He said that he did not think he should be punished, that he ought to be—that they ought to let him go home and that he would not do a thing like that again.

Q Now, have you any opinion as to why he said that?

A I thought that was rather absurd.

Q Now, is there anyway for you to determine whether it is his real attitude toward this case?

A His real attitude is he realized he should be punished, but he would rather have them let him go and give him a chance. That is the way he expressed it.

ADJOURNED until Wednesday, September 30th, 1925.

FOURTH DAY

ESSEX COUNTY COURT OF OYER AND TERMINER

Wednesday, September 30, 1925.

STATE OF NEW JERSEY, *vs.* HARRISON W. NOEL.	INDICTMENT No. 85, Sep. T., 1925 for MURDER.

Appearances as before stated.

Continued pursuant to adjournment.

Mr. Lane. I offer, if the court please, the record of the Essex County Hospital for the Insane, including the document attached thereto. This record has already been marked Ex. D1 and D1A for idenification, and I offer that record as proof of the facts therein stated, with the single exception that the diagnosis made by the hospital doctors at the Essex County Hospital for the Insane.

Mr. D'Aloia. There is no objection to the admission of the record for the purpose of this hearing.

(Paper marked Ex. D3)

Mr. Lane. I offer in evidence, as proof of the facts therein stated, and there is no exception with respect to this, because there is no diagnosis contained in the report, the record of Bellevue Hospital of the Psychopathic Department, which I have not yet had the opportunity to show the Prosecutor, because I only received it this morning.

The Court. Is the report of Dr. Slocum included in any of these you have offered?

Mr. Lane. Yes.

Mr. D'Aloia. No objection to this.

The Court. Does that also include the report from Cambridge, which you spoke about?

Mr. Lane. No. The report to which your Honor has reference is Dr. DeForest's examination.

(Paper marked Ex. D4)

George Davies, Direct.

GEORGE DAVIES sworn in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Mr. Davies, will you give us a brief history of your experience as a physician, having particular reference to your experience in the treatment of the insane.

A Seven years as senior resident physician Essex County Hospital at Overbrook, and the staff of the Psychopathic Hospital at Brooklyn and the United States Army.

Mr. D'Aloia. The Doctor's qualifications are admitted.

Q And how many years have you been a practicing physician?

A Nineteen.

Q Do you know Harrison W. Noel?

A I do.

Q How long have you known him? And when did you first come in contact with him and under what circumstances?

A I saw him on February 25th—I think it was February 25th—and then I did not see him again until the day before yesterday.

Q On February 25th how did you come to see him? Give us the circumstances surrounding that?

A The family physician in Montclair called me up on the 'phone and asked me if I would visit the house and examine this young man.

Q And did you on that occasion examine him?

A I did.

Q You appear to be one of the doctors who certified to his temporary commitment at Overbrook?

A I did.

Q Why did you so certify?

A As the result of my examination.

Q In the first place, tell me briefly what examination you made and what your opinion is based upon at that examination?

A I made a mental examination of this young man and my conclusion—my conclusion was that he was a case of dementia praecox and required institutional care.

George Davies, Direct.

Q You have not seen this young man again until the day before yesterday?

A No, sir.

Q Where did you see him the day before yesterday?

A At the Newark Street jail.

Q In company with whom?

A Dr. Thompson, in the presence of a stenographer and Mr. Smith, I think.

Q And did you examine him upon that occasion?

A I did.

Q In company with Dr. Thompson?

A Dr. Thompson was present.

Q And will you tell me generally what your examination was?

A Do you wish me to repeat the questions I asked?

Q Was a stenographic record kept?

A Yes.

Q And have you seen that stenographic record since?

A I saw it once for about five minutes.

Q Will you examine this stenographic record and tell me whether you will be able to say whether that is an accurate record of what took place or at least that the matters referred to in that record, did, in fact, take place?

A Yes.

Mr. Lane. I offer that record in evidence as to what took place between the doctor rather than have the doctor read it into the record.

The Court. Do you want to cross examine on the record?

Mr. D'Aloia. I want to look at it. I do not want Mr. Bindsiel produced to say that this is the record. I do not want your Honor to admit it until I have had a chance to look over it, and then I may consent to it.

I have no objection to this going into evidence for the purpose of showing the questions asked by the doctor and Dr. Thompson, and showing the answers.

The Court. Does that include Dr. Thompson?

Mr. Lane. Yes, it includes both; they both examined him together.

The Court. I take it it is for the purpose of saving time and asking the Doctor each and every question.

Mr. Lane. Yes.

Mr. D'Aloia. That is why I am admitting it, for the purpose of saving time.

(The same is marked Ex. D5)

Q From your examination of Harrison W. Noel made the day before yesterday and taking into consideration also the examination you made of him on the 25th day of February 1925, can you say whether or not Harrison W. Noel is, at the present time, sane or insane?

A Insane.

Q Can you say whether or not he is suffering from any distinct class of insanity?

A The type of insanity known as dementia praecox.

Q On the 25th day of February, 1925, at the time you examined him, what symptoms of the presence of this disease did you find present?

A As I entered the room where this young man was confined, he was sitting in a chair with his head bowed in his hands, laughing to himself. He looked at me with starry eyes and finally I said, "Do you know me?" and he said, "Yes." I asked him where he had seen me before and he said he had seen me on the Ward in Overbrook. I asked him on what occasion this was, and he could not remember just this particular time, and he said he remembered seeing me about a hundred feet away and he called to me and he asked me how I was feeling, so, on further questioning I found he was very, very much retarded; that is, he would hesitate in answering my questions. It would take him, frequently it would take him two or three minutes to answer the questions and he seemed to have some difficulty in expressing his thoughts or ideas, and his answers to my questions were irrelevant, and I took him on through the examination firmly convinced that he had delusions, that is, that he had delusions of poisoning. He said to me that while in Overbrook someone put poison in his food. I asked him if they put it in for the specific purpose of injuring him, and he said yes.

Mr. D'Aloia. Now, just a moment. May I interrupt

right here. I understand that the question was what the symptoms were in February 1925.

Mr. Lane. I am letting him go forward because he misunderstood my question, and that would be the next question anyhow.

Mr. D'Aloia. All right.

Witness. And during his answers to all of my questions he would generally end up with silly laughter. He seemed to be very depressed this time, and on further questioning I was interested to find out if he had any systematized delusions. Those I could not bring out at that time, but he voluntarily expressed this thought to me: That he had coughed up his spine while at Overbrook, and I said, "Coughed up your spine?" and he said, "Yes." I said, "Why did you cough up your spine?" And he said, "That he saw a man in the room that was a hunchback, he said he did not have any spine, and he said, "I thought I would give him mine." I asked him what became of this spine when he expectorated it, and he said, "they picked it up and took it away and gave it to this other fellow," and he went on in an incoherent manner as the conversation progressed, and I brought him up to the time of the crime, that he is accused of, was committed, and when I put the direct question to him as to why he killed this little girl, he said he killed her because he thought it would make him a better man. So that he could go out among the people and talk better. I asked him if he thought that it was wrong and he said no. He didn't seem to appear to show any grief or regret for the crime committed. I asked him if he thought he was being unjustly held at the prison where he was and he said yes. He evidently did not appear to realize the position that he was in there. He thought that it was wrong to keep him there. I asked him what he would do if they allowed him to go and he said he would cut the grass at home and work around the house, and from the result of my examination I was firmly convinced that this man was of unsound mind.

Q I notice that in this record that has been marked in evi-

dence at some places there are statements in parenthesis "hesitation"; does the mere word "hesitation" give an accurate picture of what occurred?

A No, it don't not to my way of thinking. It was possibly more than hesitation, more of a retardation. It seemed to me an inability to express at that time his ideas.

Q Will you tell me generally what symptoms—oh, by the way, did you find any physical symptoms present?

A I did not examine him physically. A mental examination.

Q This answer that you have given is as to the symptoms you found present at your last examination. Now, I am asking you what symptoms you found present and what the condition was generally when you examined him the first time on February 25th?

A Well, at that time I examined him at his home in Montclair and he appeared to me at that time to be seclusive. He had no inclination to go out in company. He wanted to be by himself most of the time and during our conversation I obtained from him the fact that he was deeply interested in a gentleman—Shall I go on with this.

Q Oh, yes. The name has been mentioned. You might as well go on.

A —by the name of Mr. Grey, and Mr. Grey, he informed me was a Scout Master. Harrison also admitted to me that he thought a great deal of Mr. Grey, and, in fact, that he was in love with him. He did not seem to care for the female sex at all, that he had a longing to wander, to roam and no particular point in view. He said to me that he was impulsive. He said to me that he would frequently strike at someone without cause. He could not obtain or retain any position that he might secure. He said that he had difficulty in thinking and all during my examination he sat there laughing to himself and twiddling his hands to and fro, his fingers, and he was evasive in his answers, and then he admitted to me that he had made a homicidal attack upon his father at one time, the reason for which he could not explain, and I came to the conclusion from the result of my examination that it was advisable to commit this man to an institution at once.

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Q I noticed also, in this record, there is a statement of grimaces?

A He would move his face and his lips and his eyes repeaedly; that is, he would make faces, so to speak, and, if you will pardon me, I also wish to state that that night, after I had left his home, he called me up on the telephone about two o'clock in the morning and said he was coming up to see me, and I asked what for and he said, "Well, I am just coming up to see you", and then I notified the police to take care of him that night.

Q That was February 25th?

A Yes.

Q Are these symptoms which you have described characteristic of the mental disease known as dementia praecox?

A Some of them are, yes.

Q What is dementia praecox?

A What is it? Just a term applied to a group of mental cases characterized by mental deterioration. That is about the term given to it.

Q What is the prognosis?

A Unfavorable, I should say.

Q From your examination of Harrison W. Noel and your examination—or, rather, your opinion with respect to the disease that he is suffering from, would you say that he was or was not rationally capable of, of rationally appreciating the situation in which he is and being able rationally to consult and to assist counsel in the making of a defense?

A He is not.

Q And why do you say he is not?

A I say so based upon the result of my examination, and I feel that he does not know the difference between right and wrong. He says that he does. I think that he realizes, or, at least, he says he does, that it is wrong for you or I to kill, but not for him.

Q What are the characteristics of the disease from which he is suffering and what are his characteristics which would make it, in your opinion, impossible for him to adequately defend himself?

A Why, his inability to concentrate. I think that he is practically living in a little world, so to speak, of his own. I

think he is delusional. I think he is unable to comprehend the situation in which he is now placed.

Q Could counsel or anyone else depend upon the truth of anything that he said, as a matter of fact?

A I should say not.

Q And is that so, irrespective of whether Noel believes it to be true or not?

A Yes, sir.

Q In other words, he may say something which he believes to be true, which may not yet be the truth?

A That is so.

Q And is that characteristic of this disease of dementia praecox?

A It is, in my opinion.

Q Did you observe a condition approaching that of mutism?

A Frequently.

Q What is mutism, as used in connection with the disease of dementia praecox?

A Well, as I understand it, it is simply a refusal to talk, or possibly to cooperate with you on persistent questioning.

Q And is that the result of the disease?

A It is one of the symptoms.

The Court. Doctor, did he know he was in jail?

Witness. He said he was

The Court. Did he know why he was in jail?

Witness. He said that he did.

The Court. What did he say, what did he give as his reason for being in jail?

Witness. He said he was in jail for killing this colored fellow.

George Davies, Cross.

Cross Examination by Mr. D'Aloia.

Q Doctor, you say that you noticed, from your examination of him in February, on February 25, 1925, that he had homo-sexual tendencies, is that true?

A I think so.

Q Now, the characteristics and the symptoms of a person having homo-sexual tendencies are seclusiveness, no desire for the society of others, evasiveness, and all those things that you mention in answer to Mr. Lane, that you say you found on February 25, 1925, aren't they?

A I think so.

Q So that if you have a person of homo-sexual tendencies and not one suffering from dementia praecox at all, you will find the same characteristics of evasiveness, seclusiveness, no desire for the society of others, and an abhorrence for the opposite sex or no intercouse or conversation with the opposite sex, isn't that so?

A You might.

Q Did you know that while he was at Overbrook he was subjected to a lumbar puncture?

A No, I did not.

Q For the purposes of diagnosing his case?

A No, I did not.

Q You know what a lumbar puncture is, of course?

A Yes, sir.

Q And you know that is a puncture of the spine done in the lumbar region?

A Yes, sir.

Q Now, isn't it a fact, that while you were talking to him at the jail the other day he remembered clearly that his spine had been so punctured?

A He never so related to me and I did not know of it at the time.

Q Now, this retardation, you say, you found in his speech, haven't you found it in normal persons?

A Oh, yes.

Q Persons not suffering from dementia praecox at all?

A Oh, yes.

Q Would you say that dementia praecox is insanity or partial insanity?

A Why, I would say it was insanity.

Q Would you say it was partial insanity?

A No, I would not say it is partial insanity.

Q You would simply say it is insanity, speaking medically?

A Yes, medically.

Q Did you find any disturbances of memory in your examination of him the other day?

A Not that I know of.

Q He remembered very clearly that he had called you up on the telephone away back in February, did he not?

A He did, yes, sir.

Q Yes, and he remembered he had done that?

A Yes, sir.

Q He remembered that he had been in Overbrook, very clearly?

A Yes, sir.

Q And he remembered that the food up there was not quite to his liking?

A He said it was not.

Q Well, he was using his memory in telling you those things.

A Yes, sir.

Q You did not discover any disorders of orientation, did you?

A No, sir.

Q He knew he was in jail?

A Yes, sir.

Q Now, isn't it a fact, Doctor, that the basic symptoms, one of the basic symptome of dementia praecox is the disturbance of the association of ideas?

A It is one of them, yes, sir.

Q Isn't that a basic symptom?

A It is one.

Q Now, what would you say about the association of ideas of a person who wanted an automatic pistol and he went to a place that sold them and there he asked the price, and he wanted immediate delivery of the particular object that he was seeking, and he was told that they could not deliver it to him and then he gave a name and address to which it could be mailed, and a couple of days later he goes to this particular Post Office address, and he gives the name which he had given at the place where he paid for the automatic pistol and obtained the pistol. Would you call that an association of ideas with an ultimate idea as a goal, as an objective?

A Yes, sir.

Q You would not call that a symptom of dementia praecox, would you?

A No.

Q Now, subsequent thereto, this person, in desiring to test out the mechanism of the pistol which he had, by an association of ideas and reasoning process, obtained, went out into a lot and began to shoot at tin cans to test the ac- was a pretty good weapon would you find in that course of conduct any disturbance of the association of ideas?
conduct any disturbance of the association o fideas?

A No, sir.

Q Now, if subsequent of having satisfied himself, (this same person that I am speaking of) that the weapon was functioning properly, pretty accurately he formed a plan that he needed an automobile, other than the car that he had a right to use, which belonged to his family, and with that object in view he went to a telephone and he called up a taxi company, and told the person at the other end of the wire, the person calling up was at a certain point and he desired a taxi—for the sake of this question, the Montclair Athletic Club—and he waits there until the taxi arrives with a driver. Would you call that a disturbance of the association of the ideas if the person's object is to obtain a taxi?

A No, sir.

Q Let us assume that the same person forms an idea that he desires the sum of $4,000 and figures out,, reasons out in order to get the $4,000 it would be easy to steal a child and hold the child for ransom, and that person, in carrying out that plan, goes along the street of a town and observes the exterior of houses in order to determine which particular exterior of a particular house indicated affluence, and momentary conditions, wealth, and jotted that down in his memory, he remembered the number, say for instance 136, of a street, we will say for instance Mountain avenue, Upper Montclair, and then after obtaining this automobile which he had called up he goes to this 136 Mountain avenue, Upper Montclair, and steals a girl, would you say that there is any evidence of a disturbance of the association of ideas?

A Did he go there to obtain this particular girl?

Q To obtain a little girl whose parents were wealthy, and whose parents, and the little girl herself, lived in a house, the exterior of which indicated affluence?

A And he took her for the purpose of obtaining the ransom, you say, of $4,000?

Q Yes, would you say that that course of conduct, reasoned out that way and carried out that way, indicated any disturbance of the association of ideas?

A No.

Q Would you say thta after that person had taken the little girl and discovered that possibly he had made a mistake and it was not the little girl who lived at the number he picked out, the building he had selected, among those that he had looked at, and he came to the conclusion that if he was seen with her might be apprehended by the police, and he does away with her, do you find any symptom of a disturbance of the association of ideas in that conduct ?

A No.

Q Now, the other day did you ask this defendant what he did on the 3rd day of September, 1925?

A Did I ask him?

Q Yes.

A The 3rd of September?

Q Yes.

A No.

Q Did you ask him what time he got up on the morning of the 3rd?

A No.

Q Did you ask him what he did all day of the 3rd?

A No.

Q Did you ask him what time he retired on the night of the 3rd?

A No.

Q Did you ask him what he did on the morning of the 4th?

A No.

Q Did you ask him what he did all day the 4th of Septemtember?

A No.

George Davies, Cross.

Q Did you ask him what time he retired on the night of the 4th?

A No.

Q Did you ask him what time he got up on the morning of the 5th?

A No.

Q Did he tell you what he did during the day of the 5th?

A No.

Q Did you ask him where he was on the night of the 5th?

A No.

Q And where he had been between the night of the 5th and the morning of the 6th?

A No.

Q Did you ask him what he did on the morning of the 6th and where he went?

A No.

Q Now, if I were to tell you that he did a short time after your examination of him the other day chronologically tell what time he got up on the 3rd of September, what he did all day the 3rd at different hours of the day, what he did when he got home at night, what he did when he got up on the morning of the 4th, and what he did chronologically, in sequence on the 4th, what time he got home on the night of the 4th, what he did on the morning of the 5th, and what he did all day the 5th and where he was on the night of the 5th, and then on the morning of the 6th that story of his was all checked up and he accompanied people along the route he had been talking about and that every detail was absolutely correct, would you say that there was there any symptom of a disturbance of the association of ideas?

A No, sir.

Q Now, with the basic symptoms—which is the basic symptoms of disturbance of the association of ideas, would you diagnose the case as one of dementia praecox?

A Not on those grounds alone.

Q Would you?

A No, not on those grounds alone.

Q You would have to find some evidence of that basic symptom before you could conclusively say that the party you were examining was a praecox dement?

A I don't know what you mean by praecox dement.

Q I will repeat the question. You would have to find some evidcnce of this absolute symptom, which is the disturbance of association of ideas, before you would diagnose the case of the person you were examining as a case of dementia praecox?

A No.

Mr. Lane. I object to that—all right. It is answered.

Q Then you didn't consider that a basic symptom?

A No.

Q You admitted before it was one?

A No, I said it may be one.

Q Well, do you agree with this author of this text book of psychiatry, by Dr. Eugene Bleuer.

A What is his name?

Q Bleuer, a German author, and this English edition by A. A. Brill. Have you seen this book?

A No, I haven't seen the book.

Q Well, it is pronounced Bleuer. This book is published in 1924 by the McMillian Company. Have you seen it?

A No, I haven't.

Q Among other things this author says the basic sympton of dementia praecox, the disturbance of the association of ideas, and that is especially important. Do you agree with him?

A Not necessarily so, no.

Q Do you know that on July 3rd Harrison W. Noel went to the Overbrook Institution?

A Did I know it?

Q Yes.

A No.

Q Did you know it when you examined him the other day that on July 3rd, 1925, he went there, reported at the hospital, and he was allowed to depart?

A I think I stated that he was there. I would not say for sure.

Q Yes. His memory was pretty good as to the date he went there with his mother and they found nothing the matter with him and they allowed him to go home on the 3rd of July?

A He told me that, didn't he. I do not recollect if he did

or not. I am perfectly willing to admit that he did.

Q What is that?

A I am perfectly willing to admit that he said that.

Q That showed a pretty good memory?

A Yes.

Q Now, there were times up at the institution when you were within a hundred feet of him?

A No, only the night I committed him.

Q You asked him if he remembered killing the negro. What was his answer?

A Yes.

Q You asked him where he left the car?

A Yes.

Q And he told you, didn't he?

A Yes.

Q You asked him that if there had been a white man driving that car instead of a negro would he have killed him just the same. What was his answer?

A I do not remember.

Q Well, if I told you his answer was yes, would you say it was?

A Yes.

Q You asked him if he remembered Cedar street in Cedar Grove.

A Yes, I did. If it is there. I hadn't seen this.

Q Well, this is your question: Do you remember seeing a street, Cedar street, Cedar Grove?

A Yes.

Q What was his answer?

A I do not remember what his answer was.

Q Well, if I say his answer was yes, would you recall it?

A Well, if you say so, yes.

Q Are you having any difficulty as to your examination the other day?

A Not a particle.

Q You do not know his answer to that question?

A I think he said yes.

Q But you are not positive?

A No, I am not positive.

Q Now, if I were a physician examining you I would conclude that your memory was bad.

A It might be.

Q And that would be a symptom of dementia praecox?

A It might be.

Q He remembered the number of his ward up at Overbrook, didn't he?

A Yes.

Q He remembered that it was 32?

A He did.

Q Do you remember this question—this is an examination by you: "You have not broken any law, have you?" And his answer was, "Not recently." You remember that, don't you?

A Yes.

Q You remember your next question: "Have you been punished for breaking it heretofore?" And his answer was, "No; I broke the law when I killed the colored man." Do you remember that?

A Yes.

Q Now, when a man makes an answer to you like that and those other answers that precede that will you swear that he does not know the distinction between right and wrong, as you told Mr. Lane?

A I would not give my decision on the result—

Q You did?

A No, I didn't.

The Court. The Doctor was about to say that he didn't give his conclusion based upon that alone.

Q Well, what would your conclusion be, if you were to base it on these three question?

A I would not base it on those three questions.

Q Well, I am assuming now that these are the three questions you put to the man who has been in jail for some time, "You have not broken any law," and he answered, "Not recently; "Have you been punished for breaking it heretofore?" and he said, "No, I broke the law when I killed the colored man."

Mr. Lane. I object to the question on the ground that the Doctor said he would not under any circumstances base an opinion on those three questions.

Mr. D'Aloia. I will reframe it.

Q If those were the only three questions asked and the answers made, would you say that the man knew the distinction between right and wrong?

A I would not form any conclusion.

Q Did you tell him who you were when you went there the other day?

A No.

Q Did you tell him that you were sent there by his attorneys and that you were going to examine him so that you could come to court and help him?

A No.

Q You did not tell him the purpose of his examination at all?

A No.

Q He knew you as soon as he saw you?

A Yes.

Q And he said "Hello, Doctor."

A Yes.

Q And you said, "Hello, Harrison?"

A Well, not as rapid as that.

Q Well, he suffered from retardation?

A Yes.

Q But you had no difficulty in understanding him?

A No.

Q And he had no difficulty in understanding you?

A No.

Q There was no disconnection between your questions and his answers, they were responsive?

A I would not call them responsive.

Q Well, were they responsive?

A He answered them very slow.

Q I am not talking about slowness. I am talking about responsiveness.

A Yes, I think so.

Q They were responsive?

A Yes.

George Davies, Redirect.

Redirect Examination by Mr. Lane.

Q Doctor, would you, as an alienist, presume to pass an opinion upon the sanity or insanity of any man by taking single questions and his own opinion as to his sanity?

A I would not.

Q Most insane persons think they are sane, do they not?

A Sure.

Q And this ability that the Prosecutor has referred to of obtaining the pistol by going to a place where pistols were sold, of obtaining a car by killing the chauffeur of the car, and so forth, may an insane person reason from cause to effect in the commission of an act of that kind?

A As to the cause and effect of it?

Q No. I mean from cause to effect. Assume he wanted a pistol, is it insanity if a man goes to a pistol shop to get one?

A No.

Q And assume he wants an automobile, is it an act of insanity to go to a place where there are automobiles to get an automobile?

A No.

Q If, as a matter of fact, a dementia praecox patient, an insane person, were under any stove disability, no crime would be committed because they could not take one step after another, that is right, isn't it?

A That is right.

Redirect Examination by Mr. Lane.

George Davies, Recross.

Q Would you say, Doctor, as to whether the act was that of a sane or an insane man, or whether it was a normal act, where, in order to get an automobile a man was killed, where there were a great many cars which could have been gotten without killing the man?

A I would say that is defective judgment.

Q And is that a symptom of dementia praecox?

A That is one of them.

Q Would you say that for the normal man the getting of

a car was an excuse for killing where the car might have been gotten much more easily?

A No.

Q What would you say with respect to a man who holds a person for ransom or steals a child for ransom and asks for $4000 and is offered $5000 and refuses to take the five because he only wants four, is that rational?

A No.

Q May dementia praecox patients have what appear to be acute memories?

A Yes, sir.

Q Can you place any dependence upon that memory?

A I cannot, no.

Q Do you know whether the recollection as expressed today is a recollection of an event or a recollection of something which the patient thinks was an event?

A I think something which the patients thinks is an event.

Q Have you any means of telling whether the recollection of this patient with respect to the food becoming bad at Overbrook is a recollection of what actually occurred at Overbrook or is it something which has gotten into his mind since he left Overbrook?

A That I am unable to say.

Q And anybody else would be unable to say?

A Yes, sir.

Q Can you depend at all, where a man is suffering from dementia praecox, can you depend at all upon what he says?

A Not in my opinion.

Q Is there any doubt in your mind as to whether this man is actually suffering from dementia praecox or not?

A There is not a particle of doubt.

Q Is this anything like a border line case?

A Not in my opinion.

Q Are what the Prosecutor just stated as home sexual tendencies sometimes characteristic of dementia praecox or concomitant with it?

A Sometimes you say?

Q Yes, sometimes.

A Sometimes.

Q Is there anything, except whatever might be said to you

on February 5, 1925, by Noel himself, which would lead you to think that he had any homo-sexual tendencies?

A No.

Recross Examination by Mr. D'Aloia.

Q Didn't you say before that on February 25, 1925, he told you about Mr. Gray?

A Yes, he told me so.

Mr. Lane. I expected that, Mr. Prosecutor.

Q And didn't you also say that that gave you an indication of homo-sextual tendencies in Noel, after he told you, what he said about Grey, and what he thought about Grey and the love for him which he had?

A Yes, sir.

Q Now, when Mr. Lane asked you if you found any homo-sexual tendencies in Noel you said no.

Mr. Lane. I object to that. That is not what the witness said.

The Court. There seems to be a misunderstanding?

(Question withdrawn)

Q Doctor, you just said to Mr. Lane that you could not depend upon the truth or the veracity of something said by a person suffering from dementia praecox?

A Yes, you cannot depend on it.

Q Now, if Harrison W. Noel told, in a statement made by him, that he brought a revolver at Bannerman & Sons on Broadway, lower Broadway, and we found that to be a fact, and he gives us the date and the address and the time, and we find that to be a fact, we can depend on that statement of his?

A Yes, sir.

Q And if Harrison W. Noel told that he obtained that, after purchasing it over there, at the Little Falls Post Office by giving the name of Wallace Payne, and he told you that some time after he had done that, and we found that to be a fact, that part of his story is dependable, isn't it?

A Yes, sir.

Q And if he told us, some time afterwards, that he had gotten some Winchester cartridges, a box containing 45 bul-

lets, and we checked that up and found that to be a fact, so far as that part of his story is concerned, it is dependable, isn't it?

A Yes, sir.

Q Now, when he told us that after he received the revolver in Little Falls he kept it under the rear seat of his Overland car, and we found the revolver there afterwards, in searching that car, his memory is pretty good and his story is dependable, isn't it, as to that fact?

A As to that fact.

Q Then when he told us that he went to Valley Road in a drug store on September 1st or rather September 3rd, Thursday, and called up a taxicab and we find that that call for a taxi was made from that drug store at that time, that fact, or those facts are pretty dependable, arn't they?

A Yes, sir.

Q And when he told us the kind of a car that answered his call for a cab, and we find as a fact that it is a Dodge touring car, just as he told us, it is a pretty dependable bit of information, isn't it?

A Yes, sir.

Q And when he says he took that car, and he sat behind the man who was driving it and when he got to a deserted part of the road he took out the automatic revolver and shot the driver, and then he took the wheel, pushing the body of the driver over, and he took that body up to the end of a certain bridge near a certain brook and there he carried the body down to the bank of the brook and hid it there, and we find that the body is at that spot, the body of the colored man who has brought that touring car up to Valley road in answer to that telephone call, would you say that that was a pretty dependable story?

A Yes, sir.

Q Then, when he tells us that he takes that car and parks it at a certain spot and goes home, that day's work being finished, and that car deserted is seen there by people, that information is dependable, isn't it?

A Yes, sir.

Q And when he says that the next day he got his own car, his Overland, and he drove it to where he had left the Dodge

touring car which he had obtained by killing the colored man, and he changes there at that place where he had left the Dodge touring car and leaves his Overland car there, and comes to Mountain avenue in the Dodge touring car, which is seen at Mountain avenue, at No. 136, in front of those premises, that part of the story is pretty dependable, isn't it?

A Yes, sir.

Q Particularly when we find a person who sees the Overland car at the same time in that deserted spot where the Dodge touring car had been, that is pretty dependable, isn't it?

A Yes, sir.

Q Then when he tells us that when he got to 136 Mountain avenue with the Dodge touring car he picked up little Mary Daly and forced her into the car and drove away with her, and we check that up and find that little Mary Daly was taken and put in the Dodge touring car, that part of his story is pretty dependable, isn't it?

A Yes, sir.

Q Then when he tells us that he was chased after putting little Mary Daly in the Dodge touring car by a car with a man in it, and that the chase lasted fully ten miles, and we find the man who was driving the pursuing car, and he tells us he was chasing a Dodge touring car with a young man and a little girl in it, that part of his story is pretty dependable, isn't it?

A Yes, sir.

Q And we find, he tells us he allowed the pursuing car to come alongside of him, and as the driver of the pursuing car was about to step away from his wheel he fired a shot at the driver of that car and saw him fall, and we checked that up and we do find a man by the name of Sandin who was driving the pursuing car, and who tells us he was rolling up alongside of Noel and was about to come away from the car when he received a bullet wound in his forehead and fell as the result of that wound, that part of his story is pretty dependable isn't it?

A Yes, sir.

Q And then after he says he shot the driver of the pursuing car he started his car up again, the Dodge touring car

and went to a certain spot and he then killed the little girl and left her body there, and we go there, or people go there with him to the place where he told us and we find the little girl's body at the spot where she was killed, would you say that that part of his story pretty dependable?

A Yes, sir.

Q Now, if that dependable story as checked up in every detail, is told to his counsel in the preparation of this case by this man, don't you think that they could depend upon it and rest upon it and prepare their defense upon it?

A No.

Q You do not?

A No.

Q You don't think that counsel can depend upon a dependable bit of information which was checked up and found to be true information given to them by their client, do you?

A No, sir.

Q You don't believe that a person who hides two bodies in the course of two separate days, killing one the first day and hiding it in a deserted spot, you don't believe that that person knows he is actually committing a wrong, do you?

A No, sir.

Redirect Examination by Mr. Lane.

Q Doctor, I suppose the question last asked you might be summarized, that you may depend upon whatever the patient tells you if you have the ability to check it up?

A Yes, that is it exactly.

Q Is there anyway by which you know and by which anybody can, for the patient, determine what the patient's idea was at the time of the commission of this act?

A No, sir.

Q Is there any way by which you know, by which counsel can be certain or reasonably certain that what the patient may say as to what his idea was at that time that is as to what influenced him at that time and as to the personality he was acting at that time is really dependable?

George Davies, Redirect.

A No, sir.

Q And is there any way by which if he does say at this time he was acting in this or that or the other personality, is there any possible way by which that can be checked up?

A No, sir.

Q And are those things which are necessary to be known in the defense in this murder case upon the ground of insanity?

A Yes.

Q Is there any possible way by which we can get it from anybody else except this person?

A Not in my opinion.

Q Is there any way by which you can get it from this person and be able to rely upon it.

A Not in my opinion.

Cross Examination by Mr. D'Aloia.

Q Do you know any other way that the body of this little girl could have been hidden away in a nook in Wayne Township, Passaic County, by Chief Reilly of the Montcalir Police Force and his other officers, if they had not been guided there by Harrison W. Noel?

A No.

By the Court.

Q I think in response to Mr. Lane's question you said that the effect of killing this chauffeur in order to obtain the Dodge car was an evidence of defective judgment. Would you say that all cases of defective judgment indicate insanity?

A No, sir.

Q Then, defective judgment could exist and the person be sane?

A Yes, sir.

Q I think in response to a question of Mr. Lane's you pointed out that a refusal to accept $5000 when the demand was for four, was an indication of defective judgment. Doctor, wouldn't the circumstances of the offer have something to do with the good or bad judgment exercised in the refusal of the offer of four or five thousand dollars?

A I would think so.

Q Doctor, just one more question. Would you call my act, if I intended to rob Bush's jewelry store on the corner of High street and Springfield avenue, would you call my act of breaking the glass window at three A. M. by making a lot of noise to get the diamonds and watches that might be there on show defective judgment?

A Would I call it so?

Q Yes.

A Yes, I would.

Direct.

JOHN M. THOMPSON sworn in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Doctor Thompson, will you tell us generally what your experience has been as a physician and specifically with respect to the treatment of mental diseases?

A I was practicing physician up to about fifteen years ago, when I aroused an interest in nervous and mental diseases, and beginning eleven years ago I have been constantly associated with institutions for the insane.

Mr. D'Aloia. The Doctor's qualifications are admitted.

Q What are those institutions for the insane?

A I beg your pardon.

Q What are those institutions for the insane which you were connected with?

A Essex County Hospital at Cedar Grove, Morris Plains; Dr. Milspaugh's in Paterson; Dr. McDonald's house in Central Valley, and Boston Psychopathic.

Q How long were you resident physician of the Essex County Hospital for the Insane?

A Very nearly six years.

Q Do you know Harrison W. Noel?

A Yes.

Q When did you first meet Harrison W. Noel?

A I met him on the evening of February 25th, about nine o'clock. I was called down to admit him. He was in the presence, at the time, of his mother, Dr. Davies and Dr. Kirkwood; across the hallway were Mrs. Noel and Harrison W., the patient.

Q After his admission in the asylum in whose particular—who had supervision of him?

A Why—

Q In whose ward, in whose care was he?

A Why, he was placed in the receiving ward, placed under my charge, under my care.

Q And how long a time while he was in that institution was he in your charge?

A From February 25th until the day he left us on June 28th, with the exception of about seven weeks, four weeks of which I was ill and off duty. The other three weeks I went away at the advice of a physician on a vacation during the latter part of April and the early part of May.

Q And did you during that space of time have occasion to observe him?

A Yes.

Q How continuously?

A When on duty I saw the boy at least twice a day and sometimes more. I had access to that ward rather frequently, more than my other wards.

Q Did you at any time, and, if so, when, come to the conclusion as to when Harrison W. Noel, at the time he was confined at the Essex County Hospital for the Insane, was sane or insane?

A I regarded him as insane.

Q And did you reach a conclusion as to whether he was suffering from a specific form of insanity?

A I regarded him as a case of dementia praecox.

Q Was a diagnosis of his disease arrived at the hospital?

A Yes.

Q I show you the record of the hospital, which is offered in evidence, Exhibit D3, March 12, 1925, and ask you if that is the report of the diagnosis?

A Yes.

Q And in that diagnosis who participated?

A The case was presented for diagnosis by Dr. Stamp, to whom the duty of examining the patient was assigned. The diagnosis was made in the presence and concurred in by Dr. Payne, Englander, Thompson, Kildee and Stamp?

Q What was that diagnosis?

A Catatonic dementia praecox.

Q Did you examine Harrison W. Noel recently?

A Yes.

Q When and where?

A I examined him on last Monday afternoon about half-past two at the Essex County jail, I think it is called.

Q In company with Dr. Davies?

A In company with Dr. Davies, Mr. Smith, Mr. Barber was present, and the stenographer, whose name I have forgotten.

Q From your examination made at that time did you reach a conclusion as to whether Harrison W. Noel is at the present time sane or insane?

A I reached the conclusion that he is insane.

Q And did you reach a conclusion at that time as to what form of disease he was suffering from?

A Dementia praecox, yes.

Q At the present time?

A At the present time.

Q From your examination of Harrison W. Noel the day before yesterday, and from your knowledge—your individual knowledge—that you acquired of him while he was in the Essex County Hospital for the insane, would you say whether he was or was not rationally—rather, capable of rationally appreciating the position in which he is and the circumstances surrounding him and this case?

A I consider that in view of the diagnosis of the mental form of derangement from which he is suffering that he is not. Will you repeat that question again?

Q (Question read.)

A I repeat he is not.

Q And basing your answer on the same source of information, would you say whether he was capable of rationally consulting with his counsel and assisting counsel in the preparation of a defense to this charge of murder?

A I don't think so.

Q Doctor, generally, without going into technique, what is the form of disease known as dementia praecox and what are its effects?

A Dementia praecox is what we call a precocious an early dementia that is commonly found between puberty and adolescence, although we do find it later on than that and a characteristic symptom is gradual mental deterioration.

Q And that mental deterioration results in what so far as the mental faculties are concerned?

A A derangement of the mental faculties.

Q What peculiar symptons of the disease did you find present at your examination of Noel?

A The outstanding feature in the case was a lack of harmony between continuity of thought, which was very shallow and scanty, and his behavior, emotional reaction.

Q Did you find evidence of what is called mutism?

A I saw pronounced evidence of mutism while he was a patient at the hospital. On Monday last, when I examined him, there was some slight evidence of mutism.

Q What effect has this disease of dementia praecox upon the ability of a patient to express ideas?

A It renders him inadequate and incapable of expressing his ideas property.

Q Are delusions concomitant with the existence of the disease of dementia praecox?

A Yes.

Q Is it possible, do you think, for counsel to rely upon anything that this patient may say with respect to his delusions or what they were or when they occurred?

A No, sir.

Q Is it possible for this patient, do you think, or, at least, is it possible to determine whether the patient has the ability to remember the influence which may have led to the commission by him of any act or the personality in which he was acting at the time of the commission of the act?

A I don't think so.

Q Did you make a physical examination?

A Yes.

Q What did you find as the result of your physical examination?

A I found him a rather well nourished and well developed boy with no particular physical symptom outside of an aggravated cyanosis of the hand and asymmetry of the face.

Q Will you tell us what that last term means?

A Asymmetry, a lack of unity, a distorted look, one side of the nose was larger than the other, the mouth was somewhat twisted, the bones of the face were not symmetrical.

Q You have stated that in your opinion this man is unable rationally to cooperate with counsel in a defense of his case. Will you tell me generally why that is? What is there that he could do were he sane that he cannot do now, in your opinion?

A In the first place, he lacks real insight into his situation. He shows decided poverty of emotion, an inhibition of will, together with that he has a tendency to be negativistic, not to do the things he is asked to do or to do just the opposite of what he might want to do, and then the delusions in this case must of necessity render his judgment and reason impaired.

Q Is this case, in your opinion, any border line case or is it a well developed case?

A I feel it is a very well pronounced case of dementia praecox. I have no question about that from my own standpoint.

Q What is the prognosis of dementia praecox?

A The prognosis is unfavorable.

Q Will you tell me why that is?

A For the simple reason that it is a deterioration process and that deterioration never lets up. We do have spells where the patient's conduct and behavior appear to improve, but the actual deterioration does not let up. It goes on gradually and progressively until it terminates in what we call terminal dementia.

Q Is it recognized in medicine that after there has been actual organic deterioration of the brain there cannot be any recovery?

A I think the consensus of opinion is against recovery.

John M. Thompson, Cross.

The Court: Doctor, what do you hold dementia praecox is, functional or organic?

Witness: That, of course, is a nude question. You have asked me to answer that question. From my large experience with dementia praecox cases, I feel personally that it should be placed in the organic class.

Cross Examination by Mr. D'Aloia:

Q Now, Doctor, on or about June 28th, after this man had been under your care and supervision since February 25th, you found him sufficiently improved to allow him to leave the institution, isn't that a fact?

A I didn't allow him to leave the institution.

Q Well, you did not protest against him leaving it strenuously; in other words, you permitted it.

The Court: Just a minute. Let the doctor answer the question.

A In view of his apparent improvement and what—and when I say improvement I mean conduct, behavior, general deportment on the ward, physical condition—

Q Well, I am right in saying there was an improvement.

A Why, yes, I admitted it, but I wanted to explain what I meant by improvement.

Q Well, I think we understand that word. There was an improvement in his condition between February 25th, 1925, and June 28th, 1925, a sufficient improvement to warrant you permitting him to leave the institution.

A Sufficient improvement—

Q Yes or no. Isn't that so?

The Court: Just a minute.

A In the first place, I didn't allow him to leave the institution.

Q Well, there was this improvement which did not call for any objection on your part, strenuous objection in his leaving.

A Oh, I could not possibly let him leave the institution.

Q Now, he came back there with his mother on July 3rd, according to the institutional records. Here is the record, "July 3rd, Ward 32, patient reported at hospital today and

interviewed by Dr. Stamp; mother, who was with him, states this was voluntary on part of the patient, who promised to report again within a few days," is that correct?

A That is Dr. Stamp's note.

Q Didn't you see him there at the institution?

A I did not. I was off at that time.

Q How many cases of dementia praecox have you had where there has been a cure?

A I cannot recall one real bona fide case of dementia præcox that has ever resulted in a cure.

Q How many cases can you recall where there has been an organic symptom that you might recall that convinced you there was deterioration of the brain cells?

A I do not know that I can recall any case.

Q When you say there was a gradual mental deterioration in every case of dementia praecox you don't know whether that is so or not, do you?

A I feel pretty sure that that is so.

Q But this one case of dementia praecox where the mental deterioration between February 28th and June 28th, over a period of March, April, May and the entire month of June, instead of there being a deterioration there was an amelioration, wasn't there?

A There was some improvement so far as conduct and behavior was concerned.

Q Well, what have you to say to the deterioration?

A I do not think the deterioration process changed.

Q It did not become any more aggravated, did it?

A No.

Q Don't you agree with this author Bleuer?—you know the name. A. Bleuer.

Q You know this English edition by A. A. Brill. Then don't you agree with this author and these distinguished gentlemen when they say this about dementia praecox, which they call Schizophrenia? That is true, isn't it?

A Yes.

Q This disease may come to a standstill at every stage and many of its symptoms may clear up very much or altogether, do you believe that that is true?

A I do not hold to that view of Bleuer's.

Q Where do you differ with him?

A That it does not come to a standstill.

Q At every stage you do not believe that this is true?

A I don't believe it. I do not accept Bleuer's interpretation.

A And you do not believe many of his symptoms—that is, the symptoms of dementia praecox may clear up very much or altogether.?

A I do not believe it.

Q You do not believe that that is so?

A No.

Q Now, how about these cases of dementia praecox where you say there was not an absolute cure that you recall, but there was substantially a cure, what symptoms—

Mr. Lane. I object to that. The doctor has not said there was a substantial cure.

Q Well, in this case you refer to in in your answer to my question how many cases of dementia praecox which had come under your observation which have been cured, where there was not an absolute cure, how many of those cases do you recall where some of the symptoms of the disease had cleared up and disappeared altogether?

A Some of the symptoms?

Q Yes.

A I do not recall any.

Q You do not recall any?

A I do recall one type shifting to another. We have a shifting of the type and a transition of one type of dementia praecox to another. We have a change in the picture, but the fundamental basic deterioration does not change.

Q Does not change and you think that deterioration is organic?

A I feel that way.

Q You think that that deterioration is organic?

A I feel that way.

Q You are not sure of it?

A I say that it is a mooted question.

Q It may be entirely functional, so far as you are concerned, it might be functional.

A I cannot hold the view that dementia praecox is a functional disorder, a mental disorder.

Q Well, if it is functional and no organic, you are not sure which it is, supposing the mental disorder is not organic but functional, then could there be an amelioration?

A I cannot accept that hypothesis.

Q But, for the purposes of this question, assuming that the mental defect in cases of dementia praecox is not organic, but functional, then, I ask you, could there be any amelioration?

A Why, I should expect—

Q Yes or no.

A I should expect yes, if you allow it is functional.

Q Now, if I understand your understanding of that question correctly, you don't know whether it is organic or functional. You are not ready to answer that, there is a division of opinion among you scientists, isn't that so? I am right that far, am I not?

A The great majority, I feel, believe that it is organic.

Q And a great majority believe that it is functional.

A Yes, sir.

Q Your opinion is that you don't know which it is, whether it is functional or organic.

Mr. Lane: I object to that.

The Court: Sustained.

Q Doctor, do you know whether it is organic or functional, this mental defect, in cases of dementia præcox?

A I can't say that I do positively.

Q You do not. Now, not knowing whether it is organic or functional you will admit with me that if it is functional it can be ameliorated.

A A functional disease is likely to show amelioration, but I told you that I had never in my own personal experience and observation noticed a dementia praecox which displayed or showed amelioration.

Q Now, you made a physical examination of this man and you told us that one side of his face is what you call asymmetry. Is that right?

A Yes, sir.

Q One side of his face differs from the other side?

A Yes, sir.

Q Do you know of any face where both sides are the same in a sane or insane patient?

A No, I place no importance in that.

Q But you gave it here as one of the things which you found as the result of your physical examination.

A I simply answered Mr. Lane's question.

Q Now, is mutism—that is one of the characteristics or characteristic symptoms of dementia præcox, and you did find some improvement in Harrison W. Noel between the time he was under your supervision in the institution and the time you met him the other day in the jail, there had been improvement along that line, isn't that so?

A I saw improvement, yes, about the latter part of June, during June.

Q So, as far as the characteristics of mutism was concerned, there had been improvement?

A Very little; yes, sir.

Q Some improvement?

A Some change; yes, there wasn't so much mutism.

Q Now, let me ask you about your examination of this particular subject on Monday. Did you discover any disorder of memory?

A I cannot say—

Q Yes or no.

A Yes, sir.

Q What was it?

A His recall of dates.

Q Was rather bad?

A Not bad, but there was some lapse in his general memory.

Q You do that once in a while, don't you?

A Yes, sir.

Q And so do I.

A Yes.

Q Now, did you find any disorder of orientation?

A I found he was somewhat hazy about time.

Q I know, but I am talking about locality now. Did he know where he was?

A Well, orientation includes time as well as locality.

Q Did he know where he was?

A He knew where he was, he was well oriented for places and persons, but somewhat hazy as to time.

Q And we are all hazy as to time, you admit that. Did you ask him what he did on the 24th of August, 1925?

A The 24th of August?

Q Yes, the other day, Monday, when you made this examination that you are telling us about, did you ask him what he did on the 24th of August, 1925?

A I don't recall that particular date.

Q Now, if he was to tell you or tell me, if he had told you on Monday or had told me that on the 24th of August, 1925, he lived at the Mills Hotel in Blecker Street, in New York, and you and I were to journey over there late Monday afternoon and look up the records at the Mills Hotel and find that on August 24, 1925, Harrison W. Noel had been there, you would say that his memory was pretty good, would you not?

A I should say at that particular time.

Q No, he is telling us; this is Monday afternoon at two o'clock up in the jail, telling you and me, he tells us on the 24th of August he was living at the Mills Hotel on Bleecker Street in New York and we go over there to New York about five o'clock, you and I, and we find that he was at that hotel. Would you say that his memory was good?

A If that is a fact, if you find he was there and he told you so previously, I should say yes, his memory on that particular point was good.

AFTER RECESS.

JOHN M. THOMPSON recalled.

Cross Examination (continued) by Mr. D'Aloia.

Q If I remember correctly, Doctor, you said that if a statement were made by Noel to us on Monday afternoon, around two o'clock, that he lived at the Mills Hotel on the 24th of August and you and I went there later in the after-

noon of Monday and found that to be true, you would conclude that he made a dependable statement?

A Yes.

Q And a true statement, is that right?

A Yes.

Q Now, if further on, in our examination of him on Monday he were to tell us that the pistol he bought on the 24th of August he bought at Bannerman's & Sons on Broadway and it was of a Spanish type automatic or revolver and we checked that up at Bannerman's & Sons, on Broadway, and found by the record that that kind of a revolver had been sold to a man and if Noel had told us the name he gave there was Wallace Payne and we also found that the name of the purchaser of that particular calibre revolver and make had been sold to Wallace Payne, you would conclude that his statement was dependable up to that point?

A I would say so.

Q And if he told us on Monday that he ordered the pistol to be sent by mail to one Wallace Payne addressed to Little Falls, New Jersey, and we went to the post office in Little Falls and found the record there that a Wallace Payne had received at that post office a package and signed for it, you would say that that part of his story is pretty dependable, wouldn't you.

A Yes.

Q And if he told us that he kept that particular weapon under the rear seat of his Overland car and we found the revolver under the rear seat of the Overland car, you would conclude that his statement was pretty dependable wouldn't you?

A Yes.

Q Now, if he went on and told us that having purchased this revolver he got up on the morning of the 3rd of September, 1925, and went to a drug store on Valley road, Montclair, and there he called up a taxi company and called a taxi and ordered it to come to the Montclair Athletic Club, and if we went up to the taxi company's office and found that such a call was received and the car was sent up with a driver at the time Noel told us he sent up for a car, you would say that part of his story was pretty dependable?

A Provided Noel gave his name at the time he ordered the car.

Q Well, suppose Noel told us that the car did come and picked him up at the Athletic Club and then we made our investigation at the taxi company's office, then you would say that part of the story was dependable?

A Yes.

Q Suppose he told us that prior to the time of buying this revolver he had made up his mind to get $4000 by kidnapping some litle girl at some home and providing he told us the home he had intended to pick the little girl up at and he had looked at the homes on Mountain avenue and looked at the grounds and the affluence of the people inside and their ability to pay the money he wanted for ransom and he had decided upon 136 Mountain avenue as a likely place from which a child could be held and demand made upon the people residing at 136 Mountain avenue for the money, and that he had picked up that child and after he had called up the taxi he got this car by killing the driver and secluding his body at a certain spot and parking that car for use the next day and then he went up with his own car and substituted his car at this place where the taxi was parked and used the car which he called up to take the little girl from in front of 136 Mountain avenue and get away wih i, and we checked up that part and stopped right there, and we went up and found that after he got this taxi he did hide it all night at a certain point which he told us about, and that the next morning he went there with his own car and substituted that car with his own car and that later on he did go to 136 Mountain avenue, Montclair, and he did take a little girl from in front of those premises and that he did force her in his own car and did force her away would you say that was a dependable part of his story?

A Provided you got your information from reliable sources other than Noel himself?

Q Well, we are getting the information first from Noel and then we are going to these places and we find every fact and detail to be true, then would you say that the information given by Noel to me to be dependable?

A I would think so.

Q Suppose he had told us he had killed a colored man who brought the taxi and where he had taken the body and then we traced that story out and we find three or four persons, including Dr. Payne, we find the spot where the colored man's body was found, then would you say his information was dependable?

A If you checked it up.

Q I told you he told us where he had placed the body of the colored gentleman and then he verifies it with Dr. Payne, who tells us that was the spot, and the very body, would you say that his information was dependable?

A Yes.

Q Now, if he went on and he told us that he was chased when he took the little girl, and he was chased for a long distance, in and out of different roads, until finally he stopped his car and the pursuing car stopped alongside of his car and the driver of that car attempted to get out and he turned around and shot at him and when he shot he saw the man stop and he started off in his car; and we stopped right there, you and I, and got this information and checked it up and we found that a man by the name of Sandin, who was employed by the lady who lived at 136 Mountain Avenue, Upper Montclair, and who was cleaning her car at the time the little girl was taken from in front of the premises and was given orders to chase the car with the little girl in it, and that he, Sandin, with two other men, had chased them for about ten miles, in and out of different roads, and that the car that they were pursuing stopped by the side of the road and he pulled up alongside of it and as he was about to get out from behind his wheel the man in the pursued car shot at him and injured him in the head, would you say that that information given to us by Noel was dependable information?

A If it was checked up.

Q Yes, by asking Sandin, by looking at his wounds, and by finding out that he was working for Mrs. Bowers who lives at 136 Mountain Avenue, Upper Montclair, and who gave the instructions to chase the car and we find out that all that

was true, would you say of that information that it was dependable?

A Yes, sir.

Q Now, if he told you that he went on, after eluding this automobile, and they got into a place there and stopped, and he took the little girl up and shot her, because he did not know what to do with her, because she was the wrong little girl and he did not want to be seen with her and he left the body secreted up there in a nook of the woods and you and I went up, guided by Harrison W. Noel, to the very spot where he said he took the little girl to and left her body after shooting her, and we found the body of the little girl there with the bullet wounds in her head, just as he said he had fired those shots, what would you say about the dependability of the information that he originally gave us about that phase of the story?

A It was true.

Q True. Very dependable.

A Yes, sir.

Q Now, if he said that he went home after leaving the little girl there and he went back with the taxi or the Dodge car which he had taken from the colored fellow, after killing the colored fellow and he took his car where it had been parked by him, and he went home, and that night he went out with his mother and some neighbors and took them riding, and we checked that up by asking his mother and the lady next door if they were out riding in Noel's car and if they were out until late in the evening and they said yes, you would say that that part of the story is very dependable, wouldn't you?

A Yes, sir.

Q And if he told you that the next morning he got up and laid around the house and did two hours' work in the yard, and that later in the afternoon some men came to his house, whom he knew to be police and at that time his mother told him to go upstairs so he would not hear the conversation, and after he remained upstairs some minutes his mother called him down and he went with those men, and we checked up and found that the men from the Montclair Police Department had gone to his house and that Noel was there and he had been sent upstairs by the mother, and after a while he

was called downstairs and he accompanied them to the police station, would you say that that part of the story is dependable?

A Yes, sir.

Q Now, can you think of anything else that this man could tell his counsel of his conduct on the days that I have mentioned, the three successive days, the 3rd of September, 4th of September and 5th of September, mind you, we have gone over the ground together and checked it up and find that it was dependable information; can you think of anything more he can tell his counsel in order to aid them in preparing his defense?

A Repeat that again, Mr. D'Aloia.

Q I am asking you if, from your examination and observation of Noel, now that we have come to the conclusion that if he did all those things and we find them out to be true, as I have gone over every detail, I am asking you if he told that story to his lawyers and they could go out and check up every bit of information as you and I have done, imaginarily, during this examination, could there be anything more said by him to his lawyers to aid his defense and describe his conduct, in detail, chronologically, in regular sequence, missing no details during all of those days, the 3rd, 4th and 5th of September, including the killing of Raymond Pierce, the man who brought the automobile. Is there any more aid that he can give his counsel than that to aid them in preparing his defense?

A I cannot answer that.

Q Yes, you can. You can answer that because you can tell me this—Is it possible for this defendant to respond to suggestions from his counsel, or from you, as an alienist, or from me, as a man interested in his defense to malinger and feign stupidity, retardation and a sort of non-interest in what is going on?

Mr. Lane: I want to ask whether the Prosecution will claim, upon the record in this case, in the light of the testimony of his expert, that there is any malingering or any suggestion on the part of counsel? This is the first time that this has been mentioned here and I

would like you to know, upon the record, whether the Prosecutor contends that.

Mr. D'Aloia: I am not contending anything. I am asking the expert his opinion.

The Court: I will allow the question.

(Question read.)

Q Is he mentally capable of doing that, responding to that sort of suggestion?

A I don't think he is mentally capable.

Q You don't think he is mentally capable?

A The last time I saw him on Monday afternoon—

Q You don't think he is mentally capable of understanding a request made by you or a person interested in his defense, to appear stupid, non-interested, put his hand up to his mouth, have a vacant stare, he is not mentally capable of responding to that suggestion?

A He is not competent to confer with his counsel, rationally or intelligently.

Q I am not asking you that, I am asking you if this man is mentally capable of responding to a suggestion that when he appears in court or when he is examined by you or any other alienist he is to retard his speech, not answer, look stupid, look away vacantly and show no interest in what is being said or done about it; is he mentally capable of responding to that suggestion; yes or no?

A He is not.

Q Did you ever state to any person that this crime of it- the emotions of this particular subject?

A Beg your pardon?

Q Did you ever state to any person that this crime, as you understood it to have been committed by this subject, undammed his suppressed emotions?

A No, sir.

Q Did you ever state to any person that this crime of itself would furnish a sort of shock which would undam his emotions and make him sane?

A No, sir.

Q If you are reported as having said that that is absolutely wrong?

A That is wrong.

Q Do you know of any method whereby a lawyer preparing a defense in a criminal case can tell whether the burglar, or the safe-cracker, or the murderer, whom he represents, upon interview either at the jail or in a counsel room, is telling him the truth when he is telling him what he did about the offense charged against him, at or about the time laid in the indictment?

A I can't say.

Q Do you know that the only possible way that that can be verified is by checking up a story by the client to the lawyer, on the part of the lawyer, the checking up took place and he verifies whatever the defense might be, alibi, conduct of the man, where he was at the time alleged, and all of that, so he can satisfy himself that way?

A Yes, sir.

Q Now, if Mr. Noel, the defendant in this case, were to give his counsel a detailed statement, as he has given to the authorities of what he did on the 3rd, 4th, 5th and 6th days of September, you don't know of anything that would hinder counsel from checking up this detail, do you?

A I can't think of anything.

Q And if these details are correct, upon a checking up of the same, then counsel could prepare a defense based upon the information received from the client, couldn't they?

A I don't want to understand that I believe the statements on the part of this—

Q I am not asking you to believe anything. I am asking you to assume that the statements made to the authorities have been checked up and found true, and ask you if it is possible for this particular subject to repeat those statements to counsel instead of to the authorities and they check them up and find them to be true; is that possible?

A It is possible but not probable.

Q Did you ask Noel at your examination the other day as to what he did on the 3rd of September?

A I think we did.

Q What did he tell you he did on the 3rd of September? What time did he get up in the morning?

A I didn't ask that question.

Q What else did he tell you he did on the 3rd of September, did he tell you he called up a taxi?

A No, sir.

Q Or from a Valley Road drug store?

A No, sir.

Q Well, did you ask him that?

A No.

Q Well, then you did not ask him what he did on the 3rd of September, did you?

The Court: Just a moment. If the doctor wants to refer to the testimony in the exhibit he may do so.

The Witness: Dr. Davies and I were in together on that, we collaborated. I don't recall if we asked those questions.

Q Will you kindly find your examination of this man made by you Monday afternoon?

A You mean with reference to this particular act, crime?

Q Yes, what he did on the 3rd of September, all day long. Did you ask him that? Did you ask him to tell you?

A I don't recall, Mr. D'Aloia, having asked him any particular questions with reference to this act. I think Dr. Davies asked him.

Q Well, do you recall, Doctor, Dr. Davies asking him what he did on the 3rd of September?

A Yes.

Q What did Dr. Davies ask him?

A Dr. Davies asked him about—in detail about how it happened.

Q Did he tell Dr. Davies how he called up the taxi cab?

A I think he did, I would not be sure.

Q Well, now, did he tell him he called up a taxi from a drug store in Valley road?

A I think he did.

Q Did he tell Dr. Davies that a taxicab came driven by a colored man?

A Well, that I am not sure of.

Q Well, look at the examination there and see if he did, refresh your memory.

A This is the questionaire of Dr. Davies.

Q Including yours. That is the stenographic report of what you and Dr. Davies asked him and the answers he made?

A These questions referring to the crime were asked by Dr. Davies.

Q I know, but it is there. Do you remember a question there as to what he did on the 3rd of September? Is that date mentioned at all in your question?

A I do not think the date is mentioned.

Q Then, if you did not try to find out, either you or Dr. Davies, what this man did on the 3rd of September and what he recalled of it, how can you tell us here whether he is capable of consulting with counsel when you never made any attempt to find out what he did on the 3rd of September or on the 4th and on the 5th?

A On account of the form of mental disease which he suffered.

Q Well, one of the ways to ascertain was to test his memory and conduct on the 3rd of September, 1925?

A A test of memory in those cases of dementia praecox is not material.

Q But in order to find out if he recalled what he is charged with it would not be amiss to find out what he remembers of that?

A I think it is asked here.

Q What is the question that refers to it?

A Dr. Davies. Can you tell me why you killed him (hesitation)?

Q What is that?

A Can you tell me why you killed him (hesitation)? Had he injured you in any way? No. Then why did you kill him? Was it wrong for you to kill him? I don't think so. Why not (hesitation). Had you ever seen him before? Because I needed his automobile.

Q Just a moment. Is there any reference there as to when that happened, what month, date, week, day, year?

A The date does not seem to be mentioned.

Q No, you and Dr. Davies are making an examination of an alleged dement praecox and you do not ask him if he recalls what occurred on the day he is charged with killing a man, do you?

A We asked him if he recalled the episode, the event, but I didn't think asking him about the date was essential.

Q You didn't think that a straight story of the chronological sequence of acts by him was essential which would enable you to judge whether or not there were any disorders of memory, or whether there were any disorders of orientation in his tale, did you?

A We were not concerned with memory in this case.

Q Didn't you tell us this morning that one of the characteristics is disordered orientation?

A I did not, sir.

Q Well, is it?

A It is and it isn't.

Q Did you think it was important to find out if he knew where he was on the 3rd of September when you examined him the other day?

A Not necessarily.

Q Did you think it important to find out what he did and if he recalled what he did on the 3rd of September, morning, noon and afternoon and evening, in order to guide you as to whether he could confer with counsel about that particular date and about his actions on that date?

A We didn't think that was essential.

Q Did you tell him who you were, or did he know you?

A He knew us.

Q His memory was not bad in that respect, he called you by name, didn't he?

A Yes.

Q And did you tell him you were there for the purpose of helping him?

A I think so.

Q Who told him that, you or Mr. Barber?

A I think I did.

Q Did you hear Mr. Barber tell him to go ahead and talk to you gentlemen because you were there in his interest?

A I do not recall.

Q What did Mr. Barber say to him?

A I don't know that Mr. Barber said anything.

Q What is the matter, is your memory bad?

A My memory?

Q Yes. Do you recall what Mr. Barber said to him, if anything?

A I do not recall

Q Will you tell us now that Mr. Barber did not talk to him before you and Dr. Davies examined him?

A I couldn't say.

Q Were you there all the time Mr. Barber was there?

A Yes.

Q Then your memory is rather hazy what occurred the other afternoon?

A I realized that whatever Mr. Barber had to say he said nothing to Dr. Davies or myself.

Q You realize that what Mr. Barber had to say he did not say either to you or Dr. Davies?

A No.

Q But he may have said it to Noel?

A That I don't know.

Q But you would not swear that it did not occur, will you?

A Not in my presence did I see Mr. Barber speak to Mr. Noel.

Q Did you hear the salutation or the greeting by which Mr. Barber was received by Noel?

A No, sir.

Q Do you remember the greeting that Mr. Barber made to Noel?

A I didn't notice anything in the way of salutation between Noel and Mr. Barber.

Q All right. You do not recall what Mr. Barber was doing there or what he said there or what his purpose in being there was?

A No, sir.

Q Do you agree with this author on the basic symptom of dementia praecox as being a disorder in the association of ideas?

A I certainly do not.

Q You do not. You will admit though that if a man obtains a revolver by giving another name has it sent to hi m by mail and pays for it, when his object is to get a revolver, that

there is an association of ideas with an ultimate idea as the goal idea as the objective, wouldn't you?

A I would not admit that he had a goal idea.

Q Well, if the goal idea were the getting of the revolver and he went about it this way by going to the place where they sold it and paying for one and giving the name of another person and a post office address so it might be sent there and he presented himself at the post office and got the revolver from the post office authorities, wouldn't you say there was an association of ideas following in sequence rationally for the purpose of accomplishing the goal idea of purchasing the revolver?

A I cannot say from the purchasing of the revolver what his goal idea was.

Q I am stating, for the purpose of this examination that the goal idea was the obtaining of the revolver. Now, begin with that. Then going over to a place where they sold it, paying the price asked for it, picking one out, and being told it cannot be delivered to him then and there, but it can be mailed, giving the name of another, giving the address, going away, going to the post office address and giving the name he assumed, that he received it, and receiving the revolver from the post office authorities, wouldn't you say there was an absolute evidence of association of ideas following each other rationally for the purpose of accomplishing the goal idea of getting the revolver?

A There is certainly an association of ideas, but I cannot answer what his purpose was.

Q The purpose was to get the revolver?

A Well, you use the word revolver. I say there is an association of ideas. We have association of ideas, sane and insane.

Q Would you call that process, for the purpose of affecting the purpose, would you call that process, that mental process, reasoning? Yes or no.

A On the part of a sane man I would call it good reasoning.

Q Would you call it reasoning on the part of any person who makes up his mind that he wants a revolver and he goes, as I said before, to a place where they sell it and he pays the

price for the one he picks out and he has it sent to him and he gets it through the post office authorities, would you call that mental process reasoning in any person, yes or no.

A I would in a sane man, yes, sir.

Q In any person. I am not assuming any insanity at all. Would you call that mental process reasoning if it is done by any person?

A It is a form of reasoning.

Q Well, it is a rational method of carrying out ideas?

A It is an association of ideas.

Q It is an association of ideas for the purpose of getting a revolver, is that right?

A Yes, sir.

Q Now, if a man wants to get an automobile and he wants to use it for a certain purpose and he thinks of calling up a taxi company and he gets it and then he follows out the method by killing a man who brings it and ultimately secures that automobile, which is the purpose of his entire plan, would you say there is evidence there of association of ideas?

A There is.

Q And when he accomplishes that purpose of getting the automobile, would you say that that mental process in securing the automobile is reasoning?

A That is an association of ideas.

Q It is reasoning?

A A certain form of reasoning.

Q And pretty good reasoning, isn't it, a little strange and out of the ordinary, but he got the automobile, didn't he?

A Yes.

Q Now, after he got the automobile and he figures that he wants to get a little girl, that he wants to do it on a certain afternoon at a certain time, in front of 136 Mountain avenue, and he takes that automobile from the place where he appropriated it and leaves the body of the driver after appropriating it and goes to 136 Mountain avenue and does pick up the little girl, forces her in the car and drives away, now, would you say there is a process of reasoning if the ultimate object is to get the little girl?

A That is an association of ideas.

Q And would you call it reasoning?

A A certain form of reasoning.

Q Then if he is chased and he wants to get away and escape and he puts on speed and he keeps up that speed for a distance of ten miles avoiding the pursuer and then he finds that he is pretty near caught and the reason is to shoot the pursuer and he does that, the object being to escape, you would say he was going through a mental process known as reasoning, wouldn't you?

A I do not know that at that time he was capable of good reasoning.

Q No, I am not asking you what he was capable of doing. Any person who finds a car is chasing him and he is being pursued and he formulates the idea that he is about to be caught and has with him a weapon, a firearm, and the object is to stay the pursuer and turns the firearm on the pursuer, does that person escape pursuit if that is the object?

A Does he what?

Q Escape pursuit for the time being?

Mr. Lane: I object to that.

Q Well, if he gets away and shoots his pursuer would you say that the object he had in mind when he shot the pursuer was accomplished temporarily?

A I cannot say. I do not know what the motive was.

Q I am not asking you anything about motive. I am asking about a mental process, about a person sitting in a car being chased by another car who wants to escape pursuit, who, when he comes to the conclusion that the pursuing car is about to get him, stops the pursuing car with a revolver shot, I am asking you if that mental process is, in your opinion, not what you would call reasoning?

A That is a certain form of reasoning.

Q Now, if he comes to a certain secluded spot with a little girl that he had taken from in front of 136 Mountain avenue and after having stopped pursuit temporarily, after having fired a revolver shot at his pusuer, and he discovered that the little girl he has is not the little girl he wants and he reasons out he does not want to be found with her for fear of apprehension and the object is to do away with

the little girl and he does shoot the little girl and leaves the little girl, would you call the mental process of his reasoning?

A There is a mental process there, but I do not think it is a reasonable one.

Q Well what forms of reasoning do you know of, how many different forms of reasoning do you know of, outside of this general form of sequence, association of ideas, different acts, ultimate ideas, purpose, goal ideas.

Q What other process do you know of that may be called reasoning beyond that?

A I cannot state any line.

Redirect Examination by Mr. Lane.

Q Doctor, how many patients have you in Essex County Hospital for the Insane, approximately?

A About twenty one hundred.

Q I suppose of those twenty one hundred patients in the hospital pretty nearly all of them, if they want a glass of water, would go to a water cooler and get the glass of water and drink it; that is true, isn't it?

A Why, they have that privilege, yes, sir.

Q And they do it, don't they?

A Yes.

Q And I suppose if they feel something hurting them physically they call the doctor or call for some assistance?

A Yes, sir.

Q They do that.

A Yes, sir.

Q And if they want a book to read they ask one of the doctors to send somebody to bring them a book or if there is a library there they proceed to the library and get the book and they sit down to read it; that's right, isn't it?

A Yes, sir.

Q And I suppose there are any number of other things which those patients may do there which illustrate that these patients are exercising what the Prosecutor has called an association of ideas.

A Yes, sir.

Q Would you say because of the ability of those patients to exercise those associations of ideas that the Essex County Hospital for the Insane is filled with a majority of sane persons.

A No, sir.

Q Does the mere fact that a man may apparently reason from cause to effect or from effect back to cause even, indicate that he is sane and in possession of his faculities?

A Not necessarily.

Q As a matter of fact, is it not true that in dementia praecox, given a dement praecox, a personality, who he himself thinks he is exercising, he may show extreme ability to carry out the idea that he may have in his mind in his insane personality.

A Yes, sir.

Q That is not unusual in dementia praecox cases, is it?

A Not unusual.

Q If that were not so, I suppose we never would have crimes committed by dementia praecox cases, because they could never associate the idea to the fact.

Q When the Prosecutor went over this long list, which I suppose he read from the confession of Noel—is the word of Noel to be depended upon or is the check-up the thing that is to be depended upon?

A I place emphasis on the check-up.

Q You are familiar, of course, I suppose, in the discussion of this crime, that the defense in this crime, so far as you know at the present time, can only be the defense of insanity. You know that, do you not?

A Yes, sir.

Q Do you think that a person who is at the present time suffering under the delusion that he has always been sane can, except for a limited period of time, which does not include the time of this trial, can rationally, bona-fidedly assist counsel in attempting to demonstrate that he was sane at the time of the commission of the crime?

A I don't think so.

Q Is it or is it not, upon the issue of insanity, important

to know not what the man did at the time of the commission at the crime, but what the thoughts of the man were, as to what, in fact, he thought he was acting as, or under what personality he was acting and under what influence he was acting?

A Yes, sir.

Q Is there any way in the world by which, at the present time, in this man's condition we can get to those thoughts and depend upon them when we get them?

A No, sir.

Q Is it or is it not, in this class of cases, that the memory may be extremely acute with respect to certain things?

A Yes, sir.

Q And defective with respect to other things?

A Yes, sir.

Q And is that due not so much to a defect in the memory itself as the lack of impression made upon the brain at the time of the happening of the event?

A The latter.

Q And that lack of impression made upon the mind at the time of the happening of the event is due to what thing, which is a usual concomitant of dementia praecox?

A The deterioration, the mental deterioration.

Q And does that lead to a withdrawal into one's self?

A Yes, sir.

Q Without regard to outward consequences or outward feelings?

A Yes, sir.

Q Of course, if a thing does not make an impression upon the mind, because of this withdrawal into one's self and living in another character, it is quite inmaterial for purposes of reproduction whether the memory be acute or not. That is so, isn't it?

A Yes, sir.

Q If no impression has been made, of course, there is no memory of it.

A Yes, sir.

Q Counsel has suggested that perhaps this man, or at least because of the questions, that this man has been instructed,

do you happen to know with respect to these doctors who examined this man, without the presence of counsel for the defense, and without their knowledge, how many of these answers those doctors put into his mouth?

Mr. D'Aloia: Objected to. That was not the purport of my inquiry at all. I tried to find out his capability.

A Mr. Lane, I am not familiar enough with the testimony of the Prosecutor's side to answer that question.

Q Was it in your examination, or in another examination that we went into, in which Mr. Noel said he did not think the doctors for the State would lie to him; was that statement made to you or to one of the other doctors? Do you remember that?

A I think that was in regard to the tonsils, wasn't it?

Q No, it was in regard to what this crime was.

A I don't recall that.

Q Do you remember this question: "Do you think you realize the seriousness of the crime you have committed? *Answer*: I don't know. *Question*: Do you realize that you could be punished for it—(hesitating). Do you realize that? *Answer*: I don't believe they are lying to me? *Question*: Who do you mean they are lying to me? *Answer*: The doctors. *Question*: In what way do you mean? *Answer*: They say I am liable to be punished by death for it." Now, in view of that testimony, do you know, or can you tell whether the idea of Noel now, that he may be punished, is due to something he himself realizes, or due to what some doctor for the State may have told him?

A That sounds like suggestion.

Q During the course of this examination of yours, during the time that you were there with Dr. Davies, was any suggestion made to Noel by anybody as to how he should act or how he should conduct himself?

A No, sir.

Q Is it difficult, Doctor, for a man trained in the business, or in the profession, to discover whether a lunatic or an alleged lunatic is malingering or feigning insanity or not, in your opinion?

A I don't think it is difficult, after a certain experience.

I think we are able to differentiate between the malingering and the truth.

Q And isn't one of the reasons why you trained experts can do that the fact that the normal lay mind trying to feign insanity usually falls into some error because of his lack of knowledge as to the symptoms of the particular types of insanity?

A Yes, sir.

Q Was there, in your judgment, any malingering or feigning on the part of Noel?

A I have no reason to believe that the boy was malingering at all.

Q Do you think that a normal criminal, sane, who has committed a crime such as this, the killing of one man, of a little girl, and the shooting at another man and wounding him, would tell the Prosecutor of the Pleas or the detective, or whatnot, without emotion of any kind, nature or description, without emotion of any kind at all, the details, so far as the physical facts are concerned of the commission of that crime?

A I don't think it is possible.

Q Do you think it is a normal thing, because a person has taken the wrong child, or the child he did not intend to take, to kill that child because he did not want to be seen with her?

A Repeat that again.

Q (Question read.)

A I don't think that is normal.

Q Is that an adequate reason for any normal man?

A No, sir.

Q Now, you have spoken, or the Prosecutor has, with respect to improvement, and I don't think you have, although you have attempted to two or three times, I don't think you have been given the opportunity yet to tell what you mean when you use the term "improvement."

A When I made a note regarding this boy's improvement I had no reference to the matter of deterioration. It simply had reference to the boy's conduct and behavior on the ward, which we find in these cases at times.

Q A great deal has been said as to whether this disease,

as such, is functional or organic, and how it is that the doctors judge whether a disease of the brain is a functional disease or an organic disease, what factors are taken into consideration in the making up of the professional mind upon that subject?

A The factor that deterioration goes on progressively is the same as saying that there is an organic change taking place. The absolute proof of the fact is found only upon autopsy.

Q Has that condition been attempted to be proved by autopsy?

A The profession has not gone into that very extensively. I recall distinctly the report of Dr. L. Marie Southard of Boston, who at one time gave a report of something like 34 to 40 post mortems of dementia praecox cases in which he found brain atrophy. That was followed up, checked up by Dr. Rosanof, of New York, now of Los Angeles.

Q When there is this improvement in the outward conduct in a case of dementia praecox, is there a likelihood of the conduct at any time suddenly changing for the worse?

A Yes, that is the common rule.

Q Taking a hypothetical case of a person suffering from dementia praecox eight years ago, confined in an asylum; attempting to commit suicide; had to be confined in a straight jacket; finally, because of an improvement in the conduct, released; from that time down to the present time was shiftless, unable to accomplish anything that he was at; changed from one occupation to the other; family in, or near, the poor house most of the time because of his conduct, and then suddenly kills his mother-in-law and then commits suicide himself. Now, taking those facts, and the fact that he was suffering from dementia praecox at the time, eight years ago, would you say that that act upon his part, at this time, is due to the condition of dementia praecox?

A Yes, sir.

Q As a matter of fact attempts at suicide are quite usual in cases of dementia praecox.

A Suicides are not so common in dementia praecox cases; they do occur occasionally.

Q And what are the causes when they do occur, what is

the reason that the person seeks to take his own life?

A Very likely due to a spell of marked depression.

Q Is it or is it not a characteristic of a dementia praecox, withdrawal from reality?

A That is one of the outstanding features of dementia praecox, exclusiveness, failure to adjust one's self to environment and to respond to outside stimuli.

Q And is it or is it not the fact that reality is unable to correct or adequately to modify the delusional ideas?

A You mean by that the environment, the world realty? 10

Q Yes, I mean reality.

A Environment does not seem to play an important role or a material factor in modifying the condition of dementia praecox.

Q Is he capable of governing his conduct by the contact of outside forces, contact with the world?

A I don't think so.

Q Can you tell me, Doctor, whether in your opinion Noel today is the same or worse or better than he was at the time he was in the Essex County Hospital for the Insane? 20

A From the result of my examination of Noel on Monday I find that he has deteriorated more than when at the Essex County Hospital.

Q With respect to cures or alleged cures of this disease and statements to the effect that there have been cures, to what do you attribute those statements, mistaken as you think they are?

A Failure to make a proper and complete and thorough examination as well as to mistaken diagnosis.

Q And may that not also be due to a long continued course 30 of conduct upon the part of the patient which has not yet been interrupted as in the instance that I cited to you a few moments ago where it continues for eight years?

A That would cover up the effects that were not apparent.

Q And your prognosis of this disease, so far as Noel himself is concerned, is what?

A Unfavorable.

Q Tell me what you mean by unfavorable.

A Not likely to be cured.

40

John M. Thompson, Redirect.

Q You have seen Noel as he has appeared in the court room today.

A Yes, sir.

Q Do you think that Noel is in his attitude or apparent attitude in the court room malingering, or whether that is his actual, or represents his actual condition of mind?

A That is a perfect picture of his attitude as I have seen him on several occesions before, while in the hospital.

Q And that attitude is characteristic of what?

A Dementia praecox.

Q And as a physician can you tell just what counsel could do in the defense of a crime of that kind with his assistance, in an attempt to determine him insane at the time of the commission of the act?

A I don't see how he could be of any benefit to his counsel at all.

Q Something has been said, Doctor, by the Prosecutor as to your permitting this insane person to go out of the hospital and I think you said you had nothing to do with permitting him to go out; however that may be, the Board of Freeholders, representing this county, or one branch of it anyway, has assumed to discharge you as the head of the hospital or as the resident physician at the hospital because he was not recovered, that is true; isn't it?

Mr. D'Aloia: How is that material to this inquiry?

Mr. Lane: It is to show the interest of the doctor.

Q That is so, isn't it?

A Why, that is the action that has been taken.

Q That is what I say, they have assumed to do that thing.

A Yes.

Recross Examination by Mr. D'Aloia.

Q Would you call this particular subject a katatonia?

A Why—

Q Yes or no. Would you call him a katatonia? That can be answered very simply.

A That is the classification we gave him at the time.

Q Katatonia?

A Catatonic.

Q No, catatonic is spelled with a "c," the letter "c" isn't it?

A Sometimes with a "k."

Q No, when you say that he is a katatonia you use the "k," but when you say he is a catatonic dementia praecox you use the "c." Now, I am speaking of the word with the "k," now would you call him a catatonia?

A I would call him a dementia praecox of the catatonic type.

Q Well, would you call him a katatonia?

A I don't know what you mean by katatonia.

Q What do you understand it to mean?

A I don't know. That bears no meaning to me at all.

Q Did you ever hear of this book called "Mind and Its Disorders" by Stoddart?

A Yes, sir.

Q Now, it uses that word and it begins with a "k" and it is a particular division of those who are afflicted with dementia praecox. "Katatoniacs," you see, and it speaks of the "katatoniacs in dementia praecox" and says, "Of Katatoniacs, 86 per cent reach extreme dementia; 27 per cent are partially demented, but sufficiently improved to justify their being allowed to return home; and, 13 per cent recover at least temporarily." Now, you say that that term does not exist. You never heard of katatoniac?

A That is not a familiar term to me at all.

Q And yet you speak of this case as being catatonic dementia praecox.

A Yes, sir.

Q You never heard of katatoniacs?

A I don't know that I ever did.

Q You never saw this book?

A I have, certainly.

Q Did you ever read this excerpt on page 254, under the heading of Dementia Praecox?

A I did not happen to run across that particular page.

Q And do you agree with it, that those suffering from katatoniac dementia praecox may be sufficiently improved to

justify their being allowed to return home? I think that is probably so in your case up at Overbrook. Do you agree with that?

A How large a percentage did you say?

The Court: Thirteen.

Mr. D'Aloia: No. I did not say any percentage in this case at all.

Q Do you agree that those suffering from dementia praecox, katatoniac dementia praecox, may sufficiently recover as to be allowed to return home? Yes or no.

A I can't state that.

Q Then you don't agree with this author that katatoniac may sufficiently recover as to be allowed to return home?

A I have to call on my personal experiences. I don't recall such a number of catatonic dementia praecoxs.

Q Is it possible for a patient suffering from dementia praecox to recover sufficiently to be allowed to return home from a lunatic asylum such as the one you were connected with up at Overbrook?

A Yes, it is possible but not probable.

Q And is it possible for that same person to continue to improve so as to recover from dementia praecox at least temporarily; yes or no?

A I don't think so.

Q But it is possible?

A According to Stoddart.

Q What?

A According to Stoddart.

Q According to Stoddart it is possible, and according to you you would not say that it is possible, would you?

A I must call on my own personal experiences in this matter.

Q Well, I am asking you, you say it is possible according to Stoddart, it is possible. Now, I want to know your opinion according to you, is it possible?

A I cannot answer that question.

By the Court:

Q Doctor, did you say that the defendant sitting here now all day hasn't any appreciation of what is going on?

John M. Thompson, Recross.

A Why, I think, your Honor, he has some appreciation, but I think that he takes it all coldly.

Q No, your observation of his attitude towards those conditions, from that would you say that he has appreciation just as anyone has, to determine whether or not he is capable of going on with the trial of the indictment?

A Why, he may or may not, I cannot exactly explain.

Redirect examination by Mr Lane.

Q Catatonia, properly defined is that condition where there is at some time or another a condition of catalepsy, that is true, is it not?

A Yes, sir.

Q And that, in itself is considered by some doctors under the term of katatonia, is distinct disease.

A Yes, sir.

Q And by others not.

A Yes. As we use the term catatonic now, we use it as a symtom of dementia praecox.

Q And these divisions that are made between the different types of dementia praecox, is there anything at all certain about that?

A Why, no, sir; there is a transition from one type to another, and that transition is rather common.

Q With respect to catatonic, or katatonia, insanity, do you agree that this is a correct statement; quite characteristic of this condition, (catatonic dementia praecox) are the implusive acts of these patients. They will suddenly, and without any warning whatever, commit some act of violence, such as assaulting another patient or breaking out a window, and quite as suddenly lapse into their previous state, and it is quite impossible to get any information as to the cause of these attacks from the patient, and when a question is directed to him he gives a foolish reason or perhaps retires behind an "I don't know or complete silence."

A That is quite characteristic of dementia praecox.

Q "These things come out of a clear sky, cannot be foreseen, and make these patients at times very dangerous."

A Yes.

Q Is that an accurate description of catatonic dementia praecox?

A Yes, sir.

Q Noel said in his examination to you that at one time he thought he was a second Christ. Can you depend now, in his insane condition, or do you know now whether that is a recollection—present recollection—of something which he did think in the past or whether it is an invention of his mind at the present time?

A That is difficult to state.

Q Were he feigning, abnormal, when he was asked the question "Did anyone prompt you or suggest to you committing this crime, what would you expect—and did a voice speak to you and tell you to do this thing, what would you expect his answer to be, the defense being insanity?

A Why I did not know at the time what would be his reply.

Q Put yourself in the position of a normal man trying to feign insanity, if he is asked suggestively "Didn't you hear a voice telling you to commit this crime," what would be the answer of the normal man feigning insanity?

A Why, he would probably say yes, a feigning man.

Q Well, this patient said no. Now, can you tell from the answer of that patient whether, in fact, he heard a voice or whether he didn't?

A No.

Recross Examination by Mr. D'Aloia.

Q Wouldn't you say that the question itself might be asked with the idea of suggesting the answer yes in preparation of a defense for insanity?

A I don't think so.

Q You don't think so, but it might be possible?

A It might be possible on the part of somebody else.

Q It is one that suggests an answer "yes!"

A Yes.

The Court. Just a minute.

Mr. D'Aloia. I didn't say that. He said it.

Q I am talking impersonally. I want the Doctor to understand that and Mr. Lane to understand it so we won't have any trouble. These are all hypothetical assumptions. Now, Doctor, let me ask you one question. You told Mr. Lane that cases of catatonic dementia praecox, will sometimes enable the subject to act normally like every other person and come out of that dormant state and impulsively make a violent attack and do some injury to some persons. That is right, isn't it? And you mentioned that and said it is the characteristics—

A That is one of the characteristics.

Q But he read that from the book of his and that is that catatonic dementia praecox means a sudden awakening from a dormant state and do things that are not meant—

Mr. Lane. That is what I meant?

Mr. D'Aloia. Well, then I will take the book.

Q He read this: Quite characteristic of this condition—meaning dementia praecox, catatonic dementia praecox—are the impulsive acts of these patients, and the words impulsive acts in this particular work that he read to you from outlines psychiatry by White, the two words impulsive acts are in italics, indicating to the reader that they are to be taken seriously and considered important. That is so, isn't it? Quite characteristic of this condition, too, are the impulsive acts of these patients, do you agree with that?

A Yes.

Q Now, will you tell me if you ever heard of a catatonic dementia praecox case where the impulsive act lasted over a period of three days in carrying out a general plan of seizing a little girl and holding her for ransom and beginning on the morning of the 3rd of September or 3rd of a month and ending on the evening of the 5th. Did any impulsive act of that nature ever spring up from any case of catatonic dementia praecox that you had in charge?

A Doing certain things in catatonic dementia praecox, it runs over various periods from a day to three or four days with interruptions.

Q Now, what is there impulsive about a man calling up a taxi and waiting for it, anything impulsive about that?

A Why, that might be called an impulse, yes, an impulsive act.

John M. Thompson, Redirect.

Q You might say it was impulsive. Now, getting into the taxi and riding out to a deserted road, is there anything impulsive about that?

A That might be an impulsive act.

Q And pondering over in a man's mind how to get home and shooting the driver and where he should put the body, do you call that impulsive?

A That is the carrying out of the impulse.

Q And the impulse lasting all day, he goes to sleep at night and has a refreshing slumber and gets up the next day and picks up where he was the night before—and picks up the car and goes and kidnaps a girl, you still say that is impulsive?

A I should say that is still part of the impulse.

Q And after he slept the second night and went out the third day after an interrupted sleep, you would say the impulse carried on?

A Yes.

Redirect Examination by Mr. Lane.

Q Doctor, nature always trys to maintain an average, does it not, and when you find in long periods of disease, or in disease when you find repression below the average, below what we call the normal, for any period of time, you will find on the other side of that picture at other times periods of excitement, in order to compensate, an attempt to accomplish the normal?

A Yes.

Q And so far as insanity is concerned there is no rest between the time of repression and the time of excitement where the needle can rest upon the normal, that is a fact.

A That is a fact.

Q And that is an attempt, or these traces of excitement are compensatory, are they not?

A Yes.

Q So when these authors speak of impulsive acts the word "impulsive" as understood by the ordinary layman, is a misnomer is it not? It rather refers to a period of time normal

in an attempt to compensate for a period of repression?

A Yes.

Recross Examination by Mr. D'Aloia.

Q Can you refer to another case where there was an impulsive—using the word impulsive medically and not scientifically, as used by the layman, where it covered a period of three days?

A I cannot recall at the present time any specific time any specific case.

Q You cannot, can you? Can you remember of any case.

A I said I cannot at the present time.

Redirect Examination by Mr. Lane.

Q Doctor, have there been assaults by patients up at Overbrook upon the attendants at Overbrook?

A Yes.

Q Something that you would expect up there with those patients?

A Yes, we are not at all surprised when those things happen.

Q And I do not suppose that those gentlemen who are there, confined for insanity, when those assaults take place are prosecuted by the criminal law, are they?

A Not as far as I can recall.

Q And I suppose there are people up there who are attendants and have been killed, are there not?

A I do not recall any in my own personal experience, Mr. Lane, but that may be possible.

Q Something that you expect?

A Yes.

Q That you run the danger of when you become attached to an insane asylum?

A Yes, that is possible and probable among those employed among the insane.

WILLIAM B. PRITCHARD, sworn in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Where do you live?

A San Reno, Central Park West, New York City.

Q What is your profession?

A I am a physician, sir.

Q And will you tell me generally what your experience has been in reference to nervous diseases generally?

A I have been a practitioner of medicine since 1884. Since 1890 my practice has been practically limited entirely to nervous and mental diseases. In connection with that special practice I have held hospital positions as a specialist in nervous diseases and have also taught in the medical schools of New York in that capacity.

Q What hospital have you been connected with?

A I was for several years the attending specialist in nervous diseases at the City Hospital, Blackwells Island, New York City Hospital of Nervous Diseases on Blackwells Island, for twenty-five years. I was consulting specialist in nervous diseases at the Knickerbocker Hospital and for many years at the Polyclinic Hospital and for twenty-five years at least I was with the Staten Island Hospital.

Mr. Lane. Do you want to cross examine on the Doctor's qualifications?

Mr. D'Aloia. No, sir.

Q Doctor, did you, at my request examine Harrison W. Noel at any time?

A I did, yes.

Q When did you examine him?

A The day before yesterday.

Q Where and who were present?

A At the jail, in this city. Mr. Barber and Mr. Smith of your office being present.

Q I might as well get this out of the way. During the course of the time that you were there was any suggestion made by you or by anybody else in your presence that this gentleman should appear to be insane?

A There was not.

Q And did you at the time you went there go with any preconceived opinion?

A As to what I should find—

Q Yes.

A —as to this man's mental condition?

Q Yes.

A Yes, to the extent that I had been shown the record of the case, the record of his admission to Overbrook Hospital in this county, the record from day to day of his behavior and the observation of attending physicians on the case? I have been shown a letter from Dr. Slocum, superintendent of the institution at Beacon, New York, where this young man had been a patient and I had been shown I think some other exhibits, documents, in connection with the case, and. to a certain extent, this information had led to an impression, but my final decision, of course, was still dependent entirely upon my personal findings upon examination of this body, but I did go there with a certain amount of impression in advance.

Q Do you think, assuming that the statements contained in those reports were correct, as you, of course, did, do you think any alienist could fail to have any impression made upon his mind as to the nature—as to the condition of this boy if he read those reports?

A I don't see how it is possible.

Q Will you just tell us generally what you did, describe your examination, and in order to save time let me ask you this, when you returned to my office, or the next day, did you dictate to a stenographer a summary of what you had done as you recollected it?

A Yes.

Q Therefore, if you think it necessary—withdraw this. This was dictated where?

A At your office.

Q Who were present?

A You mean at the time of the dictation?

Q At the time of the dictation?

A The stenographer alone.

Q And nobody else?

A Nobody else.

Q And did this at the time you wrote it or dictated it, did it indicate,—did you attempt to summarize what had occurred?

A Only as dictated there and, incidentally, that dictation at your office was based upon long hand memoranda that I had made, personally, after my examination.

Q You may, if you desire, refer either to your long hand memoranda or to this statement, if you see fit, to refresh your recollection. I ask you, refreshing your recollection, if you desire, to tell us what occurred at that examination.

A I was introduced to this young man by Mr. Barber first in a purely informal way, my name being called, and Mr. Smith made a statement that I was there addressing Mr. Noel at the request of Mr. Noel's counsel and, of course, with his permission. I then explained to Mr. Noel who I was, my identity, as a specialist in mental diseases, and that the purpose of my visit was to form an opinion as to what his mental condition was, as to whether he was sane or insane, and I asked him, I think, right away if he knew—Mr. Smith had referred to his counsel—if he knew who his counsel was, and he said Mr. Lane. I asked him what he thought as to the purpose of my visit, my inquiry as to the insanity, whether he thought he was insane himself or not and he said no. The rest of the examination, which occupied about an hour, consisted of a number of questions intended to bring out the responsiveness of his answers, the amount of intelligence he possessed, his power of reasoning, his emotional reaction under certain circumstances, his memory, his initiative, and that was followed by a short physical examination. I do not know Mr. Lane, that you want me to go into the details of the questions and answers.

Q Go into such details as you think would help us in arriving at our conclusions as to whether this man is sane or insane?

A Well, the sum up of the hearing or questioning and inquiry, including the physical examination, was a conclusion that this young man was suffering from dementia praecox of an established character, fixed, absolutely permanent, and, in my opinion, hopelessly incurable, and for a period which stood already for a marked deterioration.

Q As a result of your examination, will you tell us whether, in your opinion, this man is sane or insane?

A He is insane.

Q As a result of your examination, will you say whether, in your opinion, he has the capacity to rationally appreciate

the circumstances or the position that he is in and the circumstances surrounding it?

A He has not such capacity.

Q Will you tell us whether he has the capacity to rationally consult with counsel and to advise counsel with respect rationally, now, to a defense of this case?

A He cannot, in my opinion, rationally advise with counsel as to his own defense.

Q Doctor, I am going to ask you this general question. Why did you reach that conclusion?

A Well, directly and conclusively as a result of my personal examination, my own inquiry, the result of that examination was corroborative of the record of the case that had been submitted to me. The record was that of a case of dementia praecox throughout all the period of the record, the period of Dr. Slocum's care and the period of the boy at Overbrook, the picture I saw, the result of my examination, was a demonstration of exactly the same thing. There was a consistency that made in the examination a corroboration of the history; in other words, established the diagnosis already made of dementia praecox.

Q And what would you say with respect to his attitude in Court today?

A Still consistent—it is typical in my observation and experience.

Q Why is it that a man in that condition, in your opinion, cannot properly consult with counsel and give counsel information with respect to the defense in this case? That brings into question what the nature of this disease is and what the effect upon the mental faculties may be?

A This boy's mental condition is that of a dormant obtuned intelligence with all of his reactions still retarded, so delayed as to make it impossible for him to retain for any length of time any continuity of mental process, any consistent mental retention. This boy, during the entire examination, in no instance showed the slightest initiative mentally. He did not volunteer a single statement. Every answer that he made was dug out by direct and persistent questioning, sometimes repeated questioning, repetition of the same question, and that was true of questions that had not significance so far as his

crime was concerned, that were free from the necessity of evasion or subterfuge or anything but direct response. It was consistent throughout. His answers were chiefly in monosyllables. As I recall it, in only one instance did his answer consist of a sentence of more than three or four words, and I recall that incident. I asked him as to whether during his school days he had any intimate friends, boy friends, and his answer was, almost verbatum, "When I was at high school I knew fifteen or sixteen boys." That was the one single sentence in which more than three or four words appeared in a voluntary way in any statement of his. He is in a delusional state. That is another factor which would influence his reasoning power and influence his relation to counsel. He believes that he is sane. He says he does. He states that he did no wrong in the killing of either of these two people, and when persistently asked as to how he could maintain such a belief he stated that nothing that he could do was wrong, that he should be punished for nothing that he did; still persisting, failing to give any voluntary information or any voluntary defense or voluntary statement as to why he believed this, he finally stated that he could do no wrong, because of the wrong that had been done him, and when again prodded said the wrong done him was at Overbrook and then that the wrong done him at Overbrook was putting him in a room, and then that the wrong done in putting him in that room was that the walls were painted green and a further description was that on the green walls were painted yellow dragons, and I still insisted that there was nothing in that that justified his crime and he said that there were two registers in the floor—those were his words, and I suppose he meant heat registers—each of these details come out one at a time and in answer to my insistence that he describe something about that room that would make it a torture chamber. Then there were disturbances of this boy's memory. In some details it was startling accurate. He stated for instance, that he had lived in New York up to the age of five years, that he had lived in New Jersey for the last fifteen years. He corrected me when I quoted his age as nineteen and he told me it was twenty. There were other instances in which he showed a perfectly accurate memory, but there were many instances in which

there was apparently a gap, a lapse, such as we often find in these cases of dementia praecox, these lapses not really being lapses of memory, but gaps left by a default of attention, and therefore, a perception, or of reception, there having been no reception, there was a lapse. I should describe his lapse of memory as lack of attention. There was throughout the whole examination a consistency that never varied, an absolute stability, a total lack of any emotional reaction at all, and I asked him if he was sorry for killing this little child, and he said, "No." I said, "Why not, with what it meant to that mother?" and I pictured the child and I tried to picture it as graphically as I could to see if there was any possible reaction or display of emotion that would appear and there was none whatever. He was sorry for his own mother, but he was not sorry that he killed this child.

Q You were not present when Dr. Thompson examined him?

A Dr. Thompson and Dr. Davies came in just as I was leaving.

Q You heard Dr. Thompson testify here, did you not?

A Yes.

Q You heard Dr. Thompson testify as to what occurred at his examination of this boy?

A I heard much of it, yes.

Q Was there anything that occurred during Mr. Thompson's examination that you heard here in court that at all altered your conclusion, or is it corroborative of your conclusion?

A Was there in Dr. Thompson's testimony—

Q Not in his testimony, but in his recitation of what took place at his examination.

A Inconsistent with my findings?

Q Yes.

A None whatever, no, sir.

Q From what took place at Dr. Thompson's examination, as you heard it, do you consider it corroborative of your findings?

A I do, yes.

Q Is it, in your opinion, Doctor, any border line case upon which a mistake would be likely to be made in the diagnosis or is it a well defined case of dementia praecox?

A So closely, so well defined a case, it is inconceivable to me that anybody could fail to recognize it,—certainly any alienist.

Cross Examination by Mr. D'Aloia.

Q Doctor, if I understood you correctly, when you got to the jail to examine him you told him who you were, you told him the object of your visit and who had sent you.

A Yes.

Q Do you think he understood that?

A I don't think so.

Q You don't think so?

A No, sir.

Q Now, was Mr. Barber with you?

A Mr. Barber was there.

Q And you say that Mr. Smith, in your presence, or Mr. Barber, told him who you were and by whom you had been sent and the purpose of your visit?

A Mr. Barber first.

Q And then you told him?

A Then Mr. Smith.

Q Then you told him?

A Then I told him.

Q Now, supposing I were to tell you that on a previous visit of an alienist, Dr. Beling, Dr. Beling told him practically the purpose of his visit the same as you told it, the same as Mr. Smith told it and the same as Mr. Barber told it, except that he said to Noel, "I have been sent here by the Assistant District Attorney and I want to find out about this trouble that you are in"—you see, he did not tell him he was Dr. Pritchard and that I am coming here in your case, and Mr. Smith, and sent by Mr. Lane, your counsel, to prepare a defense, but he said, "I am sent here by the Assistant District Attorney, Mr. D'Aloia, and I want you to tell me what you did and what you think of what you did, and the young man told him that he knew that it was wrong to kill a little girl six years old and that he knew that it had caused sorrow, that he felt sorry for the mother of the little girl and that he

knew that what he did was not right and that he knew he might be punished, he had been told that he might be punished for having done those things and that his punishment might be death, would you attribute his different answers that he made to Dr. Beling and the different answers he made to you to the fact of this introduction of Dr. Beling of himself to him?

A I cannot see why that would make any difference.

Q Can you give any reason as to why he should answer Dr. Beling in appreciating the fact that when he did kill the little girl it was wrong and he felt sorry for the mother and that he knew he was in trouble and in jail, and that it was wrong to kill another person, and then why he should tell you something else?

A I have no explanation to make, none whatever.

Q You don't think the introduction, the dissimilar introductions of you two gentlemen, of Dr. Beling and yourself, and the accompanying counsel who came with you would have any influence on him whatever?

A Not in explaining the difference that you describe.

Q You cannot find any reason of your own and you don't know what reason to attribute to it; that is correct, isn't it?

A I give no reason.

Q You say that you examined many persons who have homo-sexual tendencies?

A I would not say a great many.

Q And did you find these symptoms, upon observing those particular individuals, retardation, distructfulness, defective memory, lack of initiative, lack of concentration, did you find these symptoms?

A I did not.

Q What did you find?

A Retardation is in no sense typical or frequent in these homo-sexual perverts, except as homo-sexual perverts are cases of dementia praecox.

Q Then, if you find symptoms such as I have described, there would exist in your mind for a moment a doubt as to whether the subject was a person having homo-sexual tendencies or one suffering from dementia praecox?

A The summary of symptoms that you describe would not suggest homo-sexual perverts at all.

Q How about this lack of initiative?

A The homo-sexual pervert has a very active initiative, very often.

Q But a dement praecox has not?

A He has not.

Q Do you think a man lacks initiative when he thinks out a plan to get four thousand dollars by kidnapping a little girl and holding her for ransom?

A There would be some initiative there.

Q Do you think a man lacks initiative when he thinks out a plan of getting an automobile other than his own in order to do the kidnapping?

A There was initiative in that.

Q Do you think a man lacks initiative when he thinks out a plan of disposition of the body of the driver of an automobile in order to take possession of that automobile?

A There was initiative in that specific act, yes sir.

Q And do you think a man lacks initiative when he thinks out a plan of divesting himself or getting rid of the little girl for the purpose of not being seen with her, or her not being seen with him?

A A certain amount of initiative.

Q Do you think there was some initiative in picking out a residence which looks opulent, affluent and wealthy, as a place in front of which he was to kidnap the little girl?

A There was a certain amount of initiative in that.

Q Do you think it was a lack of initiative in purchasing a pistol so as to effectually carry out this general plan and stop pursuit if pursuit were to be instituted or started after him?

A No lack of that kind of initiative, no sir.

Q Well, if this man did all these things without any suggestion from anybody would you say he had a pretty good initiative?

A Yes, so far as those specific instances are concerned.

Q Then, you would not find any lack of initiative.

A Not as indicated in that specific recital.

Q Let us assume that he did these things chronologically

as I have related them; let us assume that he told us he planned this kidnapping for the express purpose—which seemed an adequate motive—to get four thousand dollars from the parents as ransom; let us assume that he got this novel idea of getting a car other than his own and he did all of the things I have mentioned. You—wouldn't you say there was plenty of initiative there?

A I would not say plenty, I would say some.

Q Did you ever hear of a criminal case where a kidnapping is planned that way and a car is obtained by calling up a taxi company and getting a driver to come up after him and after getting the driver, having him drive to a deserted spot, on a lonely road where no one could see him?

A I never in my life heard of a kidnapping planned as this one was.

Q Then you would agree with me there was a great deal of initiative if that was done without any suggestion from anyone else?

A I would say there was some initiative in the case you have described; yes, sir.

Q Now, you said also that you found from your examination that there was no sustained mental condition, is that right?

A I found in my examination that he lacked it.

Q There was no continuity of thought, is that right?

A That is my observation; yes, sir.

Q Let us assume that a man is capable of beginning on the morning of September 3rd, 1925, and during that day, he evolves a plan of obtaining an automobile other than his own, with which to take from the front of a certain residence, which he had picked out, a little girl, and to kidnap her for ransom; let us assume that he did get that car in answer to a telephone call from a drug store, and that he ordered the driver of that car to drive to a secluded spot or along a deserted road and there he shot and killed the driver; let us assume that he took charge of that car and drove it from then on to a more deserted spot and there he took the body of the driver of that car and hid it; let us assume that he then took that car and parked it in a deserted part of the county and went home and attended to his affairs at the house, in the

evening; had his dinner; he took his mother out riding and then went to bed; slept all night and the next morning took his own car, drove it out to where he had parked the taxi cab, which he had called for, and which he had obtained by killing this driver, and left his car at that deserted spot in the place of that taxi or Dodge touring car, and then came on to this address where he had seen the appearance to indicate wealth, and there picked up a little girl and put her in his car and drove away from there and he was pursued and he tried to stop the pursuit by firing a shot, and after stopping the pursuers he went right on to a point where he got the little girl out of his car, in another county, in the woods, a secluded, desolate, deserted spot, and there he found out that the little girl was not the girl he intended to take, and he did not know what to do with her and he did not want to be seen with her, and he killed her and secreted the body and hid it there. Would you say that he lacked any continuity of thought during those two days?

A I would not.

Q And that three days later he tells this story; the same person who did these things on the 3rd and 4th of September, 1925, on the morning of the 6th sat down and told this story of his conduct, of what he had done on the morning of the 3rd, how he went to bed on the night of the 3rd, slept all night, got up on the morning of the 4th, and he told all about what he did on the 4th, and right up to the time he was telling the story. Would you say there was any lack of memory there?

A Not as to that event; no, sir.

Q And if you find that after he told this story on the morning of the 6th of September, which is two days after the commission of this so-called sequence of crime and acts, his story is checked up and found to be absolutely as he tells it, with him along to check up certain parts of it, would you then say there was any lack of ability of what he told people, what he related as to what he had done on the 3rd and 4th of September?

A No as to what was checked up and found to be correct; no, sir.

Q Do you know of any method whereby counsel for any

man charged with violating the criminal law can find out whether his client, when he interviews him, is telling the truth or not, except by checking up what the client tells him in the preparation of the defense?

A I do not know.

Q And if counsel should find that what he tells him, on the check up, is absolutely correct and dependable, isn't it possible for that defense to be prepared properly for that criminal case when it comes to trial?

A On a simple recital of the mere mechanical facts?

Q Yes, checked up and found to be so.

A I should not want such a case.

Q You would not want such a case.

A No, I would want to know the motivation; I should want to know the mental attitude; I should want to know that particularly in a case where the sanity was disputed.

Q And then you asked him, as his lawyer, for the motivation and he says he needed money, that he wanted four thousand dollars, there was an adequacy of motive there; was ther not?

A Yes, sir.

Q Now, if you wanted to find out whether that was the act of a sane or an insane man, you would go on to find out how the injuries were inflicted, which caused death, if there was anything atrocious about it.

A Yes, sir.

Q Is there anything atrocious about a steel jacketed bullet as used in an automatic revolver and only one shot fired at the man who was killed; anything atrocious about that?

A Insane crimes are not always atrocious, by any means.

Q That is one of the characteristics of an insane act.

A It depends upon the form of lunacy.

Q You would not discover anything imprudent if you were counsel for a man such as Noel and if he told you he had hidden the body in a secluded place in the woods, in a deserted spot.

A The whole thing strikes me as so absurdedly imprudent as to be insane on its face.

Q What was there imprudent about it?

A Assuming that he had a kidnapping scheme. It seemed

that he was after four thousand dollars as the monatary reward I asked him, "Did you investigate the financial standing of the family of this Daley child before?" "No." "Had you ever seen this Daley child before?" "Did you know anything about the people?" "No." "Did you make any inquiries to find out whether after kidnapping the child you could get four thousand dollars if you asked it?" "No." Of course, what was behind his answers I don't know, for they were monosyllabic.

Q You could not tell what were behind his answers.

A It was a perfectly silly theory to me, the whole picture was inconsistent with the kind of crime that that sort of lunatic commits.

Q Have you in your dictated report, or in your longhand notes, the questions which you have just repeated?

A Somewhere, I think.

Q Will you point out where he was asked whether he looked up the financial condition of the Daley family or the family of the little girl?

A Someone told me that this crime was inspired by the Leopold-Loeb-Nathan affair in Chicago, and in considering that question as to whether he knew of that crime or as to whether he had anything to do with it, I followed that out and compared the two crimes. (Reading.) "He was asked if he picked as his victim the Daley child. No, he said, he did not know the Daleys. Did he know their financial resources? No. Had he ever seen the child before? No. Had he made any inquires at all about the family, as to their habits, as to their finances or otherwise? No. He just saw this child and picked her up and put her in the taxi and drove her off."

Q Did you know that the people who lived at 136 Mountain Avenue, upper Montclair, that their name was Bowers?

A Did I know that?

Q Yes.

A No, sir.

Q Did you ask him if he realized that he had picked up the wrong girl, the people who lived at 136 Montclair Avenue, Upper Montclair, were known by the name of Bowers, and

the little girl whom he took said that her name was Daly, you didn't know that, did you?

A No, sir.

Q Did you ask him what he did on the 3rd of September?

A I did not ask him that specific question.

Q Did you know that he was charged with killing a man by the name of Raymond Pierce, in the county of Essex, with malice aforethought, and with deliberation and premeditation, on the 3rd day of September, 1925, when you made your examination?

A Is that the negro chauffeur?

Q Yes.

A I knew he was charged with such a killing.

Q Did you know the date of the killing alleged in the indictment?

A I did not.

Q Didn't you think it important to find out of this particular subject that you went up to examine knew or recalled any of his conduct on the 3rd day of September, 1925?

A I knew of the killing of the negro and the killing of the child, that they were in some way related or occurred on two successive days, but exactly what particular days it was I do not recall.

Q Didn't you think it important to find out and test the recollection of the man you were examining as to those particular days and what he had done at different times during each day?

A Evidently I did not.

Q Don't you think that would prove a pretty good test of memory?

A He showed a very good memory in many respects.

Q I mean about those days. You already answered Mr. Lane and you have said, so that the Court might consider your conclusion, that this boy is incapable of assisting counsel.

A That is my very positive conclusion.

Q And I am asking you, being sent to the jail for that purpose, to find out whether he could or could not assist counsel, why you did not try to test his memory as to the date alleged in the indictment when the murder charged against him is alleged to have been committed by him, and his coun-

sel would have to ask him about in preparing his defense.

Mr. Lane. I object to the last past of the question.

A I frankly admit I did not ask him that, Mr. District Attorney.

Mr. D'Aloia. I will withdraw the last part.

Witness. I frankly admit I did not ask that question.

Q And you did not ask him what he had done on the 4th of September, which was the day subsequent, although you knew he had killed the little girl.

A I did not ask him.

Q You have diagnosed this case as a case of catatonic dementia praecox.

A I should call it a dementia praecox, yes, sir.

Q Would you say it is catatonic?

A I would say that it shows catatonic phrases, yes, sir.

Q Do you agree with Stoddart that in some of these cases they are sufficiently improved to leave an institution such as the Overbrook Asylum and return home?

A That is a mere matter of opinion, I don't necessarily agree or disagree.

Q What is your opinion, is it possible for one suffering from catatonic dementia praecox who is in an institution like Overbrook, to be sufficiently improved to be allowed to go home?

A I think at Overbrook and elsewhere cases of dementia praecox do at times improve to a degree which makes it safe for them to be under home care.

Q Do you also agree with Stoddart as to this statement, that in cases of dementia praecox, catatonic dementia praecox, they recover at least temporarily.

Q What is your opinion?

A It is a paradox.

Q Can't they recover temporarily.

A No, they improve.

Q Now, if the improvement continues to a certain point where the symtoms disappear, would you say that it is a recovery or not?

A If the symptoms disappear and remain away, then it is a recovery. I have never seen such a case.

Q Would you call it a temporary recovery if it leaves for a limited time and suddenly the impulse, the katatonia comes to the surface again and then the subject assaults a man?

A I would say it is an apparent recovery.

Q Then you do admit that there is an apparent recovery in some cases sufficient to enable the patient to have initiative, good memory, reasoning quality, to associate ideas to a definite purpose, to accomplish that purpose by association of ideas and ultimately reaching the goal idea or the final idea; that is possible, isn't it?

A Theoretically, yes, sir.

Q It is possible practically too; you have seen cases of dementia praecox in your experience diagnosed as such, improved to such a degree to be allowed to go home, and continue to improve, and for a long time go along with their usual occupation before there was any demonstration of impulsiveness or catatonic dementia praecox?

A I don't know. I have not seen them go along with their usual occupations, they are always cripples.

Q Well, some have gone back to their occupation.

A Yes, sir.

Q That is possible in cases of catatonic dementia praecox.

A I don't know of any cases.

Q But it is possible.

A I do not look at the possibility of anything.

Q Let me ask you one other question. If a man wants to get a revolver, and that is his ultimate purpose and he goes to a place where they sell revolvers and there dickers about the price, and selects the revolver which he wants, a revolver or a pistol, and he is told that it cannot be given to him immediately, but it might be mailed to him to a contiguous or an adjacent state, and he gives a name, a false name, and a post office address, and he pays the price, and then several days later, goes to the post office address and remembers the name that he used over there when he made the purchase, and gets the revolver, which is the weapon he originally intended to obtain, would you say that that association of ideas, having for its purpose the obtaining of a revolver, is a process of reasoning?

A I would; yes, sir.

Q And if a man should desire to obtain an automobile, and he plans in his mind that the way to do it is to send for a taxi cab with a driver and give orders to that driver to drive to a deserted point, and there kill the driver and hide his body, and the ultimate object is to get the automobile, and he gets it, would you say that those ideas, associated in that manner, when co-related, coming in sequence, rational sequence, for the purpose of accomplishing this object of getting the automobile, which results in that purpose being effected, would you call that a course of reasoning?

A Yes, a course of reasoning, yes, sir.

Redirect Examination by Mr. Lane.

Q Do you consider, Doctor, that the reasoning which was indulged in by Harrison W. Noel as a part of the commission of this crime, as related to you by the Prosecutor three or four times this afternoon is the process of sane or insane reasoning?

A Insane reasoning.

Q I suppose in the sense used by the Prosecutor, all insane persons except those, and even those perhaps, who are raving maniacs and are shaking their hands all the time can reason.

A It is only in extreme cases of profound dementia that there is not some reason in insanity.

Q And the difficulty with the insane person is that although he may reason from cause to effect, usually, or sometimes chronologically, there is a false premise, that is correct, isn't it?

A That is correct very often; yes, sir.

Q And that false premise may even consist in a false premise with respect to the existence or non-existence of a physical fact or with respect to motive.

A Yes, sir.

Q And it is never unusual for an insane person, if he desires to get, or if he forms the idea of getting a certain thing, to adopt a physical means of getting that thing. If he wants

a glass of water he goes to a place where water is and gets it. That is not an evidence of sanity, is it, or insanity either.

A It isn't any evidence one way or another to me.

Q If that were so, if a so-called insane person could be declared sane upon the ground that they reasoned that way, you would have to open the door of most of the asylums, wouldn't you?

A Yes, and open them good and wide.

Q In this case, bearing in mind that the defense, the only defense that can possibly be made, so far as the record now stands is that of insanity, is it possible for that man to co-operate with counsel rationally in an attempt to prove that he was insane at the time of the commission of this crime?

A It is not, in my opinion; no, sir.

Q Whether he was insane at the time of the commission of that crime depends to some extent upon the motive, does it not?

A Yes, I would say so.

Q Can you tell from this man whether what he now says with respect to the motive is the motive which actuated him or not.

A I cannot. As a matter of fact he gave different reasons to some of us.

Q And some of the reasons he gave to you are not the reasons he gave to the State's alienists.

A No, sir.

Q Do you attribute that to deliberate lying on his part, or what is in his mind at the particular moment?

A If it was lying it was certainly foolish, insane lying.

Q There would be no object in it, would there? In a normal man?

A Certainly no sane object.

Q And the nature of this disease is such, is it not, that a man may have no recollection or no present recollection of motive, and by suggestion, or whatnot, invent motives as he goes along?

A In obedience to delusional ideas.

Q It is also important, is it not, in a case of dementia praecox, to determine or attempt to determine what personality he was acting under, or what he thought influenced him

and why he thought he had a right to do the thing at that particular moment, is it not?

A All of those questions are important.

Q Is it possible to depend upon what this man says at this time with respect to those past occurrences as to the interior of his mind?

A It is not as to that time or in any other of such cases.

Q Are those things which you think counsel, in an attempt to defend his client, should know and be able to get from a sane man?

A I should think so, I should so consider it.

Q Counsel has spoken about some acts indicating initiative. Do insane persons indicate or use or exhibit that kind of initiative upon occasions?

A Oh, yes, insane people sometimes have entirely too much initiative.

Q There is in this disease usually periods of depression and periods of excitement.

A Yes. sir.

Q Every act that is performed during the period of excitement shows initiative. That must be so.

A Yes. sir.

Q But is that initiative sane initiative or is it insane initiative?

A It may be one or the other, it depends on what it is.

Q Can you tell me a way, Doctor, by which counsel can check up the statements of a man as to what was in the inside of his brain at the time he committed this crime some months ago?

A I cannot.

Q And nobody else can?

A Not as far as I know.

Q And if you cannot depend upon the statements of your client and you cannot depend upon them because that patient is insane at this time, can you tell me a way by which you can get at it?

A I cannot.

Q And no one else can?

A I don't know of any other way personally.

Q Would you say, Doctor, that if a man is discharged

from an insane asylum because it happens that his conduct and deportment has become such as to indicate that he may be sufficiently trusted with his relatives, and then after a period of three or four years he suddenly breaks out and commits, for no adequate reason, a murder, that he had been, during that period of when it appeared that he could be sufficiently trusted among his friends, that he had recovered?

A I should not. I should say he had improved during that time.

Q And the breaking out three or four years later would indicate what?

A Would indicate that he had not recovered and that the disease had simply remained dormant through the intervening period; a remission in the intensity of the picture, but the picture is unchanged.

Q When you say remission and when the book gives that expression, a remission or standing still, does that have reference to the disease as such, or does it have reference to the outward appearances of that disease?

A It depends. Some use it in one sense and some in another. A figure of speech that would illustrate what is meant, very often, so far as the arrest of progress is concerned is seen in the military incident of marking time, you are marching in a certain direction and an order is given to stop, and you mark time and stop. Action is taking place, but you are not moving ahead or backward. Remission occurs in that sense. A patient stands still, marks time and goes neither forward or backward in the progress of the disease, and after a while he slumps back or goes ahead toward further improvement.

Q Doctor, do you agree with this author who says—I am going to use this in connection with the testimony as given by Dr. Beling—some of the answers referred to by counsel, "that a patient from time to time writes letters appealing for his discharge, his liberty, and signs himself, "The Emporer." It is this incongruity, this lack of oneness of the individual that for a long time has attracted attention in the symptomatology of this disease. How is it possible for a person so exalted as to think himself an Emperor to plead in quite a natural way for his discharge from an asylum?" Is that typical or

is that often found? I don't mean to say that it is so with every man who suffers from dementia praecox, but is that often found?

A A transformed personality, a multiplied personality is a common incident in this particular form of insanity.

Q Now, with reference to that, let me read you a question put by Dr. Beling and the answer of Noel, and then I want you to tell me whether that is not a striking example of that particular incongruity which is spoken of by this author. "I asked him if he knew that it was wrong to kill the child and he said, yes, he knew it was wrong, and I said, "Why did you kill her?" "Because I did not want to be seen with her. If I had been seen with her they would get me." I said, "Do you know what the punishment is for killing a person?" And he said, "Yes, it is the electric chair." I said, "Do you think you should be punished?" And he said, "No, they ought to let me go home. If they do I will not do it again." Does that illustrate that incongruity which is similar to that referred to by the author here?

A Yes, to my mind.

Q Do you think it is a normal reaction for a man who knows that the crime of murder is wrong and that it is punishable by the electric chair, to say they should not punish him, "I should go home. If they let me go home I will not do it again," is there anything sane about that?

A I did not so consider it. He practically told me the same thing.

Q If that be his thought, if that be his actual thought, can anybody say that he appreciates the consequences of what he has done and the position in which he is?

A I do not so consider it.

Q Is there anything in your opinion, in the commission of this crime and the way in which it was committed, inconsistent with the idea that it was the insane act of a dementia praecox?

A Not a thing, no, sir.

Q Do you think that a sane person would give as the reason for committing an assault upon his father, when the relationship with the father had been of the most pleasant, no

trouble of any kind, nature or description, that he was suffering indigestion?

A Do I think that that is sufficient?

Q Yes. Do you think that is the motive of a sane man or the expression of such a motive is the act of a sane man?

A I should not think so; no, sir.

Q Do you think the motive of killing the girl and chauffeur because he thought that by killing them he would be greatly benefited and become like other people, the motive of a sane person?

A I do not; no, sir.

Q Can you tell me, Doctor, how a patient who, by reason of disease, mental disease, thinks he is sane at this time and always thought he has been sane, can honestly and beneficially cooperate with counsel in attempting to prove himself insane at a particular moment when he himself thinks he is sane?

A I cannot say.

Q If he did cooperate with counsel in an attempt to prove that thing, he would himself be obliged to take the position he was insane when he really thought he was sane, wouldn't he?

A That would be my inference; yes, sir.

Recross Examination by Mr. D'Aloia.

Q Is there anything that you find inconsistent in the condition of this client which would make it not the act of a normal criminal?

A The whole thing—

Q No. Can't you answer that question?

Mr. Lane: He just told you the whole thing.

Witness: The whole thing to my mind is inconsistent with the acts of a sane person.

Q I am asking you whether there is anything inconsistent with the commission of this crime which would make it not the act of a normal criminal?

A I have tried my best to answer you directly and specifi-

cally, that there is nothing in it consistent with such an act by a sane man, as I see it.

Q Did you ever hear of a kidnapping case that was not perpetrated, or rather, the crime of kidnapping that was not perpetrated by a person suffering dementia praecox?

A I am not familiar with many kidnapping cases.

Q The best answer you can make to that question, which I put to you, is there anything inconsistent in the commission of this crime which would make it not the act of a normal person though a delinquent, a criminal is this, that in your opinion it is not the act of an insane person and you would not answer my question—

Mr. Lane: He did answer your question.

Q I am not speaking of any person who is insane, or a person who is sane. I am speaking of a criminal, a delinquent, who is normal otherwise. There are such persons, aren't there?

A Yes, sir.

Q There are such persons whom you classify, you, as alienists, as criminals, aren't there, sane criminals?

A Yes, sir.

Q There are such persons whom you classify, as alienists, as delinquents, sane delinquents.

A Yes, sir.

Q Now, those are the persons I am talking about in this question. Is there anything inconsistent in the commission of this crime which would make it not the act of a normal criminal or a normal delinquent?

A Again I give exactly the same answer.

Q And that is what?

A That every detail of this crime impresses me as that of an insane person and of a crime which a sane person could not possibly have committed. I cannot make it more specific.

Q Doesn't every detail of this crime indicate to you the possibility of it being committed by a person with a criminal mind, a sane criminal?

A No.

Q What detail is there in your mind, that is could not be committed by a criminal mind, a sane criminal mind?

A Why, practically the whole thing, the lack of precaution,

lack of any deliberation plan, the lack of any systematized, intelligent precaution for such a major crime as this; such a major attempt as this; making no inquiries; not picking out a particular child; not finding out what the financial resources of the people are; taking no precaution to escape the consequences after the act, and from your standpoint frankly telling every detail of what happened when he was caught.

Q Is that the information you had before you when you went up to the jail the other afternoon?

A What information?

Q That that is what this man had done, taken no precaution to hide his crime, his acts?

A As far as I can see.

Q Is hiding the body of the negro who had been killed by him what you would call a precaution?

A Oh, an insane precaution.

Q Isn't that a sane precaution?

A As he did that, no.

Q What would a sane man do with a dead negro on his hands whom he had killed?

A I would say that before he killed the negro—

Q Just a minute, Doctor, you are a little ahead of me.

Mr. Lane: He is answering your question.

Q I am asking this question: What would a sane man do with a dead negro on his hands whom he had killed?

A What would a sane man do?

Q Yes, that is the question.

A Well, it depends on the reason for killing him.

Q Well, here we have a sane man, assume that a sane man has killed a negro, and the sane man is sitting alongside of the negro's dead body in an automobile, and the sane man is behind the wheel, what would the sane man do with that negro's body, that dead negro, in order to indicate to you proper precaution, what would he do with it? What precautions would a sane man take with that body?

A Of course, what precautions he would take and what he would do would depend on why the killing. The whole thing—(interrupted).

Q There is one thing you are certain of, that he would not take that dead body and seat it on top of his radiator,

on the top of his hood and drive into Market and Broad Street, would he?

A I should not think so, but a sane man, before killing the negro—

Q Well, what would a sane man do if he wouldn't do that?

A Before he killed the negro as part of the plan of the kidnapping of the child for ransom, and the other details, such as were involved in the elaborate process that you have outlined, which was in this boy's mind, having been sane. he would have discounted every contingency, mishap, or other incident of such a plan; he would have discounted the disposition of the body of that negro, he would have known just what he was going to do with it before he killed it. That is my idea of what a sane man would do and how a sane man would act.

Q I understand your opinion to be that hiding the body of that negro was the precaution of an insane man.

A No, I say the whole act gives me the impression that it was an insane killing, and you asked me why, and I am trying to tell you and I am trying to give you the impression on my mind of the whole thing, in its entirety.

Q I don't want it that way. I want it broken up into sections. I ask you now, again, does the hiding of the dead negro's body indicate a lack of precaution taken by the perpetrator of the act, which was the killing of the negro.

A Not as a single detail, no.

Q Does the hiding of the body of the little girl indicate lack of precaution by the perpetrator of the killing of the little girl?

A No.

Q Does the hiding of the automobile of the negro, after the killing of the negro, in a secluded spot, parking it there so it would not be seen from the road, does that indicate to you any lack of precaution?

A No.

Q Now, are you of the opinion that a person who reasons can formulate an intent?

A Not all persons.

Q When Mr. Lane used that particular example of an in-

sane person in an insane asylum walking across the room to a water cooler to take a drink of water would you say that the intent was to get a drink of water?

A I assume that it is.

Q And how do you come to that conclusion, that the intent was to get a drink of water?

A Because of the act.

Q That is, the walking across the room and putting a cup under the spiggot and getting the water, taking the water.

A Yes, sir.

Q Now, that is a course of reasoning that that insane person is capable of.

A That is elementary, rudimentary reasoning, it is almost automatic.

Q And you would say that the intent would be to get a glass of water.

A I said nothing about the intent. He asked me if I believed it did not occur in some institutions.

Q Yes, you think that in institutions like Overbrook an insane patient, a person whom you call an insane patient goes and gets a drink of water, approaches the cooler and gets the water and drinks it—now you think that conduct on the part of that insane person—you would say that that person is capable of formulating that intent of getting the drink.

A Certainly.

Q Now, if an insane person formulates the idea of getting an automobile, and in order to get it he has got to kill the driver, would you say that that insane person is capable of formulating an intent to kill the driver?

A Undoubtedly.

Redirect Examination by Mr. Lane.

Q Doctor, would you say that that is the act of a sane or an insane mind?

A It would depend on other acts. The acts would not settle the fact at all.

Q Do you think it is the act of a normal criminal, who desires to get an automobile for the purpose of kidnapping

a girl, to formulate the intent of getting that automobile by killing the chauffeur?

A Not a sane man's idea.

Q Do you think it is the act of a sane criminal—in the first place the desire of a criminal, I suppose, is to perform the act and make a get-away, isn't it?

A That would be my idea.

Q The performance of the act without a get-away would not be of much importance to the criminal.

A No.

Q Do you think it is the act of a sane criminal to telephone to a taxi cab company himself and have a taxi cab come to him, where he formulates the intent of getting the taxi cab for himself by killing the chauffeur?

A I did not get the impression—

Q Do you think it is the act of a sane criminal, after killing this negro, to get the car, to just drive the car along the public road, and when he gets to a piece of woods to throw the body out or hide the body in the woods, is that the act of a sane criminal?

A I certainly do not so consider it.

Q Do you think it was the act of a sane criminal to get rid of the little girl just because he did not want to be seen with her, for fear if he were seen with her he would be caught, by killing her, do you think that was a sane act?

A It did not so impress me by any means.

Q Do you think that is the invention of a sane mind in the collection of ransom to write a card or to suggest that the ransom be collected by certain people taking a certain train from Jersey City, an express train from Philadelphia, and when they saw a red balloon on the track, throw the money out of the car window, is that the act of a sane criminal?

A I have not heard of that. I do not know that that would be of any positive significance by itself one way or the other.

Q Do you think that is the act of a sane person to tell the police the details just after this crime was committed, without emotion of any kind, nature or description, just as a repetition of something that has occurred, do you think the sane criminal, who has been caught with the crime on his

hands, is apt to act that way, realizing the consequences to himself?

A That one detail would not have its convincing effect, and my reference was to the picture in its entirety.

Q Well, the question is insanity. You have got to take every single element into consideration, have you not?

A That is true. What I meant to emphasize was that no single instance of itself and alone is conclusive of the picture.

Q It must be taken altogether?

A It must be.

Q Now, taking that picture as a whole, in your opinion, was this act itself, the act of a sane or an insane man?

A I have very emphatically expressed myself already as to my personal opinion.

The Court. Well, Doctor, you spoke of reason, false premise, reasoning; does not that convey the idea of a rational mind to begin with?

Witness. Not necessarily, your Honor. Insane people can reason and very often insane people on certain subjects can reason sanely. It sounds like a paradox, but it is not. Many lunatics can reason very acutely, but they reason with a false start in the major premise, which is based upon the happening of facts, realties and not upon the rest of the reasoning is as logical and mathematic.

The Court. Now, assuming that the basis, or that single —when you say false premise, you mean a delusion?

Witness. May be, yes.

The Court. Or nallucination.

Witness. False assumption.

The Court. Well, assuming that there is reasoning based upon the happening of facts, realities and not upon something assumed, and then was reasoning from cause to effect with relation to facts that have happened, would you say that that reasoning was the reasoning of a sane man or an insane man?

Witness. I do not know that I follow you or get you.

The Court. In other words, you say that the difficulty with insane persons and their reasons is that they predicate that upon assumptions which are not founded in facts, but usually it is a false premise, which might be a

delusion or hallucination. Now, I say, let us take an incident where facts are not assumed, but have happened and there is reasoning based upon the actual facts and the reasoning indicates a conception of one cause with relation to another, would you say that was the reasoning of an insane man or sane man?

Witness: I would say that was sane.

Recross Examination by Mr. D'Aloia.

Q The other day when you made your examination you did not find any evidence of delusion except that this man believes he is sane.

A Yes. I found the delusive idea that he had been persecuted and was still being persecuted by the Overbrook authorities.

Q That he has been maltreated while he was at the asylum?

A He had been tortured by being placed in this room.

Q Did he tell you anything about his spinal puncture?

A No, but I saw that in the record.

Q Did you find any evidence of hallucination?

A None, except in my examination I thought this description of torture and other pictures probably represented possible delusions.

Q No. I mean the other day. Did that leave any impression of delusion or hallucination?

A No.

Redirect Examination by Mr. Lane.

Q If a man should desire to acquire a position in a certain business and in order to acquire that position he should go to another man and secure a reference and take that reference to the man to whom he desires to apply—we will assume for the purpose of the argument, that is a fact, that the man desires to obtain a position and it is a fact that he may obtain the position if he goes to the man to whom application is to be made with a reference—his going—and still

assume further that when he first went to the man to obtain the position the man said, " I cannot take you now" and the man making the application says, "Well, I can get a reference from so and so and if I bring that reference here will you consider it"—assuming all of those facts to be true, there is no false premise in any of them and that there is no delusion as to any of that process of thought, that is, the reasoning of a sane man, is it not, and proceeding from cause to effect?

A It sounds sane enough to me as you state it.

Q Now, if that kind of reasoning in respect to a particular thing is indulged in by a person, does that show that that person is either sane or insane?

A Not as to that one specific detail alone.

Q An insane person who may be by doctors called generally insane may do that thing with respect to a particular matter, may they not?

A Many insane people can reason very keenly and very correctly along certain lines and on certain subjects; for instance, in the sciences, some of them in asylums are doing good scientific work and reasoning logically from a laboratory standpoint.

Q What I am trying to get at is whether a man can reason thoroughly with respect to any particular thing does not prove he is sane.

A No.

Q Now, does it appear with respect to a particular thing he has not reasoned sanely, that is an indication of an insane mind, isn't it?

A Again I would say that I would hesitate to reach a final conclusion or to express a final opinion to commit myself personally.

Q I had no business to ask you that question in that general term. I realized that before you answered it. The more a man diverts from the normal the more indication there is of something wrong with the man, is there not?

A I am more suspicious at once.

Q If the man is affected from dementia praecox and the man is suffering from that disease, can you tell in any given case unless you can check up and unless you can see what is

done, and even then can you tell whether, although the mind may appear to be operating with reference to that thing sanely, can you tell whether it is operating sanely or not?

A I cannot.

Q To do that you would have to look into the human mind, wouldn't you?

A Yes.

Recross Examination by Mr. D'Aloia.

Q Isn't it a fact that dementia praecox cases are different from other cases of insanity because of lack of ability on the part of the subject to reason acutely and continuously and associate ideas?

A That is very typical of dementia praecox.

Q But do you agree with the author?

A Who is the author?

Q The author is Bleuer.

A I do not. I am not a Bleuer disciple.

Q Well, do you believe that one of the basic symtoms of dementia praecox is the disturbance of the association of ideas?

A There is some disturbance of the association of ideas in all insanity.

Q But I mean it stands out in praecox cases more than others.

A I do not believe so.

Q Do you believe that there is a disconnected sequence in the ideas of the thoughts of a person suffering from dementia praecox?

A Yes.

Q Do you agree that the conversation of a dement praecox, or one suffering from that form of mental disorder, will talk something like this, as one of the smptoms: "I found the money. Doctor, doctor, doctor. Please give me some ice water. No, I was never here. No, No. The bastard swiped my handkerchief. Oh, oh, oh, Jack! You think you're smart. I've eleven of National Baking Powder. Hell, no! Take that thing away. Lucile, stop crying. Who the devil cares if he eats? What did you do with Jennie? My word,

my word, the devil you did." Is that the kind of disconnected talk which is a symptom of dementia praecox?

A That is more the description of an acute maniac than dementia praecox.

Q But do you find that symptom of dementia praecox?

A Not of the catatonic dementia praecox type.

Q Do you find here any disturbances of the association of ideas on any particular subject of Harrison W. Noel?

A Yes. I think there is a distinct disturbance.

Q What disturbance did you find on Monday that you can point to? Can you point to any one question or any answer that he made that was not responsive or which indicated that he did not comprehend the question asked by the interrogator?

A There were several questions.

Q Well, show me one question asked by you that you recall where he did not respond to your question.

A Well, another evidence of disturbance of association was in retardation. That was marked.

Q Doctor, I am talking not of the lack of association, I am asking you if you can recall any question that you put to this particular subject where the answer was not responsive. Now, tell us that question and answer.

A I do not recall any specific one. You asked me to give you any evidence I saw in this man on Monday of disturbance of his powers of association.

Q Yes, and I followed that up.

A You asked me to give you any evidence there was there in reference to answers to questions and that was a retardation that showed a very slow—

Q Don't you find that in every case other than dementia praecox?

A We find it in cases of opium poisoning, drugs.

Q So that standing by itself does not mean anything?

A No.

Q Now, I am asking you again, do you remember any question you asked this particular subject and he made answer, which answer indicated lack of accommodation and lack of response?

A I do not recall at the moment.

Q How long did this examination take?
A Fully an hour.

Adjourned until tomorrow, Thursday, October 1st, 1925, at 10.00 o'clock A. M.

FIFTH DAY

October 1, 1925

Continued pursuant to adjournment.

Present, counsel as before stated.

JAMES S. MASON, sworn in behalf of defendant.

Direct Examination by Mr. Lane. z

Q Captain Mason, you are connected with the Prosecutor's office of Essex County?
A Yes.
Q And you participated in the investigation of this crime?
A Yes.
Q And have participated in that investigation from the time of the commission of the crime down to the present time?
A Yes.
Q You saw the defendant, Harrison W. Noel, shortly after the commission of that crime?
A I did.
Q You are reported, Captain Mason, as of September 9, 1925, as having stated that Noel was hopelessly and obviously insane, is that correct?
A It is not, sir.
Q Did you state that he was insane to any person at any time?
A I do not recall saying it in that way.
Q Did you say what was equivalent to that in other language?
A No, sir, I think I was asked if he was insane, in my opinion he was insane, and I said I didn't know.

Q You said that you didn't know?

A I thought if he was insane that would be a matter for his defense, not for us.

Q You did not make the statement?

A I do not recall making the statement as the press reported it. I never said it that way.

Q I am asking you whether you expressed the opinion to anybody that he was insane?

A I do not recall expressing that opinion.

Q Was that your opinion?

A No, it was not.

Q It was not your opinion?

A No.

Q And you never made any statement that indicated that it was?

A No.

FREDERICK C. HORSFORD, sworn in behalf of defendant.

Direct Examination by Mr. Lane.

Q Doctor, what is your profession?

A Physician.

Q And will you give me generally what your experience has been particularly with reference to nervous diseases and sanity and insanity.

A I served on the staff of the Essex County Hospital at Overbrook for a period of about seven months.

Mr. D'Aloia. The Doctor's qualifications are admitted.

Mr. Lane. I still desire the Doctor to state what his experience has been.

Witness. (continuing)—about seven or eight months at Overbrook, after my coming out of the Newark City Hospital, and I was in the State Hospital at Morris Plains for a period of about eight years. After that I came to Newark to practice medicine and have been associated with the City Hospital and have done some psychiatric work there; have made mental and nervous diseases part

of my special work as a psychiatric physician, and during the war I served in the psychiatric department in the army.

Q You have practiced your profession how many years?

A Twenty-five years.

Q When did you first see the defendant, Harrison Noel?

A September 28th.

Q You may refer to any notes?

A I made a note of the date, I think it was September 28th.

Q And at that examination who was present?

A Mr. Barber and Mr. Smith.

Q How long did it take?

A About two hours.

Q Will you tell me what the nature of your examination was and what took place?

A I observed Noel and I asked him questions in an endeavor to bring out his mental condition, to find out what his mental state was.

Q Did you reach a conclusion as to whether he was sane or insane?

A I did.

Q What was your conclusion?

A My conclusion was that he was insane.

Q And did you reach a conclusion as to whether he was suffering from any specific nature of insanity?

A I considered that his mental disorder was dementia praecox.

Q Did you form any conclusion as to whether he had the ability or capacity to rationally appreciate the situation in which he was and the circumstances surrounding him.

A I did form such a conclusion.

Q And what was your conclusion with respect to that?

A My conclusion was that he could not intelligently and rationally judge what his situation was.

Q Did you reach a conclusion as to whether he had the capacity to rationally consult with counsel and assist in the preparation and the presentation of a defense to this suit or case?

A I did, yes.

Q And what was your conclusion with respect to that?

A My conclusion was that he was not in a mental condition that made it possible for him to cooperate with his counsel and understand the situation as he should.

Q Doctor, why not, generally?

A Because this boy is suffering from mental disorder, a serious form of mental disorder, dementia praecox, and by reason of that his intellectual faculties are very seriously impaired; his will, his emotions are very seriously impaired; his intellectual faculties are seriously impaired by reason of his mental disorder from which he suffers.

Q Can you depend on anything which he may say?

A I do not know whether he says what are facts. One cannot be sure whether they are facts or whether they are not.

Q And is that true irrespective whether the patient is endeavoring to tell what he thinks to be the truth or not?

A I think it is.

Q In other words he may say something which he believes to be true and yet it may not be true.

A Very suggestible, I think it would be pretty easy for one to put a question to him and then to get an affirmative or negative answer as they desire. I think that could be done.

Q What effect has this disease, from which he is suffering, upon his capacity to concentrate?

A It very seriously impairs his ability to concentrate. His attention is very difficult to gain. He is concerned with either not thinking at all, apparently, as he looks off into space, or else he is concerned with his own thoughts and not with the contents of the question which is put to him.

Q Is that a result of this disease, is that one of the natural things which is concomitant with its existence?

A That is one of the things which naturally comes in dementia praecox.

Q What is your prognosis, Doctor, as to his recovery?

A Dementia praecox cases mostly do not recover; they have varying periods of remission and some men are pleased to report recoveries during these remittant periods, and I think the best men and the best authority in our work states that dementia praecox is a progressive, chronic disease that

goes on to a termination in dementia, a complete mental disorder. Now, that does not mean, I am not making the statement that no cases recover. I don't know.

Q Do you know of any case of your experience?

A No, I do not of my own experience, no, sir.

Q In dementia praecox patients is there likely to be as some of the authorities have been pleased to state, a split personality, or used the term a split personality?

A Yes, in dementia praecox there does appear to be this condition of split personality, sometimes.

Q Is this case, in your opinion, Doctor, a border line case or is it a case of well developed dementia praecox?

A Well defined and well developed.

Q You have seen this defendant in the court room yesterday and also today. Is his appearance and action in court in a matter in which his life is at stake typical of what you would expect from a person suffering from dementia praecox?

A One might—his appearance here in court is quite the appearance of a dementia praecox patient as you see them sitting about the wards in a hospital.

Q If a dementia praecox patient were called upon to plead in open court, and the prosecutor of the pleas read distinctly, so that there could be no misunderstanding of the words, within two feet or two feet and one half of the defendant, the defendant, the indictment, and upon the reading of that indictment, and upon being called to plead, the prisoner apparently paid no attention to it or remained mute, and efforts were made by the Prosecutor to stimulate his interest, and he still paid no attention and remained mute, assuming now that it was not under instructions, would you say that that was typical in dementia praecox cases?

A Consonant with dementia praecox, yes, sir.

Q Would you say that when that indictment was read to the prisoner and the proceedings were going on around him, upon which he was called upon to plead to a murder indictment, that he appreciated the condition in which he was in and the circumstances, and that he was in any position or condition to plead to such an indictment?

A I don't think he would be in a condition to plead to the indictment, no, sir.

Frederick C. Horsford, Cross.

Q Or to determine for himself how he should plead?
A No, sir.

Cross Examination by Mr. D'Aloia.

Q Doctor, if you were to be told that when he came down here to plead and I read the indictment to him, his counsel was standing a few feet away from him and he remanied mute; the fact that he did not answer to the reading of that indictment may have been due to advice received beforehand.
A Mr. D'Aloia, I think that this man—
Q Will you answer my question. It might have been due to advice received beforehand.
A Oh, I don't believe so.
Q Now, if the next day after he had been taken back to the jail, he was asked by a physician where he was the day before and he answered, "I was taken down to court." "Well, how did you go to court?" "I was handcuffed to two other men and several guards." "What did you do down there?" "Well, my lawyers were arguing in my behalf and the Prosecutor was arguing against me. My lawyers did not want me to plead because they showed the Court a paper, where last March I was adjudicated insane, and the Court, after hearing my lawyers speak, put the matter over until Monday morning so that I am to go down again Monday morning. I don't care whether I plead or not. They have got my confession." Now, supposing that conversation took place and that is what Noel said the day after, would you say that on the day before, when he came here to plead he did not appreciate the surroundings he was in?

Mr. Lane. Do I understand that that statement now appears in the record?

Mr. D'Aloia. Yes, Doctor Beling said so—or Dr. Dowd, rather.

(Argument.)

Q Now, Doctor, assuming that to be the fact, would you say that he was aware of his surroundings on the day he came to court?
A I would say that he might not have been aware of his surroundings on the day he came to court, because I believe

this boy is a dementia praecox and sometimes they are conversant and take an interest in their surroundings and sometimes they do not. I can't tell you.

Q You can't tell me?

A No, sir.

Q Now, supposing I add to that a subsequent conversation, to that visit that he made to the court house, between himself and another prisoner, he was asked what was the function of the Prosecutor, and he said the function of the Prosecutor is to get him as much punishment as possible, "and what is the function of your attorneys?" "The function of my attorneys is to get me off as lightly as possible." "What is the function of the gentleman on the bench, the Judge?" "Well, he tells the lawyers when to start talking and then he tells them when to stop." Don't you think that that is a pretty good description of the functions of the three?

A Very good.

Q Now, you said something about—

A Now, these questions such as this one here, Mr. D'Aloia, in thinking about this man I am always thinking as to when you or anybody else is talking to him is saying, "Well, now, isn't it a fact that that is the function of the Prosecutor?"

Q It wasn't said that way, Doctor.

Mr. Lane. We don't know whether it was or not.

The Witness. If that is so, then a dementia praecox case is just as likely to say "Yes" or anything else and not have knowledge of what it means or what it is all about.

Q Now, let us assume that the questions were not put in the way that you imagine; let us assume that the question was put this way, "Who is Judge D'Aloia there? Or what does Judge D'Aloia do down there, or what does the Prosecutor do down there?" And then he answered. "What do your lawyers do down there?" And then he answered. "What does the Judge do on the bench?" And then he answered.

A Yes. Questions put that way are all right.

Q Now, you said that a dementia praecox patient is not truthful; is that so?

A Did I say they were not truthful?

Q Yes,

A Oh, I did not say that.

Q Well, you said they did not tell anything that could be depended upon.

A Well, that is quite a different thing.

Q Why can't it be depended upon, because it is false?

A No, for just the reason I have outlined to you, a man may say to a dementia praecox patient, "Isn't it a fact that so and so happened at such and such a time?" And the dementia praecox patient says, "Yes." You cannot put any dependence on that whether it is worth anything or not.

Q That all depends upon the question?

A Yes.

Q Supposing an alleged sufferer from that malady is asked this question: "What did you do on September 3rd, 1925?" and he tells that on September 3rd, 1925, he got up at such and such an hour in the morning and during the morning hours he did certain things, and during the afternoon hours he did certain other things, and he checked up his conduct all day long, remembered it step by step, and if he were to tell that to you and if you were to go out and find it absolutely so, would you say that the answer of that person was to be depended upon?

A If he volunteered the information himself.

Q No. You asked him the question, "What did you do on September 3rd, 1925?"

A Yes, and he gave a likely answer.

Q And after he gave you his minute description of his conduct you went out and checked it up and found it to be so?

A It must have been so.

Q Now, were he asked, "What did you do September 4th, 1925," and he told you step by step, chronologically, making no mistake in time what he did on September 4, 1925, and subsequent to that you went out and checked that up, what would you say as to that tale of his, would it be dependable?

A If I checked it up and found it to be correct.

Q Have you a report of your examination?

A Yes.

Q You went there with Mr. Barber?

A Yes.

Q Who spoke to the defendant first, you or Mr. Barber?
A I did.
Q You did first?
A Yes.
Q He knew you?
A Never saw me.
Q How did you introduce yourself?
A Why, I shook hands with him. When I go to examine a patient I do not wait for an introduction.
Q How far was Mr. Barber standing away when you shook hands with him?
A I don't know. He was in the room. It was rather a small room.
Q Close by?
A Yes.
Q Now, will you look at your examination of him and point out to me what you asked him, if anything, about this alleged offense, when it occurred—it is alleged to have occurred, this charge against him, and what he recalled of it.
A I didn't ask him anything about dates.
Q Now, if you didn't ask him anything about what he did on September 3rd, 1925, how could you tell his attorneys may or may not be assisted by what he tells them about that? Can you tell what he recalls of this date?
A September 3rd?
Q Yes.
A I don't know.
Q Can you say whether his memory is good or bad?
A I don't know anything about dates.
Q Can you tell whether his tale or story or whatever he might say about September 3rd, is dependable or not?
A I can only determine whether it is dependable by my knowledge of dementia praecox, and by reason of my examination of this patient, and by reason of my knowledge and by reason of my examination, I do not believe what that boy says is dependable. Now, some of it may be true. You have checked some of it and think it is true, but I am of the opinion that it cannot be true from the disease he is suffering from.
Q And suppose he told us that he called up from a drug store in Valley road, Montclair, on September 3rd, 1925, and

he called up a taxi company and he said to the person on the other end of the wire he was going to wait for a taxi at the Montclair Athletic Club and we checked that up and a call was received by the taxi company and the taxi was sent out with a colored chauffeur, would you say that story was true?

A Yes.

Q And the time was checked up, would you say that was true?

A Yes.

Q Now, after the taxi arrived with this driver he gets into the car and orders it to be driven to a desolate part of Essex County and there he took out his revolver or pistol and he shot the chauffeur, and after shooting the chauffeur he took possession of that car, which up to that time had been driven by the chauffeur, and he drove it to a place called the quarry or to the end of the bridge and there he took the colored man's body and he carried it along the banks of the brook in the bushes so it would not be seen by a passerby; now we find particularly that the negro which went out with that taxi which he called is dead and had been dead for twenty-four hours when the body is discovered, bringing the time of his death back to the time when he got the taxi, with a bullet wound in the back of his head, and that corroborates his story that he shot the colored man from behind as he was driving, with Noel in back of him, would you say that story is dependable?

A Yes.

Q Now, supposing he tells us after having secreted the body of this colored man he took this car which he called up and he went to a certain part of the woods or quarry and hid it there and then he went home, and we have checked up the time he got home, and we find he did get home the time he says, and then he went to sleep that night after being out in the evening, and next morning he took his Overland car and he went out to where he had parked the automobile the day before and there he changed cars and came to 136 Mountain avenue with the car he had called up and took a little girl and grabbed her and tossed her in the car, and we check that up, and we find the lady who saw the Overland car left there for several hours in place of another car, and we find this car

appears before 136 Mountain avenue at a certain hour on September 4th and we find witnesses who saw a man get out and grab the little girl, we check that up, would you say that is true?

A Yes.

Q Now, after he pushed the girl in the car somebody starts in pursuit and he chased him quite a distance and finally he pulled out to the side road and he turned around and shot the driver of the car, and we check that up with the man Sandin, now, would you say that story was dependable?

A Yes. I heard this several times yesterday.

Q Now, did you ask him anything about his movements on the 3rd or 4th of September?

A No.

Q What impairment of intellectural faculties did you find?

A Impairment of will power, I think, and reason and judgment. I should say that those faculties are impaired.

Q Reasoning and judgment?

A Yes.

Q What would you say of a man whose ultimate object is to get a pistol and going to a place where they sell it and dickering about the price and giving a false name and having it sent to him, do you think he could reason?

A I think here is a misunderstanding as to what you stated now, that because this man does so reason in this particular instance that therefore his reasoning is not impaired. That is the inference you would draw and what I desire—what I am trying to impress is that in general his reason and judgment and his will power must be impaired along many, many lines. I think this crime which he committed is an instance of his defective reason and judgment and will power.

Q Where is it defective?

A Well, it is defective all along the line.

Q What is there defective in a plan well laid to get $4000 ransom money?

Mr. Lane. I object to the well laid.

A The conception of the thing is defective. You say it is criminal. Of course, criminality is defective.

Q And if it is delinquent it is defective?

A Yes.

Q And if it is abnormal it is defective?

A Yes, and insane people do these delinquent and defective and abnormal things, which you are pleased to call the criminal insane.

Q What is your distinction between a plan of this sort where the perpetrator of this crime plans to gather $4000 ransom money and goes about it this way, makes out his plan and picks out the house where he thinks people have money, gets an automobile other than his own, and gets possession of it by killing a colored chauffeur and taking a little girl, and finds out that he has made a mistake and disposes of the little girl because he does not want to be seen with her and then tries to collect the $4000, and when arrested for a long period of time, this demented boy, as you call him, withstands all attempts made to ascertain from him whether he had any connection with this crime for a long period, he denies any knowledge of it, will you tell me wherein that differs from the ordinary perpetration of the ordinary crime of that sort by a criminal?

A This is my contention in that matter, Mr. D'Aloia, from this man's history, from my examination of him he is suffering from dementia praecox, that he is insane. Now, he commits a crime and he uses his reason, he does this along what you are pleased to call logical lines, but that does not make him a sane man.

Q If I understand you correctly—you will pardon my interruption. If you did not have this history, if you did not have the adjudication of March, 1925, and you did not see this report from Overbrook, you would come to the conclusion that this particular crime was perpetrated by a criminal?

A I wouldn't say.

Q Well, you just said the history—

The Court. Let the Doctor answer.

A One must have all the facts in the case. What is the use of doing away with some of them and basing your conconclusion on a little when you have a lot? Here we have a lot. This man has been insane for a number of years, he has been in the custody of institutions, he has been under the institutional care for a considerable time. We have a good history of his illness, of the things he has done that are char-

acteristic of dementia praecox, and now we come up to this particular moment when he commits a crime which is consonant, which is in line with his particular disease and condition. He does it in a logical way, you put it, but that is not anything against his mental disorder. That does not invalidate that at all. The fact he has done it makes his disorder more clear and certain.

Q And precisely what my question is, if in this case, if you as an alienist, did not have this history, you would say that it was committed by the normal, sane, criminal, wouldn't you?

A If I didn't know all this previous history and had nothing to base my report upon except the examination I made?

Q Yes.

A Well, I would not base a report on such an examination. I would not consider it.

Q Therefore, go back to my question. If it were not for this history of this patient, if this story were to be told to you describing this particular crime, you would conclude it was committed by a sane, clever, criminal, wouldn't you?

A If his story were told me as you have told it to me and I did not examine the boy and I did not have his history, it would be the act of a sane man, perhaps. I could not tell whether it had been done by a sane man or insane man, nor could anybody else. When we had examined him and had come to the conclusion that he was insane, then we would be sure that it had been done by an insane man. That is the attitude I take toward him.

Q Now, will you please forget for a moment that you ever saw a history of this case and just pass upon this crime, taking the motive, which is adequate, $4000 ransom, taking the motive in which the killings were perpetrated, taking the manner in which the bodies were hidden, taking the manner in which he secluded himself and kept silent, how he resisted attempts to get from him any information of his conduct on those two days, on which these two people were killed now, having all of that without this history, wouldn't you say that is the act of a sane criminal?

A I would think he was a pretty poor criminal.

Q Well, criminals are poor?

A Well, some are very clever and if this man had committed this act and he was sane, I would not think he was a clever criminal.

Q Well, did you ever hear of a cleverer criminal than this in your experience when it comes to kidnapping?

A The conception of this crime?

Q Yes.

A I do not see anything clever in it.

Q Well, tell me one kidnapping case you have had in your experience and of which you have knowledge which was cleverer than this?

A I have not any.

Q Why don't you call this clever?

A Because even though I do not know anything about kidnapping cases, I take it when a man starts out to kidnap a child for ransom I wouldn't like to put myself in the position of starting off to do that, but if I did I would not go and get a taxi cab at an athletic club where I was known which was a little ways from where I was known.

Q How did you get the idea it was a little ways?

A Well, he lived in Montclair and he took the body up in Montclair.

Q Do you know what the distance is?

A No.

Q Well, suppose I tell you the distance is four miles?

A Well, that is not very far in an automobile.

Q Did you know where the little girl's body was hidden?

A Over in the Preakness Ridge.

Q Where is that, how far is that from Montclair?

A Oh, eight miles.

Q Would you call that near his home?

A Not far away, in the neighborhood of his home.

Q Now, let me ask you something to indicate the cleverness or non-cleverness of this particular subject. Can you suggest to us any other method of finding that little girl's body if it had not been for the conduct of Noel or his guidance of the police officers to that particular place, that spot eight miles from his home?

A Well, the body surely would have been found.

Q No, no, Doctor. Can you suggest to me a method whereby we could have discovered the body of the little girl which was not cleverly hidden, according to you, if it had not been for the admission that this boy made and his guidance of the chief of police from the Montclair Police Headquarters to this exact spot. Can you show me a more clever way?

A I think it is true; it shows that he was not clever in telling about it. That would go with dementia praecox.

Q Then, his cleverness must have lasted about twelve hours, because for twelve hours he did not tell, if his refusing to tell is clever.

A If an attempt to conceal is clever—

Q No, Doctor, I will limit you to your statement. If it was not clever in telling on Sunday morning, was it clever in refusing to tell from Saturday night, all through the night and until the morning?

A If he failed to tell for twelve hours that might have been clever as a criminal, because they do not tell, and then when he did tell it was not very clever.

Q Then, in your case, in your opinion, in your mind, whenever a man charged with crime holds off the police and refuses to admit that he knows anything about the perpetration of the crime, or the commission of it, he is clever, and the moment he breaks, as we say in the parlance of the police, why, he loses his cleverness.

A I don't think it is clever to break.

Q You don't call that a sort of human weakening, because he is tired?

A It is human weakening to break.

Q You don't agree that one of the basic symptoms of de- do with that, the breaking?

A It is human weakness to break, but human weakness comes much more quickly in dementia praecox, probably twelve hours is enough.

Q Did you ever hear of any case where a man resisted the attempts of two police departments for twelve hours?

A I am not familiar with any.

The Court. Let's not get too far afield. We are going

to have the doctor testify to comparisons when he does not know the other side.

Q Do you believe with Stoddart that in cases of catatonic dementia praecox, there is sufficient improvement to allow the patient to leave the institution and go home?

A Yes, I do agree with that. Yes, that frequently happens, too frequently.

Q And do you believe with him that in those cases there is a continued improvement when the patient goes home so that it might be called a recovery, at least temporarily?

A Sometimes there is, and more often there is not. When I was in Morris Plains for eight years we let lots of them go home, but most of them came back.

Q Are you a Bleuer disciple?

A I am not a Bleuer disciple.

Q You don't agree that one of th basic symptoms of dementia praecox is the disturbances of the association of ideas?

A I don't think so.

Q Will you point out in your examination of this boy and show me any question where he made an answer that was not responsive?

A Where he made an answer that was not responsive?

Q Yes, to your questions.

A I recall my asking the question—all of my questions were followed by long pauses. I don't think he answered any question promptly, for I repeated my questions and I waited after the repetitions until I became a little irritable and tired waiting for them and I repeated over and over again, in my effort to get answers to some questions that I was anxious about, and after one of these questions the boy stood there and I took hold of him and shook him a little and said, "Boy, why don't you answer me? What is the matter? What are you thinking about?" And he said, "I was thinking about Dr. Davies."

Q Well, was Dr. Davies with you?

A No, Dr. Davies had been there, but I was there hammering at this boy in a very earnest effort to get him to answer the questions, and he had been looking into space, not looking at me or either looking at the floor.

Q Do you know how long before your arrival at the jail

to examine this boy Dr. Davies had been there to examine him?

A Dr. Davies had been there a short time before.

Q Nothing unusual about his thinking about Dr. Davies then.

A Most extraordinary, his not thinking about me when I was using my greatest endeavor to interest him.

Q Well, he did not know you as well as he knew Dr. Davies, did he?

A He knew me there, because I was right there on the job, if I may use that expression.

Q Will you point to that answer in your report, where he failed to answer your question? I want to find out if he comprehended your questions and answered them responsively.

A I was asking him about the commission of this crime and he told me that he did not think it was wrong. He said, "I don't think it was wrong. I think it was right." He said, "I don't think it was wrong to kill"—that is, whether it was the child or the negro we were talking about—

Q What were you talking about, which crime?

A I say, either the killing of the little girl or the negro.

Q I know, but look at your report, Doctor, or your notes. and tell me what particular killing he was referring to when he said that.

A I was questioning him about the killing of the little girl.

Q Well, does it appear there?

A I told him that he might be tried and possibly executer and he said, he had been told that.

Q He is about to be tried and might be executed, did he say that.

A I told him that he might be tried and possibly executed that you might be executed," and he said, "I have been told that."

Q He understood you when you said that, didn't he?

A Yes, sir.

Q Enough to make that answer?

A Yes, sir.

Q And he remembered perfectly that somebody else told him the same thing?

A He understood me in a good many of the questions that I asked him.

Q But he understood you when you said to him, "Do you realize that you are likely to be tried and you might be executed" and his answer was "Yes, I have teen told that. Didn't that answer indicate two things to you, first, that he comprehended your question, understood it very well, and secondly, that he remembered the two facts that someone had told him the same thing prior to the time you were talking to him?

A Yes, sir.

Q What other questions can you find there which may indicate he did not understand your question and his answer may indicate to you that it was not responsive?

A I told you, in talking to him about this crime and the consequences of the crime that he said it was not wrong nor that he did not consider it to be wrong, and then I hammered at him in an attempt to have him tell me why it was not wrong, wrong for me, wrong for you, "Why wasn't it wrong for him," and in my effort to bring that out, which I consider to be an exceedingly important fact, this is what happened, when I told you, after a long silence, and after much hammering, he told me he had been thinking about Dr. Davies.

Q Suppose I was to tell you that on former occasions, when Mr. Barber was not present, and no counsel were present, the question is put to him, did he know that it was wrong to kill the little girl, and he did answer "yes, and I am sorry." "Do you know that you are likely to be electrocuted?" And he said, "Yes, but I hope they do not, I hope they send me away for life." How do you account for this difference in appreciation?

Mr. Lane. Do you say that that actually occurred?

Mr. D'Aloia. Yes, Dr. Beling so testified—Dowd, rather, so testified.

Mr. Lane. Where?

Mr. D'Aloia. When he was on the stand.

Mr. Lane. Have you got the record?

Mr. D'Aloia. Yes, I will get the record, but I am giving the substance of it.

Mr. Lane. On page 42 the record states, "I asked him how long he had been in jail?" and he said, "I have been

here for ten days," and then further on he said, "It is wrong to do it, I am sorry, it was wrong to take the little girl. It was made that way. I am sorry. I did not know that. I know how the parents feel. I have a sister fourteen years old." Your Honor will remember that Dr. Dowd later testified that these answers were not made in the way which it appears there, or as it appears, but they were made in response to questions, but we havn't got what the questions were.

Mr. D'Aloia. No, but we have the answers here, Mr. Lane. The answers that were given, and one of the answers is "I know it was not right when I did it."

The Court. The question is Where is the record which incorporates the last question asked Dr. Horsford?

Mr. D'Aloia. I will withdraw that question.

Q Can you account for his having said, sometime prior to your examination of him, this: The doctor examining him asked him this question, "I asked him how long he had been in the jail" and he said, "I have been here for ten days," and then further on he said, "It is wrong to do it, I am sorry; it was wrong to take the little girl; it was made that way; I am sorry, I did not know that; I know how the parents were, I have a sister fourteen years old. It would not be right for anyone to take my own sister, it would hurt me. I remember taking the little girl. I would feel bad if my sister was taken, it would be wrong if my sister was taken. It was not right for me to do it. I knew it was not right when I did it. I knew how I felt when I did it. I knew it was wrong. I feel it was wrong. I remember going up on the lawn and putting her in the car. I know my predicament and I want my friends to help me. I havn't any complaint. Do you want me to answer questions." Now, that is what Dr. Dowd says was said to him by Noel not in the presence of and unaccompanied by counsel.

Mr. Lane. I object to that upon the ground that it appears from the testimony of Dr. Dowd that that is not what the witness said in a running account but that there were questions asked first and it is unintellible to any witness.

The Court. The Doctor may answer the question.

Frederick C. Horsford, Cross.

Witness. Won't you just without going into all those words again—

Q What do you attribute the change to, when he answered you that he did not think it was wrong?

A I don't think there was that great change which you think must have been, because I am of the opinion that Dr. Dowd asked those questions the way I say, and he said, "Isn't it a fact that you would be sorry if someone took your sister?" and then he put it in his report, "I would be sorry if someone took my sister." I think that is the way he got that stuff.

Q You think that?

A I think so.

Q But you don't know anything about it?

A I do know something about it, of course, because I was there and examined this boy and I know how long it took me to get something out of him. He was not making a running statement to me, his statements were all monosyllables. I could suggest a line of things to him, and I am quite sure some of his answers to my suggestions may have shown some reason, because I don't say that this man has no reason, every insane man has.

Q And he has a pretty good memory, hasn't he?

A Memory is not impaired in dementia praecox.

Q That is an intellectual faculty?

A Yes, but all dementia praecox cases have good memories.

Q Would you say that what I have outlined he did on the 3rd and 4th of September showed initiative?

A Yes, sir.

Q That is an intelleectual faculty?

A Yes, but it is impaired. There, look at him—

Q Is it possible to put on that aspect and malinger, and put that on?

A Not for this boy.

Q Is it possible?

A Not for this boy to malinger.

Q Would he be responsive to a suggestion?

A I think he is very responsive to suggestion.

Q And if it was suggested to him that it would help him to look stupid and stare vacantly, would he do it?

A He could not carry it out.

Q Then, how do you account for this, that when he came to plead, and his condition at the time, as I stood there and read the indictment to him, was fully described to you by Mr. Lane, and he apparently observed nothing, how do you account for the next day when he told that he was brought to the court house. How do you account for the fact that he knew he was brought to the court house and that the Prosecutor—

The Court. Just a moment, Mr. Prosecutor. If you will turn to page 44, the last ten or twelve lines, the exact conversation is there.

Mr. D'Aloia. How do you account for this, that after appearing to stare vacantly from the box and putting his hand up to his mouth and looking up at the clock the next day he remembered this: "Were you at the jail yesterday? No, I was taken to the Court House. *Question*: Were you there alone? *Answer*: I was handcuffed to two or three others and there were two or three guards. *Question*: Where did you go at the Court House? *Answer*: Where the lawyers make speeches. I did not say anything. My lawyers told the Judge that nothing could be done, because of the act of the Juvenile Court. He said a lot of things but I did not hear them all. *Question*: Did you expect to plead to a charge? *Answer*: Yes, I was to plead to a charge for murder and kidnapping. *Question*: But you did not plead? *Answer*: No, the lawyers are going to renew their argument on Monday. I don't know whether I will be taken down or not. *Question*: How are you going to plead? *Answer*: It does not make any difference how I plead. They have my signed confession. Captain Mason has it. *Question*: Do you know right from wrong? *Answer*: Yes, just as anyone else knows it. It might be hard to explain. I know it. I know the Ten Commandments and that is enough." Now, will you please tell me to what you attribute the change in this boy from the day he made that statement

to Dr. Dowd to the time you examined him other than malingering?

The Witness: I would attribute it to this disease.

By Mr. D'Aloia.

Q Would you say that he, having the apparent vacant stare and the apparent stupid look, appreciated pretty much what was going on?

A Yes, I think he did, because, Mr. D'Aloia, that is very characteristic of dementia praecox. The dement praecox knows and can see what is going on and sometimes you can never get it out of him. You cannot get it out of him until the next day or the next week, and when they come out with it they come out with something that amazes you and shows you that he did know what was going on, when you could not get it out of him before that.

Q Is he mentally capable of responding to a suggestion that he malinger and put on this stupid look?

A I don't think so.

Q You are not sure?

A Yes, sure; anything you please, in the way of making my statement clear, because I believe this boy is a dementia praecox patient and has been for many years, and I don't believe that such a man can put on so much.

Q You have inferentially said that Dr. Davies' questions were suggestive ones and a person suffering from dementia praecox would naturally say yes and no and the answer would be simply suggested by the question itself; and you also told us, in your experience, you knew something about how an examination of this kind may be carried on by alienists, and you stated that Dr. Dowd's questions were suggestive and yours were not.

A I beg your pardon! I don't want to convey that impression at all, Dowd knows how to examine patients. It is a question of repeating them as they were given by you.

Q Is there anything suggestive in this question, which I have read to you: "Where was the girl yesterday?"

A Nothing suggestive in that, while girl is suggested.

Q Is this a monosyllabic answer, "I was taken to the Court House."

A No.

Q He could have answered "No" and kept absolutely quiet after that.

A He could have answered "No" instead of what he did, but it would not have any bearing on his sanity, if you are trying to show that by your question.

Q Now, I am trying to find out if it is possible that between the time you examined him in company with Mr. Barber, and the time he was examined by Dr. Dowd and if he did not answer you as he did answer Dowd, it was because he was responsive to the suggestion to malinger, because he might aid his case. That is what I am trying to get at.

A And I have said this boy, I don't think, is mentally capable of carrying along the suggestion of malingering. I don't think he has the intelligence to do it, the intellectual faculty, the concentration or the will power to carry on the suggestion.

Q Wasn't there any will power necessary to carry on from the 3rd of September and all through that day to the night and to the 4th and kill two human being and sleep in the meantime, wasn't there any will power necessary to do that, to kill a negro on the 3rd of September and hide the body, go home that night and get up the next morning and kill a little girl and then hide her body?

A There was a lack of will power in the case which would keep him from doing such a thing. Every criminal who commits a crime shows a lack of power to resist temptation.

Q And it shows evidence of will power to do the act that was done.

A It shows will power to carry out the impulses to do something which you ought not to do.

Q What is there impulsive about the killing of a negro and a little girl?

A Well, we call it stimulation.

Q You call it stimulation?

A Yes, you do not like that word and I will call it stimulation.

By the Court:

Q You spoke about the boy's responsiveness to suggestion.

It is in the evidence that twelve hours after the arrest, to use the language, he broke. Let us assume that during those twelve hours he was charged with the commission of these crimes. What would you say as to his holding off from an admission after the suggestion that he did commit the crime?

A I would say that the actions of an insane man are—that the intellectual processes of an insane man go along the same lines that those of sane people do, so confronted with the fact that he did commit this crime and it was proven against him, he might break down just the same as a sane man does. Does that answer your question?

Q No, you say he is responsive to suggestion. Why is it it would take twelve hours for him to make his admisison?

A In response to the suggestion that he make it?

Q That he did commit the crime.

A That he did commit the crime? I don't look upon that as a suggestion. When I say responsive to a suggestion it does not mean that. This boy was confronted with the fact that he did commit the crime and he was shown all the evidence found against him, he might think as well as anybody else and just say, the "jig is up. They have found me out and I might as well confess." The mental processes are not different than those in sane people.

Q No, here is the point, Doctor. You testified that the boy might be asked by Dr. Dowd or any physician examining him, "Did you not do this?" and his answer might be, "Yes," and they might use language which would call for a negative answer to which the boy would say no, and the question which I have in mind is, "Why is it it took twelve hours for this boy to make an admission, or why it took that long to get the admission, whereas during that time there was a constant suggestion that he did commit the crime?

A Well, a constant suggestion that he did commit the crime and he knew that he committed it, may be that he made up his mind, as part of his plan, to conceal it. When I say insane peeople are responsive to suggestion that does not mean that they are responsive to every suggestion. It mav be that in his commission of the crime and his plan to do it, I am quite sure, he made some effort to conceal it, and it took a certain time to break down his attempt to conceal it. I think you

mean why didn't he take up these suggestions more quickly.

Q No, why did he in response to a suggestion that he did commit the crime, any more than he would in response to a question that would suggest an affirmative answer or a negative answer?

A Because of the little things that were asked him. If you please, during the course of an examination, when a great many questions are asked and a great many answers given the man becomes more or less weary and he then says yes or no because he has no initiative, I mean a dementia praecox has very little initiative.

Q Doctor, wouldn't weariness more likely occur two or three or four or five or six hours rather than in a moment.

A I think that is the bigness of the proposition. A much greater impression is made upon the powers of inhibition for concealment. If I committed a crime my powers of inhibition would be greater, in an effort to get me to confess possibly because the crime is the big thing in my life, it is the big thing.

Q Yes, but why would he hold out for the twelve hours?

A Because if it is a fact that finally after twelve hours, if he had been weak, and suffering from a mental disorder, it is very conceivable that he might have held out that long. There isn't any difference between the mental processes of a sane man and an insane man, but there is a difference in degree. That is, he thinks, and he reasons in a measure, and he has a certain measure of judgment, and he uses a certain measure of thought, and those facts are always present and make them give away at some particular moment under circumstances which may not effect a sane person. That is where they are irregular, and disorderly in their mental processes. If he held out for twelve hours it is not inconceivable that with his mental disorders he did these wrongful acts and would still conceal those wrongful acts, and behave the way he did. We have them where they conceal their wrongful acts and still use a certain measure of judgment and control just as other people do, but at some particular moment or on some particular proposition or in some particular attitude they will conceal the wrongful things. They cannot be depended upon. That is the nature of the mental disorder.

Frederick C. Horsford, Cross.

Recross Examination by Mr. D'Aloia.

Q So that what you say is that he is responsive to suggestion, and the next moment you tell us that responsiveness to suggestion indicate also irresponsiveness to suggestion, is that right?

A That is involved to me, I don't know. That is a contradiction.

Q You have told us that if this boy is responsive to suggestion and the suggestion that you have explained is this, "Didn't you kill the little girl" and he is likely to say "yes." Now, when his Honor questioned you and pointed out the fact that for twelve hours he resisted that very suggestion which was put to him continuously, continually and repeatedly, four or five or six times, hour after hour, you say that that responsiveness indicates to you weakness of some kind, is that right?

A No, I didn't say that.

Q What does it indicate?

A It indicates, as I said, to my mind, that the commission of this crime had a perhaps, a profound effect upon him mentally.

Q And carries with it a realization of his guilt?

A It was what?

Q Well, did it produce in his mind a realization of his guilt?

A He knew he had done something wrong.

Q Well, did it produce in his mind a realization of his guilt of committing murder? Is that why he did not want to say he had done it?

A He knew he had done something he ought not.

Q That is the reason he held out for twelve hours?

A I would like to—

Q No, no.

The Court. Let the Doctor tell.

A I would like to qualify that. He did something which he thought that you thought he ought not to do, that the law thought he ought not to do, and I am reminded to make that correction because he told me—

Q No, no.

The Court. Let the Doctor answer.

A He told me that he knew it was contrary to the law to kill this negro and little girl, but he said that it was not wrong to do it, and he told me why it was not wrong and why he felt he was justified in doing it. He may have held out against the Prosecutor and his staff because they are representatives of the law, which he knew he had broken.

Q Then you want us to understand that this demented boy could make fine intellectual distinction, he could comprehend that the peoeple who were talking to him were the representatives of the law, he understood that he done something contrary to the law, he understood that it would be to his advantage to deny that he had done anything contrary to the law and he done that almost for a day?

A Yes, I think so.

The Court. Well, that immediate instance, you say he knew the difference between right and wrong?

Witness. No, sir. Taking it in a broad way, I do not think he knows the difference between right and wrong. He knows the difference between right and wrong on many subjects, but because of his mental disorder, because of the disorder of mind he suffers, one cannot depend upon a concrete proposition.

The Court. Well, taking the concrete proposition as evidence of the killing and kidnapping, taking his action in refusing to make any admission for twelve hours, what would you say as to his knowledge of right from wrong with relation to the concrete problem that we have before us now.

Witness. I think I have neglected to bring out one very important factor, and that is the fact that this man was suffering from a mental disease, dementia praecox, in which inhibition, inability to speak, this negativism which you have been told about, that may have been an important factor at this time during which he held out for twelve hours. That I cannot say. I would not want to say I am sure that he did know it was contrary to law and that he did hold out for twelve hours because he showed that much reason and self control to avoid the consequences

of his crime. I do not know that that is so. I felt that here is a boy suffering from a serious disorder of mental disease and we can think of many things which might affect his mind during these tewelve hours of questioning. Whether he was mute then, whether his inhibitory faculties were overcoming his will to say anything, I cannot say, but that is my viewpoint, as an alienist, and knowing how people suffering from dementia praecox behave, I have been through the wards and attempted to talk with dementia praecox persons and held long conversations in an effort to get them in certain facts, that is, to find out what their mental condition was and got practically nothing, and then come to them the next day or week or some other time and find them quite voluble and find them engaged in conversation. Mental disorder does not always mean that the patient is in the throes of some great mental upset. It changes from moment to moment, unfortunately for us who are trying to find out, so that during this time this man was being questioned by the Prosecutor I have no way of knowing whether he had knowledge of his situation and was using his faculties to ward off the Prosecutor's efforts to fin dout about him, or whether he was held back by something in back of him, which prevented him from saying anything.

Q The Prosecutor never talked with him on that occasion, but I will tell you that for two hours Dr. Guy Payne, the Superintendent of the Overbrook Hospital, talked to him and at the end of the two hours Dr. Guy Payne said to the Chief of Police of Montclair and to Mr. Daley, I can assure you that this young man knows nothing of these crimes. What would you say that the refusal to tell Dr. Payne indicated to you?

A Nothing more than I have already told you.

Q A realization that he had done wrong and if he admitted it he would get in bad and be punished?

A No. I have gone further and elucidated another way in which this may be explained.

Q Now, will you point out to me. knowing these crimes and these details, what there is about it that indicates it was the act of an insane person?

A I have told you.

Q Well, what are the differences between an insane act and a sane act?

A Only the degree in which they are carried out.

Q Well, do you appreciate the four main acts to be the inadequacy of motive; secondly, the atrocious manner in which it is committed; thirdly, the imprudent manner in which the perpetrator commits the act, and the fourth is the conduct of the perpetrator after the commission of the act? Now, let us apply those four characteristics to this crime?

The Court. Well, let us see if the Doctor adopts them.

Q Do you recognize those four main characteristics of an insane act?

A What does it really mean? What does it bind one to?

Q Well, I am asking you do you recognize those four characteristics as standing out in any act which you described as an alienist to be an insane act?

Mr. Lane. I might suggest we have gone far afield here and are waisting time, I think, except for the incidental light that may be thrown on the mental condition of this man—

The Court. I will sustain the objection.

Q Now, Doctor, will you kindly point to some question in your examination which indicates he did not understand your question and did not answer it properly other than those you have read.

A Some other question?

Q Yes, some question other than those which you have read which indicates he did not understand your question and his answer indicates he did not make a responsive answer?

A Well, I can say in general that to none of my questions was he responsive.

Q None of his answers was responsive to your questions as you recall them?

A All his answers were slow, given after a great deal of urging, and after asking the question over.

Q Now, will you please pardon me? I asked you about one quality alone of those answers and whether they were responsive or not, and that is all I want to know.

A I can recall only two occasions where he gave irrelevant answers to my questions.

Frederick C. Horsford, Redirect.

Q Two answers out of how many questions?
A Oh, a great many.
Q A great many?
A A very great many.

Redirect Examination by Mr. Lane.

Q Doctor, did you think that he exhibits a very high degree of intellingence present in this man at the present time when he is asked—the boy twenty years old and had some college experience—when he is asked what the function of the Judge is to say the function of the Judge is to stop the lawyer talking?

Mr. D'Aloia. He didn't say that.

Mr. Lane. Well, you said it.

Mr. D'Aloia. No. He said he just permits them to talk and then instructs them to stop.

Mr. Lane. Well, I accept your suggestion.

A No, I don't think it is.

Q Rather the answer of a person who observed the objective things that were going on around him and had no appreciation of what it all meant, isn't it?

Mr. D'Aloia. What is the answer to that, yes or no?

Witness. Yes.

Q Well, let us assume that when this man was questioned for those hours that were referred to by the Prosecutor, who was questioned by police officers who appeared to be intent upon thinking he had committed a crime, for which he should be punished, that he was questioned by hospital authorities who had confined him in a hospital and from whom he had escaped, who with the police officers, were insisting that he had committed a crime, is there anything unusual for an insane man to feel that the people who were questioning him were attempting to do something to him which would result in his injury? If that is so, I suppose the instinct of self preservation is not absent in the insane, is it?

A No.

Q That instinct will last longer than almost any other instinct, is not that so?

A It is a crime instinct.

Q So would you think there is anything unusual for an insane man who had intelligence to appreciate that these people were trying to enforce him to do something to his detriment to be guided with the instinct of self preservation to do something that he would not do—there is nothing unusual in that, is there?

A No.

Q And an exhibition of the instinct, or anything based upon the instinct of self preservation is not in any sense a sign of insanity, is it?

A No.

Q Doctor, what is your definition of dementia praecox?

A Well, I understand by dementia praecox a form of mental disease which attacks young people between the age of fourteen—twelve and fourteen and twenty-eight. Those are a rough definition of the period of time and mental disorder that produces its chief effect upon the emotional, the feelings—the emotions of the individual and upon his intellectual faculties, his will, his reason, his judgment, his self control. It is a disease that sometimes comes on acutely and runs a pretty rapid course to dementia, to complete mental decay, and in very many cases there are remissions of longer or shorter time, from a few days or weeks or months to years. That is dementia praecox. The symptoms of the disease have been told the court pretty completely.

Q Let me ask you this, Doctor. The question of the Prosecutor with respect to this confession that is said to have been made—the circumstances that have been made from the Prosecutor's question, I rather gathered the inference that it was Noel who told them that he had telephoned for the taxicab and it was Noel who told them from where he had telephoned and how he got it and that the police were first put on the trail of Noel by Noel's statement in effect, now, if it should appear, as is the fact, as I understand it, and there is nothing in the case one way or the other that the police knew all about this taxicab and telephoning before they ever arrested Noel or saw Noel, would it make any difference whether it appeared to be a voluntary statement on the part of Noel or a suggested statement?

A It would make a great deal of difference, because if they

knew all these facts then they would be very likely to get a complete corroboration of their findings.

Q Do you know any way, as an alienist, whereby you can depend upon any statement that may now be made by this man, or that you can depend upon the ability of the man to so concentrate himself as to attempt to remember and bring out the actual motive which influenced him in the commission of this crime and the actual feelings which he might have with reference to the rightness and wrongness of it and the actual personality in which he thought at that time that he was acting, is there any way you can get that out of this man?

A No. In answer to that question I think this is a very fair statement, where we have a man who has been determined insane, where we have admitted the presence of insanity, that is the great factor in this case, the fact that he is insane; that is, nobody can tell at any particular time what influence that mental disorder may have upon his acts or upon his conduct; that is to say, he may conduct himself very well under some circumstances, but you cannot tell nor can I, or anybody, under any particular circumstance what influence his mental disorder may have had upon him in the commission of a crime, or any other act, delusions, inhibitions, weakness of will, lack of reasoning, impairment of defect in judgment. All those things may upon any particular occasion, or any one of them, may be a very prominent factor, which would influence him in doing something which, if he did not have a mental disorder, he would not do at all.

Q Is it safe to depend upon a statement of a man concededly insane as to what he knows?

A No, sir.

Q Or as to whether he knows the difference between right and wrong?

A No, sir.

Q As a matter of fact, most insane persons consider themselves sane, do they not?

A Yes.

Q And I assume most insane persons who are asked whether they know the difference between right or wrong in the abstract would say, "Certainly I do."

A In dementia praecox, those persons having had enough

intellectuality to have an insight, they realize that there is something wrong. They know that they are not right. This boy knew recently—he felt that he was not right. He reasons that something is wrong to make him act and to do the things that he does do, and that happens in insanity often enough. In the late stages of dementia praecox when the mind has been destroyed, then they do not know anything about it at all. This boy is not in a terminal stage of dementia praecox.

Q The Prosecutor has stated to you that the motive for the commission of this act was to get $4000. So far as I know the only evidence that there is of that or could be of that is the boy's own statement made at the present time or after the arrest. Is that to be depended upon as to what the actual motive was?

A This man is insane and so whatever statement he makes must be analyzed pretty carefully.

Q Is there any way by which you can suggest that counsel for the defense, upon whom the Prosecutor seeks to put the burden, can check up that statement of his client?

A No, sir.

Recross Examination by Mr. D'Aloia.

Q Is there any method that you can describe and counsel can verify a statement made to him by his client if it were not for that reason that he wanted $4000, supposing Mr. Lane's client told him that he needed some money to go to California, is there any way of finding out if he intended to go to California, or that was his motive?

A Go to his family and make inquiries and find out what you can about it.

Q Now, let me understand you. You just told Mr. Lane that in your opinion this defendant could not be relied upon to tell his counsel what he did on the day of the alleged crime or the crime charged against him, and yet, you in your examination of the 28th of September, the other day at the jail, never made any attempt to test as to his veracity, secondly, his memory, and thirdly, his reliability of his crimes in which he participated on that day?

A His memory, testing that as a part of the general ex-

amination.

Q No. Is it true that you just told Mr. Lane that you could not depend, or, rather, Mr. Lane, his counsel, could not depend upon what this client would tell him about September 3rd, 1925? That is true, isn't it?

Mr. Lane. I object to that upon the ground that the witness has not said that.

Mr. D'Aloia. The witness just said yes he did say that.

Mr. Lane. Well, maybe he did, if he did he didn't now that—

Witness. Mr. D'Aloia put the date. I didn't have the date before.

Q And it is a fact, Doctor, that in your examination of this man you never asked him at all what he did on September 3rd?

A No.

Redirect Examination by Mr. Lane.

Q I suppose, Doctor, that you knew about what he did from the check up that the Prosecutor's office had indulged in?

A September 3rd, the day he committed the crime?

Q Yes.

A Oh, I asked him a great many questions what he did on that day, but with reference to the specific date, I did not know what day he shot this man, but I asked him all sorts of questions about the commission of the crime and what he did to them and if he knew it was wrong and so on. I was not concerned about the date on which he did it.

Recross Examination by Mr. D'Aloia.

Q Or what he did immediately preceding the shooting or what he did immediately after the shooting?

A No. I went there to find out what this man's sanity or insanity was and I was not concerned with working out the problem of the crime, when he committed it.

Q You were there for the purpose of finding out whether or not this man Noel is capable of conferring with his counsel and aiding in his defense, preparing his defense as to a charge

of murder, which is alleged to have occurred on a certain definite date. That was the purpose of your examination, wasn't it?

A My purpose of my examination was to determine whether this man was of sound mind and capable of cooperating with his counsel.

Q About an occurrence which took place on a definite date, September 3rd, 1925, and yet you do not recall trying to bring this defendant's mind back to the 3rd of September, 1925, at any time?

A Oh, Dear me; I was trying—

Q Did you. Yes or no?

A I did, most assuredly.

Q By calling out the date?

A I knew that he did not—I knew that he committed a murder and I talked to him about this murder. I didn't know it was done on September 3rd, 4th or 5th.

Q Well, did you ask him what time he got up on the day he committed the murder, to find out the hour?

A No.

Redirect Examination by Mr. Lane.

Q You have understood and always understood, Doctor, haven't you, that the defense in this case, if it goes to trial, is the defense of insanity and has nothing to do with the specific act?

A Yes.

Q And did you make sufficient examination to qualify you to answer questions as to that?

A Yes.

Q Did you, while you were at the jail, or did any person in your hearing intimate to this defendant that he should malinger or should adopt any course of conduct of any kind, nature or description, either while talking to you or while in the courtroom?

A No.

CARLOS F. MACDONALD, sworn in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Dr. MacDonald, where do you reside?

A I reside at Central Valley, Orange County, New York.

Q And what is your profession?

A Physician.

Q How long have you been engaged in your profession?

A Since 1869.

Q And have you had experience in nervous and mental diseases?

A I have.

Q Will you tell me what your experience has been?

A With the exception of about a year and a half, when I was in a general hospital after my graduation, my whole professional life has been devoted to the care and treatment of the insane and the management of institutions for the insane and the teaching of the subject of mental diseases and medical jurisprudence in several medical colleges—three several medical colleges, and consultation work and seven years as president of the State Commission in Lunacy, now known as the State Hospital Commission, from the creation of that body in 1889 until 1906, when I resigned to resume private practice.

Q That is the State of New York?

A In the State of New York.

Q Have you at times testified in cases?

A I have.

Q Have you heretofore appeared for the State in cases?

A I have.

Q Have you been called upon from time to time to examine criminals in the State of New York for the purpose of determining their sanity or insanity and their responsibility to the law?

A I have been called upon by Governors of the State of New York and Judges of the Supreme Court of New York to determine the mental condition of persons where the mental condition was at issue and from prosecuting attorneys and attorneys for the defense and various cases both criminal and civil.

Q Do you know this defendant, Harrison W. Noel?

A I do.

Q When did you meet him and where?

A I met him in the Newark City Jail here, or County Jail.

whichever it is, on Monday, September 22nd, and made a personal examination of him.

Mr. Lane. Before proceeding further with the examination of Dr. MacDonald, I want to do something which I have not yet done. I want to call upon the Prosecutor to produce, if he has a letter written by Harrison W. Noel to Frank Gray, without date; another letter written by Harrison W. Noel to Frank Grey, a photostatic—I suppose you call it—copy of which appeared in the Newark Star Eagle on September 9, 1925.

Mr. D'Aloia. The Prosecutor's office has never seen any such letters, so far as I know.

Mr. Lane. Has the Prosecutor made any investigation to determine whether the letters were, in fact, written?

Mr. D'Aloia. No. We did not pay any attention to them. We do not have them. We have never seen them and we do not pay any attention to newspaper articles.

Mr. Lane. This is not the ordinary newspaper article. This purports to be a photostatic copy of the letter.

Mr. D'Aloia. Well, does the article state where the reporter or editor got the original?

Mr. Lane. I don't know. I only ask you if you want me to prove from this paper—do you want me to prove by a witness that this is in this man's writing, speaking from this paper?

Mr. D'Aloia. We never saw those latters. You call upon the Prosecutor to produce two letters We never knew that any such letters existed.

Mr. Lane. Will you state that those letters were sent, or do you desire that I should prove them?

Mr. D'Aloia. How can I consent. I know nothing of them.

Mr. Lane. Well, we are resting upon the statement of Mr. Noel, and Mr. Noel told Mr. Barber he had written them. Is that sufficient?

Mr. D'Aloia. No.

The Court. Whoever has them can be subpoenaed.

Mr. Lane. Yes. That is what I say. I don't know where these letters are. I suppose in an attempt to find

them I will have to subpoena Frank Grey and I will have to subpoena the newspaper reporter who apparently had these letters in his possession when they were reproduced. If the Prosecutor wants me to do that, I will do that thing.

Mr. D'Aloia. I cannot prevent Mr. Lane from doing anything, but we have no knowledge of the letters.

Mr. Lane. You will not concede they were written?

Mr. D'Aloia. Certainly not.

Q And did you, at that time, Doctor, have the history of the case as disclosed by the records of the Essex County Hospital for the Insane?

A Yes.

Q Did you examine this man sufficiently for you to form an opinion as to whether he was sane or insane?

A I did.

Q What was your conclusion and what is your conclusion as to the present condition of mind of this man, whether sane or insane?

A My conclusion is that, based upon my examination of him and my knowledge obtained of the history of his case while in the Overbrook Hospital and while at Beacon, New York, that he is insane.

Q And did you form any conclusion as to whether he was suffering from any specific form of insanity?

A I did.

Q And what was it—and if he was what form?

A In my opinion, he was suffering from a form of insanity known as dementia praecox.

Q And this case, Doctor, in your opinion, is it in any wise a borderline case, or is it well developed?

A In my opinion, it is not a border line case, but it is a well developed, established condition of dementia praecox.

Q Do you think, Doctor, that Harrison W. Noel is at the present time capable of rationally appreciating the condition in which he is and the circumstances surrounding him?

A In my opinion, he is not.

Q In your opinion, Doctor, do you think that Harrison W. Noel is capable of rationally consulting with his counsel and

assisting counsel in the preparation of a defense to this indictment of murder?

A In my opinion, he is not.

Q Will you tell me, Doctor, upon what you base your conclusion? I do not mean now by that the records and your examination, but why is it he is not capable of appreciating his present condition and of consulting with counsel in the preparation of a defense?

A For the reason that his mind is so far impaired that he is not competent to rationally advise counsel or to assist in the preparation of his trial. He is a case, in my opinion. of wellmarked dementia praecox, with the mental characteristics of that form of mental disease, namely, an impairment of the reason and judgment his reason and judgment, a lessening of the willpower, an impairment of memory and especially of a power of attention and an impairment of his emotional faculties.

Q Do you think that in an investigation into the motive of this crime, the matters and things which were in the mind of the defendant at the time he committed the crime, the reason why he acted as he did, the reason that he gave to himself, if any, as to his justification for the performance of the act, that his statement at the present time as to those matters can be depended upon at all?

A I do not.

Q Do you think he has the mental capacity to at the present time bring to the surface and express the feelings which controlled him at that time, the real motive which influenced him and the ideas of right and wrong which he may have had at that time?

A No, I think not.

Q Do you recognize that in a case of this kind, where the defense is insanity, those matters and things are of supreme and controlling importance?

A I do.

Q Is there any way that you can suggest by which counsel might get from this patient those matters which you think important to have so that they may be presented before a jury if this case were tried?

A No.

Q Would you tell me, Doctor, what dementia praecox is in your opinion?

A Dementia praecox is a form of insanity that originally was thought to occur in early adult life, hence the term praecox—precocious dementia. Dementia of whatever form of insanity it may—whether it occurs as an original or primary dementia, as it does in dementia praecox, or as secondly, to some other form of insanity, the terminal stage of some other form of insanity is a condition of mental weakness, a general impairment of the mental faculties. That is what the term dementia implies, and precocious, or dementia praeocx implies that it occurs in early life, but more recent writers have classified as dementia praecox somewhat older persons and extended the range for the application of the term so as to include certain other cases.

Q What is its effect?

A I beg pardon?

Q What is its effect on the mentality?

A As I said, it impairs the mental faculties.

Q Well, which mental faculties and how does it impair them?

A Substantially all of them. The reason and judgment are impaired, the emotions are lessened, the will power is weakened and the memory is impaired and notably the power of attention.

Q What is the prognosis?

A The prognosis in dementia praecox is bad, unfavorable as regards recovery.

Q And why is that?

A Because my experience has shown and my knowledge of the subject convinces me that cases of dementia praecox do not recover. They sometimes improve, u pto a certain point, but they invariably recur, showing that the recovery was not complete, that it was a condition of improvement or remission of the symptoms in which they subsided to a certin degree for a time and some of those cases have been reported as a recovery and in many others they have improved sufficiently so their friends have removed them and taken them home, but my observation is that in such cases practically all of them recur again, the mental symptoms recur.

Q From your knowledge of the history of this case and including your examination of this man, what would be your opinion—what would be your prognosis with respect to this particular case?

A In my opinion, based upon my examination of him and my knowledge of his history, he is now suffering from an organic disease of the brain from which a recovery is—well, I would not say impossible, but highly improbable.

Q Have you observed his conduct in court?

A I have.

Q Is his conduct in court typical of a dementia praecox patient?

A Yes. His facial expression and his attitude and listless manner and appearance are entirely consistent with the idea of dementia praecox.

Q Did you see a few moments ago the position in which he was holding his hand?

A Yes, I have noticed it.

Q You observed him yesterday?

A I beg your pardon.

Q You also observed him yesterday in court?

A Yes.

Q I show you what purports to be a photograph published in one of the newspapers this morning which purports to show various attitudes of Mr. Noel while the proceedings were going on.

Mr. D'Aloia. I object to that photograph.

Mr. Lane. You cannot object until I ask the question.

Mr. D'Aloia. Just a moment, doctor.

Witness. I will not answer.

Mr. D'Aloia. I object to those photographs. I do not know who took them or where they were taken. Simply because they were labeled such and such does not make them so.

Mr. Lane. I have not yet asked the question.

The Court. Proceed with the question.

Q Will you look at those photographs and tell me whether or not you yourself saw this man in the attitudes which are depicted on those photographs and whether those photographs are a correct representation of what you yourself saw?

Mr. D'Aloia. That question is objected to.

The Court. I will allow that.

A Yes. These are good photographic representations, I should say, of the defendant, and I have noticed the position of his hands.

Q Now, I draw your attention particularly to the manner in which he is holding his hand in the second photograph from the last and I ask you whether that is a typical mannerism of dementia praecox?

A Well, it is common of dementia praecox.

Q I show you a book which is referred to as diseases of the nerves—which is entitled "Diseases of the Nervous System, Jelliff & white" and direct your attention to page 987 of that book, figure 487, dementia praecox mannerism, and ask you from a medical standpoint to compare the mannerism and the manner in which the hand is held there, and the manner in which the hand is held on the photograph second to the left side of that paper, and whether medically those positions are not the same?

A Well, while they are not exactly the same, they are similar and characteristic of these pictures here in the book of dementia praecox mannerisms.

Q Then you mean that they are not exactly the same, it means—

A Well, there is a similarity in this second photograph of those in the book, of the fingers in the book, but not the exact reproduction.

Q I do not suppose, Doctor, you would in any two men expect to find—any two insane men—expect to find precisely the same angle of the holding of the fingers?

A No, sir.

Q You would find the general manner in which the hand was held, but not precisely, the angle would be different and one finger might be used instead of another, but there is a similarity between those two photographs, is there not?

A Yes.

Q Doctor, in your opinion, do you think it would be possible, even if an attempt had been made to prompt this witness, so that this witness might malinger and exhibit false symptoms here in court while this matter is going on?

A I do not and even if it were conceivable that the distinguished counsel for the defense was capable of doing such a thing—

Mr. D'Aloia. I move to strike out that last part.

The Court. The Court understands that.

Mr. Lane. Well, I don't know who could have done it except the doctors or counsel, no one else saw this man.

Q Do you think that this man is capable of getting somewhere in his own mind the notion of malingering and without suggestion and carrying it out here for hour after hour?

A I do not. I do not think he is competent, mentally competent to sham any form of insanity and carry it out so as to deceive an experienced alienist.

Q Is it an easy or a difficult thing for a person to feign insanity?

A It is a very difficult thing. I have personally had a very large experience with attempts at shamming insanity and it is difficult for this reason, that in order to successfully sham insanity one would need to be a very good actor and to possess a knowledge of the symptoms and phases of various forms of insanity and then it is a difficult thing to carry it out for any length of time, so as to deceive a skilled observer. In my experience of criminals who sham insanity they did not present a consistent picture, so to speak, of any form of insanity with which I was familiar, but mixed up the symptoms.

Q Do you find anything of that kind in this case?

A Not a suggestion of it, to my mind.

Q When Harrison W. Noel was brought in to plead he stood at this table here, back of the table, and the Prosecutor stood in the position which I am now in at the extreme right side of the table as you face the door of the court room and counsel for the defendant was never at any time nearer to him than the place almost immediately back of the stenographer, a distance of at least fifteen feet and when he was brought in the Prosecutor read to him the indictment, I think twice—if he did not read the indictment he read very distinctly so that no one could fail to hear it, and very intensely and he asked the defendant how he pleaded and there was no response, the defendant simply looked around, he did not even

look around, he simply moved his eyes a little bit and then paid no attention to it at all, he asked him again how he pleaded and the same thing occurred, whereupon the Court ordered a plea of not guilty to be entered; now, do you think the conduct of Noel at that time, being ordered to plead to a charge of murder for his life, there being no instructions as what he was to do, do you think that his conduct of mutism was indicative of his disease?

A Yes, I think so.

Q And do you think the way he acted then was any real indication of the circumstances surrounding him and what he was called upon to do?

A In my opinion he had no rational conception of his condition and circumstances.

Q One question before I forget it. But in view of the insinuation with respect to malingering, I am going to ask you did you during the time you examined him—oh, by the way, who was present when you examined him?

A Mr. Barber and Mr. Smith of your firm and the defendant, and Mr. Bindseil, the stenographer, and myself.

Q Did you or did anyone in your hearing, during the time that you were there at the jail, suggest to Harrison W. Noel how he should act or make any suggestion with respect to malingering, or what conduct he should indulge in during the hearing of this proceeding?

A No, sir.

Q I show you a stenographic record of the—what purports to be a stenographic record of what took place at the jail and I ask you whether you have read it since it was transcribed and whether it is a correct stenographic record, including both questions and answers and everything that was said?

A Yes. I have examined this and regard it as a very accurate report of the examination of what was said by me and by him and by anybody else there who said anything.

Offered in evidence and marked

Exhibit D-6

Q During the trial of this case in this court room have you or any other medical expert so far as the defense is concerned, suggested any questions to counsel or conferred with

counsel in any manner, shape or form in this examination?

A No, sir.

Q And may I add whether it is considered in your profession professional for a witness to do so?

Mr. D'Aloia. To do what?

Mr. Lane. To confer, to both testify and act as medical counsel as some of your experts have been doing.

Mr. D'Aloia. I do not think any —

The Court. Sustain the objection.

Cross Examination by Mr. D'Aloia.

Q Doctor, how old are you about?

A I don't know, except by hearsay.

Q Is there a form of dementia known as senile dementia?

A Yes.

Q When does that begin to show?

A Well, there is no fixed time.

Q What is the average age?

A Well, there isn't any average, no two cases are exactly alike. It may commence comparatively early when it is called pre-senile dementia.

Q You told me you don't know how old you are, except by hearsay?

A I think no one knows his age, except by hearsay.

Q How old do you think you are?

A Oh, I think I am about eighty-one, eighty.

Q Do you know the average age when senile dementia sets in?

A Yes. I am beyond the age when a good many cases of senile dementia set in. On the other hand, there are a good many men much older than I that have no sign of senile dementia.

Q And a good many men much younger than you that have it.

A Yes, pre-senile dementia.

Q You told Mr. Lane that it is very hard to fool an alienist. Do you remember during the course of your examinations in New York, the case of Dr. Rabinowitz who feigned insanity about ten years ago?

A Dr. Rabinowitz?

Q Yes.

A I knew a Dr. Rabinowitz, a woman physician, but I never knew that she feigned insanity.

Q I mean the banker. Do you remember one of the Rabinowitzes feigning insanity?

A Yes, I do.

Q Do you remember twelve expert alienists, known as such who were fooled by him?

A I don't remember how many, but I know he did not fool me.

Q You were fooled when you testified in the case of the Peeople of New York against Harry K. Thaw, weren't you?

A I was not.

Q You were not fooled in that case, were you?

A I was not.

Q And you testified in the Thaw case, the case of the People of the State of New York against Harry K. Thaw, that Harry K. Thaw was sane.

A I did not.

Q What did you say he was?

A I did not testify at his first trial because I was assistant counsel and because I could not, with professional propriety swear on the witness stand as an expert, and then aid counsel in court. I stipulated that I would testify as an expert if Mr. Jerome wanted me to act as medical counsel for him, which I did during the whole trial. I did not testify in the case.

Q You gave a written opinion.

A I did not.

Q Was it your opinion as a professional counsel, that Harry K. Thaw was sane?

A Never. He was born a lunatic, you might say. I testified at three different habeus corpus proceedings, after he was sent to Mattewan, that he was insane, that he was suffering from paranoia, that he was a sexual pervert and that he had inherited it, he had a bad heredity and that he was hopelessly insane and that his liberation would be, in my opinion, a menace to public peace and safety.

Q That was your opinion?

A Yes, that is what I testified.

Q From the beginning of that case to the end?

A I did not testify in the first case.

Q Was that your opinion from the beginning of that case to the end?

A No, I did not form an opinion in the beginning of the case.

Q You knew the facts one week after they occurred?

A I heard the facts and heard the testimony.

Q Do you mean to tell us now that when you volunteered to act as professional counsel for Jerome, the District Attorney of New York County whose absolute theory was that Thaw was sane, you were not of the opinion that Thaw was sane?

A Never, and I did not volunteer to act as counsel. Mr. Jerome asked me to and selected me for that duty, and I stipulated that if I did that I could not with professional propriety and decency, testify as an expert in the case, and I did not, and when the case proceeded far enough that satisfied me that Thaw was insane, I so advised Mr. Jerome and he asked for a suspension of trial and the calling of a commission.

Q Yes, but before that happened, and when Mr. Jerome asked you to be his assistant, his professional counsel, did you make any examination to satisfy yourself as to whether you could, with propriety assist Mr. Jerome in proving Thaw sane?

A I did not agree to assist him in proving Thaw sane. I agreed to assist him in the medical branch of the case and to give him the benefit of my advice and my judgment.

Q Well, had there been other alienists who examined Thaw before Thaw was brought to Trial?

A I did see Thaw. I had a short interview with him.

Q Had there been, I asked you, other alienists who had examined Thaw in behalf of the people of the State of New York, at the request of William Travers Jerome?

Mr. Lane. I object to the interruption of the Prosecutor.

The Court. He is asking him, does he know.

Q Do you know whether or not any other alienists had examined Harry K. Thaw at the request of Mr. Jerome, the District Attorney, before Mr. Jerome moved the trial of the people of the State of New York against Thaw, he at that time

thinking he was sane and asked you to be his professional counsel or assistant counsel.

A No; I knew that he had been examined by other alienists, but not at Mr. Jerome's request or suggestion.

Q Isn't it a fact that you knew Mr. Jerome was moving the trial of the cause, or at the indictment against Thaw because he adopted the theory of your fellow alienists that Thaw was sane?

A No, I didn't know anything of the kind.

Q How long did you continue as Mr. Jerome's assistant as professional counsel in the trial of the people of the State of New York against Thaw, before you changed your mind and said he was insane?

A I did not change my mind at any time.

Q Well, how long did you continue as counsel until you made up your mind?

A My mind was open until sufficient evidence appeared in the case to warrant me in forming an opinion.

Q Now, will you please tell me how long had the trial moved by Mr. Jerome, been in progress at which time you had your open mind, was it, before you closed your open mind and came to a decided opinion, how long did that last?

A Oh, I can't tell you how long.

Q Was it two or three weeks?

A The trial lasted, including the two or three weeks in getting a jury, nearly three months.

Q Well, how much of that three months was there while you were acting as assistant counsel, professionally, to Mr. Jerome when you had no opinion at all as to Thaw?

A I cannot tell you how long, but whenever sufficient evidence was brought out to satisfy me or to warrant me in forming an opinion, I so advised Mr. Jerome.

Q And you want us to understand that you went into that trial before making an examinaion of Thaw beforehand, such as you made of this defendant before taking the stand today.

A I did not go into that trial as an expert.

The Court. In any connection.

Q When you participated in the trial of that case as assistant counsel to Mr. Jerome, you want us to understand that

when you accepted that offer or proposition to assist him, you made no examination of Thaw?

A I saw Thaw at the request of his then counsel, Judge Olcott, for a short time in the library of the District Attorney's office. I was not there for Mr. Jerome at all, but Mr. Thaw declined, on advice of counsel, to be examined, and, of course, I did not undertake to enforce an examination, so that I never made an examination of him, but I had his manner of declaration and so forth, which possibly made a slight impression on my mind.

Q And when you formed an opinion it was dementia praecox?

A It was not dementia praecox.

Q What was it?

A Paranoia.

Q That is a subdivision, isn't it, of dementia praecox?

A No, true paranoia is not.

Q Well, we have paranoia in dementia praecox cases.

A No, we do not have them, we have paranoid dementia praecox cases in which the symptoms resemble somewhat paranoia, and that is why it is called paranoid, or like, but it is not true paranoia.

Q But it is dementia praecox.

A There is a variety of dementia praecox among the classifications of it.

Q How old was Harry Thaw when you first saw him?

A I don't remember now. I suppose it came out in the trial, but I don't recall how old he was. He was a comparatively young man.

Q Well, in his adolescent age?

A Yes, sir.

Q That is the time when praecox makes its appearance and gets its name from, that is the very period in a man's life.

A Well, it occurs in comparatively early life.

Q Well, it begins at the age of puberty and continues until full manhood is obtained, is that right, about twenty-eight years?

A Oh, it continues until it ends.

Q I understand that, but it appears in adolescent period of

a man's life and that is subsequent to the age of puberty, isn't it.

A Yes, and it appears at the time of the puberty.

Q Are you a disciple of Bleuer?

A Am I what?

Q As an alienist, do you believe in Bleuer's theory?

A I don't agree with all that Bleuer says.

Q Do you agree with Bleuer when he says, talking on dementia praecox—"This disease may come to a standstill at any age and many of its symptoms may clear up or be removed altogether. Do you agree with that?

A No. I regard Bleuer as a dreamer, I don't take much stock in his writings.

Q Do you agree with him that one of the basic symptoms of dementia praecox is disturbance or are the disturbances of associaion of ideas. Do you agree with that?

A Why that occurs.

Q Do you agree with him in that?

A Yes, in a general way.

The Court thereupon took a recess until two o'clock P. M.

AFTER RECESS

DR. CARLOS F. MACDONALD resumes the stand.

Cross Examination (continued) by Mr. D'Aloia.

Q Doctor, I think that before you left the stand you told us that you acted as professional counsel to Mr. Jerome in the first trial of Thaw?

A I said I acted as assistant counsel in the preparation of the medical branch of the case. That is what I meant to say, at least.

Q You know that the jury disagreed in the first case?

A Yes, I know they did in the first case.

Q And he was put on trial a second time, is that right?

A I know that, yes, sir.

Q And the jury in the second case found him not guilty?

A On the ground of insanity.

Q Then Mr. Jerome, in order to keep him from being at large, moved under a section of the code and had a judge order him sent to Mattawan.

A May I just say what my position was in that matter?

Q Do you remember the facts? I just want the chronology of the case.

A Not quite.

Q Well, he went to Mattawan subsequently by order of the court?

A Yes, because the jury found him not guilty on the ground of insanity.

Q And then Mr. Jerome instituted a proceeding, or had evidence taken to show that he should not be allowed at large?

A Yes, just as soon as he could get some evidence on the record to warrant it he moved for a commission when we advised him that Thaw was insane.

Q Then, there were steps taken to release Thaw from Mattewan?

A They had three separate habeus corpus proceedings in Westchester County.

Q And you testified in those proceedings?

A I did, but I was not an assistant counsel in that case at all.

Q You were with Mr. Jerome when Mr. Jerome was holding to the theory that Thaw was sane during the first trial, as professional counsel, isn't that so?

A Well, I don't think Mr. Jerome held to that theory. He was simply awaiting developments.

Q Well, anyway, you were with him in that first trial as professional counsel?

A Certainly, I have already said so.

Q And you were with him after the second trial had resulted in a verdict of not guilty, when Mr. Jerome's purpose was to keep him confined in Mattewan?

A I testified at those habeus corpus proceedings.

Q For Mr. Jerome?

A For the people of the State of New York.

Q He represented the people?

A For the people of the State of New York.

Q Well, he represented the people as district attorney.

A Yes, he did, and subsequently as assistant attorney general.

Q But the object in those proceedings on the part of the

State of New York was to keep Thaw in the lunatic asylum?

A Yes, sir.

Q You testified for the people?

A I did.

Q On September 22nd, when you made this examination of Noel were you aware of the fact that immediately before your interview he had been examined by Dr. Beling?

A Not at the time I made the examination. I learned afterwards that he had been so examined.

Q Who introduced you to Noel?

A Mr. Barber.

Q Do you recall whether there was any talk between Mr. Barber and Noel before you spoke to Noel?

A Not that I heard. I did not see him talking to him until he introduced me, and that was the first I heard him say or do.

Q Did you ask him anything about the date upon which he is alleged to have killed a man, September 3rd, 1925?

A Not that I heard. I did not see him talking to him until he introduced me, and that was the first I heard him say the occurrence.

Q Well, he admitted that he killed a colored man, didn't he?

A Yes, sir.

Q He remembered having done that?

A Yes.

Q His memory was not bad on that?

A No, he remembered that. I think he remembers it today.

Q That indicates that his memory is good?

A No, it does not.

Q What does it indicate?

A It indicates that he has some memory but not a rational memory in regard to these two homicides.

Q And if you had asked him when he killed the colored man and he answered September 3, 1925, his memory would have been pretty good, wouldn't it?

A I wouldn't say his memory was pretty good if he happened to remember that one thing.

Q Supposing now you asked him something else about September 3rd, 1925.

A I don't think his memory is entirely effaced.

Q And you don't think his truth telling ability has entirely disappeared either, do you?

A Well, I don't know as to some things he told me were questionable, and of course, I wouldn't know because I did not know the facts.

Q Will you kindly tell us what you recall asking him that he answered you untruthfully?

A I would like to refer to the notes.

Q You may do that.

A Do you want me to read?

Q No, I want you to find a question put by you to Noel and an answer made by Noel to you which you say is untruthful.

A Well, I haven't said that it is untruthful. I said it was not always responsive.

Q What is that?

A I said some of his answers were not responsive.

The Court. No, Doctor, that was not the question that the Prosecutor asked at that time.

(Last four questions read.)

Q I understood you, Doctor, to say that one of the symptoms of dementia praecox is telling things that are not true, unreliable things, undependable things, is that true?

A Oh, yes, that occurs in dementia praecox.

Q Show me now in your examination any evidence of that, show me some questions put by you to Noel, and some answer made by Noel to you, which you can say is a lie or a falsehood or an untruth.

A For instance, I asked him, when he said he ran away from Beacon, I asked him how he got back to the institution and he said an employee of the company brought him back, the doctor brought him back. He could not tell whether that was true or not, but the doctor was not an employe of any company. I know that.

Q You cannot tell whether it was untrue, can you?

A No.

Q You cannot find anything in that examination of yours which indicates those answers to your questions are untrue, can you?

A What he told about the attendants up at Overbrook and up at Beacon beating him and choking him, I did not think that is true.

Q You did not think that is true?

A I did not know, but I don't think that is true. I think that is a misapprehension on his part.

Q That is your opinion?

A I would not say that it is a deliberate falsehood.

Q You would not say it is untrue except you don't believe it.

A I don't think it is true.

Q You don't believe it is true because of your connection with institutions and that is a reflection upon institutions with which you have been connected?

A No, it is not the slightest.

Q Well, you have heard the common rumor to the effect that keepers in lunatic asylums treat patients cruelly and assault them.

A Yes, sir.

Q And you have been at the head of these institutions, and connected with them, and the reason you don't think that is true is because it is a reflection upon some particular phase of your institutional experience?

A No, sir, I don't agree with that at all.

Q Then, why isn't it true?

A I say I don't think it is because of my knowledge of the methods of dealing with patients in the institutions for the insane.

Q Haven't you had cases brought to your attention in the institutions where you have been connected where you have had patients complain of the ill treatment of them by guards, and you decided in favor of the guards and against the patients?

A Oh, we have had cases where complaints were groundless complaints of ill treatment due to delusional ideas?

Q And you decided in favor of the guards to protect the fair name of the institution?

A No, I had no such motive, Mr. D'Aloia, and you know I did not.

Q Show me some other question put by you to Noel, or

some question and answer which shows lack of comprehension of the question; show me an answer where he failed to comprehend your question?

A I had been informed that he had had trouble with somebody on a ship where he was employed as a mess boy.

Q You had been informed to the effect that he had trouble where he was employed on a ship as a mess boy?

A And he denied that he had.

Q Supposing your information was not correct?

A I don't know.

Q Supposing it was not. Would he be absolutely correct in denying it?

A Why, if my information is incorrect and he hadn't any trouble, and he said he had not, it would be an absolutely truthful statement.

Q You don't know whether your information is correct or not, do you?

A I have no means of knowing it.

Q Now, show me an answer to any question where you can point out as being not responsive.

A All right, I will. In regard to hi sstudy of mathematics, after he gave it up, I said, "What did you do next?"

Q The question was asked him if he had studied mathematics?

A He told me he had studied mathematics and had given it up and then I asked him, I said, "What did you do next?" and he said, after a long hesitation, "I don't remember."

Q Did you ask him when he studied mathematics, in what year or what month?

A I did not ask him the year or the month but he told me a seriatum of changes he made in all sorts of studies.

Q Is that the only instance you have where there is no responsive quality to the answer. I think that is my question, to find an answer which is not responsive to your question.

A I will, if you wait a moment.

Q Will you give me there a little about his memory? Doctor, as you continue the perusal of those pages—

A I was looking for this particular question, the question I asked him and after a long hesitation—

Q What was the question asked him?

A Well, I am trying to find it. He suddenly said to me, "What time is it?"

Q How long had you been there when you asked that question? That is toward the end of that book of several pages.

A Yes.

Q Is that unnatural?

A Perhaps an hour.

Q Well, is that unnatural when you see a stranger, when you ask him questions for an hour, to say, "What time is it?"

A I think that was not in response to my question.

Q Well, certainly you asked the question.

A Yes.

Q What was the question?

A I am trying to find it so as to give it to you exactly as it is. There is a question here somewhere. I evidently overlooked it.

Q Do you remember the question without looking at the stenographic record? Can you give us the question by memory?

A My recollection is that it was a question in regard to the crime, to the killing, I think, but I am not quite sure. I would like to find it here and then you can get it exact.

Q Well, from your perusal of those pages can you recall anything asked by you and answered by him which indicated an impairment of memory outside of that mathematic proposition where you say he told you voluntarily he had studied mathematics and that he did not recall what he had done after that? Do you recall any other impairment of memory?

A I don't say he has a complete loss of memory.

Q No. I say, show me in your examination any answer to any of your questions which would indicate any impairment—any impairment of memory.

A Yes. His hesitation. It took him a long while to answer in monosyllables yes or no.

Q Well, haven't you seen that in normal persons.

A Well, not in that way.

Q Well, haven't you seen that particular characteristic in normal persons, retardation, yes or no?

A No, I haven't in that way, in that characteristic way.

Q Well, are there several kinds of retardation?

A There is insane retardation which he has very marked.

Q Well, now, the difference between sane retardation and insane retardation is that you believe that one person is not sane and the other person is and you qualify it according to your opinion.

A I have not said that I said that.

Q Well, you said there is sane and insane retardation. Where did you get the adjective from.

A No, I didn't say that. You said that. I said there was insane retardation.

Q And then there is also sane retardation?

A I suppose a person could refuse to answer and it could be regarded as retardation.

Q Could you tell the difference between a normal person, the retardation, and the retardation of an insane person if you did not have any history and you were simply making an examination of him?

A I would not state any opinion on that alone.

Q So the retardation to you indicates an impairment of memory; is that right?

A Yes.

Q And did you ever see normal people stop and think when they are very cautious before they answer a question that might commit them?

A Not the way that he hesitated.

Q Not the way he hestiated.

A No.

Q Well, hestitation is a lapse of time, isn't it?

A Yes, and in his case it was very marked.

Q And it is also marked in all cases. You ask a question and there is an interval of time before the answer comes and the answer is responsive. How can you call that interval of time insane retardation in one case and not insane retardation in another case where the answer is just as responsive?

A I had to ask him a number of times before he answered and urged him to answer and asked him why he did not answer and he had that same stolid vacant look on his face and he did not answer.

Q Did you ask him about the commission of this crime?

A Yes.

Q Was there any retardation when he answered?

A Yes.

Q Do you know if the retardation lasted for a period of twelve or fourteen hours when he was first apprehended?

A No, I didn't know that except I heard you state it here.

Q What would you call the mental process going on in his tardation to?

A His mental condition.

Q Would you say his retardation was attributed to the fact that he had done something wrong and if he admitted it to those who suggested it that harm might befall him and he might go to jail?

A No.

Q What would you call the mental process going on in his mind where he steadfastly refused any suggestion included in questions that were put to him by different persons asking him if he had any connection with the crimes they were investigating, taking for granted that those questions were put in the affirmative, you knew so and so, and he is a dement praecox and very apt to react to suggestions, to what would you attribute his absolute steadfastness in refusing to admit that he knew anything about the killing of anybody over a period of twelve to fourteen hours?

A I think it was an irrational attitude, like his motive in committing the crime. He had no rational motive

Q Do you think that ransom is not a rational motive?

A He did not get the ransom.

Q I know he did not, but if he thought he was going to get one, do you think the motive was irrational?

A That was not when he committed the crime.

Q Do you think he thought—

A I think his whole scheme was very irrational. He was going to have a balloon at the crossing.

Q Did you ask him when you examined him where he got that idea from on the 22nd of September up at the jail?

A He said it was suggested to him by reading the Loeb-Leopold case in Chicago.

Q Did he tell you it was suggested to him by reading of the kidnapping case in Philadelphia?

New Jersey State Library

A No.

Q Well, you know there was no ballooon connected with the Loeb-Leopold case.

A Well, I only know what he said.

Q Well, you know there was no balloon connected with the it was a Philadelphia kidnapping case?

A No.

Q That gave him the idea of a red balloon, because in that case they used a red bandanna handkerchief.

A No, he didn't mention that at all.

Q Did he tell you that the people in the Philadelphia case used a buggy and in this case he used an automobile?

A No, he didn't tell me that.

Q Now, I think you told me before that you never asked anything about his conduct on the 3rd of September, 1925, did not ask him anything about his conduct on the 4th, or did not ask him anything about his conduct on the 5th or the morning of the 6th.

A I didn't know anything about his conduct on those particular days when I was examining him. I have heard it here since in court.

Q Will you show me a question and answer that you put to him on your examination of September 22d, 1925, which indicates an impairment of will? You have failed to find any which impaired his memory to any extent.

Mr. Lane: I object to that.

A I am trying to find this question where his answer was not responsive, but have hurriedly gone over it here.

Q Now, just keep in mind I want a question an answer which indicates an impairment of will power.

Witness: Mr. Lane, I wish you would look for that question, if you will, in which I asked him and he turned and said to me, "What time is it?" which was not responsive.

Q You mentioned that. Try to find another.

Mr. Lane: The difficulty is I have not another copy of that record. There only appears to be one copy of your report in the testimony.

Q Now, doctor, this is not about questions and answers of that examination. It is about the attitude of Noel when he

realized that what he was going to say was going to be written down. What did he do, do you remember?

A What he was going to say to me?

Q No. I am asking you to tell us, if you recall, the attitude of Noel when you got there to examine him on the 22nd of September and he was told or he realized that somebody was going to take down what he said in writing, did he object to it?

A I suppose he did realize it that there was a stenographer there.

Q Well, the stenographer had a paper and pencil.

A Yes.

Q And he was taking his notes right close to you and Noel and he could hear what Noel said.

A He could hear everything that was said.

Q Did you hear any objection by Noel?

A No, sir.

Q Supposing I was to tell you that immediately before you got there, Dr. Beling was examining Noel and when Dr. Beling took out a little note paper and pencil, Noel said, "If you are going to write what I say down I won't talk to you" and made him stop writing. What would you attribute that change in attitude to?

A I would attribute it to some idea of his that he did not want what he was going to say taken down, that is what his remarks would indicate.

Q Could you attribute it partially to the realization on the part of Noel that Dr. Beling, unaccompanied by Mr. Barber, might use what he wrote down against Noel, but you, accompanied by Mr. Barber might use what was written down by the stenographer in his favor; you don't think that that might be the reason for his change of attitude in regard to writing down what he was saying, do you?

A I think if he had any realization of that kind it was not a rational realization.

Q Would you say that a man had a rational realization when he comes into court here and appears to be not observant at all and looks anywhere but at the court and looks as if he was not listening to anything but his own counsel, and he, the next day, can mention the specific argument which his counsel has made and the name of the document and the court which

was used in that argument. Do you think that is a sort of a sane realization, a rational realization of what is going on?

A I think not.

Q You said something about the strangeness of the manner in which this particular series of crimes were committed.

A Yes, sir.

Q Will you please tell me what there is, as an alienist, which makes this crime inconsistent with the act of a normal, sane criminal?

A Have you finished?

Q Yes.

A I think the whole series of transactions, and his conduct with those two crimes were the acts of an insane man, and an irresponsible man, an irrational man. The method of committing the crime and the motive he gave to me, that he had killed this colored man, he had no trouble with him, nothing against him, but killed him, because he felt very badly and he thought it would relieve him and ease him and make him more comfortable.

Q He didn't tell you that, did he?

A Yes, sir.

Q Supposing he had told , before, he saw you, to other persons, that the reason why he killed the colored man because he wanted to have an automobile that the colored man was driving?

A The reason he killed him was because he felt badly and he thought it would relieve him if he killed him, that he had nothing against him and had no trouble with him.

Q That is what he told you, and that is the reason he gave you which made you conclude that the thing was very strange. but supposing he had told you as the reason why he told others, that the reason why he killed the colored man was to appropriate the automobile so he could use it instead of his own car to kidnap the little girl; what would you say then?

A I would say it was an insane act without reason or judgment, of an insane man.

Q Did you ever hear of a kidnapping case without a ransom being talked of?

A Why, probably I have.

Q Simply for the purpose of spiting a mother or father?

A I haven't any case fixed in mind.

Q You have been connected with criminal courts for a long, long time, Doctor, for a longer time than I have. Can you recall a kidnapping case where the kidnapping was done not by a member of the immediate family for the purpose of spiting some mother or father, but where it was done by strangers, where there wasn't any ransom ever talked of or attempted to be collected or figured in the transaction?

A I never had any connection with a kidnapping criminal case.

Q You never heard of one either, in your connection with the courts?

A Not in connection with the courts, I might have read in the newspapers about it.

Q So far as the asking for ransom and the plan to get ransom, this kidnapping case is like all other kidnapping cases, isn't it?

A No, I don't think so.

Q What is the difference?

A I think it was an irrational and an insane act what he was attempting to carry out.

Q Will you please limit yourself to the feature of this particular series of transaction which I call the ransom money, and limit yourself to that only. That particular is similar to the same particular in any other kidnapping case, isn't it?

A I think that was an insane inception on his part, that he could kidnap in that way, by radio and this question about a balloon, and all that.

Q Did he say anything to you about a radio?

A Yes, sir.

Q That he was going to accomplish this by radio?

A He got a radio and started to get one and put the parts together and his motive was to commit a crime.

Q Over the radio?

A By using it instead of the telephone for kidnapping, for blackmail.

Q That is a pretty clever idea, he is away ahead of us.

A I think it is an insane idea, I think no shrewd, intelli-

gent criminal would ever resort to that sort of method that he did, and so in the killing, without any precaution whatever, and because he felt badly, and he said the same thing in regard to killing the little girl.

Q Don't you think it was rather strange for him to walk along Mountain Avenue, Upper Montclair, and look at 136, and come to the conclusion that it was a pretty good looking place and the people might have money?

A No, sir.

Q Is that shredness, in your opinion?

A I don't think so, and I can't enter into his mind to see what he thought when he looked at the house.

Q You just said that certain acts which he is alleged to have done were not shrewd and now I am telling you to assume that he did go along Mountain Avenue in Upper Mounclair and he did look at Number 136, and it is a pretty good looking place. Now, if he concluded that that place was inhabited by wealthy people, would you call that shrewdness?

A I cannot express a medical opinion on that state of facts.

Q If you cannot express a medical opinion on that statement of facts, why do you characterize the acts of criminals as shrewd and clever?

A Because they are, as a rule shrewd and clever and they would take entirely different precautions from what he did of being found out.

Q Will you please limit yourself to each phase in this case as I put it in the question?

Mr. Lane. I object, because the witness is answering the question.

Q Now, take this fact, this is a fact I am stating to you, assuming it to be a fact that he went along Mountain Avenue and studied the exterior of the buildings and saw that Number 136 is, or what he thought was a pretty good looking place, and he figured that out, that that place is the place where he is going to kidnap a little girl, would you call that shrewd?

A No, sir.

Q What would you say it is?

A Irrational.

Q You wouldn't call it stupid, would you?

A Yes, rather stupid.

Q What would you call it if he picked out a little shack with a piece of a stove pipe sticking out of the top of it and no windows or no doors?

A I don't know.

Q Rational, you wouldn't call that rational

A I would not characterize it.

Q You wouldn't call that clever, would you?

A I would not characterize it.

Q You would not call that shrewd, would you?

A I would not characterize it.

Q You would not call that stupid by any means, would you?

A I would not call it at all.

Q Well, what is the opposite in your mind of cleverness and shrewdness, isn't it stupidity?

A Yes, and irrationality.

Q Now, taking these two acts of conduct on the part of a human being intent on selecting a place where he is going to kidnap a little child, one conduct indicates that he picked out a mansion, and the other way he picks out a woodshed. Which of the two would you call clever and which of the two would you call stupid?

A Well, I cannot comprehend that question.

Q Can't you understand that a man may do two things? He may pick out a place where he is going to steal a child that looks very rich and he may pick out a place where he is going to steal a child that looks dilapidated—you get me that far, don't you?

A Do you know that he picked out a woodshed?

Q I am assuming two different places picked out by one human being.

A You are assuming a hypothetical case.

Q If the man picks out a rich place, would you call that shrewd or stupid, a rich place to steal a child?

A I would not express an opinion on that one fact alone upon any man's mental condition.

Q Now, if a man does not use a telephone in the neighborhood of his house in order to get an automobile to do the kidnapping with and he went to a telephone, a pay station, and

used that phone and says that he is going to wait for this particular automobile that he is seeking to obtain outside of an athletic club, not inside, would you call that clever or stupid?

A I would not characterize it on that statement alone.

Q Having in mind the object of appreciating the automobile would you call the direction given to the chauffeur to drive to a deserted road and to a desolate spot unpopulated and uninhabited, would you call that clever or stupid, shrewd or stupid?

A I would not characterize it excepting to say that in my opinion it is not inconsistent in the condition which I regard this young man to be in now.

Q Would it be inconsistent with the medical condition of a normal, sane criminal or delinquent?

A A normal, sane criminal I would not express an opinion about a normal, sane criminal.

Q Would you express an opinion about an ordinary criminal?

A I am talking about insanity now.

Q I say, would you find anything inconsistent in that course of action if it were used and carried out and executed by a criminal, an ordinary criminal with no aberration at all, would you say that it was shrewd or stupid?

A I would not say it was very shrewd, the way in which he did it.

Q Would you say it was stupid?

A Yes, sir.

Q Would you say it was stupid or shrewd to hide the bodies of the different persons he killed?

A Yes, in the way in which he did, because it is then only a question of time when those bodies will be discovered.

Q Oh, a question of time makes a great deal of difference in identification.

A And a sane criminal who had committed those crimes at the same time practically, or at least both together, would have taken means of flight or getting away entirely from the scene of the crime and disappear. I think it was a stupid performance from beginning to end.

Q He would have disappeared if he was conscious of the

fact that he had hidden the evidence of his crime and thought in his mind that he could not be discovered because of the secluded spots in which he had hidden the bodies.

A If he was sound and rational and shrewd he would not have the opinion that he had secluded them there, and then believe they could be left there for a long time and then have gone home and gone to sleep and had, as you say, a refreshing sleep.

Q And if I were to tell you that he was shrewd and—that he did it so shrewdly and cleverly that for all day Thursday and all day Friday and all day Saturday, the third, fourth and fifth of the month of September, those three days, everybody in Montclair and in the neighborhood where the little girl was taken, was under the impression that the person who had killed the child was a black man in such and such a car, bearing such and such a license number, and that was believed until the black man was found dead, would you say that he had succeeded in concealing his identity pretty shrewdly and cleverly?

A No, I would not.

Q And if I say to you that it was not until the morning of the 6th when he himself guided the Chief of Police of Montclair to where the little girl's body was, and that no one, not even you could suggest to us how that body could have been found before, would you say it was shrewd and clever?

A They could have been found by searchers, undoubtedly they would have been sent out.

Q Is that the best answer that you can make?

A Why, I think the woods would have been scoured around and everywhere else.

Q Supposing you were to attribute the fact that he stayed at home because he realized that flight on his part would indicate guilt, and that is why he did not do what you say a clever criminal would have done, gotten away.

A I think a clever, sane criminal would have gotten away.

Q And absented himself from his home and thereby direct suspicion against himself?

A But he was too stupid and too insane, he went right back home.

Q If I have your opinion correctly, a clever, sane criminal,

would have absented himself from his home so that suspicion could be directed against him. Is that your idea of a clever criminal?

A Suspicion would not be directed to him unless it were known that he had this automobile of this colored man and had this little girl in the car.

Q Now, Doctor, do you think that when a man buys a revolver and uses a false name and goes to a place where they sell revolvers and pays the price asked for it, and he is told he cannot have the revolver delivered immediately, and then has it mailed to himself to an adjacent state, do you regard, or do you think that his obtaining it was done by a reasoning process, or a mental process, which would you recognize as reasoning?

A I cannot express an opinion on any man's mental condition on that one single statement.

Q What would you call the mental process if a man would, in order to obtain a revolver, if he fixed in his mind, the kind of a pistol he wanted, and if he went to the place where they sold it, and he paid for it, picked out the one he liked and paid the price, and then he was then told he could not have it immediately, and if he gave a false name and post office address and then went to the post office address, remembering the false name he had given, and obtain it, what would you call that process if the intention was to get a revolver or get a pistol, is that a reasoning process?

A Well, in connection with his condition and history as I view it, I would call it shrewd, I would call it an insane idea, he had a morbid idea of committing crime.

Q Did you understand my question? Do you mean to tell me that every man who buys a revolver and who cannot get it in New York, because they will not deliver it to him, but he has it mailed in the name of his cousin to an address in Newark, that that man is an insane person?

A Oh, no.

Q Does that show you, as an alienist, that he is going through a mental process, known as reasoning with all the ideas regularly associated, following in sequence, rationally so as to accomplish the purpose of getting a revolver?

A I would not express an opinion of the mental condition of any person on that limited statement of facts.

Q If I were to ask you whether or not the obtaining of that revolver was done in a reasonable manner, what would your answer be?

A In my opinion it was not, in this case, a reasonable manner.

Q Never mind in this case, supposing it done by A, B or C, would you say it was done in a reasonable manner?

A Standing by itself I would not express an opinion.

Q Would you say it was unreasonable?

A I would not express an opinion.

Q Did you find out in the course of studying the history of this man what his condition was on the 3rd of July, 1925, when he visited the insane asylum at Overbrook and when he was allowed to go away.

A Only by the records.

Q Well, did you find out what his condition was at that time when he visited here voluntarily on the 3rd of July and he was allowed to go home?

A Why, I satisfied myself from the whole history that he was mentally diseased at that time.

Q And you don't know of any reason why he should be allowed to go home if he was mentally diseased?

A Well, he was not committed then and they had no right to detain him there against his will or the will of his mother or father.

Mr. D'Aloia. I wonder if Mr. Lane has found that question?

Mr. Lane. [Reading] "Whom did you murder? (hesitates). Harrison, whom did you murder? (hesitates). Can't you tell me? *Answer*: What time is it?"

Q Now, do you recall that question?

A Yes, and I would say on that, that the answer is not responsive to my question.

Q How about this question before it. "Did you commit murder?"

A "Yes" See it here?

A Oh, I take your word for it.

Q "Did you commit murder" and the answer is "Yes."

A Yes That hesitation is put in there in parenthesis and means a good deal more than a similar word would imply, because his hesitations were very long.

Q Here is what you asked him. "Did you commit murder?" *Answer*: "Yes." "Whom did you murder?" And there is where you say he hesitated, and you continue and say "Harrison, whom did you murder?" Some more hesitation, and you said: "Can't you tell me," and then he said to you, "What time is it?" Is that right?

A Yes, I waited a considerable interval.

Q And you answered him and said, "It is a quarter to six. I haven't but a few more questions to ask you if you will answer them." And the next question you say is this "You say you committed a murder. Whom did you murder? You know of course." He hesitated, and you said, "Was it a white man?" And he said, "No." Then you put this question to him, "Was it a colored man," and he said, "Yes." Is that right?

A Yes, sir.

Q Is there anything else about those questions and answers which are not responsive except the retardation when you come down to the very delicate subject as far as he was concerned?

A He was very retarded.

Q It was a very relative subject to him, wasn't it, when you got down to the question as to who he had murdered, "Whom did you murder." That was a very delicate question.

A He did not appear so much interested.

Q I know, but that would make every man hesitate a bit before he answered, wouldn't it. If you were put in that position and asked that question and you were in a cell and you had not seen me before, although I might be introduced as Dr. Macdonald, the celebrated alienist, I think you would hesitated before you would tell me whom you had murdered and make a complete confession to me, would you not?

A I don't know. I never have been placed in that position.

Q And then you asked him how he committed it and his answer was with a pistol, do you remember that?

A Yes, sir.

Q There is nothing responsive about that.

A That is responsive.

Q You asked him "You know, of course how you committed it," and he said, "With a pistol," You say that is not responsive?

A I say it is responsive.

Q You asked him, "You purchased the pistol, didn't you" and his answer was, "Yes." There was nothing in that question to indicate that he did not comprehend the question?

A No, sir.

Q His answer was responsive?

A Oh, yes.

Q His answer was responsive?

A Oh, yes.

Q You were in court when Dr. Horford testified this morning.

A Oh, yes.

Q You heard him tell us how any alienist can suggest an answer in putting a question, you heard him telling that, didn't you, and particularly to a subject such as Noel, and how he would answer and respond and react to the question. You heard Dr. Horsford tell us that.

A I think I heard most of his testimony although his voice did not carry very good.

Q But you understand me now as to what kind of question I am referring to.

A Of course, your voice carries all right.

Q Now, would you say, Doctor, that this question put by you would fall in the category of questions mentioned by Dr. Horsford suggestive of the answer, "Do you think killing him would relieve you in any way of your unhappiness?" And he answered, "Yes." Now, would you put your question in the category of those questions mentioned by Dr. Horsford where a catatonic dementia praecox might have the answer suggested to him by the suggestion of the question? Do you put that question in that class?

A No, sir.

Q You did not suggest that answer to him in that question, did you?

A No, sir.

Q And then you come here and tell us that that is the

reason you accepted for his killing the colored man, because he told you it would relieve his unhappiness.

Mr. Lane. I object to that, because he hasn't told us that he accepted it.

Q You heard Dr. Horsford say that this young man told him that the reason why he killed somebody was to get rid of a sort of feeling of unhappiness and it made him feel better.

A Yes, that is what he said in substance to me.

Q But you will not contend now that it was suggested to him, that his answer "Yes" was not suggested in that question, "Do you think killing him would relieve you in any way of your unhappiness?"

A Yes, that was not suggested.

Q On your part?

A No, it was not intended to.

Redirect Examination by Mr. Lane.

Q Doctor, do you think it is a responsive answer when a patient is asked to tell his story to remain silent for a considerable space of time and then say, "Will you lend me twenty-five cents until Mr. Barber comes, I want to buy pie with it and newspapers?"

A I do not call that a responsive answer.

Q That is one of the answers that Dr. Beling testifies about?

A Yes.

Q Do you think that the following question and answer which the doctor—do you think that the following question and answer indicates a rational mind: *Question*: Harrison, did you do right or wrong all during this time, from the moment you left on that Sunday, did you do right or wrong? *Answer*: I acted wisely."

A No. I do not think that is a rational answer.

Q Do you think that you can depend upon the statement of a man who says, when he is being questioned by a doctor who has seen him upon but one occasion in February, 1925, "*Question*: Do you remember seeing me before today? *Answer*: No." Can you depend on that, the fact being that he did see him?

A I should say it indicated that his memory was defective with regard to that particular point.

Q And the question is followed on, "You never saw me before?" And the answer, "Maybe I did." The question is, "You did see me before." And the answer is "Yes." Does that show confusion of mind, assuming the patient is attempting to tell the truth?

A It does.

Q And the question is "where did you first see me?" And the answer is, "I do not remember." Does that indicate a very acute memory?

A No.

Q Where it appears that the occasion upon which this patient saw this doctor was upon his admission to an asylum, which, to a sane man, would be rather an important event; that is something a sane man would remember, isn't it?

A I think he would.

Q And when that is followed up by the statement that—by the patient that this patient saw this doctotr three nights after he went to the hospital for the insane, and that he called to him and recognized him and that the doctor responded, but that the doctor did not come within one hundred feet of the patient, whereas, as a matter of fact the doctor was never in the insane asylum and never saw the patient there, would you say that the patient's word was to be depended upon?

A No.

Q Would you say that the answer to the question, "Was there at any time anybody that you know of persecuting you in any way, doing anything against you?" *Answer*: "Yes." *Question*: "Who was it?" *Answer*: "Mr. Bresnahan, Mr. Coddington, and Mr. Cranzy," who happened to be employees or officers of the insane asylum in Snake Hill, would you say that that testimony or that statement was to be depended upon—I mean Overbrook?

A No, it wouldn't.

Q Those are typical delusions or delusions of persecution which accompany the disease of dementia praecox?

A Yes, those are the questions where he told him he

bought the pistol if they came up to take him back to Overbrook.

Q His purchase of the pistol being based upon the idea of persecution?

A Yes, he said they had persecuted him there and abused him and given him the spinal puncture.

Q Do you think that a patient's statement—that answer with respect now to this spinal puncture, "I thought they were trying to make a superior being out of me; I thought I was a superior being at the time." "What kind of superior being?" "I thought I was a second Jesus Christ;" was that a dependable statement on the part of this patient?

A No.

Q Can you imagine a man, sane in all respects, who, by reason of being punctured in the spine, would consider himself a second Jesus Christ?

A No, sir. I would regard it a delusion of persecution.

Q Do you think that this is a statement which is to be depended upon, *Question*: "What motive did you have, Harrison, in doing such a thing?" *Answer*: "I thought it would help me." *Question*: "In what way?" *Answer*: "I thought it would make me talk and be a person like other people appear to be." Do you think that is a dependable statement?

A No, it is irrational.

Q Do you think that this statement is to be depended upon to the effect that he thought and really believed that the bread up at the asylum was poisoned?

A That is in th e nature of insane delusion.

Q Do you think that is the answer of a sane man feigning insanity? Is it the answer of a sane man feigning insanity? *Question*: "Did Jesus Christ tell you to commit this crime?" *Answer*: "No." *Question*: "He did not?" *Answer*: "No." If a sane man were desiring to feign insanity and had a knowledge of insanity, the logical answer would be yes.

A He would adopt the suggestion at once and say yes.

Q When it was followed and the question is, "Did you ever speak with Jesus Christ?" And the answer, "No." *Question*: "Ever have any conversation with Him?" *Answer*: "No." A sane man feigning insanity would have realized he was failing to take advantage of an opportunity?

A He would.

Q Do you think that this statement made to the Doctor is to be depended on, *Question*: "Have you no spine now?" *Answer*: "No."

A I think that was a delusion—an insane delusion.

Q And "Where did you cough it up? *Answer*: "I spit it out on the floor." The answer to that, is that an answer which could be depended on in anyway?

A No, it is an insane delusion.

Q Do you think that a sane man, feigning insanity, and having any knowledge of the situation would answer the doctor who asked him the crucial question as to whether he knew the difference between right and wrong yes.

A No. I think he would say no, if he were shamming.

Q The logical thing for a sane man feigning insanity would be to say no, would it not?

A Yes.

Q Do you think that is the logical reasoning of a sane man to say that he knew that the punishment for murder might be the electric chair, that he had committed a murder, but that he should not be punished, that he should be let go, because if he were let go he would not do it again, is that logical reasoning of a sane criminal?

A No, sir; that was irrational.

Q As a matter of fact, Doctor, don't you find in these examinations—intrinsic evidence in the examinations themselves that this man was not feigning?

A Yes. There has not been, to my mind, in my examination and my knowledge of his case, a suggestion that he was shamming. I do not thin khe is capable of doing it.

Q If he were capable of doing it do you think that some of the answers which I have read to you would have been made?

A No.

Q This examination that was conducted by you and which was reduced to typewriting, was there any part of this examination—withdraw that. Do you think that the answer of a sane criminal, feigning insanity, to a doctor as to whether he was insane or not would be, "No, I am not insane?"

A No. I think it would be an affirmative answer, if he were shamming.

Q If he were shamming is what I am talking about, and, indeed, it is because, or largely because when an insane person, or when a sane person attempts to feign insanity that he usually goes too far in his answers—that the feigning of the insanity—that the alienist can discover the feigning?

A They overdo it, as a rule, and mix up the forms of insanity which they assimulate, so it is very difficult for a criminal to sham insanity, to deceive a competent, skilled observer of mental diseases.

Q Do you think that if this man were a sane man that there would be—I will withdraw that and ask you this question. When he did talk about the commission of this crime and what had occurred did he show any emotion of any kind, nature or description or any remorse at all?

A Not the slightest.

Q Then it was not, I suppose, emotion or remorse that caused him to hesitate about the crime?

A In my opinion it was not.

Q Now, if he had already made a confession to the police and if he had already—assuming this man to be insane now—if he had already talked to five doctors for the prosecution and to the police he had confessed and told everything that occurred and to the five doctors he had told everything that occurred, can you imagine any reason for his hesitating to tell that story to a doctor who was there in his own behalf?

A No.

Q The Prosecutor asked you a question as to whether there was any answer there—question and answer, which shows a lack of will power—I do not understand it—it may be so—that the lack of will power is usually proven by question and answer, is it? You cannot very well get at whether a man has will power or not except to a very elementary degree by asking questions, can you?

A No.

Q Doctor, do you think that a very shrewd—that a criminal, sane criminal, going out to commit a crime for the sake of ransom would start out upon the commission of that crime without making any plans whatever either as to how the

crime was to be committed or how the get-a-way was to be made, but took things as they came from time to time—do you think that is the sane way to prepare for the commission of a crime?

A No, sir, I do not think it is indicative of the conduct of a shrewd, sane criminal contemplating committing murder.

Q Do you think it is the same thing for the resident of a rather small community, where the financial ability of the residents is easily discovered by inquiry, for a criminal cognozant of that fact and living there in that community to determine what child shall be kidnapped by the look of the house that the child happens to live in?

A No, I don't. I think a shrewd criminal would have assured himself of the ability of the parents of the child whom he contemplated kidnapping.

Q If he were a sane person, looking for ransom, he would realize that sometimes appearances are somewhat deceptive, would he not?

A Yes.

Q Do you think that it was the act of a sane criminal to secure a taxi cab for the commission of this crime by telephoning some place to have the taxi cab sent to him, when, as a matter of fact he could have gone out in the public street and picked up a cab at any time off the street?

A No, I do not.

Q Do you think it was the act of a sane criminal with the dead body of a negro in this car to drive for over a mile and a half through a crowded place with that dead body alongside of him?

A No. It showed a want of rational judgment?

Q Do you think that is the act of a sane criminal to kill the girl whom he took by mistake merely because the girl happened to be the wrong person and he did not want to be seen with her?

A No.

Q There are many other ways by which he could have gotten out of it at that stage of the proceeding, aren't there?

A Yes.

Q Do you know of kidnapping cases which have become of common knowledge, carried out, where the persons who perpetrated them were never discovered?

A Yes.

Q Do you know of any theory upon which a sane man could build the conclusion that Leopold and Loeb got caught and that the main difficulty with their crime was that one or the other—I forget which it was—lost his spectacles.

A I did not get all of it.

Q (Question read.)

A No.

Q A sane man with any sane realization of the Leopold-Loeb crime would know that whether Leopold or Loeb lost their spectacles or not there are other items in their crime which would have led to their detection?

A I think so.

Q Do you consider it a proof of sanity that when an insane person desires a pistol he goes tot a pistol shop to get it? Is that a proof of sanity?

A Not where it is against the law to purchase pistols.

Q I am not referring to that. I am not referring to the law at all. I say just take the isolated instance that this insane person desires a pistol he goes to a pistol shop to get it? to a pistol shop to get it, is that an evidence of sanity or insanity?

A I could not express an opinion on that meager statement of facts.

Q Nor is there any evidence of sanity, either, that when he goes to this pistol shop and the pistol shop informs him that they cannot give him the pistol, but they can send it by mail, and he adopts that suggestion, that is no evidence of sanity or insanity, either way, is it?

A No.

Q Now, the fact that Noel at one time tells one story and at another time tells another story, is that any evidence that he is, in fact, lying, or is it in the sense that he deliberately knowingly tells what he knows to be a false story at either one of the times?

A No.

Q And in cases of dementia praecox of this type are you likely to have that situation?

A Yes, conflicting stories from time to time?

Q The patient believing the story as he tells it at the time he tells it?

A Yes.

Q Has there been or was there during—was there any attempt upon your part during the course of the examination—I will withdraw that. Does this typewritten transcript, Exhibit D6, accurately represent everything that took place between you and Mr. Noel?

A I think I can say that it does. It is a remarkably accurate transcription.

Q What I mean, was there any stage of the proceedings, where you suspended the taking of notes for the purpose of keeping it out of the record?

A No, sir.

Q So is this as correct a transcript as the stenographer could make it of what took place at that time?

A Is is a correct statement of everything that was said and done at that examination, in my opinion.

Q Does the word "hesitation" which appears in this record so often, really give an accurate picture of what actually occurred?

A No, it does not. It only shows at what point in the examination he hesitated, but it does not indicate how long his hesitations were. Some of them were very lengthy, and it was only by urging and repeating and asking over and over again that he answered questions.

Q The entire quotation from Bleuer which counsel has read to a standstill at every stage and many of his symptoms may cox, under the name of schizophenia—this disease may come to a standstill at every stage and many of his symptoms may clear up very much or altogether, but if it progresses it leads to a dementia of a definite character." Has this disease, irrespective of whether Bleuer is right in his first assumption or not, has this disease, in this particular case, led to a point where there is dementia of a definite character?

A There is a very decided dementia or loss of mind.

Q I ask you to read, if you have not already done so, this; what purports to be a copy of two letters written by Noel to Mr. Grey.

Mr. D'Aloia. I object to that.

The Court. I will sustain the objection.

Mr. Lane. The difficulty will be, if the court please, that Mr. Grey, in whose custody I am advised these letters have been returned by the newspaper that published them, is out of the jurisdiction of this court. He is in the State of Massachusetts and in order to get the originals of these letters it will be necessary to take his testimony wherever he may be. It may be possible to prove the letters by proof of the photostatic copy by calling someone who knows Mr. Noel's handwriting and proving that this is a representation of his handwriting. That has been permitted in cases where the original document is beyond the jurisdiction of the court.

The Court. Does that come within the Haring case, that if the person might testify—is beyond the process of the court his testimony may be taken by deposition.

Mr. Lane. I do not think the burden was ever cast upon a party to go out of the jurisdiction of the court. I do not think there is any burden placed on anybody. I have not considered it at all, because this matter came to my attention only this morning. I say that that is one method by which it may be accomplished. Now, I do not desire to recall this doctor. This case is not before a jury, although—it is not before a jury, nor are the rules of evidence the same with respect to the trial of this issue which we are now on as they would be on the trial of the guilt or innocence for a substantial crime and I think the situation is within your Honor's sole control. My offer at this time is to prevent the recalling of this doctor. If, as a matter of fact, these letters are not subsequently proven and your Honor does not think they are proven as I suggest, I do not think any harm can be done. I am only going to ask the doctor whether those two letters, assuming they were written, whether they bear intrinsic evidence within themselves of insanity.

The Court. That is irrespective of whether the rules of evidence apply or not. Certainly the Prosecutor will be entitled to cross examination.

Mr. D'Aloia. I will withdraw the objection if that is

the condition under which the evidence is submitted.

The Court. In other words, I would not take it unless it is proved.

Q Assuming those letters to have been sent by the patient, Doctor, would you say that those letters themselves bear intrinsic evidence of a disordered mind?

A Shall I read them now?

The Court. Just look at them.

Mr. Lane. Read them to yourself.

The Court. Read them to yourself.

Witness. Oh, yes. I did not mean to read them aloud. I have read them both.

Q (Question read.)

A They do. They are unmistakably the writings of an irresponsible, insane person, in my opinion.

Mr. Lane. I offer, if the Court please, the photograph

The Court. It will be marked for identification, not to be incorporated yet as part of the record.

Marked Exhibit D-7.

Mr. Lane. I offer, if the Court please, the photograph which appeared in the newspaper of October 1st, which Dr. McDonald has identified as being correct representation of the poses of this defendant during the progress of yesterday's hearing.

Marked Exhibit D-8.

Mr. Lane. I offer in evidence the photograph from Jellif & White, page 987, figure 447, which Dr. McDonald has testified is the correct representation of the dementia praecox mannerism.

Marked Exhibit D-9.

Recross Examination by Mr. D'Aloia.

Q What other evidence, if any, of delusion did you obtain from your examination of September 22nd, 1925, other than this delusion of persecution against the Overbrook attendant and against those who had made this lumbar puncture and those who had fed him bad food while he was up at the institution.

A Yes.

Q Yes what?

A I was going to say.

Q Oh, pardon me.

A Evidence of delusional ideas up at Beacon when he was there.

Q What other evidence besides the delusional idea of prosecution against the attendant at Overbrook and the delusional idea of people up in Beacon?

A The delusion of killing this little girl and negro, it would ease his mind and relieve him.

Q No other connection?

A Well, those are, to my mind, distinct delusional ideas.

Q I mean you do not find any connection between his delusion of persecution against those two institutions, both Beacon and Overbrook and his crime, do you? You cannot say that the killing of Pierce, a man whom he had never seen, was connected up with the delusion of persecution that he had in mind about the charge up in Overbrook.

A No. It was connected with his delusion that he felt badly and miserable; that it would relieve him to kill these persons.

Q And you come to that conclusion that he is suffering from that delusion that it would be a good thing to kill these persons because he told you so?

A Well, he told that to me and it was a very insane motive, I think everybody would agree, in committing those two murders.

Q But that is the only evidence you found of any delusion that you might connect up with the killing of Pierce and the little girl, the fact that he said to you that it would tend to relieve his feelings, make him feel better.

A Yes, that was clearly a delusional idea.

Q Now, instead of saying that to you, if he said to you what he told others that the reason he killed the little girl was to get four thousand dollars ransom and the reason he killed Pierce was to get the car, what evidence would there be of delusion except what he told you?

A Well, if he did not have those ideas, if his statements were thoughtless and deliberately false it would not be a delusion.

Carlos F. Macdonald, Redirect.

Q You would not say he would be malingering?

A No.

The Court. If I understood you correctly, in response to one of Mr. Lane's questions you said an evidence of a diseased mind was want of precaution in hiding the body or something, the substance, remember that?

Witness. Yes.

The Court. Could you classify that mental defect with a defect of judgment?

Witness. Well, I would characterize it as irrational judgment and ideas on his part.

The Court. If I understand the testimony correctly, the finding of the body was the result of Noel's bringing the officers there?

Witness. Yes. as I understand it, there was no search that yet had been made.

The Court. Is there evidence in the case as to a search?

Mr. Lane. Not a bit.

Mr. D'Aloia. You have the confession in.

Mr. Lane. No, we have not.

Mr. D'Aloia. Well, we have it in my question.

Mr. Lane. Well, that is a different thing.

Redirect Examintion by Mr. Lane.

Q Doctor, did you base your conclusion in this case upon any one isolated fact or upon the whole case?

A No, sir, upon the whole case. To summarize the case, this young man is suffering from dementia praecox in an advanced stage, when it has affected his mind and rendered him incompetent to advise with counsel or do anything scarcely in a rational way. Of course, it has to be said that insane persons do and say rational things in all institutions and outside. It is not an irrational thing for an insane patient to go to bed or go to the toilet, so it is not an irrational act when a good many insane patients do rational acts outside of their mental disease.

Q Is there any faculty of the human brain which is not affected by this disease of dementia praecox?

A Well, all the mental faculties are affected, and, in my

opinion, he has advanced to a stage where the brain cells of the intellectual center of his brain are more or less degenerated and when those brain cells degenerate they never regenerate. That is why I make an unfavorable prognosis with reference to recovery.

Q Has this disease not progressed to such an extent that it affects the brain centers having to do with the patient's physical being as well as the mental state?

A Yes.

Q And is that illustrated by the physical acts and the way in which he holds himself and the mannerisms that he has assumed?

A Yes.

Q If this case is a case of feigning, is it or is it not a fact that this patient must have a very acute knowledge of every symptom of dementia praecox?

A Yes, to feign successfully he would have.

Q Has heredity anything to do with dementia praecox?

A Yes.

Q And have you had in mind in this case the history disclosed by the records of the Essex County Hospital for the Insane?

A Yes. He has a bad heredity and heredity—the disease itself is not transmitted. It is only the predisposition to it and at a certain stage of life it crops out in cases and some cases it escapes entirely. They do not develop this disease, but it is a very important factor, heredity.

Cross Examination by Mr. D'Aloia.

Q Now, Doctor, if, after having killed the colored man on the 3rd of September, 1925, he went home and he went to the Girl Scout Headquarters and brought his sister home and then rode to the Montclair Library a couple hours later and got a book named The Jester, by Moore—he got this book on a card and he went home and read it, would you say that that indicated any deterioration of his intellectual senses?

A Yes, it would show that he had the rational appreciation of what he had done.

Q What?

A Had he been sane and rational he would not be likely to sit down and read a book.

Q I am not talking about his intellectual centers, the brain cells that go to make up those intellectual centers which you say were deteriorated because of his act in killing the colored man. Now, I say two hours after killing the colored man he went to a library and got a book entitled The Jester and he read it would, you call that an intellectual deterioration, or the deterioration of the intellectual centers of the brain cells that go to make up the intellectual centers?

A There is nothing in that that is inconsistent with the ideas of dementia praecox.

Q But there is a great deal in that which is inconsistent with deterioration of brain cells which go to make up the intellectual centers?

A No. I think he could read a book now. I do not think he would have a rational appreciation of it.

Q Have you asked him if he read Treasure Island during the last two days?

A No.

Q Do you know on September 22nd, 1925, he was getting books from the library at the jail?

A No, I didn't know that until this moment.

Q Well, assuming he got books from the library at the jail during the time he was confined there and the other night when leaving the court house he asked the attendant for Treasure Island and read it, would you say that that was deterioration of the intellectual centers of the brain?

A He might do all that and still be suffering from deterioration.

Q Still be suffering from deterioration of what, his intellectual centers?

A Yes.

Q Assuming that on the morning of September 6th he made this statement: "I talked to the police for a while" in trying to tell what he did on the morning of the 6th—"I talked to the police for a while and then the police took me in an automobile over the route I had taken after kidnapping the girl and to the spot where I disposed of the body and pointed

out the body to them," would you say that that conduct would indicate any deterioration of any faculties, any centers at all, intellectual or otherwise?

A Well, standing by itself and the history of the case being limited to that single statement, I would not express an opinion.

Q Why did you express an opinion to a single question and answer presented to you by Mr. Lane and say that is an irrational answer—will you please tell me why you are content to give an opinion as to the rationality or irrationality of an answer when Mr. Lane gives you just the question and the answer and you refuse to give me an opinion when I outline the conduct of this defendant which took pretty nearly all morning, and on the mere answer of no or yes to a question that took about three or four seconds to ask?

A I do not know that I grasp the question.

Q Here it is. I am going to try to make it very simple. Mr. Lane asked you if this man was asked by Dr. Beling, "Where are you?" And the answer was, "Will you please lend me twenty-five cents, I want to get some pie," would you say that this answer is rational or irrational and you immediately said irrational.

Mr. Lane. I object. That is not what my question was, nor is it what the witness' answer was.

The Court. You read.

Mr. Lane. My question was whether it was responsive.

Q Your answer was—there were different questions put to you by Mr. Lane involving the rationality of the answer and all he asked was the question and the answer yes, and you passed your opinion.

A I said it was unresponsive.

Q You did not use the word "irrational?"

A Well, it was, in my opinion, irrational.

Q Well, why can you not give me an opinion of this conduct?

A That is a different question. His question showed mental aberration.

Q This question does not?

A Not by itself.

Q But shows he was sane and he knows what he was talking about; it shows the opposite of mental aberration?

A I don't think so and it is not inconsistent with his present mental condition.

Q Will you answer my question, please? If a statement is made by this subject which you have examined to this effect, "I talked to the police for a while on the morning—Sunday, September 6th, and then the police took me in an automobile and I directed them over the route I took after kidnapping the girl, where I disposed of the body and pointed the body out to them," meaning the police, what is the indication there?

A Well, standing by itself, I would not express an opinion as to the mental condition of that person.

Q Standing by itself, does it indicate any mental aberration to you?

A It does not indicate anything to my mind that would warrant a medical opinion.

Q Does it indicate a rational statement?

A I could not on that bald statement alone express an opinion.

Q Assuming that on Sunday morning he talked to the police for a while, and after he had talked to the police for a while he did get into an automobile and he did go over the route he had followed when he kidnapped the little girl, he did point out where he had secreted the little girl's body, would you say there was anything rational in repeating that statement that morning?

A Well, standing by itself I would not express an opinion.

Redirect Examination by Mr. Lane.

Q Doctor, sanity is the normal thing.

A Yes, sanity is the rule; insanity is the exception.

Q When we try to prove the abnormal, or the exception, we try to prove something different from the normal, do we not?

A We do, we try to determine how far and to what extent the individual under consideration has departed from his normal condition, and in determining whether a person is insane you must not compare him with any other individual, be-

cause no two persons act alike, but you must determine him by himself and determine how far he has parted from his normal mentality.

Q A single question and a single answer may prove insanity by reason of the irrational nature of that answer, may it not?

A Yes.

Q Any number of rational statements made by a person cannot prove that that person is a sane person?

A No, it would not prove anything one way or the other standing by itself.

Q If a person should stand an examination for three or four days under the cross examination of counsel and not indicate a single abnormal thing and at the end of that was asked a single question as to whether or not—or when he was going to marry the Kaiser, as actually happened in a case, that single question and answer shows he is insane.

A Yes.

Q And notwithstatnding the whole past performance?

A Yes, by itself.

Adjourned until tomorrow, Friday, October 2nd, 1925, at 10:00 o'clock A. M.

SIXTH DAY

STATE OF NEW JERSEY *vs.* HARRISON W. NOEL	INDICTMENT No. 85 Sept. T. 1925. for MURDER

Continued pursuant to adjournment.
Present, counsel as before stated.

CHARLES ENGLANDER, sworn in behalf of defendant.
Direct Examination by Mr. Lane.

Q Doctor, what is your profession?

A I am a physician.

Q How long have you been a physician?

A Nine years.

Q And have you had experience in the care of and the treatment of nervous and mental diseases?

A I have.

Q Will you tell me, briefly, your experience?

A I have been for a number of years on the staff at Overbrook. I am connected with the Neurological clinic connected with Columbia University and in charge of the nemological clinic at the Newark City Hospital.

Q You were on the staff at Overbrook at the time of the commitment into the hospital of Harrison W. Noel?

A I was.

Q I direct your attention to the record of the hospital, Ex. D3, and to a report of March 12, 1925, to the effect that the case of Harrison W. Noel was reported and voted upon by the staff as catatonic dementia praecox and that you participated in that diagnosis. Did you, in fact, participate in the diagnosis?

A I did.

Q And what was your conclusion at that time?

A He was suffering from the disease know as dementia praecox.

Q Will you tell me, Doctor, just what dementia praecox is, as you understand it?

A Why, it is a provisional name given to a series of symptoms found in mental disorders, which, for a lack of a better name at the present time, is called dementia praecox. It is a mental disorder in which there is a progressive deterioration in the mental faculties, the intellectual faculties, and the conduct of the patient. There may, however, not be any dementia for a considerable period of time, but there will always be found in the beginning decided changes in the emotional condition of the patient and the conduct of the patient. It is a disease which is predicated upon a defective heredity and it is one in which there is a marked conflict in the patient to his environment, both his personal environment and society.

Q May a patient suffering from this disease show what appears to be a good memory?

A Oh, yes.

Q And show what appears to be good orientation?

A Yes.

Q And yet be suffering from the disease and suffering from a disassociation of ideas?

A Yes.

Q The good memory and the good orientation does not negative and presence of a disassociated idea?

A Not at all. There may be other disassociated ideas.

Q Is it a fact that a patient suffering from this disease is likely to display striking lack of thought, that they sit still in the midst of most fantastic environments and apparently think nothing?

A Yes.

Q Is negativism a concomittant of that disease?

A Yes.

Q Are hallucinations also likely to be found?

A They may be found in some forms of the disorder, but not all. They may not always be present.

Q Is it also characteristic of this disease that upon some occasions patients will do the very reverse of what they are asked to do, as for instance, refuse to dress when they are asked to dress and dress when they are asked to go to bed?

A Yes.

Q Is that an instance of the negativism which is spoken of in the books?

A One of the instances.

Q Was there, Doctor, at the time you participated in this diagnosis of the patient on the 12th day of March, 1925, any doubt in your mind whether he was suffering from this form of insanity or not?

A None whatever.

Q Was it, in your opinion, at that time, anything like a borderline case, or was it a well developed case?

A About as well developed as I would care to see.

Q You have not, Doctor, have you, since the commission of this crime, examined Harrison W. Noel?

A I have not.

Q You have been in the courtroom during the time that

this case has been on trial for the last two days and have observed Harrison W. Noel, have you not?

A I have.

Q You observed him when he was in the hospital for the insane?

A I have.

Q Does his deportment and demeanor in the courtroom, during the past two days, differ at all from what you found was his deportment and demeanor in the hospital?

A I have seen him in some of the same attitudes he sits in here in the courtroom and I have seen him in others.

Q When he was in the hospital, is his conduct here consistent with what his conduct was in the hospital?

A If you mean his position and posture, yes.

Q And his lack of interest—apparent lack of interest?

A Yes.

Q What do you say, Doctor, with respect to the ability of a person to feign insanity?

A It is a difficult thing for most individuals.

Q Will you tell me why that is?

A Because in most instances, unless the person who attempts to feign the disease is thoroughly familiar, or rather, particularly well familiar with the peculiar type of the insanity he is about to feign, he is apt to put on more symptoms than fall in the group he is attempting to feign, and, in many instances, would overdue it and many times he would be apt to be trapped in his failure to carry out his scheme and the trapping of the individual would depend upon the amount of skill in observing him.

Q Have you seen in the conduct of Harrison W. Noel in the courtroom any indication to your mind of any feigning?

A I should not venture to say it was feigning, because I have not talked with him and would not base my opinion barely upon his posture and behavior in the courtroom.

Q No. What I am trying to get at is what I have already asked you. His conduct is not inconsistent with the conduct you did see in the hospital?

A Not at all.

Q When there was no necessity for feigning?

A Not at all.

Charles Englander, Crosss

Cross Examination by Mr. D'Aloia.

Q Doctor, would you call the surroundings here in a court room fantastic surroundings?

A Not particularly.

Q What would you call them?

A Rather dignified.

Q And if a person is charged with murder and he is seated on one side of this court room, suffering from dementia praecox, he would not pay very much attention to what was going on in here, would he?

A He might.

Q Were you in court the other day?

A I was—I beg your pardon, what day do you refer to?

Q The day before yesterday.

A Yes, sir.

Q Were you here at the time when a young fellow in the second seat there fainted and fell forward?

A Yes, sir.

Q Did you notice the awakening on the part of Noel from his lethargic state, and look over there, and he was just as much interested in it as any one of us?

A I did not.

Q What would you say if that hapened?

A I would say it would not be inconsistent with the conduct of a dementia praecox patient to lack attention during certain periods, and yet, nevertheless show attention at other times, the attention of the patient may be awakened and it may not. On the other hand, I have seen patients who have shown no interest at all, when they subsequently show interest in something that would attract their attenion, but there was no lack of absolute attention at all times.

Q You would not find anything inconsistent in that conduct on the part of a normal person, would you?

A No, sir.

Q You said to Mr. Lane, that dementia praecox, in your judgment is a series of symptoms and that there is no better name and doctors call it dementia praecox. I think it was Kraeplin who first grouped those symptotms, wasn't it?

A Yes, as a group.

Q And he called it dementia praecox because those symptoms appeared during the precocious age.

A Yes, sir.

Q Now, on the 12th of March, will you give me the symptoms of dementia praecox that you noticed?

A Why, yes.

Q What are they?

A The patient was indifferent, he was denuding, his behavior was such which one would not consider to be his normal behavior; he was noisy; he was filthy in his habits; he had peculiar notions as to why he was in the hospital, and what should be done for him, and he sat about, when not entirely without clothing, in a dilapidated manner, hardly that type of man of the environment in which he had been brought up. He had peculiar ideas about individuals, he slept poorly and he talked at random about various things, when he was not talking was quite mute and negativistic.

Q When he did not talk he was qnite mute?

A I say when he was not conversing.

Q Well, isn't anybody mute when he is not talknig?

A I beg to differ with you. I am speaking of this patient and I tell you that when he was not talking incoherently about his ideas, there were times when he had periods of mutism and when you could get nothing from him.

Q What else?

A I cannot recall all of the symptoms I saw in the boy at the time.

Q If I understand you correctly, when this group of symptoms appeared, there isn't any dementia present necessarily; is that right?

A Yes, sir.

Q Did you find any dementia present on the 12th of March, 1925?

A I would say there was at least apparent dementia.

Q Now, did you follow the course of treatment that was administered to him between the 12th of March and the 28th of June, 1925?

A Only indifferently.

Q Do you know what his condition was on the 28th of June, 1925?

A I don't know.

Q Is it possible that his condition may have improved when you last saw him on the 12th of March, and noticed this group of symptoms which you have named, and when you are certain there was any dementia present, except apparently some dementia?

A I would say if the record in the case was presented, at the time the boy's case was diagnosed there might be some, but I don't recall at that moment.

The Court. Do you need anything to refresh your recollection?

Witness. Yes a copy of the hospital records. I did not make a detailed examination of the boy, but only saw him as he came under my observation in my duties at the hospital.

Q Let us recapitulate. You have given us a group of symptoms and you are not certain whether here was some dementia present, only that here was apparent dementia on the 12th of March, 1925. Is it possible for a patient who exhibited those symptoms on the 12th of March, 1925, to improve right along running through the month of April, May, and June, and up to the 28th of June?

A Why, it is possible, there may have been some improvement.

Q And in your estimation, recalling these symptoms which you have outlined, and your uncertainty of any dementia on the 12th of March, but possibly apparent dementia, is it possible for the patient to improve from the 28th of June to the 1st of October?

A Is it possible in dementia praecox?

Q Yes.

A Yes, there are possible improvements at times and there may be regressions, however, during the same period and then fluctuations to improvement at the same time. That is the histotry of the disease.

Q But there may be improvement?

A Yes, but I will have to qualify that and ask you what you mean by improvement.

Q Did you see the patient on the 28th of June?
A I did not.
Q Did you see him immediately before the 28th of June?
A I can't recall, he did not come under my direct care.
Q Can you tell us whether you noticed any change in him from March 28th, 1925, when you participated with the board in making the diagnosis, until June 28th, 1925?
A Repeat the question.
Q Can you tell us if you saw him at all during that period?
A Yes, on varying occasions.
Q What was his condition the last time you saw him subsequent to the 12th of March and the 28th of June?
A His condition, his conduct, was perhaps better.
Q You would call it improved, wouldn't you?
A Well, I would say his conduct was better, that's all I would say.
Q Did you find any evidences of hallucination when you made your examination?
A I don't recall any.
Q Did you find any evidences of delusions?
A Only as the record indicates.
Q You said to Mr. Lane that patients of this sort show a disassociation of ideas.
A That is correct.
Q Let me ask you, can you discover any disassociation of ideas if a man wants to obtain a pistol and that is his ultimate and goal idea, and he goes to a place where they sell pistols, and he dickers with the salesman as to the price, and picks out the type of pistol he wants, and then when he is told by the salesman that he cannot get immediate delivery of that pistol, because the law does not permit it, but it might be sent to him by mail if he lives in an adjacent state, and then that person gives the salesman $9.20, which is the price of the pistol, gives him a false name, gives him a post office address and leaves, and then a day or two later he goes to the post office address which he had given to the salesman and there he recalls this assumed name that he bought the pistol under, and gives it to the post office authorities and he obtains the package and that package contains the pistol which he originally set out to procure, would you say that that

course of conduct shows a dissassociation of ideas?

A I would simply say there was association for the group of ideas that prevailed at that time.

Q Would you say there was an association of ideas following each other in sequence, rational sequence to bring about the ultimate purpose, which is the goal idea, and that is the obtaining of the pistol?

A That is all.

Q You would say that, would you?

A Yes, I said so, that's all.

Q Let me ask you then, you find an association of those ideas, would you?

A Those particular ideas, yes, but there might be disassociation in other ideas.

Q Would you say that the association of those ideas and the one following the other in rational sequence and the accomplishment of the goal idea of the patient would indicate to you a course of reasoning?

A Yes, sir.

Q The mental process known as reasoning?

A Yes, sir.

Q Now, if a man would have this thought, "I need an automobile. I need an automobile and I am going to get it today," and what I will do will be to call up a taxi company and have them send me a driver and a car, and then I will order the driver to drive me to a deserted spot on a lonely road and there I will take my pisttol and shoot the driver and take the car," and after forming that plan he goes to a drug store and calls up a taxi company, and he tells the man at the telephone to send the driver with a car to a certain spot where he will be, and the car comes with the driver, and there he gets into this car, and he does give orders to this driver to go to a deserted spot on a lonely road, and he takes out his pistol when that spot is reached, and he does shoot the driver and he does take the car—mind you, the original purpose is to obtain the car—would you say there, taking all those different steps that he took, that there was any evidence of a disordered association of ideas?

A Did you say that his motive in getting the car is to shoot the man and get the car?

Q His manner of getting the car was that, that is his plan of getting the car, and then he started to carry out the plan, and he did carry out the plan as I have outlined it to you, in he manner in which it was carried out. Would you say that that indicates any disorder in the association of ideas?

A I would say it was abnormal conduct.

Q I did not ask you that—I beg to differ, conduct is dependent upon association of ideas.

Q I think you understood my question.

A I did and I am attepting to answer it.

Q Is it possible for a normal individual to plan to get a car by sending for it over the telephone?

A Yes, sir.

Q Is it possble for a normal indvidual to formulate the plan which I have outlined?

A Yes, sir.

Q Now, if a normal individual who does that, as I have told you, step by step, do you discover there evidences of the disorder of association of ideas?

A In a normal individual?

Q Yes.

A No, sir.

Q Would you say that those ideas following one another in rational sequence, and the accomplishment of the ultimate purpose, the obtaining of the car, would you say that that is a course of reasoning?

A Yes, sir.

Q A mental process known as reasoning?

A Yes, sir.

Q Now, would you say this—after shooting the driver of this car, the person who had done that, realizing that the body of the driver was in his way and that discovery was possible, plans to secrete the body, and he drives on with the dead body to a more deserted spot, and there he takes the body out and carries it down almost under a bridge to the bank of a brook where the bushes and the grass are pretty long and high and thick, and there he hides that body. Now, the object is to hide the body, and the thought in his mind is that detection is possible if he is seen with the body, and he goes along and does those things, goes to this deserted, secluded spot under

the bridge, picks the spot out, a place where the grass and weeds are high and long and thick, and there he hides the body. Would you say that the regular sequence of ideas following one another rationally, with the ultimate object, would you say that that indicates to you a course of reasoning?

A Yes, sir.

Q Now, if that same person were to plan to use that car for the purpose of kidnapping a little girl and he starts out from the spot where he left this body he had secreted and he goes to a place previously selected by him, with the car, and he picks up that little girl six years old and forces her into the car and starts away with her—now when he leaves the place where the body is secreted his purpose is to go and kidnap a little girl and he takes the car and he goes to the place he previously selected and he does pick up the little girl and seizes the little girl and puts her in the car and goes away with her, would you say there is any evidence of any disorder of ideas if his object when he left the place where he secreted the negro's body was to secure the girl in that taxi?

A I would still have to say while he associated his ideas—I would still say that the thought which guided him was abnormal.

Q Do you find in that particular sequence of ideas following one another rationally with this object in mind—do you find there any disorder of the association of ideas?

A Not that particular group of ideas.

Q Would you call that association of ideas and those ideas following each other in natural sequence a process of mental reasoning?

A Yes, abnormal reasoning, perhaps.

Q But it is reasoning?

A Yes.

Q How would the normal man, if he were at the point where that colored man's body was, how would he do it?

A Why, a normal man would not be guided by the same feeling.

Q You say a normal man is capable of being guided by a desire to kidnap a little girl?

A Yes.

Q Now, take the normal man and the desire he is going

to kidnap the little girl and he is up to this bridge and he has this car and he is going to get this little girl, how would a normal man do it?

A Well, I don't know what might enter that normal man's mind.

Q Do you agree with Southerd that some of these patients, such as the one you examined on the 12th of March, 1925, will improve sufficiently under institutional care as to be allowed to go home?

A Yes.

Q Do you agree, Docttor, that after going home they might continue to improve to such an extent that they can take up their regular occupation?

A It has happened.

Q Do you know that this man Harrison W. Noel on the 26th of August, 1925, obtained a license in New York for the purpose of driving an automobile?

A I have heard so?

Q Did you know on the 12th of March, 1925, that he had been the driver of a taxicab in New York prior to that time?

A I do not recall it at this moment.

Q Now, if he had driven a car in New York prior to the 12th of March, 1925, and prior to the time he became an inmate up in Overbrook, this going to New York on the 26th of August, 1925, would be performing his occupation?

A Will you please restate the question?

Q If this man had driven an automobile in New York prior to March 12, 1925, and then subsequent to March 12, leaving your institution, and on the 26th of August, 1925, in going to New York to obtain a license to drive an automobile again, would you say that was resuming his former occupation?

A I would say it was an attempt to resume it.

Q Well, you have heard before this time where an occupation has been resumed?

A Yes, but they may not always stay at their occupation and do it as well as before.

Q But you would not say when they assume their occupations they are not capable of resuming their reason?

William B. Pritchard, Cross.

A No. I may say those patients would have lots of reasoning. They have always a total absence of reasoning.

Q Would you judge good reasoning from bad reasoning from the object of the reasoning?

A No.

Q Would you say that simply because a man picks out a human being to commit murder that is bad reasoning?

A Yes.

Q But you would not say it was insane reasoning?

A No.

Q You would say if a man starts out to take an automobile, by reason of that result that it is larceny, is it bad reasoning?

A Yes.

Q You would say it was defective judgement if a burglar crashes in a window about four o'clock in the morning and smashes the glass and makes a noise?

A I would say it was bad reasoning.

Q But you would not call it insane reasoning?

A No.

Q Now, do you know how this crime was committed?

A Just as the newspapers have recorded it.

Q Well, do you find anything there which indicates lack of precaution, imprudence on the part of the perpetrator?

A Well, I should not want to dissect the act piece-meal and say.

Q Just dissect the act piece-meal for those two things.

A Well, I consider the whole act imprudent.

Q No. Take it step by step and show me where he lacked precaution and prudence?

A Well, I am not a criminologist and I do not attempt to analyze the same from a criminal standpoint.

Redirect Examination by Mr. Lane.

Q Do you think that the normal criminal about to kidnap a child for ransom, living in a community where it is easy to know everybody and everybodies' financial circumstances, would select the object to be—or the person to be kidnapped by observing the character of the front of the house in which

the person lived, where he had all the time in the world to ascertain the financial ability of the parents of the child, or any child in the town in which he lived and was intent to commit the kidnapping?

A I should say under the circumstances I would not know what a normal criminal would do in his judgment to select the child.

Q No. I am asking you, in your judgment, as to what a normal person would do under those circumstances?

A I have no judgment in the matter whatever, except perhaps I might disagree with the viewpoint taken that this individual selected the house from which he would kidnap the child purely from the appearance of the front of the house.

Q It does not seem to be reasonable?

A Not of itself.

Q Do you think it is a reasonable thing for a man who desires to get a car for the commission of a crime, where he can pick up any automobile on the street without anybody seeing him, to telephone to a taxicab company to send him a car?

A Would I think it good reasoning?

Q Yes.

A Not particularly good reasoning, i.e.

Q Can you judge of an act, or of the mentality, by any one specific act taken alone by itself?

A I might form an opinion, but I should not want to be biased by that one act alone.

Q Alienists usually, in making up their minds, take in the entire history of the case, do they not?

A They do.

Q Do you agree with Southerd that in the majority of cases, that most cases of dementia praecox leads to profound dementia?

A Yes.

Q Do you also agree with Southerd that patients apparently recover and yet then there is an outbreak of symptoms again?

A Yes.

Q And do you also agree with Southerd that sometimes the

disease, so far as the symptoms are concerned, the symptoms seem to fade away and then reappear in rather rapid succession?

A Yes. That is the history of the disease.

Q Now, do you also agree that in dementia paranoia, that is, with Southerd in dementia praecox, that recovery never takes place?

A Yes.

Q The forms of dementia praecox referred to by the authorities, there is no certain line between them, is there, they overlap?

A They may overlap; not always, but they may.

Q And catatonic is liable to overlap into the paranoia form and paranoia into the catatonic?

A There may be symptoms in each group, yes|

Q Do you also agree that it is typical of dementia praecox that patients appear to feel neither joy nor sorrow, fear nor anger, anticipation nor satisfaction; and the meaningless imbecile smile, which is too frequently seen, is unaccompanied by emotional feeling.

A That is true at times.

Q Does the fact that this crime was committed and I adopt now the language of the Prosecutor, in a logical way, that is, the steps of the crime, in a rational way, does that indicate that the conception of this crime and the motive which induced the commission of the crime, was or was not induced either by reason or failure of the patient to associate ideas?

A I should not base it on that alone.

Q It has no weight one way or the other?

A Not in itself.

Q Of course, the greater—the further you get from the normal in the steps of the commission of crime, the more it appears to be due to some abnormality, that is true, isn't it?

A I would judge so.

Q So the fact that the physical steps are taken in rational sequence, as the Prosecutor says, does not indicate at all whether the man was suffering from an inability to associate an idea which induced the formation of the goal point?

A I do not quite get the entire question.

Q I mean this. The Prosecutor has stated that this crime was committed, in his judgment, in a way which showed rational ability and rational reasoning to accomplish this goal idea anything whatever to do with what in the mind of that patient he had formulated the goal idea? Has the steps which were taken to accomplish this goal idea anything whatever to do with what in the mind of that patient he had formulated the goal idea?

A No, I don't know what his original idea was.

Q And that goal idea itself may have been the result of the failure or the inability of the patient to associate ideas?

A Yes.

Q If insane persons could not reason and could not act rationally, we would have few crimes today by insane persons, wouldn't we?

A I think so.

Q Is it unusual at all to find an insane person, other than in a maniac, who has lost all reasoning, able to reason in the sense of proceeding from one thing to the other with respect to physical acts, is it unusual to find that?

A No.

Q If that was a test of insanity how many people do you think would remain in the asylum?

A How many people we would have in the asylum?

Q Yes, if that were a test of insanity?

A I have no conception how large the asylum would have to be.

Q The Prosecutor has used the word improvement. What do you mean by improvement when you use that term?

A Oh, they may return to their environment and get along, perhaps, as well as they formally did, and they might not get along as well. They may, instead of gaining complete recovery—in other words, social recovery, adapt themselves better than they had, and perhaps only have a slight sign of disorder left, but they would be considered improved, perhaps not entirely recovered in the sense of the word recovered entirely, but there would be an amelioration of the symptoms for the time being.

Q It is an amelioration of the symptotms and there may be

that amelioration of the symptoms without any check in the disease itself?

A Well, the disease itself may show some improvement, but the entire psychic may not be improved.

Q Have you any opinion, Doctor, as to whether this disease is organic or functional?

A Decidedly.

Q What is your opinion?

A I believe it to be an organic disease.

Q You are under subpoena in this case?

A I am.

Recross Examination by Mr. D'Aloia.

Q You are not certain that it is organic, are you?

A Not any more than we are about any other condition in medicine.

Q Not any more certain it is organic than it is functional?

A That quesiton is a mooted question and I am entitled to my opinion from my experience as well as others who may hold to the opinion it is functional. There may be functional aspects of the disease. There are observers who do not hold to the same view, having their opinions, but my mind is open to possible changes, but my present opinion is that the disease is an organic process.

Q But you do not admit of the impossibily of its being functional?

A I am decidedly of the viewpoint it is more liable to be organic. The changes so far shows, objective changes, shows it to be of the organic nature.

Q You will agree with me if it is simply functional and the other observers are correct that it is curable?

A Yes, even if it is organic it is curable—

Q Now, will you please do us a favor and tell us what you understatnd by catatonia dementia praecox.

A Yes.

Q What is it?

A It is a symptom some gentleman many years ago chose to designate as catatonia, referring to the fact that there was certain rigidity occuring in the muscular group, which he

believed to have an organic basis, and that, these patients, because of this form of symptoms, where they rather fitted in this particular type, he called it catatonia. There were several symptoms, perhaps, which fall into the group, and the disease itself is called catatonia.

Q But the main symptom, the principle symptom of catatonia dementia praecox is the rigidity of the muscles which at times compels a person suffering from that ailment to remain in sort of a statutesque pose all day and perhaps for hours?

A There is no principle symptom.

Q That is one symptom?

A Yes.

Q And that is where the name was derived?

A Yes.

Q Have you seen him in the statuesque pose?

A I have, in the wards of the hospital.

Q But you have not seen him since?

A No. I find mannerisms.

Q Isn't it a fact that after they get out of that state they are liable to commit an assault by impulse?

A Yes.

Q Do you remember enough now of the occurrence on the 3rd of September, the 4th of September and 5th of September, in which Harrison W. Noel participated as the principal actor, which would indicate to you any evidence at all of impulsiveness, catatonic qualities, or something which is done on the spur of the moment?

A Well, it need not be something done on the spur of the moment. A man may develop an idea and in carrying out of that idea he may not have the discrimination powers which a person normally might have, and, therefore, in carrying out that idea he may not be influenced as he would be with his ordinary moral ethical senses.

Q Now, assuming, Doctor, Noel is suffering of delusional persecution and in his mind he had a pretty good judgment against all you gentlemen of Overbrook and it was engendered because of his stay there from March to June, that is, his delusion, do you know anything about his conduct on the 3rd and 4th of September, 1925, which would have anything to do with

that delusion if his conduct resulted in the killing of one Pierce and one Mary Daley, who were no where near Overbrook?

A I should not qualify it on that basis alone.

Q Now, you, as an alienist, or member of the staff at Overbrook, assuming that he had this delusion, delusion of persecution, where he thought that you gentlemen in Overbrook were trying to get him back and that you had hurt him because you had made a lumbar puncture up there while he was there, and assuming that was true and that upon that particular subject, Overbrook, the staff, the attendants, that he was absolutely insane, can you find any connection between that insanity, that delusion, with his conduct on the 3rd or 4th of September, 1925, when he killed a man by the name of Raymond Pierce?

A I would not find any delusions he might have in that particular.

Q Do you find anything impulsive in the conduct of an individual who begins on the morning of the 3rd of September and carries out a certain plan all day long, which results in the killing of a human being, and which is the first step in his general plan, and he goes to bed at night and sleeps well, so far as we understand, gets up on the morning of the 4th of September and goes through the second day of his general plan by kidnapping a little girl and killing her, do you see anything there which is impulsive?

A I see a series of impulses carried out.

Q A series?

A Yes, sir.

Q Rather invisible.

A Well, as any other impulses are invisible.

Q You know that if I turned around here and hit Mr. Mason on the head while I am talking to you, that that is a visible impulsive act, don't you?

A Yes, but I don't know your reason for doing it.

Redirect Examination by Mr. Lane.

Q Whether it is impulsive or not depends entirely on

whether the Prosecutotr got in that position in order to hit Mr. Mason with the book.

A Yes, and I should wonder whether it is deliberate or not.

Q The mere performance of the act is no indication of the impulse.

A No, sir.

Recross Examination by Mr. D'Aloia.

Q But if you had nothing else except that you saw me do it, would you say that it is impulsive?

A I would observe it as an impulsive act.

Q You have answered Mr. Lane that the obtaining of an automobile by calling up for it and having it sent to him and killing the driver, to you appeared abnormal.

A I did not.

Q Well, it would not be the reasonable method of getting an automobile, used by a normal person, when he could get an automobile, as suggested, by stealing one.

A Yes, sir.

Q Supposing it was the intention of the man getting the automobile to divert suspicion, as happened in this case, because immediately after the killing of the little girl as believed by a great many policemen and chief of police and also alienists, like your superintendent, Dr. Payne, that a colored man, the man who had driven that car to the Montclair Athletic Club, and whose body was found, was the man who had kidnapped the little girl, what would you say as to that method of getting that car?

A I wouldn't say anything, wouldn't have anything to say with regard to the method alone, I would simply inform you that is is nothing unusual for dementia praecox patients, so classified, to be very keen and far shrewder than most people would expect them to be.

Q You wouldn't say that it is because they might be suspicious and it was to divert suspicion and place suspicion on somebody else?

A It might be; yes, sir.

Charles Englander, Redirect.

Redirect Examination by Mr. Lane.

Q Now, doctor, do you agree with Stoddart that catatonia is a stage in which acts are performed not as a final sequel to a play of emotions, but is the result of some unrecognized, purely organic stimuli, to which the corresponding psychic state is a normal one. In other words, catatonia is a state in which there is a blind, unconditional obedience to a stimuli from within.

A Yes, sir.

Q The word "catatonia" or the word "katatonia" to which the Prosecuttor has been referring, is that disease or symptom known as catalepsy, is it not?

A In which catalepsy is found; yes, sir.

Q And in the catatonic dementia praecox there might be a condition of catalepsy found or there might not be a condition of catalepsy found.

A Exactly. May I qualify the statement made by Stoddart by saying that in a later edition than you perhaps have—I am not quite sure which edition you have—Professor Stoddart has stated that while for purposes of describing the disease he spells the word "ka" and for the purpose of describing the symptoms of catatonic dementia praecox, he spells it "cat," in most parts of his book he uses the words rather synonimously and I am inclined to believe that most authors do use the word synonimously.

Q And he also divides catatonic dementia praecox into catatonic major and catatonic minor.

A Yes, sir.

Q And in catatonic major he places those cases in which there is the statuesque condition referred to by the Prosecutor.

A Yes, sir.

Q And in catatonic minor he places those cases in which there is negativism and this physical rigidity.

A I thnk that is correct, as I recall it.

Q Now, might it not be possible that this man was started out on this career of crime by purchasing this revolver which he says he purchased not for the purpose of committing the

crime at all, but because he thought the person in the hospital were persecuting him, and then after securing the revolver, the possession of the deadly weapon, led to one step after another, each step in impulse.

A It may have been.

Q It is possible, is it not?

A Yes, sir.

Q Can you tell me any way by which you can ascertain whether that is the way in which this mind acted unless you look into this man's mind and depend upon what this man himself says a sto what the motives were which actuated him?

A None whatever.

Recross Examination by Mr. D'Aloia.

Q And if he tells you that he bought that revolver for the purpose of shooting down any man who came from Overbrook to take him back, you would not have any reason to disbelieve it, would you?

A No, he was suffering with the illusion that he was sane and did not belong in the hospital.

Q Now, if he tells you that he bought that revolver because he intended to shoot any of you men from Overbrook who went after him to take him back, you would have no reason to disbelieve him, would you?

A No, sir.

Q And you would not say if that was the reason he got the pistol that there was any connection between the pistol and the killing of one Raymond Pierce, would you?

A No, not if that is all there was.

HOWARD C. BARBER sworn in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Mr. Barber, you are a member of the Bar of the State of New York?

A I am.

Q And have been for how many years?

A Approximately eighteen.

Q Did you, after the commission of this crime, see Harrison W. Noel in the county jail?

A I did.

Q When for the first time, and how long were you with him?

A I think it was on Thursday, the 10th of September; I was there for about a half an hour.

Q And who was present with you at the time you were there?

A Detective Dimond.

Q And was Detective Dimond there during the entire period of time?

A Absolutely.

Q Was there any private conversation between you and Noel at that time?

A Absolutely none permitted.

Q When was the next time you saw Mr. Noel at the County Jail?

A I think it was on a Saturday, two days later.

Q And how long a period of time were you there then?

A I was with the boy about one hour.

Q Was that conversation which you had with him private or otherwise?

A It was as private as I could make it under the circumstances.

Q What were the circumstances?

A I went there after being instructed—

Q Never mind all that. I just want the circumstatnces at the jail.

A The place where I was allowed to see the boy was in a narrow corridor immediately in front of two cells, in one of which he had been; a private, short corridor. Looking from my position from the cell there was an open space through which you could see the front door, across which were some windows painted, the paint on which had been partly removed, scratched off. When I entered this little corridor with the guard, after they had made certain very definite preparations, the bench was on that side of this little corridor; they put in a small table and they placed a stool on the other side, practi-

cally next door to the cell adjoining the cell in which this boy had been. Upon entering or just prior to entering the jail, I had learned that Detective Dimond and a Doctor had just preceeded me, and so when the guard, after making the preparations in this room, suggested that Mr. Noel could sit in that particular seat (indicating) near the other cell, I was curious as to his interest, and I looked in the cell and there was a man, a well dressed man, with a blue suit, lying on his stomach with his face away from me, but with his head right near the door. I took the seat at the door, after the guard had volunteered the suggestion that Noel sit there, and Noel sat on the other side of the little corridor.

Q And did all of your conversation that you had with him at that time take place under those circumstances?

A Yes, sir.

Q What was the next time you saw Harrison W. Noel?

A The date I don't remember, but it was when I went up there with Dr. MacDonald.

Q Who else was there?

A Mr., I think it is, Bindseil, a stenographer, and Mr. Smith from your office.

Q Did you have any private conversation with Mr. Noel at that time outside of the presence of Mr. Bindseil.

A I think when we got through, and those are absolutely the only words, on my visit with Detective Dimond—

Q Never mind.

A He said something about some money and as a result of that I left him some money downstairs. That was the only thing, as we separated, with the Doctor and everybody present.

Q When was the next time you saw Mr. Noel?

A On the day when first Dr. Pritchard and then Dr. Thompson and Dr. Davies, and finally Dr. Horsford examined the boy.

Q Did you have any private conversation with Harrison W. Noel on that day outside of the presence of the doctors and Mr. Smith?

A Absolutely no.

Q Have you now told us every occasion on which you have seen Harrison W. Noel since the commission of this crime?

A Except as I have observed him in court.

Q Have you had any conversation with him in court?

A Absolutely not a word.

Q Has anybody else, so far as the defense is concerned, seen Harrison W. Noel?

A No one that I know.

Q Did you at any time that you were with Harrison W. Noel suggest or indicate any manner or any act as to how he should conduct himself?

A A suggestion of that manner, Mr. Lane, never entered my mind or heart, and the first time I heard of it was when it was injected here the other day.

Q Did you do it?

A No, a thousand times no.

Q Did you hear anybody else do it? Did you do it at the time you and Mr. Smith were there?

A Not a hint of it.

Q Did you at one time have a conversation with Harrison W. Noel with respect to certain letters which it was said he wrote to a certain Mr. Gray?

A I did

Q When was that?

A That I cannot recall, but I made no note of the date. I think my impression is that it was near the end of Dr. Horsford's examination when I was asked if there was anything that I could suggest that would help get any information, and I think that was the only time any of the doctors asked me for anything, and that is the only time that I entered ito the examination.

Q Did he give you any idea at that time what his thought was at the time he wrote the letters?

A Yes.

Q What did he say?

Mr. D'Aloia. Where was this?

Witness. At the jail. On approaching it from two or three different angles, before I got any answer, he stated, in substance, that he had written letters to Mr. Gray and he had suggested that Mr. Gray die and leave him his money. Do you wish me to tell what else he said?

Q Yes. I want to know what his idea was as to how Gray should die.

A As I said, in response to my questions, not that Mr. Gray commit suicide, but that it was the time when Mr. Gray should just be thinking about it, he could die, that that would be the time he could die, all he needed to do was to think it was his time to die and he could lie down and that would happen.

Cross Examination by Mr. D'Aloia.

Q How long were you there on the second visit to the jail?

A The second visit?

Q Yes. When you went up there as counsel, associate counsel.

A I first went to the jail as requested. Around ten o'clock—

Q How long were you at the jail talking to Mr. Noel?

A Oh, you mean with Mr. Noel at the jail?

Q Yes.

A I was at the jail with Mr. Noel just about from 11:30 to 12:38.

Q That is an hour and eight minutes?

A Yes.

Q That was how long after you had been to jail with Mr. Dimond?

A Two days.

Q On the first day when you went there with Mr. Dimond you had no trouble in understanding Noel, did you?

A You mean—

Q You had no trouble, did you, during that visit, to understand the conversation?

A Oh, yes.

Q And you understood him when he tried to borrow two dollars from you when you only had a dollar and ten cents.?

A I understood, yes, sir.

Q How long were you there on that occasion?

A About thirty minutes.

Q And during the time you were there you asked him things and he understood your questions, didn't he?

A I don't know.

Q How about his answers, were they responsive?

A So far as he made.

Q You are a member of the Bar?

A Yes, sir.

Q You have been for eighteen years?

A Yes, sir.

Q I asked you a simple question, and that is, these questions put by you to Noel on the occasion when you were there with Detective Dimond, were they responsive?

A Generally such answers as he made to my questions were responsive.

Q Now, when you went up there on the second examination as associate counsel with Mr. Carpenter—

Mr. Lane. I have no objection to that, but if the Prosecutor is going into this to see what the responsiveness was, I can only say that I will have to go into that, and I have not touched that subject at all, to show the sanity or insanity, but just to show that no instructions were given to him first, and secondly, to show the conversation regarding these letters. If he wants to go into this to see if the answers were those of a sane or an insane man, it will open the door.

The Court. I will allow it.

Q Now, Mr. Barber, when you got there on the second occasion and you noticed, as you say, all these set preparations for you and your arrival, a table in the corridor and a stool over here near the two cells, and you sat down with Noel, he gave you some information, didn't he?

A No.

Q Did he tell you when the table was placed there?

A No.

Q Did he tell you when the stool was placed there?

A No.

Q Did he tell you that he suspected somebody had been placed in the cell next to him?

A He did not.

Q You noticed that probably when you were going to talk to him that you might be overheard, didn't you?

A In fact, he had no suspicion of the other man, I believe, from what he told me.

Q Now, what did he say, did he tell you?

A He told me, somewhere in the hour that I was talking with him, I asked whether he knew this fellow in the next all the time?" He said, "He was put in there just before all the time?" He said , "No, he was put there just before you came." I said something, I don't know what, indicating some suspicion of him. "No," he said, "oh, he is just a drug case." Something of that sort, indicating clearly to me that he had no suspicion.

Q But it is a fact that after he told you this, "He was put in there shortly before your arrival, Mr. Barber," you then lowered your tone of voice, didn't you?

A No, I lowered my tone of voice from the beginning, I didn't lower it, I kept it low.

Q All during that hour and eight minutes.

A Yes, sir.

Q And when you got through you are reported as having said to somebody there, "All that the fellow in the next cell has heard, he can put in his eye."

A I did say so.

Q Therefore, during all of the hour and eight minutes that you were there you were very careful not to have anybody overhear what you had to say to Noel.

A I was.

Q You did not have any difficulty in having him understand your questions, did you?

A Yes, sir.

Q He knew who you were.

A Many of my questions he never answered.

Q Did you tell me before you went up on that occasion, very confidently, that this boy would talk to you very freely, in this building?

A If you want a yes or no, I will say no.

Q What did you say about this boy talking to you very freely?

A I said that at Beacon, I may have mentioned Beacon, that was in line with it, he had moments of muteness, and the first time I saw him there, for what reason I don't know, he

had talked to me, and I believe, based on what I have seen of him, that so far as he was capable of trusting anybody, he was likely to trust me and talk to me. I hoped so.

Q Then you said that he would talk to you and trust you?

A I said I hoped so and expected so. I believed that he might.

Q Then you went up there for an hour and eight minutes and talked in a low tone.

A I talked in a low tone, yes, sir.

Q You did not make any notes on that occasion, did you?

A Not at that time.

Q Can you recall any question where you asked him a question and where the answer he made to you, you being the man whom he would trust and whom he would talk to, was not responsive?

A I don't think I can.

Q Didn't you say that you had been a good friend of the family and a good friend of this boy and been associated with him for years and went to his house on many occasions?

A I told you I had known his father since we were in law school and the boy since he was born.

Q Did you ever visit the Montclair home?

A No, sir.

Q Did you know that he went camping with a Mr. Gray?

A I did not know when he was going.

Q Did you ever go on a hike with him up around Montclair?

A No.

Q Did you ever visit the Noel residence in Montclair?

A Yes, before and since.

Q On Sundays?

A And many times my wife and I. We are friends of the family.

Q Did you know where Noel stayed in New York City when he was employed as a taxi driver?

A I do not.

Q Do you know the Mills Hotel on Bleecker Street?

A I know three Mills hotels.

Q Do you know one on Bleecker Street?

A I know where it is.

Howard C. Barber, Cross.

Q Have you been there?
A You mean to say?
Q Have you been there while Noel was there?
A No; I never knew he was there.
Q Where did you ever see Noel in New York?
A I saw him first after he was born in 54th Street.
Q I mean during the time he was employed there, you know he was employed there as a taxi cab driver and in other places.
A I did not know it at the time, I was not associating with him at all, and I did not see him during that period.
Q Now, will you try to recall again, during this hour and eight minute conversation in a low tone, so no one could overhear you, was there any question put by you to him where the answer to the question was not responsive?
A I made no minutes of it and I can't tell you now about every question where the answer failed to make a response.

Redirect Examination by Hr. Lane.

Q Were these questions which you asked all answered?
A Many were not.
Q Did you have any difficulty in getting different information from him?
A I did, in many cases.
Q How did you attempt to get the information?
A I went there in the only relation in which I was willing to go, that was an attempt to pull him together, if such a thing were possible, by this friendly, intimate, emotional appeal. That was the only way in which I went, and I talked to him at length, in an undertone to him, and when he did not answer the questions I talked to him at length trying to sell myself to him. Sometimes he would answer and sometimes he would not, and much time was taken up by me in talking in that direction with the full realization and hope that I might pull him together|
Q Did you succeed?
A Only in spots.
Q Was there exhibited when you were talking to him alone at that time, the same manner that there was at the time the

doctors examined him and you were present?

A Oh, yes. In fact, things that he would not talk to me about he talked to the doctors, and things that he had told in the statement, that has been made public and which are common knowledge he would not discuss, and things that he might discuss at one time he would not discuss if approached from a different angle.

Q Your experience when you were alone with him, and your experience that you gained when you were there at the time the doctors examined him, will you tell me if it is possible to get from Noel what influenced him at the time of the commission of this crime, and the circumstances surrounding it, so that it could be depended on in any way?

A It is not.

Q Did you so report to me?

A I did.

Q Is it unusual, do you think, for counsel or an associate counsel for a man charged with the crime of murder, to have a conversation with his client outside of the presence of the Prosecutor?

Mr. D'Aloia. What is the purport of that question?

The Court. I don't think this man's opinion is going to help me solve the question before me.

Q Were you ever notified, or did you know whether anybody else was ever notified, so far as the defense was concerned, when these alieniest for the State were going to examine Mr. Noel.

A I never heard of it and I was a little bit surprised, without knowing the law, the extent to which they had the freedom of the boy's conduct.

Recross Examination by Mr. D'Aloia.

Q It is a fact that you had, for an hour and eight minutes, a conversation with the boy, a private conversation?

A As private as I could make it.

Q And is it a fact that subsequent to that day, whenever an alienist went up to examine Noel you were there?

A Unless it was someone I didn't know about.

Q Do you know any alienist that went to the jail to examine him without your being present?

A No, except the alienist for the defense.

Howard C. Barber, Recross.

Redirect Examination by Mr. Lane.

Q Why did you go?
A Because I was asked.
Q What was the reason that you went?
A My motive in going was the hope that within this boy's limitations, if it were possible to get the whole truth from hm as to his mental state, possibly my presence may assist, that was the sole reason.

Recross Examination by Mr. D'Aloia.

Q Mr. Smith's presence or Mr. Lane's presence was not sufficient, was it? You thought you would be needed for it?
A I never knew whether his would be or not. He never knew the boy.

Mr. Lane. I don't know whether the Prosecutor requires it, but if he does, or whether he will take a statement from Mr. Smith and myself that we have not instructed this man in any shape or form that he should feign insanity?

The Court. I may say this, Mr. Lane, I have never considered that situation and I don't think the Prosecutor meant to convey that thought.

Mr. D'Aloia. I don't contend that Mr. Lane or Mr. Smith did that.

Mr. Lane. Or that we had any knowledge of it.

Mr. D'Aloia. I will go that far for you.

Mr. Lane. I would like to call Dr. Washington.

Mr. D'Aloia. Is this for further cross examination or for your own witness?

Mr. Lane. I don't care, I will call him as my own witness.

DR. WALTER S. WASHINGTON called in behalf of the defendant.

Direct Examination by Mr. Lane.

Q Doctor, I noticed in your testimony you stated that at the time of your examination, at least one your examinations

there was a stenographer present?

A Yes, sir.

Q Have you a copy of the record of what took place?

A Yes, sir.

Q Will you produce it?

A I haven't it with me, but it is here, I think, Mr. Lane.

Q Does that record, whatever the record is, indicate everything that took place between you and Mr. Noel while you were there?

A I think it does.

CROSS EXAMINATION WAIVED

Mr. Lane. With the exception of the matter involving the letters we are through. With respect to the letters we find that the statement of the editor of the Newark Star is that the letters were given to Mr. Gray or to the Chief of Police of Montclair. We subpoenaed or attempted to subpoena Mr. Gray yesterday afternoon, and we also sent up—or the person who was at the home, or the office, rather, stated that they thought the letters were given to the Chief of Police. It was impossible yesterday afternoon to get in touch with the Chief of Police. We got in touch with the police headquarters at Montclair and were informed by the lieutenant in charge that he thought the Chief did not have those letters, and they were given back to Mr. Gray personally, and that he thought Mr. Gray had the letters. Mr. Gray is out of the State. He is now in Massachusetts, and it is impossible to get him at this time, and it was also impossible, up to this time to get any accurate information as to whether the Chief has the letters or has not. With that exception we are through. I might say to your Honor, that the substance of these letters are not important, except as a graphic thing, because you will find, when you come to examine the records of the hospital, that these letters are mentioned, the contents of the letters are stated. They are in the case now excepting the physical document.

Mr. D'Aloia. Here is the transcript of the examination

by Dr. Washington on the 10th of September. If the court please, I think Mr. Lane will waive formal proof of this confession.

Mr. Lane. I want to say, Mr. Prosecutor, that I cannot waive proof of that confession, for I should like to know the circumstances under which it was made. I cannot, of course, stipulate to permit that to go in, something which appears to be running account of how the offense was committed.

THOMAS DIMOND sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q On the morning of September 6th, 1925, were you at the Montclair Police Headquarters?

A In the morning, yes.

Q And at that time were you connected with the Prosecutor's office.

A I was.

Q On that morning did you see Harrison W. Noel?

A I did.

Q On that day did you sit down and write a statement, write a statement which he made?

A In the afternoon, late afternoon I did.

Q What time was it, about?

A I think I have the time there, I am not sure.

Q Did you write it?

A Yes.

Q What was it you wrote?

A I wrote what I would call his confession, or what he told me as to his movements.

Q When did he tell it to you?

A That day that I wrote it.

Q At the time you were writing it was he doing the talking?

A He was.

Q Did you write it as he stated it?

A I did.

Thomas Dimond, Direct.

Q I show you a document and I ask you if that is in your handwriting?

A That is it, I know it.

Q And after you had written this, did you see Harrison W. Noel sign it?

A I did.

Q Was it signed in your presence?

A It was.

Q Is that his signature?

A It is.

Q How long did it take you to write it?

A I think something more than half an hour, maybe not that much, but around that time.

Q During the time was there anything said or done by anyone there which might be interpreted as a threat or was there any blows struck at Noel?

A No, sir.

Q Was there any promise or any inducement made while he was dictating this to you?

A No, sir, only at the end of it, when he was all through and he signed it and he said that he wanted to go to sleep.

Q I mean, was there anything said by you gentlemen around there to him that it is a statement made by him?

A No.

Q Did he say, and did you write "On August 24th, 1925, I was living at the Mills Hotel in Bleecker Street—

Mr. Lane. Is it necessary to read it?

Mr. D'Aloia. Well, look at it. I offer it in evidence.

Cross Examination by Mr. Lane.

Q When did you first see Harrison W. Noel?

A The first time I saw him was the morning of the day I took the sttatement, but I did not have any conversation with him.

Q Where?

A In the Montclair Police Headquarters.

Q What time?

A I think I arrived up there about eleven o'clock and I saw him shortly after that.

Q Who was present when you first saw him?

A Why, there was Chief Reilly, Officer Gallagher, Detective Gallagher and Captain Mason was around.

Q Anybody else?

A Not when I first saw him.

Q What did you do when you first saw him?

A Why, I didn't do anything.

Q What did anybody else do in your presence, what were you doing up there?

A I had come up there to assist Captain Mason. I had been on my vacation and when I arrived I had quite some difficulty in getting to Captain Mason to talk to him, because there was crowds around there, and I happened to get a fleeting glance of him, in and out of different rooms, and I was waiting my time when I could see him, and talk to him, and it was during my waiting around police headquarters I happened to see Noel.

Q Then, what happened?

A Nothing.

Q Did you have any talk with him, or what?

A No, I did not. I waited until I had a chance to talk to Captain Mason which was some time after one o'clock.

Q Do you know what Captain Mason was doing or do you know where Noel was then?

A No.

Q Do you know when he was talking to the police at that time or what part of the building he was in?

A No, only when I first saw him.

Q And what was he doing when you first saw him?

A He was sitting in Chief Reilly's office.

Q And these other men were around him?

A Yes, they were around him.

Q Were they talking?

A Not at the time I saw him first.

Q What were they doing when you saw him first?

A Why, Noel was sitting in a chair, and Captain Mason was sitting in a chair not far away, and Chief Reilly was coming out of the doorway. That is how I got the glance of him. I saw him through the open door.

Q Can you tell me what Noel's attitude was?

A Why, he was sitting at a table, without a coat on, and

he just seemed to be sitting at a table somewhat in the manner I am sitting now.

Q Just slumped over?

A Well, I don't know as I would call it that.

Q Did he pay much attention to what was going on?

A I didn't really have a chance to observe him much at that time.

Q When was the next time you saw him?

A Late in the afternoon when that statement was taken.

Q What time?

A If you will let me look at the statement I will refresh my recollection.

Q I want your recollection at the present time. I will afterwards let you refresh your recollection.

A No.

The Court. You asked him as to the time and he wants to refer to the time that is on there.

A I think I may have put it down on the first page.

Q Can you, without referring to any memorandum, tell me what the time was?

A I can't tell you that. It was getting dusk.

Q And then how did you come to go there, how did you come to see him there about this?

A I had a conversation with Captatin Mason, and in the meantime—

Q What did he say to you?

A I offered my assistance and asked him if he could use me and he said, "Well, you might stay around," he said, "Noel has told us that he knows where the body of the little girl is and has told us other things about the case, and Chief Reilly and some of the other men have gone out in a machine with him, he is going to point the spot out, and when he comes back I would like to take a written statement." And he said, "I will want you to help me," and I said, "All right," and I waited until Noel came back and then I took the statement from him.

Q Who was present when you first saw him after he came back?

A Well, Chief Reilly, Officer Gallagher, Captain Mason and two officers from Jersey City whose names I have forgotten,

but they will appear on that statement. I wrote their names down.

Q Tell us just how the statement came to be made up. Tell us what happened?

A Why, I sat in the chair at Chief Reilly's desk and I asked Noel to sit down alongside of me which he did, and I told him that I wanted him to give me a statement so I could write it down. He said, "All right." So, I asked Captain Mason how he wanted the statement started and he told me I had better begin at a point some days previous when Noel had purchased the revolver, so that was the starting of the statement.

Q Well, you still haven't told me. Give me the technique of the way that statement was taken, who said anything?

A I asked some questions, Captain Mason asked some questions and other times he would volunteer information without a question being asked.

Q And that continued during the entire course of the preparation of this statement, did it?

A That's right.

Q And you haven't got the questions in here that you asked, or that anybody else asked, have you?

A No, sir.

Q And when you would get a yes or a no to a question that was answered, you turned it into the first person, didn't you.

A We did, but not at all times.

Q No, not at all times, is there any way in the world in which I can tell or anybody else can tell how much of it was done in that way and how much of it was gotten in any other way?

A There is only one way that you can tell that he gave a yes or no answer and I would formulate it into a sentence sometimes, which was very seldom and asked his approval if that was the way he wanted it written down and he answered yes or no.

Q My question was, was there any way in which I can tell how much of that is an answer from Noel to your questions in the affirmative and turned into the first person, and how much is volunteered by him?

A By asking me the questions and letting me look at the statement at the time you asked me.

Q I don't get that.

A By letting me have the statement and you ask questions and I will eliminate the one which had a yes or no answer.

Q You think you have carried this in your mind with such vividness, this statement containing nine pages, that you can now go over this statement and pick out those answers which were, or that portion of it, rather, which was volunteered by him as distinguished from that portion of it which you turned into the narrative form?

A There was only a few of them, I think I could.

Q You think you could at this time?

A Yes, sir.

Q And you can do that notwithstanding the fact that during the time of the preparation of this statement you are asking questions, Captain Mason was asking questions, and then you said somebody else was?

A That is what I mean, yes, sir.

Q Was there a stenographer available in the Town of Montclair at the time that you know of?

A I don't know.

Q Did anybody suggest at that time that a stenographer be called in and take exactly what was said by anybody?

A I didn't hear anybody suggest that?

Q Did he tell you at that time why it was that he had purchased the revolver?

A He did.

Q What did he say?

A I asked him that question.

Q What did he say?

A He said—if you will let me read the statement I can tell you the exact words.

Q I am asking you from your recollection now, because you say you have such an accurate recollection that you can pick these things out.

Mr. D'Aloia. If the court please, he said he can pick it out of the statement.

Mr. Lane. I am asking him for his recollection as to

whether or not this man totld him why he purchased the revolver.

The Court. I understand that the question was that so far as yes or no answers are concerned if you will let him have the statement he can pick them out. I did not understand the witness to say that he can clearly remember the statement.

Q Can you recollect now, without looking at the statement the reason he gave you for purchasing this revolver?

A Yes.

Q What was it?

A He said if anybody came from Overbrook for him he was going to shoot them.

Q Now, which portion of the statement did you put that in?

A Right there on the front page, the second paragraph.

Q Did he tell you that voluntarily or is that in answer to a question?

A As I said before, I asked him what he purchased the gun for and that was his answer.

Q You haven't said that before?

A I did.

Q So that was one of the questions which you put in the narrative form?

A Yes, sir.

Q Did you ask that question or did Captain Mason?

A I asked that question.

Q You remember that until this day?

A Yes, sir.

Q Did you ask him how he got the revolver?

A I did.

Q Can you recollect what he said?

A Yes, sir.

Q What did he say?

A He said he purchased it over in Bannerman's in New York.

Q Was there any hesitation or anything of that kind in his answers to any of these questions?

A At that time?

Q At that time, during the course of making up this statement?

A There were at times, yes, but not at that time.

Q Well, when you say there were times, what do you mean, what kind of hestitations were you referring to?

A If you will let me see the statement I can refresh my memory.

Q You cannot tell us without looking at the statement?

A I might, if I want to delay the court here to think about it. I have not found it yet, but it was when I came to the spot about the killing of the little girl.

Mr. D'Aloia. What is that?

Witness. It is when I came to the spot about killing the little girl. When I speak of the spot I speak of the spot in the statement.

Mr. D'Aloia. You mean at the time you were taking the statement?

Witness. That is what I meant. Here is where he hesitated. Noel was speaking himself and I was taking it down as he was talking. He said, "When I reached this spot I don't remember what the little girl said. She was talking." Then he hesitated for a long time and, while I say a long time, it seems a long time, possibly a minute or two minutes, and I said, "Yes, go ahead and tell me the rest of it," and he hesitated. I said, "You have told everything so far, why don't you go through and tell me the rest of it," and he said, "Well, I took the revolver from my right hip pocket as I had previously told the little girl to step out of the car and I led her a few feet off the road and I shot her twice in the side of the head and then dragged her body to the spot where she was found in the Sumac bushes." And I didn't know what sumac was and I had him explain it there.

Q Is the explanation there what sumac is?

A No. One of the other officers told me. I said, "Sumac?" and they said, "That is kind of a weed."

Q Is that the only place during the entire confession that he hesitated at all?

A No, sir, there was another. It was when I was trying to get an exact spot from him as to where he shot at Sandin, the chauffeur, who was pursuing him at the time he had the

little girl in the car with him and he was a little mixed up as to whether it was West Paterson or Little Falls. I can't find it yet, but I will in a minute. So then I asked him to explain it to me the way he turned and just what road he traversed with the car and he told me this way, and then drove over Highland avenue to Normal, then to the reservoir, and I turned to my right, and then into the Great Notch road, and I passed the depot turning to the right and then to my left and I might have went two, three or four blocks when some men in a closed car pulled up alongside of me. That was a point— I was unfamiliar with the territory, and so forth, myself, and he hesitated for quite a while before he came out and explained it to me in this manner I have read it to you.

Q Is that all the hesitation that you remember?

A Those are the ones that I would say I noticed most of.

Q Well, were there other places?

A Well, every statement from anyone I ever took——

Q I didn't ask you that.

A Well, it is hard to explain, but there were places. I don't want to volunteer information.

Q You do not mean to give us the impression that this young man was alert, did you?

A Yes, fairly so.

Q Not at all like he is today?

A No, sir.

Q Not at all?

A No, sir.

Q After having suffered twelve hours attempt to break him he was still alert?

Mr. D'Aloia. I object to that. That is not within this witness's knowledge.

A I don't know what the attempt was.

Q Assuming it to be so. I will withdraw the question.

The Court. Ask the question.

Q You say this man was alert?

A I didn't say that he was alert; no, sir?

The Court. Fairly alert.

Q Q Well, what do you mean by fairly alert?

A Well, to tell you the truth there didn't seem to be an awful lot of difference from him and other people from whom

I have taken statements. Everybody—If you want me to explain.

Q Do you know what it was that induced the promise that you say you made at the end of this statement? You said to the Prosecutor there was not any promise or anything held out until the end?

A Well, when we were all through taking the statement the officers wanted to get something to eat and I said, "All right, I will go along with you," and then Noel spoke up and said, "I want to go to sleep."

Q Yes.

A Well, he finally, or one of the others, I don't know who it was—somebody in the room, whose names are here, said "We will take him downstairs and put him in the cell and he can go to sleep."

Q Well, he would rather sleep than eat?

A Well, he had eaten previous to that.

Q Well, he did not appear to be tired; he was fairly alert, but he wanted to go to sleep?

A No, I didn't say he was alert.

Q You did not say that he was alert?

A I say he was fairly alert. He knew what he was doing. He may have been tired. I had no way of judging that. I didn't know how long he had been awake.

Q You could not see by anything that you could observe there that this man was all tired, is that right?

A He may have been tired.

Q And you said to the Prosecutor that there were two—as to any terms being held out to him, you said no, except at the end of the statement. What promise was that?

A I explained it to you.

Q What was he to do? Promise implies something to do as a consideration for it. What was he to do in order to be permitted to sleep?

A Nothing.

Q Well, then, it was not a promise at all?

A Well, I kind of thought in my mind it was a promise.

Q What kind of promise?

A Well, it was an acquiescence to his wishes.

Q Do you call that a promise?

A No.

Q Well, what induced you to say to the Prosecutor was anything held out to this man except at the end?

A Well, in answering his questions possibly I said as a promise.

Q But he didn't do anything for which that promise was made?

A No.

Q Nothing was suggested with respect to sleep except at the very end, is that right?

A That is true.

Q Did this man, during the preparation of this statement, when he came to describing the crime and killing of these two people display any emotion at all?

A I cannot answer that very well. I don't know just what you mean.

Q You cannot answer a question as to whether a person in reciting words displayed any emotion? You are not sufficiently competent to judge?

A Well, when I come to the part where I asked him about the little girl and told him to describe the movements, and he had hesitation, he seemed reluctatnt to tell—it seemed a reluctance to me.

The Court. Well, did he appear excited or was he remorseful, or was there any change in his attitude from when you first met him?

Witness. Well, I don't know. I may imagine it, but it appeared to me his eyes were kind of watery and his head was bowed for two or three minutes a little bit.

Q Do you think he was crying?

A Well, I think there were tears in his eyes. As to whether he was crying or not I could not tell you. He did not seem to be crying or sobbing.

Q Is that the only display of emotion that you saw or observed?

A Well, I do not know just what the word emotion is. There is another incident that I remember. It was about the shooting of the colored man, and I was trying to get from him just the manner he shot the colored man, and if you will let me have the statement I think it will refresh my recollection

as to the instance. That is when he got to this point here, and on the second page of the statement, a little over half way down the page, he said, "I got in and drove up Valley Road to Bellevue avenue, then to Upper Mountain avenue to Bradford avenue and going down Bradford avenue on the hill, as I was going up the hill, I pulled the pistol out—I pulled out the pistol. I was sitting on the left hand side of the back seat, and I felt dizzy." When he got to that point there when he said he felt dizzy he just kind of shook his head down like this and then he went on, "But as we came down the hill I took the revolver and shot him in the back of the head, and he fell over towards his right side and the car was going at a moderate rate of speed and I climbed over the front seat and got behind the wheel and stopped the car. I pushed the colored man over out of my way." When he said that he made a motion, a shifting motion, and it seemed to me as if he kind of shuddered when he remembered it. He went like this (illustrating) it is kind of hard to describe it.

Q It was not by chance a mere mechanical representation of what had actually occurred?

A It may have been that.

Q Isn't it more likely to be that, in your judgment, you being there, than any display of emotion?

A Well, that is what I told you before.

Q He had somewhat of a tendency when he was describing this in respect to his dizziness in repeating it in shaking his head, illustrating it. I don't know if it was illustrating it or if it was voluntary on his part.

Q It appeared to be involuntary on his part, mechanical?

A I cannot say, I am not an expert.

Q Are the words, "the car was being driven at a moderate rate of speed," is that his question?

A No, sir.

Q That is not his question. Whose question is that?

A That is mine. I asked him how fast the car was going and he said, "Oh, ordinary." "Well," I said, "What would you say, moderate," and he said, "Yes." "Well, then," I said, "you would say the car was going at a moderate rate of speed," or whatever the wording is that you read me, and he said, "Yes."

Q Is that his language, "I remember the conductor giving me an exit coupon dated September 5th, 1925, which Captain Mason is now showing me?

A Up to the point where it says, "Which Captain Mason is now showing me." Captain Mason took the coupon and showed it to him and I said to him, "That is the coupon that Captain Mason is showing it to you, and he said, "Yes," and I therefore added the words, "Captain Mason is showing me now." The rest of it is his language. If there is any mistake in spelling I don't claim that he made that, because I was the one spelling the words.

Q When you used his language you used his language as he spoke it?

A Yes.

Q But you used his grammar?

A Yes.

Q So that if there is any mistake in grammar it is his?

A Some of that would be and some not.

Q He used the expression, "Have went?"

A In what sentence?

Q In any one of these sentences?

A I cannot recall unless you point that sentence out to me.

Mr. D'Aloia. For the sake of brevity I will admit that error is Mr. Dimond's.

Mr. Lane. I am willing to take that concession. I don't know whether the Prosecutotr realizes where it leads to.

Mr. D'Aloia. That grammatical error, that doesn't mean anything.

Q Is this his language, "I talked to the police for awhile and today, Sunday, September 6th, 1925, the police took me in an automobile and I directed them over the route I had taken after kidnapping the girl and to the spot where I disposed of the body and pointed the body out to them." Is that his language?

A Most of it is, yes.

Q Well, how much of it is and how much of it is not?

A Well, let me have the whole of it and I will tell you. Why, when we got to this point he told me that he came to the police headquarters, using his language now; he said, "I came

to the Montclair Police Headquarters and I talked to the police for awhile.

Q Is that in response to any question or volunteered?

A It was in continuation.

Q Was it in response to a question or volunteered?

A It was a continuation of a previous question, which he had volunteered on further from this preceding information that he gave me.

Q Well, what was the question to which it was a continuation?

A I had asked him what transpired in the house—in his house when the police came to see his mother and then he started to tell me and he went right along and said, "Then I came to police headquarters and I talked to the police awhile," and then he said, "They took me in an automobile." Well, I wanted to make sure in my own mind, because I didn't know what the police had done with him or where they had taken him and I said to him, "Now, when you arrived at police headquarters you said you talked to the police for awhile?" and he said, "Yes." So then I wrote that down. I was writing the statement slowly and then I said, "You said they took you out in an automobile and he said, "Yes," and I said, "Was it today, Sunday?" and he said, "Yes," and then I said, "Today, Sunday, September 5th, 1925, the police took me in an automobile."

Q. Yes, and what is the next question?

A. I said, "What did they do?" I either asked what did they do with him when they got in the automobile or what happened or where did they go.

Q. Or something else which you don't recollect?

A. And he gave me an answer which was responsive and connected with the train of thought.

Q. How do you know it was responsive now?

A. Well, I just simply asked him where they went in the automobile.

Q. Well, you say you may have asked him this thing or that thing or something else. Now, if you can't remember what you asked him how can you tell what appears on that record is responsive?

A. Or words to that effect.

Q. Is the language, "I kept the revolver under the rear seat of my Overland car and on several occasions I took the revolver to my room in my mother's house, is that his language?

A Yes, practically.

Q. I didn't ask you pratically?

A. Well, it was.

Q. Well, now, was there any difference between it was and it was practically in your mind?

A. No.

Q Did that come voluntarily?

A. If you will let me see where it is I will tell you. That was in answer to a question

Q. Do you know what the question was?

A. Yes.

Q What was the question?

A I asked him what he did with the revolver and where he kept it, or words to that effect.

Q Well, I would like to know what you mean by the words to that effect. Can't you recollect the language that you used because it may be of some importance. Did you ask him where he kept the revolver or did you ask him how long he kept the revolver at his mother's house?

A I didn't ask him that at all. I asked him where he kept the revolver, where he put it.

Q Is that exactly what you asked him?

A Either where he kept it or where he put it.

Q Is this his language: "Then on Tuesday, September 1st, 1925, I made up my mind to kidnap a young girl that lived at 136 Upper Mountain avenue, Montclair. I got this idea into my head because it was a nice big house and I wanted to get money from her parents for her return.

A Let me see it. After he had told me where he kept the revolver I then asked him when he made up his mind to kidnap this little girl. I don't know whether I asked him that. No. Captain Mason.

Q All right. Somebody did.

A Yes.

Q What else did they ask him?

A And he said, "Why, on Tuesday," and I said, "What

Tuesday was that?" and he said, "September 1st, 1925." He said that he made up his mind to kidnap a young girl.

Q Well, what did he say, "Yes," to your question or did he say, "Yes, I made up my mind to kidnap a young girl."

A No. In response to my question, or it was a question asked by someone else. In response to that question he gave me the substance of which I put down here.

Q What did he say. I don't want the substance .

A He said what I have down here.

Q But that is the substance, that is your language and your interpretation of the words he used?

A That is true.

Q And you were there with a pencil and could have, if you desired, taken the very words of this man?

A I had a pen and this was all reread to him.

Q I am coming to that in a minute. I am asking you about the preparation of the document, not the reading of it or the man wanted to go to sleep.

A That is practically what he said to me.

Q Is this his language, "On Thursday I went to a drug store on Valley road and called up a taxi cab and told the man over the phone to come to the Athletic Club for me. A colored man came with a Dodge touring car and I told him to drive me to a number on First Street, Little Falls. I got in and we drove up Valley Road," and so forth. Is that his language?

A That is practically his language.

Q Is it his language?

A He said words to that effect.

Q Was it volunteered?

A Yes.

Q All of that was volunteered and no questions asked, is that right?

A Well, I would have to go over it pretty minutely to tell whether it was a question asked before or whether it was a new question. That was in response to some questions asked him by Chief Reilly or Captain Mason as to how he come to get possession of this taxicab and he started in to tell that.

Q You do not remember the questions and you do not remember who asked them?

A I do not remember that just now.

Q Will you point to any part of that statement which was volunteered?

A The very first sentence.

Q Any other part? Now, wait a minute. Let's see that for a minute. He started out now, volunteered without asking of any questions to say——

A No, I didn't say that.

Q Well, volunteered, means volunteered without the asking of any questions.

A Well, what I mean by volunteered, I asked him where he was living on August 24th, 1925, and he volunteered the Mills Hotel.

Q Well, my distinction between volunteered is what the man said in a running account and what he said in response to a question. Is there anything there that was not brought out by a question of some kind by somebody?

Mr. D'Aloia. For the sake of this hearing I will admit that everything contained in there was brought out either directly or indirectly as the result of a question.

Q And you do not know what the questions were, do you?

A There is a spot here that I was trying to find. It is about when he shot the girl. He volunteered the information that he had shot her twice. I am trying to get that point.

Q Well, that is in there. Is that the only voluntary piece of information, is that right?

The Court. You say volunteered, Mr. Lane, in distinction to answers suggested by prior questions?

Mr. Lane. Yes, sir.

A There may have been some place. I cannot recall.

Q Well, you cannot recall them now?

A No.

Q Well, when this statement was all finished, what time was it?

A I judge that it took about a half an hour. It may have been longer, and my recollection may be bad on it, but it took a half an hour. It would be eight o'clock.

Q Well you think it is a half an hour when you did all that long hand work and got these questions out and signed?

A Well, it may have been a trifle over. To be fair with

you we will say a half an hour and a half an hour plus fifteen minutes.

Q And you think it was all accomplished within forty-five minutes?

A To the best of my recollection it was.

Q Were you introduced to Noel by anybody?

A No.

Q After the statement was written out by you in that way what was done?

A With me or what?

Q What was done when the statement was finished?

A Done with the statement or with Noel or myself?

Q Anybody. After you put the last pen strike on that statement what happened?

A You mean after he signed it

Q What did you say to him with respect to the signing? What was said?

A Well, after I completed the statement——

The Court. What did you do?

Witness. I read it to him, I said, "Now, Noel I want you to listen. I am going to read this statement to you and if there is any correction to be made, if there is anything that is not right in here I want you to tell me, so I said, I want you to stay a little closer over here so you can read over my shoulder, and I started to read it to him, and in the beginning I kept drawing my finger across the lines—I usually do that; it is kind of a habit of mine, kind of attracting the person's attention toward it, and I read the statement to him and asked him if it was true and he said it was.

Q During the progress of the reading did he suggest any corrections?

A I think he did. No, he didn't, but one of the other gentlemen in the room did.

Q And who were the other gentlemen in the room who suggested a correction that Noel did not?

A Captain Mason.

Q What correction did Captain Mason suggest?

A On page 4, about the middle of the page.

Q What was that?

A In this sentence here. I passed the depot turning to the right and then to my left and I might have went two, three or four blocks when some men in a closed car pulled alongside of me and as I had the statement written, "I don't know whether any one was hit or not," and Captain Mason suggested to me he said, "Why, he said he fired a shot," and then I turned to Noel and I said, "Noel, did you fire a shot when the car pulled up alongside of you," and he said, "Yes," so then I changed the statement to read, "I might have went two, three or four blocks when some men in a closed car pulled up alongside of me and I fired a shot and I don't know whether any one was hit or not, but I saw in the Montclair Times yesterday that a man was hit and injured.

The Court. Did Noel say that?

Witness. Noel volunteered that

The Court. Noel said he saw it in the Montclair Times?

Witness. Yes, sir.

Q Was that volunteered by him?

A Yes.

Q He used that language?

A Yes.

Q What other corrections were suggested by Captain Mason or anybody else?

A I don't remember any.

Q None were suggested by Noel?

A I don't think so. No, no, there was not.

Q And then after it was all drawn or read over what happened?

A Why, I asked him if he would sign it and one of the other men in the room—I don't know which one it was—offered him a pen and he took the pen and he signed it.

Q And how soon after that was it that he said, "Now, let me go to sleep?"

A Why, as he signed it his sleeve kind of went over the fresh ink on the signature and it blurred it, and one of the officers took a blotter and blotted it and Noel got up from the chair where was he sitting alongside of me and he walked over on the couch and he said, "Now, I want to go to sleep," and the Chief said, "Well, now, you can go to sleep." I think it was Chief Reilly who said this, "You can go to sleep." We

Thomas Dimond, Cross.

will put you where you can go to sleep," and he opened the door and Noel got up off the couch and walked with Reilly—or Gallagher, I don't know which.

Q Do you know how long that man had been kept awake?

A No.

Q No conversation about that in that room?

A No, sir

Q Did you hear anybody tell that man during the course of the proceedings that he did not have to sign that statement if he did not want to?

A No, sir.

Q Did you hear anybody in the whole course of that proceeding tell that man that it was a confession of a crime which might lead him to his electrocution?

A No, sir.

Q Did you hear anybody tell thot man during any time as to the seriousness of what he was in fact doing?

A Other than that he was cautioned to tell the truth.

Q Yes, I know, but as to the consequences to himself?

A No, sir.

Q Was he warned in any way, manner, shape or form, in your presence?

A Not to my knowledge.

Recross Examination by Mr. D'Aloia.

Q Did the persons present there sign their names as witnesses after Noel had signed the statement aftr you read it to him and he was watching you over the shoulder?

A They all did.

Q How many of them?

A Chief Reilly, Captain Mason and these two Jersey City officers. I made a mistake there. It was not Chief Reilly, it was Fred Gallagher that signed this statement and not Chief Reilly.

Redirect Examination by Mr. Lane.

Q Did you know at the time you took this statement that this man was an escaped lunatic?

A I had heard that the Doctors had been from Overbrook there in the morning, and I think I read in the paper that he had been an escaped lunatic.

Q Was there any money on the—cash money in evidence at any time during the session that you were there?

A No, sir.

Q Did Noel say anything about his being willing to sign it at one stage of the proceedings if they gave him $4,000?

A No, No. There was nothing like that.

Q Nothing like that said?

A No.

Q No mention of money other than what appears in this statement?

A Other than the $4,000 he gave as a motive there.

Mr. D'Alonia. I offer the confession in evidence.

Mr. Lane. I have no objection for the purpose of this proceeding.

(Paper marked Ex. S1)

RECESS FOR ONE HOUR.

AFTER RECESS,

Mr. Lane. If the Court please, just before recess there was produced and handed to me by Dr. Washington the typewritten transcript of what occurred at one of his examinations. I desire to offer it in evidence.

(Same is marked D1 of October 2nd, 1925.)

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY	*On Indictment No.* 85, *Sept. T.*, 1025
vs.	*for*
HARRISON W. NOEL	*MURDER.*

OPINION.

Appearances:

J. Victor D'Aloia, Assistant Prosecutor of the Pleas for Essex County, for the State.

Merritt Lane, for the defendant.

CAFFREY, J.

Harrison W. Noel has been indicted, charged with the murder of Raymond Pierce. The defense contends that the prisoner is insane and not able to comprehend his position or to rationally consult with counsel in the preparation of a defense. Therefore, the precise question raised and decided in these proceedings is the mental state of the defendant at this time and only with relation to the issue raised by the defense.

In *State v. Peacock, N. J. L. at page* 36, Mr. Justice Reed, speaking for the Supreme Court, said:

> "It is undoubtedly the law that a person, who, by reason of insanity, is unable to comprehend his position, and of making his defense, cannot be placed on trial for a crime. If the court, either before or during the progress of such a trial, either from observation or upon the suggestion of counsel, has facts brought to its attention which raises a doubt of the condition of defendant's mind in this respect, the question should be settled before another step is taken. The method of settling this preliminary question where it is not the subject of statutory regulation, is within the discretion of the trial court. The court can itself enter upon the inquiry, or submit the question to another jury empaneled for that purpose."

The court cites the case of *Freeman v. People*, 4 *Denio*, 9.

In the above cited case Justice Beardsley says, in discussing the New York statute with reference to its similiarity with the common law rule:

> "If, there, the person arraigned for a crime is capable of understanding the nature and object of the proceedings going on against him, if he actually comprehends his own condition in reference to such proceedings and can conduct his defense in a rational manner, he is, for the purpose of being tried, deemed sane, although on some other subjects his mind be deranged or unsound."

During the hearing, which lasted five days, the testimony of eleven physicians and three laymen was heard and, in addition to their evidence orally, the transcripts of at least four physicians, containing their examinations of the defendant in the form of questions and answers, were read into the record. The hospital record concerning the prisoner during his confinement at Overbrook from March 12, 1925, until his leaving there on June 28, 1925, together with the report of Dr. Slocum in charge of the Craig House, Beacon-on-the-Hudson, at which place the defendant stayed from July 18th, 1923, until September 29, 1923, were also introduced as evidence. Of necessity, the hearing made relevant considerable evidence as to the defendant's mental state prior to the third day of September, 1925, at which time Pierce met his death, but not on the theory that the defendant's state of mind as found prior to that time would be conclusive or dispositive of the case under the issue as framed. Therefore, the order of the Juvenile Court committing the defendant, under date of March 24, 1925, may be treated only as evidence in the case justifying Noel's admission to Overbrook Hospital pursuant to an order made by a court of competent jurisdiction. Neither the findings of that court, nor the evidence supporting its conclusions, are binding on this court in this inquiry.

A complete incorporation of the medical testimony would serve no purpose in this memorandum. However, a few excerpts of testimony will be noted.

Dr. LeRoy G. Kirkman, a physician of splendid reputation, examined the defendant on five occasions, the first on the 12th of September and the last on the 19th. He is of the opinion that the defendant is mentally capable of appreciating the predicament he is in, predicating his views on the story the defendant told him touching upon the happenings of the

crime and not finding that he is suffering from any delusions or hallucinations or confusion in his mental processes.

Dr. Edward W. Markens, the physician at the jail, is of the same opinion, it being based upon an observa ton of the defendant from the day to day at the Essex County Jail.

Dr. Walter S. Washington, an alienist, examined the defendant at the Court House on September 10th. The entire examination, in the form of questions and answers, was offered in evidence in addition to his oral testimony on the stand. Dr. Washington found his apprehension was good, his orientation perfectly normal, his memory, especially for recent events, was remarkably good and that he gave a connected, coherent statement of his personal history and family history. In answer to the specific question why he left Harvard College, he said he left there to earn money; that he was envious of the students because they had a lot of money. In response to the question whether or not he thought it was wrong to shoot people and kill them, his answer was, "Yes."

Dr. Ambrose F. Dowd, a specialist in nervous and mental cases, was offered by the State and testified as to three examinations of the defendant made by him at the County Jail. As the result of these examinations, he is of the opinion that the defendant appreciates his predicament and that he can aid counsel in the preparation of a defense. One of the examinations of the defendant by Dr. Dowd was the day after he was brought to the Court House to plead. He detailed to Dr. Dowd the happenings and, in response to this question by Dr. Dowd: "Did you expect to plead to a charge?" answered: "Yes. I was to plead to a charge for murder and kidnaping." *Question*: 'But you did not plead?' *Answer*: 'No. The lawyers are going to renew their argument on Monday. I don't know whether I will be taken down or not.' *Question*: 'How are you going to plead?' *Answer*: 'It doesn't make any difference how I plead. They have my signed confession. Captain Mason has it.'

Another witness, Dr. Christopher C. Belling, an alienist of reputation, examined Noel on the 21st and 22nd of September. He, too, is of the opinion that the defendant is mentally capable of appreciating and realizing the predicament he is in, that he is charged with murder, and that he is mentally capable of aiding his counsel in the preparation of a defense. Dr. Belling's examination was, in part, as follows: "I asked him how

he came to do what he had done and he said, 'Well, do you want me to tell you? I planned to get the money!' I said, 'You tell me your story,' and then he started to tell me what he did. He said that after he had committed the crime—he said after he had killed the little girl, he had gone to the bank—he had gone to the post-office and deposited a postal card informing an Edward Brown that they must get the money the next day and take the 8:22 train in the morning going to Philadelphia, and when they saw a red balloon at the railroad track they were to throw this money out, $4,000. He said he had gone there and waited and had held up the balloon and nobody threw the money, so he came back. I asked him, 'How did you conceive this idea of taking this child, kidnapping this child for ransom?' 'I remember,' he said, ' the Philadelphia case where two men used a buggy and kidnapped a child. Of course, I did not use a buggy,' he said, 'I used an automobile.' I asked him also how he felt about himself, as far as his own health was concerned and he said, 'I feel all right.' He said, 'I never felt right ever since they did a puncture on my spine in the hospital, and when I came out of the hospital I felt that the top of my head was off. I had a sensation in my head.' He said when he went to the hospital he was all right, he knew everything that transpired in the hospital, except for a few days when he was very much excited, when he did not have his clear recollection. I asked him if he knew that it was wrong to kill a child and he said, 'Yes, I know it is wrong.' I said, 'Why did you kill her?' 'Because I did not want to be seen with her. If I had been seen with her they would have got me.' I said, 'Do you know what the punishment is for killing a person?' He said, 'Yes, it is the electric chair.'

On cross examination all of the physicians called by the State, with the exception of Dr. Markens and Dr. Washington, testified that the defendant was suffering from dementia praecox, but, with all of this, they were of the opinion that a dement praecox could appreciate circumstances surrounding him and could rationally consult with counsel.

Dr. George Davies, a physician of experience in mental cases, testified on behalf of the defendant. His first contact with him was February 25th. On that occasion he made an examination of Noel and was one of the physicians to certify to the temporary commitment at Overbrook. Dr. Davies made an examination of the defendant on the 30th of September, dur-

ing the progress of this hearing, accompanied by Dr. Thompson. The defendant detailed his whereabouts to Dr. Davies from the time he left the hospital in June. In response to a question by Dr. Davies concerning the killing of Pierce the defendant said he remembered it. The Doctor testified that all through his examination he encountered much difficulty in getting answers from the defendant due to his hesitation in replying. He did say, as a reason for killing Pierce, that he needed the automobile and that if the decedent had been a white man he would have killed him just the same. He told the Doctor that the place of killing was in a quarry. He further told the physician that he remembered killing a little girl and he thought it would do him a lot of good and that it would make him like other people and make him enjoy talking like other people. He was further asked if he realized that he could be punished for what he did and he said he was told that he would be liable to be punished by death for it. As a result of this examination and his knowledge of the defendant, Dr. Davies is of the opinion that he is not able rationally to consult counsel and assist counsel in the preparation of a defenes and he is suffering from dementia praecox. The Doctor defined dementia praecox as a term applied to a group of mental cases characterized by mental deterioration.

Dr. Thompson examined the defendant on the 28th at the time of Dr. Davies' examination. Dr. Thompson, at this examination, asked if they tried to harm the defendant at Overbrook, to which the defendant answered: "I used to think so, but I do not think so now." The defendant further said that he thought they were trying to make a superior being out of him and that he thought he was a superior being, that he thought he was a second Christ. The Doctor further questioned him as to whether or not he felt at any time in his past life up to the present time that he was mentally deranged or of an insane mind. The defendant said that he believed that at periods when he was in Overbrook and periods before that, but today he does not know whether his mind is sound or not and he does not think that his mind was sound at the time of the commission of the crime.

Dr. William B. Pritchard, an alienist practicing in New York City, produced by the defense, testified that he was introduced to the defendant at the County Jail by Mr. Barber. The witness further testified that he explained to Noel that he was

a specialist and that the purpose of his visit was to form an opinion as to the mental condition of the defendant, and that he asked the defendant if he knew who his counsel was, to which the defendant answered "Mr. Lane." Dr. Pritchard is of the opinion that the defendant is insane and is a dement praecox and lacks capacity to rationally appreciate the circumstances or the position he is in and that he cannot consult counsel or advise with counsel. He predicts his opinion upon a history of the case as indicated by the records at Overbrook and an examination of the defendant himself.

Dr. Frederick C. Horsford, a physician of reputation, practicing in the city of Newark, was also called by the defense. He made an examinattion of the defendant on September 28th and reached the conclusion that the defendant was insane and suffering from dementia praecox, that he could not rationally appreciate the situation he was in and that he could not rationally consult with counsel and assist in the preparation of a defense.

Dr. MacDonald, of national reputation, examined the defendant at the County Jail September 22nd. He, too, concluded that the defendant was insane, basing his opinion upon the personal examination and an examination of the history of the defendant while at Overbrook Hospitatl and while at Beacon, New York, and that he was suffering from dementia praecox, and that the defendant's reason was impaired so that he could not rationally advise counsel or assist in the preparation of his trial. At the time of Dr. MacDonald's visit to the jail, Mr. Barber introduced Rr. MacDonald. Comment on this is later noted.

As pointed out, the Court is not called upon to determine whether or not the defendant was insane at any time prior to or at the time of the commission of the offense with which he is charged, and, assuming that the record shows that the defendant was suffering from some form of insanity justifying his committment to Overbrook under date of March 24, 1925, the language of the Chief Justice in *State v. Spencer*, 21 *N. J. L.*, at page 202, is pertinent.

> "Proof that a man has at some former period of his life been afflicted with such insanity as would render him an unaccountable being, and exonerate him from punishment, is not sufficient, if it also be proven, or comes

out in the evidence that he has at any time since been so far restored to his right mind as to be capable of moral action and of discerning between right and wrong. Otherwise, a man who had once been out of his right mind, might ever afterwards commit any crimes he chose without being held responsible for it. If it were true that insanity never left a man after once clouding his mind, that he had once been insane. But it often occurs that men have turns or "spells" of insanity, and then enjoy intervals of entire soundness of mind. Now although they would be excusable for what they did in a paroxysm of madness, they are by no means excusable for what they do when they have their senses."

In *United States vs. Chisolm*, 149, *Fed.* 284, the question was presented whether one not entirely sane could be put on trial in a criminal case. The court held there that if he comprehends his own position with reference to the proceedings and has such possession and control of his mental power, including the faculty of memory, as will enable him to testify intelligently and give his counsel all the material facts on the criminal act charged against him, he was subject to trial.

It was also held, discussing capacity and comprehension, that mere incapacity to fully understand legal rights and to make known in an intelligent manner to his counsel all the facts material to the defense, is not a sufficient ground for refraining from proceeding to trial. *State v. Arnold*, 12 Iowa, 479.

In *United States vs. Chisolm, Supra*, the Court said:

"It is impossible to lay down any fixed rule, as a matter of law, as to any particular state of facts which will unerringly demenstrate sanity, or the contrary condition of the human mind, or the degree of aberration which, when found to exist, exempts an accused person from criminal responsibility, or unfits him to rationally aid in his defense, when arraigned for a crime * * * But whether or not an individual's departure from general rules governing human action demonstrates such abberation of mind as exempts him from criminal responsibility, or shows unfitness on that account, to be placed on trial, depends upon the circumstances of the particular case; and is to gathered not merely from the act for which he

is arraigned, but must also be determined and tested in view of every other fact and circumstance which sheds light upon the condition of the defendant's mind at the period as to which the inquiry is directed."

See 3 *A. L. R.* 95-96.

The term to consult with counsel or to consult with anyone is a relative one. To what degree one may consult with another is more or less dependent upon the subject matter and the information on the given subject.

The Supreme Judicial Court of Maine said:

"To consult is to apply for direction or information, to ask for advise, to discuss something together, to deliberate."

Hewey vs. Metropolitan Insurance Company, 62 *Me.*, 600.

A careful reading of the testimony, aided by my observation and conversation with the defendant, and not being unmindful that the physicians both for the state and defense are of the opinion that the defendant is suffering from some form of mental deterioration at this time leads me to the conclusion that the defendant's appreciation of his predicament is apparent and that he comprehends his position with relation to the crime charged against him.

It has been urged that no reliance could be placed upon anything that he might tell counsel, but the Court has no way of determining that at this time. The testimony, both in the form of the transcript marked in evidence and the oral testimony of the physicians for the State and the defense, is replete with responsive answers to questions propounded to the defendant. The statement made by him to the Prosecutor's office was examined into and many facts were found to exist in keeping with the statement. It seems to the Court that the solution of this matter up to the stage of his hearing has been due to the reliability of the defendant's story as told by him.

There has been much stress laid upon the defendant's muteness, both as a symptom of dementia praecox and as a hindrance to counsel in the preparation of his defense and, while there was much hesitation in the defendant's answers to the

various questions put to him, it seems Mr. Howard C. Barber, associate counsel, had little difficulty in conferring with the prisoner. At the time of introducing Dr. MacDonald to the defendant on the 22nd of September he said, "This is really the first private conference we have had. Dr. MacDonald wants to talk to you and I want you to talk to him just as you would talk to me." The answers to Dr. MacDonald's questions following this conversation seem to be freely made and they lacked the hesitancy which characterized some of the questions put to him at other examinations.

As pointed out at the beginning of this memorandum, the issue here is a narrow one and, deciding the precise question framed, this Court is of the opinion that the prisoner is able to comprehend his position and to make a rational defense.

Therefore, he is remanded, with a direction that his guilt or innocence under this indictment shall be determined by a jury.

.....

Judge.

Dated: October 8, 1925.

STATE OF NEW JERSEY, Plaintiff, vs. HARRISON W. NOEL, Defendant.	ESSEX COUNTY COURT OF OYER AND TERMINER ORDER

The Court having considered the testimony presented upon the question as to whether the defendant, Harrison W. Noel, is in a mental condition as that he can appreciate the predicament in which he is, and can consult with and aid and assist counsel in his defense, and as to whether he is at this time triable, and having heard Merritt Lane, of counsel with the father, the natural guardian of said Harrison W. Noel, presenting such evidence and bringing the matter to the attention of the Court and Victor D'Aloia, for the State, the Court having filed a written decision, which is made a part of this order;

It is ORDERED that Harrison W. Noel do now stand trial upon the indictment herein and that he be remanded to the Essex County Jail to await said trial.

EDWIN C. CAFFREY.
Judge.

To which ruling and order of the Court an exception is prayed and it is allowed and sealed.

EDWIN C. CAFFREY,
Judge.

Before Hon. Edwin C. Caffrey, Judge, and a Jury.

For the State appears J. Victor D'Aloia, Assistant Prosecutor of the Pleas of Essex County.

For the defendant appears William A. Wachenfeld.

(Defendant's counsel inquires how many absentees there are on the special panel and the clerk states that there are eight.)

Defendant's counsel prays an exception to the panel on the ground there are eight absentees.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

WALTER CHARLTON, a talesman, being duly sworn on his *voir dire*, testified as follows:

By Mr. D'Aloia.

Q Have you any conscientious scruples against capital punishment?

A Yes, sir.

The Court. What are they?

The Witness. I believe in a life sentence instead.

The Court. You are another one who puts yourself above the law, where, in a proper case, under the law of New Jersey in first degree murder, the sentence is death, you are above the law—

The Witness. I wouldn't say I am above it, but I do not believe in it.

The Court. Why?

The Witness. I don't think the state has got a right to take a life.

The Court. Is that a religious scruple?

The Witness. Yes, sir.

Mr. D'Aloia. I will challenge this juror for cause.

Mr. Wachenefeld. I object, if the Court please, to this challenge for cause being permitted, first, it is not sufficient in itself; secondly, because the statute of the State of New Jersey, the law of this state, says it is up to the jury to determine what the sentence should be, and the mere fact that the man has objections to capitatl punishment is not sufficient in itself. I object to the dismissal of this juror for cause on those grounds.

The Court. Objection overruled.

Mr. Wachenfeld. Then, as I understand it, the record is that he is being dismissed at the direction of the court.

The Court. Yes.

Mr. Wachenfeld. Then, may I have an exception to the

use of that discretion and on the same grounds as already stated.

Defendant counsel prays an exception to this ruling of the court.

Exception allowed; let it be signed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Mr. Wachefeld. If the court please, before the Prosecutor opens this case may I call the court's attention to the fact of an order made by the Essex County Juvenile Court on the 24th day of March, 1925, committing this defendant, Harrison W. Noel, to the Insane Asylum at Overbrook, New Jersey, and may I call it to the court's attention with the insistence that the court must take judicial notice of it.

The Court. This is simply the order, is it?

Mr. Wachenfeld. I have both the order and the other papers if your Honor desires them.

The Court. I will take judicial notice of it.

Mr. Wachenfeld. Does your honor desire to have them marked?

The Court. I will take notice of it.

(The paper referred to is marked D1 for identification.)

Mr. D'Aloia opens to the jury as follows:

May it please your Honor, and Gentlemen of the jury: You have been empanelled to try this indictment by the Grand Jury of this County against this defendant, Harrison W. Noel. This indictment charges that Harrison W. Noel did on the 3d day of September, 1925, in the Township of Cedar Grove, this County, wilfully, feloniously and with malice aforethought kill and murder one Raymond Pierce, 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.

Now, the facts in this case are briefly stated as follows:

We will show you that this defendant lived in Montclair and that he lived with his mother in Montclair for

possibly fifteen years. He is about twenty years of age.

All summer, during the months of July and August, he was at the house with his mother, taking occassional trips to New York and going about like every other resident of Montclair; driving an automobile like every other driver of an automobile, until we get down to September 3d. The State will prove to you that on the 26th of August, 1925—and you will notice that is about seven or eight days before the 3d of September—he passed an examination in New York to obtain a license to drive a taxi, and there the law requires that he be examined by a physician. On the 3d of September, the State will prove to you that about 1:30 or 1:45 in the afternoon a call was received by a taxi company, at a taxi station, and that that taxi station was in charge of Raymond Pierce at the time the call came in, Raymond Pierce being the deceased. That Raymond Pierce left with a taxi, which was a Dodge car, which went at or near the entrance, or went to the entrance of the Montclair Athletic Club, and there this defendant (who made the call for the taxicab) got into the taxi, and after giving some orders to the deceased, the taxicab proceeded, out of Montclair and through the Pompton Turnpike, through the Cedar Grove-Little Falls Road. The State will show you that this defendant, at that time, when he got into this particular taxi, on this afternoon of September 3d, about 1:45, had in his possession an automatic pictol of Spanish make, and that at about 1:45 on this afternoon, when he got into this taxi he had in his possession this automatic pistol loaded. When the taxicab left the entrance or the spot near the entrance of the Montclair Athletic Club it proceeded up Valley street and out of Montclair and on the Turnpike, he had this pistol. Now, when they got to the Turnpike, the State will prove to you, that this defendant sat behind the driver, Raymond Pierce, and when they got to a point in the road where there were no houses at all, and nobody was around, he took out that pistol and he fired at the driver from behind, the bullet entering the back of the driver's head, and the doctors will tell you that upon the autopsical examination, it was found just below the skin, here in the forehead, right here (indicating) after going clear through the brain. The State will show you that

after he did that, he pushed Raymond Pierce's body aside and took charge of the wheel himself, and he drove that taxicab, with the dead negro alongside of him, to a point in the Little Falls—Cedar Grove Road, and that there he stopped the car—(this defendant did)—and took the body of Pierce and dragged it down into some bushes at a point in the road where the casual observer or passer-by would not see it, and that after he had done that he took that car and drove it to a point known as the "Old Quarry" and left it there and proceeded home. When he got home he sat around the house, had his dinner, and he went out that evening and took his mother out automobiling in his own car or rather in a car that belonged to the Noel family and he took the lady next door out, and when they came home he went to bed at the regular retiring hour.

The State will further show that the next morning, on September 4th, he went back to the place where he had hidden the car, with his car, or the Noel car, and there he exchanged cars. He left the Overland car, which belonged to the Noel family where the Dodge car, which had been driven by Pierce the day before, had been left by him the afternoon before, and took the Dodge car leaving, the Noel car there—

Wachenfeld. I would like to object on the ground that anything that happened on the following day is evidence of another crime and is not admissable in this case.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Mr. DAloia. (Continuing) After he got into this Dodge car and left his Overland car there, he proceeded up Mountain avenue, Upper Montclair, and we will show you that he first picked out this residence before the 3d day of September, and that out, in front of this residence, there were some children playing, and, driving his Dodge car

went by there and picked up one of the children and threw her into the car and started off, driving off with this child in the car, and that he was seen doing that by Mrs. Bowers who lives at 136 Mountain avenue, and she called to her chauffeur to follow this car, and her chauffeur got into another car and chased this car, the car driven by this defendant for ten miles or so, and that after he had pursued it for ten miles, the defendant withdrew to one side and waited for the other car to come up to him, the car driven by Mrs. Bower's man, and that as this defendant was waiting there, and as the chauffeur stopped and came towards his car, he pulled out the automatic pistol, which he had, and fired a shot at the chauffeur who was pursuing him——

Mr. Wachenfeld. The same objection.

Mr. D'Aloia. And the defendant kept on going and got across the Essex County line with the little girl, whose name was Mary Daly——

Mr. Wachenfeld. I will press my objection to anything which the Prosecutor will say as to what happened from this point on, on the ground that it is something which is not admissable in evidence in this case.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Mr. D'Aloia. He drove over the Essex County line into a part of Passaic County known as Wayne Township, and then there, we will contend, he discovered, this defendant discovered, that the little girl he had taken was not the little girl he had intended to take, and in his haste he had made a mistake, and that he killed that little girl——

Mr. Wachenfeld. I ask an exception now to the Prosecutor's remarks in regards to the killing of this little girl on the ground that it is no part of this case, and upon the ground that there is another indictment pending

against this defendant; upon the ground that it is entirely separate and distinct from anything which the defendant is being tried for under this indictment, and upon the ground it is no part of this scheme of things at all. I am admitting that the question of motive may be admissable in evidence, but I say that when the Prosecutor makes any statement as to the killing of this little girl he is putting in something that is prejudicial to the defendant, and is stating something which is not admissable as evidence in this case, and I ask an exception to any such remarks, and ask the court to admonish counsel and instruct the jury to disregard it.

The Court. I will overrule the objection at this time and say that at the proper time I will instruct the jury as to my understanding of the law and the facts relating to them.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Mr. Wachenfeld. Then, for the purpose of the record may I at this time ask for a mistrial, if your Honor please, on the ground that the defendant has been prejudiced.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Mr. D'Aloia. After having disposed of the little girl he drove back to the old quarry in Cedar Grove where he had left his Overland car, and then he took his Overland, after leaving the Dodge there away from the road, and he went home, and he went home late on Friday, September 4th,sitting around the house, had his dinner at the usual hour, and on that evening he went out driving in his Overland car with his mother, a neighbor and sister, and

he drove around and returned at the usual hour and went to bed.

On Saturday morning, September 5th, he arose at the usual hour, laid around the house all morning, did some odd things, and went out in the afternoon to the Montclair Library and got some books and went home, and at five o'clock in the afternoon, on Saturday, he was taken into custody by the Montclair police; taken to the station house in Montclair, and we will show you that from five o'clock on Saturday afternoon, September 4th, 1925, until some time about noon on Sunday, September 6th, for a period varying from fourteen to eighteen hours he was questioned, and he was asked where he had been and was asked whether he knew anything about Pierce, the driver of the Dodge taxi, and he said he didn't know anything about it, and had never seen Pierce and didn't know anything about the little girl Daly, and had never seen her and had never driven her away in a car, and for some two days and over twenty hours almost he simply denied that he was responsible for the killing of Pierce. He will show you on the afternoon or the evening of September 4th, Friday, about six o'clock, a gentleman by the name of Matts, an officer of this city connected with the tax department, had occasion to come along the Little Falls and Cedar Grove road, and he went down to the brook, and going down off the road he came to a place where the Raymond Pierce body was lying in the bushes and he sent an alarm and he brought to that spot there Dr. Guy Payne, head of the Overbrook Institution, who was having dinner on that evening with Mr. Bowden, an ex-supervisor of this county, and a member of the Board of Freeholders, and when Dr. Payne saw that the body of Pierce he pronounced the man as having been dead for at least fifteen to twenty-four hours.

Now, gentlemen of the jury, the State will contend that this young man called that taxi on the 3rd of September about 1:45 P. M. because he had conceived a scheme whereby he was going to kidnap a little girl and he was going to ask the sum of $4,000 ransom from the little girl's family or parents; that in conceiving this scheme

he had gone along Mountain avenue, observing the exterior of homes until he came to 136, the exterior of which appeared to him as though the people living there were affluent and wealthy; that he had this pistol which he had secured a week or ten days before, and that he told one of the State's witnesses that he got this idea from a Philadelphia kidnapping case, but that this case was different from the case in Philadelphia, because in Philadelphia they used a buggy and a horse, and he used an automobile, and that in following out this scheme, in order to divert suspicion from himself, he did not want to take any one of the ordinary automobiles to be found in the streets of Montclair or Bloomfield, but he wanted an automobile with a driver, and that he got this car and killed the driver in order to kidnap the little girl, because he did not want to do it with his own car, and that when he got the car which was driven out of the taxi station, with another person, he got the automobile by killing Pierce, and with that automobile, which he had gotten by killing Pierce he kidnapped the little girl. In doing that he was able to, and did succeed in fooling the police of Montclair into believing that Pierce was the man that had kidnapped the little girl, and it was not until they had found Pierce's body at six o'clock on Friday that this belief was suspended—when they found the body of Pierce in this deserted part of the road where the casual observer would not see it. He also succeeded in maintaining his denial that he did not know anything about the killing of Pierce or about the disappearance of the little girl——

Mr. Wachenfeld. I make the same objection with the same request that the court instruct the jury with reference to this phase of the case and will ask your Honor to grant me an exception to anything which the Prosecutor might say.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Opening.

Mr. D'Aloia. Gentlemen of the Jury, the State contends that this was no impulsive act due to any temporary aberration of the mind; but, that this was a well conceived plan, and it does not differ from any other ordinary kidnapping case that you and I have ever heard. The motive was $4,000 ransom; the movements apparently were well thought out over a period of three days, and every act committed by this defendant was committed with a reason for it; that he was conscious that the act he was committing was wrong, which, we contend, is evidenced by the fact that he tried to successfully hide, and did hide all evidence of his act, and that he was conscious that what he was doing was not right, and when he denied that he knew anything about Pierce and knew anything about the little Mary Daly, he was conscious, during that period, that what he had done was wrong, and he was conscious that he was wrong, we will contend, when he denied any knowledge of it until he broke down, and then, when he was placed in an automobile by the Montclair police, he guided them along the road out to Wayne Township, to this place in the woods up in Passaic County, and he pointed out the spot where he had killed little Mary Daly, and there, her body was found, and coming back, he was asked by those who accompanied him, where he had killed Pierce, and he told them he had killed Pierce in the Dodge taxi on Thursday afternoon about two o'clock, and he pointed out the place where he had put Pierce's body, where he had hid it, and we will show you that that is the place where the body was found; that that was the spot where, on the afternoon of Friday, September 4th at six o'clock Mr. Matt discovered that the body, the dead body of Raymond Pierce.

Now, when we show you these facts, and show you all of these things, notwithstanding the adjudication under an order made in March, 1925, committing this defendant to the Overbrook Asylum where he was committed at the request of his family, and from where he was allowed to go on the 28th of June, 1925, he was able to and did on the 26th of August buy a pistol where they sold them in New York, and when he was informed that he could not take it

away with him because he did not have a permit, but that it could be mailed to him, he gave them an address in Little Falls and gave them a fictitious name, and then a day or two later went to the Post Office and procured the parcel containing the pistol with which he killed Raymond Pierce; and that he succeeded in resisting the efforts of the police of this entire countryside for twenty-four hours, resisting them successfully, we will contend that he knew the distinction between right and wrong, and he knew that it was wrong to kill Pierce which is the crime charged in this indictment; that he knew the distinction between right and wrong, and that when he killed Pierce he was conscious of what he was doing, and is amenable to the crime like any other person in this State, we of the prosecution will ask that this man be found guilty of murder in the first degree.

JAMES HANLON, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q What business were you in about September 3, 1925?
A Taxi business.
Q Where?
A Top of the Mountain, Montclair.
Q Do you remember the afternoon of September 3, 1925, Friday?
A Yes.
Q Who was in charge of your taxi station—or Thursday, rather?
A Raymond Pierce, the man who was killed.
Q What time did he take charge of that station on Thursday afternoon, September 3, 1925?
A About 1:15.
Q Who had charge of this before 1:15?
A I did.
Q Where did you go at 1:15?
A I took a party to the depot.
Q Where did you leave Pierce?
A In charge of the station.
Q How many taxis did you have?

A Two.
Q Which one did Pierce have?
A The touring car. I left the touring car.
Q What was the number on that car?
A O722.
Q After leaving your place of business at 1:15—who did you say you left in charge ?
A Raymond Pierce.
Q Did you see him before you left?
A I seen him as I was going by to the depot at 1.30.
Q No, when you left at 1:15 did you see him?
A He was right at the station.
Q And you saw him again at 1:30?
A Yes.
Q When did you again see him after 1:30 Thursday?
A Not until he was dead; a couple of days later.
Q Where did you see him?
A Up at his house where he was waking.
Q And did you attend his funeral?
A No.
Q You saw him dead?
A I did.
Q Where did you next see this touring car, you Dodge touring car, O722?
A Up in the garage in Upper Montclair.
Q When was that ?
A About five or six days later.

Cross Examination by Mr. Wachenfeld.

Q Mr. Hanlon, Mr. Pierce was a colored man, was he not?
A Yes.
Q And the last time you saw him was at 1:30 on this Thursday?
A Yes.
Q And you say you left there at 1:15 to go to the railroad station?
A About 1:20.
Q Where is your place of business?
A Near the Montclair depot on Bloomfield avenue.

Q And when you left at 1:15, is that when you left to go and get your passenger?

A I left to get my passenger at 1:20.

Q And you went by your place of business at 1:30 and Pierce was still there?

A Yes.

Q And how long was it before you got back to your place?

A I did not get back until about two or ten minutes after.

Q And when you got back Pierce was gone?

A Yes.

Q And he had taken with him this open touring Dodge car?

A Yes.

Q How long did Pierce work for you?

A About three days. He started working Monday afternonn for me.

Q And when he was working three days for you he was driving the car?

A Yes.

Q And if he went out driving for any length of time he would call you up?

A Yes.

Q And tell you what he was doing with your car?

A Yes.

Q He did not call you up this Thursday?

A No.

Q You didn't hear from him by telephone?

A No.

Q Didn't you get any word from him at all?

A No.

Q Now, do you know how much gas this car had in it when Pierce left with it?

A I could not tell you.

Q Did you see this car after it was recovered?

A Not for five or six days.

Q Did it have a speedometer on it?

A Yes.

Q And do you know what the speedometer registered, approximately at the time you last saw it around 1:30 on the afternoon of September 3rd?

A It registered at about 2100 miles.

Q Did you notice what the speedometer registered the next time you saw the car?

A It was over 2200.

Q So that from the time you last saw the car up to the time that you saw it again two or three days afterwards, it had run considerably over one hundred miles?

A Over a hundred miles, yes.

Q Now, this was an ordinary Dodge touring car, was it?

A Winter enclosure.

Q Winter enclosure?

A Yes.

Q And it was a vacuum feed, wasn't it?

A Yes.

Q With a gasoline tank on the rear of the car?

A Yes.

Q And did it have a reserve gasoline tank on the rear of the car or just the ordinary tank?

A Just the ordinary tank.

Q And was that a twenty gallon tank?

A No, fifteen.

Q And that is the only tank it had on?

A Yes.

Redirect Examination by Mr. D'Aloia.

Q Do you know how much gas it had in it when you left it there in the place in charge of Pierce?

A No, I don't know.

LILLIAN PIERCE, sworn in behalf of State.

Direct Examination by Mr. D'Aloia.

Q You are the widow of Raymond Pierce?

A Yes, sir.

Q What time did he leave home on the morning of September 3, 1925?

A Seven-thirty.

Q Did he come home for lunch on that day?

A He did.

Lillian Pierce, Direct.

Q At what time?
A Twelve-forty-five.
Q What time did he go back to work?
A At one ten.
Q When did you next see your husband after One ten P. M. on Thursday, September 3, 1925?
A Sunday, dead.
Q Where?
A At home.
Q Who brought his body home?
A Undertaker Brown.
Q And the funeral took place from the house?
A Yes, sir.

Cross Examination by Mr. Wachenfeld.

Q When he came home for lunch that Thursday, Mrs. Pierce, did he drive home?
A Yes, sir.
Q Did he have this Dodge touring car at that time?
A Yes, sir,
A And that is the last time you saw him?
A Yes, sir.

LEWIS G. BOWDEN, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Bowden, on September 4, 1925, which was Friday evening, were you at home about six P. M.
A Yes, sir.
Q Who was with you?
A Why, my wife and Dr. Payne.
Q Did you have occasion to leave your house to go anywhere?
A Yes.
Q Where did you go?
A I went out at the bridge above my house.
Q How far away from your house is the bridge?
A Oh, a few hundred yards.

Q How did you come to go there?

A A boy came to my house and said that a colored man——

Q A boy came to your house and gave you some information and after you got that information you went up there?

A Yes, Sir.

Q Did anybody go with you?

A Yes, Dr. Payne went with me.

Q You and Dr. Payne left your house and when you got up there a few hundred yards away at the bridge, what part of the road, or off the road did you go to ?

A Why, right off the abutment of the bridge, on the west side of the road.

Q And what did you find there, if anything?

A I found the body of the colored man.

Q How long have you lived up at that particular part of this county?

A About fifty-four years.

Q I show you a photograph and ask you if this photograph represents the road at or about the spot that you call the bridge?

A Yes, sir, that is the bridge.

Q Now, on the right hand side of that particular photograph do you see the place where you say you went down?

A Yes, right here (indicating).

Q Will you please mark it with this pencil?

A (Marked.)

Q Where you put that cross, is that where you left the road?

A Yes, sir, that is where we have a drive way that goes in there.

Q And how far below the level of the road did you have to go before you come to the spot——

A Do you mean where the body was?

Q Yes.

A Of course we had to go around there to get the body, the body was right here by this concrete abutment.

Q Below the road?

A Oh, yes.

Q Could you see the body if you walked along the road?

A No, sir.

Q Now, what did you find there?
A We found the body of this colored man.
Q How far below the road was it?
A Oh, probably six feet.
Q What is there under this bridge there, what runs under it?
A The Peckham river.
Q How far away from the bank of the river was the body?
A Why, the man's head was about opposite the opening of the bridge.
Q What have you to say as to the length of the grass at or near the bank of that river and around this body?
A Well, there is a great many briars and brush; it was a rough place.
Q What did you do when you got there with Dr. Payne?
A We walked around so as not to disturb any evidence that might exist and went around and came to the edge of the bridge to where the body laid.
Q Did you notice any trampling of the briars and brush right immediately after you crossed the bridge to go off the road to the right?
A The grass was trampled down around this fence, from the fence to the brook.
Q Where you go down to the brook from the road?
A Yes, sir.
Q Did Dr. Payne make an examination of the body there in your presence.
A Why, he just looked at him, that's all.
Q Who else was there at that time?
A Why, this boy was with us when we went up.
Q Do you know Mr. Matts?
A Oh, yes, but Matts was not there at that time.
Q Did Matts come up later?
A He did come later.
Q What did you do, if anything, before going to this spot where the body was?
A Before I went there I telephone to Mr. Bogan, our Chief of Police.
Q He is the chief of Police of Cedar Grove?
A Yes, sir.

Lewis G. Bowden, Direct.

Q You sent for the Chief of Police of Cedar Grove?
A Yes.
Q Did he come while you were there?
A Then I notified Mr. Mason.
Q Yes.
A And Mr. Bogan came very shortly after I arrived at the spot.
Q How long did you remain there with Mr. Bogan after Bogan came?
A Oh, I was there some time; probably half an hour, three quarters of an hour.
Q What was done with the body at that place, if you know?
A Kunz came and took it away.
Q Who is Kunz, is he the morgue keeper?
A Yes.
Q And that is the last you saw of the body?
A Yes, that is the last I saw of it.
Q Did you make any examination, or any superficial examination of this body?
A No, it was quite rigid, I thought.
Q Did you see any wound?
A No. As they raised it up, I saw that he had blood on the back of his head.

The Court. You mean he was bleeding or there was evidence of blood?

Witness. Evidence of blood.

Q As I understand you, you said he had bled from the back of the head.
A Yes.

Cross Examination by Mr. Wachenfeld.

Q How long have you lived up there?
A I was born there.
Q You are quite familiar with that locality, aren't you?
A Yes.
Q And that is a good road through there, is it not?
A Yes.
Q It is on a macadam road and was at that time?
A It is an amisite road.

Q And it is quite wide?
A Yes, twenty feet.
Q And it is quite a popular road as to traffic, is it not?
A Yes.
Q And there is a great deal of traffic there?
A Yes.
Q And was this Sunday when you found this body?
A No, I think it was Friday night.
Q What time was it?
A Oh, in the neighborhood of a quarter to seven, between a quarter and seven o'clock.
Q And you got the information from someone first that it was there, and then you went down, is that right?
A Yes.
Q Now, there is a bridge across this river or stream, whatever you call it, a cement bridge?
A Yes, a concrete bridge.
Q And at the end of this concrete bridge, at least, in this picture, there is a fence that is here?
A Yes.
Q In other words, this which appears gray is concrete and this which appears white is wood?
A Yes. That is a guard rail erected by the county.
Q And here at the end of this wooden fence there is a lane that runs back of that point to the river edge?
A No. That is a drive we have to go into the fields.
Q Well, isn't there quite a path from that driveway down to the river edge?
A No, there is not.
Q Now, this body, as you saw it, as it was lying on the ground, was within a few feet, was it not, of either this fence or this board fence?
A The man's head was practically opposite the end of the bridge.
Q And how near to the bridge, within how many feet of the bridge?
A Oh, within a couple of feet of the bridge. He was right at the bridge, practically.
Q Now, wasn't it clear to you, as you saw the position of the body, that whoever put it there had just toppled it over the railing?

A No.

Q What was there that indicated something else?

A It indicated to me that he had been dragged to this fence and then along the brook.

Q And there was evidence of the fact that he had been dragged along there and down?

A Yes.

Q Now, where this tream flows underneath that bridge there is a space of at least eight or ten feet between the bed of the river and the top of the bridge?

A I do not think there is that much clearance.

Q Well, how much clearance would you say there was there?

A Not over six feet.

Q Well, you would say there was six feet?

A Well, I wouldn't say there was quite that.

Q Now, then, am I correct, where this body was lying, if you were walking along here and looking over that railing, you would have no trouble in seeing it?

A At that time the brush had leaves on.

Q There was brush and briars all around that section of the country?

A Yes.

Q And it is not unusually populated on account of that?

A No.

Q And there is underbrush there?

A Yes.

Q And at the time when you saw it and the conditions under which you saw it, if I walked along there and looked down I would not have had any trouble to see it?

A Ordinarily you would not.

Q Well, I would not happen to see it unless I looked at that spot?

A No.

Q But it was within two feet of the road-way?

A Two feet of the end of the bridge.

Q But all over on the left hand side of this road and also on the right hand side of this road are forests, are there not, were there heavy trees?

A No, not heavy trees. It is mostly small there.

Q All right. Doesn't it get heavier as you go further from the roadway?

A Yes, back here there are large trees.

Q And that is true on both sides?

A Yes.

Q Now, your house is elevated, isn't it, on the left hand side of this road?

A Yes.

Q So that you have a good view of this entire situation?

A No, not this situation.

Q Am I right as to this, that this river over here on the right hand side of those houses, directly opposite your house, there is a large lagoon there, or pool of water?

A A pond, a mill pond.

Q And how big a pond would you say that is?

A Less than an acre.

Q And it runs up along almost even with the road and extends quite a way back?

A Yes.

Q And between that pond and this river there is what looks more or less like an embankment, or at least, there is solid soil, so you can walk on it.

A It used to be a drive-way.

Q Now, if you had taken this body further back into the woods, say twenty, thirty or forty yards, it would have been much more difficult to discover it, wouldn' it?

Mr. D'Aloia. I object to that question.

The Court. Sustain the objection.

Redirect Examination by Mr. D'Aloia.

Q I show you another photograph, and that is the same road looking in the opposite direction. Will you kindly mark that fence on that photograph or the end of the bridge? That is looking in the opposite direction. Do you recognize that?

A This is a short guard rail. This is the west side of the road.

Q And here is the east side of the road?

A That is looking the other way.

Q Now, do these two photographs represent that road, as

you recall it, on that memorable evening of September 4, at six P. M., September 4, 1925?

A Yes.

Mr. D'Aloia. I offer these two photographs in evidence

Photographs marked Exhibit S-1 and S-2 for identification.

Recross Examination by Mr. Wachenfeld.

Q Look at this picture again, which you have just seen, S-2 for identification, and where you put your mark of a cross is right at the beginning of that wooden fence?

A Yes.

Q And from that wooden fence on, as indicated by this picture, the undergrowth there and trees are pretty heavy?

A Yes, quite heavy.

Q Now, at least for a distance of eight feet from back of that fence leading down to the water's edge there were no large trees, were there, just underbrush, am I correct?

A Yes.

HARRISON S. MARTLAND, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, on September 4 and 5, 1925, were you the county physician of Essex County?

A I was.

Q And in that capacity did you perform an autopsy on the body of one Raymond Pierce at Kunz' Morgue on September 4, 1925?

A I did.

Q What time was it?

A About eleven o'clock at night.

Q Will you please tell the jury what you found to be the cause of death from your autopsical examination?

A I found the cause of death of Raymond Pierce was a gun shot wound in the back of the head, produced by a .32 calibre, jacketed bullet. The point of of entrance started in just at the edge of the hair line, at the back of the neck, practically absolutely in the mid-line. It then passed through the scalp producing a small wound about a quarter inch in diameter. The edges of this wound were slightly bruised around the whole circle of the point of entrance. At the outer edge

of the wound there was a slight burning of the scalp, due to the brand of the revolver, the brand being the gases of combustion that leave the revoler after the bullet has left and is usually in an opposite—in a direction opposite that to which the direction of the weapon is held, that is, if the triger of the weapon is held down, the brand would be at the upper part of the wound. There was a slight brand in this case. There were no powder marks and there was practically, with the naked eye, no burning of th ehair. Th bullet wound then passed directly forward through the skull, making a pointed out opening, without any fracture line going across the opening. The bullet then passed the right brain or cerebellum, passing forward and slightly upward, passing practically through the entire anterior posterior diameter of the large brain and passing out in the mid-line just above the root of the nose. Passing out of the skull the bullet, with a mushroom nose, being located just over the hole of exit of the bone, that is, on coming out of the skin, lying beneath the chin, the bullet lying about like that in the hole of exit with a couple of small fragments of bone pressed out underneath the skin.

Q Did you extract the bullet?

A I did.

Q I show you a bullet and ask you if that is the one you extracted from the frontal bone of Raymond Pierce?

A That is the bullet.

Q And do you notice that this is a steel jacketed bullet?

A Steel jacketed bullet.

Q And it is flattened?

A Flattened at the nose.

Q What did you do with this bullet?

A I filed that with my record of the autopsy and the special envelope we had, and the day I testified before the Grand Jury, I turned it over to Captain Mason.

Q Now, what do you say, from your autopsical examination and the extraction of this bullet, was the cause of death?

A The cause of death was gun-shot wound in the brain, Homicide.

Q Causing what?

A Causing cerebal laceration and hemorrhage.

Cross Examination by Mr. Wachenfeld.

Q Did you find any wounds at that time outside of this

wound?

A No other wound. A slight reddish bruise on the lower lip on this right outer angle, extending slightly over the chin, that was the only—there was also on the right chest anteriorly a few little red blisters in the skin, superficial blisters.

Q Caused by what?

A I think caused by the extreme congestion in his blood vessels at the time of death.

Q What time did you first see the body?

A I saw the body first at about eleven o'clock.

Q Could you form an opinion as to how long the body had been death?

A Yes, I did.

Q What was your opinion as to that?

A I based my opinion of the time of death in the body by the presence of rigormotis or stiffness in the joints, which was still present at the time I saw the body, in the small and large joints. I also based my opinion on the time the body had been dead by observing a very great many magots in the eyes and nostrils and mouth of the body, basing my opinion that the larvae, or the eggs of a fly, will take some twenty-four hours to develop. I was of the opinion that the deceased, at the time I saw the body had been dead certainly longer than fourteen hours, under forty-eight hours, and probably somewheres in the neighborhood of twenty-four hours, as the probable length.

Q That is the most definite opinion you can give?

A Yes, fourteen to forty-eight, as the minimum and maximum, and the most probable time twenty-four hours.

Q And you saw the body at what time?

A At eleven o'clock at night on September 4.

The Court. Would the congestion on the chest indicate a condition, or the blood have any bearing on the time.

Witness. No, sir.

Redirect Examination by Mr. D'Aloia.

Q You identified this bullet as the one you extracted?

A Yes.

Herbert H. Matts, Direct.

Bullet offered in evidence and marked Exhibit S-3.

ADJOURNED until tomorrow, Tuesday, November 10 1925, at 10 o'clock. A. M.

SECOND DAY.

Tuesday, November 10, 1925.

Appearances as before stated.

Trial continued pursuant to adjournment.

HERBERT H. MATTS, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q What is your business?
A I am a tax collector of the city of Newark.
Q Do you know this part of Essex County up there near Cedar Grove, between Cedar Grove and Little Falls?
A Yes. I have a summer home up there.
Q Were you there on the fourth of September, 1925?
A I was.
Q Were you coming along this road as shown in Exhibit S-1 and Exhibit S-2 about five P. M., on September 4, 1925?
A Well, about—it was later than that.
Q Well, about what time was it?
A About six forty-five.
Q Was it still daylight?
A Yes, it was daylight.
Q Will you tell the jury as you got to this particular spot, which is marked with an ink cross there at that white fence, what you saw and what you did?
A Well, I passed there. I had two guests and I took them over on the other side to see the falls. The water runs under the road and I brought them over on the north side to look at the water there and, as I stood at the bridge, glanced over to one side and I seen something through the lower part of the brush and weeds that attracted my attention.
Q What was that something?

A Well, it turned out to be a shirt on a man's back, but at that time I didn't know what it was. I went through the guard rail and walked down through the bushes and weeds which grew about seven or eight feet in height, and I saw a man.

Q Now, you say you saw the man on this side of the road which is shown in Exhibit S-1.

A Yes.

Q Now, you say the weeds there were how high?

A About seven feet high at the point of the bridge.

Q Now, in order to get to this particular spot, where you saw what looked like a man's shirt, how far did you have to walk off the road?

A Well, I walked over to the guard rail and through the rails and I stepped down probably four or five feet.

Q Below the level of the road?

A Well, it is about four feet below the level of the road there and it slopes down to the water's edge. At the water's edge it would be probably seven feet below the level of the bridge.

Q When you got there, what did you find?

A When I got there I saw the feet of a man, with black oxford ties, and black clothes, and I investigated and I saw it was the body of a dead man, and I put my hand on his left side, and what attracted my attention was his shirt had been pulled from his trousers and body. He had no undershirt on and his coat laid open. Had it not been for that—

Mr. Wachenfeld. I object.

The Court. I will allow it.

A [continuing] And I put my hand on his body and found it was cold.

Q Was that a white man or colored man?

A I first thought it was an Italian, dark skinned, and I investigated and I found it was a colored man, and his body was cold and rigid.

Q What did you do after you made that discovery?

A After that I went to Mr. Bowden's mother's house which is about a minute's walk, and I notified them there and asked them to send for Mr. Bowden and after they sent for the Chief of the Police, that being the nearest telephone point, I thought that would be the best thing to do.

Mr. Wachenfeld. I object.

The court. I will allow it

Q Did you stay there until the body was taken away?

A No. I took my guests home and had my supper and when I returned it was in the neighborhood of eight o'clock and then Mr. Bowden was there and Captain Mason came and then they went down and examined the body.

Q Were you there when that examination was made?

A Yes, I was there when they found something on him. I do not know what it was, but I was told—

Mr. Wachenfeld. I object.

The Court. No.

Q What became of the body the second time at eight o'clock?

A It was placed in a wicker basket and I helped somebody to carry it up into an undertaker's wagon.

Q Now, you say the shirt was pulled out of the trousers?

A Yes.

Q And it was up over the upper part of the body?

A A way over on his back.

Q And that was what attracted your attention from the road?

A Yes, just that white object. I thought it was something strange—

Mr. Wachenfeld. I object.

The Court. Do not say that.

Q You saw that white object and that attracted your attention?

A Yes.

Q And who took the body away?

A I don't know who the undertaker was.

Q You helped put it in this wicker basket?

A No, I did not help put it in the basket, I helped to lift the basket over the rail. The others put it in the wagon. Several others helped.

Q Where was the body when you left that place?

A The body was gone, they had taken the body away.

Q Who took it away, do you know?

A The undertaker took it away.

Herbert H. Matts, Cross.

Cross Examination by Mr. Wachenfeld.

Q How near to this bridge do you live, Mr. Matts?
A About three minutes walk.
Q And what is the name of this road?
A The Little Falls Road, Cedar Grove.
Q Is that what it is called, Little Falls Road?
A It is Little Falls Road in Little Falls and Cedar Grove Road in Cedar Grove.
Q And you say you live a three minutes walk from the bridge, is that in the direction where Mr. Bowden lives or in the opposite direction?
A In the opposite direction.
Q Now, look at this picture, S-1, and as I understand it, Mr. Bowden's house is here?
A Yes, sir.
Q On which side of the road do you live?
A On that side, on the north side.
Q Right on the north side of this bridge, there are two houses in front and one in back, is that right?
A There is a concrete house nearest to the bridge, and just to the other side there is a frame house.
Q And there is a little house between these two houses?
A Yes, sir.
Q And in back of this house there is another house?
A Two more houses which were just put up, Mr. Hopkins lives there with his married daughter.
Q And do you live beyond that?
A Yes, there is a patch of woods here and a field and my house is around the bend.
Q And how long have you lived there?
A About two years.
Q What time of the day was this, that you say you found this body?
A 6:45.
Q What day of the week was it?
A Friday afternoon, September 4th.
Q Was it still light or was it getting dusk?
A Well, it was daylight savings time, and it was not dark at that time, it was just about dusk.

Q And were you walking up there, and did you have someone else with you?

A I had two lady guests with me that were from out of town and I was taking them down to show them the falls and we walked down where the river passes under the road.

Q And as you were walking along the roadway you were attracted by this white object?

A No, it was while we were standing at the bridge gazing in the water——

Q Well, after you stopped walking and had stopped to look down in the water, over the side of the bridge, this white object attracted your attention?

A Yes, we just happened to glance over through there about six feet from the water's edge.

Q Was it the white object that attracted your attention?

A Yes, if it had not been for that I might not have seen him, I would not have noticed him.

Q Now, look at this same picture, Exhibit S1. I am going to ask you how far from that, which appears to be a white, and I think Mr. Bowden testified, a white fence——

A Yes, sir.

Q And this which appears more or less gray is a cement coping

A That is a cement concrete bridge.

Q Now, will you indicate on that picture where the body was at the time you saw it?

A I cannot indicate on that, because the body was below.

Q I mean, just an indication where the body would be opposite.

A It would be opposite this (indicating).

Q Would it be opposite, as I understand it, where you point, about the junction of the board fence with the cement?

A Yes, there was a wooden abutment at the foot of the bridge that ran in a diagonal direction and the head lay north, between that and a stone.

Q Assuming the ground in there to be level, how many feet would the body have been from either the board fence or the cement coping?

A Well, about possibly five feet.

Q Not more than five feet?

New Jersey State Library

A Well, I would not say. I did not measure it. I should judge about five feet.

Q Now, there is quite a space between the water's edge and the top of this bridge, isn't there?

A Yes, sir.

Q And Mr. Bowden said that it was perhaps six feet, would you agree with that?

A From the water's edge to the top of the bridge it is all of six feet.

Q Now, there are a good many small roads around that particular section, are there not, which are not so popular for traffic as this Little Falls Road?

A Well, the road there at the bridge, there is a wagon road that runs through the woods just as it turns off from the road, that is not used very much.

Q And that is much more deserted than this road for traffic?

A Well, very few people go there.

Q And this is a wide road?

A The Little Falls road?

Q Yes.

A Oh, yes, it is a County road.

Q And it is paved with what—Mr. Bowden said—I thought it was asphalt——

A (Interrupting) Well, bithulitic, patented pavement.

Q It looks like asphalt?

A Yes, sir.

Q And used frequently for automobiles and traffic?

A Automobiles and there are two sand pits below and the sand trucks are running all day long back and forth.

Q Had you been past the bridge that day?

A Lots of times, but not at that hour.

Q You had not passed it that day?

A No, that was the first time.

Q So the first time you went past that locality you discovered this body?

A Yes, sir.

New Jersey State Library

Gustave Kunz, Direct.

GUSTAVE KUNZ, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q What business were you in, Mr. Kunz, on September 4, 1925?
A Undertaker and morgue-keeper of Essex County.
Q Do you remember going up to Little Falls Road on the evening of September 4, 1925 about 7:30 or eight o'clock?
A I do.
Q What did you do there?
A I was ordered there by County Physician, Dr. Martland, to remove a body of a colored man that was found alongside of the road.
Q I show you a photograph marked Exhibit S1 and ask you if you recall being at that spot that night?
A It was dark when I got there and the surrounding was a strange spot to me, so I cannot recall it.
Q What did you do with the body of the colored man?
A Removed it to my morgue.
Q Where was that?
A 41 North Centre Street, Orange, New Jersey.
Q What happened to the body at that morgue later, if you know?
A An autopsy was held by Dr. Martland, County Physician.
Q What time was it?
A I should judge around ten o'clock.
Q Were you there when the autopsy was performed?
A I was.
Q And you say the autopsy was performed by Dr. Martland on the body that you had taken from Cedar Grove down to your morgue?
A I assisted him in doing it.

Cross Examination by Mr. Wachenfeld.

Q Can you give us an idea, Mr. Kunz, of the weight of the body, approximately?
A We figured, estimated it at about 180 pounds.
Q Quite a big man, was he?
A He was.

Q And can you give us an idea as to his proximate height?
A If I am not mistaken it was five ten. I haven't any record with me to prove it.

CHARLES SCOT, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Scott, what is your business?
A Manager for Francis Bannerman's Sons, New York.
Q What kind of a place is Francis Bannerman's Sons?
A Military goods, firearms and curios.
Q Where is their place of business?
A 501 Broadway.
Q I show you a paper and ask you to tell us what that is, if you know.
A Yes, that is a receipted bill for a Spanish pistol sold for $9.25.
Q Sold where?
A Sold in New York City.
Q At what place?
A 501 Broadway.
Q Whose place is that?
A Francis Bannerman's Sons.
Q To whom?
A Sold to—Wallace Payne, Falls Road, Little Falls, New Jersey.
Q What is the date ?
A August 24, 1925.
Q And the price?
A $9.20.
Q Do you know whether this order was delivered or was it mailed?

Mr. Wachenfeld. Of your own knowledge.

Witness. To my own knowledge it was turned over to Station A Post Office, New York City for delivery.

Q Of your own knowledge it was turned over to whom?
A Station A, Post Office, New York City.
Q Address to where?
A Wallace Payne.
Q Where?

Charles Scot, Cross.

A Little Falls.
Q What State?
A New Jersey.
Q Have you here with you the carbon copy of that order?
A Yes, I have completed order with me.
Q Let me see it, please.
A Both the shipping bill and the sales bill. The copy of the bill.

Mr. D'Aloia. I offer both in evidence.

Cross Examination by Mr. Wachenfeld.

Q I show you the first one—well, that is the original. Do you know anything personally about that transaction?
A Nothing, personally, any more than the completion of it and the registration.
Q Did you make that entry that you are looking at now? Is that your handwriting on that paper?
A No, not my handwriting.
Q Whose handwriting is it?
A It is signed Devery. He is a salesman.
Q Is he an employee of yours?
A Yes.
Q And it is his handwriting on that?
A Yes.
Q Were you there when he signed it?
A I was not present when he signed it.
Q You did not see him sign it, did you?
A No, did not see him sign it.
Q Then you don't know anything about it?
A Not as a fact he signed it. I take it it is the same as his signature.

Mr. Wachenfeld. I object on the ground it is not properly proven.

The Court. I will not admit the bills.

Redirect Examination by Mr. D'Aloia.

Q How long was Devery in your employ?
A About three months.
Q Do you know where he is now?
A There.

Q Where?
A Still in the employ of the business, 501 Broadway.

LYLE W. MOREHOUSE, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q What business were you in on August 24, 25, 26 27, 28, 1925?
A Postmaster, Little Falls.
Q Subsequent to August 24, or about that time, 1925, did you see this defendant at your postoffice?
A Yes.
Q Will you tell the jury when you first saw him?
A I could not tell them that.
Q Well, how long was it before the 24th of August?
Mr. Wachenfeld. May I ask what the witness is referring to?
A I saw him August 14.
The Court. Yes. What are you referring to?
Witness. I have a record of the date he was in the office.
Mr. Wachenfeld. Made in your own handwriting?
Witness. Yes.
Mr. Wachenfeld. When was the record made?
Witness. August 14.
Mr. Wachenfeld. Did you make it on August 14?
Witness. I made the record on August 14.
Q Now, please tell the jury what this defendant, Harrison W. Noel, said or did at your office at Little Falls.
A He bought a money order for $2.50.
Q Where was the money order addressed?
A Hartford, Connecticut.
Q To what concern?
A Maxim Silent Arms Company.
Q And was the money order issued?
A The money order was issued.
Q When did you next see the defendant?
A Well, I could not say for sure. He was in the office several times.

Q Now, subsequent to the time he took out the money order to the Maxim Silent Arms Company, when did you see him?
A Well, he was in the office August 20.
Q August 20. Do you recall what he said and did there?
A He asked for a letter.
Q What name did you know the defendant under?
A Wallace Payne.
Q Did you give him the letter?
A I did.
Q When did you next see him?
A I do not remember the date.
Q Well, how long after he got the letter about?
A Why, several days.
Q What did he come there for at that time?
A He asked for a package.
Q Was the package there?
A No. The first time he came for it.
Q When did he come again to ask for the package?
A Well, I don't know whether it was the same day or two days after.
Q What name did he come in and ask for the package under?
A Wallace Payne.
Q Did he get the package?
A Later he got the package. I would not say what date it was.
Q Well, he came once and the package had not arrived?
A Yes.
A And you saw him two days after that and he got the package?
A Yes.
Q Did he sign for it?
A No.
Q Simply said he was Wallace Payne and wanted the package?
A Yes.
Q You knew him as Wallace Payne?
A Well, I transacted business for him under that name.
Q You did not question him at all; you gave him the package?

A Yes.

Mr. Wachenfeld. I object to that.

Q How many times in all did you see him at your post office in the month of August?

A I could not say that. Three or four times, anyway.

Q Did you know him on those three or four visits under any other name than Wallace Payne?

A No, sir.

Q How big was this package he got the last time you saw him?

A Well, it looked like a small package of writing paper.

Q Will you kindly illustrate the size?

A Well, about that long and that wide and that thick (illustrating).

Q "About that long;" you mean about eight inches?

A Probably.

Q "And about that wide, meaning about five or six inches?

A Yes.

Q And about "that thick," meaning about two inches?

A No. About an inch and a half.

Q Was it light or heavy?

A I do not remember that.

Cross Examination by Mr. Wachenfeld.

Q You say you saw him three or four times all told?

A Yes.

Q When was the first time that you say him?

A Well, I don't know whether it was the first time I saw him or not, but the first time I have any record of seeing him was August 14.

Q Well, you have a record there he was there August 14?

A Yes.

Q Do you know whether you saw him prior to that time or not?

A I cannot recall.

Q Cannot you recall whether that was the first time you saw him?

A We have so many people coming in I do not pay any particular attention to them.

Q Well, can you tell us whether you saw him before August 14?

A I cannot tell you.

Q Now, the record you have, August 14, is for what, a letter?

A Purchased a money order.

Q For $2.50?

A Yes.

Q And is it part of your duty there to make out the money order?

A Well, it is my duty to do anything.

Q Well, did you make out that money order?

A I made out that money order.

Q You cannot tell whether that is the first time you saw him or not?

A No.

Q But do you recall him distinctly, after this thing happened, that he was the man that was there on the 14th of August?

A Not particularly.

Q Well, what fixed it in your mind that you did see him on the 14th of August?

A The fact that I made out a money order.

Q What did he tell you at the time he spoke to you about the money order?

A I do not recall anything.

Q Don't you remember him saying something to you?

A Well, he asked for a money order, or perhaps made the application.

Q Did he give a name at that time?

A He signed a money order.

Q What name?

A Wallace Payne.

Q Did you have any other conversation with him?

A No.

Q Well, the mere fact that this boy walked in there and got a money order and signed it Wallace Payne, was that sufficient for you to recollect that this was the particular boy?

A Well, he was in there several times.

Q Well, let us take up the one instance first, on August 14. Is there anything that prompted you to recall that this was the boy under the name of Wallace Payne?

A No.

Q And from the August 14 incident alone would you say this was the boy who was there?

A Yes. I would not be positive, but I would think that was the boy.

Q Well, what makes you think that this is the boy?

A Well ,he is the same size.

Q There are lots of boys the same size.

A Yes.

Q What else is there that permits you to recognize this boy?

A Well, the only thing I know was the lower part of his face.

Q Well, was there something peculiar about that?

A Well, I think his chin is a little peculiar shaped.

Q Well, what else is there that enables you to recognize him?

A Nothing I know of.

Q When did you see him after that?

A Well, I know I seen him August 20.

Q Well, that is the package——

A No, that is when he came and got a letter.

Q And was the letter addressed to him?

A The letter was addressed to him.

Q Under what name?

A Wallace Payne.

Q And was it a special delivery letter or ordinary?

A An ordinary letter, addressed to Wallace Payne, Little Falls.

Q And it was in the General Delivery?

A General Delivery Box.

Q And did he ask you for the letter?

A He did.

Q And did you give it to him?

A Yes.

Q Do you recall at that time that he was the boy you wrote out the money order for on August 14?

A Well, the money order was returned to him and I cashed it for him.

Q When?

Lyle W. Morehouse, Cross.

A August 20.

Q So he did transact business, too, August 20. He got a letter and got his $2.50 back?

A That is it.

Q When did you see him again after August 20?

A I do not recollect the date.

Q Well, you say you saw him three or four times all told?

A About that.

Q August 20 did you have a conversation with him?

A Not that I recollect, but he came in and wanted to know if the money order had been returned and if he could get the money order and I told him if he signed it in the proper place he could get it.

Q Did he sign it?

A He did.

Q Did he sign Wallace Payne?

A Yes.

Q Now, can't you tell us the other times?

A I could not tell you. I know this, because I have the dates on the record.

Redirect Examination by Mr. D'Aloia.

Q What was the last thing that he did there at your office?

A Well, I could not tell you that.

Q Well, did he get the money for the money order before he got the package you described as a package of writing paper?

A He got that before he got the package.

Q He got that before he got the package?

A The $2.50.

Q That was the 20th of August?

A Yes.

Q And if you remember the chronology of these occurrences, you recall that he got the $2.50 and the money order before he got the package——

Mr. Wachenfeld. I object.

The Court. Sustain the objection.

Q Now, is it your recollection that occurred before or after?

A Well, if I thought to look up my records I could tell you. I did not bring it here.

Q Have you a receipt for the package?

A I haven't a receipt, but I have a record when it was received.

Q How long will it take you to go there?

A Why, about an hour and a half.

Q Try and get it?

A All right.

CHARLES J. SCOT, recalled in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q After on or about the 24th of August, 1925, while you were manager of Bannerman Sons at 501 Broadway, was there a pistol such as this in stock?

A Yes.

Q Do you know the price of it?

A $9.20.

Q What kind of a pistol would you call it?

A Second hand, refinished, Spanish Automatic, .32.

Mr. Wachenfeld. May I move at this time to strike out the former testimony of Mr. Scot on the ground it is not proper?

The Court. I will over-rule the objection.

HELEN BOGAN, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mrs. Bogan, where were you residing in September, 1925?

A In Cedar Grove.

Q Where in Cedar Grove?

A Cedar Street.

Q Do you know the place known as the Osborn Quarry?

A Yes, sir.

Q How far is that from your house?

A Well, I should judge it would be about—The Qurary you mean?

Q Yes, the quarry, the old Osborn Quarry.

A I think it is about a mile.

Q Now, where were you on September 4th?

A Over to my old homestead picking berries.

Q How far away from your home?

A I should judge about a mile.

Q And did you have occasion on that afternoon to go by the old Osborn Quarry?

A I did not pass the quarry—yes, I did, I was picking berries, yes, I did.

Q What was it, if anything, that you noticed up on the back of the quarry?

A A car.

Q What kind of a car?

A A maroon, kahki top.

Q A maroon car with a kahki top?

A Yes, sir.

Q What kind of a car was it? A touring car or closed car?

A Touring car.

Q Did you take the number of that car?

A Yes, I did.

Q Do you recall it now?

A Captain Mason has got the number.

Q Did you take the number that day?

A Yes, sir.

Q What did you do with that number?

A Captain Mason has got it.

The Court. Did you write it down?

Witness. Yes, sir.

The Court. And gave it to Captain Mason?

Witness. Yes, sir.

Q Do you recall that number now from memory?

A I think I do remember it.

Q Try it.

A It is 156433.

Q Was that number on that car a New Jersey license or a New York license number?

A A New Jersey license number.

Q To whom did you first give that number?

A To my husband.

Q How long was that car there while you were picking berries?

A Well, I did not see it until I came out of the woods, see, and I cannot tell you that, but it was about half-past eleven when I came out of the woods.

Helen Bogan, Cross.

Q Was anybody around it?
A No, sir, not a soul.
Q When was it that you gave the number to your husband?
A In the meantime I got a call for a mad dog——
Q No, when was it that you gave the number to your husband?
A Well, it was about coming on to about twenty minutes to twelve.
Q How long after you had taken the number from the car?
A Well, about twenty minutes after that.
Q Twenty minutes after you had taken the number from the car you had given it to your husband?
A Yes, sir.
Q What particular position did your husband occupy at that time in Cedar Grove?
A He is Chief of Police.

Cross Examination by Mr. Wachenfeld.

Q Do you remember what time of the day it was, Mrs. Bogan, when you saw the car first?
A I didn't see the car until I came out the woods with berries.
Q Can you give us an idea what time that was?
A I judge that would be about half-past eleven.
Q And after that you saw that car driving away?
A Yes, sir.
Q How long after that was it when you saw that car drive away?
A My husband and I sat down to lunch and my husband said——
Q You cannot tell us what your husband said. After your husband said something tell us what you did or saw.
A I saw the car drive away and I got up from the table and went to the front door.
The Court. What time was that?
Witness. Coming on to one o'clock.
Q Did you see the same red car with the kahki top?
A Yes, sir.
Q Did you see it drive by your house?

A Yes, sir.
Q How many men were in it?
A There were two men in it.
Q Now, where this car was parked at the time you first noticed it and took its number, it was parked right off the roadway?
A Yes, when I saw it, and my attention to it was called to it because it was up against the bank.
Q In other words, there was a roadway running up where this car was, and this car was off the side of the road, it was parked there?
A Yes, sir.
Q And the place where it was parked was right up around the bend from your house, wasn't it?
A I guess it was about five feet from my house, or about ten, I should judge.

WILLIAM J. BOGAN, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q The last witness was your wife, Chief?
A Yes, sir.
Q And in September you were Chief of Police of Cedar Grove?
A Yes, sir.
Q Now, do you remember the 4th of September, 1925?
A Yes, sir.
Q Did your wife give you the number of an automobile that day?
A She told me to look at an automobile.
Q Did you go over to look at it?
A Yes, sir.
Q And did you see the number 156433 on it?
A Yes, sir.
Q What kind of a car was it?
A An Overland touring.
Q To whom did you communicate that information and when?

A On Saturday, when the Dodge car was found in the quarry, I gave it to Frederick Gallagher.

Q Who is Gallagher?

A He is a detective in Montclair.

Q What did you do when you first saw this car, simply look at the license or look at something else?

A I got out and felt the radiator and looked at the name on the car and the number.

Q And you felt the radiator?

A Yes, it was warm.

Q And you said something about giving this information as to the license number of that Overland car to Mr. Gallagher when the Dodge car was found in the quarry?

A Yes, sir.

Q When was that?

A Saturday.

Q Were you in the quarry?

A The Dodge car was found on the continuation of Cedar street near Bradford avenue.

Q In the woods?

A Yes, sir.

Q Were you there when it was found?

A I was there after it was found.

Q I show you a photograph and ask you if that is a correct representation of the spot where the Dodge car was found near Bradford avenue.

A It looks like the spot, yes, sir.

Q How far from the road was the Dodge car in that particular locality?

A I should judge five or six feet in.

Q From Bradford avenue?

A From Bradford avenue.

Q What was the character of the ground around there, what topography, woods?

A Woodland.

Q Could you see the car from the road?

A No, sir.

Q What time was it when you saw Gallagher where the Dodge car was when you told him about this Overland car that you had seen the day before?

William J. Bogan, Cross.

A About eleven o'clock.
Q Eleven o'clock of Saturday September 5, 1925?
A Between eleven and twelve.
Q Did you describe the car to Gallagher?
A Yes, but I did not know of the kidnapping at the time.
Q I know, but did you describe it to him?
A Yes, sir.
Q And you gave him this number 156433?
A Yes, sir.

Cross Examination by Mr. Wachenfeld.

Q The Overland, Chief, at the time you saw it was parked right alongside of the roadway, wasn't it?
A Yes, on the easterly side of the roadway.
Q Within a few feet off the roadway, wasn't it?
A Yes, back from the bank.
Q How far from the left hand side of the nearest side of the roadway?
A About two feet, two or three feet.
Q Two feet off the road?
A Yes, the road where the Overland was parked was a private road.
Q There wasn't any difficulty in seeing the Overland car off the road, was there?
A Not until you got in there.
Q Until you got in where?
A Until you got into Sunset terrace.
Q And when you got into Sunset terrace you had no difficulty in seeing that Overland car?
A No, sir.
The Court. You said that road was a private road?
Witness. Yes, sir.
Q What do you mean by private road? Weren't there several houses there in that street?
A No, on Cedar street.
Q And Cedar street runs in what direction?
A East and west.
Q And what is the other street?
A Sunset terrace, north and south.

Q Which street was this car on, the Overland car when you saw it?

A On Sunset terrace.

Q And Sunset terrace runs around into Cedar street, doesn't it?

A Yes, sir.

Q So, there is nothing private about Sunset terrace?

A It is a private road.

Q And as you go up Cedar street, the street on which you live, there are a number of houses on that street?

A Yes, sir.

Q And when you get up it makes a bend, and becomes Sunset terrace?

A Yes, it is a street from which Cedar street continues out to the turn at which the car was found.

Q Well, assuming that this (indicating) is running east and west and this is Cedar street and there are houses right here, aren't there?

A Yes, sir.

Q On both sides of the street?

A Yes, sir.

Q And when it gets up here it makes a bend in that fashion, doesn't it?

A Yes, but that street continues on.

Q It is not paved up here, is it?

A If you will give me the chalk I will show that to you (indicating.) This is Sunset terrace; this is Cedar street; there is a house way back there and this is the end of the street right here and there is a sign on it "Private Road" and right here is where the Overland car was found, and off in here is the quarry.

Q Now, then, this house here is almost on where the street makes the turn?

A Yes, sir.

Q And you live here?

A Yes, sir.

Q And where you found the car was away up there?

A Yes, sir.

Q Is that your indication of it?

A Yes, sir.

William J. Bogan, Redirect.

Q Right off here, off the roadway?
A Yes, sir.
The Court. Chief, where is Bradford avenue?
Witness. This is Bradford avenue here (indicating) and that is a continuation of Cedar street which comes into Bradford avenue.
Q Is this road which leads over here, is this paved?
A No, sir.
Q It is a wood road?
A It was all ploughed up years ago and it is all grown up.
Q And Bradford avenue leads right in, if you continue on, it leads right into Overbrook Asylum, doesn't it?
A Yes, sir.
The Court. Chief, Mrs. Bogan spoke something about an old homestead. Where is that with reference to the quarry?
Witness. This is right here, Cedar street and Sunset terrace, and over here to the north eight hundred feet wide is the old place.

Redirect Examination by Mr. D'Aloia.

Q Chief, just look at this photograph, please, and tell us whether that is this part of the road that you have marked as the continuation of Cedar street into Bradford avenue?
A Yes, right in here.
Q And that is where you saw the Dodge car on Saturday, September 5, about eleven o'clock when you saw Mr Gallagher?
A Between eleven and twelve.
Q About here?
A Up about here.
Q That car we will mark the Dodge, and you say here is the Overland?
A Yes, sir.
Q And this picture here shows the character of that road?
A Yes, sir.
Mr. D'Aloia. Mr. Wachenfeld, I don't think you will have any objection to marking this Bradford avenue?
Mr. Wachenfeld. No, not at all.
Mr. D'Aloia. Mr. Wachenfeld, I don't think you will
(Same is marked Ex. S5.)

John M. Perrin, Direct.

Recross Examination by Mr. Wachenfeld.

Q Chief, you said that this picture shows the character of this stretch of road from here on over to Bradford avenue?
A Yes, sir.
Q But over here, this street is paved?
A It is covered with cinders.
Q Well, fine, cracked stone?
A Yes, it is a little bit better than Cedar street.
Q It is a paved street covered with cinders?
A Yes.
Q And there is no heavy underbrush or heavy forest as shown in this picture?
A No, sir.
Q And there is no difficulty in seeing the Overland across the road?
A Not until you get in there, in Sunset terrace.

JOHN M. PERRIN, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Do you remember the 5th day of September, 1925?
A Yes, sir.
Q At that time what particular business were you engaged in?
A Policeman.
Q In what municipality?
A In Montclair.
Q What kind of an officer were you?
A Motorcycle.
Q Do you remember on this, was it a Saturday, September 5th?
A Yes, sir.
Q Were you with your motorcycle in the neighborhood of Bradford avenue, Cedar street and Sunset terrace, Cedar Grove?
A Yes.
Q I show you a photograph which is marked Ex. S4, do you remember going through here with your motorcycle?

A Yes, sir.
Q On that day?
A Yes, sir.
Q Will you tell the jury what you found there.
A I found a Dodge car.
Q I show you the photograph of a Dodge car, touring car, license No. 0722, is that the Dodge car that you found in there?
A Yes, sir, that is the car.
Q Will you please put a mark on this photograph showing that continuation of Cedar street and showing the spot where the car was found?
A That is the spot there (marking).

Mr. D'Aloia. I offer in evidence photograph of the 0722 car. It does not show in this place, but it shows the car.

Mr. Wachenfeld. Do you know whether or not the car was in this position at this time? Mr. Hanlon said it had a winter top on it.

Mr. D'Aloia. That picture was taken on September 10th. I will call Mr. Hanlon.

Q Now, Mr. Perrin, look at the photograph of this car. You saw it up there, where you indicated on the other photograph?
A Yes, sir.
Q Is that the way you found it?
A Yes, sir.
Q With the same kind of a top on it?
A Yes, sir.
Q Just like it is, it is just like you found it?
A Yes, sir.

Mr. D'Aloia. I offer it in evidence.

Mr. Wachenfeld. I would like to cross examine on it.

Mr. D'Aloia. I am showing the jury this photograph showing the continuation of Cedar street, the spot where this witness found the Dodge car.

Photograph marked Exhibit S-5.

John M. Perrin, Cross.

Cross Examination by Mr. Wachenfeld.

Q Officer, do you remember whether that car what we call a winter top on it when you got there?

A Why, it looked to me as if it was a touring car.

Q Well, you know what these improvised tops are that you use on an open car in the winter time?

A Yes.

Q And you know they enclose both sides in glass. Did it have such an improvement as that on it?

A No, sir.

Q Are you sure about that?

A Yes.

Q Now, look at this picture. You will see that this winter portion on the back of it—did you see that?

A Yes.

Q Was that the way the car was at the time you saw it?

A Yes.

Q Then with the exception of the back part of the winter top, it had no winter top on it, did it?

A No, sir.

Q How did you happen to go up this street? I have forgotten the name of it—where you finally found the Dodge car?

A I was sent up in that section by Chief Reilly.

Q And did you get your instructions from Chief Reilly to go to that particular section?

A Yes.

Q Well, what section did he tell you to go to?

A Well, he told me to go to any place.

Q Did he tell you to go to this particular section?

A No, not exactly.

Q When was it you saw this Dodge car there?

A Saturday.

Q That would be after September 5. What time, in the morning?

A 11:20.

Q What time did you leave headquarters that morning?

A A quarter to ten.

Q Did I understatnd you to say that Chief Reilly told you to cover this section?

A He told me to go up in that section.

Q You do not know why Chief Reilly told you to go to this section?

A He did not tell me to go to any particular section. He told me to go and get information.

Redirect Examination by Mr. D'Aloia.

Q After finding this Dodge car there in that part of the road, did you notify your superior?

A Yes.

Q And what time was it when officer Gallagher came there?

A Why, it was pretty close on to twelve, or a little after twelve.

Q Did you remain there with the Dodge car until after Gallagher arrived?

A Yes.

Q And were you there when Gallagher arrived?

A Yes.

Q Was Bogan there?

A No, sir.

Q Were you there when Bogan came up and spoke to Gallagher?

A No.

Q When did you leave there?

A Well, I went to different parts of the woods there.

Q And you left Gallagher there?

A Yes.

FRED GALLAGHER, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q On September 5, 1925, were you a member of the Montclair Police Department?

A I was.

Q And were you on this case, the kidnapping of Mary Daly.

A I was.

Q Now, on the morning of Saturday, between 11 o'clock and noon, did you have occasion to go to Cedar Grove?

A I did.

Q And did you go to this particular place shown on this photograph, a continuation of Cedar Street, as it runs into Bradford avenue? Did you have occasion to go up to the spot shown on that photograph on September 5, 1925?

A I did.

Q And when you got there, what did you find?

A A Dodge touring car was there.

Q And what did you do after you got there, did you have a talk with Bogan?

A Some time after.

Q What time was it when you had the talk with Bogan?

A About four o'clock in the afternoon.

Q Did you have a talk with Mr. Bogan?

A I did.

Q Did you get any information from them?

A I did.

Q What did you do after you got that information?

A Came down to Montclair and called up the license bureau in Trenton.

Q What license number did you inquire about?

A 156,433.

Q Did you get some information after making that call?

A I did.

Q Where did you go?

A I first went up to Hanlon's and later on went to Noel's.

Q First you went to Hanlon's, that is the Taxi Company?

A Yes.

Q And then you went where?

A Noel's.

Q Where was that?

A 295 North Mountain Avenue.

Q What time did you get to Noel's house?

A I should judge around five o'clock.

Q Did you see this defendant, Harrison W. Noel?

A I did.

Q To whom did you speak when you got there?

A Mrs. Noel.

Q Did you speak to the defendant?
A I did.
Q What did you say to him?
A I asked him if he was driving that car.
Q What car?
A The Overland touring car, with the license 156,433.
Q What did he say?
A I asked him if he was driving it Friday, the day before, and he said yes.
Q What else?
A I asked him where he was with the car and he said he drove to Morristown, and I asked him if he stopped anywhere and he said no.
Q What else did he say?
A I told him then that I had a witness that saw his car parked in Cedar Grove for at least four or five hours.
Q What did he say?
A He said they are lying if they say my car was parked there, and then I asked him if he had a driver's license and he said he had a New York state license. I said, "Have you a New Jersey license?" He said, "No." "I had one last year." I said, "Do you know you cannot drive without a license?" And I said, "Get your hat and coat on and come down to see the chief."
Q Did you take him in custody?
A Yes.
Q After you had him in headquarters did you have occasion to go to the Noel house?
A Sunday afternoon.
Q Did you go in the room occupied, or the room that was described to you as Harrison W. Noel's room?
A I did.
Q Will you please tell the jury what you found there, if anything, that attracted your attention?
A There was some stickers.
Q What do you mean by stickers?
A I don't know what you call them. You have them in an envelope.

Q Well, you know there is another name for them. Is that what they call beggar lice?

A Yes.

Q What did you do with what you found on the floor?

A Put it in the envelop.

Q Did you go back to headquarters with it?

A Yes.

Q Did you notice any more of this anywhere?

A Yes.

Q Did you examine his clothing?

A Yes.

Q Was there any on his clothing?

A There was a few pieces.

Q Where?

A On his coat.

Q Which did you find first, this quantity in the room or on his coat?

A In the room.

Q When you got back to police headquarters in Montclair, you compared this with what you saw on his coat?

A Yes.

Q Did you have any of this stuff on your clothing?

A Plenty.

Q Where did you get it from?

A Going through the woods.

Q Where?

A Up through Bradford Avenue.

Q What else did you find in his room?

A Box of .32 bullets.

Q I show you this box of .32 bullets. Is that the box?

A Yes.

Q Where was it in his room?

A In a little strong box.

Q What kind of bullet would you call that?

A Steel jacketed.

Q Do you know the calibre.

A .32.

Q Do you know what kind of pistol these are fired in?

A Well, I could not say. They could be fired in an automatic.

Q How long have you been a policeman?
A Ten years.
Q What else did you find in his room, if anything?
A A receipt for that.
Q You found this letterhead, "Francis Bannerman & Sons, Ordinance Stores, military goods, war relics, office and salesrooms 501 Broadway. No. 2750. Estatblished 1865. No goods exchanged, in lead pencil. New York City, August 24, 1925, sold to Wallace Payne, Falls Road, Little Falls, New Jersey. One Spanish pistol. $9.20. .32 automatic. Down below, "paid." And down at the bottom, "Order taken by Deverie."
A I did.
Q Now, when you got back to headquarters with this envelop and with these cartridges, and with that order—before you got to headquarters, did you find anything else? Did you search the Overland car?
A No.
Q Where did you find the pistol?
A Why, the chief and Lieutenant Brady and Walsh got that Sunday night when they were going back from where the body was found.
Q Did you see an Overland car, the license number 156-433, New Jersey?
A I did.
Q Where was it?
A In front of his house, in the driveway.
Q Did you see it there when you went up to the house on Saturday afternoon when you returned from Bogan's?
A I did.
Q What kind of a car was it?
A Overland touring car.
Q What color was it?
A Maroon with a kahki top.
Q Now, when you got back to police headquarters did you have a conversation with the defendant?
A I did.
Q What did you say to him?
A Well, we asked him—
Q What did you say to him?

A I asked him where he was that day and he kept saying he was up to Morristown.

Q What day did you refer to?

A Friday.

Q You kept on asking him where he had been Friday?

A Yes.

Q How many times did you ask him that?

A Maybe a thousand times all night.

Q And how many times did he answer he had been to Morristown?

A That many.

Q Who else was there asking questions?

A Chief Reilly.

Q Do you recall what Chief Reilly asked him in your presence?

A He asked him where he had been.

Q What did he say to Chief Reilly?

A He told him he had been to Morristown.

Q He told him the same thing he had told you?

A Yes.

Q How long did that continue?

A That continued from about six o'clock Friday night until five o'clock Sunday morning.

Q And you say during that time you put the question to him a thousand times?

A Yes. At around three or four o'clock in the morning he admitted taking the girl, but he said she was alive.

Q What girl?

A Mary Daly.

Q What did he say as to that?

A He said that he had taken her and she was in a place being cared for and she was alive and that he wanted $4,000 for her return.

Q Now, the next morning, on Sunday, did you have any conversation with him?

A I did.

Q What did you ask him?

A I asked him where the girl was.

Q What did he say?

A He answered the same way, that she was alive and be-

ing taken care of, and he would not tell where she was until he got the $4,000 and was released.

Q Did you ask him where he had been Friday night, Sunday morning?

A Yes.

Q What did he say to that?

A Well, after he admitted taking the girl, he said he took her away and she was being taken care of. Of course, he gave up the Morristown end of it then.

Q Where did he say he had been?

A He said he was home.

Q And how long did he keep on reiterating he was home Sunday morning? I mean by that—maybe that is confusing. On Sunday morning, how long was it that he kept on telling you that he had been home on Friday and not up to Morristown?

A Well, after he once admitted taking the girl—

Q I understand that. How many times did he say to you on Sunday morning that on Friday preceding he had been home.

A Maybe a thousand times.

Q Did you hear Chief Reilly ask him where he had been on that Friday?

A Sure.

Q What did he say to that?

A The same thing, that he had been home.

Q And how long did that continue where he kept on reiterating that he had been home?

A Well, it continued, I should say, until about half past four Sunday morning.

Q At half past four Sunday morning did anybody come there, any physicians come there?

A Doctor Payne and Dr. Stamp.

Q What did they do?

A They questioned him.

Q What did he say to them?

A Why, he admitted taking the girl, but said she was alive and being taken care of.

Q Now, what happened about half past four or five o'clock?

A Why, Lieutenant Brady and Walsh were talking to him

at that time.

Q Were you there?

A Not at that time, no.

Q Did you go to Preakness?

A I did.

Q What time was that?

A About half past five, we got there, or a quarter to six.

Q Who left police headquarters in Montclair to go to Preakness?

A Lieutenant Brady, Walsh, Chief Reilly and myself in one car, and then I think Sergeant Lennon and several other officers in the car behind.

Q Who else outside of the police officers?

A Oh, Noel.

Q In what car was Noel seated?

A He was seated in the car I was riding in.

Q Leaving Montclair police headquarters who did the directing of the driving?

A Noel.

Mr. Wachenfeld. I object to anything done or said after this on the ground it is another crime and not admissible in this case.

The Court. Overruled.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Which way did Noel guide that automobile containing you and the other officers?

A Over Bloomfield avenue, over Upper Mountain avenue, up through Little Falls, in by Beatty's mill at Little Falls and up the back road close by the Hamburg Pike, I think Prospect avenue is the name, and as we got, I should say, five hundred feet from where the body was found—

Mr. Wachenfeld. I object to that on the same ground.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A (Continuing) He looked out and he said, "Stop here."
Q He said "Stop here."
A Stop here.
Q And was the car stopped?
A The car did stop.
Q Now, all these turns you have described going up Bloomfield avenue, who dictated those?
A Noel.
Q And when you got, you say, up near the Hamburg Pike, what county were you in?
A Passaic County.
Q And what was the character and topography of the country, was it populated?
A No, it was woods.
Q Now, you say you came to a spot and he said stop and the automobile was stopped?
A Yes.
Q Did you get out?
A I did.
Q Who got out with you?
A Chief Reilly and all the occupants of the car.
Q Did Noel get out?
A Noel got out.

Mr. Wachenfeld. I object on the same ground, that it is prejudicial to the defendant, on the ground it is a separate crime, on the ground there is another indictment pending against this boy for the crime, and on the ground it has nothing to do with the indictment for which this boy is being tried at this time.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

Mr. Wachenfeld. May I have an exception to anything that is said in reference to the particular points—

The Court. I will allow it after the questions are asked.

Q After you alighted from the car at that particular point in the woods with Noel, tell us what happened?

Mr. Wachenfeld. I object.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

A (Continuing) We crawled underneath the fence there.

Q Who did?

A Noel and myself and Sargeant Lennon and all the occupants of the car and Noel—

Mr. Wachenfeld. The same objection.

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

A (Continuing) And he said, "There she is there," and she was lying there with some sumac bushes over her.

Mr. Wachenfeld. May I move to strike out the testimony of the officer on the same ground?

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Who was lying there?

Mr. Wachenfeld. The same objection.

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

A (Continued) Mary Daly.

Mr. Wachenfeld. And may I move to strike it out.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Will you describe that body?

Mr. Wachenfeld. Same objection.

A She was lying there on her back.

Mr. Wachenfeld. Wait, the same objection.

Q How do you know it was the body of Mary Daly.

Mr. Wachenfeld. The same objection.

The Court. I will allow that.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Well, Noel had told that was the body of the girl he had taken away.

Q When did he tell you that?

Mr. Wachenfeld. Same objection, and I move to strike that out.

The Court. Allowed.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q What happened after that?

A Why, we put him back in the car and took him back to police headquarters in Montclair.

Q What time did you get back to police headquarters in Montclair on Sunday morning, about?

A I should say 6:30.

Q Before you got back to police headquarters did you have a conversation with Noel?

A I did.

Q What did you say?

A I said, "Now that you have this over, what did you do with Pierce?"

Q What did Noel answer?

Mr. Wachenfeld. These are in the nature of admissions made by the defendant and I am going to ask the court at this time to give me the right to cross examine the witness.

The Court. I will allow that.

Cross Examination by Mr. Wachenfeld.

Q When you got to headquarters Noel wanted $4,000, did he?

A He did.

Q Who did he tell he wanted $4,000?

A The Chief and I.

Q And did he say it to you more than once?

A Yes.

Q Did you offer him the $4,000?

A We did.

Q Did you tell him you would give him more than $4,000?

A We did.

Q You told him you would give him more than $4,000 and he told you he wanted $4,000?

A $4,000.

Q And he argued with you police officers when he was in police headquartesr about getting from you men, who represented the law, $4,000?

A He did.

Q When you promised him more than $4,000 that didn't work either, did it?

A No.

Q You did not get any information about the little girl?

A No more than she was alive.

Q Well, you didn't find out where she was?

A No.

Q And then you made him some promises because you wanted to get that information?

A Well, he wanted $4,000 and we told him we would get him the $4,000.

Q Now, didn't you tell him after that and you couldn't get any information, didn't you tell the boy he could go scot free, that all you wanted was the information?

A I did not

Q Did you hear anybody else there tell him?

A No.

Q Was it said while you were there?

A It was not.

Q Well, the conversation you held was with reference to the $4,000?

A Yes.

Q What else did you promise him besides the $4,000 if he would give you the information?

A I did not promise him anything.

Q You told him pretty near everything?

A No, I didn't hear anybody tell him anything outside of the $4,000.

Q And did you promise him that or Chief Reilly?

A Well, I guess Chief Reily and I promised him, too, and Mr. Daly.

Q Did anybody else?

A Mr. Daly.

Q Well, there were three of you that were offering him $4,000?

A Yes.

Q Now, did you hear anyone else say at that time if you will tell us what happened and where the little girl is that we will let you go free?

A I think Mr. Daly told him that if he would tell him where his girl was he would not prosecute him at all.

Mr. D'Aloia. What is that answer?

A That Mr. Daly said he would not prosecute him at all if he told him where his daughter was.

Q Didn't you convey the impression to this boy when you were trying to get the information out of him that he would go free if he gave you the information?

A I will tell you the only impression we gave him——

Q Just answer my one question about that.

A About going free—

Mr. D'Aloia. I object to what impression he gave him.

The Court. I will sustain the objection.

Q Did you make any other promises about him going free outside of what you told him about the girl?

A Yes.

Q Did you make any promises about not going back to Overbrook?

A Yes.

Q That was one thing that he appeared to be definitely afraid of?

A He did.

Q Did you promise him that he would not go back to Overbrook if he gave you the information?

A Yes, sir.

Q Were there any other promises made when you were there?

A No.

Q When did you start to question this boy—I suppose you questioned him when you first went to the house?

A Yes, sir.

Q. What time was that?

A About five o'clock.

Q And then you took him to headquarters?

A Yes, sir.
Q And when you got to headquarters you and Chief Reilly talked to him?
A Yes, we did.
Q And were you and Chief Reilly and the defendant the only three persons present at that time?
A Yes, sir.
Q How long did that situation continue? The Chief and you and the defendant being the only persons present?
A I should say until about one or two o'clock in the morning.
Q Did anybody else come in there during that time?
A We were the only ones questioning him. There might have been somebody else walking in the room.
Q No one else questioned him?
A No, sir.
Q And you told him of the promises made at that time, up until around one o'clock?
A Yes, sir.
Q Did you leave at one o'clock?
A No.
Q How long did you stay there?
A No.
Q How long did you stay there?
A I stayed there until five o'clock Sunday morning.
Q Did you stay there all that time in the presence of he defendant?
A No, I might have walked out of the room for five minutes at a time.
Q And he was alone with Chief Reilly for periods of time?
A Yes, he was.
Q And he was alone with you for periods of time?
A Yes, sir.
Q Do you remember his mother coming to headquarters?
A Yes, sir.
Q His mother talked to him?
A Yes.
Q In your presence?
A No, sir.
Q In the presence of Chief Reilly?

A Yes, sir.
Q Did you hear his mother make him any promises?
A I heard her tell him to tell the truth.
Q Did you hear her make any promises?
A No, sir.
Q Did you hear her tell him that he would not go back to Overbrook if he told the truth?
A Yes, sir.
Q Do you remember Dr. Kirkwood being there?
A Yes, sir.
Q Did Dr. Kirkwood talk to him?
A Yes, sir.
Q Did Dr. Kirkwood talk to him while you were there?
A Dr. Kirkwood talked with him alone.
Q And was Dr. Payne there that night?
A No, the next morning.
Q What time did he arrive?
A Around nine o'clock.
Q Who got there, as to the doctors, who got there first?
A Dr. Kirkwood was there around four or five o'clock in the morning.
Q What time did Dr. Payne come?
A Around nine o'clock.
Q And who came with Dr. Payne, Dr. Stamp of Overbrook?
A Yes, sir.
Q Were you present when they talked to him?
A I was not.
Q Now, that time when you talked to Noel, after Noel had told you the different things, did you tell him that anything that he said might be used against him?
A I did not.
Q Did you caution him or warn him at all?
A In the morning, you mean.
The Court. At any time.
A Well, later on when he made the statement that we did.
Q No, I am talking to you now up to the time that you testified to, in the first hour of conversation between you and Noel when you went up there and was coming back, you did not at that time caution him, did you?

A No, sir.

Q You did not at that time tell him that you were not going to make good on the $4,000 and the other promises you made?

A No, sir.

Q You did not tell him at that time that you were not going to keep your promise about not sending him back to Overbrook?

A No, we didn't tell him that.

Q In other words, Mr. Gallagher, you wanted the information—and I don't blame you for wanting it, you were trying to get it.

A Yes, sir.

Mr. Wachenfeld. I object to anything that was said by the defendant under those circumstances.

Mr. Wachenfeld. Shall I state my record further?

The Court. If you want to.

Mr. Wachenfeld. Upon the ground that is wat perfectly apparent that this boy was promised three different things, at least, by the police officers, and upon the ground that under the case of State vs. Bullock that that presumption continues, and that the burden of proof is upon the State to show that the boy's mind was disabused that the promises were made by the police officers and the other people, and there is no evidence in this case that it was disabused and there is no evidence in this case that the officers told him about it.

The Court. Same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Direct Examination by Mr. D'Aloia.

Q Now, we are going back to your return from Preakness and you are coming along the road in your automobile and you said to Noel, "You told us about this, how about Pierce." What were the exact words you used?

Mr. Wachenfeld. If I cannot have a blanket objection

I will have to object to every question that is asked.

The Court. The difficulty will arise as to what is covered by the blanket objection.

ion by Mr. Wachenfeld. I will object to every question.

Q What was it that you said coming back?

Mr. Wachenfeld. I object to what the defendant said to Gallagher or what Gallagher said to the defendant upon the same ground.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q What did you say to him?

A "Now that you have got this over what has become of Pierce?"

Q What did he say?

Mr. Wachenfeld. Same objection.

The Court. Same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A He said he had shot Pierce.

Q What else?

A I asked him where and he said on Bradford avenue.

Q Then what did you do?

A Why, we told the chauffeur to drive down to Bradford avenue and Noel said he would point out the spot where he had shot Pierce.

Q Who said that that he would point out the spot where he had shot Pierce?

A Noel said that.

Mr. Wachenfeld. Same objection.

The Court. Same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Did you drive to Bradford avenue?

A Yes, sir.

Q I show you a photograph of Bradford avenue and ask you to point out where you were with that automobile which contained Noel and where he took you to the spot where he had shot Pierce?

A We were coming east on Bradford avenue and he said just about the start of this white fence is where he had shot Pierce and I guess he was going west at the time.

Q Put a mark there where he pointed it out.

A Just the beginning of that white fence.

Q Do you recognize Bradford avenue here in this photograph?

A I do.

Q And the typography of the countryside and the road itself was in the same condition as you see it here?

A Yes, sir.

Q That is a correct representation?

A Yes, sir.

Q You say that Noel was going in the direction from the bottom of the picture up, is that right?

A We were coming this way?

Q And when he shot Pierce he was coming in the opposite direction that would be from the bottom of the picture up towards the center?

A Yes, towards the bottom, yes, sir.

Mr. D'Aloia. I offer it in evidence.

(Same is marked Ex. S6)

Q After he pointed out the spot, what did he do?

A Well, we drove back to the police headquarters in Montclair—no, we stopped on the way down at the garage where they kept their car.

Q Where who kept their car, what car?

A Where the Noels kept their car.

Q What did you do there?

A Then Chief Reilly and Brady and Walsh went back into the garage and they brought out that gun that you have there.

Q Was there any conversation about this gun with Noel in your presence?

A There was.

Q Where?

Mr. Wachenfeld. Objected to on the same ground.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A On the way up from the car.

Q What did you say to him, what did he say to you or what did you hear him say to anybody else about it?

Mr. Wachenfeld. Same objection.

The Court. Same ruling.

Defendant's counsel prays an exception to this ruling of the court

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A We asked him what became of the gun and he said it is in the rear seat of his car.

Q And when you got back, after taking the trip up to Preakness, and after coming along Bradford avenue and after he told you where the gun was you stopped at the garage in Montclair where the Overland car was, bearing license No. 156433, and say that Chief Reilly and who else—

A Brady and Walsh.

Q They went in?

A Yes, sir.

Q And when they came out they came out with this pistol?

A Yes, sir.

Q And after they came out with this pistol did you hear anybody say anything to Noel about it?

A Chief Reilly asked him if that was the gun.

Q Did you hear him say that?

A Yes, sir.

Q What did he say?

A He said yes.

Q And when he came back from his house the night before and had these cartridges did you talk to him?

A That was on Sunday afternoon, yes, sir.

Q What did he say about these?

A He said that he had another gun up there at the same time, and he had the bullets up there.

Q That he had what.

A That some time before he had a revolver and he had them bullets there.

Q Did he admit that they were his?

A Sure he admitted that they were his.

Q When did he make that admission, on that Sunday afternoon?

A Sunday afternoon.

By Mr. Wachenfeld.

Q Who did you first see, Mr. Gallagher, when you went up to Noel's residence?

A Mrs. Noel.

Q Was Harrison there at the time?

A Yes, sir.

Q Did you see him when you went in?

A Yes, sir.

Q Did you see Mrs. Noel at the same time?

A I did.

Q Did you speak to Mrs. Noel first or to Harrison?

A We asked to speak to Mrs. Noel alone first.

Q When you asked to speak to Mrs. Noel, Mrs. Noel asked Harrison to step upstairs?

A Yes, sir.

Q When Harrison went upstairs you asked Mrs. Noel some questions?

A Yes, sir.
Q You asked her where her car was, if she knew?
A Yes, sir.
Q And she told you what Harrison had told her?
A Yes, sir.
Q And she told you that Harrison had told her that he had been to Morristown?
A Yes, sir.
Q And then you told Mrs. Noel what information you had?
A Yes, sir, we did.
Q And then you asked Mrs. Noel to call the boy down?
A We did.
Q Did Mrs. Noel call the boy down?
A Yes, sir, she did.
Q And when she called him down he came down, didn't he?
A Yes, sir.
Q And when she asked him to go upstairs in the first instance he went upstairs?
A Yes, sir.
Q And when he came down you spoke to him?
A We did.
Q And after you spoke to him a little while you told him he would have to come down to talk to the Chief?
A Yes, sir.
Q And he went with you?
A Yes, sir.
Q He did not object to it?
A No, sir.
Q He put his hat and coat on?
A Yes, sir.
Q And that was around what time?
A Around quarter after five, half past five.
Q When was it that you went to the house to get these cartridges?
A Sunday around noon.
Q Who did you see first when you went to the Noel house at that time?
A Mrs. Noel.
Q Did you tell her what you were there for?

A Brady and Walsh and myself went there and we asked if she had any objections if we searched Harrison's room, the room where Harrison slept in and she said no, in fact, she went upstairs with us.

Q The fact was that she told you that there was a box up in his room that she suggested your looking at?

A No, sir.

Q Where did you find this?

A In a box.

Q A box where?

A In a drawer in a dresser.

Q In Harrison's room?

A Yes, sir.

Q Who first called your attention to it?

A I think Brady or Walsh picked it up.

Q Why, isn't it a fact, Mr. Gallagher, that Mrs. Noel told you there was a box up there that Harrison had been keeping things in that used to be his father's box, and she suggested that you look into it to see if you could find anything that would help you?

A She said that after we found the box, that it had been Mr. Noel's and Harrison had used it.

Q At any rate she made no objection to your searching at all?

A No.

Q In fact she offered to co-operate with you in every respect possible?

A She did.

Q And the fact was that she went up to Harrison's room with you?

A Yes, sir.

Q And when you went through the things there she helped you while she was there and you found the cartridges at the same time?

A Yes, sir.

Q Where did you find them, also in the same box?

A Yes, sir.

Q Did you find anything else in the same box?

A His license application in New York for a taxi license.

Q Did you find anything else in there, Mr. Gallagher?

A There was an application for a taxi license, or something.

Q Then, that, and the receipt that has been shown you and the bullets were all that you found in this box?

A I don't recall anything else that was in there, that is all that we were interested in.

Q Did you go through the rest of the parts of the room?

A Yes, sir.

Q And search it thoroughly?

A Yes, sir.

Q How long did it take you?

A I guess we were there about forty or forty-five minutes.

Q Now, when you first took this boy down on Saturday afternoon you and Chief Reilly talked to him?

A Yes.

Q He did not have very much to say, did he?

A No.

Q He would not answer some of your questions would he?

A No, sir.

Q And you say you asked him a thousand times whether he went to Morristown and he answered you a thousand times?

A Yes, sir.

Q Did you get a thousand answers?

A About that Morristown yes, sir.

Q And what did you ask him?

A We asked him where he was on Friday morning and he answered he drove to Morristown.

Q You say you asked him that and you say you got the same answer about a thousand times.

A Yes, sir.

Q And you are talking now of what time, from the time you started questioning him up to when?

A From five o'clock to one, up until one or two o'clock in the morning when he admitted taking the girl.

Q What else did you ask him from five o'clock on up until twelve in the morning?

A Well, the main idea was to get the girl.

Q What else did you ask him?

A We questioned him as to where he went.

Q You told us that, that you asked him a thousand times

and he told you a thousand times he had been to Morristown?

A Yes, sir.

Q What else did you ask him during that time?

A All our questions were along the same line as to what he was doing and where he was on that particular day.

Q Did you keep asking him those questions where he was that morning and afternoon?

A Yes, practically the same.

Q Can you tell me anything, any other questions that you asked him other than that?

A Well, we kept telling him that we wanted this girl and they were all along the same line at that time.

Q Did you know at that time that Pierce's body had been found?

A Yes, sir.

Q You told him that, you told that to Noel whom you were talking to him, didn't you?

A We did not.

Q You did not tell him anything about Pierce's body being found?

A We did not.

Q Did you tell him anything about the Dodge car being found?

A We told him about the Dodge car being found.

Q Where did you tell him the Dodge car was found?

A On Bradford avenue.

Q What else did you tell him about the Dodge car?

Q We asked him where he went with the Dodge car after he had taken the girl away and then he would not tell, but he said he had taken her some where and she was being taken care of.

Q What else did you tell him about the Dodge car if anything?

A We did not tell him anything more about the Dodge car that I know of.

Q What else did you tell him, or what else did you ask him about this number of hours from five o'clock until one?

A We kept asking him about the same questions all the time, his movements that afternoon.

Q What afternoon?

A Friday morning or afternoon.

Q And you had suspected that he took the little girl up to that time, didn't you?

A Yes, sir.

Q And you knew where the little girl was taken from, the locality?

A We did.

Q And you knew there were two or three other girls there at the same time?

A Yes, sir.

Q And you knew that one of those girls was as old as twelve years of age?

A Yes, sir.

Q And you told that to Harrison?

A I don't know as we gave him the information about the age of the girls.

Q You were trying to get information from Noel, weren't you?

A Yes, sir.

Q And you were trying to impress him with the knowledge you had so he would answer your questions, and you mean to say that you did not say to him, "Come on, Noel, tell us what happened?" "We know you took this little girl from such and such a place, and did such and such a thing." Didn't you talk to him that way?

A He admitted it.

Q Didn't you talk to him, didn't you talk to him that way, weren't you trying to get the information from him?

A Yes, sir.

Q And you told him the fact of the Dodge car?
girl?

A Certainly we did.

Q You told him of the fact that he had been pursued by this chauffeur?

A Yes, sir.

Q And you told him of the fact of the Dodge car?

A Yes, sir.

Q You told him about the car being found?

A He knew the car was found.

Q Did you tell him about his car being found?

A He knew his car was found.
Q Did you tell him?
A His car was standing there when we went there first.
Q Did you tell him about Pierce's body being found?
A No, sir.
Q Why did you keep that from him if you told him everything else?

Mr. D'Aloia. I object to that.

The Court. Sustained.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q When was the first time that he told you about the little girl?
A That he had taken her?
Q No, that she was safe?
A I should say around one o'clock in the morning, between one and two.
Q And after he told you that and made the statement that the little girl was safe, you could not get any more information from him, could you?
A No, sir.
Q And after that he would not tell you where he had taken her?
A No, sir.
Q And after that he would not tell you where he had taken her?
A No, sir.
Q Did you ask him about the colored man?
A No, sir.
Q When did you first speak to him about the colored man?
A Coming to where the body of Mary Daly was.
Q You knew on Friday night that the body had been found?
A Yes, sir.
Q And you did not mention that to Noel at that time?

Mr. D'Aloia. Objected to.

The Court. Overruled.

A No

Q How did Mrs. Noel come to come down to headquarters?

A Why, I think Chief Reilly or Commissioner Robertson went after her or sent after her.

Q And when they went after Mrs. Noel she came down?

A Yes, sir.

Q And she tried to talk to her boy and get information from him?

A Yes, sir.

Q And she did not succeed any further than you did?

Mr. D'Aloia. Objected to.

The Court. Sustained.

Q And Dr. Kirkwood was there?

A Yes, sir.

Q And he talked to the boy?

A Yes, sir.

Mr. D'Aloia. The same objection, we cannot be bound by whatever Dr. Kirkwood did or said.

The Court. Overruled.

Q Do you know whether Dr. Kirkwood got any information while you were there?

A No, not any more than we have gotten.

Q And Dr. Payne was there and Dr. Stamp was there?

A Yes, sir.

Q And they did not get any more information?

A They did not.

Q And then after that this boy finally made the one statement to you that the girl is safe and that's all he said.

A That the girl is safe and being taken care of.

Q Did he admit that he had taken her?

A Yes, sir.

Q Did he tell you at that time where he had taken her from?

A He said he had taken her from Upper Mountain avenue.

Q What else did he say?

A He kept saying all the time that the girl was being taken care of and I think he did say he had saw her Friday night. He went out and saw her Friday night.

Fred Gallagher, Redirect.

Q And after he told you that the girl was safe he started to argue with you about the $4,000?
A Yes, sir.

By Mr. D'Aloia.

Q Are you acquainted with Upper Mountain avenue, Montclair?
A Yes, sir.
Q Do you know the Bowers homestead?
A I do.
Q I show you a photograph and ask you if that is a photograph of the Bowers Homestead?
A Yes, sir.
Q Is that the place where Noel told you he took the little girl from?
A Yes, over here on the corner.
Q Is that another view of the same premises from the corner?
A It is.

Mr. D'Aloia. I offer both pictures in evidence.

(The same are marked Exhibits S7 and S8 respectively.)

Q Now, after coming back from this trip and getting back to Montclair, what time was it when you got back to headquarters?
A Around a quarter to seven, I should say.
Q What happened there at police headquarters?
A Why, he was asked to make a statement.
Q Were you present?
A I was.
Q That statement was taken down in writing?
A It was.
Q How long did it take to get that statement from him and have someone write it?
A I should judge about an hour.
Q Who wrote the statement?
A Detective Dimond.
Q What was the course of procedure followed in taking that statement, just describe it, what would Dimond write?
A Captain Mason did the talking to Noel and as he an-

swered Captain Mason's statement, why, Dimond would take them.

Q As he answered?

A As Noel answered Dimond would write them down.

Q Do you remember when the statement was all finished and completed?

A Yes, sir.

Q Was it read to Noel or did Noel read it himself?

A Noel read it himself.

Q And what, if anything did Noel say, in your presence, after reading the statement?

A He was asked, I believe, by Mason, if everything in that statement was true and he said yes.

Q Then what did he do?

A Mason asked him to sign it and he signed his name to it.

Q And what did you do, what did you gentlemen do?

A We signed our names as witnesses.

Q Did you sign it as a witness?

A Yes, sir.

Q Did you see a signature affixed to this statement by the defendant?

A I did.

Q And this is your name appearing here?

A It is.

Q Next to the last?

A Yes, sir.

Q Who else signed it?

A Chief Reilly, Lieutenant Walsh, Sergeant Brady and Captain Mason.

Q And yourself?

A And myself as a witness.

Q Were you there during the entire period while this statement was being taken?

A I was.

Q Do you remember as Noel made the statement, did you recall this trip that you had taken about an hour or an hour and a half?

A Did I recall the trip?

Q This ride?

A Yes, sir.

Q When he made the statement, was the ride, as he described it to Mason and as it was taken down by Mr. Dimond, the same as the route that you had followed when you put him in the car and went up to Preakness?

A Not exactly the same.

Q What was the variation?

A Why, he went out Highland avenue to Belmont avenue and north around the reservior.

Q He told Mr. Mason the point where he started from, is that right?

A Yes, sir.

Q He did not start from the Montclair police headquarters?

A No, sir, he did not.

Q As you had started with him just about an hour or an hour and a half before?

A No.

By Mr. Wachenfeld.

Q How long do you say, Mr. Gallagher, it took to write this?

A I should say about an hour.

Q What time was it started?

A Around quarter after seven, I guess.

Q After he had come back from this automobile trip?

A Yes, sir.

Q Did you hear anybody say at that time, before this statement was taken from Noel, the defendant, that the promise to give him $4,000 was off, was cancelled?

A Captain Mason told him that any statement he would make might be used against him.

Q Captain Mason told him that, did he?

A Yes, sir.

Q In your presence?

A Yes, sir.

Q Did anyone else say it in your presence?

A Dimond might have said it.

Q Did you say anything about it?

A No, sir.

Q Did Chief Reilly say anything about it?

A No, sir.

Q Did you tell him substantially that he was not going to

get the $4,000, that he had bargained with you police officers for?

A I did not.

Q Did anyone tell him that he might not be sent back to Overbrook or would not be sent back to Overbrook, that that promise was off?

A No.

Q Did anybody tell him that Mr. Daly's promise not to prosecute him was off?

A No.

Q Do you know if, in the way he acted or what he said, that he was not relying on the promises that were made to him?

Mr. D'Aloia. Doesn't that call for a conclusion.

The Court. Sustained.

Q Did he say anything about it?

A No, he did not.

Q And no one else said anything about it?

A No.

Q No one else told him that those promises were cancelled, did they?

A No.

Q Now, when you came back who started this statement?

A Detective Dimond.

Q Well, who first spoke about taking the statement?

A Oh, I don't recall, it was Captain Mason I guess.

Q And Noel did not volunteer that he wanted to make a statement, did he?

A No.

Q Who asked him to make a statement?

A Captain Mason.

Q And what did Captain Mason say to him?

A He told him that he wanted him to make a statement and he told him to tell the truth on anything that happened from the time he took the automobile until the time the body of Mary Daly was found.

Q What did Noel say to that?

A He wanted to make the statement.

Q Without anything else being said by Captain Mason?

A Captain Mason warned him that anything he might say would be used against him.

Q What were his words?

A Words to that effect, I imagine that he told him that anything he might say would be used against him, something like that.

Q Well, in this statement there isn't anything at all about any such a warning being given to the defendant at the time, is there?

A It says, "A voluntary statement".

Q But there aren't these words, are there, in this statement, "I, Harrison W. Noel, being warned that anything I might say might be used against me".

A No.

Q And who then started to talk to Noel and ask him questions?

A Captain Mason.

Q What did Captain Mason ask him?

A He asked him where he got the car from.

Q And what did Noel Answer?

A The way I recall it, Noel said that he went to a drug store on Valley road, opposite Van Vleck street and telephoned to Hanley's, called Hanley's on the 'phone and told them to send a taxi to the Montclair Athletic Club.

Q What time did he say that was——

The Court. Just a moment, Mr. Wachenfeld. If you are using this statement as a basis for examining this witness it will have to go in. If you are going to ask him to recall the incidents related in that statement, of course he has a perfect right to refer to it.

Mr. Wachenfeld. I have no objection to his referring to it, but he has not asked for it yet.

(*Argument*)

The Court. I am calling your attention to the fact that if you examine on this statement the statement will go in evidence.

Q (Question read)

A As I recall it was around one o'clock.

Q One o'clock in the afternoon?

A Thursday afternoon.

Q What was the next question that Mason asked him?

A I don't remember all the questions asked him.

Q But you remember one, you told me about the first question.

A Yes, sir.

Q Do you remember any other questions that Mason asked nim?

A He asked him which way he went and he said he went up Valley road to Bloomfield avenue, up Bloomfield avenue to Upper Mountain avenue and up Upper Mountain avenue to Bradford avenue.

Q And didn't this frequently happen, that you would tell Noel what you police officers knew of the case and when you got through with your question you would say to Noel, "Isn't that so", and didn't he say, "Yes," to what you asked him?

A No, sir.

Q That did not happen at any time when you took the statement?

A No, you mean that somebody would make a statement and ask him whether it was true or not?

Q They would say, "Didn't this happen" and he would say "it did".

A They asked Noel what happened and he would tell them.

Q And didn't this happen at any time during the taking of this statement, that some police officer said, "You did this or did that, or it happened this way or that way" and he would say, "Yes"?

A Not that I recall.

Q And you recall rather distinctly the taking of this statement?

A Yes, sir.

Q Did anyone ask him where he lived?

A I believe he was asked where he lived, yes.

Q Who asked him where he lived?

A I would not want to be sure, I guess Captain Mason asked him, he was doing the questioning.

Q Did he tell where he lived?

A He did.

Q Where did he say he lived?

A 259 North Mountain avenue.

Q Did any one ask him where he lived in the month of August?

A I don't remember.

Q Do you remember that morning as to whether he said anything as to where he lived in the month of August, or where he was?

A He did say that he was over in New York, I think, in the month of August, driving a taxi and he lived with his father over there.

Q Questions were asked Noel about the gun and where he got it?

A He was asked where he got the gun and he said he got it in Bannerman's in New York, Broadway, New York.

Q At that time did you have this receipt there?

A Yes, we did.

Q So, you knew at the time you were questioning Noel where he bought the gun, didn't you?

A We had a pretty good idea, yes.

Q And you as a police officer, having found this receipt, for a Spanish pistol $9.20, and having this gun in your possession, you had a pretty good idea that it was purchased at Bannerman's in New York?

A Yes, sir.

Q Now, when you spoke to him about the gun, didn't you say to him, "Noel, you bought this over at Bannerman's at 501 Broadway, New York", and didn't he say "yes"?

A He said yes.

Q Well, that is at least one questoin that you put to him in which you narrated the fact that he said yes.

A He was asked where he had purchased the gun and he said "In Bannerman's in New York". We had the receipt and knew where he purchased it.

Q I am asking you if you did not say to him, with the knowledge that you had, "Noel, you bought this gun over in Bannerman's at 501 Broadway," and he said, "Yes."

Mr. D'Aloia. If Your Honor please, I think we ought to clear up this atmosphere.

The Court. Let the question be answered as it is.

Mr. D'Aloia. I know, but we are all getting confused as to the time.

Q (Question read)

A At the time the statement was made.

A Yes.

Witness. Yes, that is the time we are talking about, the conversation that was had at the time the written statement was made.

A I think he was asked where he got the gun and he said, "Bannerman's."

Q What I am trying to find out is if this happened, that you, with this information, having this receipt and the gun itself, knew that he had bought it at Bannerman's, and if you did not know, you certainly suspected it, if you did not ask him "Harrison, didn't you buy this gun at Bannerman's" and he said, "Yes."

A As I recall it was not put to him that way.

Q Didn't you testify to that a few moments ago?

Mr. D'Aloia. That is where I make my objection. The witness did not ask him these questions, he wasn't writing the statement.

The Court. I recall the testimony.

Q And another thing, Mr. Gallagher, you knew at that time that a telephone call had been received by Mrs. Bowers, you knew it, didn't you?

A Yes, sir.

Q And you had that knowledge and that information at the time you were talking to Noel and were taking this statement?

A Yes, sir.

Q And did you tell him, or did you put the question to him and say, "Then, Harrison, you 'phoned to Mrs. Bowers"?

A I didn't talk to him.

Q I appreciate that, but wasn't the question put to him that way by Dimond or Mason of the Prosecutor's staff?

A Yes, sir.

Q You were there?

A Yes, sir.

Q And did either Dimond or Mason or anyone else that was there put questions in that form?

A I do remember that, this question that one particular question.

Q Well, but any question, do you remember any questions in which Dimond or Mason would say, "Now, this happened, didn't it, Harrison," and he would relate the incident", and say, "Yes".

A Harrison was asked the questions and he would answed them.

Q And what about calling for the taxi, was that volunteered or did someone tell him that?

A Yes, volunteered.

Q Now, you had information also, didn't you, at the time that you were examining Noel the fact that a 'phone call had come into Hanley's for a taxi?

A We did not.

Q You didn't have it?

A No.

Q You knew that Hanlon's car had been used?

A We knew his car had been used.

Q You knew it was a Dodge car?

A Yes.

Q And had you spoken to Hanlon about the case up to that time?

A Yes, several times.

Q Then you knew that Dodge car of Hanlon's went out that afternoon?

A We knew it went out that afternoon, yes.

Q Now, did Noel volunteer all that information, or was this story pieced together for him and he said yes?

A No, he volunteered the information. He was asked several questions and he answered them.

Q Frequently during the taking of this statement, you police officers having knowledge of all the facts, would ask him did this happen or that happen and he would say yes?

A We would ask him questions and he would answer.

Q He would answer them that way?

A He would explain them. He would tell you what happened and what he did.

Q Did any officer ask him questions as I have stated to you?

A Well, they asked him questions and he answered them.

Q And didn't he often answer those questions yes or no?

A I do not recall him answering them yes or no often, or at all, for that matter. I know he answered questions, and he would answer and give in detail what he knew, and he read it after he got through.

Order or receipt for $9.20, bearing date August 24, found in the room of the defendant, offered in evidence and marked Exhibt S-9.

Box of cartridges found in the room of the defendant offered in evidence and marked exhibt S-11.

Envelope containing grass which the witness says he found on the rug in the defendant's room and which the witness also says there was some of it on the defendant's clothes and more of it on the clothes of the officers who had been up in the locality offered in evidence and marked exhibit S-10.

EDWARD F. REILLY sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q You are chief of Police of the town of Montclair?

A Yes.

Q And you were such chief during the first week in September?

A Yes.

Q And do you remember Sunday evening, September 6, 1925?

A Yes.

Q Coming from a trip to Preakness back to Montclair and stopping at a garage?

A Yes.

Q What automobile, if any, did you go to in that garage?

A What automobile did I go to in the garage?

Q Yes?

A Noel's.

Q What kind of an automobile was Noel's?

A An Overland touring car.

Q What was the color of it?

A Kind of a dark maroon with a kahki top.

Q What was the license number?

A That I could not say. It was 156,433, I think; something like that; but I am not positive of the number.

Q When you went into that garage and got to that car, what part of the car did you go to?

A We went under the back seat where Noel told us the gun was.

Edward F. Reilly, Cross.

Q Did you find this there?

A Yes.

Q And after you found it did you talk to the defendant?

A We asked him if that was it and he said yes.

Gun offered in evidence and marked exhibit S-12.

Cross Examination by Mr. Wachenfeld.

Q Where did you speak to Noel about this gun, Chief?

A On the way back from Wayne Township.

Q And who was in the car at that time besides yourself and Noel, do you remember?

A Why, there was Lieutenant Brady and Walsh of Jersey City and Detective Gallagher and the driver and myself.

Q Before Noel gave you this information about the gun, where it was, where you subsequently found it, you had talked to him for long hours, hadn't you?

A Yes.

Q And you started to talk to him about somewhere around five o'clock——

Mr. D'Aloia. I object to that as not proper cross examination.

The Court. Sustain the objection.

Mr. Wachenfeld. I ask an exception on the ground I am trying to prove former promises made that would make the answer of Noel with reference to the gun and its whereabouts inadmissible.

The Court. The same ruling.

Exception allowed; let it be sealed, and it is signed and and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q What time did you find the gun there?

A Why, I should judge in about the neighborhood of seven o'clock, when we came back, somewhere around that time, a quarter to seven, somewhere along there.

Q Had you made any promises prior to this conversation where Noel told you where the gun was, had you made him any promises with reference to obtaining the money or his freedom?

A I made him no promises, nc.

Tyle W. Morehouse, Recalled, Direct.

Q You had made him promises prior to that time, hadn't you?

A The only promise I made to him, as I recall, is that he always kept saying he did not want to go back to Overbrook, and I told him if he told the truth about this affair I would see that he did not go back to Overbrook.

Q Weren't there other people there that offered him money in your presence?

A Yes, the father of the child, Mr. Daly.

Tyle W. Morehouse, recalled.

Direct Examination continued By Mr. D'Aloia.

Q Now have you refreshed your memory, or have you brought with you the records showing when this defendant, Harrison W. Noel, came to Little Falls and got a package which was like a package of writing paper?

A The package was received on the 25th of August.

Q And in the name of whom?

A Wallace Payne.

Q And who was the man who got the package?

A The same man here that got the money order.

Q Is this defendant the man?

A Yes.

Cross examination waived.

JAMES F. MASON sworn in behalf of the State.

Direct Examination By Mr. D'Aloia.

Q You are connected with the Essex County Prosecutor's office?

A I am.

Q Captain of detectives?

A Yes, sir.

Q On Sunday evening, September 6, 1925, around 7:30 P. M. were you at the Montclair police headquarters?

A I was.

Q And there did you have a conversation with this defendant, Harrison W. Noel?

A I did.

Q Wil you please tell the jury what was the first thing you said to him prior to his making the statement which was taken down in writing?

A We had just returned from the trip we had made to Preakness with Chief Reilly, Officer Gallagher, Lieutenant Brady and Sergeant Walsh.

Q Had you gone on the trip?

A I had not.

Q Were you at the Montclair police headquarters when the members of that party returned, including this defendant?

A I was waiting for them to return.

Q Tell us what you said to the defendant?

A He was brought upstairs into the Chief Reilly's office. I had in my possession at that time this receipt for the revolver.

Q Exhibit S-9. What did you say to him with that particular paper in your hand?

A I showed him that receipt and I said, "Harrison, I want you to make a statement to me of everything you done from the date of this receipt."

Q What else did you say to him?

A I says, "I am a representative of the prosecutor's office and anything you say I wil put it in writing and I may use it against you at a later date."

Q What did he say to that?

A "All right."

Q Who was present when you said that?

A Detective Dimond, Detective Gallagher, Chief Reilly, Officer Brady and Officer Walsh of Jersey City.

Q After you said that to him and he said, "All right," what was done?

A I requested Detective Dimond to do the writing. He sat down at the chief's desk, a flat top desk. Noel sat at my left and Dimond sat at Noel's right.

Q Sat at Noel's left?

A AtNoel's left, that is right. He started in to relate——

Q Who did?

A Noel did.

Q How did he start in to relate, beginning when?

A He began with August 24.

Q What year?

A 1925, and stated that he was living at the Mills Hotel.

Q What city?

A New York City, and if I recall right, I think he stayed there one night.

Q Was that written down by Mr. Dimond?

A Yes, sir.

Q What did Noel say he did on that day?

A He said he went down to lower Broadway, 501 Broadway, to Bannerman and Brothers—Bannerman and Sons—and purchased a revolver.

Q Was that written down by Mr. Diamond?

A It was.

Q What else did he say?

Mr. Wachenfeld. May I cross examine before we go on with this testimony?

The Court. Yes.

By Mr. Wanchenfeld.

Q When did you first go to Montclair in this case?

A Friday night, September 4.

Q You didn't see Noel at that time, did you?

A No, sir.

Q When did you first see Noel?

A The first I seen of Noel was Sunday morning, about a quarter after eight.

Q That was after the all night session that Noel had with Chief Reilly and Gallagher?

A Yes, sir.

Mr. D'Aloia. I object to that.

The Court. Objection sustained and it will be stricken out.

Q Did you know at that time that Chief Reilly and Gallagher had talked to Noel?

A Did I know of my own personal knowledge?

Q Well, had you been informed by Chief Reilly or Gallagher.

A I had been informed that they had talked to him.

Q But you knew they had talked to him all night?

A No, sir.

Q Didn't they tell you how long they had talked to him?

A No. sir.

Q Did you talk to him?

A Not in that room.

Q How long did you talk to him?
A Probably three quarters of an hour.
Q Then how long did you continue to talk to him?
A Well, at that time I only had about a fifteen minute conversation with him, because he was talking at that time to Dr. Payne.
Q During the time that you were talking to him was he talking to Dr. Payne?
A Well, it was during one of the intervals when Dr. Payne stopped that I went in to talk to him.
Q Well, you did not get any information out of him during that fiifteen minutes?
A No, I didn't.
Q Then how long was it after that you began to talk to him again, if you did continue to talk to him?
A Why, off and on all morning up to one o'clock. We were—when Dr. Payne or Dr. Stamp would get through with him for a few minutes I would go in and talk to him, and that continued all the morning up until about 1 P. M.
Q Well, can you give us a fair estimate of the approximate time that you talked to him all told before this statement was made?
A All put together?
Q Yes.
A About two hours.
Q And that was broken up into different intervals?
A Yes.
Q Did you know at that time that you were talking to him that promises had been made to him about $4,000?
A No.
Q Did you know at that time that he had asked the police authorities, to wit, Chief Reilly and Gallagher, for $4,000?
A No, I didn't.
Q Did you know at that time that they had offered him more than $4,000?
A No.
Q Did you know at that time that they had practically offered him his freedom if he would tell them what happened and what he did?
A I didn't know that they had offered him his freedom.

Q Did you know at that time that they had promised Noel that if he would tell what he did and what happened that they would not send him back to Overbrook?

A I know that was promised him.

Q Was that promised him while you were there?

A Yes.

Q None of these other promises were made, however, while you were there?

A Nothing about the $4,000.

Q And you had no information about that?

A No.

Q Now, you didn't make him any promises, did you?

A Yes.

Q You did?

A Yes.

Q What promises did you make him?

A I promised him he would not go back to Overbrook if he told us where that little girl was.

Q Did you make him any other promisse than that?

A He wanted to know what asylum he would go to if he told us and I told him he would not go to any.

Q This was before any statement was made?

A This was early in the morning.

Q There were not any promises made by you during the time of the signing of the statement?

A No.

Q But you didn't tell Noel during the time of the signing of the statement that the former promises were wiped out?

A No, sir.

Q Didn't use that phraseology?

A No.

Q Did anyone in your presence during the time of the signing of this statement say that the $4,000 would not be paid to him?

A No.

Q That he would not go free?

A No, sir.

Q Did anyone tell him he would not be sent back to Overbrook?

A No, sir.

Mr. Wachenfeld. That is all of the cross examination at this time.

Direct Examination (continued) by Mr. D,Aloia.

Q Now, after he told you and Mr. Dimond had written down that on August 24, 1925, he was living in New York at the Mills Hotel and he went down to lower Broadway to Bannerman's Sons and bought a pistol, what next did he say?

Mr. Wachenfeld. I object to what he said on the grounds I have heretofore made, that is that it appears certatin promises were made to this defendant and there is no proof in this case that those promises which were made to him were withdrawn, and the presumption is that they continued until the boy's mind was relieved of those impressions.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Now, what next did he say?

The Court. Are you going to ask him to detail now what is in the statement?

Mr. D'Aloia. Yes, sir.

Mr. Wachenfeld. May I have, then, a running objection on the same ground without further objection?

Mr. D'Aloia. Well, I will abbreviate it to save time.

Q And from that time on, Mr. Mason, did he keep on telling what he had done from August 24 down to September 3rd?

A He did.

Q Now, beginning with September 3rd, did he tell what he did on that day, Thursday?

A He did.

Q And did he state what he did on September 4th?

A He did.

Q And did he state what he did on September 5th?

A He did.

Q Did Mr. Dimond write that?

A Yes.

Q Now, when Mr. Dimond had finished this statement what was done with it?

A What was done with the statement?

Q Yes. After he had finished writing it.

A It was handed to him and he read it.

Q Handed to whom?

A Noel.

Q And did he read it?

A He did.

Q And after reading it what did he say, if anything?

A I asked him if everything in that statement was the truth and he said yes.

Q Then what did he do?

A I said, "Will you sign your name to the bottom of it?"

Q Then what did he do?

A I handed him a fountain pen and he signed his name.

Q You were present?

A I was.

Q And saw him sign his name to this?

A Yes.

Q And did you sign it as a witness?

A I did.

Q And did Chief Reilly, Brady, Walsh and Gallagher sign in your presence?

A Yes.

Mr. D'Aloia. I offer this in evidence.

Mr. Wachenfeld. I object on the ground that it has not been properly proven, and, secondly, on the ground that I have already mentioned, to wit, that there had been promises made to this boy at the time, under the case of State vs. Bullock; thirdly, that the confession contains evidence of the commission of other crimes for which this defendant is not on trail and which are inadmissable for that purpose.

The Court. And those are your only objections?

Mr. Wachenfeld. Those are my only objections.

The Court. Admit the confession.

(Confession offered in evidence and marked Ex. S12.)

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

AFTER RECESS.

Continued pursuant to adjournment.
Present, counsel as before stated.

HARRY W. WALSH, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Walsh, do you remember the evening of September 6, 1925?
A I do, sir.
Q What day of the week was that?
A On Sunday.
Q Where were you at 7:30 P. M.
A At Montclair headquarters.
Q And at Montclair headquarters did you see this defendant Harrison W. Noel affix his signature to this paper?
A Yes, I did.
Q Just before he signed, what did he do, if anything?
A He read it.
Q And what did he say, if anything, after reading it?
A He was asked if it was the truth.
Q What did he say to that?
A He said, yes, sir.
Q Now, is this your signature?
A Yes.
Q You affixed your signature immediately after he affixed his?
A Yes, sir.

Cross Examination by Mr. Wachenfeld.

Q Did he read it out loud?
A No, sir; he did not.
Q Why do you say he read it, because he looked at it?

Patrick J. Brady, Direct.

A No, because he looked at it and he showed every appearance of having read it.

Q At the time did you see him do anything else excepting look at it?

A I saw him sign it.

Q You say that he read it because you saw him look at it, is that right?

A Yes, he was apparently reading it.

Q He didn't read it out loud?

A He didn't read it out loud, no, sir.

Q Did he turn the pages over when he read?

A Yes, sir.

PATRICK J. BRADY sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Brady, do you remember the 6th of September, 1925?

A Yes, sir.

Q What day of the week was that?

A Sunday.

Q At 7:30 or 8 o'clock that night where were you?

A Montclair Police Headquarters.

Q And did you at that place on that occasion see this defendant, Harrison W. Noel, affix his signature to this document which I am showing you?

A Yes, sir.

Q Did you sign it as a witness?

A Yes, sir.

Q And this is your name, the second one of the witnesses?

A Yes, sir.

Cross Examination Waived.

EDWARD F. REILLY recalled in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Reilly, do you remember Sunday evening, September 6, 1925, in the neighborhood of 8 P. M.?

A Yes, sir.

Q Were you at the headquarters in Montclair?

James F. Mason, Recalled, Direct.

A I was.

Q Were you in the room where this defendant was when he signed this document?

A Yes, sir.

Q Did you see him sign it?

A Yes.

Q Did you sign it as a witness?

A Yes, sir.

Q Did you see him affix his signature?

A I did.

Q Did you affix yours?

A Yes, sir.

Cross Examination ed *Waived.*

JAMES F. MASON, resumes the stand.

Direct Examination by Mr. D'Aloia (continued).

Q I understood you to say before the adjournment hour, Mr. Mason, that you affixed your signature to this paper too?

A Yes, sir.

Mr. D'Aloia. Now Gentlemen of the Jury this is—

Mr. Wachenfeld. Are you offering it again?

Mr. D'Aloia. It is in evidence and I am going to read it.

Mr. Wachenfeld. Before you read it may I ask the Captain a few questions.

The Court. Yes.

By Mr. Wachenfeld.

Q Captain, how long did it take to get this statement from the defendant Noel?

A Approximately two hours.

Q During the time of the taking of the statement you knew at that time where the body of the colored man had been found, didn't you?

A Yes, sir.

Q You at that time had in your possession this receipt which is marked in evidence, showing the purchase of a pistol at Bannerman's in New York.

Q And you knew where the little girl had been taken from?

A Yes, sir.

Q And you knew who the playmates of the little girl were at that time?

A Yes, sir.

Q Did you at various times put that information to the defendant and did he say yes to your question after you framed it?

A No.

Q At no times?

A No times.

Q Did you at any time interrupt to make suggestions as to certain things that should be put in the statement?

A No, sir.

Q Did you interrupt in reference to the question of the fact that he shot at this chauffeur Sandin, or whatever his name might be?

A No, sir.

Q You did not interrupt?

A I did not interrupt him at all.

Q Did you ask him various questions as this statement was being taken?

A I did not ask him any questoins, Mr. Wachenfeld.

Q Did he hesitate?

A He did.

Q Did he stop at certain times and refuse to go any further?

A He did.

Q Did he show an indifferent attitude toward the whole proceeding?

A He did, yes, sir.

Q Before this statement had been taken, not at the time of the making of the statement, but prior to that, during your conversation with him, had you given him the information that you had about what you knew about the facts in this case?

A Some of them.

Q And one of the things that you told him is that you knew that he bought the gun at Bannerman's in New York?

A No, sir.

Q You didn't tell him that?

A No, sir.

Q What things did you tell him?

A I told him—I don't know what anybody else told him—

James F. Mason, Cross.

I told him that I knew that he had been driving this Dodge car 0722 and I was pretty sure he was the boy that had taken Mary Daly, and I think that is all the information I gave him at the time I was talking to him.

Q And he told you on Thursday, September 3, he got home at four o'clock in the afternoon?

A I think he told me that.

Q That is what is in the confession?

A Yes.

Q He said, "I think I got home around four P. M.," do you remember that?

A Yes, I remember him saying that.

Q Did he tell you what time he called the cab?

A What time he called the cab?

Q Yes.

A I am not positive, but I think he said about 1:30. I would not be positive about that.

Q Did he in this statement say he had shot the colored man, who was the driver of the taxi cab?

A He did.

Q Did he say what time he shot him?

A He did not say what time he shot him, but he outlined the route he had taken when he got in the taxi cab and told us about where it was he shot him.

Q Well, he told you about what time he called the taxi?

A Yes.

Q And he told you that he had driven in that taxi cab to certain places?

A Yes.

Q And he told you he shot the colored man?

A Yes.

Q And he told you he got home at four P. M., after it was all over?

A Yes.

Redirect Examination by Mr. D'Aloia.

Q Did any of you officers of the Montclair police court or police station know until Sunday evening he had shot Pierce?

A No, sir.

Mr. Wachenfeld. May I add an additional objection to the admission of the confession on the ground that it does not appear that it was voluntary.

The Court. Overrule the objection.

Defendan's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

JOHN SANDIN sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Sandin, what business were you in on September 4th, 1925?

A Chauffeur?

Q For whom?

A Mr. J. A. Bower.

Q Where did he live?

A 136 Upper Mountain avenue, Montclair, New Jersey.

Q Where were you about eleven o'clock on the morning of the 4th?

A At eleven o'clock?

Q Yes.

A I think I was in East Orange yet at eleven o'clock.

Q What time was it that you were at 136 Upper Mountain avenue cleaning the car?

A I just came in to 136 Upper Montclair avenue about twelve o'clock.

Q Noon?

A Noon.

Q That is, September 4th, 1925?

A Yes, sir.

Q What day of the week was that?

A Friday.

A While you were there and had just came up, what happened, if you recall?

A There was a lot of people standing in the road hollering, so I drove up and they said——

Mr. Wachenfeld. I object.

Q You got some information, did you?

A You asked me what happened.

Q Don't tell us what they said.

The Court. What did you do, or what did you see anyone doing?

Q What did you see and what did you do?

A Well, they were all hollering.

Q Did you understand the holler?

A Not until I got up to them.

Q Did you undertsand it then?

A Yes, sir.

Q After you understood the holler what did you do?

A I started up the street.

Q In what?

A In the Buick sedan.

Q What did you do then?

A I chased this car that was pointed out to me.

Q What car was pointed out to you?

A A Dodge touring car.

Q What was the number of it?

A 0722 New Jersey.

Q Where did you chase it?

A I chased him to West Paterson, I think it is was West Paterson.

Q What is the distance that you chased him?

A Eight or nine miles, I think.

Q And when you got out there to West Paterson, what did you do?

Mr. Wachenfeld. I object to what was done in West Paterson on the ground that it is evidence of another crime and not admissable in this case.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

John Sandin, Direct.

Q What did you do?
A I pulled up alongside of this car—
Mr. Wachenfeld. I object, I take the same objection to the answer.
The Court. The same ruling.
Defendant's counsel prays an exception to this ruling of the court.
Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A I pulled up alongside of the Dodge car and this fellow Noel was sitting at the driver's seat.
Q Which fellow Noel, do you see him in court?
A Yes, he is sitting there with his head down.
Q Where was he sitting in this car?
A Sitting behind the steering wheel.
Q Who else was with him in this car?
A Mary Daly.
Q Did you know her?
A I know her now.
Q How big a person is she?
Mr. Wachenfeld. Objected to.
The Court. The same ruling.
Defendant's counsel prays an exception to this ruling of the court.
Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Six years old.
Q And when you got to this car, state what happened?
Mr. Wachenfeld. Same objection.
The Court. The same ruling.
Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A I pulled up alongside of this car and the little girl was sitting right close to him and I could see her and I wondered if he threw her out, and I took a good look around and I saw her, saw the little girl in the car.

Q Then what did he do?

Mr. Wachenfeld. The same objection.

The court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A He pulled the gun.

Q Did the car that you had been pursuing stop?

A Yes, sir.

Q Did you come alongside of it?

A Yes, sir.

Q I show you a photograph marked Exhibit S5, is that the car that you pursued?

A That is it.

Q When you drew alongside of this car, shown on this photograph, what did this defendant do, if anything?

Mr. Wachenfeld. Objected to on the same ground.

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A He reached for a gun.
Q What did he do?
Mr. Wachenfeld. The same objection.
The Court. The same ruling.
Defendant's counsel prays an exception to this ruling of the court.
Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A He shot me.
Q Did you see the gun?
A Yes, sir.
Q Which way was it pointing?
A Which way?
Q Yes, was it pointed at you?
A Yes, point blank.
Q Did you hear the shot?
Mr. Wachenfeld. Objected to on the same ground.
The Court. Overruled.
Defendant's counsel prays an exception to this ruling of the court.
Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Yes.
Q Did you feel anything?
A Yes, sir.
Q What?
A Just like an electric shock in the head.
Q Then what happened in the car that had been pursued by you to that point and had stopped and which contained this defendant and the little girl?
A Then I didn't see, I went out for a moment.
Q What do you mean by that?
A I was knocked out for about a minute.
Q Where were you hit?

A Right here over the left ear.
Q Did you have this cap on at the time?
A Yes, sir.
Q Before this shot was fired at you was this hole in it?
A No.
Q Were you taken to the hospital?

Mr. Wachenfeld. Objected to if the court please, upon the same ground.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Yes, sir.
Q How fast did you drive after this car before it came to a stop and permitted you to draw alongside of it before you were shot by this defendant?
A Well, in places the road was so bad that you couldn't do any more than 35. Well, we were doing about 35, but that was terrible for that road.
Q And when you were riding on the good road how fast were you going?
A About fifty.
Q You did not overtake him?
A No. He stopped.
Q And he did not run into anything, did he?
A No.
Q He did not colide with any trees or poles or fences along the road?

Mr. Wachenfeld. I object to that on the ground it is leading.

Mr. D'Aloia. I wil reframe it.

Q Did he colide with anything while this pursuit was in order?
A No.
Q When he brought his car to a stop was it because he had collided with some object or was it because the operator of the car brought it to a stop?

Mr. Wachenfeld. I object.

The Court. I will allow him to answer.

A The operator of the car brought it to a stop.

Q There is no mistake this is the man?

A That is him right there. I am positive.

Mr. D'Aloia. I offer this cap in evidence.

Mr. Wachenfeld. Objected to on the ground it is another crime and not relevant.

The Court. I will admit it.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Cap offered in evidence and marked exhibit S-14.

Cross Examination by Mr. Wachenfeld.

Q Do you remember about what time it was when you drove up to your employer's house?

A It was about 12 o'clock.

Q And you had come to East Orange just prior to that?

A Yes.

Q And when you got there, there were quite a number of people there?

A Well, there were—I wouldn't say quite a number, but six or seven.

Q And apparently from what they said and the way they acted something had happened there?

A Yes.

Q You did not see that thing happen?

A No.

Q Now, look at this map and see if it is a representation of this place you speak of. Here is Mountain avenue shown on here with a figure one, and there is Edgewood, which runs perpendicular to Mountain into Highland?

A Yes.

Q Now, when you came to 136 Upper Mountain avenue you drove in from what?

A Bloomfield avenue, to Edgewood road.

Q And when you got at the corner you saw these people?
A Yes.
Q Something had already happened?
A Yes.
Q And these peoeple shouted to you to do certain things?
A Yes.
Q And after they shouted, where did you first see this car?
A Right at this corner.
Q You are pointing at the corner of Prospect——
A No. That is a different corner. Right here.
Q That would be the corner of—— Will you put a cross where you indicated, please? Now, where you put this cross is where you first saw the car?
A Yes.
Q Now, did you see which direction the car came from before it got to that point?
A No.
Q Do you know whether it came down this Edgewood road or whether it come across Prospect?
A No, the car was right at the cross there.
Q Now, do you know, as a matter of fact, that this car, after the little girl was picked up, went up Mountain avenue and down Bloomfield avenue to almost the starting point again?
A No, I don't know anything about it.
Q But the time you saw it was after all this happened?
A Yes.
Q Do you know how long this happened before you got there?
A No.
Q Was it a number of minutes, anyway?
A I don't know.
Q And you don't know the course that car took?
A From there on, yes.
Q At the time you saw it, was it headed up Edgewood road?
A Yes.
Q Well, couldn't you see which direction it came from?
A No. That was the first point I saw it.

Map offered in evidence and marked D-3 for identification.

Q Was the car in that position at the time you saw it, do you remember?

A Yes.

Q Can you remember whether or not it had other curtains or side curtains?

A It did not have any.

Q It was just as it appears there?

A Yes.

Q Where was the little girl seated?

A Right on his right hand side.

Q How many men did you have in your car?

A Two.

Q Who were they?

A I don't know their names.

Q One of their names was Gould?

A One was O'Mara.

Q They were not with you at the time you started in pur? suit?

A No.

Q Where did you pick them up?

A They were standing on Highland avenue.

Q Both of them at the same place?

A No.

Q Who was standing on Highland avenue?

A Both of them on Highland avenue.

Q Did you pick them both up at the same time?

A No, at different times.

Q Who did you pick up first?

A O'Mara.

Q And Gould next?

A Yes.

Q And they were with you at the time this shooting incident took place?

A Yes.

Q Where were they?

A Seated in the car.

Q In the front part?

A In the back part.

Q And the last you knew, were they still with you?

A That is the last I remember, yes.

Q Now, did you get a good view of this boy while he was driving the car?

A Yes, very good.

Q When did you first tell the police about it?

A What do you mean?

Q Well, about this incident itself about the facts and circumstances as you knew them with reference to this car?

A Well, I think they came right to the hospital.

Q Do you remember which police officer came to the hospital?

A No.

Q Do you know Gallagher of the Montclair department?

A I know him now.

Q Is that the man?

A I don't know.

Mr. Wachenfeld. Will you stand up, Mr. Gallagher?

Witness. I have seen him here. I am pretty positive he is not here now. It was the chief.

Q And you saw him at the hospital how soon after this thing happened?

A Well, he was there about the same time I reached there.

Q And did you at that time give him a description of this boy?

A I did.

Q What kind of a description did you give him?

A Well, I don't remember word for word.

Q Well, give it as near as you can recall the description you gave Chief Reilly when you were in the hospital?

A Well, I do not remember just what I did say.

Q Was Gould there with you at the hospital when you were talking to Chief Reilly?

A He came there to the hospital with me. I don't know whether he was there or not.

Q Was O'Mara there?

A I don't think so?

Q Did you hear O'Mara give the police a description?

A No.

Q Can't you remember the description you gave to Chief Reilly when you first saw him?

A Well, I just remember he was about 135 pounds.

Q I am not asking for a description as you remember him, but the description as you gave it to Chief Reilly.

A Well, I cannot remember word for word.

Q When did you next see this boy Noel?

A I seen him in the Court House here.

Q When?

A Well, that was at the last time he was here.

Q That was some weeks ago, wasn't it?

A Yes.

Q And at that time had you told the police that it was a dark colored man or a dark complexion man who was driving the car?

A No, I said it was sort of yellowish.

Q Did you say he had a hat or a cap on?

A I said he had a hat on.

Q And the first time you saw Noel was here?

A No, I seen him up there when he shot me.

Q No, I mean after that.

A Here. I identified his picture in the hospital.

Q But the first time you saw him was here at the Court House?

A Yes, sir.

Q And at that time you had read his confession?

A No.

Q Had you heard he had confessed?

A Hadn't read a thing.

Q Hadn't you heard of these details?

A No.

Q Or hadn't been informed?

A No. I read it in the paper.

Q Didn't you read in the newspaper that this boy had admitted he committed this crime?

A Yes.

Q But at the time you identified him here at the Court House you knew something about the facts of the case, you knew from the newspapers that he had admitted he was the man?

A I knew he confessed.

Q Well, you read in the newspapers or had been told that he admitted that he was the man?

James F. Mason, Recalled, Direct.

A I read it in the paper.

JAMES F. MASON, recalled.

Direct Examination by Mr. D'Aloia.

Q Captain was this the coat that Noel was wearing when you saw him up in Montclair?
A Yes, sir.
Q And did he point out where the blood was that was removed, or he was trying to remove with gasoline?
A No, he did not.
Q Did you see any blood?
A I seen spots which I thought was blood.
Q Is that the hat that he wore?
A Yes, sir.
Q What did you do with this coat?
A I turned it over to Dr. Edel for examination for blood spots.

Mr. D'Aloia. I offer the hat in evidence.

Cross Examination by Mr. Wachenfeld.

Q Where was it you first saw the hat, Captain?
A On the defendant.
Q Where?
A In the Montclair Police Headquarters.
Q On Sunday?
A Yes, sir.

Mr. Wachenfeld. No objection.

(The hat is marked Ex. S15.)

ALBERT E. EDEL, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are a chemist by profession?
A I am.
Q And do you remember receiving this particular coat from Mr. Mason of the Prosecutor's office?

Albert **E.** *Edel, Direct.*

A I do.

Q Did you cut out these pieces of cloth which form the these holes?

A I did.

Q Did you make an analysis of these pieces of cloth?

A I did.

Q Will you please tell the court and jury what your analysis showed these spots on this piece of cloth to be?

A Each and every one are blood spots.

Mr. D'Aloia. I offer the coat in evidence.

Mr. Wachenfeld. If the court please, he is offering the coat, but I don't think there is any proof that the defendant had it on at the time of the commission of the crime. There is proof that he had it on on Sunday when Captain Mason saw it.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

(The coat is marked Ex. S16.)

Cross Examination by Mr. Wachenfeld.

Q What kind of blood was it, Doctor?

A Mammallian blood.

Q What does that mean?

A Blood derived from animals who suckle the young.

Q Can you tell from the analysis that you made whether it was human blood or not?

A I cannot.

Q It might have been blood from an animal?

A It could be.

Q And there is a test that you can make to determine whether or not it was human blood?

Albert E. Edel, Redirect.

A Yes, sir.
Q That test was not made?
A It was not.

Redirect Examination by Mr. D'Aloia.

Q But you are satisfied that it was mammallian blood?
A I am.
Q Were you also given certain pieces of leather to examine?
A Yes, sir.
Q Did you analyze the spots on this leather?
A I did.
Q Can you tell us the result of your analysis?
A Mammallian blood, here are the blood crystals, photographic records.

Recross Examination by Mr. Wachenfeld.

Q And the same thing is true with that, Doctor, you cannot tell whether it is human bloor or not?
A I didn't examine it for human blood.
Q I say from the examination you made you cannot tell us whether or not it is human blood?
A I cannot.
Q And there is an examination or an analysis that you could have made to determine whether or not it was human blood?
Q There is.
Q But you did not make that examination?
A I did not.

Redirect Examination by Mr. D'Aloia.

Q What do you mean by mammallian blood?
A Blood derived from animals which suckle the young, such as human, monkeys, cats and dogs.

Samuel Golcher, Direct.

CAPTAIN JAMES F. MASON recalled.

Direct Examination by Mr. D'Aloia.

Q Where did you get these pieces of leather which I exhibited to the last witness?

A Cut them from the right hand corner of the cushion of the front seat on the Dodge car No. 0722.

Mr. D'Aloia. I offer it in evidence.

(The same is marekd Ex. S17.)

Q Did you give them to Dr. Edel?

A I did.

Cross Examination waived.

SAMUEL GOLCHER, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Mr. Golcher, you are a keeper up at the Essex County Jail?

A Yes, sir.

Q Now, last week, you had this defendant in custody?

A Yes, sir.

Q Do you remember last Monday, a week ago yesterday?

A Yes, sir.

Q Do you remember what this defendant said in conversing with you, yes or no, do you remember it?

A Yes, sir.

Q Tell the jury what this defendant said last Monday in the conversation with you in reference to this case.

A I had him down the bath house and started to kid about the showers, and I asked him how he liked it and he said it was all right but it was better to take a bath home. I asked him why he came there, and he said "If that Chief's wife had minded her own business, he would not have been there," is that what he said?

A Yes, sir.

Cross Examination by Mr. Wachenfeld.

Q How long have you seen him up there at the jail, Mr. Golcher?

A What is that?

Q How long have you seen the defendant up at the jail?

Samuel Golcher, Cross.

A Ever since he was committed.
Q Do you see him almost every day ?
A Pretty nearly.
Q What is his general attitude there during the day?
A Well, he has been a good prisoner.
Q Tell us what it is, what does he do?
Mr. D'Aloia. I don't think that is proper cross examination.
The Court. I will allow it.
A I don't know what you mean.
The Court. Does he talk or read or standstill?
Witness. Well, he reads a lot, talks a lot, is sulky a lot and is stubborn a lot.
Q And isn't it a fact that for days at a time he does not talk to anoyne?
A At times he does and at times he does not.
Q In other words, he is from one extreme to the other?
A Yes, sir.
Q And you have had him under examination how long?
A Ever since he was committed.
Q And is it true that at times he will stand in one position for days and hours at a time?
A Yes, sir.
Q And have you seen his position in court with his hands to his face, in that attitude?
A Yes, sir.
Q And have you seen him in that position for days at a time?
A Not days, hours.
Q And a great deal or a great portion of the time you have seen him in that attitude?
A Yes, he was at first when he was committed, but he has cleared up a whole lot lately.
Q Have you seen him sit that way lately?
A Yes, sir.

Redirect Examination by Mr. D'Aloia.

Q Have you seen him take books from the library at the jail?

A No, I send for the books.
Q And he reads them?
A Yes, sir.
Q And when he gets through with one volume he sends for another?
Mr. Wachenfeld. Please don't lead him.
A Yes, sir.

EDWARD W. MARKENS sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are the Essex County Jail Physician?
A Yes, sir.
Q And you were such on September 3, 1925?
A Yes, sir.
Q Do you remember the coming in of this defendant Harrison W. Noel around that time?
A Yes, sir.
Q On September 7th, 1925?
A Yes, sir.
Q Have you seen him every day at the jail from September 7th on?
A Well, practically every day.
Q Did you have any conversations with him?
A Yes, sir.
Q When did you have a conversation with him?
A The night of the day he came in.
Q What did you say to him?
A I asked him regarding his health; that is all, about all the first time.
Q And did he understand your questions?
A Yes, sir.
Q Did he make responsive answers?
A Yes, sir.
Q Did you get the information you desired from him?
A Yes, sir.
Q Did you notice what his power of orientation was, good or bad?
A Apparently good.

Q When did you next have a conversation with him?

A I spoke to him every day up until the 23rd of September. I saw him every day.

Q During these days that you spoke to him, for a period of about fifteen days, was there ever a time when he did not understand your questioning or make unresponsive answers?

A Why, there was a couple of times there when he would not answer me.

Q I did not ask you that. Was there ever a time when he did not understand your question and when he made you an irresponsive answer?

A No, sir.

Q What was the examination or the conversation you had with him on the 23rd of September, 1925?

A Why, I endeavored to find out if he knew what was going on about him and the perdicament he was in.

Q What did you say to him?

A Why, I wrote the questions down and have them with me if I can refer to them.

Q Yes, you may. Look at the paper and then recall what you asked him, use your memory but don't read.

Mr. Wachenfeld. Are you referring to September 23rd now?

Witness. Yes, sir.

The Court. He can read it if he cannot refresh his recollection?

Witness. I have it written in my own hand-writing at the time I spoke to him.

Q All right, tell us what you asked him and what he said to you.

A "Do you realize the serious nature of the perdicament you are facing". The answer was, "Yes". "What is that perdicament?" "I am arrested for breaking the law". "What are you held for?" "Murder and kidnaping." "Are you able to assist your counsel in the preparation of a defense for trial?" His answer was, "At the trial." "Yes". Answer; "No, I don't know how." The next question is, "Supose your lawyer asked you to tell him everything that happened from the time you called the taxi to the time you were arrested, could you tell

him?" The answer was "I could not keep talking long enough". "Could you tell him gradually?" "Yes." "Do you know what a courtroom is?" "Yes". "What is a court for?" "To try criminals." What do you expect of your lawyers?" "He will argue for me against the Prosecutor." "How many men are on a jury"? "Twelve, I learned that in high school." "What are the duties of the Prosecutor in this case?" "He is out to give me the hardest penalty he can." "What are the duties of your lawyer in this case?" "He argues to make the jury give the least possible penalty." "What is the judge for?" "He tells the different lawyers when to start to talk and when to stop."

Cross examination waived.

WALTER S. WASHINGTON, sworn in behalf of the State.

Direct Examination by Mr. D'Aloia.

Q Doctor, are you a regularly licensed physician and surgeon in the county of Essex and State of New Jersey?

A I am.

Q And how long have you specialised in nervous and mental diseases?

A Over thirty years.

Q You were formerly county physician of this county?

A Yes. I was County physician from 1894 to 1902, eight years.

Q I understand you have been specializing in nervous and mental diseases for thirty years. Now, at the request of the Prosecutor's office, did you examine this defendant, Harrison W. Noel.

A I did.

Q How many times?

A Three times.

Q Where did this examination take place?

A The first one was made in the Court House and the other two were made in the County Jail.

Q Will you please give me the date of the examination made here at the Court House?

Walter S. Washington, Direct.

A September 10, 1925.

Q And subsequent to that what other examinations did you make at the jail?

A One on the 15th and the other on the 20th of September.

Q Now, from your examinations of this defendant, you have made three examinations, and from your observation of these particular things, his memory, his orientation, his power and faculty to associate ideas, what would you say of his ability to distinguish between right and wrong?

A I think he knows the difference.

Q Did you have occasion on these examination to question him about September 3, 1925, and the occurrences?

A Yes.

Q Did he tell you what hapened and what he did on that date?

A I do not remember that he stated distinctly what he did. I could not tell you that without looking over my examination at that time.

Q Well, now, from what you recall of your conversation with him about the third of September, 1925, would you say that on that date he was able to distinguish between right and wrong?

A I would.

Cross Examination by Mr. Wachenfeld.

Q From your observation of this defendant would you say he was sane or insane?

A Sane.

Q Sane?

A Sane, yes.

Q Perfectly normal?

A So far as I could determine.

Q Do you know what the disease of dementia praecox is?

A I do.

Q What is it?

A It is a disease of the brain occurring mostly in young people and is called dementia praecox on that account.

Q And the man who suffers from dementia praecox is insane, is he?

A Oh, yes, while he suffers from it, undoubtedly.
Q When did you make the first examination?
A September 10, 1925.
Q Where was that examination?
A In the Court House.
Q It was taken down stenographically?
A It was.
Q When did you make your next examination?
A At the jail.
Q Was that taken down stenographically?
A It was.
Q Where was the third?
A In the jail.
Q Was that taken down stenographically?
A No.
Q In whose presence was the first?
A The defendant and Mr. Samuel Belcher, who was the keeper.
Q How long did the first examination take?
A I think about an hour.
Q How long did the second one take?
A Not so long.
Q How long did the third one take?
A About half to three quarters of an hour.
Q So the first was the longest.
A I think that was the longest of the three.
Q Now, you say you have been specializing for thirty years in nervous and mental diseases, is that correct?
A Yes, over thirty.
Q And you carried on your practice as a physician also?
A A large part of the time, until the last ten years.
Q And you are employed by the Travelers' Insurance Company as a referee?
A I am not employed by any insurance company as a referee now. I had been for over five years a medical referee for the Aetna, but I ceased my employment with them on the first of October.
Q Of this year?
A Of this year.

Q Did you have any difficulty in talking to Noel to get responses?

A Not as a rule.

Q Did you have any difficulty?

A There were some times when he was slow in answering or did not answer at all.

Q Well, that would indicate some difficulty in getting your responses.

A Yes.

Q As a matter of fact, at the second examination you had you got no responses at all?

A None at all to any of the questions that were asked him. He began talking himself afterwards.

Q Is that a symptom of dementia praecox?

A No.

Q It is not?

A No.

Q Isn't it?

A No.

Q You testified in this case before, did you not?

A Yes.

Q Do you remember this question: "Did you find any difficulty at any time during your examination of getting responses from this Mr. Noel? Answer: I did". Did you testify that way?

A I did.

Q And did you testify this way on the next question: "That is one symptom of dementia praecox or what you may call it, from a medical standpoint, of dementia praecox? Answer: It is at times." Did you answer that way?

A Yes.

Q So at times the failure to get an answer is a symptom of dementia praecox.

A It is, but not merely the statement. He may be feigning. He may have a lot of reasons.

Q Did you notice him try to answer some of your questions?

A I think there were one or two questions that he started to answer and did not complete the answer.

Q And how far did he get with the answer, do you

remember?

A Not very far. I could not without notes—

Q And did you at other times see him open his mouth as though he were going to answer the question and then a blank look come over his face?

A No.

Q Did you find any dulling of emotion in this boy?

A I could not say whether I did or not. I found that he was not very active emotionally, but that may have been his normal condition. I don't know that there was anything unusual about him.

Q Well, in talking to him about the commission of these crimes did he evidence a total lack of emotion?

A Well, I would not say he is emotional. I do not think he is at any time.

Q Was there any marked emotion at the time you spoke to him?

A No, there was no marked emotion at that time. The only marked emotion he showed was at the last examination when I told him a story and he enjoyed that very much.

Q There being no marked emotion is also a symptom of dementia praecox?

A Well, I would not say that.

Q You would not say that?

A No. I say that may be a normal condition.

Q Let me ask you if you testified this way at the last trial? "Page 18: *Question*: Did you notice that in the course of your examination when this murder was discussed that there was a total lack of emotion displayed by the murderer? *Answered*: Yes, there was no marked emotion." Did you answer that way?

A Yes.

Q "That also is a symptom of the disease of dementia praecox and is caused by practically the same reason that the lack of responses is caused by, that is true, is it not? *Answer*: That is so." Did you answer that way?

A Yes.

Q So that you found that to be a symptom of dementia praecox.

A Lack of emotion?

Q Yes.

A At times it was and at times it is not.

Q Is it in this case?

A Not in my judgment.

Q Why not?

A Because all the rest of the examination showed a perfect comprehension, orientation, no delusions or hallucinations. His attention was good. His ability to talk and describe coherently all the various things I asked him was perfectly good, too.

Q Did you find evidence there of muteism?

A No, none whatever.

Q Did you say none whatever?

A No, no muteism at all.

Q You do not think, then, when he did not answer there was not any evidence of muteism?

A No, none whatever. That is not muteism.

Q But he did remain mute, didn't he?

A He did not answer some questions. That is the only way I could answer that.

Q Does that indicate muteism?

A Sometimes; sometimes it does not.

Q Now, Doctor, in coming to a conclusion, did you examine or take into consideration the hospital records of the Overbrook Asylum?

A I did.

Q And did you also take into consideration the record from the Craig House, which is a sanitarium at Beacon, New York?

A I did.

Q Is this the record, Doctor, that you took into consideration?

A The record—I suppose that is the record of the hospital at Overbrook.

Q Well, look at it and see if it is.

A Oh, I could not look that over and remember it.

Q Can't you tell by glancing at it?

A Well, glancing at it does not give me much of an idea.

The Court. Are you referring to the Craig House?

Mr. Wachenfeld. No, sir. I am referring to the Overbrook records.

A Well, I remember looking over the record at some time in the hospital. I also remember the letter written, I think, by Dr. Slocum.

Q Just look at the last page.

A Yes. I saw that and I read the other some time ago.

Q Now, Doctor, from those records alone would you say that in March, May and April that he was sane or insane?

A Insane.

Q That he was insane at that time?

A Oh, yes.

Q Did he ever recover his sanity?

A Well, in my judgment he has.

Q When did he recover his sanity?

A That would be almost impossible for me to say; practically impossible.

Q Could you tell whether he was sane or insane on the third day of September, 1925?

A I think he was.

Q When did he become sane?

A I cannot tell you.

Q Why do you say then you think he was sane on the third of September?

A Well, I can say from the records that he had gradually been getting better before he escaped and was not returned to the hospital.

Q Before he escaped from there?

A From Overbrook.

Q On the 28th or 29th—

A Sometime in June. He was better and had been getting better for some little time. I have a right to assume that in the absence of anything to the contrary and from the facts as I discovered in my examination that he continued that way up until the time I saw him and up to the time of the commission of the crime, and since that time he has been better still, so that in my judgment he was sane, at least, sane enough to know the difference between right and wrong on the third of September. Maybe not so sane as he was when I saw him.

Q Was he sane on the second of September?

A Undoubtedly. One day would not make any difference.

Q Well, was he sane on the first of September?

A Undoubtedly.

Q But now you say he was sane on the third of September?

A I do.

Q Let me ask you this question. On your prior examination did you testify this way, Doctor, "Page 12: *Question*: Can you tell me when, assuming him to be insane at the time of those examinations, suffering from dementia praecox"

A I beg your pardon, not at the time of those examinations.

Q Those examinations, as used in this question, are referring to the hospital records that I just spoke about.

A Yes, what date were those examination?

Q No, pardon me, this question, I think, is referring to the examination at the time while he was in the hospital.

A That was during the actual stage of his disease. That was some time before he escaped.

Q Let me read before that. "Have you any doubt, Doctor, that Harrison W. Noel was, at the time of your examination, what you have read, and in these findings you have re[illegible] insane at that time?" and your answer was, "none whatever."

A That is right.

Q And that is your answer now?

A I do not dispute for a moment that he was insane, suffering from dementia praecox, catatonia while he was in both of those institutions.

Q "*Question* And the form of insanity was what? *Answer*: Was catatonia dementia praecox."

A That is right.

Q "Can you tell me when, assuming him to be insane at the time of those examinations, suffering from dementia praecox, he became, if ever sane? *Answer*: I cannot." Did you so testify?

A I did.

Q In other words, at that time, at that hearing, you said you could not tell when he became sane?

A That is right.

Q And now you say he was sane on the third of September?

A I say I think he was, but that is only from the fact I found him so at the time I saw him, and a week would make very little difference.

Q Let me put this question. You now say you think he

was sane on the third of September and yet in response to this question at the prior hearing you said if he did become sane you couldn't tell when.

A Well, I couldn't without an examination.

Q Let me ask you if you answered this question, page 29. Did you say this; "I am not thinking that this man when he became sane whether he was at the time he committed the crime or not. I am not making any such statement." Did you answer it that way?

A I did.

Q Well, now, if you answered it that way at that time, in which you said, "I am not thinking that this man when he became sane, whether he was at the time he committed the crime or not, I am not making any such statement," don't you think that when you now say he was sane on the third of September, which is the day of the commission of this crime, that you are contradicting yourself?

A I don't think so.

Q You don't think so?

A No.

Q And that is the only explanation you have to make of that?

A Yes. There is no way of telling the exact day or minute. Only an examination will tell.

Q Doctor, if this man was sane on the third of September, there is not any question about his ability to distinguish between right and wrong.

A None whatever.

Q If he was insane on the third day of September, there might be some question about his ability to distinguish between right and wrong?

A Yes, depending upon the condition, that is, the degree of insanity, and whether he was recovered and was not entirely well or not. He might have recovered to such an extent that he would know the difference between right and wrong and still be insane medically.

Q Your situation here is, your testimony is, that he was sane on the 3rd of September?

A Yes, that is what I think from my knowledge of the case.

Q And your deduction also is that he was insane on the 28th day of June, wasn't it?

A I don't know yet, you have not told me or you have not found out just when this examination was made.

Q Well, was he insane in March of this year?

A Yes.

Q Was he insane of May of this year?

A Well, so far as I know, I can't tell you that.

Q In your opinion, from the examination of the record, was he insane in May?

A I don't know what time the examinations were made. I cannot tell you that without examination of the records to find out when they were made.

Q Let me tell you this, Doctor, the records show he was committed to Overbrook, as you say, on the 25th day or the 24th day—I have forgotten which,—of February of this year, and that he escaped from that institution on the 28th day of June. Now, Doctor, that period of time, from the record you have seen in the Overbrook Hospital, and from the previous record of the Craig House at Beacon, New York, would you say that during that period of time he was insane?

A Yes, sir.

Q Would you say that a recovery from an insanity case of dementia praecox catatonia from June 28th to September 3rd was rapid, or would you say it was slow?

A Rapid.

Q And what caused the rapid recovery in this case, do you know?

A I don't know, I only know what I found, what his condition was then.

Q Now, Doctor, during the time that you talked to him all of his answers were not responsive, or his questions, rather?

A I think all but one or two.

Q And many times he did not answer them at all, did he?

A Quite a number.

Q And that was so practically at every hearing?

A Well, the last time he answered every question and appeared more normal than he did on either of the two other occasions.

Q Now, Doctor, you found his memory pretty good, didn't you?

A Remarkably good.

Q And is that one of the things that caused you to come to the conclusion that he was sane?

A That is one that helped.

Q Don't all mediacl authorities agree that in dementia precox, which is a mental disease, which practically affects every mental faculty, that for some reason or other it does not affect the mental faculty of memory?

A No, they do not. One of the first things that deteriorates is memory. They may have memory for school knowledge or something that they have been taught before, but for recent events they have a very poor memory.

Q All right, Doctor, another thing that you found upon which to base the fact that he was insane is that he was well oriented at the time, is that right?

A That is one of the things.

Q And do not the medical authorities all agree that a man suffering from dementia praecox may have good orientation?

A Yes, as a rule they do except when they are in the Stuporous condition, in the active stage.

Q Do you recognize Dr. W. A. White as quite an authority on this subject?

A Yes, I do not recognize anybody as an authority that knows it all, and Dr. White is the one man that testified for Loepold and Loeb—

Q I did not ask you that.

A I have a great deal of confidence in everything he says.

Q I am asking you if you recognize him as an authority?

A I recognize him as a man who is very able. He is undoubtedly right in a great many cases, but I am obliged to disagree with him in some things.

Q Now, see if you do not agree with him in this respect. In speaking about a case of dementia praecox, he says, "Cold and impassive without so much as moving an eyelash; without spontaneous reaction, without expressing a wish, he is oriented as to time, place and persons."

A Yes, sir.

Q So the mere fact that you found this defendant then, if you agree with White, that he was oriented, would not go against the diagnosis of insanity, would it?

A Not that alone.

Q Now, what else is there that you found in him that would indicate or make you come to the conclusion that he was sane?

A Well, I found that he was well oriented; that his appreciation was good. He knew everything that was asked of him, his consciousness was perfect; his attention was fair, he had no delusions. He had no halucinations. He had no negativism, which is probably one of the most important ones at that time; absolutely none whatever.

Q Now, you say, Doctor, that he has no delusions, is that right?

A Yes, sir.

Q And he has no halucinations, is that right?

A No, or no delusions, none whatever. He never showed any during any of the examinations I made.

Q Do you remember when he told you about Dr. Davies?

A Yes, sir.

Q What did he tell you about Dr. Davies?

A He said he had been to see Dr. Davies; he had become very nervous and did not sleep that night and he did not believe that Dr. Davies slept; that was the only thing he said about him, and I asked him then, "How long did that continue", and he said, "Oh, I guess it disappeared in a day or two."

Q Let me read, to you, and see if this is what the boy said to you in reference to Dr. Davies. "*Question*: Now you say you haven't had any mental trouble when you were taken to Beacon and you had no mental trouble when you were taken to Overbrook? *Answer*: Excepting Dr. Davies came and he asked me questions the way you are, the same questions, and that upset me very much. I seemed to be very excited and I could not sleep that night and I was sure that he would not sleep; I was absolutely certain that he would not sleep."

A That's right.

Q Did you consider that answer the answer of a normal man?

A I do not see anything abnormal about it, certainly not a delusion.

Q You don't think he was laboring under a delusion as to Dr. Davies?

A Not at all. He doesn't know. Dr. Davies may be did not sleep well that night or the next night.

Q But you think it is perfectly normal, a perfectly normal answer to get from a normal boy when you asked him what mental trouble he has had?

A There is certainly nothing abnormal about it.

Q Now, let me read you the next question: "Why did you think that? *Answer*: I don't know, I still think so." Did he answer you that way?

A Well, I suppose that is so.

Q Do you remember whether he answered that way or not?

A I think that is right.

Q And you say that is a normal answer?

A I do, I don't see anything abnormal about it.

Q And the next question, "That was the thought in your mind and you still think so? *Answer*: Yes, he was over in Verona." Do you consider that a normal answer?

A Yes, sir.

Q Do you think it has affected Dr. Davies' sleep since that time?

A No, he must have gotten over it in a couple of days, but I was not the same person then that I am now." Do you remember that?

A Yes, sir.

Q And that is a normal answer, is that right?

A I think so.

Q From a normal individual?

A Yes, certainly.

Q And Doctor, on several occasions do you remember when you asked him a question and he would ignore the question and come back with a question to you which was perfectly irrelevant to the question you asked him?

A I don't remember now more than twice, but the question was relevant so far as the answer to my question was concerned, but it was not a very silly or a very bad question at that, it was something that occupied his mind particularly at that time.

Q You say it was not a silly or a bad question?

A Not at all.

Q But it had no relevancy to the question you asked him?

A No, I don't think it did, but that would not be anything unusual.

Walter S. Washington, Cross.

Q All right, tell me of the two instances that you remember anything he said, when he answered your question by another question which was irrelevant?

A Yes, the one I have reference to in particular is— I don't know what the question is, but he asked me in reply, "What is a spinal puncture?" I told him, and he asked me if I had ever been up in Overbrook and I said, "Yes, many times," and he spoke then of having been at Overbrook and about how very badly the spinal puncture affected him.

Q Let me read your question.

A That would be the better thing to do.

Q All right, I will read one or two questions before that so that you can get the trend of it. "*Qusetion*: "Where? *Answer*: In New York City. *Question*: A taxicab was it? *Answer*: Yes, sir. *Question*: Did you have a license to drive in New York City? *Answer*: Yes, sir. *Question*: Did you pass an examination to get a license or not, over there? *Answer*: What is a spinal puncture, Doctor, do you know? *Answer*: Yes, I remember the question.

Q Do you consider that a normal answer of a normal individual in response to your question as to whether or not he had passed a license for a taxicab driver?

A Well, it hadn't any medical significance whatever, it was only something which he had in his mind something that had given him some discomfort or some displeasure. That is the way I looked at it, I knew it was not responsive, but it is a question that was not answering my question, it is not the kind of a question that would mean anything silly or incoherent or anything of that character, but it was something on his mind, something that he had gotten some discomfort or some displeasure from.

Q But did he say in answer to that question, "Let us not talk about a license for awhile, I want to ask you a question."

A No, sir.

Q He did not make any such prelude when he asked you what a spinal puncture was?

A Not at all.

Q You were trying to attract his attention at the time to see whether he got a driver's license in New York?

A I cannot say that, I was simply asking him questions.

Q Do you think that is a responsive answer?

A Oh, no.

Q Do you think it is a normal answer to a question as to whether or not he got a driver's license in New York?

A I don't think that is a question that is abnormal, in fact I think it is a common thing.

Q But medically—

A Wait a moment, I am not through yet. It is a common thing when you are having a discussion with somebody, I don't care who it is, and if something comes in their mind at that time, and they want particularly to ask you about it, they will do so, will stop and ask it and then go on with the answers to the question. I don't see anything abnormal about it.

Q In other words, there is nothing abnormal about it?

A No.

Q There is nothing that indicates any mental disease to you?

A No, not to me, particularly in connection with the rest of the examination.

Q And you consider it a normal situation?

A I do.

Q Now, Doctor, you said that his memory was remarkably good, didn't you?

A Yes, sir.

Q Wasn't there a good many things that he could not tell you about?

A Oh, yes.

Q Did you ask him why he left Harvard?

A Yes sir.

Q What did he say?

A I don't remember, I think he said he did not know.

Q Did he say because he wanted to earn money?

A Oh, yes.

Q Was that the answer?

A That was the answer, yes, sir.

Q Your examination there, Doctor?

A Yes, sir.

Q Have you got it with you on the stand?

A Yes, sir.

Q Will you look at it, at page 5?

A Yes, I remember that very clearly, that was another way he had of trying to get money.

Q You told me awhile ago that his attention was fair, didn't you, isn't that correct, Doctor?

A Very good.

Q Do you think his attention was fair when you asked him about his driver's license and he asked you about a spinal puncture, what a spinal puncture was? His attention was not good then.

A I have already explained that.

Q Will you answer my question, whether his attention was good or not?

A His attention was perfectly good, he answered, but he answered in a different way, he answered me by asking a question.

Q Let us turn to page 5 of your examination. *Question*: "Why did you leave Harvard?" *Answer*: "To earn money." Do you remember that?

A Yes, sir.

Q And what did you ask him next?

A "Was that the only reason."

Q What was his answer?

A No.

Q What was the next question?

A "What was the real reason."

Q And his answer?

A "I don't recall, I don't remember."

Q His recollection as to why he left Harvard was not very good, was it?

A I don't know if he was answering that correctly, I cannot tell you that.

Q You could not tell?

A I could not tell whether he was answering correctly, he might have known but he did not answer correctly.

Q You think he might have been lying about that?

A Yes.

Q Do you know any reason why he should lie about it?

A Oh, no, I don't know of any reason.

Q Now, turn to page 6 and to the question, "Why did you leave?" *Answer*: "I wanted to do some studying." *Question*: "For what purpose?" *Answer*: "I don't remember exactly, it was law, I think, at one time." Did he answer that way?

A Yes, sir.

Q Now, on page 7, "Why did you leave there?" *Answer*: "I don't remember." Do you find that?

A Yes, sir.

Q He did not remember that, did he?

A No, he said he did not.

Q And a little bit further down the page, "What did you do then, after that?" *Answer*: "I studied geometry and algebra at home." *Question*: At home, why?" *Answer*s "I don't remember that." Do you find that?

A Yes, sir.

Q And do you find the next question. "You don't remember why you did it? *Answer*: No, sir."

Q And then do you find a long line of questions from then on to which there is no answer, is that right?

A There is one right here not answered.

Q Let me read these questions to you and see if I am right. "How did you get along studying alone? *Answer*: I did not do anything to amount to anything, I did not accomplish much." *Question*: "Then what did you do about it? *Answer*: (No answer). Doctor, isn't it true that when you asked him questions that he could answer by yes or no, or in which the question would suggest that answer, that you got an answer?

A And that in others I did not, is that the idea?

Q Isn't it a fact that when you asked a question in which the question would suggest the answer that he would answer it?

A Oh, I don't know that.

Q You don't know that?

A I have not been all through this, I cannot tell you.

Q Well, now, just look at page 7 again. Do you see any question that is answered there that is not simple and is answered in a word or two?

A I think they were short answers, most of them were responsive answers.

Q But they were short answers, weren't they?

A Most of them, I did not ask for anything else.

Q Look at next to the last question, "Then, what did you do after that?"

A Yes, sir.

Q That might call for a long answer, might it not?

A Anyone might call for a long answer.

Q But you did not get any answer, did you?

A I did not get any answer, no.

Q Then the next question is, "Can't you tell us what you did at any time after that, after those several weeks were over, what next did you do to try to earn your living or what next did you do after that?

A "I went to Williamstown." Do you remember that?

A Yes, sir.

Q And further down on the page "Did you try to enter Williams College as a student?" *Answer*: "No, sir." Do you remember that?

A Yes, sir.

Q "You did not make any effort to do that? *Answer*: No." Yes, that is correct.

Q "You did not try to pass any of the examinations at all?" In other words, the question is "You did not try to pass any examinations" suggests the answer, doesn't it?

A Yes, sir.

Q And his answer is, "No."

A Yes.

Q "Did you study for the examinations?" That is the next question, am I right?

A Yes, sir, and the answer was a perfectly proper answer.

Q Now, on the same page, "What would that bring you, in the summer, the late summer of 1923, do you remember that," and he gave no answer to that?

A Oh, yes.

Q The next question: "Well, did you go to work again anywheres? What did you do after that?"

A Yes, sir.

Q There is no suggestion in that question, is there, Doctor, "What did you do after that?"

A No, I beg your pardon you did not read the answer to the other question.

Q You mean the question before that?

A Yes, sir.

Q "Well, did you go to work after that anywhere?" *Answer*: "That brought me up to June."

Q "What did you do after that?" That would not suggest what the answer should be?

A No, sir.

Q And you got no answer?

A No, sir.

Q And the next question is, "Can't you tell us anything about what you did after that?" That did not suggest an answer, did it?

A The question did not suggest an answer?

Q Yes, the question did not suggest an answer, did it?

A Suggested an answer to some question if he wanted to make it.

Q Did he answer the next question?

A No.

Q And the next question, "Can't you tell us anything about what you did after that?" That was not answered?

A No, he did not answer that question.

Q And then you put the same questions in another form, "How did you put in your time since June, 1923, what work did you do, where did you work, and what did you do?" Can't you tell us anything about it," and you got no answer?

A That is correct.

Q Then, the very next question, "Have you ever been in Overbrook?"

Answer: Yes, I have."

A Yes, sir.

Q Did you ask him whether he was sane or insane at the time he was in Overbrook?

A I don't remember my asking him that, but I think I asked him if he thought he was, I believe, in both places.

Q And what did he tell you?

A I think when I asked him whether he had any mental troubles, I asked him, "Was there anything the matter with you mentally at that time," and he said, "No."

Q Then I asked him "Anything the matter with you now?" and he said, "Yes." *Question*: What is the matter with you now mentally?" *Answer*: "Nothing special."

Q His answer to your question "Is anything the matter with you now," was "Yes, sir."

A Yes.

Q Then, when you asked him what is the matter with you now, mentally?" He said, "Nothing special?"

A Yes, sir.

Q And then you asked him, "But you did not think there was anything the matter with you at that time in February, when you were sent up there?" And he said, "No, sir."

A That's right.

Q "You did not think you ought to have gone there?

A "No, sir."

Q Did he tell you, when he told you there was nothing the matter with him, mentally, at the time, why he was sent to Overbrook?

A Well, he might have thought that was a proper answer.

Q And if he said he was not insane at the time he was sent to Overbrook, and you know he was insane, was he laboring under a delusion that he was sane at that time?

A That is not the very same question.

Q You cannot answer that question?

A Just a moment, I think that you made a mistake in the way that you asked it. If he was not sane, is what you have the questions as—

Q You told me a little while ago, Doctor, that you thought the boy was telling you the truth or trying to tell you the truth, is that right?

A I think he was.

Q And before when he said he was sane and there was nothing mentaly wrong with him at the time he was sent to Overbrook, I asked you if it is not a fact, assuming that to be true, as I have stated it, that he was laboring under a delusion?

A He was mistaken, undoubtedly.

Q And you would not call that a delusion?

A No, a mistake is not a delusion.

Q Didn't you find this, Doctor, that he was amenable to suggestion as to what answer he should make?

A I don't think any more than any other person being examined in the same way was, sane or insane.

Q Did you find occasions when he would adopt a suggestion which you made in your question?

A I don't remember that.

Q Would you say that there were any such occasions?

A No, I would not say that.

Q Now, is there any time in which he would tell you something, as a state of facts and you would reverse that state of facts and you would still get the same answer?

A I don't remember that.

Q You don't remember anything of that character?

A No, sir.

Q And you don't think he was amenable in that respect?

A Not so far as I know.

Q Now, turn to page 12 and refer to the third questoin which you asked him at that time, "What have you been doing since 1923, then, tell us some of the things you have been doing since 1923 when you were at Beacon and after you left there and went home. Have you had any positions, any work, that you have done or earned money?"

A I carried mail for three months and drove a hack for ten months—no, ten weeks." And then you reversed the question and you say "Ten weeks you carried mail," whereas it should be that he carried mail for three months and he said ten weeks he carried mail, is that right, as it appears in the records. Is his answer that he carried mail for three months and drove a hack for ten months—no, ten weeks, is his answer that he drove a hack for ten weeks, right?

A His answer is, "I carried mail for three months and drove a hack for ten months—no, ten weeks?"

Q What does he say next?

A "Ten weeks you carried mail? That's right."

Q In other words, in your question when you said ten weeks you carried mail, you were asking him something he did not tell you, are you not?

A Well, he made the correction. I didn't.

Q He made the correction?

A He made the correction. Then I asked him the same thing over again.

Q What did he tell you in answer to your question? Read your record.

A Well, I will read it. The answer is, "I carried mail for three months and drove a hack for ten months—no, ten weeks. *Question*: Two weeks you carried mail? *Answer*: That's right. *Question*: No, not two weeks. *Answer*: Ten weeks."

Q Then you put this question, "Ten weeks you carried mail?"

A Yes.

Q And his answer is "That is right?"

A Yes.

Q Now, look at his answer to the former question and he said, "I carried mail for three months."

A Well, he corrected it.

The Court. Well, the point is this, Mr. Wachenfeld is directing your attention to the second query that he carried mail for ten weeks. Mr. Wachenfeld is directing your attention to before that he carried mail for three months.

Witness. The finish of that answer is, "no, for ten weeks. He corrected it himself. I am not correcting it.

Q Well, let me read this question again. We will dissect his answer in the first instance. He said this, "I carried mail for three months;" isn't that what he said?

A That is right.

Q Then you said, in your next question, "Ten weeks you carried mail?" And he said, "That's right."

A Well, that is about the same. It was not very much different.

Q Do you think so?

A Well, wait a minute. That's right.

Q That is right?

A Yes.

Q So that then he did adopt your suggestion in your question when you said ten weeks you carried mail, when he said "That's right."

A Yes, I think that is so, but I assume—

Q You have answered the question. Now, then, two questions down below that you again run into the same situation, in which you say this, "And then you drove a hack for three months." That suggests the answer, doesn't it?

A Yes.

Q And the answer is, "Yes," isn't it?

A Yes.

Q Where, as a matter of fact, before that time he had not told you anything of the kind.

A That he had not drove the hack for three months? He drove it for ten months.

Q Is there any place in his entire answer that you see a place where he says he drove a hack for three months?

A No.

Q But he does say, in his prior answer, that he carried mail for three months?

A Yes.

Q And when you put the suggestive question to him in this form, when you say he drove the hack for three months he answered "Yes" and yet you say his attention is good?

A Yes, very good. That is the same mistake any boy might make under the circumstances.

Q Now, Doctor, from the records, as you have examined them, would you say that he has a border line case of dementia praecox and, when I speak of records, I mean the records of the Overbrook asylum and Craig House?

A No.

Q You think he was a well-defined case?

A A well defined case, yes.

Q And, Doctor, do those patients have what is called in your profession episodes?

A What do you mean by episodes?

Q Well, is there such a thing in your profession as an episode?

A Lots of them.

Q All right. Do dementia praecox patients have an episode?

A What do you mean by an episode?

Q What do you mean by an episode, Doctor?

The Court. Just a minute. The doctor is entirely right.

Q Is there such a thing in a dementia praecox case known as an episode?

A I do not remember hearing that particular term used in reference to dementia praecox.

Q You do not remember?

A No. If it has reference to an impulsive action, or something of that character, then they have an episode.

Q But they have impulsive actions?

A Oh, yes.

Q And would you call an impulsive action an episode?

A Well, I don't know whether it is called an episode or not. I suppose that would apply, but we do not speak of it as an episode.

Q But as you use it as an impulsive action, that a person suffering from catatonia dementia praecox would be an episode?

A Yes.

Q In other words, then, they have a period of excitement and a period of depression?

A Well, they vary. Sometimes they are stuporous and sometimes they are excited.

Q But they have at different times periods of excitement and depression?

A Some forms.

Q Well, let me read White to you again: It is, "Quite characteristic of this condition, too, are the impulsive acts of these patients." Do you agree with that?

A During the active stage, but not during the stage when they are so very much better.

Q Let me continue the paragraph. "Quite characteristic of this condition, too, are the impulsive acts of these patients. They will suddenly and with absolutely no warning whatever commit some act of violence, such as assaulting another patient or breaking out a window, and quite as suddenly lapse into their previous state. It is quite impossible to get any adequate information as to the cause of these acts. The pa-

tient is inaccessible to a degree and either gives some senseless reply to the questions asked, a puerile reason, perhaps, or retires behind an 'I don't know' or complete silence. These attacks come out of a clear sky, cannot be foreseen, and make these patients at times very dangerous." Do you agree with that?

A I agree that that occurs in dementia praecox in its active stage, but not in the stage that this man was in in the later months.

Q That is what I am asking you, if that is true in cases of dementia praecox.

A In the active stage only. When they are under the state of delusion or allucination or negativism, they may do that sort of thing.

Q Is it possible for an undaming of the episode after an action of violence?

A I don't know.

Q Could it have some effect upon a patient who is suffering from dementia praecox?

A I don' t know just exactly what you mean.

Q Well, do you think a man who has his emotions penned up, so to speak—

A That he has them penned up?

Q Yes.

A I suppose that is possible.

Q That is possible?

A Yes.

Q And when I say the undaming of the emotions, I mean the emotions are untangled to a certain extent?

A Yes.

Q And is it possible for an episode to unpen them or undam them?

A I think so.

Q And you don't know whether that happened in this case or not?

A I have not the remotest doubt that it did not occur.

Q You have not the remotest doubt that it did not occur?

A Yes.

Q Why do you say that?

A On account of the condition I found this man on my

various examinations, my observation of him, and what I know of the case.

Q Well, your first examination was when?

A September 10.

Q At that time you came to the conclusion that he was sane?

A I did.

Q Now, can you give me any logical reason for this, as you have already said, a very rapid recovery from the 28th of June, when this man was suffering from dementia praecox to September 3, approximately two short months, by a man who, as you say, on the 28th of June was a marked case of insanity, suffering from catatonia dementia praecox, what is the explanation of his rapid recovery during the period of two months.

A Did I say it was a marked case on the 28th of June I do not think I said any such thing. I said I did not know what his condition was. All I said was from the records that this man was very much better, so much better that he was allowed out of the institution not sent back again.

Q Is that what you got from the records?

A I think so.

Q You knew he had escaped from the asylum?

A Yes.

Q And you knew that he went out without what they call issuing a pass?

A Yes, I know he escaped, a very unusual thing for a dementia praecox to do.

Q Do you consider the disease organic, or do you consider it functional?

A Well, I think in many cases it is organic. There have been many cases which have recovered or apparently recovered, so you could not tell the difference between them and a perfectly sane person, in which, if it was organic, the change in the brain structure has been so little that it would be recovered from and could be recovered from. In some of the cases it looks as if they had entirely recovered without any changes in the structure whatever.

Q Now, Doctor, you say that at the time you examined him you found no evidence of delusions or allucinations?

A None whatever.

Q Did you find any evidence of delusions or hallucinations in his past?

A Oh, yes, a great deal.

A And in dementia praecox those things are called transitory delusions rather than fixed delusions?

A Yes.

Q They come and go?

A Not systematized.

Q But they have not one fixed delusion that remains?

A No, not as a rule.

Q They vary?

A They vary.

Q From day to day, would you say?

A I would not say that, but they are not systematized, unless there is a varying trend. In that case there might be systematized delusions or delusions of persecution or granduer, but ordinarily they are not.

Q Now, Doctor, is there such a thing as a split personality?

A Oh, yes.

Q In a dementia praecox?

A Oh, yes, in the active stage.

Q And the split personality is what?

A Well, there are two personalities, one traveling side by side mentally. Sometimes the patient will be under the influence of one personality and at other times under the influence of another.

Q And that is quite prominent in dementia praecox patients?

A Yes, in the active stage.

Q And is that where the name schicophrenia comes from?

A Yes.

Q Schicophrenia meaning in itself a split psychic?

A Yes.

Q And when you have that condition you have automatic thinking and automatic acting?

A Yes.

Q You have two extremes flowing side by side with no connection whatever?

A No connection.

Walter S. Washington, Redirect.

Q And the patient may think of one thing and while he is thinking that one thing, go into another?

A Yes.

Redirect Examination by Mr. D'Aloia.

Q Now, on this occasion of your examination on September 10, 1925, upstairs, you asked him this question. Do you remember asking him why he left Harvard and he said he was envious?

A Yes.

Mr. Wachenfeld. What page?

Mr. D'Aloia. Page 5.

Q And you asked him this question, "Envious of who?" and he answered, "The students."

A Yes.

Q And you asked him this question, "Why?" and he answered this, "Because they had a lot of money."

A That is right.

Q *Question*: "They had more money than you did?"

A Yes.

Q And you put this question, "And that is the reason you left Harvard, to go to New York to earn money?" And the answer was, "Yes." And you asked him this, "What did you do in New York, what did you do when you went down there?" And he said he got a job in the stock exchange and you asked him, "In an office?" And he said, "No, as a messenger boy." and you asked him, "How long did you retain that? and he said, "Three weeks." *Question*: Why did you leave? *Answer*: "I wanted to do some studying." Is that right?

A Yes.

Q Now, you asked him, also, this, "After you had worked those three weeks, then what did you do, look for another job?" and his answer was, "No." "What did you do?" and he told you he rented a farm near the Boy Scout Camp at Oakland, and you asked in what State and he said New Jersey. You asked him, "Where is Oakland?" And his answer was, "Twenty miles from Montclair."

A That is right.

Q No difficulty there?

A None whatever.

Q You asked him this question, "It is in the Northern part of the state, isn't it? and he said, "Yes." and you asked him how large a farm, and he answered, "A small farm," and you asked him how many acres and he said, "I don't know." Pages 6 and 7. The next question, "How long did you live there?" The answer was, "six weeks." The next question was, "What time of the year was that?" The answer was, "February and March." "What year?" "1923" Any difficulty in asking those questions and getting those answers?

A None whatever, responsive and attentive to them.

Q "Why did you leave there?" *Answer*: "I do not remember." "Where did you go?" *Answer*: "I went home to Montclair." *Question*: With your mother?" *Answer*: "Yes." *Question*: "Your father and your mother both knew you were up there?" *Answer*: "Yes." Now, toward the end of your examination you asked him this. "By the way, were you ever in Virginia?" Page 14, the first question, "By the way, were you ever in Virginia?" And he said, "Yes," and you asked him, "When, what year?" and he said, "In 1924," and you asked him what time in 1924 and he said, "In the spring," and you asked him this question, "How long were you down there?" *Answer*: "Three weeks, I guess." "What did you do while you were there, what did you work at?" *Answer*: "I stopped several places on farms."

A Yes, I remember very well.

Q You asked him this question, "Did you meet a man by the name of Payne down there?" and his answer was, "Yes." And you asked him, "How does he spell it, p-a-y-n-e," and he repeated that question, and you said, "Yes." Do you know the right way to spell it? And he answered, "Why, I would spell it with a 'Y'," and you spelled it out and he answered this, "Or else it is Paine, but I think it is a 'Y'."

A That is right.

Q "How long did you work for him?" And he answered, "The old man was eighty years, there were two of them." The next question, "Were they both on the same farm?" and the answer was "Yes." "Father and son?" "Yes, sir." "And the father, you think, was about eighty, is that right?" *Answer*: "Yes." "How old was the son?" "Forty." "Now, where

was that in Virginia?" Answer: "In the mountains." "What was the address, what was the post office address there where they were, do you know?" *Answer*: "Crest Hill." Do you remember that answer?

A I do.

Q "Do you know what county it was in?" *Answer*: "No." *Question*: "You do not?" "No." "Crest Hill was the post office?" "Yes." "Where you got your mail and where you sent your mail away?" *Answer*: "Yes." Now, was there any difficulty in his recalling the way of spelling the name Payne down in Virginia or the name of the place, Crest Hill, where he stopped down there?

A Not the slightest.

Q Now, you put this question to him, too, "Do you konw what you are locked up for?" *Answer*: "Sure."

A Yes, I remember very well.

Q Page 17. Then you put this question, "What is it you are locked up for?" No answer. Then you put the question to him, "Can you tell me was it for something that you did that was unlawful, was it for shooting a man by the name of Pierce, do you remember?"

A Yes.

Q No answer. Next question, "Was it for shooting a little girl by the name of Daly?" *Answer*: "That is what they tell me." Is that right?

A Right.

Q Now, did you put this question to him, "Do you think it is wrong to shoot people and kill them?" *Answer*: "Yes." And the next question, "Do you know what the punishment is?" *Answer*: "Yes." "What is the punishment?" No answer. "Can you tell us?" No answer and he does not answer any more of those questions until you get down to the next page.

Mr. Wachenfeld. What page?

Mr. D'Aloia. Page 18.

Q And you asked him this, "Who is the superintendent of Overbrook and what is his name?" *Answer*: "Guy Payne." Is that right?

A That is right.

Q "Who is the assistant superintendent?" "I don't know." You put this question, "Who was the doctor in charge of you

there in the ward you were in?" And here is what he answered, "Dr. Thompson and Dr. Stamp and another man used to come around, but he did not speak to me. I don't know what his name is, a big, tall man." He told you that, didn't he?"

A Yes.

Q Then he asked you your name?

A Yes.

Q And you told him?

A Yes.

Q And that was the end of the examination on the tenth of September?

A Yes.

Q Now, from this examination and from the records that you had read, you say that on the third of September, 1925, this defendant, the man you examined on the tenth of September, 1925, was sane?

A I think so.

Q And that he knew the distinction between right and wrong?

A I do.

Recross Examination by Mr. Wachenfeld.

Q Doctor, if a man is sane, there is hardly any necessity for asking the next question as to whether he knew the distinction between right and wrong,, is there?

A Well, if he is a good character, good morality.

Q Dementia Praecox cases, what is commonly called the wanderlust, is that sometimes present?

A You mean after they are committed?

Q No, before.

A I suppose that is so, but not after they are committed. They are usually satisfied and they rarely escape.

Q Now, tell me this, do they also have a tendency to change from one place to another and from one job to another?

A Oh, yes.

Q And did you find such a tendency on the examination of Noel?

A Yes, I found that and asked him about it.

Q Yes.

A And asked if the reason he had changed was that he was dissatisfied.

Q What did he tell you?

A He told me he was pretty well satisfied.

Q Was that a logical answer?

A I thought so.

Q That he told you that he changed from job to job and place to place and you asked if he done that because he was dissatisfied and he said , no, I was absolutely satisfied, and that was a logical answer?

A I think so.

Q And yet it contains both elements which you just told me, which indicates catatonia Dementia praecox, first, a desire to change and, secondly, to wander and a satisfaction of their present position.

A Now, wait a minute. You have misconstrued or misstated my answer to that question about the wanderlust. I was not speaking about wandering from one position to another. I supposed you had reference to what is really wanderlust, from one place to another. That is not what I had reference to. I had reference to business or occupation, and it is not unusual for them to be dissatisfied or at least move about from one place to another, but this boy was not dissatisfied. He did not have many positions. There were only two or three mentioned.

Q He did not have many positions?

A No.

Q Suppose I were to tell you he was a deck hand, an able bodied seaman——

Mr. D'Aloia. I object.

The Court. Sustain the objection.

Q You did not find, did you, any such detailed changes as you speak of, which would indicate a desire to go from one job to another?

A No.

Q But assuming he occupied these different positions as a seaman, deck hand, and a bricklayer, as a pom-pom maker, and

a taxi cab driver, as a mail carrier, would you say there was quite a variety of occupations there.

Mr. D'Aloia. That is objected to.

The Court. Sustain the objection.

Q Assuming, Doctor, that he did follow these various occupations, would you say that there had been—

Mr. D'Aloia. Object to that question.

The Court. Sustain the objection.

Mr. Wachenfeld. May I have it on the record? I do not think I finished it.

The Court. Well, you have gone far enough for me to conclude it is not in evidence.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Page 16. You said to Harrison this, "Now, here is another thing, Harrison, you worked in quite a number of places. You do not seem to have retained any job very long, do you?" And the answer is, "No, sir." *Question.* "Were you dissatisfied always, so as to change about that way? Coludn't you settle down and be contented if you had a job that suited you and worked without changing so frequently, or did you get dissatisfied easily? *Answer*: "Well, I was always generally pretty well satisfied." Is that the way he answered it?

A Yes.

Q And yet he changed about from job to job even from your examination?

Mr. D'Aloia. That is objected to.

Witness. Mr. Wachenfeld, that is so common a thing among lots of people to go from one job to another, that it is no indication of a mental condition whatever.

Q But they go from job to job because they are satisfied or dissatisfied?

A They are shiftless.

Q In other words, if I am satisfied with my job, I keep it?

A I would, if I were in your place.

Walter S. Washington, Redirect.

Redirect Examination by Mr. D'Aloia.

Q You had in mind when you made your examination on the 10th of September and the occurrence that you questioned him about on the third of September that on the third of July, 1925, as appears from the Hospital records, this defendant had called at the hospital in company with his mother and had been allowed to go home.

Mr. Wachenfeld. I objected.

The Court. Sustain the objection.

Q When you came to the conclusion that he was sane on September 3d and told Mr. Wachenfeld, in answer to his questions, that you had taken into consideration this hospiatl record—

A I did.

Q —did you glean from this record the fact that this defendant had called at the Essex County Insane Asylum in the company of his mother on July 3 and he had been allowed to leave—

Mr. Wachenfeld. I object to that.

The Court. Sustain the objection.

The state rests.

Mr. Wachenfeld. I desire to move for the direction of a verdict, reserving the right to put in a defense, upon the ground that the burden of proof as to the sanity of this defendant at the time of the commission of this crime has not been sustained by the state. There have been two doctors who testified, to wit, Dr. Markens, whose testimony only was as to the conversation with the defendant. He was not asked an opinion whether he was sane or insane on the 3rd day of September. The only other doctor who testified was Dr. Washington and Dr. Washington said that on the prior occasion he did testify to the fact that he could not tell when this boy, assuming him to be insane, which he admitted to be true, became sane, and I say it is not sufficient to sustain the burden of proof and I ask for the direction of a verdict.

The Court. The mental condition at some prior time is not conclusive, and, without passing upon the question of the burden of proofs I will deny your motion.

Defendant's counsel prays exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN S. CAFFREY,
Judge.

Mr. Wachenfeld opens for the defendant.

ROBERT J. RUSH, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Where do you live?
A I live in Brooklyn.
Q And what business are you in?
A I am a police officer.
Q How long have you been a police officer?
A Four years.
Q In what department?
A New York City Police Department.
Q And were you such a police officer on the night or day of June 28 or 29?
A I was.
Q Which was it?
A The 29th.
Q And where were you stationed at that time?
A I was in the West 47th street Precinct, 9th precinct.
Q Look at this defendant Noel here, who sits with his hand by his face, and tell me if you saw him on that date?
A I did.
Q Where did you see him?
A I seen him in the Ninth Precinct.
Q Where is it located?
A 345 West 47th Street.
Q And what time of the day was it, do you recall?
A Noon time, 12 Noon.
Q Did you talk to him at that time?
A I asked him questions, yes.
Q Did you get any answer to your questions?

A I did not.

Q How long did you talk to him, about?

A About two minutes, that is, in the station house.

Q And then did you talk to him after that?

A I did.

Q Where?

A On the way to Bellevue Hospital.

Q Did you take him to Bellevue Hospital?

A I did.

Q To what ward in Bellevue Hospital?

A Reception ward.

Q Reception ward of what department, do you know?

A Well, I don't know.

Q Will you tell us what you observed as to the appearance of this boy?

A Well, his appearance was something similar to his appearance right now. He had a blank stare on his face and you would have to lead him to bring him from one part of the room to the other. If you told him to come on he would not hear you. If you wanted him to walk across the room, he would not hear you.

Q How did you arouse him so that he would hear you?

A Well, I don't think the way he acted he heard me at all.

Q What about the appearance of his face, how did that look?

A Well, his eyes looked glassy, just a sort of a blank stare, and I moved it to the right and to the left, and he kept it in the same position at all times.

Q What do you mean moved what to the right and to the left?

A His face.

Q And how long do you suppose you saw him, all told, at the police station until the time you took him to the hspital?

A About thirty-five minutes.

Q And did you leave him at the hospital?

A I did.

Q And did you see him again from that time until today or yesterday?

A No, sir.

Robert J. Rush, Direct.

Q Who else was there in the ambulance that took him to the hospital?

A A nurse by the name of C. E. Patton.

Q Is that a lady or a man?

A A man.

Q Tell me again what you said about his face, what about his face remaining in the position that you put it in, tell me that more definitely what you did?

A I just tried to get him to say something but he kept his face in the one position.

Q And when you moved his face in that position he would keep it there?

A Yes, sir.

Q Until what happened.

A Until I moved it again.

Q Now, from your observation for more than thirty-five minutes, and at the time that you talked to him and got him to answer questions, would you say he was sane or insane?

A I would not say that his disposition was that of a nomarl person.

Cross Examination by Mr. D'Aloia.

Q Do you know that when he got to the hospital he told Dr. Gregory that he faked this condition because he thought he might get hungry and he thought he might be sent to a hospital?

Mr. Wachenfeld. I object to that.

The Court. Overruled.

A I don't know.

Q Do you know that he told how he got to Battery Park and how he loafed around until ten o'clock that morning and then walked into the police station himself in order to be sent to a hospital.

A No, sir.

Q Did you ever go to Bellevue to find out what he said there?

A No, sir.

Q You only saw him for thirty-five minutes and you were

given orders by your superior to take him to the observation ward?

A Yes, sir.

Q And you don't know what doctor said anything to him there, and you don't know what he said to the doctor?

A No, sir.

EMILE VON THORN, sworn in behalf of the defense.

Direct Examination by Wachenfeld.

Q Mr. Von Thorn, where do you live?

A 20 Pompton avenue, Verona.

Q What business are you in?

A A little confectionery store, grocery and a little all around store.

Q Do you know where Hanlon's cab station is?

A Yes, sir.

Q Is that near your place of business?

A Yes, sir, about two or three hundred feet from my place.

Q Did you know this man Raymond Pierce who was a colored man?

A Yes, sir.

Q Did you know him very well?

A Very well, because he happened to come to my store practically every day and he was one of my best sandwich customers.

Q Did you see him every day?

A Well, while he worked for Hanlon.

Q Did you see him on Thursday, September 3rd?

A Yes, sir.

Q Where did you see him?

A In my store.

Q What time of the day or night was it that you saw him?

A I think it was between seven and eight.

Q Evening or in the morning?

A Evening, Thursdaqy evening.

Emile Von Thorn, Cross.

Q And do you remember distinctly seeing him there at that time?

A Yes, sir.

Q And what did he do at that time, did he do anything or just talk to you, or what happened?

A Yes, he bought a glass of soda and a "Love Nest", and also a "7-11", that is a five cent candy.

Q Did you have any conversation at that time, about tires?

A Yes, sir.

Q What did he tell you about tires?

A He asked me if I would like to buy two Ford 30 by 3½ Cord tires for $8 piece.

Q What else did he say?

A He told me he bought them very cheap and he would sell them to me for $8, and I told him, "I had just bought two tires a week or two before and I did not need them just now, otherwise I would buy them, so he told me that Moser, which is another taxi driver, near the Mountain House, offered him to pay $5 down and the rest afterwards, but he said he needed the money and he wanted cash for them.

Q From how long prior to September 3, 1925, had you known Pierce?

A Oh, practically a year or a year and a half before that.

Cross Examination by Mr. D'Aloia,

Q Do you remember going to the Montclair Police station on Sunday, September 6, 1925?

A Yes, sir.

Q Did you see Mr. Mason there?

A Yes, sir.

Q Do you remember seeing Chief Reilly there at the Montclair Police Headquarters?

A I don't know Chief Reilly, but I saw several men there.

Mr. D'Aloia. Stand up, Chief Reilly.

Q Did you see that men there (indicating Chief Reilly)?

A Yes, sir.

Q Do you remember the afternoon of Sunday, September 6, 1925, seeing both these gentlemen at the Montclair Poliec head-

quarters and saying this, "Gentlemen, I made a mistake. I now realize that I made a mistake that night that Pierce came into my store was Wednesday and not Thursday as I originally thought."

A I did not say so.

Q What did you say?

A I did not say so.

Q What did you say?

Mr. Wachenfeld. I object to that if the court please.

Q I want you to tell us what you said on Sunday afternoon September 6, 1925, at the Montclair Police Headquarters when Chief Reilly and Mr. Mason were there and you came in there. That is the only time I am talking about.

A I went down there especially for that, that my neighbor was in the store when Pierce was there and told me as he went out of the store he saw another man standing outside with what looked, and it looked as though he had a club under his arm and he told me the next day, and for that reason I went to the Montclair Police station to tell them that.

Q I am talking about Sunday, September 6, 1925, you went to the Montclair Police headquarters, did you not?

A Yes, I did, and that's what I told him.

Q Did you see these gentlmen there?

A Yes, sir.

Q Did you see Chief Reilly there?

A Yes.

Q Now, did you say anything about having been mistaken?

A Not a thing.

Q Did you say anything about having been mistaken at a prior occasion when you said that to them, that Pierce had been in your store on Thursday night, did you sav anything about Wednesday night?

A I did not say anything about any mistakes I have done or anything like that.

Q You never said to Mr. Mason and never said to Chief Reilly that you were mistaken when you thought it was Thursday night but that in fact it was Wednesday night when Pierce came to your store?

A I didn't say any such thing.

Q You never admitted to either one of these men or both

of them that there was a mistake made?

A No, sir.

CARL ANDERSON, sworn in behalf of the defense.

Direct Examination by Mr. Wachenfeld.

Q Mr. Anderson, where do you live?

A 38 Belmont avenue, Verona.

Q How far is that away from this man Von Thorn's store?

A About 250 feet.

Q Did you know a man by the name of Pierce, Raymond Pierce?

A I didn't know him.

Q Were you in Von Thorn's store Thursday night?

A Almost every night I am there, on Wednesday night, and I believe I was there Thusday night, too.

Q You believe you were there Thursday night, is that right?

A Yes, sir.

Q Did you see a colored man in there at that time?

A Yes, sir.

Q And was there a colored man talking to someone else?

A Well, when you come in that store there was always about three or four colored people in there, so I cannot exactly tell.

Q What time was it Thursday night that you were in the store, do you remember?

A Between seven and eight.

Q Did you see a colored man in there at that time talking to Mr. Von Thorn?

A I believe so.

Q Well, can't you tell us, can't you tell us distinctly whether you recall it or not.

A I am not sure.

Q What did you go in there for at that time?

A A loaf of bread.

Q Can't you tell us whether or not you saw a colored man in there?

A Well, I cannot say for sure.

Carl Anderson, Direct.

Q Now, you have said, haven't you?
A I have said I believe I saw some colored man.
Q Just look at this man seated at my left, Mr. Mulchay. Didn't he see you in reference to this matter?
A Yes, sir.
Q And didn't you tell him that you saw a colored man in that store talking to Von Thorn?
A Yes, I saw lots of colored people in that store.
Q Did you give that information to the police at any time?
A I never talked to the police about it.
Q Did the police ever come to see you about it?
A No, sir, not to my knodledge.

Cross Examination by Mr. D'Aloia.

Q You didn't know Raymond Pierce, did you?
A No.
Q You don't know now whether you ever saw him in your life or not?
A No, sir.

RECESS until Thursday, November 12th, 1925, at 9:30 o'clock, A. M.

THIRD DAY

Thursday, November, 12, 1925.

EMELINE SCHAFFER, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Mrs. Schaffer, where do you live?
A Pompton avenue, Cedar Grove.
Q Do you know Mr. Von Thorn who testified here on Tuesday?
A I do.
Q Do you know where his store is?
A I do.
Q Did you know this colored man, Raymond Pierce?
A I did.
Q How long did you know Raymond Pierce before the 3rd of September?
A Since last April.
Q Did you see Raymond Pierce on Thursday, September 3d, this year?
A I did.
Q Where did you see him?
A Coming out of Von Thorn's store.
Q Mr. Von Thorn's store?
A Yes.
Q What time of day or night was it that you saw him?
A Around 7:45.
Q Are you sure you saw Pierce there at that time?
A Positively.

Cross Examination by Mr. D'Aloia.

Q You are sure it was on a Thursday night?
A Positive.
Q Did you make a note of it?
A I know, because I had an engagement on a Wednesday night I could not keep and it was on returning from that engagement that I met Pierce face to face.

Q Did you know Pierce before that?
A I know him since April.
Q How did you know him?
A By riding with him as a passenger in his taxi.
Q You saw him every day?
A Not every day.
Q Almost every day?
A On the average of three or four times a week.
Q Therefore, when was it before this Thursday night that you say you saw him again?
A That I could not be positive of.
Q You see, that week begins with Sunday, Monday, Tuesday and Wednesday. Now, you say you could tell counsel you saw him Thursday night. Now, when did you see him before that?
A I could not be positive. It may have been Monday.
Q You would not be positive you saw him Thursday night?
A Yes.
Q Where do you live?
A Pompton avenue, Cedar Grove.
Q You have heard a good deal about this case?
A Yes.
Q You know Chief Bogan?
A Yes.
Q You know Mr. Bowden?
A No.
Q You know where his headquarters are in Montclair?
A I have passed it.
Q Did you tell anybody this before?
A No.
Q Who was it that came to you this last week or two and asked you to recall this September 3d?

Mr. Wachenfeld. I object.

The Court. Sustain the objection.

Q Did anybody ask you within the last two weeks to recall Thursday, September 3d, 1925?
A They came up to question me to see if I saw Pierce on that night.
Q Had you told it to anybody?
A No.

Q How do you account for a person coming up to you, not having known you before and not knowing that you know what happened Thursday, September 3d, how do you account for a person coming to you and saying you saw Pierce on September 3r?

Mr. Wachenfeld. I object to that. This witness cannot account for the actions of someone else.

The Court. I will allow that so far as she knows.

Q Can you tell me?

A To verify the statement.

Q What statement?

A Mr. Von Thorn passed a remark about the article put in the paper that he was killed at 2:30.

Q And you and Mr. Von Thorn are pretty good friends?

A No, not outside of business.

Q Now, when was it subsequent to this 3d of September that your mind was first called upon to go back to that Thursday, can you tell me?

A No, sir.

Q How long ago before today was the last time that you spoke of this case about the seeing of Pierce on September 3d, do you know, when was it last?

A I cannot definitely answer that. I do not know the date.

Q You do not know the date?

A No.

Q Can you tell me the person who talked to you last about this?

A No.

Redirect Examination by Mr. Wachenfeld.

Q You said something, Mr. Schaffer, about you and Mr. Von Thorn having had a talk that this man Pierce was killed at 2:30. Do I understand you to say that was in the paper?

A I went into——

Q No. Did you see newspaper articles about it?

A Yes.

Q And did you see newspaper articles about when you saw Pierce?

A No.

Emeline Schaffer, Recross.

Q Mr. Mulcahy, was that the man who saw you some time within the past week?

A Yes.

Q He did not suggest to you that you saw Pierce?

A No. He asked me did I know Pierce and when I saw him last.

Recross Examination by Mr. D'Aloia.

Q Do you recall whether you saw him on Tuesday, the 1st of September?

A I cannot say.

Q Do you recall whether you saw him on Wednesday, the 2d of September?

A No, because I was not out of my home.

Q But you cannot tell whether you saw him on Tuesday?

A No.

Mr. Wachenfeld. Your Honor, I call your attention to the committment made by the Juvenile Court, which was marked for identification. May I now have that marked in evidence?

The Court. Yes.

(Paper marked Ex. D1)

Mr. Wachenfeld. Now, I also offer, with the consent of the Prosecutor the original records of the Overbrook Asylum, or the Essex County Hospital for the Insane, covering the case of this defendant, Harrison W. Noel, and also the record of the Craig House, which is an asylum at Beacon, New York, which is a letter written by Dr. Slocum, a member of that asylum, which is attached to and made a part of the record.

The Court. Do I take it this is consented to?

Mr. D'Aloia. Well, we have no objection.

(Papers marked Ex. D4.)

Mr. Wachenfeld. Now, if your honor please, I offer in evidence transcript of the testimony of a witness residing outside of the state of New Jersey, to wit, Dr. Menas S. Gregory, which was taken in the presence of Judge D'Aloia and myself.

Mr. D'Aloia. I have no objections.

The same is marked Exhibit D-5.

Mr. Wachenfeld. And, in the testimony taken there is an exhibit which is the record of the Noel case while at Bellevue and it has marked under exhibt D-5.

Direct Examination by Mr. Wachenfeld.

ANNA CUEMAN, sworn in behalf of the defendant.

Mr. D'Aloia. No objections.

Q Mrs. Cueman, where do you live?

A On Little Falls Road, Cedar Grove.

Q Is there any river near where you live?

A Yes, Peckman river.

Q I show you a picture marked for identification, S-1, and ask you if that is a picture marked for identification S-1 and ask you if that is a picture of the bridge over the river that you speak of.

A Yes, sir.

Q Do you recognize that?

A Yes, sir.

Q Is that the same road that you live on?

A Yes, sir.

Q And how far, about, do you live from the bridge as shown in this picture?

A Well, I don't live very far from it.

Q Can you give us an idea in feet, yards or blocks or miles, or whatever it is?

A Well, I don't know much about feet but I should judge about fifty feet. I am not no good judger in feet.

Q Just give us your best estimate.

The Court. Is it the distance of this court room?

Witness: Why, it is a little further away than this court room.

Q A little further than the length of this court room, is that right?

A Yes, sir.

Q Here is another picture, Mrs. Cueman, which is marked Exhibt S-2. Do you recognize that picture?

A Yes, sir.

Q And this roadway here, that you see on the left of that picture, does that lead into your house?

A Yes, my house is right on that road.

(Exhibit S-1 and Exhibit S-2 are exhibited to the jury.)

Q Do you remember, Mrs. Cueman, where you were during the afternoon of Thursday, September 3?

A I was right on the front lawn.

Q And you say you were on the lawn during the afternoon, Mrs. Cueman, would that lawn be on this Cedar Grove road?

A Yes, that lawn is right in front and goes to that road.

Q Here is another picture marked S-1, and if you will look here, does that show the road that leads into your place?

A Oh, there is a road there and where I was right here. (indicating.)

Q Will you mark on there where the lawn was that you were on that afternoon?

A Right here, you see this here is all a big lawn and there is a lawn right here on this side.

Q Will you mark on that where you were that afternoon?

A You see, there are trees here in front and I was on the lawn in back over here, and there is a little hedging in front. (Indicating.)

Q How much of the afternoon were you there?

A Well, I was there from one o'clock until five; I was out with the children.

Q With your children?

A Yes, sir.

Q How many children have you?

A I have three.

Q During the time that you were there, did you see any car drive up to this bridge and stop there for a period of time?

A No, sir, I did not.

Q Did you at any time during that night see or hear a car on that bridge?

A Well, I did Friday morning.

Q Friday morning at what time?

A Four o'clock.

Q How did you happen to see or hear a car at four o'clock in the morning?

A Well, I was up with my one boy, he was sick, and I was up with him sitting at the window when a machine pulled up.

Q A machine pulled up where?

A Right in the front there, in the front of that one lawn, right in front of the house, and they backed up a little bit and then they stopped and put their lights out.

Q How long did they stay there?

A Well, they came there about four o'clock and they were there until about twenty minutes of five.

Mr. D'Aloia. That may be very interesting, if your Honor please, but I don't see how it is material to this case.

The Court. I don't know whether it is or not.

Q They stayed there until about a quarter to five?

Mr. D'Aloia. Objected to.

The Court. Overruled.

Q Did you see how many men were in that car?

A As far as I can see when they were walking in front of the headlights there were two.

Q And do you know whether or not the motor of the car was stopped at the time the car was standing there, or whether it was kept running?

A Well, whatever motor was in the car, why, it ran silent; it was not a noisy machine.

Q Now, look at this picture again, S-1, and tell me where that car was that you saw there at four o'clock in the morning?

A Right here, between here. (Indicating.)

Q Between where? Between that road and the bridge?

A Yes sir, it was up there (indicating) and then it backed up.

Q You say they pulled up and then they backed up. Now, there is an X on that picture in ink. Will you tell me where, with reference to that X, the car was at the time you saw it that morning?

A Why, right between there.

Q Right between the road and the X?

A Yes, sir.

Q Did you hear any men talking that morning?

Mr. D'Aloia. Objected to as leading.

(Question withdrawn.)

Anna Cueman, Cross.

Q Did you hear or see anything else other than what you told, me, Mrs. Cueman?
A No, sir; I did not.
Q Was your husband there that night?
A Yes, sir.

Cross Examination by Mr. D'Alioa.

Q Did you hear or see anything else other than what you at four o'clock in the morning?
A No, not as early as that.
Q But they do come pretty early, don't they?
A Well, they come on through from five o'clock on.
Q Well, that is quite a busy road there, isn't it?
A Yes, it is.
Q There is a place up there known as the Four Towers, and several other road houses?
A Yes, sir.
Q You know where the Four Towers are, don't you?
A Yes, sir.
Q Been there?
A No, sir.
Q Do you know what time they close?
A No, sir.
Q Now, do you know these gentlemen here (indicating Captain Mason)? The day after the body was found along under the bridge, weren't you interviewed by Captain Mason on Saturday morning?
A Who?
Q Weren't you interviewed by Mr. Mason on Saturday morning, September 5 in front of your own house?
Mr. Wachenfeld. This is Mr. Mason here, the man in the middle. (Indicating.)
A Why, I don't think I was; I know I was not.
Q Did you tell anybody on that Saturday morning about this automobile?
A Well, when they found the body, see I was—
Q Did you tell anybody about the automobile?
A Of course, it fell suspicion on me at the time. I did not think anything about this machine coming there, and

when they found the body it just came suspicion on me that if it was not probably that machine or so, and then I did.

Q You told Mr. Mason this, that a car stopped there around four A. M. and you heard three or four voices and then they went on, didn't you?

A No, sir.

Q And you told Mr. Mason that you could not see the car, but the only thing you could see from in back of the trees where your house was located, was the headlights, isn't that true?

A I don't remember speaking to that man.

Q You don't remember talking to him at all?

A No, sir; I do not.

Q Don't you remember when the body was found? Weren't you there?

A No, sir; I was not on the bridge.

Q Weren't you there at the time it was taken away by Mr. Kunz?

A I was inside on the lawn; I did not go outside of the lawn.

Q And wasn't it at that time that Mr. Mason talked to you?

A No, sir, nobody talked to me, because I did not come outside.

Q Did you talk to him the next morning?

A No, sir; I did not, I didn't talk with him at any time.

Q Did you tell anybody that you remembered that at four o'clock in the morning you heard three or four voices and you saw a car, you saw the headlights through the trees, and it was there for about five minutes and then it went away?

A No, sir; I did not.

The Court. Well, did you see anybody take a body out of a car.

Witness. No, sir; I did not.

Mr. Wachenfeld. If the court please, I desire to read the testimony taken of Dr. Gregory, in New York, and this one exhibit of the committment.

The Court. Yes.

(Mr. Wachenfeld reads Exhibit D-1 and D-5 to the jury.)

Frank F. Gray, Direct.

(*Mr. Wachenfeld* reads the committment of the Essex County Juvenile Court to the Jury, letter of Dr. Slocum of Craig House and Mr. Wachenfeld reads the direct examination of Menas S. Gregory, of Bellevue Hospital, and Mr. D'Alioa the cross examination.)

FRANK F. GRAY sworn in behalf of the defendant.

Direct Examination by Mr. Wackenfeld.

Q Where do you live?
A Montclair, New Jersey.
Q And what occupation are you in?
A Scout executive.
Q How long have you been in that work?
A Twelve years.
Q Do you know the defendant in this case, Harrison W. Noel?
A I do.
Q How long have you known him?
A Six or seven years.
Q Were you confined at one time to the Community Hospital at Montclair?
A Yes.
Q When was that?
A It was on the 1st of January until about the 18th.
Q What year?
A 1925.
Q Did you see Harrison W. Noel during that time?
A Repeatedly.
Q Where?
A At the hospital.
Q Will you tell us what he did when he was there, what he said or what you said? Tell us just exactly what you observed and what you heard.
A He came twice a day. He merely sat there. He did not say anything, as a rule, so little that I cannot remember what he did say.
Q How long did he stay there
A He stayed two hours at a time.

Q And you say that occurred twice a day

A Sometimes twice a day.

Q And when he walked in would he speak to you or you speak to him

A Yes, I would speak to him.

Q Would he speak to you

A Sometimes; sometimes not.

Q Then would he say anything else to you after that?

A No.

Q What would he say during these two hours?

A Just sat there.

Q In what position did he sit there? (Witness illustrates.)

Q Look at him now, the position you saw him, does it resemble the position you see him in now?

A Very much the same.

Q And during that time would you talk with him or try to?

A Some.

Q And would you get any response?

A Rarely.

Q Now how long did that continue?

A For the time I was in the hospital.

Q And you were in the hospital until the 18th?

A About the 18th. I cannot give the exact date.

Q Then do you remember being at Clifton Springs, in New York?

A Yes.

Q Where were you at Clifton Springs?

A At the sanitarium.

Q And Clifton Springs is in New York State?

A New York State.

Q Whereabouts?

A Between Geneva and Rochester.

Q When were you up there?

A About the 25th of January and from then on until early March.

Q In other words, when you left the Montclair Hospital?

A In a little while.

Q How long did you stay in Clifton Springs?

A About six weeks.

Q Did you see Harrison W. Noel at Clifton Springs?

A Yes. He appear the second morning after I got there.
Q Did you know he was coming there?
A I hadn't the slightest idea of it.
Q Did anybody inform you he was coming?
A No.
Q Tell us the circumstances that you saw him under?
A One day I was taking a treatment and they told me Harrison W. Noel was there to see me. This was in the forenoon about ten o'clock, and I continued the treatment and went up and he was gone and he returned later on.
Q What were you in the sanitarium for, Mr. Gray, will you tell us?
A For an attack of siatica and shingles.
Q Did you see Harrison W. Noel that day afterwards?
A Yes.
Q Where did you see him?
A At the sanitarium.
Q What happened then, did he talk to you?
A He said very little.
Q Well, how long did he stay?
A He stayed about half an hour.
Q And when you say he said very little, can you remember anything he did say to you?
A The only thing I can remember is that he said he didn't know why he came up there, he just took the notion.
Q Do you remember him saying anything else?
A That is all I remember.
Q And what was his attitude during that half hour? What was his position, was he standing up, walking, or sitting down?
A Well, he sat down, as I remember it now.
Q Did you see him again up there?
A Yes, two or three times.
Q Under what circumstances did you see him the second time, was it in the daytime or night?
A It was in the night time. He came in the night and they sent him away.
Q Well, did you see him any evening?
A Once in the evening.
Q Where?

A In my room.
Q Will you tell us the situation?
A He was there first.
Q Did you know he was there?
A No.
Q Well, just tell us what happened.
A Well, the main thing he was there and stayed there for a while and said nothing until afterwards he went out to go to bed.
Q Do you know where he went to go to bed that night?
A No, I don't.
Q How long did you see him that night?
A Well, I suppose it was nearly an hour.
Q Well, did he talk to you at that time?
A No.
Q Did he say anything?
A Very little, not enough for me to remember anything about.
Q What was his attitude for that period of an hour?
A He just sat there.
Q The same position?
A About the same position.
Q Did you see him again while you were at Clifton Springs?
A I saw him again on another occasion.
Q At Clifton Springs?
A Yes.
Q What was the third occasion?
A I came in my room one night and turned on the light and found him standing there.
Q Did you expect him?
A I had not the slightest idea of it.
Q Did you know he was there?
A No.
Q Was your room dark before you turned on the light?
A Yes.
Q When you turned on the light where did you see Noel?
A Standing off to the left at the foot of the bed.
Q Did he say anything to you?
A No, sir.

Q Did he say why he was there?

A I asked him why he was there and he said he didn't know.

Q How long did he stay there that time?

A The sanitarium authorities took care of him at once.

Q What do you mean by that?

A Had him confined.

Q Did they take him away?

A Not they themselves, the town authorities took him away.

Q You did not see him after that time?

A I did not see him after that at all.

Q Now, did you get some letters from Noel?

A Yes, sir.

Q Do you know Harrison's handwriting, Mr. Gray?

A Yes, sir.

Q I show you a letter that has no date to it, nor have I the envelop in which it was sent to you, if it was sent to you.

Mr. D'Aloia. What is the date of that letter?

Mr. Wachenfeld. It has no date.

Q Did you receive that letter from Noel?

A Yes, I received that letter.

Q When?

A Early in February.

Q What year?

A 1925.

Q And where were you at that time?

A At Clifton Springs, at the Clifton Springs sanitarium.

Q And is that Harrison Noel's handwriting?

A That is his handwriting.

Mr. Wachenfeld. I offer it in evidence.

(Same is marked Ex. D-6.)

Q I show you another letter, Mr. Gray, and I will let you keep this one in front of you which is marked, and which is the one we were just talking about. I show you another letter. Did you receive that from Noel?

A Yes, sir.

Q Do you remember the date that you received it?

A Early in February.

Q Can you tell us whether it was before this letter which

has been marked D6 or whether it was after?

A I think it was before, as I recall it.

Mr. Wachenfeld. I offer it in evidence.

(The same is marked Ex. D-7.)

Q Now, here is another letter, Mr. Gray, was that sent to you by Harrison Noel?

A Yes, sir.

Q Can you tell us when you received that?

A About the same time; they came fairly close together.

Mr. Wachenfeld. I offer it in evidence.

(The same is marked Ex. D8.)

Q Mr. Gray, I show you another letter and an envelope and I ask you if that letter came in the envelope that I am showing you?

A Yes, it came in that.

Q And I ask you if the envelope is addressed to Clifton Springs, New York.

A Yes, sir.

Q These other letters that you have identified, were they sent to you through the mail?

A All sent through the mail to Clifton Springs.

Q And do you know whether they were received in a registered letter or whether they were received in an ordinary letter?

A Some were received in a registered letter and some in an ordinary letter, but they are out of the envelopes and I didn't know which.

Q Now, this letter was received from Harrison W. Noel, wasn't it?

A Yes, sir.

Q Can you tell us when you received that, there is a postmark on the back, "Clifton Springs, February 9, 1925."

A Yes, sir.

Q At the time that you received it did it have this paragraph written on the back of the envelope?

A Yes, sir.

Mr. Wachenfeld. I ask that the letter and the envelope be marked as one exhibit.

(The same are marked Ex. D9.)

Q I show you, Mr. Gray, a postal card, and ask you if that is in Noel's handwriting?

A Yes, sir.

Q And I call your attention to the fact that although it was written on a postal card, the address side of it is perfectly blank. How did you receive it, if you did?

A In an envelope.

Q You mean in a separate envelope?

A Yes, sir.

Q With a stamp on it?

A Yes, sir.

Q And addressed to you?

A Yes, sir.

Q Do you remember when or about when?

A I have no recollection of when; I was too busy taking care of the shingles.

Mr. Wachenfeld. I ask to have this marked.

(Same is marked Ex. D10.)

Q Now, I show you another letter, Mr. Gray, together with an envelope, and the envelope is addressed to you, Frank F. Gray, at the Sanitarium, Clifton Springs, New York, and on the back of it it has Harrison W. Noel, 318 West 57th, New York City, with a postmark, Clifton Springs, February 5, 1925," and a letter on the stationery of the West Side Young Men's Christian Association, 318 West 57th street, New York City, and ask you if that letter is in the handwriting of the defendant, Harrison W. Noel?

A Yes, it is.

Q And you received it at Clifton Springs about the time that the envelope was marked?

A Yes, sir.

Mr. Wachenfeld. I offer it in evidence.

Mr. D'Aloia. I have no objection, but I would like to draw the court's attention to the fact that this was prior to the order of commitment which the defense has introduced, and probably led to the order.

The Court. What is the date of the first letter?

Mr. Wachenfeld. Apparently some time in the month of February, 1925.

The Court. You may read them.

Frank F. Gray, Cross.

(Mr. Wachenfeld reads Ex. D6, D7, D8, D9, D10 and D11 to the jury.)

Q Now, Mr. Gray, will you tell me from what you have seen and what you have been able to observe and heard of Harrison W. Noel whether or not, in your opinion, he is sane or insane?

A In my opinion he is insane.

Q Will you tell me whether or not you can form an opinion from what you have heard whether or not he could distinguish between right and wrong?

A I do not think he could.

Cross Examination by Mr. D'Aloia.

Q He never did you any harm?

A No.

Q Seven years ago how did you come to make his acquaintance?

A He joined the scout troup.

Q And he camped with you?

A Later on.

Q When did you first begin to permit him to call you uncle?

A That is a general term used by all the boys in town.

Q When did you first permit him to call you uncle?

A I do not know now. It is a general term used by all boys in town.

Q Have you had close contact with him in the last seven years?

A Well, not all the time.

Q Well, how many times have you camped with him in seven years?

A About three.

Q When was the first time and for how long?

A 1921, I think.

Q And for how long?

A Two weeks.

Q Where?

A At the camp at Oakland.

Q Did you ever convey to him the information that you had money?

A No.

Q Never told him that you had property?
A No.
Q You never talked to him about your affairs?
A No, I never did.
Q Never made any promises to him that you liked him and would like to leave something to him?
A I did not.
Q Now, let's see, he came to the hospital in Montclair in January?
A Yes.
Q Every day from the 1st to the 18th?
A Yes.
Q And you talked to him?
A Some.
Q What did you say to him?
A Why, the ordinary questions and answers.
Q Yes, and he would answer them ordinarily and understand your questions?
A I don't know.
Q Well, you could state from the answers he made whether those answers were responsive?
A Sometimes I thought he did and sometimes I thought he did not.
Q Well, now, the first day he came was what day?
A New Year's day, I think.
Q And did he say, "Happy New Year, Uncle?"
A No.
Q What did he say?
A He said "Hello."
Q What did you say?
A I presume I said the same thing.
Q How long was he there?
A About two hours.
Q Did he have a book there?
A No.
Q Did you ask him what he was doing?
A No. It was plain to see what he was doing.
Q Did you ask him what he was doing when he wasn't at the hospital?
A Yes.

Q What did he say?
A He was driving a taxi.
Q Where?
A In New York.
Q Did you ask him what he was doing? business?
A Not that I recall.
Q Well, did you ask him whether he had any difficulty getting in and out of traffic and out between the elevated pillars in New York?
A No, I didn't.
Q Didn't it appear rather strange that you, being a scout master and being in camp with him three times and visiting you at the hospital, strange that he visited you at this hospital?
A Nothing strange.
Q How did he know you were going to be taken to Clifton Springs?
A I don't know.
Q Do you mean to tell us that you did not tell him during these eighteen days that he called at the Montclair hospital, between the 1st and 18th, that you were going to leave that hospital and go to a sanitarium at Clifton Springs, New York, near Rochester?
A No.
Q Well, don't you remember anything at all?
A No.
Q Well, don't get excited.
A Well, don't you get excited, either.
Q Who are were talking to?
A You.
Q Who were you talking to up at the hospital and telling that person you were going to Clifton Springs at that sanitarium so this person could have heard it?
A I told the doctor.
Q Now, you are sure he came there every day for those eighteen days?
A I wouldn't say it was absolutely every day, but very nearly.

Q And you are sure he stayed one or two hours every time he came?

A Yes.

Q And you knew his father?

A Yes.

Q Now, when you left that Clifton Springs hospital, how long was it after the last time you had seen Noel—how long before you left Clifton Springs that you saw Noel?

A A day or two.

Q You are sure you did not see him the same day?

A I certainly did not see him the same day.

Q And you are sure you didn't give him the route as to how to get to Clifton Springs?

A No.

Q You were not surprised when you saw him up there?

A I was.

Q When did you arrive up there?

A At night, six o'clock.

Q And how long after that was it you saw Noel?

A The next morning, about ten o'clock.

Q You did not put him out?

A I had nothing to do with putting him out I—

Q But you—

Mr. Wachenfeld. I think this witness ought to have the opportunity to answer the question.

The Court. He has answered it.

Q You did not call the authorities, or the persons in charge of this sanitarium at Clifton Springs and say, "This young man is not right mentally, and I want to see that he gets back to Montclair, New Jersey, where his parents are?"

A I did, in effect, just that.

Q To whom did you say that?

A To the superintendent.

Q What is his name?

A Lichey.

Q But he came back the next day?

A He came back the next day.

Q And did you tell the superintendent the next day that you wanted him kept away from there?

A Yes.

Q And then he came back the third time?

A I think not. I would not say whether he came back the third time or not.

Q But this time you went into the room and the room was dark and Noel was there—

A That was some time later, two or three weeks after.

Q Did he ever use any endearing expressions toward you?

A No.

Q Did he ever tell you that he loved you?

A No.

Q Did you know any reason why he should tell other people that he loved Mr. Gray?

A I don't know any particular reason.

Q You have had charge of boy scouts for a long time?

A Yes.

Q And do you know when you see a boy who has almost sexual tendencies, can you distinguish him from the rest of the boys?

Mr. Wachenfeld. I object to that. There is no proof of what the prosecutor is talking about.

The Court. Sustain the objection.

Q Did you notice any particular symptoms about this young man when you saw him in camp that he was particularly attached to you?

A No.

Q Did you ever visit him at his house?

A No.

Q Did you ever go out with him?

A Once I took an auto ride with him?

Q Where?

A Out to the edge of Montclair, over to Nutley and back

Q So that outside of the three times you went camping with him, a period of two weeks each time, that makes six weeks, and outside of this trip around Montclair in the automobile, he did not come to visit you?

A Well, I would meet him accidentally.

Q Well, on these accidental meetings you want us to un-

A Well, when I came on duty, me and my assistant made 1st to the 18th for a period of two hours each day?

A He came there—

Q And the best answer you can give us that he was to visit you at Clifton Springs, or wherever you went to, was that he overheard you telling it to the doctor, is that right?

A That is all I know about it.

Q Now, do you remember asking him any questions during the eighteen days he was at the hospital in Montclair and he gave you an answer that was not responsive?

A I do not know anything about it.

Q Do you remember any time up in Clifton getting an answer that was not responsive, or his saying something to you that you did not understand?

Mr. Wachenfeld. I object. It is a conclusion.

Q Well, did he ever say anything to you that was not responsive?

A Several times.

Q What do you recall?

A No, I do not recall now.

Redirect Examination by Mr. Wachenfeld.

Q Do I understand you are called uncle in the boy scout work?

A Yes, by the boys and their parents.

Q And are you called uncle up there by the leaders?

A Yes.

Recross Examination By Mr. D'Aloia.

Q Did you possess, around 1925, some sort of an estate, personal or real?

Mr. Wachenfeld. I object to that.

The Court. I will allow that.

A I possess—

Q You understand the question. It is very simple. Did you possess, around January, 1925, an estate? Did you have money in the bank? Did you own land? Did you have bonds and stocks? Yes or no.

A Yes.

ERNEST DE LISE sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Mr. DeLise, where do you live, please?
A At the Essex County Hospital, Cedar Grove.
Q And is that where you are also employed, at the Essex County Hospital for the Insane at Cedar Grove?
A Yes, sir.
Q How long have you been employed there?
A Two years and nine months.
Q Have you had other experience in such institutions?
A I worked in eleven other institutions.
Q Covering a period of how many years?
A Well, five years.
Q Then, you were at the Overbrook Asylum during the time that Harrison W. Noel was there, were you not?
A I was, sir.
Q And did you see the defendant Harrison W. Noel there?
A Yes, sir.
Q Do you remember how soon after he arrived there that you saw him?
A I saw him from the very night he arrived there until he left there, and I saw him most every night.
Q Do you remember what day or night he arrived?
A He arrived, I admitted him to the ward on the night of February 25th at 9:24.
Q February 25th, of this year?
A Yes, sir.
Q And are you the night attendant there?
A Yes, sir.
Q What time did you go on duty?
A Seven o'clock, I go on at 7 P. M. and go off at 6:30 in the morning.
Q And did you notice Noel while he was there?
A I seen him most every night.
Q Do you remember an occasion when you told Noel to go to bed?
A On the second night he was there I told him to go to bed at nine o'clock, when we put all patients to bed.
Q What happened?

A And he says to myself and my assistant, Mr. Barrett, who was there, "Why, you try and make me." Well, we finally got him into a room that we reserved for him, a private room was given to him, and then he came out after us, and he came at me with a flying leap, and I went to grab him, and as I went to grab him he gets his arms around my neck and throws me clean over his shoulder.

Q And how much do you weigh?

A Two hundred and twenty-five.

Q Did you finally get him to bed?

A I had some more help and we finally subdued him and we put him in one of what we call a strong room for violent cases.

Q What is there in the room that makes you call it the strong room?

A Well, the guards are reinforced and the doors are a little heavier than the regular rooms.

Q And why did you have to put him there at the time?

A Well, he was violent at the time, so he would not do any bodily harm to others and attack any patients.

Q Any furniture in that so-called strong room?

A A bed and a little bedstead.

Q Did you fiinally have to take the bed away from him?

A After we got him into the room he kept rushing the door—

Q What do you mean by rushing the door?

A Well, the room was, I should say, about twelve feet long, and he would go back to the window and he would kind of get him set and then he would run and rush the door with his shoulder. Well, he kept doing that repeatedly, maybe a dozen times, until his shoulder got bruised and then he stood in the room, and in the meantime, there was four of us holding the door so he would not get through.

Q Did you ever see Noel walking around his room when he was naked or nude?

A Yes, sir.

Q When?

A Well, every time I came on duty.

Q Tell us about that.

A Well, when I came on duty, me and my assistant made

our rounds and counted our patients, especially those who were secluded, and I turned on the light, and of coures the lights was on the outside of the door, and I turned on thelights and Noel would be in the center of the room gazing at he ceiling, and at times he would be masterbating.

Q Did you see him masturbate often?

A Well, quite often.

Q Will you indicate to us, please, and to this jury the attitude he would be in at night when you would put on the lights, standing and staring?

A Just he would be standing, gazing out at the wall.

Q And the room would be dark at that time?

A Well, it would be dark and I swung on the lights.

Q And when you turned on the lights, would he still continue to be gazing?

A Yes, sir.

Q While you were there, at any time, did you see Noel play with his own feces or have anything to do with it?

A Well, in the morning we would clean him up, we would do it with all our patients before we go off duty, and we would find stools on the floor and the bed wet.

Q Did you ever find any of his own bowels on the window sill?

A Not that I can remember.

Q Did you ever see him put his own bowel movement on the window sill?

A No.

Q Well, when you say you would find stools on the floor and the bed wet, was that a rare occasion or quite common?

A Quite common.

Q Now, then, tell about the food, did he have any delusions about food?

A Why, at times he would ask me for something to eat and he said he did not get anything to eat, and I asked one of the patients who was in the kitchen at that time "Did that boy get something to eat?" and he would say, "Yes, the tray came back just as it went out." And I would bring him some tea and some toast, and he would say, "Has that been weighed," and he would break the bread open and say, "I can't eat that" it is poison," and throw it away.

Ernest De Lise, Cross.

Q Do you remember his asking you at any time to call him Tessie?

A Yes, he would say, "Mr. McGee"—he would call me Mr. McGee, he never called me Mr. De Lise, he would say, "Don't call me Harrison, any more, call me Tessie, you see I am a female," and he made that representation to me.

Q Now, from your experience in the number of years that you have worked in the insane asylums, and from your observation of Harrison Noel, would you say whether or not, in your opinion, he was sane or insane at the time?

A He was insane.

Cross Examination by Mr. D'Aloia.

Q How long did this condition continue before it improved?

A It continued about on to maybe until two weeks before he left.

Q Two weeks before he left he was considerably improved, wasn't he?

A I can't say that.

Q You noticed a difference, didn't you?

A I noticed a slight difference, but not improved.

Q Did you know that two weeks prior to the time he left he had been given permission to go home?

Mr. Wachenfeld. I object to that, if the court please, there is no proof that he has been given permission.

The Court. I will allow it.

A No, sir, he did not.

Q What was the improvement that you noticed?

A Why, he would keep his clothes on for one thing.

Q And he would keep himself clean for another thing.

A No, sir, he did not.

Q And he did not ask you, within two weeks before he left, to call him Tessie?

A No, sir.

Q He got that impression out of his mind?

A Yes, sir.

Q He would forget that he was impersonating a female and come back to the fact that he was Harrison Noel, do you recall that?

A No, sir, I do not.

Q Was it two weeks before he left?

A I can't say.

Q Now, you received him, if I recall it, on February 25th, and that was the first time you saw him, at half-past nine that night, is that right?

A Yes, sir.

Q Now, during the month of April you continued to see him?

A Yes, sir.

Q In March?

A Yes, sir.

Q When was it that he asked you to call him Tessie, in February or March?

A Well, when he first came there.

Q Well, that is in February?

A Around February.

Q And he did not ask you any more about that?

A Oh, yes.

Q In March, did he?

A He asked me several things.

Q In March?

A In March and April and down to the time he was there, but I can't remember.

Q I am talking now about this request, when he called you McGee, and he said, "Mr. McGee, I am not Harrison Noel, I want you to call me Tessie, because I am a female.' Now, when was the last time he said that to you, February, March or April?

A I can't recall it.

Q When was the last it was necessary to go in there and clean up because the bed was wet and the feces was on the floor. February, March, April or May?

A Just before he left there.

Q How many weeks before?

A Well, I should say three to four weeks.

Q During the last three or four weeks, before the 28th of May, 1925, you found him very sensible and pretty rational, didn't you?

A Why, he would go to bed when was told.

Q Not only that, but when you talked to him he understood you.

A I never talked to him.
Q Did you ever talk to him, ever ask him to do anything?
A Just to go to bed.
Q And he would do it?
A He would do it, but he would not stay in bed.
Q And when you asked him to go to bed again he would go?
A Well, I would put him in one bed and find him in another.
Q He was restless?
A Yes, sir.
Q But he would follow your orders?
A He would go to bed.
Q During the last three or four weeks before he left the institution how many times did you converse with him?
A That I can't say.
Q Well, how many times a night, you were there every night from 7:30 until morning?
A I would order him to bed.
Q And when did you converse with him, talk to him?
A I never had any conversation with him.
Q Do you remember any conversa tion during the last three or four weeks that he was there, up there at Overbrook, when he made any remark that was not rational?
A No, sir.
Q Do you remember any occasion during the last three or four weeks, before he left the institution, when you asked him to do something he did something contrary to your request?
A Yes, I do.
Q What was it?
A He would go to bed, and he wouldn't stay in that bed tha t I put him in.
Q But, he would go to bed when you ordered him?
A Yes, sir.
Q Now, do you remember any occasion when you had any conversation when he misunderstood you either wilfully or because his mental faculties were not functioning, do you remember any such occasion as that?
A No, sir.

MARY BAUMANN sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Mrs. Baumann, where do you live?
A At the Essex County Hospital, Overbrook.
Q Are you employed there as a nurse?
A As a nurse.
Q How long have you been employed there as a nurse?
A Six years.
Q And is your husband also employed there as nurse?
A Yes, sir.
Q Do you know this defendant Harrison W. Noel?
A Yes, sir.
Q Did you know this defendant Harrison W. Noel while he was a patient at Overbrook?
A Yes, sir.
Q Were you in charge of him some time during the day?
A Yes, I was for quite some time when he first came in there.
Q You would talk with him at various times?
A At times, yes, sir.
Q Will you tell us what his habits were as to cleanliness?
A I can't just recall on what certain days, but he did have filthy habits, his habits were untidy and filthy.
Q I show you the original hospital records, Mrs. Baumann, and call your attention to a sheet which is written down on one side and on the other side, and it signed, "M. I. Baumann," at the bottom. Is that your signature?
A Yes, sir.
Q And are the notes in there in your handwriting?
A My handwriting.
Q Can you refresh your recollection from them?
A Well, I remember some things, but I don't know whether I can recall everything.
Q Now, taking that memorandum, which you made, that was made at the time?
A During his first ten day of his admission.
Q Will you take that memorandum and look at it, please,

and tell us what happened and what occurred on the first day he was there?

A On the first day the patient was oriented, he knew the correct time, place and person; he said that his parents brought him here on the advice of a doctor to get a rest because he was irritable and restless; says there was nothing wrong with his mind; patient had no hallucination and delusions on the first day.

Q What about the second day?

A The second day the patient was more quiet during the day and said he did not sleep during the night because his mind was disturbed; said that this is Overbrook Hospital and likes it here; says he does not want to go home ;says he intends to stay here; patient had a Wasserman and spinal test taken by Dr. Englander. Patients says there is nothing wrong with his mind; patient says that he has one sister and one brother; says he had many physicians before he came here, but never stayed there; said the reason he came to this institution was because he wanted to have fun and meet different people. Filthy in his habits, and his appeatite was fair.

Q Now, when you say he was filthy in his habits, what does that mean? Can you tell us some of the things he did?

A Well, he urinated and defecated on the floor; often in his bed at times that I remember.

Q Well, would he do that once in a great while, or was it customary?

A Very often.

Q And what about masturbation? Have you ever seen him do that?

A Yes, I did. One day I opened the door and he was masturbating. He was lying on the floor and masturbating.

Q Did he pay any attention to you when you opened the door?

A No.

Q Did he continue?

A Yes.

Q And you did what?

A I just closed the door and attended to my other duties.

Q Did you at any time see him attempt to denude himself in the ward before the other patients?

Mary Baumann, Direct.

A Yes. Well, he would take his clothes off and refuse to put them on, and the attendants would take him in his room.

Q Would that happen very frequently?

A Yes.

Q Did you at any time see him attempt to denude himself

A Well, I think when he took his clothing off he took his shoes off, too.

Q Well, would his condition change?

A Well, there were times when he was more quiet. He would not talk. He would sit with his head down and his hands by his side. Sometimes he would talk when he was spoken to.

Q And there was a remark made to you which contained a proposal?

A Well, one day he come in the office when I was writing charts and said, "Miss Baumann, will you marry me?"

Q Did he tell you why he came to the hospital?

A He told me he came there to be married.

The Court. Did he call you by your name?

Witness. Yes, sir. He called me by my name.

Q Was he destructive at times?

A Yes. One particular day I remember he tore a sheet and pulled down curtains.

Q Do you remember other times when he was so restless, so violent you had to put him in an ice bag?

A Yes, one day he was in an ice pack, ordered by Dr. Thompson. I mean a cold pack.

Cross Examination by Mr. D'Aloia.

Q One day he tore a sheet and one day you had to put him in an ice pack.

A Yes.

Q And do you glean from your record one day he had to submit to a lumbar puncture?

A He had a spinal puncture one day.

Q And wasn't that the day he became so distructive?

A I don't remember just what date.

Q Wasn't that the day the ice packs were needed?

A No, I don't think so.

because his mental faculties were not functioning, do you remember any such occasion as that?

A No, sir.

Q You don't think so?

A No, not on the day he had the spinal puncture.

Q Now, do you remember anytime during those days you saw him there when you talked to him and he didn't understand you?

A I beg your pardon?

Q Do you remember any occasion when you talked to him and he did not understand you?

A Well, there were times when I would talk to him and instead of answering my questions, he would not talk at all, just have sort of a silly laugh.

Q How did he——

Mr. Wachenfeld. Just a minute. Give her a chance to answer.

The Court. Are you through?

Witness. A silly laugh he would give in return.

Q Well, when he did laugh and when he did speak, what he did say was responsive when he did talk?

A Well, the time that he asked me to marry him, I changed the subject and I talked to him—

Q Well, that was——

Mr. Wachenfeld. I think this witness has a right to answer questions.

The Court. That is not a responsive answer.

Q Just remember my question is this, do you remember ever asking him to do something and he making an answer or asking a question and he made an answer which was not responsive?

A Well, what do you mean, if you told him to take his clothes off and he would say no, I won't?

Q Well, if you said, "Take your clothes off" he would take off his clothes?

A Yes.

Q And you talked about clothes in a question or demand?

A Yes.

Q Well, the time he said he wanted to marry you and you said no and changed the subject, he did not go back to it?

Mary Baumann, Cross.

A Well, while I talked to him on other things, instead of answering me back in answer to my questions, he would interrupt me again.

Q And asked you again if you would marry him?

A Yes.

Q And how long had he been there when he made that request?

A About three or four days.

Q And how long was it afterthe lumbar puncture was made?

A Well, I do not just remember what day the puncture was made.

Q You know when a patient up there has his spine punctured or a lumbar puncture is made, he suffers from a terrific headache for some time, a fever comes on?

A Not always.

Q Well, in most cases.

A Well, that is up to the doctors.

Q And they become delirious sometimes, immediately after the lumbar puncture?

A Well, that is up to the doctor.

The Court. No. Did you ever see anybody become delirious after a lumbar puncture?

Witness. Well, I did not really notice that in particular. We usually keep them in bed for a day after that.

Redirect Examination by Mr. Wachenfeld.

Q Now, just look at your record and see if you do not find on the second day it says, "Patient had a spinal puncture and Wasserman test taken by Dr. Englander, the second day." Now, run all way down the second day and see if you do not find there the patient continues noisy, excited, restless and very violent, become very meddlesome this A. M. and put in a cold pack by Dr. Thompson?

A Yes.

Q And do you find that as five days later then the taking of the lumbar puncture?

A Yes, five days.

Mary Baumann, Recross.

Recross Examination by Mr. D'Aloia.

Q And what happened to his condition between those five days between the time the lumbar puncture and his being put in a cold pack, was he in bed or outside?

A A couple of days, I think, he was dressed and walked on the ward.

Q How many days was he in bed?

A I do not remember.

Q When did you first notice a sign of improvement in this patient?

A Well, I didn't notice.

Q How long did you have him under observation?

A About two or three months. I wasn't there when he went there.

Q Now, when you went away had he improved any?

A Well, there were days when I seen him, a couple of days or so when he would keep his clothes on for maybe a couple of hours or so.

Q Well, what about his general condition?

A No, I didn't see any improvement.

Q Now, during those two or three months you were there and he was, did you see any occasion that he failed to understand what you said to him?

A There were days when I would talk to him and he would not answer me.

Q I understand that. Were there any occasions during those two or three months when you spoke to him and he indicated by what you said to him that he did not understand your question?

A Well, he usually understood.

FRANCIS J. BAUMANN, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Mr. Baumann, where do live?

A Essex County Hospital at Cedar Grove,

Q Are you the husband of Mrs. Baumann, who just testified?

A I am.

Q And you are an attendant there at the Essex County Hospital for the insane?

A Nurse

Q How long have you been there?

A Approximately eight years.

Q Did you see this defendant, Harrison W. Noel, while he was confined at that institution?

A Yes, I did, often.

Q Will you tell us whether or not there were times when Noel would not eat?

A There were, yes.

Q And how long did that continue?

A Sometimes one day and sometimes two or three days where he would not eat, voluntarily, but we always forced nourishment in the form of egg and milk.

Q At other times were there occasions he would eat?

A Yes, particularly after a period of fasting. He would go to the table and eat in a very ravenous manner with his hands and eating in great quantities.

Q And at those times would he use any table utensils at all, or would he manipulate the food with his hands?

A Usually not.

Q Usually not what?

A Usually not using any table utensils.

Q Now, did you ever notice a tendency on his part to become denuded and take his clothes off?

A Yes, I have.

Q Well, was there such a tendency?

A Yes.

Q Was it quite common?

A Quite common.

Q Did you ever see him masturbate?

A On several occasions.

Q Do you remember one remark he made to you about going out on the grass?

Q Yes. It was made in my presence.

Q Well, what did he say about going out on the grass?

A He said, "I want to go out on the grass to heal people."

Q And did he have any delusions about poisoned food that

you could see.

Mr. D'Aloia. I object to that.

The Court. Sustain the objection.

Q Can you tell us anything about the food incident part of it?

A No, only that he was quite fussy about his food and asked for special kinds of food.

Q Was it necessary at times to keep him secluded from other patients?

A It was.

Q Why?

A Why, because he would denude. That was the particular reason.

Q And what about his habits as to cleanliness, bowel movements and urination?

A Well, they were not clean.

Q Well, tell us what they were?

A Why——

Q What would he do?

A Why, his bowels would move in the bed.

Q Often or seldom?

A It was quite a common occurrence.

Q Now, what about urination?

A And urination also in the bed and floor.

Q And were there also bowel movements on the floor?

A Yes.

Cross Examination by Mr. D'Aloia.

Q Do you remember any particular occasion when you said something to him and asked him a question when he answered and indicated by his answer that he did not understand you?

A When he did answer he always understood.

Q Now, toward the end did you leave, too, when Mrs. Baumann left?

A No, I am still there.

Q When did you particularly notice any improvement in this patient who came there in February and all he did was simply refuse to keep his clothes on and refused to go to bed?

A Well, I believe there were two or three occasions when he appeared to be improved.

Q When was the first occasion? What month?

A Well, I could not recall.

Q Well, was it in March? Let me recall that he came in on the 24th or 25th of February. Now, that gave you a few days in February and the whole of March. Now, was it in March when he appeared to be improved?

A I think it was. There was one such occasion.

Q Was there an occasion in the month of April when he appeared to be greatly improved?

A I think there was.

Q Was there an occasion in April?

A Yes, I think——

Mr. Wachenfeld. I think the witness ought to be permitted to answer.

The Court. I think that is sufficient.

Q Was there a period in the month of June, particularly around the 28th of June, when he appeared to be greatly improver?

A Yes, I think there was one when he appeared to be more improved than previously.

Q And do you remember whether that was on the 28th of June when he came with his brother-

A Yes.

Q And they were allowed to go home——

Mr. Wachenfeld. I object to that.

A No, sir.

Q Did you see them leave the institution?

A No.

Q Did you see them go?

A He had permission to take a walk.

Q Did you see them leave the institution?

A I do not believe I seen them go out.

Q Now, don't you know that you saw both Noel and his brother go toward Montclair?

A No, sir. I was occupied elsewhere.

Q But you do remember he was greatly improved on that occasion.

A You might call it that.

JOHN H. THOMPSON, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Dr. Thompson, where do you live now?
A I live at 24 East Park street, Newark, New Jersey.
Q And were you up to a short time ago connected with the Essex County Hospital for the insane at Overbrook?
A Yes.
Q Up to what period of time were you connected with it?
A To the middle of September.
Q Of this year?
A Of this year.
Q At that time you were discharged?
A I was evicted.
Q And you were evicted because the board of chosen Freeholders of this County, who have charge of that institution discharged you——

Mr. D'Aloia. I object.

The Court. Sustain the objection.

Q How long had you been at the asylum?
A Very nearly six years.
QAnd in what capacity?
A Capacity of respectively Junior and Senior resident physician.
Q How long were you junior resident physician?
A Up to about two and one half years ago.
Q And then from that time on you were senior resident physician?
A Senior resident prysician.
Q And you were senior resident physician at the time Harrison W. Noel was there, were you not?
A Yes.
Q Did you see Noel when he was there?
A I did.
Q How often did you see him while he was there?
A When on duty, at least twice a day, sometimes more.
Q When did Noel come to the instituion?
A On the evening of February 25, 1925, about 9 o'clock P. M.

Q How long did he stay there?

A He stayed there until the 28th day of June, the same year.

Q What happened to him then?

A He was allowed, or permitted, after his brother visited him on that day and in the interest of his own well being, to take a walk or stroll in the grounds for a short time for the benefit of his health.

Q What happened to him?

A He walked to his home.

Q Did he leave that institution with your consent or permission?

A He did not.

Q Was there a pass issued to him for the purpose of leaving that institution?

A No.

Q When a patient goes out with the consent of the authorities there, what is the usual procedure?

A The usual procedure is to allow him a pass. A pass signed by the superintendent or one of his subordinates on the staff.

Q And who determines whether or not a pass should be issued, just one doctor or more?

A The custom is for the doctor in whose care that patient is.

Q Did you issue or did anyone issue a pass for this defendant, Harrison W. Noel?

A No written form of pass was given.

Q Was any pass given for him to leave the institution?

A No pass at all.

Q Now, were you present when his case was diagnosed after he came to the institution?

A Yes.

Q And who diagnosed his case, one or more than one doctor?

A More than one.

Q How many were there?

A I will endeavor to recall. The case was brought before the staff on March 12, 1925. It was entered as a case of catatonia dementia praecox and the diagnosis was concurred in——

Q The diagnosis was what?

A Of catatonia dementia praecox. That diagnosis was concurred in by Dr. Payne, Dr. Thompson, Dr. Kildee, Dr. Stamp and I cannot recall whether there was another doctor. That is on the record.

Q But the diagnosis was concurred in by——

A By a majority of the staff.

Q Now, then, from that time on you say you saw the patient quite frequently, is that right?

A Yes.

Q Now, will you tell us some of the things you saw the patient do while he was confined there?

A Why, the most peculiar and striking things on the part of the patient—perhaps the most striking thing was his marked negativism.

Q What does negativism mean, Doctor?

A Negativism means the lack of ability to do what the patient is asked to do, or rather, to do the opposite to what the patient is asked to do. It is also found sometimes on the part of the patient where the patient's conscious mind suggests a doing of a certain thing and yet the patient does the opposite to that suggested thing, so that the stimulus comes from without and within in the form of negativism. If that is a marked resistance, the patient resists being moved and being talked to and being fed, having anything done for him whatever.

Q Now, Doctor, while he was there, did you notice any changes in his moods from time to time?

A Why, as I saw him day in and day out from the time of admission to the time of his escape, he was of a shut-in type of personality, a dull apathetic, indifferent attitude. He showed no emotion whatever. There were decided lack of or poverty of emotions whatever and no appearance of ambition whatever. He would generally seem blocked in his conversation. If you asked him a question you were not sure of getting an answer or not. Sometimes you would and sometimes you wouldn't, but when he did answer he usually replied in the form of monosyllables or very short sentences.

Q At times, Doctor, while he was there, was he destructive?

A Why, I never personally saw him destructive. Reports to that effect came to me where he showed destruction.

Mr. D'Aloia. I object to the reports that came to him.

Mr. Wachenfeld. All right.

Q Did you see him eat at various times.

A I have seen him at the table.

Q And did you ever see him at the table when he would disregard the usual table utensils?

A Yes.

Q Will you tell us about that?

A Why, he would sit there and stare at the tray, whether it was in the dining room or in his own room, and appear indifferent and refuse to eat.

Q Do you remember whether or not on different occasions he was put in an ice pack?

A I remember on one occasion an ice pack was ordered and he was put in one.

Q And what is the purpose of that?

A An ice pack usually follows an emotional episode with the effect of quieting the patient, rather than resorting to medication.

Q Now, doctor, after he escaped from the institution did you see him again?

A I never saw him again until I examined him in the jail on the 28th day of September.

Q The 28th day of September, this year?

A This year.

Q And who was present at the time you examined him at the jail?

A Dr. Davies, Mr. Barber, Mr. Smith and the stenographer, whose name I do not recall.

Q Mr. Bindseil, I belive, that is correct?

A I think that might be it.

Q And Dr. Davies was there at the same time?

A Yes.

Q And did both you and Dr. Davies ask the boy questions?

A Yes, we conducted our examination jointly.

Q Do you remember on that occasion, Doctor, Noel told you anything about a spinal puncture?

A I do not recall his emphasizing anything regarding the spinal puncture.

Q Did he say anything about his spine?

A Yes.

Q What did he say about his spine at that time?

A He told us that the attendants there—he mentioned the names of Mr. Coddington, Mr. Brenahan and Mr. Crasner as having persecuted him to the extent of having made him spit up his spine on the floor of the room, that it took him about two days to do that and when asked why, he replied that it was supplied some other patient on the ward who had lacked a spine at the time.

Q Now, Doctor, from your observation of Noel while he was at the asylum, up to the time that he escaped from the asylum on the 28th day of June, was there any question about whether or not he was sane or insane?

A I never had any doubt of the fact that Harrison W. Noel was insane.

Q And what form of insanity, Doctor, was he suffering from?

A A form known as dementia praecox.

Q And is a person who is suffering from dementia praecox insane?

A Yes, sir.

Q Now, will you tell us, so that we can understand it, as laymen, what dementia praecox is, what it does to one's mentality or to one's mental operations.

A Dementia praecox is a disease peculiar to adult life from puberty to adolescence, although we find it later on in life, right up to the middle age. It is a form of disease that is characterized by a gradual and progressive form of mental deterioration. This deterioration, does not, at the start necessarily involve the intellectual field. It involves, peculiarly, the emotions and the will. Quite strikingly characteristic of a dementia praecox is the splitting of the psychic, the splitting of the mind. That means this, if you will allow me to describe it.

Q Go ahead.

A An idea enters the conscious mind of the patient, an idea of doing something, and in the carrying out of that idea, in trying to carry that idea out, to a sane, logical, reasonable conclusion, the disordered will and emotion step in and prevent the dementia praecox from reaching the original conclusion or the original idea.

Q How many examinations did you make in the month of September of this year?

A Of the defendant.

Q Of the defenant Noel?

A I made one.

Q And about how long did that examination take?

A Oh, that lasted, I should say, for an hour or an hour and a half.

Q Well, what conclusion did you arrive at from that examination, as to the sanity or insanity of the defendant Noel?

A He presented the same picture to me as he did when I last saw him at the hospital, dementia praecox.

Q And would you say how his condition at the time you

A Insane.

Q And what was he suffering from?

A Dementia praecox.

Q And you would say how his condition at the time you examined him in September compared with his condition at the time you examined him in the institution?

A From my findings on that occasion, on September 28th, I must necessarily say that he showed more deterioration.

Q He showed more deterioration then than at the time in the institution?

A Yes, sir.

Q Now, do you think this boy was sane or insane on the 3d of September?

A I think he was insane.

Q Now, do you think this boy had the capacity to distinguish right from wrong?

A I do not.

Q And why not, Doctor, will you please tell us, and tell us as plainly as you can, why you make that answer that you don't think he could distinguish.

A I remember, in answer to your question, when he was asked if he did the right thing or wrong thing in committing this crime, in the commission of this crime, he said he thought he did the right thing, and if he thought he did the right thing I do not see how he knew the difference between right and wrong.

Q Now, Doctor, do you know what a shut in case is?

A Yes, sir.

Q What does shut-in mean, as you doctors or you alienists use it?

A Shut-in means the withdrawing of the individual from the world of realty, living in a little world by himself, displaying no interest in his surroundings, no interest in matters, apparently.

Q Well, with a shut-in case, such as you describe it, is it subject to correction from outside influences?

A Why, environment does not seem to have a very determined influence upon the shut-in type of personality.

Q Now, Doctor, how long have you been studying mental and nervous diseases?

A I have been specially interested in mental and nervous diseases for fifteen to twenty years.

Q And have you served in any other institutions other than the Essex County Hospital?

A I have been uniterruptedly connected with institutions for the insane during the last eleven years.

Q Doctor, do you agree with W. A. White, do you recognize him as an authority on the subject?

A I have a great deal of respect for White.

Q Do you agree with White that a person may be suffering with dementia praecox and still may be oriented as to time, place and persons?

A I certainly do.

Q Do you agree with White that he still may have a good memory?

A Yes, sir.

Q And may I read you another paragraph from White, Doctor, and see if you agree with that, "Quite characteristic of this condition too are the impulsive acts of these patients. They will suddenly, and with absolutely no warning whatever, commit some act of violence, such as assaulting another patient or the breaking out of a window, and quite as suddenly lapse into their previous state. It is quite impossible to get any adequate information as to the causes of these acts. The patient is inaccessible to a degree and either gives some senseless replies to the questions asked, a pueril reason, perhaps, or retires behind an " Idon't know" or complete silence. These

attacks come out of a clear sky, cannot be foreseen, and make these patients, at times, very dangerous." Do you agree with that?

A I do.

Q Tell me another thing, Doctor. Did you ever speak to Noel about an attack upon his father?

A Yes, sir.

Q And what explanation did Noel give you as to why he attacked his father?

A Why, he did not give any satisfactory answer or reply—

The Court. Just answer the question, Doctor, what explanation did he give?

Q Did he give you any explanation?

A No, none, no real explanation.

Cross Examination by Mr. D'Aloia.

Q He knew what you were talking about when you asked him about that assault on your father.

A Well, when——

Q Well, didn't he?

A He did not tell me he did.

Q Well, what answer did he make to it?

A He did not make any answer.

Q Didn't he tell you that he did not know anything about it, about the assault, and that he woke up the next morning and it seemed to be a bad dream to him?

A I don't think that comes in——

Q No, what did he tell you?

A He didn't tell me anything.

Q Doctor, if I understand you correctly, the symptoms of dementia praecox are negativism, seclusiveness, secludedness, loss of memory, as to recent events, and you agree with the authorities that loss of memory as to recent events is a symptom of dementia praecox?

A No.

Q It is not?

A It may or may not be.

Q Let us see, give me your symptoms. Give me the symp-

toms now, one after another, that you would be guided by in diagnosing a case as dementia praecox, and begin with No. 1. What is it.

A I should say——

Q Would you say retardation?

AI should say poverty of emotion.

Q Well, poverty of emotion, all right. Now, would you say anything about retardation?

A I don't like the word retardation.

Q Well, call it anything you like. Is it negativism?

A Negativism.

Q What else, the second symptoms?

A Lack of control of the will.

Q Now, the fourth one please.

A A changing, transitory delusion and hallucinations.

Q What else?

A A shut-in attitude, poor concentration and attention, distractability, some times mutism, or excitement.

Q Now, give me the symptoms which would guide you into a diagnosis that a man, a person examined by you, had homo-sexual tendencies.

Mr. Wachenfeld. I object to that, if the court please, upon the ground that there is nothing in this case as to that.

The Court. The Doctor is an expert.

Q Now, give me the first symptom?

A Am I expected to answer that, your Honor?

The Court. Yes.

Witness. Please ask that question again.

Q Will you please enumerate the symptoms that you might find in a person of the age of eighteen or twenty years, between the age of puberty and adolescence who had homo-sexual tendencies?

A A peculiar and distinct fondness for members of the same sex to the exclusion of the other sex.

Q That is the definition of the character itself, the person having homo-sexual tendencies, is defined by what you just said now, and I want to know the symptoms that that person would exhibit. Would he exhibit the poverty of emotions?

A Oh, I don't think so, I think a practically sane man might be homo-sexual.

Q Is it possible that he might, is it possible that one who has homo-sexual tendencies would show this symptom, poverty of emotions?

A It is possible.

Q Would it be possible for a person with homo-sexual tendencies, at the age of nineteen or twenty, to have this symptom, negativism?

A It is possible.

Q Is it possible for a person who suffered from tendencies that are homo-sexual, a male, from 19 or 20 years of age, lack of control of will, yes or no?

A It is possible, yes.

Q Is it possible that he would be a shut-in personality?

A Possible.

Q Is it possible that he would have poorer concentration?

A Possible.

Q Is it possible that he would give you poorer attention?

A Yes, sir.

Q Is it possible thta he might suffer from distractability?

A Yes, sir.

Q Is it possible that he might show mutism on certain occasions?

A Yes, on certain occasions.

Q And on other occasions he would suffer from undue excitement, isn't that so?

A Yes, sir.

Q Now, that is every one of the symptoms that you would be guided by in coming to the conclusion that a man who is suffering from dementia praecox, that you have enumerated to me?

A I would not necessarily include homo-sexual tendencies in my diagnosis of dementia praecox.

Q I understood you to say to Mr. Wachenfeld that a dementia praecox has a brain that is divided into certain classes or sections, a brain that thinks something up and wants to carry it out, and then in steps the disordered will and prevents that idea from being carried out, that is a dementia praecox, isn't it?

A Yes, that is one of the characteristic features.

Q What would you think of a brain that conceived the idea on the 24th of August, 1925, that a pistol was needed, and that was the idea, to get a pistol, and this brain after thinking that idea out "I want a pistol," then directs the person down to a place on Broadway and that person negotiates, the same will, you know, is carrying out this main idea to get a pistol. This will directs this person down to 501 Broadway and directs this person to select a Spanish type pistol and directs this person to demand a price, and directs this person to pay $9.20 for it, then, when this particular person is told that the pistol cannot be delivered to him because he has no permit, but if he lives in a contiguous state, it might be mailed to him, and then this will directs this person who wants the pistol to say, "My name is Wallace Payne, and I live on Little Falls Road, Little Falls, New Jersey, can I have it sent to me there", and the will directs the person who wants the pistol to pay for it and then he leaves the place with a receipt, and the next day this same will directs this person who wanted the pistol and who got one and paid for one and who said he wanted it sent in the name of Wallace Payne, the same person who had formed that idea the day before, goes to the Little Falls Post Office some forty-eight hours afterwards, or at least twenty-four hours afterwards, and remembers the name he had given to the salesman and obtains from the Postmaster at Little Falls a package containing the pistol. Now, would you say, Doctor, that the will was in any way impaired in the carrying out of the main idea which was to get the gun?

A The will might not have entered into that condition or proceeding that you have described.

Q Then, you agree with me that so far this will acted pretty nice, in bringing about the getting of the gun, it was not disordered and did not step in to bust up the original plan, you would say that the will acted in coordination with the rest of the faculties, would you not?

A At that particular time, yes.

Q And you would say that this idea of going to New York and going to a place where they sold pistols, agreeing on the price, selecting the type, and trying to get it then and

there, to have immediate delivery made to him, and then giving a name, the name of Wallace Payne, and going to Little Falls the next day and getting that pistol, you would call that an association of ideas, one following the other in natural sequence, for the purpose of attaining the goal idea of getting the pistol, would you not?

A It is an association of ideas.

Q And following in regular sequence, for the purpose of carrying out the main idea of getting the gun, wasn't it?

A Yes, sir.

Q And they came in natural sequence?

A According to your statement, yes.

Q What would you say of a mental process that on the 24th of August, 1925, forms the idea to get a gun and goes to New York, buys it, and has it sent to Wallace Payne at Little Falls ,and goes to the Post Office the next day and gets the pistol, what would you call that mental process, reasoning?

A An association of ideas.

Q You wouldn't call it reasoning?

A A certain form of reasoning.

Q What form of reasoning?

A I don't know.

Q But you would call it reasoning, wouldn't you?

The Court. Doctor, you think it any other kind of reasoning than ordinary persons indulge in.

The Witness. Why, no.

Q Why not?

Mr. Wachenfeld. I object to that, if the court please.

The Court. Sustained.

Q I think that by your answer to the Judge's question "Why no" you mean to say to us that this course of reason was the same as the reasoning of ordinary people, is that right?

The Court. Repeat the question.

(Question and answer read as follows)

The Court. "Doctor, you think it any other reasoning

than ordinary persons indulge in?

Witness. "No. That is true, isn't it? A Yes——

Q In answering the court you meant to say that this course of reasoning that this particular person who got the pistol went through, this process, was the reasoning of ordinary people, sane people, normal people, isn't that right?

A I wasn't asked that question.

Q I am asking you now, by the ordinary people included in the Judge's question, do we understand normal sane individuals?

A That is the kind of reasoning that we find in both classes, both the insane and the sane at the time.

Q Now, if this boy was hurt up in Overbrook some time in February or March by one of you gentlemen or several of you performing an operation on him, and puncturing his spinal canal and taking out some fluid, making a lumbar puncture, and he from that time nursed a sort of a hatred toward all your attendants and physicians, would that be normal?

A I should regard that as abnormal.

Q Why?

A For the simple reason that the patient knows that all cases that enter that hospital have a blood test, it is common, common hearsay on the ward, and a normal patient would understand, would realize, that it is done for his benefit.

Q But if you hurt him and did cause him excessive pain and you caused him to become feverish and delirious for several days necessitating ice packs at the end of the fifth day, it would not be such a terrible, abnormal thing for him to hate you people up there?

A Allowing if what you say is true.

Q Well, that is what he told us. Now, assuming that this patient told me——

A Well, he never told me that.

Q Well, he told us that.

AWell, I was his doctor on the ward and he never told me.

Q Well, just a minute. Here is what he told the people after he was examined——

A Who examined him?

Q The chief of police, the captain of detectives.

A Laymen.

Q And we are refering to that pistol that you say now that he bought, had reasoned it out, and here is what he said, "I purchased it for the purpose of using it if anyone came from Overbrook after me, and I ordered it shipped to me under the name of Wallace Payne, Falls Road, Little Falls, New Jersey." Now, is there anything abnormal about his buying this pistol, to prevent his being taken back to a place where pain had been inflicted?

A Yes, a very common thing, a very common reaction by insane patients.

Q And how about sane people who are committed to asylums by relatives and who succeed in getting away?

A I don't know anything about these cases.

Q Now, let us go on. Suppose an individual wants to try a newly purchased gun and that is the main idea to find out if the gun shoots or operates or functions mechanically in a proper way, what would you say about his going into an empty lot and filling the magazine of that gun with bullets which fitted the magazine, which were of the proper calibre, what would you say about his taking a tin can and placing it a certain distance from himself and firing fifteen or sixteen shots out of that gun he is trying to test mechanically, would you say that is a process of reasoning where the ideas are all associated and follow one another in regular sequence natural sequence, in order to bring about the general idea to test the gun?

Mr. Wachenfeld. I object to that. There is no proof of any such instance.

The Court. I think his confession is that he tested out the gun.

Mr. Wachenfeld. There is nothing in the evidence I can see which shows anything about a tin can.

Mr. D'Aloia. All right, we will withdraw the tin can.

Q Suppose he goes into an empty lot and fires fifteen or sixteen times for the purpose of finding out if the machinism worked properly, his object was to test the gun, and he went to an empty lot and he did not do it in any room where some human being might be hit—but he went in an open space and

fired that gun fifteen or sixteen times and filled the magazine two or three times, you would say that was a course of reasoning?

A Yes.

Q And you would say there was present there an association of ideas, no disorder at all?

A Not necessarily.

Q And you would say the association of ideas followed each other in natural sequence?

A Yes.

Q And you do not find any evidence of a distorted will stepping in there and sort of side- tracking or obstructing the main idea to test that gun, do you?

A I would not answer that.

Q Well, now, here is the fact.

A This boy may not have wanted to do that particular thing at that particular time and his will might have stepped in and told him about it.

Q I am assuming your definition of a demented brain suffering from dementia praecox and you told me that brain would form an idea and want to carry it out and then starts out to do it and then the distorted will steps in and obstructs and creates obstacles. Now, I say to you, if a man wants to test a gun to find out whether it works mechanically, and goes into a vacant lot and he fills the magazine and he fires it and he is not quite satisfied with the first test and he takes the magazine out and refills it and he fires everyone of those shots again, do you find any evidence there of a distorted will stepping in and blocking originally that idea?

Mr. Wachenfeld. I object to that, because there is nothing in the confession that states he wanted to do it, the confession states he did, and the prosecutor incorporates the presumption that this boy wanted to do it.

The Court. I will allow that question.

Q Now, doctor, do you find in that process any distorted will stepping in? Yes or no?

The Court. I will allow that question.

Q Now, doctor, do you find in that process any distorted will stepping in? Yes or no?

John H. Thompson, Cross.

The Court. Taking the facts as you have before you or what is in the testimony.

A Why, I would say to your Honor, that that sort of a will is expressed both in the insane and i nthe sane.

The Court. No, the question is the doing of that what has been recited an evidence of a distorted will?

Witness. I don't know that it is.

Q Now, when the object is to keep that revolver from everybody else's sight, that is the main idea, and the person takes it and puts it under the rear seat of his automobile, do you see any distorted will stepping in opposing or obstructing that particular thought of hiding the gun?

Mr. Wachenfeld. I object to that upon the ground there is no proof in this case that this boy's mental idea was to hide this gun.

Mr. D'Aloia. The confession reads, "I left the revolver under the rear seat of my Overland car and on several occasions I took it to my room in my mother's house.

Mr. Wachenfeld. And I do not see where he expresses a desire to hide this gun.

The Court. I will allow the question.

The Court. I will allow the question.

Defendant's counsel prays an exception to this ruling of the court;

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN S. CAFFREY,
Judge.

Q What have you to say to that? Do you find any evidence of a distorted will stepping in if he wants to put the revolver under the rear seat and he does it?

A No. If those statements are true on the part of the defendant——

Q And if these statements are true, then you would say he

reasoned these things out like a normal person would do?

A Why, yes.

Q Supposing this defendant, on the first of September, which was a Tuesday, 1925, made up his mind to kidnap a young girl who lived at 136 Upper Mountain avenue Montclair, and he tells you that he got this idea because it was a nice, big house, that house at 136, and he wanted to get money from her parents for her return, do you find any distorted will stepping in and trying to oppose that main idea, when you find that will directing his steps to 136 Upper Mountain avenue and see that will direct his steps to the house and the surroundings, to see that will take a mental note of the way the place is built and where it is located, so he can come back to it Friday, September 4th, four days later, do you see any evidence there of a distorted will stepping in and raising obstacles for deviating the main thought and the main idea?

Mr. Wachenfeld. I object to that on the ground there is no evidence to prove that fact, those things that Judge D'Aloia has asked this witness.

The Court. Read the confession.

Mr. D'Aloia. "Then on Tuesday, September 1, 1925, I made up my mind to kidnap a young girl, who lived at 136Upper Mountain avenue, Montclair, and got this idea in my head because it was a nice big house and I wanted to get money from her parents for her return."

Mr. Wachenfeld. I have no objection to that question being incorporated.

Mr. D'Aloia. Well, his mind must have some kind of conception when he recalls the house was a nice big house.

The Court. I will permit you to ask questions that incorporate an incident that is founded on a fact.

Mr. D'Aloia. I am going to ask your honor to allow me to get to this doctor a description of the mental processes so he can tell whether it was reasoning or not.

Q Now, the part the man tells you this, he got the idea in his head because it was a nice, big house. Would you infer from that, that he had seen the house and looked at it and he came to the conclusion that it was a nice, big house and there was a normal functioning of his mental faculties when he did that?

A I could not say.

Q Have you ever seen the Bowers' home at 136 Upper Mountain avenue?

A No, sir.

Q Well, supposing I show you a photograph of it. Now, take a look at this picture which is S-8, Doctor. I assume for the purpose of this question that you are not suffering from any particular ailments at all, and I am going to ask this question, isn't that a nice, big house?

A Yes, a better house than I ever lived in.

Q Now, what would you call that exercise and that function of the mental faculties of this particular young man exercised when he took in this veiw that you see in this photograph and came to the conclusion that it was a nice, big house? Would you call that a rational, sane, normal way of concluding?

A He was out sight-seeing.

Q And he saw a good, nice, big sight, didn't he?

A Yes.

Q In the form of the house. Now, supposing three days later, which was on Thursday, this was Tuesday when he saw the nice, big house, supposing he were to tell you this on Thursday, "I went to a drug store on Valley road and called up a taxi cab and told the man on the phone to come to the Athletic club for me, would you conclude from that statement that if this particular man, who did tell you this, did go to the drug store and did this, and telephone and did call up a taxi cab and he did call the man on the other end of the wire to come to the athletic club for him, that he was reasoning out the same as any other person would do?

A Well, a certain form of reasoning, with poor judgement.

Q You say a certain form of reasoning?

A Yes.

Q Well can you tell me how another form of reasoning

might be used by any individual, sane, normal or abnormal, when he wants a taxi cab and going to the drug store and finding a telephone number in the book and tells the man at the other end that he wants a taxi and waiting for it?

A I gave you my answer, the goal idea.

Q No, the goal idea is to get the taxi, the associated idea.

A Well, it was all right, then.

Q And you would call that reasoning?

A Yes, so far as it is all right.

Q You would call that normal reasoning?

A Yes.

Q Not neccessarily indulged in by any person suffering from a mental ailment known as dementia praecox?

A The same as you or I would do.

Q Now, supposing this same young man told you this, a negro came with a Dodge car, and I told him to drive me to a number on First street, Little Falls, I got in and we drove up Valley road to Belleview avenue, then to Upper Mountain avenue to Bradford avenue and going down Bradford avenue on the hill—as I was going up the hill I pulled out the pistol. I was sitting on the left hand side of the back seat"—and stop there. What would you deduce from that, if I were to tell you now and ask you this question, do you think that that person reasoned things out and he intends to kill the man who drove the taxi, if he had the gun in his possession?

Mr. Wachenfeld. I object to that. The Prosecutor stops——

Mr. D'Aloia. No, I am going to read the rest.

The Court. I will allow the question.

Mr. Wachenfeld. I object to it because it does not include all the facts with reference to that one particular situation.

Mr. D'Aloia. I am going on in a few seconds.

A Will you repeat that?

Q Yes. A colored man came with a Dodge touring car and I told him to drive me to a number on First street, Little Falls. I got in and we drove up Valley road, Bellevue avenue,

then to Upper Mountain avenue to Bradford avenue and going down Bradford avenue on the hill, as I was going up the hill the back seat." What would you say as to that course of conduct and reasoning there if it was the intention of the man who pulled the pistol to kill the man on the front seat?

A I have seen that same kind of reasoning on the part of the insane as well as the sane.

Q But you cannot find anything there that distinguishes it from the sane, normal way of reasoning things out.

A I have answered the question.

Q Have you anything more that differentiates this particular course of reasoning from a sane, normal individual?

A I say both sane and insane.

Q Can't you answer my question?

A I think I have.

The Court. Can you not give any better answer? Is that your answer?

Witness. That is my answer.

Q And I understand from your answer this is the reasoning of a sane man and it may be the reasoning of a man who is mentally ill.

A Yes.

Q Now, he goes on. He says, "I felt dizzy, but as we came down the hill I took the revolver and shot him in the back of the head. He fell over to the right side. The car was going at a moderate rate of speed, and I climbed over the front seat and got behind the wheel and stopped the car." Now do you call that the reasoning of a sane person who wants to take possession of the car which was being driven by the man who he had shot? The idea now, the objective idea, is to get possession of that car. Would you say that there was an association of ideas there?

A Yes.

Q Following one another in a regular sequence to accomplish the purpose of getting possession of the car?

A Yes.

Q You don't find any disordered will stepping in there to sort of obstruct or stop the main idea, do you?

A I do not consider there was a normal will attained at that time at all.

Q You told us the mind of a dementia praecox is made up of a man that conceive an idea and is about to carry it out and then a distorted will steps in and stops the idea from being carried out? Now, I am going to put that test to this brain and then ask you if it is not the brain of a person not suffering from dementia praecox.

Mr. Wachenfeld. Now, the doctor said just exactly what Judge D'Aloia asked him except he said that it did not always occur. He said that occurred at times.

The Court. Well, let the doctor testify.

Mr. Wachenfeld. Yes. Judge D'Aloia said he testified to certain things, whereas he did not testify to that.

The Court. Well, the doctor testified to dementia praecox and one of the points asked by the Prosecutor. The doctor can answer it.

Q Now, doctor, now I am to read this excerpt from the confession again. As we came down the hill I took the revolver and shot him in the back of the head. He fell over towards his right side. The car was going at a moderate rate of speed and I climbed over the front seat and got behind the wheel and stopped the car. Now, I am going to repeat, the idea is to take possession of the car that had just been driven by the man who had been shot, and the person who wants to take possession is sitting in the rear seat, climbing over the seat and getting behind the wheel and bringing the car to a stop. Is that an association of ideas following one another in natural sequence to bring about the accomplishing of the main idea, that is, to get possession of the car?

A Yes.

Q Well, isn't it in sequence?

A Yes.

Q Can you find any reasoning there that is different from a sane individual who wanted to do the same thing?

A A sane man could do that same kind of reasoning and so could an insane man.

Q If I understand you correctly, a sane man would rea-

son the same way if he wanted to get possession of that car?

A When a dementia praecox is restored to reason at times only the God above knows, but a dementia praecox does not show good reasoning.

Q And there are exceptions to that rule, aren't there?

A Not in the dementia praecox.

Q But were you correct when you said that the brain of a dementia praecox or person suffering from dementia praecox, that brain could form an idea and engender a thought and endeavor to carry it out and then a distorted will would come in, step in, so to speak, and prevent the accomplishment of that idea?

A Yes, but what I said was a rule of a characteristic predominating symptom of dementia praecox.

Q Do you find that predominating rule of a dementia praecox when the idea is to get the car, second to shoot the man and third, to climb over the front seat and bring the car to a stop——

A I claim there you have evidence of lack of control over the will.

Q You do not find any opposition of the will, stepping in.

The Court. Do you find the man being controlled by the other personality, so as to do the opposite of the conception?

Witness. I think the will is the determining factor, the guiding force here, that guides the main idea of the conscious mind.

Q Now, doctor, what do you think—what was the controlling force that made this man get behind the wheel and bring the car to a stop, was that will power?

A That was his will.

Q And it was functioning properly if the object to be obtained was to bring the car to a stop or not?

A I don't think so.

Q How would you bring a car—you are a sane individual. Your car is going at a moderate rate of speed and you want to bring it to a stop. What mental processes would you invoke?

A Well, I cannot assume this boy——

Q I am asking you what you would do. Your answer is not at all responsive and if you keep it up I will come to the conclusion that you are suffering from some ailment.

A And if that is true I may think the same thing towards you.

Q I asked you this, if you wanted to bring a moderately traveling car to a stop, what function would bring it to a stop, would it be your will power and you are sane?

A Yes.

Q Would you do it any differently than this man says he did it? Go behind the wheel and bring the car to a stop by operating the machinism?

A I don't know.

Q Is there any other way of doing it?

A I don't know if there is any other way.

At this point the Court takes a recess for one hour.

AFTER RECESS

JOHN H. THOMPSON, resumes the stand.

Cross Examination by Mr. D'Aloia (continued).

Q Supposing a person wanted, to, after getting possession of this car which had stopped, after it had been going at a moderate rate of speed, he wanted to get rid of the man whom he had shot, or the body of the man he had shot, and he told you this, "I then started the car and drove down to the Pompton Turnpike, the first street beyond the railroad bridge on the right. I turned in this street and continued to a white cement bridge. I then stopped the car and pulled the colored man out of the car and dragged him across the road and down in the bushes alongside of the brook." Now, what would you say as to the process, the mental process this particular individual was undergoing in first formulating the idea that he was going to hide this colored man's body, the colored man whom he had shot, what would you say about the sequence of the ideas and the association of those ideas? Would you say that they were natural?

A I should say that the association of ideas was all right, but the process of reasoning there was associated with defective judgment.

Q And defective judgment would not be in hiding the body in a place that looked to every appearance, outward appearance a good hiding spot, that would not be defective judgment, would it?

Mr. Wachenfeld. Objected to.

The Court. Sustained.

Q Now, what would you say about the objective idea, that is, the hiding of the body, was that brought about properly by a natural sequence of associated ideas, having as a goal the hiding of the body?

A The sequence of ideas was all right, and not to be criticized, but the judgment used in the depositing of the body showed defective judgment.

Q Tell me now how a sane man, now, let us assume for

the purpose of this argument, that a sane individual has a dead negro alongside of him on the front seat of an automobile and he wants to hide it. Now, tell us how a sane man would go about it?

A Well, I think a sane man would have selected a more secluded spot, he would have avoided that particular road over which traffic is more or less frequent and within sight of these two houses, more or less public.

Q Which two houses?

A Mr. Bowden's and the one across the street.

Q Here is a photograph of the road, up and down. Can you see a house anywhere (showing witness exhibit S-1 and S-2).

A You are now speaking of the bridge——

Q I am speaking now of the road upon which you say a sane man would not go, see that mark there in ink?

A Yes, sir.

Q That is the spot where the body was taken down by someone.

A Well, Mr. D'Aloia, this photograph must have been taken at a different time from the one I visited this scene. At the time I visited this place I could see well in sight these two houses I speak of.

Q This photograph was taken on September 10, 1925, and that is about six days or seven days after the body was found. Now, look at the photograph, would you say it appears there that that spot is secluded?

A As it appears here, there is some seclusion to this spot.

Q Look at this other photograph showing the road in the opposite direction, and look at that spot there where the body was taken down. Would you say that appears to be secluded?

A Somewhat, and yet it appears to be a public thoroughfare.

Q Once you get off that road and into that thicket, you would not say anything would be visable.

A Well, if another automobile happened to come along I think it would be a dangerous procedure.

Q Did you hear Mr. Matts testify the other day?

A Did I hear who?

Q The man who found the body?

A I think so, yes.

Q Did you hear him say he was on the bridge and he looked down because he wanted to find where the brook had some falls, to exhibit the place to some guests of his, and all he could see up there was a white patch of some particular material and he could not see any body at all?

A I remember that.

Q And that he had to go down and go down seven feet, six or seven feet below the level of the bridge, and that there the grass was about seven feet high, and that when he got to that spot where he had seen this white rag, all he could see was the two feet first and then he made the discovery of the colored man's body?

A Yes, sir.

Q Did you hear him tell that from where he stopped first and where he first saw this white material or an object of white material, he could not see any body at all?

Mr. Wachenfeld. I object to that upon the ground that that is not the testimony.

The Court. What did he say?

Mr. Wachenfeld. He said that it was the first time that he had crossed the road that day, that it was about dusk and that he stopped walking and that he stood at the bridge and looked down and the first thing that attracted his attention was a sort of a white shirt.

The Court. I don't think he said it was the first thing but his attention was first attracted by something white.

Mr. Wachenfeld. Yes, he said also it was about dusk.

Q Would you call that spot, as described by that witness in his testimony, a secluded spot, the object being off the bridge and off the road, below the road?

A Somewhat secluded, yes.

Q Let us modify the situation, modify it to the extent that you are willing to modify it, that the colored man is dragged out of the automobile, brought down there seven feet below the level of the road, under the bridge, to a somewhat secluded spot, would you say that the person who was doing that, in-

tending to hide the body, was undergoing a reasoning process, mentally.

A A certain reasoning process associated with defective judgment.

Q Now, you have used that expression twice. Where was the judgment defective if the object is to hide the body?

A In the selection of the particular road and spot.

Q Although you admit from the selection of the spot and what you know it was somewhat secluded?

A Yes.

Q And from the description of the body?

A It was somewhat secluded from the two who dwell in the houses I mentioned, but to the passerby who went by on the road it was not secluded.

Q Did you hear Mr. Matz say he had to go to the cement bridge and look over?

A I did, but it took some time to remove that body from the Dodge car to that particular place and during that time somebody might have come along the road, and a wise man, a man of good judgment would not have put the body where it was found, in my estimation.

Q Where would he put it?

A I don't know.

Q Then you do not know the distinction between what a wise man would have done and what this defendant did?

A There are so many different ways a wise man might have disposed of that body that I do not think he would pick that particular spot.

Q Now, he goes on and tells you this, "I then got back in the car and drove back through the country at a pretty good clip and came back through the Eagle Rock Reservation.'

Mr. Wachenfeld. I think he ought to state all of that. He says "I do not know where I went, but I came back to Eagle Rock Reservation."

Mr. D'Aloia. He has the facts. He got back in the car and drove through the country at a pretty good clip. "I don't know where I went, but I came back through the Eagle Rock Reservation. I remember I stopped once and took gasoline from the reserve tank and tried to take

the blood off my clothes and the seat of the car."

A Well, there were times during that time a dissociation of ideas, particularly the time he said he did not know where he was.

Q You know those roads where he had left the body, you know that lots of those roads have no name. You know that, don't you, particularly in the neighborhood of Upper Montclair and Bloomfield?

A Yes, but he says he didn't know where he went.

Q He went through the Eagle Rock Reservation as soon as he recognized the road.

Mr. Wachenfeld. He does not say that. He said, "I don't know where I went, but I came back through the Eagle Rock Reservation."

The Court. You have got to follow the language of the question. It is sufficient that a sufficient part of the facts be incorporated in the question.

Q Supposing a man realizing that he has blood on his coat the right side of his coat, and he realizes that on the seat of the automobile he is in there are blood stains and he stops after leaving the spot where he put the body and he stops and gets some gasoline out of the reserve tank and he removes or tries to remove those spots from his coat or the seat, would you say there was there an association of ideas which followed the other in natural sequence for the purpose of accomplishing the goal idea?

A I think that association of ideas is all right.

Q Any sane man who wants to remove spots from his coat, knowing he has gasoline in the reserve tank, would go at it in that way?

A Yes.

Q Now, let us go on. He says, "I came to Montclair to the stone quarry and I drove the car in there and left it and walked home. I think I got home around four o'clock p. m." Do you think that was pretty good reasoning power?

A That was all right, yes.

Q Now, Friday morning he told you what he did. "Friday morning I got up about eight o'clock and worked a couple of

hours in the back yard and then I took my Overland car and drove to the other side of the hill back of the quarry and took the Dodge car." Now, would you say that process was a pretty good reasoning process of a person intending to take his car and drive it to the Dodge car and then take the Dodge car?

A There was an association of ideas, but the ideas were associated in poor judgment.

Q Well, the idea is to go up and get the Dodge car. Now, what he does is to take the Overland car from his house and drive it to where he had left the Dodge car. Now, where is the any defective judgment there?

A From what I have heard——

Q No, from this statement alone, consider that. It is a complete idea and there is a complete association of ideas that he leaves his mother's home and he wants to go up and get the Dodge car, and here is what he does, he gets the Overland car, his mother's car and gets in it and drives it up to the old quarry and leaves it there and goes in and takes the Dodge car. Is there any defective judgment there?

A Yes.

Q Where?

A I should think that the last car that that boy would have taken would be his own mother's car.

Q To get up to the place where he secreted the Dodge car?

A Yes.

Q What car would he take?

A He would have taken a stolen car or somebody else's car.

Q But what fault have you to find with getting to where the Dodge car is?

A I don't find any fault with it.

Q That is rational?

A That is along the idea of your association of ideas.

Q Now, he says, "I took the Dodge car and left there and drove it down Highland avenue to the back of some big places on South Mountain avenue. I then drove along Upper Mountain avenue and there I picked out this little girl from out in front of number 136 Upper Mountain avenue, Montclair," and

mind you, he has told you that he looked at this nice, big house on Tuesday.

A Yes.

Q He has gotten this car on Thursday. Now, we are at Friday morning. Tuesday he saw the big, nice house. Wednesday, Thursday, Friday, three days later he then takes this Dodge car and he drives it to 136 Upper Mountain avenue. Now, what would you say about that course of reasoning?

A That associating of reasoning is all right.

Q And he says, "I stopped the car and got out and told the little girl to get in. She said she did not want to do so. I lifted her in my arms and carried her and put her on the front seat." What would you say about his association of ideas when the goal idea is to get the little girl in the car?

A The association of ideas is all right, but, if I am permitted to do so, let me say that the very fact that others were around at the time he kidnapped that girl shows defective judgment.

Q He then drove the car over Highland avenue to Normal avenue and then to the reservior and turned to his right and then to great Notch and then passed the depot and turned to his right and to his left and he must have gone, two, three or four blocks when some men in a closed car pulled up alongside of him, and I fired a shot. Now, would you say that he realized he was being pursued?

A Why, certainly.

Q You will admit that he had the power of realizing it?

A He used poor judgment, however.

Q But he realized he was being pursued?

A Yes, I will admit that.

Q You will admit that when he fired the shot he showed some evidence of disliking that pursuit and tried to discontinue it?

A Yes, I do.

Q Would you say that he was conscious that what he was doing was not exactly right?

A No. I would say he was not in the right frame of mind, because there are two witnesses in the car at the time that he shot this man, Sardine, which shows that he had defective judgment.

Q (Question read.)

A I feel that at that moment he was not capable of distinguishing right from wrong.

Q Now, where do you draw that line of demarcations? You admit that he realized that he was being pursued and you admit that he, by firing at his pursuers, showed a desire to stop the pursuit. Now, where do you stop and say that he did not show any consciousness that what he was doing was not right?

A The very fact that he shot but one man and did not shoot at the others.

Q Do you know what man he shot at?

A I understand Mr. Sardine.

Q Who was driving the pursuing car?

A Mr. Sardine.

Q Do you think the man, when he shoots the man who is driving the pursuing car and there are three men, that he does not use good judgment when he is trying to stop pursuit?

A I don't think so.

Q Now, let's see this. "I don't know whether anyone was hit or not, but I saw in the Montclair times yesterday morning that a man was hit and injured." Now, what do you think of a man who shoots at a pursuing car and starts off again and stops the pursuit with his shot and then the next morning finds a news item in the paper and recalls from the reading of that item that it was he who fired that shot at the man who was described in the news item as having been wounded. It is pretty good memory and pretty good association of ideas.

A Yes.

Q "I started off again and drove on"—this, after he fired the shot—"Until I reached the place where I took the officers this afternoon, Sunday, September 6, 1925." What do you think of a man's mental faculties who on Sunday, September 6, who, around five o'clock or five-thirty, guides the driver of an automobile filled with police officers over the route that he had taken on Friday about noon with the Saturday intervening, is his memory pretty good?

A His memory is all right, yes.

Q And how about the association of ideas, remembering the turns he made on the roads he took, what would you say

as to that?

A You mean by that act itself?

Q What can you tell us of the mental faculties or the mental condition of a man who, on Sunday at five-thirty p. m. guides an automobile filled with police officers over a route which he had previously taken on Friday noon, taking all the turns and following all the roads for a distance of about twenty miles to a spot in another county, in the woods, without making a mistake, what would you say of that?

A I would say that the association of ideas was not to be criticized.

Q How about his memory from Friday noon until Sunday?

A That doesn't cut any figure with me at all.

Q But the association of ideas is all right?

A Neither does that.

Q Can you tell us how the body of the little girl could have been found if he had not brought the officers there?

Mr. Wachenfeld. I object.

The Court. Sustained.

Q Now, when he continues and he tells you this: "When I reached this spot I don't remember what the little girl said, she was talking. I took the revolver from my right trouser pocket and I told the little girl to step out of the car, I led her a few feet off the road and shot her twice in the side of the head and then dragged her body her body to the spot where she was found in the sumac bushes." Would you say that that was a series of associated ideas of a person who is undergoing that mental process, having for an object the hiding of the little girl's body after he had shot the little girl twice?

Mr. Wachenfeld. I object to that question, if the Court please, and I object to the recitation of it, even, by the Prosecutor, on the ground that that is another case and is not admissible here.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let is be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge

Q What would you say about the association of ideas, the goal idea being the hiding of the body of the little girl whom he had previously shot twice?

Mr. Wachenfeld. The same objection.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Granted that this statement was dictated by the defendant, and by him alone, I would say that the association of ideas is all right.

Q Showing what kind of a mental condition, good, bad, insane or sane?

A Insane.

Q But the association of ideas is all right?

A The association of ideas is all right.

Q Now, when he tells you this, "I then drove the Dodge car back to Bradford avenue, Montclair, and drove it into the woods." What would you say about the association of ideas if his goal idea is to hide the car?

A That the association of ideas is all right.

Q Supposing he said this, "When I drove it into the woods about four hundred feet I turned it around and I left it facing Bradford avenue." Would you say that driving it in four hundred feet in the woods and with the idea of secreting it or hiding it, would you say that showed pretty good judgment or bad judgment?

A Is this his own car?

Q No, the Dodge taxi.

A That was all right.

Q That was good judgment?

A Yes, sir.

Q Now, he formulates this idea, he wants to go back to the quarry and get his own car, his Overland car which he had left there some time before, and he tells us, "I then went back to the quarry and got my Overland car and drove home. I think I got home about one forty p. m." Do you think he used good judgment?

A That is not the judgment of a sane man.

Q Just forget a sane man. Here is a person, a normal individual up at the old quarry who has just hidden the Dodge car four hundred feet from the road, and knowing that he has hidden his car, his own car and knowing it is alongside of the quarry and he wants to go home in it. Would you say that is not the judgment of a sane man if he wants to get in and he starts it and drives the car home?

Mr. Wachenfeld. I object to that because there is no proof in the case that his car is alongside the old quarry. There is proof in the case, according to his confession, he then went back to the quarry and got his own car, but the evidence in the case, according to Mrs. Bogan and Chief Bogan, is that it was standing alongside of the road.

The Court. The confession is in evidence and everything in it is in evidence. There may be a contradiction, but it is in evidence.

Q He goes to the quarry or in the neighborhood of the quarry after hiding the Dodge car four hundred feet from the road, which you said was pretty good judgment, and he goes back to his Overland car. I don't care whether it is in the back of the quarry, in the quarry, alongside of the quarry or in front of the quarry, but he wants to get home and he has got his Overland car there. Now, what is the matter with the judgment, if he gets into it, starts it and drives it home?

A There is nothing the matter with the judgment that he hid his own car, but he showed poor judgment in the placing of his car so it could be seen off the road.

Q I am not asking you that now. I am asking you now to tell me about his judgment, when he gets to the place

where he has his car for an hour or two and he wants to go home after leaving the Dodge car four hundred feet from the road, hidden, is that good judgment or bad judgment?

A Well, that is pretty difficult to say.

Q Now, he tells you this, too, "I know Ireloaded my gun and put it under the back seat of my Overland car. I then left my Overland car standing in front of the house, went upstairs and took a bath and put on a clean shirt, and got in the car and drove it to Montclair to the Girl Scout Headquarters and brought my sister home and then rode to the Montclair Public Library, a couple of hours later and got a book named the "Jester" by Moore. I got this book on my card." What would you say about the judgment there; he wants to get a book; he is home with his Overland car, which is out in front, and he knows the book is in the library and he knows the name of it and he has got a card and he goes and gets it. Would you say that is an association of ideas if the goal idea in mind is to get the book?

A Yes, sir.

Q And when he went to the Girl Scout Headquarters, intending to take his sister, whom he knew was up there, to take her home with his Overland car, and he got his sister and took her home, would you say that that mental process had any difficulty in it?

A Except that that is the mental process of an insane mind.

Q How would a man go up and get his sister at the Girl Scout Headquarters in any other fashion, sane or a normal man, how would he do it? A sane or normal individual has an Overland car in front of his house, an dhe knows that his sister is up at the Girl Scout Headquarters, how would he get her excepting by going in the Overland car and driving to the Girl Scout Headquarters and getting his sister and then going home?

A Perhaps it would be the same way.

Q Then you say that what he did in getting his sister was absolutely sane, would you not?

A I would say it was the normal way of doing it.

Q Doesn't that apply also to getting the book?

A Why, yes.

Q Now, he tells us this, "On the way home from the library I drove to the D. L. & W. Railroad station in Glen Ridge, New Jersey." That is after he had taken his siter home from the Girl Scout Headquarters and after he had gotten his book from the library, the "Jester" by Moore, he says, "I drove to the D. L. & W. Railroad station in Glen Ridge. I went to the telephone booth and got the telephone books and started at the A's and came down and went to the B's watching to see who lived at 136 Upper Mountain avenue." This was the place that he called the nice, big house, and which he had selected on Tuesday, September 1st, "and I found the name of Joseph A. Bower, 136 Upper Mountain avenue. I then called up the number listed under that name." What was there about that mental process—would you say he reasoned pretty well?

A Why, yes, that is a certain form of reasoning.

Q Would you say there was a coordination of ideas when he took the telephone book and knowing simply the address and not knowing the name, he looked for the name?

A Yes, that is a coordination of ideas.

Q And the goal idea was to find out what the telephone number was and the people who lived at 136 Upper Mountain avenue, and he accomplished that, didn't he?

A Yes, sir.

Q What would you say about that mental process, would you call that reasoning?

A His particular form of reasoning; yes, sir.

Q Do you find any difference between that kind of reasoning of this defendant and the reasoning of a sane man?

A I think so; yes, sir.

Q How would a sane man have done it, knowing simply the address and not knowing the telephone number and you open it to the Montclair list and you have got the A's and the B's there and you look down and all you know is the address of 136 Upper Mountain avenue, how would you find out the name of the people who lived there?

A Why, I would go about it the same way.

Q Supposing he told you this, "I then called up the number listed under that name. A woman's voice answered the phone. I asked her if she was interested in a little girl with a pink dress that was taken away this morning and she replied

'Yes' ". What would you say as to his memory?

A All right.

Q "I then said I want four thousand dollars ransom. She said, "Who are you?' I did not reply to that question." Now, supposing the idea was to conceal his identity or supposing he formed the idea that he was going to conceal his identity; he has got the lady on the other end of the wire, wouldn't you say it was a pretty good reasoning process when the lady on the other end of the wire says, "All right. Who are you?" And he does not answer. Would you say he accomplished his purpose in concealing his identity?

A I tries to do it, apparently.

Q How would you conceal your identity?

A If I wanted to conceal my identity I would leave the telephone alone.

Q Supposing you wanted to find out if I was interested in a girl with a pink dress and you wanted to get four thousand dollars, which had actuated your conduct from the Tuesday before this Friday——

A I don't think I would go about it that way.

Q You would go up to the house and ring the door bell, I suppose.

A Oh, no.

Q That is one way of doing it though.

A Oh, yes.

Q But you would not think there was any precaution used by this man when he went up to the telephone?

A Some precaution, yes.

Q And he hid his identity and that is another means of precaution.

A The insane are very often very cautions.

Q Where you here when Dr. Pritchard testified in this case?

A Yes, sir.

Q Did you hear him say that he thought this was a strange case because of the lack of precaution?

A If the doctor said that maybe I did, but I don't recall it.

Q Do you find any lack of precaution in any of the things I have read to you so far, such as the hiding of the colored

man's body, the hiding of the cars, and the exchange of the cars and the hiding of the little girl's body and the using of his machine, you show me now where you find any lack of precaution.

A There is some precaution and some lack of precaution.

Q Show me the lack of precaution in one particular instance?

A The particular fact that he used his own car and the particular fact that he skirmished around in Montclair where he was well known; the fact that he went to the telephone and called for a taxi. He made it a public matter. He acted like an insane boy all through the whole process and yet he shows good memory and good consciousness and good association of ideas.

Q And you call it lack of precaution that he does not use his car to do the kidnapping with and he procures a car to do it with, which car is associated with another person upon whom suspicion may fall, you call that lack of precaution?

A I don't think a sane man would have done that.

Q Do you call that lack of precaution?

A I do.

Q And going to the telephone and calling up the Bower's residence for the four thousand dollars and withholding his identity over the telephone, you call that lack of precaution?

A I don't call that good judgment.

Q Do you call that lack of precaution?

A I don't call it good consciousness.

Q Would you call it lack of precaution?

A Yes, there is some lack of precaution.

Q "She said, 'Who are you?' but I did not reply to that question. I told her then there were some banks open in the theatrical district in Upper New York City. I hung up the receiver and left the railroad station and drove home arriving around five o'clock." Now, what do you think of that course of conduct if his idea was to get home?

A That is lack of precaution and poor judgment.

Q He didn't tell anybody over the wire who he was and he did not disclose his identity; he had not been seen by anybody going into that booth that we know of, and then he went home. Would you say that is lack of precaution?

A Are you sure he was not seen by anybody?

The Court. There is no evidence of that.

Q We have no evidence that he was and assume that to be a fact, that nobody saw him go into that telephone booth.

Mr. Wachenfeld. I object to that if the Court please.

The Court. I will sustain the objection as to form.

Q How about going home, doctor? He had the car outside of the railroad station and the object was to go home and he got into it and he drove away and he accomplished his object in getting home. Would you call that sane judgment?

A No.

Q If he drove his automobile all right, and especially when he was being pursued and over rough roads he was going thirty-five miles an hour and over good roads he was going about fifty or fifty-five miles an hour and he did not collide with anything at the time, do you think he had mentality or the mental faculty to guide that car and not collide with anything?

A Well, the car is in good shape and he is a pretty good driver.

Q You say he possessed car-sense, when he did not collide with a telegraph pole or telephone or electric light pole or anything else on the road, and he stopped it when he wanted to and he started it when he wanted to start it, would you say that he was in possession of his mental faculties?

A Oh, no.

Q And he tried to keep his pursuers from catching up to him.——

Mr. Wachenfeld. We have been all over that.

A I have answered that question before.

Q Now, if he tells you that he did not like the book when he got home from the railroad station he did not like the "Jester" and he goes back to the library and gets two more, one of which is "Hale-Vail" would you say at that time he had good judgment in going to the library and getting another one if he did not like the one he has?

A No, sir; that is characteristic of the insane.

Q What is?

A To go to the library and get a book and bring it home and not being satisfied with it, to go and get two instead of one.

Q Have you ever done that?

A No, sir.

Q Haven't you ever taken a book from the library of the institution at Overbrook and after you found that you did not like it or like its cotnents, haven't you brought it back and gotten another one?

A No, I don't think I ever did. I am pretty careful when I select a book.

Q You have seen a lot of other people do that.

A Oh, yes.

Q Now, he tell you this, "We then have dinner and after dinner I took my mother and the people who live next door, a Mrs. Raymond and her niece and my mother and sister for a drive in my Overland car. I don't know what time I got home, it was dark, I stayed home the rest of the night." Do you think that a man who could drive his mother and the neighbors next door around for some time that evening was in possession of his mental faculties if he does not collide with any trolley cars or any other vehicles on the street or any part of the road or any poles or obstacles on the side of the road?

A No, sir, a man who is cold blooded, who is indifferent enough to do anything like that cannot be of a sane mind.

Q I am not asking you that. I am asking you what would you say of the mental condition of a man who did do that?

A I am telling you that he is of insane mind.

Q Why, because he does not collide with anything and drove the car and knew where he was going?

A Following what had occurred previous to that——

Q What about the conduct itself?

A That last limited statement of yours is all right, but you don't associate it with anything.

Q I associate it with the driving of an automobile.

A But you don't associate it with the crime.

Q I am not talking about the crime, I am talking about the mental condition of a man who drives an automobile on the night of Friday, September 4th, containing his mother

and his sister and the next door neighbor and her niece for hours, what about the mental condition of that man?

A If that is all the evidence that you present I cannot answer your question.

Q Do you think it was the conduct of a sane individual?

A It may be sane or it may be insane.

Q What was there insane about it?

A I cannot answer the question; it may be sane or it may be insane.

Q Do you find anything insane about it?

A Indifferent.

Q Yes, indifference.

A A sane man may have done the same thing.

Q Now, what, when he tells you this, that on Saturday he got up at seven o'clock in the morning and drove his car to Newark and went to New York City on the Tubes and he remembered the conductor giving him an exit coupon dated September 5, 1925, which was shown to him at the time he was making the statement. What do you say about his memory. Isn't it pretty good as to that?

A His memory is all right.

Q And that is a recent event, he is telling it to somebody on the Sunday afternoon that it occurred the day before at seven a. m.

A Yes, sir.

Q And haven't you said his memory is bad as to recent occurrences?

A Not exactly.

Q But that is one of the symptoms.

A No. Memory doesn't cut any figure in the case. It could be bad in a dementia praecox. We haven't good memory in dementia praecox in the early stages.

Q Not a good memory as to recent events?

A No, we find defective memory in dementia praecox who have a good association of ideas and a clear consciouness and who are oriented as to time, place and persons. Those are my personal views.

Q But you find those things in persons who have homosexual tendencies.

A Yes, sir.

Q How many of you men up there at Overbrook, you doctors, diagnosed this case in March as dementia praecox?

A I think five or six.

Q How many differed with you?

A We did not have any variance of opinion at all. It was unanimous.

Q You are sure about that?

A I think so, but I would not be positive. I would like to refer to the record.

Q You may have the record.

A If I made a mistake my memory does not serve me.

A This case was presented at the Essex County Hospital for the insane, Cedar Grove, on March 12, 1925, by Dr. Stamp.

Q Doctor who?

A Doctor Stamp.

Q Yes.

A He was assigned to write up this case and presented the case on that date, March 12, in the morning, when the report is read and presented as catatonia dementia praecox.

Q By whom?

A By Dr. Stamp. After the diagnosis was submitted the case was very thoroughly discussed—I remember that—that Dr. Payne, was present, Dr. Englander, Dr. Thompson present, Dr. Kildee present, and, of course Dr. Stamp, and they all joined in confirming Dr. Stamp's diagnosis There was no question about it whatever.

Q And you were put in immediate charge of the case, weren't you?

A Why, the case was on my ward.

Q Now, do you see any amelioration during the month of March?

A During the month of March?

Q Yes.

A Not to speak of.

Q Did you see any amelioration during the month of April?

A Not to speak of.

Q Did you see any amelioration during the month of May?

A Hardly, no.

Q Did you see any in the month of June?

A There was some change in behavior and conduct.

Q How well did you know Mrs. Noel at that time, the mother of this defendant?

A I knew Mrs. Noel as a doctor would know any visitor coming to the hospital from her occasional visits there and chats with her about her boy.

Q Well, did you know her well enough to have dinner with her at her house?

A I certainly did.

Q And during the month of June, before the 28th day, before you allowed this defendant to go home, did you have dinner at her house?

Mr. Wachenfeld. I object to that. There is no proof in this case the doctor allowed the boy to go home.

The Court. Well, fixing the time. Change the phraseology.

Mr. D'Aloia. I will change the phraseology.

Q About the time when the boy, this defendant, left the institution, and when he was in your ward and under your special supervision, which was about June 28th, how many times had you had dinner at the Noel's house?

A Once.

Q What?

A Once.

Q Had the boy's condition been spoken of?

A I do not think so, particularly.

Q Had the feasibility and possibility of his being allowed to go home been talked about?

A No.

Q What was talked about?

A The particular thing was to find out whether it would be permissible to allow his brother to come up there, who had just returned from college, and who had not seen him for a long while.

Q And Mrs. Noel, while you were at her house, did not speak to you about allowing her boy to come?

A Not a thing was spoken about the boy.

Q Now, I understand you, Mr. Wachenfeld insisted upon it, that this boy was not permitted to go from the institution?

A Yes.

Q Do you know any reason why he should tell Dr. Gregory over at Bellevue that he should be permitted to go home with his brother for lunch?

A Do I know? That he was insane.

Mr. Wachenfeld. I object to that. I think the statement of Dr. Gregory was that he was home and he called up Dr. Thompson and asked if he might stay for lunch and Dr. Thompson said yes.

Mr. D'Aloia. Well permission was given to him then.

Mr. Wachenfeld. Well, I say that is not true.

Q Did that happen, Doctor?

A No.

Q But he left on the 28th day of June and how long before that had you had dinner with Mrs. Noel?

A Oh, probably a week or ten days.

Q And you say that was the only time you ever had dinner with her?

A Yes, and that was in the presence of my family, as well as Mrs. Noel's.

Q Yes, I understand that. You had your family there, the whole family. What date was it he left?

A The 28th of June.

Q Who made this entry on the 29th, "Was allowed out with his brother for a stroll about the grounds yesterday and insisted upon going to his home in Upper Montclair. He took dinner and appeared to his family amazingly improved but the first opportunity he stole away on his sister's bicycle and has not been seen since. Family seem reconciled that he will seek work and soon be seen by them again."

A I made that note.

Q You made that note?

A I am quoting there from the one who supplied that notation.

Q This is the record that you have of the boy's leaving

the institution, made by you on the 29th of June, and, if it is correct, you remember it, as I read it he was allowed, with his brother for a stroll about the grounds yesterday and insisted upon going to his home in Upper Montclair—Noel insisted—That is what that means—Upon going to his home, doesn't it?

A Yes, I didn't insist.

Q Yes, he insisted and you allowed him to have his way?

A He was beyond my control at this time.

Q Well, where was he?

A He was supposed to be on the grounds. I allowed him for a walk in the fresh air on the hospital grounds with the distinct promise on the part of the brother that he should return him back to the hospital and not leave the grounds.

Q Now, with whom did he insist upon going home, with his brother?

A With his brother.

Q He did not have to insist much with him, did he?

Mr. Wachenfeld. How does the doctor know?

The Court. Sustain the objection.

A I was not present. I cannot answer.

Q Now, where did you get this information from that you put here. "He took dinner, appeared to the family amazingly improved," where did you get that from?

A I got that from members of the family, from the brother, and Mrs. Noel, who was inclined to feel that way herself. She is the mother of this boy

Q That is what I am trying to get at, that both you, as the attending physician, and the mother of this boy, say he was amazingly improved on the 28th of June.

A Those were not my words. I did not say that he was amazingly improved.

Q You wrote it.

A I say I wrote it on the statement of the family.

Q You did not put it in quotation marks and you were the doctor in charge of this institution with reference to this case.

Mr. Wachenfeld. That is not the question.

Q Isn't that so, Doctor? Isn't it so that is a record by you, the physician in charge of this particular case in this

particular institution and you made it on the 29th of June, 1925, as part of the record of this particular case?

A Yes, I made that note, but I don't think you have interpreted the note properly.

Q Well, I can read the words "amazingly improved."

A He appeared to the family amazingly improved.

Mr. Wachenfeld. Just a minute.

The Court. Let the doctor explain.

Mr. Wachenfeld. I know, but I think the prosecutor should ask him questions.

A He appeared to the family amazingly improved. I did not say that he appeared to me amazingly improved. I do not think the boy was amazingly improved at the time I could not consistently say that.

Q Where did you get this part of the entry, "family seem reconciled that he would seek work and soon communicate with them?

A Where did I get that?

Q Yes, where did you get this, that the family seem reconciled and that he would seek work and soon communicate them?

A Where did I get that?

Q Yes, where did you get this, that the family seem rceonciled and that he would seek work and soon communicate with them?

A After he escaped from the home and in view of the fact that the same thing had happened, I take it, before, in this boy's life, they felt that he would seek work.

Q He escaped from the home on his sister's bicycle?

A That was their honest statement.

Q Do you know about this entry, July 3, 1925, ward 32. That is your ward?

A Yes.

Q That is the ward this young man was in while he was up there, "Patient reported at hospital and interviewed Dr. Stamp. Mother, who was with him, states this was voluntary on the part of the patient, who promised to report again in a few days." July 3, 1925? What have you to say about that

part of the record of this particular case, under your particular supervision in this institution, is that correct?

A That is correct, but that note was not made by me. That note has reference to the appearance at the hospital of Harrison W. Noel with his mother on the afternoon of July 3, when Dr. Thompson was off duty and Dr. Stamp was relieving him. I am not responsible for that note, nor the visit of the boy to the hospital.

Q Well, what does that convey to your mind where he is allowed to go away with his mother on the promise to return within a few days?

Mr. Wachenfeld. I object.

The Court. Sustain the objection.

Q Now, in view of what I have read to you of these two notes and what you have seen here, on July 3, and in view of the fact that you had had dinner with the family a few days before this, do you consider that when this boy left the institution that he escaped?

A I certainly do.

Redirect Examination by Mr. Wachenfeld.

Q Were you there when that visit was made on the 3rd of July?

A No, sir.

Q Where were you at that time?

A I was in Newark.

Q Was this boy sane enough, in your opinion, on the 28th day of June to leave the hospital?

A No.

Q Now, you say there had been some improvement?

A Yes.

Q What do you mean by improvement?

A Well, I mean that the boy was more—his conduct and behavior was better and his moving out in the open more and he seemed to be mixing up a little more and was more accessible and better able mentally himself, and that the picture—the dementia praecox process was still there. We find these cases that go on and clear up a little and go back again, but the deterioration process is there. That never lets up.

Q In other words, because of the boy's conduct, his behavior, improved, for a period of a week or two, does that mean that his mental deterioration has ceased?

A No. You can take an automobile. An automobile can run for 25,000 miles and be three years old and run better than it did when it was one year old. The conduct and behavior of the machine at the end of the three year period may be better than the first year, but the machine has deteriorated.

Q Do you believe this organic or functional?

A Oh, I think it is organic.

Q What do you mean?

A It is a constitutional disorder. It effects the brain. Not with the idea of coming and going, but once it gets in, it stays there.

Q Do you consider there was such a deterioration there?

A I certainly do.

Q And do you say that merely because the boy's conduct had improved for a day or two that that mental deterioration stopped?

A By no means.

Q Do you say by that reason of his conduct, improvement, that he had improved from insanity to sanity?

A No.

Q Now, Doctor, how many patients did you have in Overbrook in your care?

A I would say 350 in my particular care.

Q You mean in your ward?

A In my different wards.

Q Then I suppose that insane people talk sometimes, don't they?

A Oh, yes.

Q And they think sometimes, don't they?

A Yes.

Q And they have some association of ideas?

A They have their rational moments.

Q Now, doctor, simply because they talk at times and they eat at times and they have association of ideas at times, that doesn't make them sane?

A No.

Q And if a patient is confined in Overbrook hospital and wants a drink of water, he goes and gets it?

A Yes.

Q And if you had to throw open the door to all of those patients you have at Overbrook who have those ideas, in other words, who wanted a drink of water and gets it, there wouldn't be very many?

A No.

Recross Examination by Mr. D'Aloia.

Q When did you examine this boy after the third of September, 1925?

A On the 28th.

Q Where?

A At the jail.

Q Did you find any evidence of a delusion there at the time?

A Yes.

Q What delusion?

A A delusion of persecution.

Q Yes, against the Overbrook institution and people who wanted to bring him back?

A Yes.

Q Did you find any evidence of hallucination?

A Yes.

Q What was that?

A He stated that he heard Dr. Davies' voice when Dr. Davies was not present on the ward at all.

Q No, you are going back to what he told you——

A I am answering.

Q —Just a minute. I am asking you whether you found any evidence of hallucination at the jail on the 28th of September. Not what he told you about what he heard in March, 1925.

A I am telling you that on the 28th day of September, when I examined him at the jail—

Q Yes.

A —he stated that he had heard previously while at Overbrook—

Q While at Overbrook?

New Jersey State Library

A Yes.

Q But while at the jail did you get any evidence of hallucinations?

The Court. While he was at the jail.

A No, no, he didn't speak about hearing then.

Q Now, do you agree with Stoddard on Mental Diseases that a great many cases of dementia praecox, that they improve to such an extent that they leave the institution and go home?

A That all depends upon who has charge of the patient.

Q Well, a good doctor like yourself, who had charge of the patient, of dementia praecox, is it possible for that case to improve so that it is possible for the patient to leave the institution and go home?

A Why, yes.

Q Now, is it possible for the improvement to continue after the patient gets home and there engaged in his occupational work which he was engaged in before he was taken to the institution?

A It depends upon the occupation.

Q Here is the case. He had driven a taxi cab in New York in 1923 and 1924, he came to your institution committed by yourself and Dr. Davies at the request of his mother in March, 1925, and he was allowed to go or went on the 28th of June, 1925, and we find with reference to his going these entries, we find words like this, "Amazingly improved" and then we find on the 26th of August, 1925, after he left the institution on the 28th, he goes over to New York and passes an examination to drive a taxi. Would you say there is improvement there?

Mr. Wachenfeld. I object. It incorporates facts which have not been proven in this case and which, as a matter of fact, are not facts.

The Court. What reference in the testimony is there as to the taxi examination?

Mr. D'Aloia. None as yet. I am going to assume it now, and if I do not connect it up this testimony will be stricken out.

I will withdraw the question.

Q Do you admit that there are cases of dementia praecox that improved to such an extent that they are allowed to leave the institution and go home and the improvement continues and then they go back and do some of the work that they used to do before they went into the institution?

A Some patients are allowed to go home.

Q Well, are there cases like that?

A They take up simple tasks, but invariably when they are bona fide cases of dementia praecox they are returned.

Q Now, you diagnosed this case as a catatonia dementia praecox. Isn't one of the symptoms of catatonia dementia praecox that the patient remains in a statuesque position?

A Fixed position.

Q And then when they come out of that particular condition, that rigid condition, like rigor mortis, impulsively they are liable to kill somebody?

A Yes.

Q Do you find anything impulsive in the conduct of this young man from the morning of Tuesday, September 1st, when he says he first went up there to look at this nice, big house and continued on until Sunday night, after he had gotten this taxi and killed this colored man and shot him and the next day went and got this little girl and shot her, and he shot Sandine and hid her body in that woods twenty miles away and came home and took his mother for a ride and called up the lady at 136 Mountain Avenue, and got books from the library and was at his house when he was arrested on Saturday, September 6th, 1925—

Mr. Wachenfeld. I object to that. I object to the testimony of the Prosecutor about the killing of the little girl. That is not admissible in this case, because it is prejudicial.

The Court. Overrule the objection.

Q What is your answer?

A Well, my answer is this, that the whole act was the result of an impulse. I would not call it, literally speaking an impulsive act, as I have seen this boy by experience at the

hospital with my own eyes. I did not see the affair. I was away at the time.

Q You did not find anything in that conduct that savors of catatonic dementia praecox.

A Why, it is not inconsistent with catatonia dementia praecox.

Q And it is not inconsistent with any dement praecox whatever, catatonia or otherwise, so far as impulses are concerned.

A I do not think the impulsive state stands out very boldly.

Q Can you differentiate between this case and the ordinary case of kidnapping where the motive is ransom and the killing takes place at various steps of the crime right up to the time of the demand for the money?

A Why, yes. I am not familiar with many kidnapping cases.

Redirect Examination by Mr. Wachenfeld.

Q Doctor, with relation to the delusions or hallucinations, do you remember the boy speaking to you about a second Jesus Christ while he was at the jail?

Mr. Wachenfeld. I object to that.

The Court. I will allow it.

A Yes.

Q Will you tell us about that affair?

A In answer to the questions put to him at the time I examined him at the jail, the question "Did you do right or wrong?" he said, "I did right." Then when I asked, "Why did you do right?" He said that "It might make me like other people; get me out and mix up with other people and make me a second Jesus Christ."

The Court. Doctor, at that same examination did you not ask him if he felt as Christ now and didn't he answer "No?"

Witness. I did not ask him that question. I do not recall that, your Honor.

The Court. Well, I will withdraw the question.

John H. Thompson, Recross.

Recross Examination by Mr. D'Aloia.

Q This is the only examination you made of him on the 28th; is that right?

A Yes.

Q Do you remember this gentleman being there, Mr. Barber?

A Yes.

Q You were introduced by Barber to Noel or did he know you?

A Oh, it was not necessary, Noel knew me.

Q No. I mean when Noel saw you he recognized you?

A Yes.

Q And he called you Dr. Thompson?

A I asked him if he knew me.

Q And he said "Yes?"

A Yes.

Q Who spoke first, did he, you or Mr. Barber?

A I did.

Q Did you know at that time when you went into that jail with Mr. Barber that Mr. Barber had been there a week previous and spent an hour and eight minutes with him alone?

A No, sir.

Mr. Wachenfeld. I object to that. The objection is there is no proof in this case that Mr. Barber went in there and spent an hour with him there alone.

The Court. Sustain the objection.

Q Well, who was with you when you went in there on the 28th beside Mr. Barber?

A I have already stated that and will state it again.

Q Please do it.

A I went in with Dr. Davies, and Mr. Smith and Mr. Barber and the stenographer were there in addition to Harrison W. Noel in the same room.

Q You and Dr. Davies were the two physicians who had signed the commitment papers in March?

A No, I didn't commit him at all.

Q But Dr. Davies signed the committment papers and you were the witness called before the Court.

A I cannot commit in the institution with which I am connected. I admitted him to the hospital.

Q Well, besides admitting him to the hospital you appeared before Judge Brennan and testified in March, 1925?

A I never knew that I did.

Q You never knew that you did, that you testified?

A I don't know Judge Brennan.

Q I will withdraw that question. Did Dr. Davies examine him in your presence too?

A No, Mr. D'Aloia, he simply came with the patient the night he appeared at the hospital.

Q This particular bit of information that you gleaned from him about why he had killed first the chauffeur and then the little girl, was that in line with the story that you had some time previous to this examination given vent to, that his emotions were damned?

Mr. Wachenfeld. The same objection, upon the ground that the question is not admissible, improper, irrelevant and evidence of another crime which is prejudicial to this defendant.

The Court. Overrule the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Now, wasn't this answer he made to your question as to why he had killed these people because it would make him a better man? Wasn't that in line with your particular theory with reference to this case, after you heard of the crime, when you said his emotions were damn and something like this would furnish a shock which would unleash or undam those emotions?

Mr. Wachenfeld. I object. It is unfair to frame the question as though these things are facts, because they are not.

The Court. The doctor will answer.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A I made no such statement at all. I am not on record as having made that statement. I do want to state however, that a certain newspaper made that statement, from which you got that information.

Q Do you know, as a matter of fact, why he should answer the question when you put it to him that way, and say it would make him a better man and that is why he killed and because it would make him better, and when Dr. Beling asked him the same question two weeks before he said he killed because he wanted to get the four thousand dollars.

Mr. Wachenfeld. I object because there is no testimony as to what he said to Dr. Beling.

The Court. Sustain the objection.

Q I will read the order of the Juvenile Court committing this boy, "I, Daniel J. Brennan, Judge of the Juvenile Court of the County of Essex, having examined a copy of the application in writing, certificate of George W. Davies and Allan S. Kirkwood, two duly qualified physicians and the temporary order of committment for the admission to and confinement in the Essex County Hospital for the Insane, of Harrison W. Noel" and so on and so forth, and it appearing therefrom and from the testimony of Anna W. Noel, the mother and of John M. Thompson, M. D., two reputable witnesses called and examined upon oath—Are you the John M. Thompson mentioned in here that the Judge cites in his order as having heard your testimony?

A That is my name.

Q Well, now, read the order and see if your memory is not refreshed that you have testified before Judge Brennan when the mother asked that this boy be committed.

Mr. Wachenfeld. I want to object to that because the petition in this case is signed by the father of the boy and not the mother.

Mr. D'Aloia. Well I will correct that. The father then.

A I do not account for the use of my name there. I will tell you. Let me state this—

Q Does that refresh your recollection at all, doctor? If it does not, say so. Did you testify when this boy was committed, or didn't you?

A Mr. D'Aloia, I never saw Judge Brennan. I do not know Judge Brennan, and therefore I could not testify in Judge Brennan's presence. I do, however, say this, that as Senior Resident Physician, representing the Senior Ward at Overbrook, every two weeks I am called into a so-called lunacy hearing.

The Court. Is it possible that you were called in at the hearing and not be called in that case?

Witness. No, I would have remembered that.

Q Do you mean to tell us that your name cited here as one of the witnesses before the Court upon whose testimony this committment was made out, that you did not testify?

A Well, I say I testified at the lunacy hearings which are held every two weeks in the County Adjuster's office, Mr. Mahoney's office, as far as I know.

Q Did you see the Court? This is the order of the committment.

A Is that Judge Brennan's signature?

Q Yes. This is the final order and it recites from the testimony of Anna M. Noel, mother, and John M. Thompson, two reputable witnesses, the Court commits—

The Court. Now, just a minute. Mr. Mahoeny is designated by the Court to take testimony.

Mr. D'Aloia. All right.

Q Did you testify?

A I certainly did.

Q Now, when you went up on the 28th of September, 1925,

to this jail, you, who had testified in March, you who had had this boy under supervision in August, you had had a dinner with his mother before his escape from the institution, when you went there with Mr. Davies and Mr. Barber and Mr. Smith, do you think that he knew what you were there for?

A Why, in what respect?

Q Well, did he know what your purpose in going to the jail was?

A I don't know.

Q Do you know whether he understood that he was under a charge of murder, and that you and Dr. Davies, together with his attorney, Barber, from New York, were there to have an examination so as to help him out?

Mr. Wachenfeld. I object to that, because there is no evidence in this case that Mr. Barber was his attorney.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Q Now, doctor, can you recall my question?

A Will you repeat it?

Q (Question read.)

A I assume that he did. I assume that he realized

Q He realized that you were to examine him?

A I don't know that he realized what I was there for.

Q Now, did Mr. Barber do any talking to him before you got this answer?

A No. I assure you about that. Mr. Barber was a silent witness. He had nothing to do with our examination.

ANNIE WEBSTER NOEL, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Mrs. Noel, where do you live?

A 295 North Mountain avenue, Upper Montclair.

Q You are the mother of Harrison Noel, the defendant in this case?

A Yes.

Q Have you any other children in your family?

A Two; I lost one.

Q Who are the children who are living?

A Dix Noel and Mary Noel.

Q And is Mr. Noel living with you at the present time?

A No.

Q How long since he has been living with you?

A Since Harrison was committed to Overbrook.

Q How long have you lived in Montclair, Mrs. Noel?

A About sixteen years.

Q And where was Harrison born?

A In New York.

Q How old was he when he came to Montclair?

A Oh, about four or five; between four and five years old.

Q How old is he now?

A Twenty.

Q Did Harrison go to school in Montclair?

A Yes, sir.

Q Did he go to the Montclair High School?

A Yes.

Q Did he have any difficulty up to his junior year with his studies?

A No, sir.

Q What happened in his junior year?

A In his junior year his teachers complained to me——

Q Don't tell us what his teachers said to you.

A Well he failed in all his examinations at the close of the junior year.

Q Then, what did he do during the summer?

A He went sailing for about three weeks, and then he came home and studied.

Q And when he studied, did he have a tutor or any outside help?

A No, no help at all.
Q Did he make up these examinations in the fall?
A Yes, sir.
Q All of them?
A Yes, sir.
Q And then he completed his senior year in the Montclair High School, did he?
A Yes.
Q After his senior year in the Montclair High School, what did he do, with reference to continuing with his education?
A He passed his college board examination in June.
Q For what college?
A For Harvard.
Q And was he going to Harvard?
A Yes, sir.
Q And did he go to Harvard first?
A No.
Q Where did he go first?
A He went to Andover.
Q How did he come to go to Andover, do you know?
A He conceived a notion about the middle of the summer that he would like to go, very suddenly, he said, "I must go to Andover."
Q Well, after he said he must go to Andover, did he go to Andover?
A He went to Andover for about two days.
Q Then, where did he go?
A Then he went to Harvard.
Q How long did he stay at Harvard?
A Until immediately after the Christmas vacation.
Q What happened, then, Mrs. Noel, did he stay at Harvard?
A No, he returned from our home to Harvard, after the Christmas vacation, and immediately went to the Dean of Harvard and told him that he must leave, he cannot stay.
Q And after he told him, after he told the Dean he must leave and cannot stay, he left, is that right?
A Yes, sir.
Q Then, what did he do after coming home?
A He applied for a position on the Stock Exchange in New York City.

Q Did he get such a position?

A Yes, sir.

Q What nature of position, what was it?

A I believe it was messenger, I don't know. He wore some kind of a grayish blue uniform.

Q You believe it was a messenger?

A Yes, he wore a gray-blue uniform.

Q How long did he retain that job?

A About two weeks.

Q Then, what did he do?

A Then he came home and said he was going to study at home; he was going to study Latin and mathematics, and nothing else at all.

Q How long did he stay at home?

A He stayed at home about two or three weeks.

Q And what did he do during those two or three weeks?

A He secluded himself in his room on the third story. He said that he could not study unless he was all alone. He came down to his meals only and he went for a week all by himself, I could not get him to associate with his brother or the family in any way.

Q Did he go out with any other children or boys in Montclair?

A Not even with his brother.

Q And after the end of two weeks, or so, as you say, what happened then, if anything?

A Why, he announced very suddenly that he could not study at home, he could not study with even the family around. he had to be away all by himself. He must be all alone, he said, and he went to a small cottage up near the Boy's Scout Camp, not near, but about a mile or so from the Boy's Scout Camp. He did this over the 'phone without my knowledge, and announced that he was going up there to stay.

Q Before that incident, do you remember a black crepe incident?

A Oh yes.

Q What was that incident. please, will you tell us?

A Why, his room was on the third story and quite secluded. He chose that room for its seclusion. and he announced one day that he did not like it very much; that the light was bright,

and he thought he would——

Q What was the paper or the paint in his room?

A Oh, it was like all the rest of the house.

Q And did he ever complain about it being too light before that time?

A Oh, no.

Q Then what happened?

A He said he was going to get some black cheese colth and drape the windows with it, and I said, "all right;" and a few hours later, I was surprised to find a package coming from Bamberger's, a whole bolt I believe it is called, of black cheesecloth.

Q And did he ever complain about it being too light before that time?

A Oh, no.

Q What did he do with the black cheesecloth when he got it?

A Why, he made a kind of a little coop or a little place in the middle of his room up there, I was appalled when I went upstairs and saw it after he had been working a few hours, he fastened some sticks to the ceiling; it was a third story room, and it came out irregular, and he fastened these strips to the walls and the ceiling and hung this black cheesecloth around this table, so that it fell to the floor and it excluded everything excepting where he drapped it up to let a little bit of light come on to the table.

Q And what did this black crepe cover?

A Just himself and the table and the chair.

Q And what did he do after he built that black crepe?

A He stayed there studying a few days. I was very much appalled, but I did not cross him, and then two or three days later he made this announcement that he must get away by himself somewhere, if he was ever going to amount to something, and he, as he said, engaged this small farm without my knowing it.

Q When did he leave for this small farm house, in the day time or during the night?

A He left about near nine o'clock at night.

Q About what month, can you recall?

A No, but I know it was the winter time.

Q How do you know it was in the winter time?

A Oh, there a was very heavy snowfall, it had been falling for twenty-four hours and the snow was deep.

Q Did you expect him to leave that night?

A Oh, no, I was hurt about it.

Q Then did he leave that night?

A Oh, yes.

Q What time did he leave?

A About nine o'clock.

Q And what did he take?

A He took a very heavy Scout knapsack of clothing, because he said he was going to stay some time, and a blanket roll, and he took a very large package of law books. He said he was not going to study Latin or arithmetic any more, but he was going to study law.

Q Did you expect him to go that night?

A No, sir.

Q Did you persuade him not to go that night or try to persuade him?

A Oh, yes. I entreated him.

Q And did he go?

A Oh, yes. I entreated him.

Q And did he go?

A Oh, yes.

Q How long did he stay there?

A About three weeks.

Q Did you visit him up there?

A Once.

Q And was this an isolated place up there or were there any houses around?

A No houses anywhere.

Q And at the end of three weeks what happened?

A He came home quite suddenly, unexpectedly.

Q Did you know he was coming home?

A No, sir.

Q Did he advise you he was coming home?

A No, sir.

Q And then what happened?

A He was home about ten days or so and one Sunday afternoon his father and I went over to a friend's house for Sunday

supper, and as I came in the house he was standing near the living room fire place and said he was going up to Middlebury to College.

Q Prior to that time had he said anything about going to Middlebury?

A No, I didn't know where Middlebury was.

Q Did he go to Middlebury College?

A He went to the town where Middlebury is.

Q And in what state is that town in?

A It is Vermont, I think.

Q How long did he stay there?

A Oh, I think two or three weeks; about two weeks, and perhaps three weeks.

Q And did he go to college there or where did he stay there?

A Why, he rented another little farm house there, and by his letters he wrote us, he wrote us some letters, very brief letters and stated that he rented another farm house there, which he said was not occupied at all during the day, a watchman or something of that sort, or a milkman, came and lived there at night, but no one was there in the daytime, so he was all alone.

Q You told me, I think, how long he stayed there?

A Yes, not very long, two or three weeks.

Q And where did he go from Middlebury?

A From Middlebury he went to Williamstown, he said he was going to Williams College.

Q And did he go to William College when he got to Williamstown?

A No, he did not go to Williams College at all.

Q Where did he stay in Williamstown?

A He didn't go to Williamstown at all. He went up in the hills about seven miles from Williamstown and rented another little farm house there. I don't know where, I never visited him, but his father visited it, and it was about seven miles out of Williamstown in the woods, in the hills.

Q Did he at any time tell you anything about buying some cow bran?

A He did not tell me then, but later he told me that one of the reasons he lived in the house was that he discovered, after

living there a short time, that the thing that would make him a strong man was to live on cow bran, not exclusively, but largely, and he carried, he told me, a bag of 75 pounds, I think it was, it was a great many pounds from Williamstown up to this little secluded place of his, seven miles in the hills. He was quite proud of having been able to do it, and he said he lived on this cow bran, a very course kind of cow bran; no other bran would do, it would have to be cow bran.

Q How long did he stay at this little cottage in Williamstown, Mrs. Noel?

A He stayed there perhaps two months, I think. He stayed until the springtime.

Q And then after that what happened, did he come home?

A Yes, for a day, one day.

Q Where did he go then?

A He left again for Williamstown, he went off to Williamstown.

Q How long did he stay there, then?

A One week.

Q What was the occasion for going back to Williamstown?

A Well, there was some very intimate friends of his called the Kincaids who lived in California, but formerly lived in Montclair, and they were like brothers of his, four boys in the family, and he liked them very much. They were stopping at Upper Montclair on the way to Europe and we wanted him to come home and he came home for just a day and then he left, he said he would be back after the Kincaids had left, but he would not say. I entreated him to stay but he would not.

Q Did he say why he was going to go to Williamstown?

A No, he did not give me any reason at all, he could not stay, that was all he said, he could not stay.

Q Well, did he give you any reason why he could not stay?

A No.

Q It had nothing to do with the Kincaid family, or the boys whom he used to know?

A No, just that he could not stay.

Q And then he stayed there about one week, is that right?

A Yes, sir.

Q Then what happened, did he come home?

A Yes.

Q And how long did he stay home at that time?

A Why, we had a camping party planned for the whole family, the whole family was going camp down at Sag Harbor on Long Island. Harrison stayed home a day or so and then he left with his younger brother and his sister and his father for Sag Harbor.

Q Well, did you finally join them on that camping trip?

A One or two days later I joined them.

Q Now, will you tell me how Harrison acted during that trip, would he talk to other people or mingle with them or what did he do?

A No, he would not have anything to do with them.

Q What happened after that?

A Well, this second Sag Harbor trip was pretty short. You remember it was on the first trip that he would not associate with people, in the previous summer; on this trip, this Sag Harbor trip, I went down to Sag Harbor after the rest of the family and stayed at the boarding house in Sag Harbor one night and the next morning I went down to their camping place in a small sail boat which we owned and stayed there; that afternoon I went sailing with my younger son, leaving Harrison to prepare the dinner. He seemed very much fatigued, but he said he could fix the string beans for dinner, and we had dinner together and went to bed. I slept in a neighboring tent——

Q With whom?

A I slept with Mary.

Q Who slept in the other tent?

A Why, Dix and Harrison and his father slept there.

Q Well, did anything happen that night?

A Yes, about, oh, deep in the night before dawn it was, his father cried out, "Someone has struck me." And he cried so loudly it woke us all and I ran to his tent to see what was the matter and somebody had struck him on the head so that he was bleeding.

Q Was he bleeding badly or was it just a slight scracth?

A He bled very badly, because he had put up his hand to protect his head, apparently, and he also was struck on the hand and on the wrist.

Q Was his hand bleeding also?

A Yes, sir.

Q Then what happened?

A Why, we didn't know what to do. It was in the dead of night and quite a long ways from help, and I kept Mary in my tent and Dix laid down with his father and Harrison went right straight to sleep.

Q Well, who struck Mr. Noel?

A I said, "Who struck you, Dix?" And he said, "I don't know." And I said, "Well, what were you struck with?" He said, "I think an axe." And I said, "Where is the axe?" And we looked for the axe and the axe was in Harrison's tent in his bed.

Q Did it have any blood on it when you found it in Harrison's bed?

A Yes.

Q Did Harrison say anything at the time?

A Harrison said, "Why, then, I must have struck him."

Q Did he give any other explanation?

A No, he said nothing else at all, and the two boys bound their father's wound as best they could and Harrison went right to sleep.

Q Did you go to sleep again?

A Nobody else slept, no.

Q Only Harrison?

A Only Harrison.

Q How long did he sleep?

A Harrison slept until we woke him in the morning.

Q And when you woke him in the morning did he say anything more about it, or give any other explanation

A No, we did not dare leave Harrison with his father or Dix with Harrison.

Q Did he say anything else about striking his father?

A No.

Q Did he express the fact that he was sorry?

A No, he did not.

Q Did he give any explanation as to why it happened?

A No, sir.

Q Up to that time had there been any friction between Harrison and his father?

A No friction. His father was sever somewhat, but I did not think his father was so very severe.

Q Had there been any difficulty that day between them over any incident whatever?

A None whatever.

Q Where did you take Harrison after that day?

Q Why, at first we went to Sag Harbor, and because it was just a family matter we thought we better keep it quiet.

Q Well, did you keep it quiet?

A Yes, sir.

Q Then what did you do with Harrison?

A We kept Harrison in Sag Harbor that night. His younger brother slept with him, but Harrison seemed to be in a state of just lethargy, he did not seem to know what was going on, but I had no particular fear for his younger brother, although I was somewhat afraid because his younger brother slept with him, and the next day I took Harrison up to Dr. Frederick Tilney in New York City. He is a nerve specialist.

Q And did Dr. Tilney see Harrison?

A Just a moment or two.

Q And who did you take Harrison to then?

A Directly from Dr. Tilney's house Harrison went to Dr. Slocum's place at the Craig House

Q Is that the Craig House at Beacon, New York?

A Beacon.

Q And how long did Harrison stay there?

A Harrison stayed there until about the 1st of October.

Q Did you see him while he was at the Craig House?

A Yes, sir.

Q How often did you visit him there?

A I was allowed to see him I think twice or three times. I only remember twice that I went up there when I saw him. I went up quite frequently, but was not allowed to see him every time.

Q But you do remember the occasion when you saw him twice?

A Yes, sir.

Q Were there other occasions when they would not permit you to see him?

A Oh, yes.

Q How many occasions were there such as that?

Q Oh, some three or four times.

Q On the occasions that you saw him did you talk to him?

A Yes.

Q Will you please tell us what happened on these two occasions?

A Why, I took lunch with him one time. The doctor wished me to be near him for a number of hours. There was an attendant there at the time, of course, but he wished me to see if I could get any results, if I could make any contact with Harrison, it is called. And I had lunch with Harrison and Harrison was very much discontented with his diet; he said they did not feed him correctly; that they just gave him things that they gave the other people there, and in order for him to recover he would have to have round steak and nothing but round steak three times a day, only round steak.

Q Well, did he say anything else about his food?

A No, that was enough, that was all he wanted, round steak and he asked me to tell the authorities to give it to him.

Q Did anything else happen at that time?

A No, Harrison never did speak unless I first spoke to him. I had to do the talking and he would answer, but he would never start any remarks. I would make the remark and perhaps he would give an answer, that was the most I could get.

Q On that occasion that you were speaking to him there did you talk to him in the asylum or did you go out on the grounds with him?

A He was on the grounds.

Q The second time that you saw him what happened?

A The second time Dr. Slocum wished to see if I could take him for a walk, persuade him to go for a walk, because he had refused for a long time to leave his room at all, but remained naked in his room and he wished to see if I could get him out and so I tried and Harrison started out and walked with me around the grounds.

Q What happened after you started with him on this walk?

A Well, we went a little ways before we came to a stretch of sun shine, a shady place, but the sun shine was about perhaps as wide as from here to there, and Harrison stopped and said he could not go any further, and I said, "Why not,

Harrison?" And he said, "Because I cannot cross any place where the sun is shining." I said, "Why not?" And he said, "Because of the effect it has on my head." So I said, "Go and get your hat." And he went and got his hat.

Q Did you have a parasol with you?

A Yes, and we stopped again at the sunny place and he said the hat was not sufficient protection from the sun, so I spread my umbrella over his head and said, "Come on, now, we will make it together" and I spread the sun shade over his head and he made it, much to my surprise.

Q And after he got across this spot of sunshine how did he feel then, was he satisfied with his accomplishment?

A He was very much relieved at the time. He said, "I did not think I could cross that place. It is a great relief to me to think I can cross a place where the sun is, because I did not think I could."

Q What happened after that.

A We came to a large sunny place. We came about up to the main house. Harrison was by himself in a cottage—not by himself, but with a few others, and we came up to the large center building and between where we were standing and the Craig House, there was a large sunny place and the doctors wished to see if I could get him to make a contact with the people in the house; he would not speak to anybody or have anything to do with anybody up there, and my object was to persuade him to speak to the people in the house.

Q And did you succeed?

A No, he could not cross such a large expanse of sunshine.

Q Did he say anything or give you any reason for not being able to do it?

A He said it would affect his head.

Q Where did you take him after that?

A We returned to his room and I came home.

Q How long after that was it before he came home from the Craig House?

A I don't remember the date exactly, but it was sometime in July that I was up there, and then he came back from the Craig House sometime in October, the first of October.

Q And that would be around what year?

A Must have been 1923.

Q Did you know he was coming home from the Craig House at all?

A His father telephoned me from New York that he was coming; that he was going up that day to bring Harrison home, and I was to expect him around nine o'clock that night.

Q Now, did you see him around nine o'clock that night?

A Yes, sir.

Q Were you up or had you retired?

A I had gone to bed; I was very tired.

Q Did Harrison come in to see you?

A Yes, I was in bed. Harrison came along like this and stood at the foot of the bed and he looked round like this and he said, "Well," he said, "here I am home, but I won't stay home unless I can have exactly what I want to eat."

Q Did he say what he wanted to eat?

A I said, "What do you want to eat?" and he said, he must have round steak, and only round steak three times a day.

Q And what did you say about his suggestion of having round steak three times a day?

A I said, "Well, we won't discuss that tonight. It is nine o'clock and we must all go to bed; so we all went to bed.

Q What about his spirits at that time, were they lighter or heavier?

A Yes, he was heavier and his face was pasty white, I did not think he looked well, he looked tired out.

Q The next day, after the incident you told us of, did he still insist on the round steak three times a day?

A Yes, sir.

Q Did he get it?

A Yes. He said that I did not know round steak when I saw it, and he went to town and got it himself. I had been told not to cross him. I had interviews with the doctor and I was told that if he was in that state that he knew absolutely what he wanted to do, not to cross him if he was adamant.

Q Then did he purchase his own round steak?

A Yes, sir.

Q And did he always do that?

A No, he did that for two or three days, and then after he said, "Round steak won't do me any good, I will have to have Roquefort cheese."

Q How often did he have that?
A At every meal.
Q And did he purchase that himself?
A Yes, sir.
Q What happened after that?
A Well, it was during that time, I think, his father—I had no help at the time and I was doing the dinner dishes. I was in the kitchen doing the dinner dishes and I heard his father say to him, "Are you not going to help your mother with the dishes? And Harrison said, "No, I am not going to help my mother with the dishes." And his father said, "Then I will see to it that you do." And I heard this argument, and I thought his father, who had a quick temper was going to get into trouble with an insane boy, and I went in between them and there I saw my chance to take Harrison to another doctor, and I did not want to take care of him myself any more after he had been four months at the Craig House, and I stepped in between them, and I said, "You will have to both promise me that you will go up to Boston tomorrow to see Dr. Emerson." He is a psycho-analyst.
Q And after that night did you go to Boston?
A Yes, we went the next day.
Q And who went to Boston?
A Harrison, Mr. Noel and myself.
Q And where did you go to when you got to Boston?
A To a hotel.
Q I mean to what physician?
A We saw Dr. Emerson. He is not a medical doctor, he is not an M. D., he is what you call a psycho-analyst and I thought perhaps that would help.
Q Did he treat Harrison?
A He was a little doubtful about treating Harrison when he heard Harrison had attacked his father and thought possibly he did not have any right to treat Harrison.
Q But did he?
A Yes, sir.
Q How many times did he treat him?
A Harrison stayed there a week.
Q And at the end of the week what happened?
A Harrison had been rooming with me. I had a room with

a little adjoining room and the door was left open between, We were there alone in Boston, and Harrison had an appointment on a Monday with Dr. Emerson at three o'clock, I think it was, and he told me at two o'clock that he was not going.

Q Did he say why he was not going?

A Yes, sir.

Q What did he tell you?

A He said Dr. Emerson was an old fool and Dr. Emerson cannot do anything for him at all because he was approaching the subject in the wrong way. He said the only thing that could help him was to weigh his food, and he showed me a small weighing machine that he had bought in Boston that morning.

Q When he said that that was the only thing which would help him, did he say in what way it would help him?

A He was not very definite about that. He seemed to think he was going to be something some day, some good man or some big man.

Q Well, how did he express it?

A Well, he said, "The only way I can ever get to be anything worth while is by weighing my food."

Q Did you then leave Boston after that incident?

A I called up Dr. Emerson and Dr. Emerson said not to cross him.

Q Then what happened?

A I went home.

Q What happened after you got home?

A Well, he did weigh all his food, and then he said he would have to have salt pork with every meal. He said his other ideas were wrong about eating, but he had a weighing machine which was like a weighing machine that you weigh letters with and he weighed his food on that.

Q Would he eat anything before he weighed it?

A No, and besides that he had to have three ounces of salt pork with every meal, and he weighed this pork and I was very much distressed and I thought it would not agree with him.

Q How long did that continue, Mrs. Noel?

A Oh, not very long. That lasted perhaps a week, something of that kind.

Q Do you remember an incident when he told you when he had to go upstairs that he could not?

A Yes, sir.

Q When did that happen?

A That was just one of a dozen such things that happened all the time. He couldn't do this and he couldn't do that, and I remember that particularly well. He stood at the foot of the stairs in the front hall and said, I would have to bring him upstairs, and I said, "Well; why, Harrison?" And he said, "Well, because it is perfectly impossible for me to go up the stairs, and so my instructions had been not to cross him, so, I said, "All right, downstairs is comfortable and you can live downstairs."

Q Then, what happened, did he live downstairs?

A Not then because in the afternoon he had forgotten about it and he went upstairs in the afternoon and I drew his attention to the fact that he had gone upstairs, because, if he felt he could not even get a piece of bread for himself or anything like that, I had to play up to his consciousness when he felt he could do those things, and encourage him that he would be able to do it, then perhaps he would do something else too, and he went upstairs, that afternon and for a while he saw he could live upstairs, and then there was a change in temperature, and then he got an idea about the temperature——

Q Do you remember an incident about rye bread?

A Yes, sir.

Q Tell us about that.

A That was one of the ideas about food. I think that came after the Roquefort cheese. He said he could not eat anything, any other kind of bread than rye bread. He was eating much more at that time and he felt he should have rye bread and he got it——

Q Where did you get the rye bread from?

A He found some certain place in Jersey City, some small shop where he got the bread and he got it two or three times, he went and got it and brought it home and it was not rye bread then, it would have to be nothing else but pumpernickel, so he bought the pumpernickel some place in New York City.

Q Then, what happened after that?

A He got a notion about temperature.

Q What was it about temperature?

A It was coming on winter then and it was about November and he said he could not stand the cold and I reminded him that he was a Boy Scout and that he had stayed outside for weeks, and had built his own place up in Oakland, but he said he had changed, and it was in November—although this is November—he had a hat over his head and an overcoat.

Q You say a hat over his head?

A I mean a cap and the cap went down over his ears, you know.

Q That was what he wore in November?

A Yes, sir.

Q Was the weather at that time mild or cold?

A Well, just as November weather is.

Q Well, was it cold or mild?

A Mild.

Q Then what happened after that?

A He slept downstairs for quite a little while and he tried the coal bin first, I let him stay down there, I had been instructed not to cross him and he stayed there a week or two.

Q How long did he stay in the coal bin?

A For two weeks.

Q What happened after that?

A He had brought his mattress downstairs and then he said he could not remain any longer in the coal bin and I said, "What is the matter?" He said he could not sleep downstairs, he would have to sleep in the living room on the floor, on a mattress.

Q Then what happened?

A He still had his temperature idea, and he slept downstairs for a little while and then he concluded that he could sleep upstairs and for a time he showed a little progress, he had his meals regularly and he slept upstairs, and he seemed to be getting his confidence back a little bit, and I did not cross him and he said, finally, he would have to go south, and his father said he woudl go with him and his father packed his grip and agreed to go with him, and they went to the Erie station, about five minutes walk from our place and Harrison was to follow with his own grip. They had a great deal of difficulty packing it and it took Harrison hours to pack, but

his father preceded Harrison to the station and Harrison was to follow him and about a half an hour or so later his father returned and said he waited and the train had gone, but Harrison did not come.

Q Did you see Harrison after that?

A His father did not, I did.

Q Where did you see him?

A His father went into New York City on my advise and left Harrison to fight it out with me, and his father went into New York City and Harrison returned.

Q Harrison returned after his father went to New York?

A Yes, sir.

Q What did Harrison say?

A He said he woud have to go alone, that it would not do him any good to go with someone else.

Q Did he go alone?

A Yes, sir.

Q Did he go alone?

A Yes, sir.

Q Where did he go?

A He planned a trip. I told him to plan a trip and to let me know how much it would cost and I would let him have the money, and I gave him thirty-five dollars and he planned a trip in which he was to walk most of the way, and that sounded reasonable.

Q Where did you go?

A He took the train down towards Tennessee and he was then to go a walking through the hilly section in Tennessee. But he didn't do it.

Q What did he do?

A He telegraphed me.

Q From where?

A I don't remember the place, it was some place in Tennessee. I am very poor on the names and dates, but he telegraphed me from some place in Tennessee that his money was gone and he had not been walking as he planned, but he had gone on the train, and his money was gone, and would I telegraph him money enough to come home with.

Q Did you telegraph him the money that night?

A No. I said that he had made these plans and I would send him no money at all.

Q Well, did he come on?

A Yes, sir.

Q Do you know where he got the money to come home?

A No, I did not ask him. I did not make it a practice to ask Harrison anything. It was not my policy to ask questions.

Q How was he when he got home?

A He was very much brighter and he had a cold and he was willing to sleep in his own bed. I watched every progress, I must say that, and all along during the three years he was more improved then than at any time then.

Q And how long did he stay home after he came home from Tennessee?

A He stayed home about a week, until about a week before Christmas, about ten days.

Q Then what did he do?

A Then he said again he could not stand it where it was so cold and I tried to talk to him, and his father was away at that time; his father was staying in New York City during the week and coming each week-end, and I said to him, "Harrison, if you will make a definite plan"—I wanted him to make some definite plan, I said, "if you will make a definite plan and make a contract with me, I will let you have the money to pay your way out if you will walk but, but I will not send you any money to come home with. You must understand that when you leave." He said he would go on the train, on the through train to Jacksonville and and he promised me that he would not leave, or ask for any money when he came back, and the next I heard from him he was in St. Petersburg and he wrote a letter saying he had enough money to go to St. Petersburg, but he was shipping as a mess hand on a Danish steamer, I think it was a Danish steamer.

Q And where did you hear from him next?

A We heard from him from Hamburg.

Q And what was that message?

A He sent a cablegram asking for money to come home, and I was out of town when the cable arrived.

Q And did you send him money to come home?

A Yes. His father sent him the money to come home.
Q And did he come home?
A Yes, sir.
Q How long did he stay home that time?
A Twenty days.
Q And how was he when he came home?
A Well, he seemed very much improved, or he seemed better and he told me that the work was very hard——
Q Well, did he tell you that he had had trouble with the cook?
A Oh, no, not on that trip, he had trouble with the cook on another trip.
Q Did he tell you when he went to Europe that he had trouble with the cook?
A Oh, no, not on that trip; he had trouble with the cook on the George Washington.
Q What was that?
A The George Washington trip was in. When he failed to pass his examinations in June and then he went sailing a little while.
Q Where did he go on this trip on the George Washington?
A He wanted to go to Andover, but his father said he would not have to go, and he didn't go that summer, and his father got him a job as deckhand on the George Washington.
Q Where did he go on the George Washington?
A That was a trip to Europe.
Q And when he got back from that trip did he tell you of the trouble he had with the cook?
A Yes, sir.
Q Did he say he had any trouble?
A Yes, sir.
Q What was it about?
A He said the cook furnished rotten grape fruit for breakfast.
Q What did he do?
A He jumped over the table and knocked the cook down; he also was chased around the decks, he said, during that trip, all night long by a drunken sailor with a knife.
Q Now, let us get back to the second time when he got

home from Europe. You say at that time he was improved?

A Yes, sir.

Q How long did he stay home then?

A He matriculated at Columbia in extension work, and he stayed home a little while and went to Columbia.

Q How long did he stay in Columbia?

A He took up four courses at Columbia, and he took them for two or three weeks, and then he dropped two of them and continued those two down to about ten days to the Easter vacation. I don't remember the exact date.

Q And did he come home then?

A Yes, sir.

Q What did he do then?

A He said he would have to take a hiking trip through the Alleghenies.

Q Did he say why he would have to take that trip?

A Oh, yes, he was going to be a rough man, he was just going along and now is his chance.

Q His chance for what?

A His chance to be what he wanted to be, a very rough man.

Q What else did he say about this trip that he proposed to take?

A It was to be a hiking trip to the Alleghanies and he said he must have the money to go, and I said he must have a definite plan, he must tell me definitely where he was to go or I would not give him the money unless he would tell me where he was going and the exact amount of money he would need, otherwise he would not hold to his plan, but he could go if he made his plan and we gave him the money when he made his plan to go.

Q He did get it?

A Yes, but he did not go where he had planned, because I heard very soon after by telegraph that he was at Dover.

Q And did he come home after that?

A Yes, sir.

Q How long did he take the course?

A Well, he stayed home a little while and then he took up a brick laying course at the Y. M. C. A.

Q Where did he take the course in brick laying?

A The 57th street branch of the Y. M. C. A.
Q How long did he take the course?
A About six days.
Q And did he quit there after that?
A Yes, he went up to Hartford, Connecticut?
Q Why?
A Because he said he could lay bricks well enough, and he could lay them in Hartford, and I could not do anything with him. He used to get these perfectly obstinate views and I couldn't do anything with him.
Q And did he buy a bricklayers outfit in Hartford?
A Yes, sir.
Q And what happened after that, did he come home?
A Yes, sir.
Q And what did he do then?
A He stayed home awhile and then he started to look for a job around the house.
Q Did he get a job?
Q Yes. He got a job through the World making up poms poms.
Q And how long did he work at that?
A One week.
Q And then what happened?
A Then he came home and it was now well on to the summer vacation, and he stayed around the house a little while, and his father offered to take the whole family abroad, but Harrison refused to go abroad, and of course, when Harrison refused I would not go without him.
Q Why not?
A I could not leave Harrison home alone. I would not have felt it safe for him or anybody else.
Q Do you remember his putting up or fixing up some machinery in his room to make these pom poms?
A Yes, sir, that was in the fall, later on.
Q What happened after this incident that you just spoke of when you did not take this European trip so you could take care of Harrison?
A Why, Harrison stayed home alone and he took a job as substituted postman up in Montclair and he held the job all summer, and I felt very much encouraged, I felt if he held that

kind of a job for three months he was on the way to recovery, and as I say, I always looked for recovery.

Q Now, what happened after the post office job?

A Afterward his brother came back and then went to Harvard, and Harrison said he could not stay home any longer, home is no home for him, he said, and he said, "I will go to New York City and take a job". So, I let him go, and I did not know what else to do.

Q Then, how long was he gone?

A He went to New York City and he took a job in New York City.

Q Doing what?

A First he tried doing these pom poms, he said at first he had tried them out at home, he rigged up a little machine and he was trying to make the pom poms at home, and then he said he was going to New York to go into the pom pom business.

Q What kind of machinery did he rig up?

A Oh, that was another one of those terrible things he thought.

Q Well, terrible things does not mean anything.

A Well, he was up on the third story and he tied a great big block of wood to these things, with another piece hanging down like this (illustrating) and he got some stones and wrapped them up to have as a balance.

Q How long did that last?

A Only a day.

Q Well, now, did he stay home after that?

A No, he went to New York. He used to come to see me regularly. He would come for the week-end, sometimes he would come unexpectedly.

Q Well, did you know what job he was doing?

A No, I didn't know at that time.

Q What happened after that?

A Well, that went along until Christmas. It was just a few weeks, four or five weeks, and at Christmas time his father said, "What is it you are doing in New York City?" He would not tell his father. He said, "Throw it up and stay home a week."

Q Well, did he stay home that week?

A Oh, yes, he was there.

Q What did he do that week?

A Well, apparently when Dix left for Harvard he went back to his job, but I was busy one night and I heard the doorbell ring and I went downstairs and there was a policeman there, and I let him in, and he said, "Have you a son named Harrison?" And he said, "Well, I think you had better call 700 Clifton Springs." I said, "What is the matter?" He said, "I cannot tell you what is the matter." He said, "Just call 700 Clifton Springs, and I called 700 Clifton Springs and it was police headquarters and they said, "Have you a boy named Harrison?" And I said, "Yes," and I said, "Is he in trouble." And they said, "Well, we don't know exactly." I said, "Is he in on a charge?" And they said, "No," we just found him drifting on the street." It was such a bad snow storm, and he said, "We don't think he ought to stay out," and I said, "Has he money to get home?" and he said, "Yes." I said, "Is there any charge against him?" and they said, "No" and I said, "You better let him come home."

Q Did he come home?

A Yes, in the morning.

Q Did you hear from Clifton Springs after that?

A Yes. Harrison went to Clifton Springs and he said he had been up there to see Mr. Gray, and he said he was sure Mr. Gray would like him to go back to Columbia.

Q Did he go back to Columbia?

A Yes.

Q How long did he stay?

A About ten days.

Q Then where did you hear from him then?

A Well, then the police tried to telephone and I didn't hear.

Q Well, who did you get the information from, the Montclair police?

A Yes, they were rather disturbed this time and said, "What is the matter with your boy?" and I said. "He is very unsteady," and they said, "You call Clifton Springs 700 again."

Q Did you call them?

A Yes, and this time they said to me that he had been annoying Mr. Gray, and they said, "You will have to come up right away and if you don't come right away and get your boy

immediately, we will have him committed in New York State.

Q Did you go up to get him?

A I went up.

Q Did you bring him down?

A Yes.

Q And was it after that he was committed at Overbrook?

A Yes. I saw the health officer in Clifton Springs first. I went straight to the police station and the health officer was there, and he said he had examined Harrison and I said, "Well, what is the matter with him?" And he said, "Well, I am sure he has dementia praecox."

Q Well, after he told you that did you bring the boy back home?

A Yes.

Q And then was he committed to Overbrook?

A About a day or two later.

Q Now, who were the two doctors who saw him at the time he was committed to Overbrook?

A Dr. Davies and Dr. Kirkwood.

Q Do you remember a doctor DeForrest in New York who he went to?

A Yes. Harrison would not go to him.

Q Do you remember any other person he saw beside Dr. Emerson and Dr. Tilney?

A No.

Q Was there a Dr. Riggs?

A Oh, yes.

Q Where is Dr. Riggs?

A Well, Dr. Riggs is a nerve specialist, but Dr. Riggs saw him once while he was at Williamstown and later on Dr. Riggs said he was too serious a case for him. He said he could not take such cases at all.

Q He went to Overbrook in what month?

A It was in March, wasn't it?

Q I think it was February.

A February.

Q February 24th.

A Well, I don't remember that date.

Q Do you remember how long he stayed at Overbrook?

A Yes.

Q Do you remember his coming home from Overbrook?
A Yes.
Q Did you know he was coming home?
A No. I was frightened to death when I saw him.
Q What did you do?
A I told him that he could not stay at all, that I would call the police instantly.
Q You told him what?
A I told him he could not stay at all. He appeared with his brother. His brother had been there to Overbrook to take a short walk with him.
Q Yes, and then he and his brother finally came to your house?
A Harrison tried to go to Newark first
The Court. Now, just tell us what you know about it.
Witness. Oh, yes. Not what his brother said?
The Court. No.
Q Well, finally Dix and Harrison come to your house?
A Yes.
Q What was said then? Did Harrison say anything to you?
A No. Harrison never starts anything.
Q Did you say anything to him?
A Yes. Of course. I said I was awfully glad to see him, but I was terribly frightened, and I said, "Harrison, you cannot stay. Did Doctor Thompson let you come?" And he said "No." He answered questions. That is all. I said, "I will call up the police and have you taken back unless you call up Dr. Thompson yourself.
Q Did he call up Dr. Thompson then?
A Yes.
Q What happened?
A Dr. Thompson made him promise to come back—of course he made me promise, too.
Q To bring him back?
A To bring him back.
Q Did you bring him back?
A No.
Q Why not?

A Because we were going to bring him back,—Dix and I thought we could get him back, but he was very clever and he got Dix off somewhere on an errand, Dix is younger and he sent Dix off, and I saw Dix go down the street to look around the corner—and I was looking for Harrison and as I looked for him he went down in the cellar and got his father's wheel and was around the side of the house and was off.

Q Where did you locate him next?

A I telephoned the police and Overbrook immediately.

Q What police did you 'phone?

A I 'phoned the police of Montclair.

Q And did you phone Dr. Thompson also?

A Yes, and Dr. Thompson called all the police in the neighborhood.

Q Did you see him again?

A Yes, I saw him several days later.

Q Where?

A His father telephoned me. Do you want that?

Q No. You cannot tell us what his father said. Where was he, if you know, from that time on, in New York.

A I know he was in New York.

Q And did he come back to Montclair?

A Yes.

Q When did he come to Montclair?

A He came back to Montclair on Friday. Wasn't the fourth of July on Saturday, and he come out on Saturday afternoon, thought he was going to spend the holiday with me.

Q Did he spend the holiday with you?

A Yes.

Q Did he go back to New York?

A He went back to New York.

Q When did he come back to Montclair again?

A Of course, the third was when I took him over to Overbrook.

Q When did he come back to Montclair?

A I think he came back the next week-end.

Q Did he stay then or just a visit?

A Just a few hours.

Q And then he went back to New York?

A Yes.

Q So he finally came to Montclair before the third of September, didn't he?

A Before the third of September?

Q Yes.

A He came out on a Saturday preceeding his arrest. I haven't got the date.

Q The Saturday preceeding his arrest?

A Yes.

Q So he was arrested on Saturday, also?

A Yes.

Q So he had been in Montclair for that week?

A Yes.

Q Now, up to the week preceeding the third of September would Harrison do as you asked him to do, such as work around the house?

A No.

Q What would be his attitude?

A A great deal of trouble with him.

Q Well, suppose you asked him to chop wood, would he chop it?

A No. I made him work for his meals. I said I could not have him there.

Q No, if you asked him to chop wood would he consent to it?

A No. I would have to go into hysterics to get him to.

Q And was that true of everything else?

A Yes.

Q In other words, everything you asked him to do you had to go to a lot of trouble?

A Yes.

Q Did his attitude change before the third of September?

A Yes. I was very much alarmed.

Q What did he do?

A Everything.

Q Well, take, for instance, the wood chopping incident.

A Yes.

Q Did he chop it?

A Yes.

Q Did you have to argue with him?

A No. I said, "You have got to chop wood for dinner."

Q Well, did he chop it?

A Yes. I had to go down to tell him to stop.

Q Well, prior to that did you have to tell him to stop?

A No.

Q Well, tell us about it.

A Well, before that week he always had been extremely difficult to manage. He would not do anything you suggested. The minute you suggested anything it meant he would not do it.

Q Did he tell you anything during that week about the whistle at Overbrook?

A Yes.

Q Did he tell you anything about the patients at Overbrook?

A Yes.

Q Tell us what?

A He was down at the foot of his bed one day in his room and he said—I just went in the room one time—and he said, "Not everybody in Overbrook is crazy. Do not think that." I said, "Well, aren't they?" And he said, "No, there are hundreds of people over there who are not crazy at all. They are just there to help the others out. They go over there and stay there just because they are such good people and they mingle with these crazy patients just simply with the idea of helping them out.

Q What did he say about the whistle?

A That was not all he said. I said, "Well, is that so?" He said, "You ought to go there." See, with him you just had to coax him. "Well," I said, "aren't they all crazy?" And he said "They are all crazy now;" and I said, "What makes them crazy?" He said, "Well, they feed the doctors and all their food and flour and water and never give them anything else."

Q What about the whistle?

A We were on the porch and the whistle blew, the whistle at Overbrook, and I said, "Listen." He said, "That is the loveliest sound in the world," and I said, "I do not see anything lovely about it," and he said, "you would if you were a patient in Overbrook," and I said, "I don't see anything very fine about that," and he said, "Well, you would if you were there, because it is part of the treatment," and I said, "I always sup-

posed that was because somebody escaped from Overbrook,'" and he said, "No, that is not the reason," he said, "Ignorant people think so but it is part of the treatment over there," and he said, "You ought to see the people after the whistle blows, it has a wonderful effect on them."

Q Now, when he wanted round steak or rocquefor cheese three times a day, did he say what it would help him to accomplish?

A No, he was not definite about that. He just had an idea he was going to be a very big man some day.

Adjourned until tomorrow, Friday, November 13, 1925, at 9:45 o'clock, A. M.

ANNIE WEBSTER NOEL, Recalled.

Direct Examination by Mr. Wachenfeld.

Q Mrs. Noel, did Harrison read quite a number of books?

A No.

Q Did he use quite a number of books?

A They were around the house. I don't think he read them.

Q Why do you say you don't think he read them?

A He would never discuss them and never say anything about them. I tried to see if he really was reading and I asked him about them and he would not discuss them at all.

Q In other words, after you saw him reading a book sometimes, did he ever tell you what he read in that book?

A No.

Q Did you ever get any information what he read in the book?

A No.

Q Was Harrison usually home for his meals?

A Yes.

Q Was he home on Thursday afternoon or Thursday night, September 3rd?

A He was home.

Q Do you know what time he came home?

A I don't remember.
Q Did he come before his dinner?
A Yes, he must have.
Q What time did he have dinner?
A Between six and seven. I cannot say exactly.
Q Do you know how long before his dinner he came home?
A No, I don't remember exactly.
Q How long did he stay after dinner?
A If I remember it he was there all the evening. He was certainly there when I went to bed at nine o'clock.
Q You went to bed at nine o'clock?
A Yes, I always go to bed at nine o'clock.
Q Did you see anything unusual about him at that time?
A No. He was just as he had been the whole week.
Q Did you see him Friday?
A Yes.
Q Did you have a sister, Mrs. Noel, who died at the age of nineteen?
A Yes.
Q What was her condition?
A She killed herself.
Q At what age?
A Nineteen.
Q Well, what was her mental condition prior to that time?
A She tried several times to kill herself and was prevented. She was extremely malancholy. She would weep at night. I often went in to see her at night and crept into her bed and she would weep for nothing. I was a young girl myself and she would never say what was the matter.

Cross Examination by Mr. D'Aloia.

Q During the month of July, 1925, did you write some articles for the Montclair Times?
A I didn't hear.
Q In the month of July, 1925, did you write some articles for the Montclair Times?
A Yes, I think it was in July.
Q Now, will you tell the jury whether or not you sent a letter to the editor of the Montclair Times, the contents of

which letter was published on Saturday, July 18th, to this effect—

Mr. Wachenfeld. Just a minute.

The Court. Let her see it.

Q Here is the article.

Mr. Wachenfeld. Will you point that portion out which you want her to read? Is it short?

Mr. D'Aloia. Very short.

A No, I didn't.
Q You did not send that in?
A No.
Q You know the Montclair Times has no reporter.
A Yes. The Montclair Times called me up about that letter.
Q And did you give the information?
A Not as stated there—no.
Q You did not say that Harrison—

Mr. Wachenfeld. I object.

The Court. No.

Q Well, what did you say about Harrison's condition?
A Why, I said it was none of their business to put anything in the paper at all, that they would have to use their own judgment. I gave them no information, not as I remember it. I was very angry at them for attempting to put anything in and I gave them a good bawling out. I do not remember my exact words.
Q Do you know Mr. McGeehan, the editor of the Montclair Times?
A I have met him once.
Q You never sent him a letter?
A Yes, I sent him several.
Q Did you send him a letter containing this information which appeared in the paper?
A Well, I don't remember. I may have.
Q You may have done so?
A Well, I don't remember.

Q Well, will you say that you did send Mr. McGeehan a letter containing the information which appears in this article?

A My memory is very poor and I would not want to swear to that.

Q It may have been contained in your letter?

A No, that is not so, because I knew Harrison was not recovered.

Q Did you say anything at all about his recovery?

A I don't remember writing a letter to Mr. McGeehan. If I did, I do not remember what was in it. I contributed to the Montclair Times and wrote Mr. McGeehan several letters during the summer.

Q Did you have an automobile, an Overland car?

Mr. Wachenfeld. Will you mind if I interrupt to ask a few questions I forgot?

Mr. D'Aloia. Go ahead.

Direct Examination continued by Mr. Wachenfeld.

Q Mrs. Noel, from what you saw of your son during the period of time you have told us of and what he said to you and what you observed, would you say he was sane or insane.

A Insane.

Q Do you think he could distinguish between right and wrong?

A No.

Q Do you remember the incident about the attack upon his father that you have told us of?

A Yes.

Q Do you think in that instance he could distinguish between right and wrong ?

A No.

Q Why do you say no?

A Because he showed no emotion on the subject. We were all extremely upset and distressed and he laid down and went to sleep.

Annie Webster Noel, Cross

Cross Examination (Continued) by Mr. D'Aloia.

Q Now, didn't you write that letter to Mr. McGeehan of the Montclair Times in which you said that Harrison had recovered from his recent illness and was that published in the Saturday Times on July 18th, 1925?
A I do not remember.
Q Do you remember seeing the article?
A I do not remeber
Q Did you see the caption of the article, "Harrison W. Noel, 295 Upper Mountain Avenue, has recovered from his recent illness and is now with his father in New York City?" Did you write that information to the Montclair Times?
A I do not remember.
Q Did you write that information to the Montclair Times?
A I don't remember writing it.
Q You owned an automobile?
A Yes, sir.
Q And it was an Overland car?
A Yes, sir.
Q What license?
A I don't remember.
Q Wasn't it 15643B?
A I don't remember.
Q During the summer Harrison used that car, didn't he?
A Yes, sir.
Q With your permission?
A It was.
Q And he had no license to drive in New Jersey?
A No.

CARLOS MACDONALD sworn in behalf of defendant.

Direct Examination by Mr. Wachenfeld.

Q You are a physician, are you?
A I am.
Q Where do you live?

A My residence is at Central Valley, New York. I practice at 15 East 48th street, New York.

Q How long have you been practicing as a physician?

A Since 1859.

Q In what medical college or school did you graduate from?

A Bellevue Hospital, Medical College, New York City.

Q Have you made a specialty in mental or nervous diseases?

A I have since the autumn of 1870.

Q Will you tell me, were you connected with any insane asylums or hospitals?

A At the finishing an internship in a general hospital for about a year and a half, after I graduated, I went, in the autumn of 1870, to Kings County Lunatic Asylum, now the Brooklyn State Hospital, as an assistant physician.

Q As an assistant physician?

A Yes, I served two or three years as an assistant physician and then was promoted to medical superintendent.

Q Then did you to the Binghamton State Hospital?

A Yes, sir. I was superintendent of the Binghamton Hospital.

Q How long were you at the Kings County Hospital?

A About five years altogether.

Q What was your connection with the Binghamton Hospital?

A I was medical superintendent.

Q How long were you connected with the Binghamton Hospital?

A Less than two years.

Q Were you connected with the State Lunacy Commission in New York?

A I was superintendent in the Manhattan State Hospital for Insane Criminals—I mean, now the Manhattan Hospital.

Q Were you connected with the State Commission of Lunacy?

A Yes, sir, I was appointed by that Commission in 1899, and served one term of six years and was appointed for a second term and I resigned to resume private practice.

Q Have you talked or written as a professor on mental diseases?

A Yes, sir. I talked for two years in the New York Medical College as lecturer on insanity, and about twelve years in Bellevue Medical College, and subsequently, until 1896 as Professor of Mental Diseases and Medical Jurisprudence in the University of Bellevue Medical College. I am now emeritus professor in that faculty.

Q Have you written books or articles on insanity?

A I have never written a text book. I have written articles.

Q Have you been appointed by the Governor of New York State in lunacy proceedings?

A I have been appointed by the Governor to examine criminals sentenced to death and have been appointed by the Judges of New York Courts to guide them in criminal cases.

Q Did you examine the defendant, Harrison W. Noel?

A I did.

Q When did you examine him, do you know?

A On September 22, 1925.

Q Where did you examine him?

A At the Essex County Jail.

Q Who was present at the time of your examination?

A Mr. Barber, Mr. Smith of Mr. Merritt Lane's firm, a stenographer, and the defendant and myself.

Q How long did your examination take?

A About two hours.

Q Is there such a disease known as dementia praecox?

A There is.

Q Tell us what effect it has on a patient? Tell us so we can understand it.

A Dementia praecox is a form of insanity that is characterized by dementia. The term praecox is a Latin term for precocious. It was originally called precocious dementia. Prior to the adoption of that term it was called insanity of adolesence because it occurrs mostly in early life. early youth, but the modern classification of dementia praecox is a form of dementia. By dementia, I mean mental failure. It means impairment or loss of mind, dementia does, in whatever form it occurs, whether primary dementia praecox or whether secondary, but some other forms of insanity, a terminal stage of dementia is a failure of loss of mind.

Q What is the prognosis of dementia praecox, favorable or unfavorable?

A Unfavorable.

Q Are you familiar with medical records?

A The Medical Journal, you mean?

Q Yes.

A Yes, sir.

Q Do you know of any cases of dementia praecox which was very much marked in its development that recovered, so that the man was normal and recovered?

A I don't know of any such case. Some writers claim there is improvement, and even talk of improvement in some cases.

Q Do you know of any cases where the man had become sane and recovered in a period of two months?

A I don't recall any case of that kind. Improvement in cases is reported in the books, and I have known cases to improve, temporarily.

Q Mere temporary improvement does not mean recovery?

A No, sir.

Q In your opinion, is the disease functional or organic

A In my opinion, it may be functional in the promontory stages, but organically it is a disease of the brain.

Q What do you mean by a functional disease?

A A functional disease is a temporary disturbance of the brain which may be recovered, has a recoverable condition, but an organic condition, and that is my knowledge, is irrecoverable. In other words, there is a degeneration of brain cells and when they become degenerated they are never regenerated.

Q At the time of your examination of this defendant did you look at the hospital records of the Overbrook Asylum while making your examination?

A I did.

Q Did you also see the record of the Craig House?

A Yes, the record furnished by Dr. Slocum. I read that.

Q Will you tell us generally what Noel's attitude was at the time of your examination?

A His attitude was mental dullness, to my mind, mental enfeeblement, and with very sluggish mental operation. His response to my questions were very slow, and after a great

deal of hesitation and sometimes urging, his answers were not always responsive.

Q What do you mean when you say by urging and that his answers were not responsive?

A I have in mind one question when I pressed him to know if he committed murder and why he committed it. After a long hesitation he suddenly turned his head towards me and said, "What time is it?"

Q Do you remember another occasion of a similar kind when he asked you who the doctor was that was there?

A Yes.

Q Tell us about that.

A It is not responsive to anything that I had said to him.

Q What did he ask you about the doctor?

A He asked me if I knew the doctor's name that examined him that afternoon.

Q And that was in response to what kind of a question you asked him?

A Well, it was in response to some question respecting the homicide.

Q Could you depend on anything this boy might tell you at the present time?

A No.

Q If he told you why he committed this crime or who did commit it or what his motives were, could you depend upon what he told you?

A Yes. He gave me what evidently was his reason and I pressed him to tell why he killed the Negro.

Mr. D'Aloia. I object to the answer, the question is, "Could you depend on it."

Q The first question is if he told you what his motives or ideas were at that time could you depend upon it?

The Court. Could you rely upon what he said?

Witness. No, I don't think so.

Q Why can't you?

A Because his mental capacity is so much impaired that I don't think his statements about anything are reliable and yet he may state some things that are undoubtedly true.

Q Now, you started to tell me what he told you about the killing of the colored man. Will you continue that?

A Well, after a good deal of prompting and urging, he said he killed him, and I asked him how he killed him and he said he shot him. I asked him if he shot him in the back of the head and he said he did, and he said, in answer to my question, that he was on the back seat of the car behind the victim and that he shot him in the back of the head without warning. I asked him if he had any difficulty or trouble with the man and he said, no, and I pressed him to know why he shot him and he said because he thought it would make him feel better.

Q Now, doctor, do you remember speaking to him about a spinal puncture while he was at the Overbrook Hospital?

A Yes.

Q Do you remember what he said about that?

A He said they made a spinal puncture there and it made him feel very badly, and their object was, he said, was to change him into a second Jesus Christ, and he thought for a time—he believed for a time that he was a second Jesus Christ. He was very unhappy and very miserable.

Q Did he always answer your questions, doctor?

A No. Some of my questions—a good many of them he did not answer at all, he simply looked blank and vague.

Q What were the symptoms that would indicate dementia praecox that you found in this boy at that time, doctor?

A The symptoms of dementia, loss of mind.

Q Now, will you tell us from the examination you made and from the records you have examined, whether or not the boy was sane or insane?

A In my opinion, he was and is insane.

Q And the form of insanity that he is suffering from is what?

A Dementia praecox.

Q Now, is it a border line case, doctor, or is it well developed and well defined?

A Well developed and well defined, not a border line case.

Q And do you think the boy you saw, this man, who is suffering from dementia praecox, had the capacity of distinguishing between right and wrong at the time of the commission of the crime he is charged with here?

A No.

Q Why do you say no?

A Because I do not think he knows the difference between right and wrong as far as his own acts are concerned. He might in some respects know the difference between right and wrong in the abstract, but he does not apply that to himself.

Q Were you present, doctor, when Mrs. Noel testified?

A Yes.

Q Did you hear all her testimony?

A I did. This morning I could not hear very distinctly, because her voice did not carry very well.

Q But you heard everything except a few things this morning?

A Yes.

Q Did that history indicate dementia praecox?

A It does.

Q And does it combine symptoms that you usually find in dementia praecox?

A Yes.

Q Will you tell me what the symptoms are from that story as she related it which would indicate dementia praecox?

A His want of continuity of purpose, as is outlined in her statement and in the history of the case as I have heard it before. The fact that he has never continued at any one calling or occupation for any considerable length of time. He changed constantly.

The Court. Just a minute. Mrs. Noel can retire.

Q In addition to your mental examination did you also make a physical examination?

A I did.

Q Will you tell us about the physical examination?

A I examined him with reference to his eyes and pupils and condition of tongue and pulse, his reflexes, his knee reflexes. I listened to his heart, I examined him for evidence of venereal disease and tested his coordinating powers.

Q Did that complete your physical examination?

A I think so. Might I refer to a little memorandum?

Q Yes, sure. Will you tell us the condition of his hands at the time of your examination?

A Well, I will begin at the beginning here. It is [illegible]

brief. Eyes ,normal, both as to light and accommodation and what is known as the consensual reflexes, that is when one eye is shaded and the pupil dilates, the other eye dilates with it and contracts. That was the appearance of his eyes, were normal. His tongue was coated and tremulous, which is found usually or very frequently in dementia praecox and other forms of menatl diseases. His hands were cold and clamy and tremulous and had sort of a puple of livid hue.

Q What does that show?

A It shows a sluggish condition of the capillary vesels and if you press the blood out it turns white for a moment and when you relieve the pressure the purple hue gradually returns.

Q What does it indicate?

A It indicates a sluggish circulation and including the brain.

Q Has it any bearing upon insanity?

A Yes.

Q What bearing?

A Well, it is found very frequently—I might say commonly in chronic mental diseases. He had a slight—what is termed Rhomberg symptom.

Q What is a Rhomberg symptom?

A Well, when the patient stands with feet in parallel and approximated and closes his eyes tightly there is a tendency to sway a little and unsteadiness, and where it is well marked the patient will fall if he were not held up. He had a slight Rhomberg symptom when I made that test. I also made what is known as the finger to nose test, extending the hand like this and with the eyes closed and with the index finger touch the tip of the nose. He did that perfectly. There was no incoordinating in the finger to nose test. The knee reflexes were absent. I could not elicit any response to the knee jerks, as it is called.

Q Is that any indication—

A Well, yes, it is impaired or abolished in many cases, and in other cases it is very much exaggerated. His face is unsymmetrical.

Q What do you mean by "unsymmetrical?"

A We term it asymmetrical.

Q What does that mean?

A Well, it means that he has signs of degeneration. His ears also stand at an irregular angle, and the outer end of the rim here, particularly in his left ear is sort of half pulled down. It is defective.

Q Anything else?

A I had him close his eyes and walk toward me a little ways across the room and he walked all right. He did not stagger or stumble or fall. The heart sounds were normal. I found no indications of venereal disease of any kind. I examined him carefully with reference to that and he told me that his bowels did not move, that he was constipated. That is the substance of my physical examination.

Cross Examination by Mr. D'Aloia.

Q Now, that constipation that you found would be responsible for the coated tongue, wouldn't it?

A What do you say?

Q That condition of constipation that he told you about might be responsible for the coated tongue?

A Yes, it might.

Q You say his face was not symmetrical. Did you ever see a face that was symmetrical?

A Well, not exactly, by scientific measurement.

Q There isn't any face—isn't it a fact that there is not a face of any individual, sane or insane, that is absolutely summetrical?

A It is a fact, according to my observation.

Q It is a fact?

A May I finish my answer?

Q No. I just want an answer yes or no.

A I decline to answer yes or no.

The Court. If you are not satisfied you may ask the doctor again.

Mr .Wachenfeld. I appreciate that, but it is difficult to follow.

Q Isn't it a fact, doctor, that in all your experience, when you began to practice medicine and became a specialist in

nervous and mental diseases, almost a half a century ago, during all that time you have not yet seen a face which was absolutely symmetrical?

A Well, I could not say that, because I have not measured all the faces that I have seen, but I have seen a good many and I believe that the exact scientific measurement of faces and heads, there are no two that are precisely symmetrical.

Q You mean there are no two sides?

A Well, there is a difference in the two sides.

Q But your face, as I look at it, your left eye is about three eights below the right eye.

A I think your vision is distorted.

Q That may be. Now, if you will turn and look at the jury— maybe my vision is bad—and they will notice that the left eye whether it is due to the droop of the lid or something else, your left eye appears to be lower.

A About how much lower would you say?

Q Oh, I would say from here it looks a quarter of an inch.

A Well, I have never discovered it myself.

Q Well, none of us ever discover our own faults. We go to a mirror and we think we are perfect.

A No, I don't think I am.

Q In your mental examination, you say you conducted this examination on the 22nd of September for two hours.

A About.

Q And the only unresponsive answer made by this man were two questions he asked you, one was, "Who was this man" inquiring about the other gentleman with you, is that right?

A That was one.

Q And the other unresponsive answer was—that came toward the end of the examinationwhen he said, "What time is it?

A Well, it came after an hour or so.

Q Now, is there anything strange after you examined this man an hour or so—what time did you begin your examination?

A I think it was about four thirty or four forty-five.

Q And what time was it when he asked this question "What time is it, doctor?"

A I do not remember what time it was.

Q Well, was it after five o'clock?

A It was after the examination had continued three quarters of an hour.

Q Had the lights been turned on yet?

A No, it was still daylight.

Q Do you recall any other unresponsive answers in your examination excepting those two questions when he said, "Who is this man?" pointing to the other doctor, and the other when he said, "What time is it?"

A Well, his answers, many of them were responsive, but insane answers.

Q Were there any answers that were unresponsive except these two questions which you have mentioned which are not answers at all?

A Yes.

Q Well, now, mention one question that you put to him and give me the answer which you call unresponsive.

A Why, it was not sanely responsive.

Q Please recall the question you put to him and then repeat the answer he made.

A Why, I asked him why he killed this girl and he said he thought it would make him feel better.

Q Now, when he answered that, that was responsive. The reason might have been strange to you.

A No, I didn't regard it as responsive.

Q He was giving you an answer to your question.

A It showed his motive was a marked insane one.

Q Do not let us go far afield. I am not asking you what motive. I am asking you about that simple question or answer. Now, what was it?

A In my opinion it was not responsive.

Q You had asked him why he had killed the little girl and he said, "I killed the little girl because I thought it would make me a better man."

A No, he did not say that.

Q What did he say?

A I asked him why he killed her and he said, "I thought it would make me feel better."

Q But he was referring to the killing of the little girl.

A Yes.

Q Don't you call that responsive?

A No, not sanely responsive.

Q Simply because the reason he gives you—you say the answer is not responsive?

A It is an insane reason.

Q You still insist that answer was not responsive?

A I do.

Q Was Mr. Barber present during this examination of yours?

A Yes.

Q Did you speak to this boy before Mr. Barber did?

A Mr. Barber introduced me to the boy and told him who I was before I spoke to him.

Q You found there was no incoordination upon this examination. His eyes were normal and he walked all right. He didn't have any difficulty in understanding your instructions when you told him to walk up and down.

A Well, I had to urge him and direct him and suggest to him.

Q I have this down here, "He walked all right." What do you mean by that?

A Well, I say he did not stagger. He walked six or eight steps toward me.

Q When you read from your notes you did not mention any difficulty with the orders you gave to him.

A No.

Q Well, there was not any?

A No. I have said so.

Q Well, you told him to close his eyes and touch the tip of his nose. He did it.

A Yes.

Q He understood what you wanted.

A He coordinated the movement of his finger to his nose.

Q No. From the way he acted after you asked him to do that thing, did it indicate to you that he understood your order or request?

A I think he did.

Q Now, you say after he shut his eyes tightly there was a slight sway. Now, isn't that in normal individuals?

A No.

Q You said to Mr. Wachenfeld that you had heard what

Mrs. Noel had testified to and you find from that recital this symptom, this very great symptom, want of continuity of purpose.

A Well, I said that with reference to his general history, including what she said about his various occupations.

Q You told Mr. Wachenfeld that that was a symptom, very marked symptom of mental derangement.

A Yes.

Q Want of continuity of purpose. That is the expression.

A As shown in his history.

Q Now, let me ask you a question. Assuming that on the first of September this very young man you examined for two hours on the 12th of September, goes to 136 Upper Mountain avenue, Montclair and sizes up a very beautiful house and comes to the conclusion he is going to kidnap a girl from that house and ask for a four thousand dollar ransom—this is Tuesday, September 1st—and he thinks it over on the 2nd and on the 3rd he procures an automobile in some manner or other and then on the 4th he kidnaps the girl, would you say that there was a continuity of purpose of kidnapping that girl when he sized up the residence of the girl or the place he thought she lived on the 1st of September and carried out his plans on the 4th?

Mr. Wachenfeld. I object to the question on the ground it does not incorporate the facts proven in this case.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

Witness. Will you read the interrogatory?

Q (Question read.)

Mr. Wachenfeld. I object on the ground that there is no proof in this case that he thought it over, and the

ground that he did not come to any conclusion that the Prosecutor said he was going to do it for a ransom of four thousand dollars.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

Q What is the answer?

A He did not show to my mind a sane continuity of purpose.

Q Notwithstanding the fact that he went to sleep, and slept normally on the night of the 1st, and got up normally on the morning of the 2nd, and went to sleep normally on the night of the 2nd and he got up normally on the morning of the 3rd, and he went to sleep on the night of the 3rd and he slept, according to Mrs. Noel, and he got up normally on the morning of the 4th; with these three nights intervening of sleep, would you still say there was evidence of want of continuity of purpose in that particular kind of conduct?

Mr. Wachenfeld. I object to that.

The Court. Strike out the word "normally".

Q Eliminate the word "normally." Went to bed, a night intervened between the 1st and 2nd, and a night intervened between 2nd and 3rd and a night intervened between the 3rd and 4th. He kidnapped the girl in front of this house on the 3rd, would you say there was a want of continuity of purpose?

A A want of continuity of purpose.

Q But there is no want of an insane continuity of purpose?

A Yes, sir.

Q Why did you answer me and say there was a want of continuity. Was there a continuity of purpose, sane or insane?

A In my opinion he was insane all the way through.

Q I am asking you this, do you find any want of continuity

of purpose between the 3rd of September and the 4th of September? Don't qualify the continuity of purpose with that adjective. Do you find any want?

A Yes, I do, taking the whole transaction together.

Q Where is the want of continuity of purpose, assuming that on the 1st he made up his mind to kidnap the girl and picked out the house, and on the 3rd he got an automobile for that purpose, and on the 4th he kidnapped the girl? Where is the want of continuity of purpose?

A I assume from your question as contemplated the kidnapping the girl and then got the automobile.

Q I am asking you to pass upon this conduct between the 1st On the 1st of September Harrison W. Noel picks a house on Upper Mountain avenue, which looked good to him, it is a big, nice house, and he contemplates kidnapping a girl there in front of the house, or the grounds of that house and he is going to hold her for ransom. On the 3rd of September, with two nights intervening, he gets an automobile other than his own, and on the 4th, after hiding that automobile, he kidnaps the girl. Now stop right there and answer my question. Do you find in that course of conduct any want of continuity of purpose? Yes or no.

A Yes and no.

Q Supposing I told you and assumed that this young man on the 24th of August, 1925, made up his mind that he wanted a pistol, that is the object that he wants to obtain, and he goes to a place 507 Broadway, New York, where they sell pistols, and there he discusses the kind of a pistol he wants, or he picks one out, and he pays the price, and he is told that, not having a permit in New York to carry a revolver, he gives the name of Wallace Payne, and gives instructions to have it mailed to Little Falls, New Jersey; the 25th he goes to the post office, goes to the postmaster and he tells the postmaster that his name is Wallace Payne, and he obtains the pistol which he had purchased in New York; would you say that between the time that he got the gun and the time that he went to the post office and in the time that he obtained the gun, there was any want of continuity of purpose in that conduct?

A Limiting it to that particular transaction, I should say no.

Q Suppose I should say to you that this defendant, wanting a taxicab, and for the purpose of getting the taxicab, goes to a drug store on Valley street, Montclair, on the afternoon of September 3, 1925, about 1:30, and calls up a taxi company and gives instructions that the taxi be sent to him outside of the Montclair Athletic Club, and he waits there for it, and he gets into it when it arrives, and he instructs the driver to drive to Little Falls, and then when he afterwards gets on a lonely portion of the road, he shoots the driver, takes his place back of the wheel, hides the body of the driver, and takes the car, would you say that his object, being to get an automobile, that there was any want of continuity of purpose?

A Taking the whole transaction?

Q Will you please forget the whole transaction.

A I don't think that the purpose was to kill the negro when he started out. I think he changed his purpose.

Q Will you please answer my question. Do you find any evidence of any lack of want of continuity of purpose? Never mind what you think of the conduct; never mind what you think of the transaction; just take the naked facts. He wants a taxi and he wants to take it, and he gets out that way, he calls a taxi company and waits for it to come and orders the driver to drive certain place at a part of the road where there is nobody around, he shoots the driver, he hides the body and takes the car after killing him. Do you find any lack of continuity of purpose in that conduct?

A Yes.

Q In what part?

A I think his purpose was not to kill the negro when he sent for the car, but he did change his purpose and killed him. That was a want of continuity.

Q Whether he killed him or not, I am asking you, he wanted the car, he did get it. That was the purpose, he wanted the car.

A Yes, he got the car.

Q Do you find any lack of want of continuity in that purpose?

A In that one single item?

Q Yes.

A No, I couldn't express an opinion about it.

Q Now, supposing that he told you that he got this car on the 4th, where he had hidden it, and he wanted to kidnap the child, he drives it from the place where he had hidden it on the 3rd to this house at 336 Mountain avenue, and picked up a child and forced her into a car and drove away with her. Do you find in that any lack or want of continuity of purpose?

A Standing by itself, no.

Q Suppose he turns around and he notices he is being pursued and he leads the pursuerer a merry chase for quite a distance, then his idea is to discontinue that pursuit and stop, and he brings his car to a stop, and he allows the pursuing car to come alongside of him, and then he shoots the driver of the pursuing car. Do you find any lack or want of continuity of purpose in that episode?

A No, sir.

Q Suppose he then goes on with the little girl in his car and he drives about ten miles to a desolate spot and there he talks to the little girl, and assume, for the sake of argument, he discovers it was not the little girl he intended to kidnap?

Objected to.

Objection sustained.

Mr. D'Aloia. I will withdraw that.

Q When he gets there with the little girl, for some reason or another, his object is to dispose of the little girl, not having her seen with him, he keeps her and hides her body in some bushes known as sumack bushes, do you find any want or lack of continuity of purpose, for some reason or another, that was necessary for him to get rid of the little girl and not having her seen with him?

A Yes.

Q What is it?

A I don't think his purpose, when he started out with the little girl, was to kill her.

Q Will you begin at the point where this defendant is in a patch of woods and he is talking to this little girl, he formulates this purpose there, the purpose is not to be seen with the little girl or not to have the little girl seen with him, that is his purpose, and he shoots her and hides the body.

Mr. Wachenfeld. I object on the ground that there

was no proof in this case that there was any such purpose of this defendant. There is no proof that he talked to this little girl.

Q Will you answer that? Is there any lack of continuity of purpose there?

Objected to.

The Court. We will not include anything in the hypothesis that is not in evidence.

Mr. D'Aloia. At this point, this young man had been pursued by somebody and he fired a shot at the pursuer, and in his confession he said he talked to the little girl and he told her to get out of the car and the little girl said something to him, I have a right to infer that in shooting her he had a purpose.

The Court. But you cannot divine the purpose

Mr. D'Aloia. I will withdraw the question.

Q Now, Doctor, after shooting the colored man, in order to obtain an automobile realizing that there was a dead negro alongside of him, and he stops and hides the body, does that show any lack of precaution—hides the body—does that show any lack of precaution which indicates anything to you?

A Yes, I think it did, a lack of precaution to kill the negro.

Q I am going to show you photographs of the particular place where the body was hidden, supplemented by a little further description. (Indicating on photograph). There is a road, and here on the righthand side of the road you will find a little cross; that is where the body was taken down until it got under this cement bridge.

Mr. Wachenfeld. I object because there is no proof that it got under the cement bridge.

The Court. Seven feet below the cement bridge.

Mr. Wachenfeld. Seven feet below the level of the bridge, but I don't want the impression to go that it is under the bridge, because my contention is if it had been it would not have been found yet.

Q Seven feet below that spot where the cross is, six or seven feet, would you say that this conduct on the part of the defendant indicated a want or lack of precaution?

A It indicated decided lack of precaution.

Q How?

A Such as a sane man would have taken under the circumstances.

Q Tell me what a sane man would have done with a dead negro besides him and the body to get rid of? What would he have done, sit him on the outside of the radiator?

A In the first place, I don't think a sane man who contemplated kidnapping a little girl would have shot this negro with a car, riding at a high rate of speed, and in the back seat, he took a chance of climbing over the seat, and getting control of the car because he told me that he shot him and he fell down on the right side of the car.

Q Do you remember my question?

A Yes, sir, I think I have answered it.

Q You begin at this side on the photograph, where a dead negro is put up in comparison with a spot described on the photograph, will you answer my question, and that alone? Does that indicate any lack of precaution? Never mind what preceded. Taken at the point where he finds a dead negro alongside of him, and he is at the wheel, just where I showed you, and stop there. Does that indicate any lack of precaution?

A A lack of sane precaution.

Q Tell me what a sane man would have done.

A He would have taken the body a great deal further away and where it would have been more difficult to discover.

Q He would have taken the body a great deal further away and where it would have been more difficult to discover?

A I think a sane person would have taken more precaution to hide it, in regard to both bodies.

Q That is the best answer that you can make, that a sane man would have taken it a further distance and hidden it so it could not have been discovered?

A He would have taken greater pains to hide it where it wouldn't have been so easy to discover.

Q Do you know how this body was discovered?

A Somebody saw it there.

Q Saw what?

Carlos F. Macdonald, Cross.

A I think he said a white cloth, but somebody said it was a white shirt.

Q Then after the man had walked fifteen feet, when he got to the white cloth, then he discovered that it was a shirt pulled out from a man's trousers?

A I understand—

Q Did you get the testimony that the cross was about seven feet away?

A I think I heard that.

Q Do you say, putting these details together, that all he could see was the white cloth and it was necessary to go down there and see the feet and see the body, would you say that was a lack of precaution?

A A lack of precaution.

Q Would you say it was a lack of precaution or lack of good judgment?

A Lack of precaution.

Q We will assume that criminals are generally detected because criminals sometimes leave traces. Would you say that was want of good judgment on the part of criminals?

A No, I would not.

Q What would you ascribe it to?

A Lack of good judgment.

Q Then would you say that all criminals who were caught by reason of leaving evidences of crime were insane?

A No, sir, I would not.

Q Where do we draw the line?

A I wouldn't express an opinion on this defendant's insanity on the very small statement there, itemized statements, in regard to his conduct at any time. I take into account the whole transaction, his whole conduct from beginning to end.

By Mr. D'Aloia.

Q Let me follow your answer that you made to the court. Take the whole transaction from beginning to end. Beginning on the 1st of September, 1925, and ending on Sunday night, September 6, 1925, having done all these things over a period of four days, as you know the transaction, will you tell the jury that you find any want of continuity of purpose?

A Yes, I do, in the whole transaction.

Q In what respect?

A In the first instance, he started to kidnap the child to get a ransom and he thwarted all that by shooting her there and leaving her body on the roadside.

Q That is the only thing you can say?

A Don't that show that he changed his purpose, if he had the purpose that you say he had? I don't see how you can tell what was in his mind.

Q Suppose I tell you that that change had to come on Friday, for some reason, what would you say then?

A Was that the day of the homicide?

Q Yes.

A Well, he only changed his purpose. After he took the car and after he took the little girl.

Q I have heard you use this expression several times, "judgment," if a man is intent upon robbing a jewelry store on Springfield avenue and he does it at three o'clock in the morning and he breaks in the plate glass window and grabs the watches and chains and starts to run, just because he made a noise in breaking the window, would you call that bad judgment?

A I would not express an opinion as to his mental condition on that single set of facts.

Q You would say as an alienist that that particular criminal used bad judgment in making the noise, wouldn't you?

A Yes, and no. I take into account this young man's whole history from beginning to end.

Q Would you also call it bad judgment, if a yegg holds up the payroll, and he does it at noon, and he does it four feet away from a bank on Broad street, and in order to get away with a satchel full of money from the paymaster's hands he shoots promisciously and hits an alienist going by, that is bad judgment, isn't it?

A I don't know.

Q Let us see if you agree with Stoddard on mental diseases. You have heard of Stoddard, you are very familiar with it. "All catatonic"—I think you will agree that is a person suffering from dementia praecox.

A It is a form of catatonia that is nervous or hysterical

affections, but in connection with dementia praecox, it is one of the forms of dementia praecox catatonia.

Q Do you agree with Stoddard when he says this: "That of catatonia cases, twenty-seven per cent. are partially demented, but sufficiently improved to justify their being allowed to return home."

A I don't know what the percentage is. I don't agree with it.

Q What is your percentage?

A Some dementia praecox cases improve sufficiently for friends to take them home or they are let out on parole.

Q Does that improvement continue?

A In my opinion it doesn't. They invariably relapse. They don't get well; they simply improve up to a certain point, and seem a little better, as Mrs. Noel testified her son did.

Q Never mind Mrs. Noel's testimony. I am asking if you agree with Stoddard that twenty-seven per cent. of catatonics sufficiently improve to leave the institution and go home?

A No, that does not coincide with my experience.

Q What percentage would you say?

A I have never determined the percentage. I have seen cases that seem to be better and I know two cases in a sanitarium now that are under my observation that did improve and went home for awhile and of course came back worse than ever.

Q During the period of improvement those two cases just mentioned, they could distinguish between right and wrong, couldn't they?

A Well, possibly.

Q When the improved condition comes or this improvement shows itself, then the dementia praecox can distinguish between right and wrong?

A I couldn't say.

Q You couldn't say?

A I could say as to any particular case, but not as a general proposition.

Q Will you say that twenty-seven per cent. recovers completely?

A I do not.

Q You don't agree with Stoddard?

A I have never known of a complete recovery of dementia praecox.

Q When you examined this boy on the 22nd of September, your examination was taken down stenographically, wasn't it?

A Yes, sir.

Q Did you find any trouble getting information from him?

A Yes, a great deal.

Q But when you got it, it was correct, as far as you know?

A No, I don't think it was.

Q Did you ask him where he was last year?

A I asked him about his various occupations and his wanderings around the world, you might say, almost.

Q And he gave it to you in detail?

A I don't know how true it was.

Q You heard Mrs. Noel testify?

A Yes, sir.

Q And her story is his story, as far as his history was concerned, they were pretty nearly alike, weren't they?

A As far as his staying at various places, and getting law books and renting cabins and studying law for two or three weeks.

Q Didn't he tell you the same as his mother did, that he got a job as messenger in the Stock Exchange?

A Yes, sir.

Q Didn't he tell you the same as his mother did, that he went up and hired a farm at Oakland, New Jersey?

A I don't recall.

Q Didn't he tell you that he went to Virginia?

A He told me that he wandered around the woods trying to study law.

Q Didn't he tell you that he had been down to Tennesee or Virginia?

A No, he told me he went to North Carolina.

Q Didn't he tell you that he had been to Provincetown or Williamstown?

A I don't think he did. He said he went to Harvard, but he didn't stay there.

Q Did he tell you that he went to the Montclair High School?

A No, I think not.

Carlos F. MacDonald, Cross.

Q Did you ask him that?
A I don't recall that I did.
Q Let me ask you a question. Did you ask him what he did the last week in August?
A No, I don't think I asked him.
Q Did you ask him what he did on the 1st of September?
A No, I think not.
Q Did you ask him what he did on the 2nd of September?
A No.
Q Did you ask him about the 2nd?
A No.
Q Did you mention the 3rd of September to him? ask him about the killing of the man?
A I asked him about the killing of the man.
Q Didyou mention the 3rd of September to him?
A No, I don't think I did.
Q Did you mention the 4th of September and ask him what he did that day?
A No, sir.
Q Did you mention the 5th of September and ask him what he did that day?
A No.
Q Did you mention the 6th of September, which was a Sunday?
A I have just said I didn't mention any particular day.

Redirect Examination by Mr. Wachenfeld.

Q In coming to a conclusion whether a man is sane or insane, can you cut the picture up in different subjects and come to a conclusion to get one section?
A No, sir.
Q Why is that?
A I couldn't consistently pass upon the mental condition of an individual from one single fact in his history. I would want to know the history, know his hereditary, if I could get it, and know the history of his mental condition from beginning to end, and that is what my opinion is based on in this case.

Carlos F. MacDonald, Recross:

Recross Examination by Mr. D'Aloia.

Q You didn't ask him about the 29th of August, 30th, 31st, 1st, 2nd, 3rd, 4th, 5th and 6th. How can you tell us whether or not in your opinion he could distinguish between right and wrong on those occasions?

A From my general knowledge of the condition going back before he went to Overbrook.

Q You didn't try to find out what he did on the 3rd of September?

A No, sir, not on those particular dates, but I know, as a matter of positive opinion, that he was insane on those dates.

Q Did you try to find out what time he got out in the morning on the 1st, 2nd or 3rd of September?

A No, sir.

Q Did you try to find out whether he had his breakfast?

A No.

Q Did you try to find out whether he was visited by some particular imaginary person between morning and noon on the morning of the 3rd?

A No, sir.

Q Did you try to find out if he suffered from any delusions on the 3rd of September?

A I don't know on that day whether he expressed or manifested delusions or not, but he was in a delusional state, I know that.

Q Did you try to find out when you examined this defendant on the 22nd of September, 1925, whether on the 3rd of September he suffered from any delusions or labored under any particular mental strain or suffered from delusions on that day, the 3rd of September, 1925?

A I didn't determine that particular date, what his mental manifestations were, except as I could judge by his actions, acts of committing the homicide, his method of doing it, the lack of rational motive in both homicides.

Q You knew on the 3rd of September, 1925, this young man had committed an act which is in violation of the criminal law?

A So you said.

Q And you know that you were up at this jail for the

purpose of examining this perpetrator of that particular act, and you mean to tell us here that you never asked him a thing as to his conduct on the 3rd of September, 1925?

A I did ask him as to his conduct when he committed the crime which, as you say, was on the 3rd of September.

Q No, he only committed one on that day. But did you ask him what he did all day long?

A No, I didn't.

Q Did you ask him what time he retired?

A No, sir.

Q Did you find out what he did in the afternoon?

A No, sir.

Q Did you find out what he did in the afternoon?

A No, sir.

Q Did you find out what he did in the morning?

A No.

Q How can you tell us here whether he could distinguish between right or wrong?

A I didn't ask him whether he coughed or blew his nose or sneezed or what he did that day.

Q No; but did you try to find out what he did that day which you explained to us as an alienist as extraodinary conduct, or as you explained it, out of the ordinary conduct, on the afternoon of that day?

A Just as far as the crimes were concerned about which I interrogated him.

Q Can you tell us that on the morning of September 3, 1925, this defendant suffered from any delusions?

A From his history, I find positively he did.

Q From his history and from your examination on the 21st of September?

A Coupled with my examination and what he told me was in his mind that day.

Q Can you tell us whether he suffered from any hallucinations on the 3rd of September, 1925?

A He didn't disclose to me any hallucinations.

Q Can you tell us whether he lacked orientation on the 3rd of September, 1925?

A No, he didn't with reference to where he was. He knew he was in the jail.

Carlos F. MacDonald, Recross.

Q He wasn't in jail on the 3rd of September, 1925?
A I thought you meant when I examined him.
Q Please pay attention to the question. Can you tell us whether there was any disorder in the association of ideas in this defendant's mind on the 3rd of September, 1925?
A In my opinion, there was very decided disorder.
Q Did you ask him what he did on that day to lead you to that conclusion?
A I asked him the crimes he committed—
Q On the 3rd of September he only committed one?
A One on that day and subsequently another one.
Q Then, as I understand you, on your examination at the Newark jail, you never brought his mind back specifically to the 3rd of September at all?
A I did.
Q Did you specify the date?
A No.

Recross Examination by Mr. Wachenfeld.

Q Why do you say the time you saw him he was in a delusional state?
A That he was influenced by delusions, he had delusions about the purpose of the spinal puncture at Overbrook, and things of that kind. He had delusions about his stay at Beacon and at Overbrook when he made the assault. He has a history of assaults without provocation, repeatedly. He assaulted his father without the slightest provocation; he said he must have had indigestion when he did; he assaulted one of the attendants at Beacon, at Dr. Slocum's place, wrenched the arm off of a chair and smashed him over the head; assaulted the attendants at Overbrook, and he has what we call in dementia praecox an assaultive case of dementia praecox.
Q Do you think when he committed the assault on his father that he could distinguish the difference between right and wrong?
A No.
Q Why not?
A Because it—he wouldn't have assaulted his father without any provocation whatever.

Carlos F. MacDonald, Recross.

Q Could you get any reason why he assaulted his father?
Q No sane reason. He said he must have had indigesiton.
Q And you didn't find from his examination the difficulty that he told you that he had with his father that would give occasion for the assault.
A No, sir.

By Mr. D'Aloia.

Q Did you look into Mrs. Ncel's family history?
A Yes, sir.
Q She said she didn't sleep in the same camp with her husband. Do you remember that?
A I think I heard her say that.
Q Do you remember also that since the committment of this boy to Overbrook Mr. and Mrs. Noel have not been living together?

Objected to.

Mr. D'Aloia. I am trying to find out the motive for the assault on the father.

Mr. Wachenfeld. I am referring to 1923, when this assault took place. It doesn't make any difference to me. We are talking about something that took place in 1925.

The Court. He is referring to Mrs. Noel's testimony.

Q Now, do you recall that Mrs. Noel said that at the time they were camping when this assault was made upon her husband that she and her husband were not sleeping in the same tent?
A Yes, I recall that, but I did not infer from that that they were separated.
Q But you found out later he did not come home from New York for two weeks?
A Yes.

Mr. Wachenfeld. I object to that as incompetent, and immaterial.

The Court. I will allow it.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,

Judge.

Q And you also gleaned from her testimony since March, 1925, Mr. and Mrs. Noel have not lived together?

Mr. Wachenfeld. I object to what the witness gleaned from this testimony. The testimony is in evidence and the jury are the ones to draw the proper deductions from it.

The Court. I do not know what deductions the prosecutor wants to draw.

Mr. D'Aloia. The next question will clear it up.

Q Isn't it possible that this defendant, eighteen years old, two years ago, old enough, had been to Harvard to ,comprehend between his parents all was not right and out of loyalty to his mother and under the impression that she was not being treated right by his father, he could have made that assault, couldn't he?

Mr. Wachenfeld. I object. The question is absolutely unfair.

The Court. Objection sustaned.

Mr. D'Aloia. Now, if your honor please, the doctor has been asked in the redirect examination as to that particular assault and the reason given by the doctor was dementia praecox, and I think I have a right to insist upon this question. The reason was brought out in counsel's redirect examination of the doctor. We got a lot of wonderful expressions about assaultive dementia praecox, and the reason was given for the assault and I insist the doctor give an answer to this question, if it is not possible that the assault was caused for the motive I have in mind.

The Court. Objection sustained.

Lewis G. Bowden, Recalled, Direct.

LEWIS G. BOWDEN, recalled in behalf of defendant.

Direct Examination by Mr. Wachenfeld.

Q Mr. Bowden, I show you again the two pictures that you have already identified, S-1 and S-2 for the State, which, as I understand, are a scene of the bridge where the colored man's body was found, within a few hundred feet of your home, is that right?

A Yes.

Q And you are familiar with that section of the country?

A Yes.

Q Now, I show you S-6 for the state which, as I understand it, is a picture of the scene on Brandford avenue, which is the scene as shown here and X indicates where, according to the statement of Noel, he showed the officers the spot where he is supposed to have shot the colored man in the back of the head. Are you familiar with that locality?

A Yes.

Q Can you give me the approximate distance shown in S-6, which is the spot where Noel is supposed to have shot the body was found, within a few hundred feet of your home, is stand it, is a picture of the scene on Bradford avenue, which colored man, to the location shown in S-2 where the body was found?

A Between a mile and three quarters to two miles.

Q Now, I refer you again to S-6, and ask you if there are any houses there in that section of Bradford avenue?

A Not until you cross the Ridgewood road.

Q Is the Ridgewood road down as that picture shows?

A Yes, it is at the foot of the hill.

Q Going toward Overbrook?

A Yes.

Q And that is quite some distance from where this spot is marked with the X?

A Yes. Here is the street sign shown in that picture.

Q Well, that is quite some distance in that picture from where the X is marked?

A Three or four hundred feet.

Q And there are no houses—with the exception of what you have said, across the Ridge road, there are no houses on Bradford avenue?

A No, not from the Montclair line there.

WILLIAM B. PRITCHARD, sworn on behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q Where do you live?

A The Hotel San Reno, New York City.

Q What is your profession?

A I am a physician.

Q How long have you been a physician, doctor?

A Since 1884.

Q And have you specialized in nervous and mental cases and insanity cases?

A I have, yes.

Q And for what period of time have you specialized in them?

A Exclusively for the last thirty years.

Q And what experience have you had in reference to that same line of work?

A Well, the experience, first, of a more or less extensive practice. Other experience as neurologist in several hospitals and ten years or more in the City Hospital, Blackwells Island, New York.

Q How long were you with the City Hospital on Blackwells Island, New York?

A I say for ten years or more.

Q Then were you connected with the Knickerbocker Hospital also?

A Yes, twenty five years as a consultant.

Q Did you experience any difficulty in getting answers this case?

A I did.

Q When?

A On the 28th, I think.

Q Of September?

A Yes.

Q This year?

A Yes.

Q And who was present at the time you examined him?

A Mr. Smith, of the law firm of Mr. Lane and Mr. Barber.

Q How long did your examination take, doctor?

A I should say an hour.

Q At the time that you examined the defendant had you seen the hospital records of the Overbrook Asylum?

A Yes.

Q And had you also seen the hospital record of the Craig House, New York?

A I had seen a statement from Dr. Slocum.

Q Which was the statement annexed to the Overbrook Hospital record, is that right?

A I think it was, yes.

Q Did you experience any difficuty lin getting answers from the defendant at the time of your examination?

A I did.

Q Did you experience much difficulty in that respect?

A Well, most of my questions had to be repeated, some of them several times. The whole examination, so far as questions and answers were concerned, was one of constant prodding.

Q And from the examination and history of the case as displayed by the records of the two institutions that you saw, did you come to the conclusion as to the sanity or insanity of this boy?

A I did.

Q What was your conclusion?

A That he was insane.

Q Now, will you tell us freely and clearly and put in everything that you can recall in the answer as to what made you come to that conclusion, on what you based that conclusion?

A My opinion as to this yung man's mental condition, formed as the result of my investigation of the case and from personal examination of the man himself, included, as is customary in such cases, as much as I could obtain of his family history and all I could obtain of his previous history. The statements of those who had known him. In this case the records from the hospital at which he had been confined as a mental patient in Beacon, New York, and Overbrook, this state. All the information that I could get from credible sources as to the offense alleged to have been committed by

him and for which he was in jail and itemized as medical data, to constitute that series of events and occurrences, peculiarities of behavior, conduct, of continuity of adjustments, of family relations and of other factors of that sort that went back for a period of certainly two years prior to my examination and which, in my opinion, continuously existed throughout that period of two years and up to the moment of my examination. That record included a mental characteristic of unstability, of shifting purpose, of vaccillation, of lack of any constant continuity of purpose of mental processes. That was illustrated in his educational career. First, to Harvard, then to Andover, then to Middleton, then to Williamstown, later on to Columbia. Occupational, first, as a bank messenger and then taxi driver and then a substitute letter carrier, then this wanderlust, this restless manifestation of a physical instability, this wanderlust which carried him on two occasions across, to Denmark on another. This instability, reticence, and this shut in condition as we describe it, which led him to live apart, which led him to going to this shack in the woods near a boy scout camp and living there alone, illustrated his conduct particularly much the same in Williamstown. Illustrated again in his living at home and as illustrated by his mother, of his building of a coop or pen in the room, which he shrouded in black cheese cloth, literally shutting himself in, physically shutting himself in, he being distinctly of the shut in personality as we know in such cases. The third instance that Dr. McDonald referred to as indications of his assaultive tendencies was taken into consideration. The incident at Beacon, where he took part of a chair and attacked one of the attendants. The incident at Overbrook where he also assaulted one of the attendants, the instance of which I was told of an assault of someone aboard ship. The instance of the assault upon his father. The same consequence of this wreck was, to my mind, the absolutely classical story of a dement praecox.

Q Do you think, doctor, this is a border line case of dementia praecox?

A It could not be a classical example of a border line. There are two terms, paradoxical or contradictory.

Q Well, then, what would you say?

A It is to me an absolutely identical positive case.

Q Did you find him in a delusional state at the time of your examination?

A I did.

Q Will you tell us what you mean by that?

A Specifically he made a statement in answer to my question as to whether he thought he was sane or insane that he was sane.

Q At the time that you examined him?

A At the time of my examination. That I looked upon as a delusion. He made an additional statement, in answer to my question as to whether he thought—as to whether he did not think it was wrong to kill this child, that he could not do anything wrong. That indicated a delusional state of mind.

Q Did he say, doctor, why he could not do anything wrong?

A I asked him why, and he said because wrong had been done him.

Q Did he say what wrong had been done him?

A After further questioning him, yes. Wrong at Overbrook. It required still further questioning to get him to specify the wrong. Finally, after a succession of questions, the specific wrong done him there was confining him in a particular room, the walls of which were covered with green paper with yellow dragons or yellow paper with green dragons, I do not remember which.

Q What is this shut-in personality that you speak of, Doctor? Will you explain that to us, please?

A Well, it is illustrated in the different instances that have been related by his mother yesterday, specifically that unsocial quality, of his desire to be alone, of his refusal to mix with people. I asked him the question if he had any friends?

Q What did he say to that?

A He said no. I said, "Didn't you ever have any friends?" I remember the question and answer, because it was in answer to that question that his answer was more than a monasyllable, of more than two or three words at most. His answer to that question was that when he was in high school he knew fifteen or sixteen boys. That was his outstanding manifestation of any actual mental initiative in his examination. It was the longest sentence he used, which was not a monosyllable yes or no.

Q He did not volunteer much information to you, did he?

A No, he didn't.

Q Did you hear Mrs. Noel's testimony yesterday?

A Yes.

Q And assuming that to be a fact, what would you say as to those occurrences and that history of a case of dementia praecox?

A The story that she told was one that an alienist who runs could reach. It was, from a layman's standpoint, a classic. It was a story of a dement praecox.

Q Now, will you tell me this, a man suffering from dementia praecox, as you say this defendant Noel was and as you discovered from the history of his case and your examination, do you think he had the capacity of distinguishing between right and wrong?

A I do not.

Q And why do you say you believe he does not have that capacity? Will you tell us just as frankly and as fully as you can, please?

A His denial that it was wrong and the form of his denial and the reason of his denial was part of the evidence, to my mind, that he did not know that it was wrong. Broadly speaking, my answer to that question is that this boy has not enough mentality to know the difference between right and wrong.

Q So that in addition to the answers you got from him, you determined that upon the question of mentality?

A Exactly.

Q Now, Doctor, what is the prognosis of a case of dementia praecox of this kind?

A This is purely a matter of opinion, but my own personal opinion is that this boy is hopelessly incurable as a dement praecox ever becomes.

Q And in your opinion is the disease functional or organic?

A I don't know. I really have not a right to anything more than an opinion on that subject and that is of an academic value.

Q Now, Doctor, in your experience for the number of years you have specialized in mental and nervous diseases, do you know of any cases that was a marked or well defined case of dementia praecox that was completely and absolutely cured in a period of two months so that the patient was then sane and normal in every respect?

A No, sir; I have no such knowledge.

Q Do you know of any medical records that point to such a case as that?

A I do not.

Q Have you ever heard of a case clearing up and becoming normal and sane in a space of two months?

A Not until I heard of this case.

Q You do not believe that this one did, do you?

A I am absolutely sure that this man is insane at this moment. That I am as sure of as anything in my professional knowledge.

Q Now, will you look at these letters, please, first I am referring to D-6 and D-7 which are letters written by this defendant, Noel, to a scoutmaster by the name of Gray, and I ask you to look at both these letters at the same time and I think I can tell they are almost identical with the exception of a P. S. at the bottom, and assuming they were received by Gray within a day or two apart, is there any indication from these letters alone of dementia praecox or insanity?

A What was your question as to my opinion?

Q Well, I will change that. In your opinion were they written by a normal mind?

A They were not, sir, in my opinion.

Q And in your opinion what do they indicate, if they indicate anything, of the mental status of the man who wrote and sent those letters?

A Well, either of these letters—they are duplicates, practically, with the exception of a P. S. We will say this letter, assuming I knew nothing about the man who wrote it, that the letter standing absolutely alone, that is the question you asked me, and I should say that it was a very queer letter, but I should want, I think, without further study, I should want further information as to the man who wrote this letter and further facts about him before I expressed an opinion.

Q All right. Coupled up with your present knowledge of the defendant, as you told us you obtained it, couple that with the letter itself. What does the letter indicate?

A This letter is perfectly consistent with the record of this case and Harrison W. Noel.

Q Now is it equivalent with dementia praeco x?

A It is equivalent of the same thing, Harrison W. Noel being an example of dementia praecox, this letter being written by him, is a part of the record of a dementia praecox.

Q Now, I show you another letter, which is marked D-11,

which is addressed to the same man and I mentioned, and written sometime within the same period, up to within, I think, two or three weeks—I cannot tell you exactly—now, in answering that question, assume the knowledge yo unow have of the records obtained in this case, the asylum or hospital records and also your examination of the boy and the testimony of Mrs. Noel, what would you say as to that letter indicating a symptom of dementia praecox, or would it indicate a normal mind?

A It is consistent as the product of a dement praecox.

Cross Examination by Mr. D'Aloia.

Q Now, supposing he knew a man by the name of Gray and he knew his address and he had had quite an acquaintance with the man Gray who received those letters and he was very much devoted to Gray, assuming that Gray might or might not have promised him something upon his death, Gray being an old man, do you think there is anything strange about the writing of those letters?

Mr. Wachenfeld. I object to that. There is no such testimony in this case as incorporated in the question.

Q Well, supposing Gray had an estate and he was looked upon as a very good friend of this particular defendant, the alleged writer of letters, do you say there is anything wrong about writing those letters?

A The character of the letters, the text of the letters, is to my mind irrational.

Q You said queer?

A I said I would describe it as queer, knowing nothing about the associated facts and looking at the letter as a unique single exhibit.

Q Now, you said this young man as given by his history and from his mother and what you know about this case, had unsocial qualities. Do you find unsocial qualities in a person who has almost sexual tendencies?

A You find a good many variations from the normal, but they are not unsocial.

Q You find they do not want any friends very much?

A On the contrary, they are anxious to find friends of a certain class.

Q But not the ordinary run of human beings, males.

A Lady friends, as they call them, yes.

Q Male lady friends?

A Yes.

Q But not the ordinary run of human being, males.

A There is nothing characteristic, so far as I know, of the homo-sexual—nothing characteristic in a tendency to a shut in personality

Q Do you find a quality of distractability of one who has homosexual tendencies?

A Not as appear to that group, no.

Q But you find a lack of attention?

A No, not distinctively at all.

Q Do you find seclusiveness, a tendency to be alone in a person who has homosexual tendencies?

A I do not think they are as normally social as a normal person. That is a broad admission, but it is not considered a characteristic of the homosexual group.

Q How many cases of dementia praecox have you obeserved where there has been an improvement to such an extent that the patient could during the period of improvement distinguish between right and wrong?

A I don't know. I would not like to designate a specific number.

Q Well, you have had quite some, haven't you?

A I think that dementia praecox patients could improve to a point where they would know certainly, from a legal standpoint, the difference between right and wrong.

Q Now, if a person kills another and makes all the necessary preparations and takes all the necessary steps to hide the body of the person, would that indicate to you that the person who is doing the hiding of the body was conscious that what he had done was not right?

A I would say that the was an indication of some rudimentary or some sort of appreciation in the sense of fear of the consequences.

Q So that you would take that on the part of an individual who had killed another, the act of hiding the body and covering up his acts and his deeds, you would take that as an indication

of consciousness of the fact that what he had done was not right?

A That he might be punished for it.

Q Yes, that it was not right, it should be kept from the view of others.

A That it might not be right as other people would judge it.

Q Well, we say that killing a human being is not right because other people judge it to be a crime, don't we?

A We do.

Q Therefore, if a person kills another and he takes the body and hides it, you say that was an indication of consciousness that that particular thing he had done was not right in the judgment of others?

A Certain appreciation of that fact, yes.

Q Now, supposing after killing a man the person who killed the man was conscious of blood spots on his coat and then got some gasline or some kind of a liquid spot remover and he got a rag and attempted to remove the spots from his coat, would you say that that would indicate that he was conscious that what he had done was not right and that those spots might lead to the discovery of his wrongful act?

A The same answer as before, yes.

Q Now, I think you did tell me that there had been a nummer of cases of dementia praecox under your observation where the improvement has been sufficient and to a certain degree where the patient could distinguish between right and wrong.

A No, I didn't say that there had been a number of patients under my care.

Q No, but patients that had come under your observation.

A No, I didn't say that, but I made the statement that I was perfectly willing to concede that an improvement could occur in dementia praecox in certain cases to a point where the individual would have an appreciation of the difference between right and wrong from a legal standpoint.

Q Now, you know this case very well. You know that on the 1st of September, 1925, this defendant selected a pretty nice house up in Montclair by reason of its appearance as the place from which he was going to kidnap the little child, and you know that on the 2nd of September he kept that fact in

mind, you know that on the 3rd of September he took the initial step to carry out what he had conceived on the 1st, and he got ahold of an automobile and on the same day, the 3rd, he hid the automobile and went home and then on the 4th he went and got the automobile where he had hidden it and went back to his original proposition which he conceived on the 1st of September and kidnapped the girl from the front of that particular house he had selected on the 1st. Now, what would you say as to that mental process, would you say that particular brain was carrying out a conceived plan, having for its object the kidnapping of a little girl during those four days?

A As you state the case and assuming all those statements to be true, yes.

Q Would you call that mental process reasoning

A Yes, a certain kind of reasoning.

Q Well, would you call it reasoning?

A Yes, reasoning.

Q Have you ever heard of a kidnapping case before this one?

A Oh, yes.

Q Have you heard about a child taken from a very wealthy neighborhood before in any particular kidnapping case?

A I recall the Chicago case.

Q Yes.

A Nathan Loeb.

Q Loeb-Lepold.

A Leopold, yes.

Q Do you remember the Philadelphia case?

A I do not recall it. I might if you remind me.

Q Didn't you ask this young man where he got the idea on the day when you examined him?

A Not in that form.

Q Well, did you ask him at all where he got the idea?

A I told him that I had been informed that he had gotten the idea of a kidnapping scheme from the Nathan Loeb case, or Leopold.

Q Well, didn't you know that he had previously stated he got the idea from a Philadelphia kidnapping case?

A I don't.

Q Where did you get the information?

A I could not tell you, to save my life.
Q What?
A I could not tell you now.
Q Mr. Barber was with you on the day you went up to the jail?
A Yes.
Q Mr. Barber introduced you to the defendant?
A Yes.
Q And did the defendant comprehend the introduction?
A I don't know whether he did or not.
Q Well, did Mr. Barber describe you as a doctor?
A He introduced me and I further described myself.
Q Tell me what the introduction was by Mr. Barber?
A I do not remember, except that it was very brief. As I recall, purely perfunctory. "This is Dr. Pritchard and he is the doctor who has come here to examine you."
Q For what purpose, did Mr. Barber explain the purpose?
A I don't think he did.
Q Are you sure that he didn't?
A I am practically sure that he didn't.
Q But you are positive?
A No.
Q You did not have any difficulty in asking this young man to do whatever you wanted him to do—did you make a physical examination of him?
A Yes, superficially.
Q Did he have to remove any part of his clothing, close his eyes, point his arms, stick out his hands?
A I think I made certain neurological tests.
Q And every time you made those requests he complied?
A Yes.
Q He comprehended everything you wanted and did what you wanted him to do?
A When I asked him to shut his eyes, he did so.
Q Did you bring his mind back to the time in his life between the first of September and the sixth of September, 1925?
A Yes.
Q How?
A By asking him about the crimes alleged to have been committed.
Q Did you ask him what he did on those particular dates?

A I didn't ask him specifically as to any dates.

Q Did you try to find out what movements he made on the 1st of September?

A No.

Q Tuesday of that week?

A No, except as I asked him particulars of what happened in connection with these two killings.

Q Now, you took it for granted that he had killed Pierce when you put these questions to him?

A Yes.

Q Now, didn't you find it necessary to ask him what he did on September 1st, all day long, and get his conduct on that date to determine whether it was rational or irrational, the conduct of a dementia praecox or a normal individual.

A I didn't.

Q Did you ask him what he did on the 2nd of September to find out whether his conduct on that day was rational or irrational or the conduct of a sane individual?

A I didn't ask him any questions as to any specific date, September 3, 4, 5, 6, 7, 8, 9.

Q You have heard during your study of a psychopathic personality?

A Very familiar term.

Q Will you kindly explain it to us?

A Well, it is a very broad term.

Q Well, what does it mean in its broadest sense?

A It is so broad it is almost impossible to define it.

Q You said you are familiar with it?

A I am.

Q I want you to give us your idea of what a psychopathic personality is?

A I started to define and it is necessary that I should describe it as a term having exceedingly broad meaning.

Q Do you understand there is a distinction between a psychopathic criminal——

Mr. Wachenfeld. Well, now, do you want a definition of that word?

Mr. D'Aloia. No, I will lead to it in another way.

Q Do you understand the difference between a psychopathic criminal and an insane criminal?

A Personally I do not recognize that.

Q But some authorities do?

A Some doctors do.

Q Some alienists do?

A Yes. You use the word authorities?

Q Yes?

A And I question that.

Q If I understand you correctly, you say every doctor is not an authority?

A I say medicine is so shifting that the authority of today is the waste basket of tomorrow, so we cannot call anything an authority.

Q I agree with you.

A Well, we are in agreement once, anyhow.

Q Well, we will be in agreement before we get through.

A I think so.

Q But insofar as this shifting of science is concerned—you are a wonderful, brilliant, exponent of——

A Thank you.

Q Is stated and certain, you do admit there is a distiction between a psychopathic criminal and an insane criminal?

Q Some men make the distinction.

Q Well, don't you make it?

A I do in an academic way, yes.

Q Well, do you agree with me that a psychopathic criminal and an insane criminal differ from one another in one particular point and that is that the psychopathic criminal knows the distinction between right an wrong and the insane criminal does not?

A No. Some insane criminals know perfectly well the difference between right and wrong.

Q And if they do they are amenable to the criminal law?

A I think they ought to be.

Q Well, now, not knowing what this defendant did on the third of September specifically and not knowing what he did on the morning, noon and night of the 1, 2, 3, 4, 5, and 6 of September and the sixth is very important, because I am going to tell you between 5:30 P. M. on the fifth and almost four o'clock, P. M., on the sixth this defendant denied consistently that he knew anything about the killing of anybody, or denied killing any human being, now, do you mean to tell us that you can tell now whether he could distinguish between right and wrong during those five or six days?

A I do not say to all that whole period, but it would be included in my answer. I did not ask him as to the specific date that you mentioned, because it was not necessary to the conclusion that I formed. I might have asked him a thousand questions that I didn't.

Q Well, let's summarize your testimony. You will admit that a dementia praecox may improve to such a point where he knows the distinction between right and wrong.

A I think that is true, yes.

Q You will diagnos this case as dementia praecox?

A Yes.

Q Professionally?

A Yes.

Q Not having asked him what he did the 1st, 2nd, 3rd, 4th, 5th and 6th of September, those six days or five days the month of September, 1925, will you admit that you cannot tell not knowing what he did did, whether he knew the distinction between right and wrong?

Mr. Wachenfeld. I object to that on the ground that the doctor has testified although he did not mention the specific date that he did talk to him about these occurrences that did happen on those dates. The doctor was assuming they did happen on those dates.

The Court. I will allow the question.

Q Will you admit, doctor, that not having asked him particularly about this period, his conduct, not having found out what his mental condition was, what he believed existed or didn't exist on the 1st of September, or what motivism there was for his going up to this particular place and picking out this nice house and not finding out what actuated or stimulated that thought, or not having found out anything at all about his conduct specifically between the 1st of September and the 6th, will you admit that you cannot tell us whether he could distinguish between right and wrong during that period?

A I will not.

Q You want us to believe that you can't tell us?

A I honestly believe I have given you the correct answer as to his mental condition at that time and I cannot change it.

Q Now, isn't it remarkable that this classical case of dementia praecox during all his wanderings in different parts of the world, as you gleaned it from Mrs. Noel's testimony, going to Hamburg, shipping on a boat, never had any trouble

or never ran amuck or afoul with the criminal laws of any country or state except on one occasion at a camp in Sag Harbor, when his father was asleep in one tent and his mother in another, would you call that remarkable?

Mr. Wachenfeld. I object to that, when the Prosecutor says he never ran afoul to the criminal law.

The Court. Objection sustained.

Q Is it a fact that from his history you gleaned that he was never taken into custody or charged with any crime?

Q I do not recall any instance in which he was accused of any crime.

Q Do you recall that he revolted against the attendants in a lunatic asylum?

A I recall he assulted two attendants in two asylums and also an assault upon a cook on one of the ships.

Q And you would say they were impulsive acts?

A I don't know all of them.

Q Well, you read of this attack in the Craig House when he took the arm of a chair and assaulted one of the attendants, you would say that was impulsive?

A It was impulsive in a way, but there might have been a motivation for it.

Q Do you find any impulsive act in his conduct between the 1st of September and the 5th of September, 1925?

A Using the word as distinguished from prompted by judgment, yes.

Q Using the word as distinguished from prompted by judgment, using the word as catatonia dementia praecox, do you find any assaultive impulsive conduct in what he did between the 1st of September and what he finished up in telling us on the 6th of September, 1925?

A If you can tell me how to use the word "impulsive" otherwise and his conduct which is not prompted by judgement I can answer your question.

Q Was his going to 136 Upper Mountain avenue to pick out a good looking house prompted by judgment?

A I should say pretty rotten judgment.

Q Never mind. Is it prompted by judgment?

A With that qualification, yes.

Q And was his calling for a taxi prompted by judgment?

A The same answer, as a part of the whole scheme.

Q Did you ever hear of a criminal that was caught and tried

for a crime which he committed that did not attribute his beavior to some rotten judgment at some time in the preparation of his crime?

A I don't know.

Q Have you ever come in contact with these psycho-pathic personalities known as criminals who will bemoan the fact that they kept a candle lighted a second too long in perpetrating a burglary?

A No.

Q Suppose I was to inform you this defendant said to one of the keepers if it had not been for the wife of the chief of police or if she had minded her own business "I would not be here", would you say that was rotten judgment he was soliloquizing about?

A No.

Q Now, if he did recall last week after taking a bath in the jail that his apprehension in this case was due to the seeing of an automobile license number by a chief of police's wife, what would say as to that memory, pretty good or bad?

A I found his memory pretty good in my examinations.

Q All right. Now, if you take this whole case, how he was arrested and why he was arrested and what led to his arrest, and it is a fact that it was this chief's wife, and the noticing of that number on that particular car that led to his arrest and to the solving of these killings, and when he sees that as I see it and the same as everybody else sees it, what would you say as to his power of reasoning about determining for himself just how this mystery or these killings were cleared up?

Mr. Wachenfeld. I object to that. It is argumentative and contains a lot of things——

The Court. The question is too broad.

Mr. D'Aloia. I will make it a little narrower to suit Mr. Wachenfeld.

Mr. Wachenfeld. You do not have to suit me.

Q Would you say that this defendant in November, two months after this thing occurred, over a period of five days, if last week he was able to put his finger and could point to

that particular fact on what little details his apprehension was caused, what would you say about that mental faculty, that brain, a pretty good brain or rotten judgment?

A No, I should say that as to the particular incident he put two and two together perfectly correctly.

Q And when a man can put two and two together perfectly correctly mentally then he is not mentally deranged at all.

A That does not follow.

Q Now, you will go to this extent in this case, that he suffered from no hallucination on the day you saw him at the jail?

A I recall no hallucination.

Q And the only thing you recall about a delusion or state of mind was when he told you that away back in March they had subjected him to a lumbar puncture?

A He did not tell me that at all.

Q Well, he told you that he hated the people up in Overbrook?

A No.

Q Well, what did he tell you?

A He told me that he had been wronged, that was his story.

Q Did he tell you how?

A I gave that before. He told me how after repeated questions that he had been wronged by being confined in a certain room, that the wrong done in confining him in that room was due to the fact that the room was papered in yellow and on the paper were green dragons. I might have reversed that, green paper with yellow dragons.

Q And that is what he told you at the time he was in Overbrook hospital?

A Exactly.

Q At the time you examined him in the jail he did not tell you he saw green dragons on the cell.

A He did not have any hallucinations.

Q Did he have delusions?

A I gave you three.

Q What were they?

A One was that he was perfectly sane.

Q That ran counter to your opinion?

A That was an obvious delusion. Another was that he had suffered grevious wrongs that would justify him in killing any-

body. That was a delusional state of mind. Those were two that I recall specifically.

Q Now, during your examination do you recall any particular question that you put to him that was answered in an unresponsive manner? You said his memory was good. Now, let us find out about the questions and answers.

A My recollection is that his answers were responsive to the extent of a monosyllable yes or no.

Q But that monosyllable was responsive to the question?

A It was.

Q In each instance?

A I recall no exception at the moment.

Redirect Examination by Mr. Wachenfeld.

Q Now, you say that this boy's memory was pretty good?

A Yes, I should say that his memory—there was nothing radically wrong with it at all.

Q Is that anything against the diagnosis of dementia praecox or insanity?

A No, sir.

Q Did you find any emotional dullness there or lack of emotion?

A I failed to get the slightest reaction in any direction.

Q And is that a symptom of dementia praecox?

A It is, of the catatonic dementia praecox, particularly.

Q Will you tell me, based on the examination and the history of the case and the facts that you have before you, that you think this boy would willfully and deliberately and with premeditation commit this crime?

A In my opinion, he could not.

Q Do you think this boy judges the situation as a normal man judges it?

A No, sir, not in my opinion.

Q Why, because of a form of insanity?

A Because of the degree of this insanity.

Q From the facts that the Prosecutor has given you, do you think this scheme is a sane scheme or do you think it is an insane scheme?

Objected to.

Objection sustained.

Q Do you think it is a normal or a sane reason to kill a man in order to get his automobile, assuming that is why he killed him?

A It doesn't so impress me.

Q Do you think it is sane for a man, after being taken in the custody of the place, to argue with the police and ask the police for ransom of $4,000.

A It doesn't impress me as evidence of sanity.

Q Do you think it is sane, for a man, after arguing for $4,000 with the police authorities, in whose custody he is, to be offered by the police authorities $4,000, and to insist that he only wanted $4,000. Does that sound like the act of a sane man?

A It doesn't to me, no, sir.

Q Does it sound to you like the act of a sane man that this boy, after kidnapping or taking the little girl for ransom kill her?

A I don't think so, no, sir even although intervening—intervening conditions might have arisen which would have altered the whole scheme and would alter his mental viewpoint, attitude.

Q. Is there anything that you know of from the facts in this case which shows continuity or lack of thought?

A There is a certain thread of continuity in the scheme, as described, assuming that it was such a scheme. There was a certain thread of continuity.

Q Let me tell you this. This boy says that he called up a cab and that he got a cab and that when he got in the cab, after driving a short distance, he shot the man, the colored man who was driving it. Is there anything there, or can you tell from that fact, or from your examination of that boy, what his idea was when he got in that cab?

A No, sir.

Q Can you tell me whether, at the time he called the cab, that he intended to shoot the colored chauffeur?

A I cannot.

Q Can you tell me whether or not, after he got in the cab, that that impulse came to him and he shot him?

A I cannot.

Q Can you tell me whether or not he started when ride

with the colored man, he got the insane delusion that this man was taking him back to Overbrook Asylum, assuming the fact that the road was directly in line with the road to the Overbrook Asylum?

A I cannot.

By Mr. D'Aloia.

Q Have you ever read of any accounts in the newspapers of these crimes of violence? Have you read in the last two weeks of crimes of violence, and do you think they are the acts of sane men?

A I don't read them habitually.

Q Have you ever heard of a crime of violence which, when you get the details, sounded like the act of a sane man?

A I have seen nothing to contract sanity in the details of some of these criminal acts.

Q But in most of them you find that they did not sound like acts of sane men?

A On the contrary I don't belong to that school which excuses the criminal because he is a pschopathic.

Q You don't?

A I don't.

ALLEN S. KIRKWOOD, sworn in behalf of the defendant.

Direct Examination by Mr. Wachenfeld.

Q What is your profession?

A Practice of medicine.

Q How long have you been a physician?

A Twelve years.

Q Where is your office?

A 53 Union street, Montclair.

Q Have you been practicing during the period that you have told us about in Montclair.

Q Where else have you practiced?

A I have had hospital experience, general hospital experience.

Q During your term of experience have you had experience with nervous or mental cases?

A Some, yes, sir.

Q What experience have you had?
A Just general experience.
Q Did you see this defendant, Harrison W. Noel, some time in the month of February, 1925?
A February 24, 1925.
Q Where did you see him?
A 235 Mountain avenue.
Q And that was his residence at that time?
A Yes, sir.
Q And who else was present at the time you saw him?
A His mother.
Q Did you make an examination of him at that time?
A I did.
Q Was Dr. Davies present then?
A No.
Q Will you tell us what you observed and what your examination consisted of then?
A When I arrived at the house I saw a young man walking to and from on the piazza. I didn't know who he was and when I entered the house I met his mother and she said that Harrison was outside; she tried to persuade Harrison to come in, and after a long time he came in and seated himself in one room——
Q Before you get to that, can you in detail tell what she said?
A She simply asked Harrison, "Will you come in, there is somebody here to see you."
Q Did he come in or did she have more trouble with him?
Mr. D'Aloia. He didn't say anything about trouble.
A He walked with his head down and he didn't pay any attention to his mother.
Q Did he walk into the room or did he walk up and down on the porch with his head down?
A Yes.
Q And he paid no attention to his mother?
A No.
Q How many times did she speak to him all told before she finally got him to come inside?
A About five minutes, three or four times she spoke to him.

Q Did you say anything during that time?
A No.
Q You finally got him into the house?
A Yes, sir.
Q What happened there?
A He sat there in a chair, assuming the same attitude he is now.
Q His hands to his face ?
A Then he changed suddenly into another room and sat there and I tried to explain to him, and received no answers at all.
Q Did you receive any answers?
A Not at that time.
Q What was it you tried to question him?
A I asked him what his name was, what he was doing at that time, and finally he did make a statement, and that was, "I am worried about a Mr. Gray. Mr. Gray is Scout Commissioner. I don't believe he should be"—something of that sort—"he is sick, he is at a santarium. I went to the sanitarium to see him. They razzed me, they threw me out."
Q That is what he said to you?
A Yes.
Q How long did that examination take, Doctor?
A I was at the house about three-quarters of an hour.
Q And that is all you got out of him in three-quarters of an hour?
A Yes, sir, after he made that statement he deliberately left the room and went upstairs and I didn't see him again.
Q You didn't see him again?
A No.
Q Did you see him in conjunction with Dr. Davies, the next day?
A The next night.
Q What time the next night?
A About half-past eight.
Q Where did you see him the next night at half-past eight?
A Overbrook Hospital.
Q Did you make an examination of him there?
A Simply made an examination and received the history from the family, and no application had been made for his

committtment, and of course, we didn't write our examination until after his father had signed the application for his committment.

Q Was it then, on the 25th of February, that you saw him at the hospital?

A Yes, sir.

Q Did you make another examination of him at that time in the presence of Dr. Davies or not?

A No.

Q Did you see that boy there then until after the commission of this crime?

A No.

Q From your examination of him at that time, was he sane or insane?

A My impression was that he was insane.

Q When did you next see him?

A On September 6th.

Q Where did you see him on September 6th.

A At the police station in Montclair.

Q What time of the day or night was it?

A It was between two and three o'clock, Sunday morning.

Q How did you happen to go to the police station at that hour in the morning?

A Mrs. Noel called me on the 'phone and asked me to come to the police station.

Q When you got to the police station at that hour in the morning did you see Chief Reilly there and Captain Mason?

A Yes, sir.

Q And some Jersey City Detectives?

A I don't know. There were some other people there, but I didn't know them.

Q Did you talk to him alone, or did you talk to him in the presence of police officers?

A I talked to him in the presence of police officers.

Q Did you talk to Chief Reilly?

A No special conversation.

Q Did you talk to any police officers?

A No, sir, not anybody especially.

Q Did they permit you to talk to the boy?

A Yes, sir.

Q Did you get any answers from him?
A No.
Q How long was it before you got any answers?
A I suggested to Chief Reilly that he might tell me something alone.
Q Did you talk to him while the police officers were there?
A Yes, sir. Chief Reilly made the suggestion to me that I talk to him.
Q How long did you talk to him before the police officers before you got any response?
A I should judge about fifteen minutes.
Q Did you adopt Chief Reilly's suggestion?
A Yes, sir.
Q Did you talk to him alone?
A Yes, sir.
Q How long did you talk to him alone?
A I should suppose fifteen minutes.
Q Did you ask him any questions?
A Yes, sir.
Q Did you get any answers?
A Repeating the question I finally got some answers.
Q Will you tell us what questions you asked the boy and what answers he gave you?
A May I use this memorandum?
Q Yes.
A "Question: Harrison, do you know me. Answer: Yes. Question: Where did you see me before? Answer: I don't know. Question: What is my name? Answer: Dr. Kirkwood. Question: When did you see me before? February 25th. Where did you see me before? Answer: I don't know. Question: Did you take the little girl away? Answer: Yes. Question: You didn't take the little girl away, did you? Answer: No. Question: Where did you take the little girl? Answer: She is not in Montclair. Question: Is she in Cedar Grove, Verona, Passaic, Paterson or Bloomfield? Won't you tell me where she is so we can take her back to her father and mother? Answer: She is alive and well." And then I repeated these questions for further replies and couldn't get any. After that he seemed—he was very sleepy, and getting those answers from him I took hold of his arm several times to try to urge

him to answer, and after he had been quiet for some time he suddenly woke up and turned to me and opened his eyes and seemed very much inclined to talk, and he said "When did you visit Overbook lately?" And I said, "Why do you ask that?" And he said, "Do the faces of the doctors change?" And I said, "What do you mean?" "Well," he said, "The faces of the doctors change sometimes, once a week sometimes, it is a week sometimes, three times a week." I said, "Do you mean the faces of the same doctors change?" He said, "Yes." I said, "Why do they change?" He said, "I don't know."

Q Did he say anything else at that time?

A Nothing more.

Q From your examination at that time, from your observation from what he said, what you asked him, and the whole thing all told, do you think he was sane or insane?

A Insane.

Q Any question about it in your mind?

A No, sir.

Q Do you think he could distinguish between right and wrong?

A I do not.

Q Why do you say that?

A His delusion that he had at this time in regard to the face of the doctors, his attitude and his past history, and the diagnosis which had been made of his condition.

Cross Examination by Mr. D'Aloia.

Q His memory is fairly good and he remembered a date, which you say is correct, February 25th?

A Yes, sir.

Q He didn't see your face change?

A No.

Q How long after that was it he guided these people up to where the little girl's body was?

A I think it was that afternoon.

GEORGE W. DAVIES, sworn on behalf of defendant.

Direct xamination by Mr. Wachenfeld..

Q What is your profession?

A Physician.

Q How long have you been a physician?

A Nineteen years.

Q Have you had any experience with nervous, mental or insane cases?

A I have.

Q What experience have you had?

A Seven years senior resident physician Essex County Hospital at Overbrook and staff of Boston Psychopathic Hospital, and I was special examiner of mental diseases in the United States Army.

Q How long have you been a resident physician at Overbrook?

A Seven years.

Q When did you first see the defendant, Harrison W. Noel?

A On February 24th.

Q This year?

A This year.

Q Where did you see him?

A At his home in Montclair.

Q How did you come to go to his home in Montclair at that time?

A His family physician called me on the phone and asked me if I would go there and examine this young man.

Q You saw him when you got there?

A I did.

Q Was there anyone else present at the time?

A His mother met me at the door and accompanied me to his room and informed the young man that I was Dr. Davies and when she left Harrison and I were there alone.

Q How long did you examine him at that time, doctor?

A I should say approximately about an hour.

Q And will you tell us what your examination consisted of and what took place at that time?

A Harrison sat in the corner of the room, it was about dusk. There was no light on. I asked him several questions about how he was feeling and what he had been doing, and he was somewhat slow in answering me. He sat there with a silly smile, silly laughter and was making what we call grimaces.

Q What are grimaces?

A That is muscular contraction of the face, blinking of the eyes and snuffling of his nose and during my questioning he

seemed to be very slow in answering, what I would call returned and I asked him to give me a description of his life and what his occupation and so forth was, and he informed me that he had been occupied at various occupations in a short time and never seeming to be able to hold any one particular position for any length of time, and about walking—attempting to tramp to Virginia with no particular object in view, taking a trip across the ocean, and then he related to me that he belonged to the Scouts in Montclair, that he was very much interested in the Scout Master and that, in fact, he was in love with the Scout Master. He was very much interested in the fact that he thought that the Scout Master needed someone to care for him, and then he said he—the Scout Master, was in a sanitarium at Clifton Springs, New York, and he had visited him there and he was informed by the authorities if he did not stay away from there he would be committed to some institution, and he did not seem to care as to whether his mother or father—whether they coincided with his ideas about wandering throughout the country. He did not seem to care whether it worried his mother. He seemed to be devoid of emotion at that time, what might be termed his emotional deterioration and I concluded from the short examination—that is about all I think I examined him at that time and is about my experience in observing mental cases—that he was a committable case that should be committed to an institution for observation. That was the 24th and on the morning of the 25th, about two o'clock in the morning, my phone rang and Noel was on the other end of the wire and informed me he was coming up to see me.

Q That is, the defendant, Harrison.

A Yes, Harrison, and I immediately determined that he was not, so I called up the Montclair Police and asked them to take him in for the night and we would commit him the next day.

Q And did you commit him the next day?

A And I informed his mother that he should be committed. She agreed with me, in fact, she thought——

Mr. D'Aloia. I don't think these conversations are admissible.

Q But he was committed?

New Jersey State Library

A The next day.

Q At the time you saw him was he sane or insane?

A Insane.

Q And the form of mental disease he was suffering from was what?

A Dementia praecox.

Q And you say you found him devoid of emotion at that time?

A Yes.

Q Did you find any evidence of negativism?

A Yes. He would not cooperate with me, and in my endeavor to obtain any information declined to offer assistance to me.

Q Did you find any evidence of retardation?

A Yes, he was retarted.

Q Did you find any evidence of muteism?

A Yes.

Q Now, did you see him again after that?

A I did not see him again until the 28th of September, I think it was.

Q Was that the time you made the examination.

A In the Newark Street Jail.

Q Yes.

A Yes.

Q And who was present at the time of that examination?

A Dr. Thompson, Mr. Barber, Mr. Smith and the stenographer.

Q How long did that examination take?

A I should say about an hour, an hour and a half.

Q And did it consist mostly of questioning the boy during that time?

A It did.

Q Now, will you tell me the attitude you found him in?

A At the jail?

Q At that time at the jail, September 28th, I think you said.

A As I walked in the room—Dr. Thompson and I had agreed that we would examine him together, and Dr. Thompson proceded to examine him first, and I sat in a chair opposite Noel and Dr. Thompson proceeded with his examination, and

what should have been an answer to a direct question, he turned to me and said, "You know me?"

The Court. What was the question?

Witness. I do not know what the question was, your Honor. Some question Dr. Thompson had asked him. In other words, it showed me a lack of attention to Dr. Thompson, and he said, "Why don't you say yes?" And I asked him various questions——

Q The Court asked you if you remembered the question.

The Court. He said he could not remember the question.

Q What did he say at that time?

A Instead of answering this direct question from Dr. Thompson he turned to me and said, "You know me, don't you? Why don't you say yes?"

The Court... Was he addressing you then?

Witness. Yes. Then he turned and addressed me.

Q Did you answer him?

A I did not.

Q What happened after that?

A Then when it became my turn to take up the examination I asked him why he was there and he said he was there for killing the colored man, and I asked him if he considered that he had done anything wrong in killing this man and he told me no. He said he had broken the law—I believe he said that, and I took him through quite a few questions and while questioning him he suddenly said he had spit up his spine while at Overbrook.

Q Did he tell you anything else about his spine?

A No. He said he had spit up his spine at Overbrook and I said, "spit up your spine?" And he said, "Yes," I said, "What did you do with it?" "Well," he said, he spit it up on the floor and gave it to a hunch-back up there who did not have any spine, and he also volunteered the information that they had put poison in his food at Overbrook. That was about the sum and substance, I think.

Q Did he say anything at that time about doing things to make him a better man?

A Oh, yes. I asked him a direct question, "Why did you kill that little girl" and he said because it would make him a

better man, "So it would make me feel better and I could go out among the people and talk."

Q Was there any hesitation on his part about answering your questions?

A There was.

Q Was it slight or considerable?

A I would say it was considerable. He seemed to have difficulty in expressing his ideas and answering the questions.

Q Did he attempt, apparently to answer your questions and could not do it, or was he simply sitting mute?

A Well, he was simply sitting mute there at times.

Q And at other times would he attempt to answer?

A Yes, but it would be slow.

Q Did he laugh at any time when you were there?

A Well, he had this silly smile on his face.

Q Were there any grimances while you were there?

A I think there was a repetition of the grimances I said before, blinking his eyes and he had a blank expression.

Q Did you come to a conclusion at that time that this boy was sane or insane?

A I still consider him insane.

Q Will you tell me what there was that caused you to consider him insane?

A Why, I thought the deterioration of his emotions and he expressed no anxiety or fear of the future, no joy or sorrow for the past. He did not seem to realize why he was in the jail and he thought it was wrong for them to keep him there, and my judgment is in the spitting of his spine—that he had spat up his spine on the floor and the delusion they put poison in his food at Overbrook that was enough, in itself, to convince me he was insane just as much as he was the day I examined him at his home.

Q Did you consider at that time he was suffering from dementia praecox?

A I did.

Q Would you say it was a border-line case or well defined case?

A I would say it was a well defined case.

Q And do you consider the condition you saw Noel in at

that time, do you think he had the capacity to distinguish the difference between right and wrong?

A I don't think so.

Q Why don't you think so?

A I don't think so because of the fact of the answer he gave to me why he killed that little girl, because it would make him feel better, to go out among the people so he could talk better.

Cross Examination by Mr. D'Aloia.

Q Could that answer have been suggested to him?

A It could have been suggested to him, yes.

Q Mr. Barber was there while you were there examining him?

A Yes.

Q You saw Mr. Barber in court here yesterday?

A Yes, I did.

Q And he was there during all the time you were examining him?

A He was, but he was of no assistance to me.

Q Now, you simply mentioned to him the killing of the colored man and he said something about breaking the law. Did he say he had broken the law in killing the colored man?

A No, he had been told he broke the law.

Q Did you ask him when he killed the colored man?

A No.

Q Did you try to bring his mind back from the first to the fifth of September, 1925?

A No.

Q Did you try to find out what he had been doing the last week of August, 1925?

A No.

Q Did you try to find out what he had been doing during the month of July, 1925?

A No.

Q Did you try to find out what he had been doing during the month of August?

A No.

Q Suppose he had been carrying mail during that time

somewhere between the 30th of June and the 1st of September, reading addresses and reading letters, and there were no complaints, what would you say about his condition, do you think he might have improved since the time you saw him in March?

Mr. Wachenfeld. I object to that. There was no proof in this case there were no complaints.

The Court. Strike out that part there were no complaints.

Mr. D'Aloia. I think that was said by Mrs. Noel.

The Court. If she said that, the question will stand.

Mr. D'Aloia. I will withdraw it.

Q Supposing he had been carrying mail during the summer months, July and August, would you say that he had improved?

A Because he had been carrying mail?

Q Yes.

A No, not necessarily so.

Q That would not be a symptom of deterioration?

A Oh, no.

Q Of aggravation to you?

A Oh, no.

Q But you do not want to say it would be a sign of amieloration?

A No.

Q You did not see him after you committed him?

A No.

Q You only saw him once before you committed him, and that was the time he sat in the corner of the room at his house?

A Yes.

Q And the next you heard of him he called you at two o'clock in the morning?

A No, the next evening I saw him at Overbrook.

Q I know, but you heard from him at two o'clock A. M.?

A Yes.

Q You did not have any conversation with him at two o'clock in the morning?

A No.

Q You do not know whether he wanted to tell you his mother made a mistake in having him committed?

A No.

Q You do not know what he wanted?

A No, I didn't want to take any chances.

Q Was there any violence in your examination of the defendant then?

A No. From my observation of mental cases, this man's manner made me think that he should be committed and put under a guard as soon as possible.

Q What did he do then that brought you to that conclusion?

A Just a history of his case in general.

Q Well, all you noticed while you were there was this, he was devoid of emotion and you noticed some retardation in answering your questions, but he gave you all the information you wanted to know and then you went away?

A Practically so, yes.

Q He did not make any attempt to strike you?

A No.

Q He did not make any attempt to strike his mother?

A No.

Q He did not make any attempt to throw the furniture around?

A No.

Q Now, the next morning at two o'clock, when he called you up, you say you did not want to talk to him because you were frightened?

A No, I didn't say I was afraid to talk to him.

Q Did he know who you were?

A Yes.

Q And did he know you were Dr. Davies?

A Yes.

Q And then he expressed a desire to talk to you?

A No.

Q And you don't know what he wanted to say to you?

A No. I wouldn't, naturally, give him a chance.

Q Then you hung up?

A Yes.

Q And called the police and you had the boy taken to the jail and the next time you saw him was in Overbrook?

A Yes.

Q How long ago was that lumbar puncture?

A I don't know.

Q How long after this first day when he arrived there?

A I don't know.

Q And you never saw him again until the 28th of September?

A That is right.

Q And on that occasion you di dnot ask him a thing he had been doing since the time in March?

A No.

Q How can you tell us whether he knew the distinction between right and wrong during the months of July, August and September?

A Because he is a case of dementia praecox and I do not think a case of dementia praecox can tell the difference.

Q Don't they ameliorate?

A I don't think so.

Q Don't you agree with Stoddard?

A No.

Q Don't you agree that they improve so that they can go back to their occupational work?

A No.

Q And they can go home from the institution?

A Yes, they go home.

Q And when they do go home cannot you recall a case where a person who went home could tell the difference between right and wrong?

A I don't think so.

Q What question did you put to him during the examination of the 28th of September where the answer was not responsive?

A Well, I don't think any of his questions were responsive.

Q What is that?

A They were slow.

Q I am asking you what question did you put to him on the 28th of September at the jail when you examined him to which question he answered unresponsively?

A I don't think any of his questions——

Q You are saying his question.

A His answer. I do not think any of his answers are what I would call responsive.

Q There you say question again.

A Answer, I mean.

Q You do not recall any answers made by him to your questions which were unresponsive?

A I think they were really sort of retardations, they were slow.

Q I am talking about unresponsiveness. Can you think of one question you put to him on the 28th of September, 1925, at that jail where he answered and the answer was not responsive?

A I did not consider any of his answers responsive.

Q I take it your answer to that last question is no.

A It all depends upon what you mean by responsive.

Q I am taking the interpretation where they are ready with answers to questions.

The Court. Well, you asked the question.

Were the answers in keeping with the questions?

Witness. Yes.

Q Every answer he made in answer to every question you asked him was in keeping with the question asked?

A Yes.

Q And every question that was put to him by Dr. McDonald was asked in your presence?

A No.

Q Were you there?

A Oh, no.

Q Who was the other doctor with you?

A Dr. Thompson.

Q Were there any questions put to him by Dr. Barber?

A Not in my presence.

Q Just as you were leaving did you hear Noel say to Mr. Barber, "Will you please leave some money downstairs, I want to get some cigarettes?"

A No.

Q Was there any questions put to him by M .rBarber? fore you questioned him?

A I heard there was, not that I saw.

Q And you now say the answer he made to you when you

Charles Englander, Direct.

asked "Why did you kill the little girl?" was, "Because it might make me a better man." The answer might have been suggested to him?

A Yes, it might have been.

Redirect Examination by Mr. Wachenfeld.

Q Do you think that answer was suggested to him from your whole examination?

A I have no reason to think so.

CHARLES ENGLANDER, sworn on behalf of defendant.

Direct Examination by Mr. Wachenfeld.

Q You are a physician here in the city of Newark?

A Yes.

Q Will you tell us briefly, what experience you have had with mental and nervous cases, insanity cases?

A I have been on the staff of the Essex County Hospital at Overbrook for nine years. I am on the service of the Nervous Department, Vanderbilt Cilnic connected with Columbia University, in charge of the out patient general clinic here in Newark and private practice.

Q When did you first see the defendant, Harrison W. Noel and where?

A A day or two after his admission to the hospital.

Q Which hospital?

A Essex County Hospital, Cedar Grove.

Q That is commonly called the Overbrook Asylum?

A Yes.

Q How long did you see him there?

A On and off various occasions in my travels through the ward seeing other patients.

Q Were you present when this case was diagnosed by the medical staff of the hospital?

A I was.

Q And how was his case disagnosed by the staff of the hospital?

A A presentation of the clinical history obtained by the

physician to whom his case was assigned for study and the family history, and so on. The facts brought out as to previous admissions to other institutions, observation of the ward physician, and observation of the physicians who examined him at that time, plus the laboratory examinations at the hospital.

Q What was his case diagnosed as?

A Catatonia dementia proaecox.

Q And by how many doctors?

A Four or five.

Q And do you know whether there were any dissenting votes to that diagnosis?

A Not as I know of.

Q Who were the doctors?

A Dr. Stamp, Dr. Thompson, Dr. Kildie, Dr. Payne and myself.

Q Doctor, what is dementia praecox, what effect does it have upon the patient? Will you tell us fully?

A Dementia praecox is a name given to a large group of mental cases, sort of a professional name to designate a group of patients who suffer from a progressive deterioration in emotional spheres, continue on gradually, but very slow, but very progressive impairment of memory. Many of them have hallucinations, many of them have delusions; some are demented; some are not; it may come early in life; it may come a little later to the patients, depending on the particular group which they might fit in, have the serious symptoms which make for the diagnosis of catonia dementia praecox.

Q Is the catonia different from the simple dementia praecox?

A Yes.

Q What is the difference?

A The simple dementia praecox is an indidivual who goes along in life very often. There is nothing he purposes initially. He talks very little, goes in anything, and passes for a normal individual very often. He may have some delusions which keep him from getting in conflict with society. He may get along and carry on his vocation very well, but generally is free from delusions.

Q What about the catatonic?

A The catatonic is one which finds alternating depressions, changes in mood, change in speech. Even there is change in the muscular tension of the individual, muscular tensions in the body, semi-muscular tension of the body, disorder of judgment, and a great many of them very often hallucinate, they are impulsive, negativic and show a marked disharmony between themselves—that is, their own attitude regarding what they do and in the environments in which they are found.

Q Do you know what a split personality is?

A Yes, it is a term sometimes used synonimously with dementia praecox and sometimes used preferrably by some writers to the term of dementia praecox.

Q What is the term that these writers use?

A Instead of dementia praecox they use the term split personality.

Q What does a split of the psychic mean? Is it a splitting of the mind or personality?

A It takes into consideration that when there is a splitting of the mind there is a splitting of the personality.

Q And when you have a condition such as that it is automatic action?

A Very often.

Q Are there two steams of thought, are they separated without any connection between the two lines of thought.

A There might be changes; there might also be a marked discrepancy.

Q Have you ever seen Mr. Harrison Noel at the asylum in such a condition of status quo?

A Yes.

Q Will you give us, from your observation of him, from seeing him there, from examining him, give us your opinion whether he was sane or insane?

A He was undoubtedly insane.

Q What was the form of insanity that he was suffering from?

A Dementia praecox.

Q Was it a border line case?

A No, sir.

Q What was it?

A I think it was a pretty well advanced case, from the records in the case, and certainly one which was more than anything than a border line case.

Q But he at times suffered from delusions?

A From the medical records of the case. I never saw any.

Q When you saw Noel in the hospital would you say whether he could distinguish between right and wrong?

Q Right and wrong is a very relative thing, and Noel might distinguish between right and wrong, but that differentation is as to themselves, and they believe theye were doing what was right, and that if it was not in harmony with their environment they would regard it as right or wrong from their standopint. They have a capacity of distinguishing things, but their judgments are generaly poorly formed.

Q And before you can determine that, have you got to find out what the personality is?

A Yes, sir.

Q The causes of the action?

A Yes, sir.

Q Would you say with reference to the crime charged against this defendant that he could distinguish between right and wrong?

A It is a very difficult matter for any one to determine absolutely that at the time of the commission of this crime he absolutely knew right from wrong unless he himself stated so, and while he might say "yes, I know right from wrong——"

Q (Question repeated.)

A Not necessarily. In relation to his crime he might think that he was doing perfectly right.

Q Tell the jury why it was difficult for him to tell right from wrong?

A These dementia praecox patients suffer from defect of judgment although they may associate ideas, and although they may reason as apparent normal individuals, doing it according to their own concepts of their own ideas. Any stimulus which comes to them is a very brief one, or an individual who is engaged in doing an overt act may, know finally, considering his environments, that the act itself would be considered legally wrong. Such an idividual, by reason of his emotional conditions, and in many cases he is deteriorated, he

can't use the brakes, so to speak. When he has the desire to do this thing and because of this desire he does the act which he wants to do. When one goes in a confliction, even in deliberation, the desire to deliberate this thing as to whether it is right or wrong, does not take place, and the individual proceeds along the lines of least resistance, and he does not reason the consequences, and the result is that he goes on doing the thing which he desires without any regard of consequences.

Q What is a shut-in personality?

A It is an individual who secludes himself, does not desire to mingle with others, he is self satisfied being with himself, dreaming with himself constantly, withdrawing from realty and from the outer world, paying little attention, apparently, to what is going on, but really apprehending what is going on. Such an individual is indifferent. He cares little about others, what they think or do. Sometimes they feel inferior in many respects, and because of that fact, that experience painful to them. The doing of things is painful. They prefer not to do them, and they travel over the lines of least resistance. Instead of going out and facing difficulties, they fail to adjust themselves properly.

Q You haven't examined Noel since your last examination?

A No, sir.

Q Since you have seen him here—you saw him sitting here at another hearing?

A Yes, sir.

Q What would you say as to his attitude now and at the time of the last hearing?

A Since I have seen him he is apparently in a state of abstraction, but it is impossible to say that the individunal is absolutely abstracted.

Q Is his attitude the same as you have seen him at the asylum?

A Yes, but more often I have seen him untidy and walking around.

Cross Examination by Mr. D'Aloia.

Q Is it possible that the attitude may be attributed to the fact that he is accused of murder?

A It is possible, but I shouldn't venture to say that it was actually so.

Q Did you ever see a man charged with murder face a trial such as this one in a joyful attitude?

A No, but one in which they take great interest.

Q Did you see him look at Dr. Davies then?

A Not then.

Q You were not looking.

A Not then. I have several times.

Q As to this attitude, I show you a picture which was taken in the courtroom, it shows Noel, doesn't it, it shows his counsel and his assistant counsel and shows counsel next to him and the assitant counsel and the person next to the assistant counsel are all in the same attitude?

A Yes, sir. This is right in the room, too.

Mr. D'Aloia. I offer these in evidence.

Q Doctor, would you say, from your examination, whether an accused is conscious, taking the crime as related in the evidence, and would you say that the defendant was conscious of the fact that what he did in shooting Pierce was wrong?

A At the moment of the crime?

Q Yes.

A That is, as I said before, a very difficult matter to say, for any one which would be only predicating one's opinion whether it was so. The actual evidence in the case would have to depend largely upon what the patient told you at the time, or shortly after that time, as to whether he did or not, from the emotional standpoint, although he may have a mental capacity to reason that such a thing would be wrong, they are unable to reason—the defendant himself would be unable to reason at the time of the crime, because th eemotional reasoning isn't there, it is inhibited, they are inhibited from the power to reason certain acts, the reasoning power would not be present at that time. It is not a case of being demented and not knowing absolutely what they are doing. It is the state of being unable to reason, they are inhibited, and he travels along the line of least resistance. He is not comprehending anything in its entirety, doesn't comprehend what he is doing.

Q You spoke about ethical wrong. What do you mean by that?

A The result of our training. The advance in our enviornment, things that we are told that are wrong. It is true that in dementia praecox the individuals regress back to the primitive. Dementia praecox eat like primitive people, their beliefs are lined with them, and as the result of this regression there comes about this failing, and they act very similar to the primitive, and they think that the things which they think they believe are so, and have no regard for the so-called standards of society. It is not a will on their part. It is an unconsciousness on their part. They don't want to believe differently. Their attitude and conduct and action in such instances is purely unconscious on their part. They don't realize it themselves.

By Mr. D'Aloia.

Q You say they react to regression. Are all criminals insane?

A All criminals are not insane.

Q But all criminals have defective judgment particularly when it results in their punishment.

A That is what they commonly say.

Q You heard on the 1st of September that this man picked out a big nice house in Montclair, and you know all that happened in September, when he took the officers out in the automobile.

A That is true.

Q Do you find any defective judgment from what he did.

A Taking the whole thing in its logical attitude, not dissecting the act, piece by piece, but considering the whole thing, you would certainly come to the conclusion that the defendant wasn't using good judgment in carrying out the act, and certainly not sane procedure.

Q Did you ever hear of a kidnapping case where anything different than what this defendant did was done by the criminal?

A Different in what way?

Q The way he took the child that he wanted to kidnap, the way he secreted the child, disposed of the child, because there are some cases where the children have not been found. Tell me, were you in any one of these kidnapping cases not committed by a criminally insane person?

A Any one who wanted to kidnap a person would not call a taxi and for that purpose kill the driver, and a couple of days later come back, secret the car, and kidnap a person. Certainly such a proceeding is not good judgment.

Q Where did you get the information that he took his car to an old quarry up in New Jersey?

A The presumption being it was a good spot. Others might know it was a good spot, may come upon it, see the car, and, certainly carrying the body a distance of two or three miles with him would not be considered good judgment when he might have dumped him on the road where he didn't secret the body, and nobody would know about it.

Q You say that was an attempted precaution on his part to hide the body?

A Surely. Even an insane person will instinctively ward himself from danger. The instinctive reactions of the insane come to the fore.

Q When those reactions take place and they are vicious, when he hides the corpus de licti would you say that he was conscious that the act that he committed was not right?

A Subsequently, yes, such as when we cross the street, when he denies the corpus de licti would you say that he was step back out of danger of being struck.

Q Would you say that the fact that he hid this colored man under this bridge, almost under this bridge, the brush was seven feet high, and it was seven or eight feet below the level of the road, would that indicate that he, the defendant, was conscious that what he had done was not right?

A Certainly. He came to the realization. I said to you awhile ago that these people do think as other people think.

Q This is a question of consciousness. If I told you that he took the body of the little girl, that he hid her body in the bushes, in sumack bushes, that his conduct to you, as an alienist, would indicate to you that he was conscious that what he had done in killing the little girl was wrong?

A Certainly not. I wouldn't say it was wrong——

Q I say that his conduct of hiding the body indicates to you a consciousness on the part of the man doing it that it was not right, doesn't it?

A I would have to qualify a statement of that kind, and

state, realizing that he had committed the murder of the negro, and that he might be detected, certainly, if he attempted to hide the body after killing the child, he might have a realization of what he did do, but the fact that he killed the child is not an insane act.

Q The hiding of the body would not indicate to you that he was thoroughly conscious of what he was doing? Do you think he was conscious of realizing the enormity of the act?

A No, I don't think so.

Q You told us that when you examined him in March that you are not sure whether you found any dementia praecox present?

A I think I told that to you, about dementia.

Q Will you tell us now?

A From his conduct there is an apparent dementia. I never made any detailed examination, but I had the records to show, and they indicated there was some dementia.

Q When you saw him later do you think his conduct was better?

A After the 28th of June I found his conduct, in a measure, was improved.

Q You told Mr. Wachenfeld that you thought possibly, in your opinion, he could distinguish between right and wrong in March when you examined him?

A I said that?

Q Yes.

A I don't recall saying that.

Q From your examination of him in March, what would you say as to his ability to distinguish between right and wrong?

A Mostly all cases at the hospital can distinguish between right and wrong.

Q You are put on the stand and you examined this defendant?

A Yes, sir.

Q I am going to ask you about this defendant alone. From your examination of this defendant in March, 1925, can you tell this jury whether or not he could distinguish between right and wrong?

A In the abstract?

Charles Englander, Cross.

Q Yes.

A In the abstract, if you ask him does he know right from wrong he would probably say yes or no. If you ask him, yes.

Q In the abstract. Answer this question, if you can, could he distinguish between right and wrong in March, 1925?

A I will tell again that knowing right from wrong in respect to some things, which is in respect others, they would be together. They are not solelyt so demented that they cannot see right from wrong at any time.

Q When you saw him at the institution, when you tell us by his conduct that he had improved will you kindly tell us if it is your opinion that he could distinguish right from wrong?

Q Could he distinguish between right and wrong at all at these times?

A In the same way.

Q And you only saw him once in March?

A I saw him several times in my passage through the ward.

Q And when was the last time?

A I don't recall the date.

Q And was he improved at all during the last days.

A I said so, yes.

Q And you haven't seen him at all until here in court?

A Yes, sir.

Redirect Examination by Mr. Wachenfeld.

Q Doctor, assuming from the testimony in this case that this boy drove on the back seat of a taxi cab on this day in question, September 3rd, and shot this colored man, in the situation pictured by this photograph S6, where the X is there, and assume also that this is a country road in which the nearest house is three or four hundred feet away, and assume that this boy, in the afternoon carried the body of that negro from that place, a distance of from one and three-quarters to two miles to this spot indicated by S1, in which there is a house within fifty feet of the place where the body was deposited, and that the body was deposited about five feet from the road, and down under the bridge about seven feet, and near this house

which is shown in that picture, would you say that that was the act of a sane or insane mind?

A Not alone, I could not say just on the position of the body. I would say in total, taking the entire picture, shooting the man on the public highway where he could easily be detected, and then carrying the body around for some distance where he could easily ha detected, and dumping it out at the side of the road, near a house, that certainly would not be an act of a normal individual.

Q Now, then, would this be the act of a normal individual? Let us assume that this boy, who was taken into custody by the police, charged with this murder, and charged with the crime of kidnapping, and assume that that boy asked the police, in whose custody he was, for a reward or a ransom of $4,000, would you say that that was the normal conduct of a normal individual?

A One does not usually ask the police for ransom when one is in their custody.

Q Well, assume that the police offered him more that $4,000 and he refused it and he said he wanted $4,000 would you say that is normal conduct?

A Poor judgment, and certainly not normal conduct, and I would hesitate to criticize the police——

The Court. Never mind that.

Q Assume, Doctor, after this crime was committed, and after the little girl was disposed of, that this man here, went into a public telephone station located at the D. L. & W. Railroad Station in Montclair or Glen Ridge, I have forgotten where it was, and that he looked in the telephone book in this method, first running through the A's and then going on down the alphabet to find out who lived at 136 Upper Mountain avenue. Do you consider that normal judgment?

A That is pretty good judgment.

Q And do you consider, Doctor, it poor judgment that this boy knew nothing about the financial status of the family which he took the child from—would you consider that pretty good judgment?

I would hesitate to criticize the police——

Paul Mulcahy, Direct.

PAUL MULCAHY, sworn in behalf of defendant.

Direct Examination by Mr. Wachenfeld.

Q Mr. Mulcahy, you are an attorney at law?
A Yes, sir.
Q And have you been cooperating with me in this case?
A I have, sir.
Q Did you see the defendant Noel at the Essex County Jail?
A I did, sir.
Q When?
A About a week ago.
Q Who was present at that time?
A Yourself and one of the jail attendants, Mr. McLafferty, I think is his name.
Q With the defendant Noel?
A The defendant Harrison W. Noel.
Q Will you tell us what was said at that time and what he answered?
Q Well, when we first went in there you introduced me to Harrison Noel, you said, "Harrison, I am your friend, I have been assigned to defend you and I want to introduce you to Mr. Mulcahy, who is assisting me in this case,"
Q Pardon me, Mr. Mulcahy, did I ask Harrison before that if he knew who I was?
A Yes, sir.
Q And he knew who I was?
A He knew who you were.

Mr. D'Aloia. I would like to know what the purpose of this is, if the court please, how it is material to what occurred on the 3rd of September, 1925?

Mr. Wachenfeld. Just as material as the statement of a jailer whom you brought here who testified to something which was said a week ago.

The Court. I will allow it.

Q Go ahead.
A You then told him that you wanted to get some assistance from him and you asked "Harrison, where were you on September 3rd".
Q Did I get an answer to it?

A He made no response at all.

Q Did I ask him that question more than once?

A You asked him that at least a dozen times.

Q And did I get any answer to it?

A You received none whatever.

Q What happened next?

A You asked him, "Harrison, were you in Montclair on September 3rd?" and still you could receive no answer, and you kept repeatedly questioning, "Harrison, don't you remember whether or not you were in Montclair" and he turned around on one occasion and said, "I saw a cockroach on the ceiling of my cell this morning."

Q Was that an answer to any question that I asked him about cockroaches?

A No, sir. You had asked him where he was, whether or not he was in Montclair on September 3rd, and that was the response he made, and on another occasion in response to your repeated questions as to that fact, whether or not he was in Montclair on September 3rd, he said, "Do I look like a cocaine addict."

Q Did I ask him anything after he made that statement?

A You then tried to bring him back to the fact whether or not he killed a colored man.

Q Well, what were the questions and answers in reference to that?

A You asked him, "Harrison, do you remember a colored man?" and at first he said, "No," and then you repeatedly asked him and he said, "Yes."

Q Now, did I tell him before that time what I would do for him if he would tell you and I and the jailer who was there at the time, the truth?

A Yes, you told him if he told the truth and he would help you it would assist you in getting him back home to his mother.

Q All right, tell us what he said, then, after that question, in answer to that question.

A The question was as to the colored man?

Q Yes.

A He said he remembered a colored man and a car, and you asked him how he remembered that, and he said, "I remember a colored man who was taking me back to Overbrook", and

then you tried to get some further information from him and he turned around to the jail keeper and he said, "Are you Johnny, lock him up."

Q Well, did I ask him any more questions then?

A You asked him, "Harrison, did you kill the colored man?"

Q What did I say then?

A He said no.

Q What did I say then?

A Then some further questions were asked him and you went back to the question again, "Harrison, tell us now did you kill the colored man?"

Q What did he say then?

A This time he said yes.

Q Then what happened?

A And after that there was further questioning and you came back to the same question and said, "Now, Harrison, tell us and help us. Did you or did you not kill the colored man?" And he said, "Well, I don't know. Sometimes I think I did and sometimes I think I did not."

Q Now, how long did I question him all told?

A Well, we were there from about three quarters of an hour to an hour.

Q And in answer to all questions that I asked Noel as to where he was and what happened and what he did and what he didn't do, did I get any information other than what you have just referred to?

A None.

Q And did he answer my questions immediately or were there frequent periods of hesitation?

A He would hesitate on every question that was put to him. You would have to repeatedly ask him, "Come on, Harrison, help us out," but it was of no avail.

Q What was his general attitude, how did he act?

A Well, his face was dull and pasty and eyes glassy.

Q From what you saw and what you heard of your opportunity for observing him would you say he was sane or insane?

A I would say he was insane.

Cross Examination by Mr. D'Aloia.

Q You are assisting Mr. Wachenfeld in this case?

A I am, sir.

FREDERICK B. HORSFORD, sworn in behalf of defendant.

Direct Examination by Mr. Wachenfeld.

Q Doctor, you are a physician?
A Yes, sir.
Q And your office is in the city of Newark?
A Yes, sir.
Q How long have you been practicing medicine?
A Twenty-five years.
Q And you have a specialty of mental diseases or insanity cases?
A I have made a specialty of mental and nervous cases?
Q What experience have you had in that particular line?
A When I finished my internship in the Newark City Hospital I went to the Overbrook institution and was there about seven months. From Overbrook I went to the State hospital at Morris Plains, where I served as an assistant physician for a period of eight years. I came to Newark and went into the practice of internal medicine in connection with nervous and mental diseases as a special branch of my practice. During the war I served in the Medical Corps of the Army in the division known as neuropsychiatry.
Q Now, doctor, did you see the defendant, Harrison W. Noel?
A Yes, I did.
Q When did you see him?
A I think it was on the 28th of September.
Q And where did you see him?
A At the county jail.
Q Did you make an examination of him at that time?
A I did.
Q How long did your examination continue?
A Oh, possibly two hours.
Q And is that the only examination you made?
A Yes.
Q Did you come to the conclusion on that one examination?
A Conclusion to his——
Q Sanity or insanity?

A I did.

Q Do you usualy make more than one examination to come to such conclusion?

A Usually, often.

Q Why did you only make one in this case?

A Well, I considered the examination sufficient in view of the history and other information I had.

Q Tell us what that examination consisted of?

A Questions and answers and observation.

Q Will you tell us what your questions and what his answers were and what his attitude was? 10

A His attitude in general was one of indifference, apathy. He sat as he sits here in Court. Questions were repeated frequently. Long pauses between questions. Sometimes no answer. Sometimes after repeated questions and prodding we would get a monosyllabic answer. Occasionally a little more. He sometimes picked at his mouth, smiled in a silly way, puckered his mouth up as though—as one would to whistle.

Q Did you make a memorandum of the questions you asked him and the answers? 20

A I did.

Q Have you that memorandum with you?

A Yes.

Q Will you tell us from that memorandum what you said to him and what he said to you?

A Do you want me to go over the whole thing?

Q Yes. I wish you would.

A I asked first what he was there for. He said—or how long he had been in jail and he said he had been in jail two weeks and I asked him why he was there and he said "Because I broke the law," "And how did you break the law?" "I killed a colored man." "And what did you kill him for?" I needed his automobile." And then I made here in my notes a notation, "Answers slow—long pauses between answers and questions." That is, I didn't get that amount of material in so short a time as I am giving it to you. Then I asked him what he needed the automobile for and he said, "For the purpose of carrying off a little girl." "What for? What were you going to carry off the little girl for?" "For ransom." Then he said, I think in answer to a question, "I had a lot of reasons. 30 40

I do not remember what they were." Then I have a notation "He hesitates," half closes his eyes, picks at his mouth." A very long pause. Didn't answer the question as to other reasons. Then I repeated the question very frequently and he paused very long. "Why did you shoot her?" He said, "I didn't want her to run home." Then I asked him something about whether he thought it was right to shoot her and he said he didn't think it was a mistake to shoot her. He looked at the floor and squints. I asked him if he believed in God and he said, "Sometimes I do believe in God." I asked him if it was wrong to commit this act and he said, "I don't know that it is wrong. I thought it was necessary. I cannot think of the reason." That is, I am trying in many questions, to get all this material. "I cannot think of the reasons now, it was so long ago." And then I have the notation, "Always a very long pause between answers and repeated questions to get anything." I asked him some other questions and I have the answer here started, "I have been telling the doctors——" Then he starts on a long pause and looks off into space and I get no more answer to that question. And then with relation to questions about killing the colored man he said, "I thought if I killed the colored man and the girl it would make an ordinary human being out of me." And I asked him, "Why, were you not an ordinary human being? What do you mean by that?" A long pause. Looking into space. No answer. Bites his finger nails, puckers his mouth. No emotion. No emotion expressed in any of—in response to any of these questions. I do not know that I am giving this—I said, "Then you may be tried and possibly executed." He said, "I have been told that." And then, in answer to some question, "I think it was justified." Then he said, "I feel very thirsty. I want to get a drink." I asked him something—continued to ask him about this violation of the law and he said, "Yes, I think it was a violation of the law." I asked him, "Do you think it was wrong?" "I do not think it was wrong. I think it was right." Continuing to ask him about the wrong and right of this act, he said, after a long pause and in answer, "I am thinking about Dr. Davies." That is when—I guess I got a hold of him and tried to stir him up by personal contact when I was not getting any reply and he said, I am thinking about Dr. Davies." He

smiled in a silly way. That is my note here, smiling in a silly way. "I just thought that it was justified and I think so today." And then I have "and he doesn't see why now." Now, this did not all come together in one answer, but it came out in piecemeal. Continuing to check up the right and wrong of this act with him and to get more information about it, he said, "I can't think about it at all." He said, "I was thinking about Dr. Davies again." That answer comes after a long pause and looking into space and apparent inattention. I then questioned him with respect to his attitude towards this crime with respect to his parents, what he would say to his father and mother about it, and if he didn't feel the shame of this trouble he was in, and he said, "I would say to my father it was necessary. I would say to my father it was necessary." Then I asked him, "Why was it necessary, what do you mean?" "I don't know why it was necessary." Then more questions. A long pause, and then he said, "I was not listening to you." So I tried to stir him up again to get some kind of an answer. Again I have "smiles in a silly way." And he said, "I think that you, Dr. Horsford, look like Mr. Traucher." I questioned him then something about his stay at Overbrook. I have that notation here about Overbrook. These questions refer to that, and he told me about some room there which had been arranged in a fantastic way with figures all around the room, a dragon, a sun, a man with a cane and big head, and all sorts of things with no shapes. I asked him what all that meant and he said it had the effect of a peculiar horror, and I said, "What is the idea, what did they have such a place up there for?" And he said, "For some kind of psychological effect upon the patients." I must have asked him some question which brought out the answer that they did something to him there which gave him a feeling like Jesus Christ, and then I asked him what that feeling was and I didn't get much out of him, but I said, was it aesthetic and he said yes. I don't know whether he knew that, but he said whatever they did or something they did made him feel like Jesus Christ.

Witness. And, I have a note that he said, "Very funny things will ordinarily happen on Ward 32." I asked him something about a lumbar puncture, because I had read in some of the records, I think, that a lumbar puncture had

been made, and he told me that after they had done something to him there, "I immediately began to spit up my spine." I asked him what the spine looked like, and he said, It looks like jelly," and then some irrelevant material, incorherent material matter here, but I wouldn't be sure that it is incorherent on his part. "I don't know how I know" —that is what it means. I was trying to find out how he knew that this stuff that he spit out was his spine, and he said, "It looks like jelly," and he said, "I don't know how I know," and I said, "Why, you got a spine now, you look as though you have a spine now, and you could not have spit your spine out." And he said, "I don't think I got a whole spine'" and I have the note that he stopped after many questions. looked into space, puckers his mouth into a grimace, no reply. I had some information about a Mr. Gray, so I asked him about that in order to see what that was about. I did not know, and he said he asked Mr. Gray to die so that he could have his money and I said, "How could that come about? Why would you do such a thing as that." He said, "It was silly. Mr. Gray could not die." He said, "I just thought he could die any time he wanted to." And I said, "How could he die any time that he wanted to?" And he said, Noel said, "By just wishing it." I then went back with my questions to the subject of the right and wrong of his killing, trying to get something more about that, and I have here his answer to one of my questions, "If I killed somebody, it would help me out." He then, in answer to some question said, "I looked in the public library to see if there was a hospital somewhere like Overbrook." I asked him if he ever heard voices; I wanted to find out whether he was hallucinatory, and he said that he heard voices, but not recently, and then, to find out when he had heard voices, many questions brought out the reply that he had not heard any for three or four months. He started to smile then, as though something about that amused him, a silly smile, no answer; starts to answer; puckers his mouth; grimaces; then stops. Then he said, "I never sleep in the day time." More questions then about the voices and he said, "Yes, I remember that the voices used to say,' and then he

stopped, and then some more questions and then he said, "Just of no consequence," and I asked him how long he had started his scheme of the kidnapping of murder, and he said, "I thought about the murder for a day or two." I asked him if he needed money, if that was the reason why had committed this crime, and he said, "I did not need any money then." "Why did you do it." I said, "Just to make me like other people." I asked him what he meant by this, not being like other people, "What do you mean by that?" and he said, "For one thing I dont' like to talk and there are other ways, I don't know. I cannot talk like other people." Those answers came in response to my question why he was not like other people. Some question brought out the reply, and I have it in quotation marks, "Dementia praecox," and then he laughed. "Dr. Dowd told Dr. Kirkman that I was suffering from dementia praecox."

Q That is what he told you?

A That is what he told me. More questions about what happened to him at Overbrook, and he said that while he was at Overbrook he was affected with insulin, dropsy, and spinal meningitis. "I was the worst case of dropsy they ever had at the hospital." He said, "When I had spinal-meningitis, everybody knew what I thought." That is spleenitis he said he had, and I asked him about that, because people generally do not know what spleenitis is and he said, "I don't know what it is," "anything else," my question. Starts to whistle and says, "Yes, it is." I asked him about this idea, that as the result of something they did to him at Overbrook people were able to tell what he was thinking about. "Everybody knew what I thought," and I said, "How did they know?" "I don't know," I never beileved there was such a thing.' "Do' you like it at Overbrook,' my question. His answer was, "I tried to break one man's neck there, I threw him over my head," and I asked him what he did such a thing as that for, what was his reason for it, and he said, "Oh, well, it was a crazy thing to do. I liked the man. I did it on the impulse." And then I asked him if he realized there was something wrong with him and he said, "Yes, there is something wrong," he said that soon after he got to Overbrook—this must have been in answer to

another question—he said "Soon after I got to Overbrook there they performed some sort of an operation and made be seen like a second Jesus Christ. I seemed to know the way Jesus Christ felt. I cannot describe the feeling," I asked him why he would not cooperate with his lawyer. He looked into space. No answer. He got up then and went over to a window at the wall of the room where we were holding this examination and pulled a curtain aside, looked through this window and said, "That is my cell," laughed in a silly way and came back.

Q And was that the end of your examination, Doctor?

A Yes, sir.

Q And that, you say, took about two hours?

A About two hours hard work.

Q From your examination of him, did you come to a conclusion as to his sanity or insanity?

A Yes, sir.

Q And what do you think?

A I think he is insane and was insane.

Q And the mental disorder that he is suffering from is what?

A Dementia praecox.

Q And is it a slight or border-line case or a well defined case?

A A well defined case.

Q Do you think, Doctor, in the condition that you saw him, that he could distinguish between right and wrong.

A I do not.

Q And why do you think he cannot, Doctor?

A Because in my opinion this boy is suffering from a serious form of insanity, mental disorder, and I think that his mental processess are so badly distorted, and he is so fully deviated from normal that he is not able to distinguish between right and wrong.

Q Now, Doctor, will you just tell us briefly your description of dementia praecox and what it affects in the patient.

A How does the disease affect the patient?

Q Yes, please.

A Dementia praecox is a disease that attacks young people as a rule, and it attacks particular the higher intellectul faculties, those that have been most recently acquired, in contra-

distinction to lower orders of the mental faculties; the reason, judgment and self-control. It attacks particularly the emotional side or emotional tone or feeling of the individual to cause an impairment and a deterioration in that, chiefly, dementia praecox attacks the feeling tone and the intellectual faculties.

Q Is one of the symptoms negativism?

A It is a symptom.

Q And may that negativism change to susceptibility to suggestion at times?

A Yes.

Cross Examination by Mr. D'Aloia.

Q Would you say the mental processes of a man who wanted a pistol and went over to buy one in New York and could not get it immediately because the law prohibited it and gave a false name and ordered it sent to a post office in a contiguous state and called for it the next day, using the name he gave in New York, in a post office in New Jersey, would you say there was any bad mental process exhibited there by the man who wanted the pistol?

A Not in respect to that particular act, no.

Q Would you say there was any badly exhibited mental process by a man who wants a taxi and goes to a drug store and calls one up and calls up the taxi company——

A May we go back to the other question.

Q No.

A Not in that particular mental process, no.

Q Now, if the particular individual forms this idea, whether it is a bad or good idea, it makes no difference, forms this idea that he wants that taxi and wants to use it for a purpose the next day and he orders the driver of the taxi to drive along a certain deserted road and shoots the driver of the taxi and hides his body in a spot which was secluded and then takes the taxi and hides it in a spot which was deserted, would you say there is any evidence there of a mental process that is badly distorted?

A Yes. The whole thing is badly distorted. The idea of going out with the idea of killing a man is one of distortion.

Q How about the mental processes of obtaining the object or goal idea of taking the taxi away from him?

A Consecutive ideas?

Q Yes.

A The ideas are consecutive.

Q Follow in natural sequence?

A Yes.

Q You would not say there is any distortion of ideas?

A The base idea is bad.

Q But you do not find any distorted mental process in accomplishing that idea?

A The consecutiveness of the ideas is apparent.

Q Now, when he, on the first of September, 1925, goes along Upper Mountain avenue and looks at 136 and finds a nice, big house and he forms the idea that he is going to kidnap a little girl from in front of those premises and he carries that idea with him on the second and on the third of September obtains a taxi and on the fourth goes and kidnaps the girl, that he had sized up and looked over the first of September, and makes away with the girl, do you discover any exhibition there of any mental process that is badly distorted?

A I think the idea of kidnapping is a badly distorted idea. The base idea is bad. The coherence of his thinking is good. That is to say, it is right.

Q What would you say about process of reasoning, is that pretty good?

A Process of reasoning—his process of reasoning there, I think, is bad, that is to say, in respect to sizing up a house that looks good, because it is a big house, and he thinks that somebody who lives in a big house has a lot of money, which is not always so.

Q You would not call that an erroneous conclusion?

A Well, I would say, taking a long chance.

Q Look at S-8. That is a pretty nice house?

A Yes.

Q You would say it is a nice big house?

A Yes.

Q Well, then, I know there is nothing the matter with your mental processes.

A Well, I don't know. Thank you. I don't think so.

Frederick B. Horsford, Cross.

Q I show you exhibits S-1 and S-2. Take a look at those photographs. One is the road going in one direction and the other is the road going in the other direction. I ask you would you call those secluded spots?

A It looks so. A big, broad road. It must have been a main thorough fare and frequently traveled road.

Q Would you call the spot to the side where the X mark is made, would you call that a secluded spot?

A A big, broad road.

Q Do you see where that X is?

A Yes.

Q Well, there is where there is a drop under this concrete bridge of about eight feet, and down below there the grass was about seven feet tall at that time. Would you call that spot, seven or eight feet below the level of the road among grass seven or eight feet tall a secluded spot?

A That is a scluded spot.

Q Now, if this young man found himself with a dead negro along side of him in an automobile and his idea is to hide the dead negro's body, wouldn't you say that taking that negro's body to the spot designated on this photograph is sort of a precautionary method in hiding it there?

A Yes.

Q Would that indicate to you the mere fact that he took this dead negro's body and hid it in this spot, would that indicate to you on the part of this defendant a consciousness of what he had done in killing that negro was wrong and not right?

A I cannot say—I cannot answer that question affirmatively.

Q The taking of that body——

Mr. Wachenfeld. Wait a minute. Give him a chance.

Q Take that fact alone, that he found himself with the colored man or negro dead along side of him and he forms this idea, the goal idea, he is going to hide the body and he hides it in this spot under this bridge, below the level of the road, where the grass is seven or eight feet long, doesn't that indicate by itself a consciousness of the fact that the act he had committed was not right?

A That gives me the idea that he had a body there and

wanted to get rid of it and he dumped it out of that car in what was the quickest, best or easiest place to get to. He did not go very far.

Q He wanted to get rid of the body?

A Yes.

Q And don't you know that one of the main characteristics of an insane act is the fact the insane perpetrator pays no attention to what becomes of the body of the person he just killed?

A No, that is not so, at all.

Q It is not?

A No, absolutely not.

Q Isn't that one of the characteristics of an insane man?

A No.

Q Now, you examined him on the 28th of September and you got a lot of information before you examined him. You knew something about a Mr. Gray?

A Yes.

Q And you knew something about an operation at Overbrook?

A Yes.

Q Had you talked to Mr. Barber before you went to the jail?

A No.

Q Where did you get the information about Mr. Gray?

A From Mr. Barber at the jail.

Q So Mr. Barber was at the jail——

A Pardon me! I think in Mr. Lane's office I saw some letters or heard somebody or heard some talk about Mr. Gray and letters.

Q Well, did you talk to Mr. Barber before you went to the jail on the 28th of September?

A Not in an effort to find out anything about Noel. Mr. Barber was present.

Q Mr. Barber accompanied you to the jail.

A Yes. He was at the jail. He had been there with the other men, who had been examining Noel and he waited until I came.

Q Did he introduce you to the defendant?

A He did not introduce me, because I introduced myself, but he was there.

Q You noticed during the two hour examination, or toward the end of it, this defendant remembered your name and called you Dr. Horsford?

A He did.

Q And you had not told him your name except the very out-set, the beginning of your examination.

A No.

Q You asked him why did you kill the colored man—Noel. First you asked him why he was in jail and his answer was "Because I killed a colored man."

A Yes.

Q And you followed that up and said, "Why did you kill the colored man? And his answer was, "I needed his automobile."

A That is right.

Q Then you asked him this question, "Why did you need his automobile?" "For the purpose of carrying off the little girl." That is right?

A Yes.

Q Then you asked him this question, "Why did you want to carry off the little girl?" And he said, "For a ransom." Is that right?

A Yes.

Q Then you asked him why he killed the little girl and his answer was, "I didn't want her to run home."

A Yes.

Defendant rests.

Adjourned until Monday morning, November 16, 1925, at 10 o'clock A. M.

Edward Reilly, Rebuttal.

FIFTH DAY

Monday, November 16, 1925..

Continued pursuant to adjournment.

Present, counsel as before stated.

Photograph offered in evidence and marked Exhibt S-1.

Photograph offered in evidence and marked Exhibit S-2.

EDWARD REILLY, recalled in behalf of the State rebuttal.

Direct Examination by Mr. D'Aloia.

Q Do you recall the afternoon of Sunday, September 6, 1925?

A Yes.

Q About four P. M. did you see this witness Von Strom, the store keeper?

A Yes.

Q Where?

A Police Headquarters, Montclair.

Q Did he tell you what he had previously said about seeing Pierce on Thursday was a mistake, that he had seen him on Wednesday night instead?

A Yes.

Cross Examination by Mr. Wachenfeld.

Q Did he come there voluntarily?

A Well, I didn't send for him.

Q Well, as far as you are concerned, he came voluntarily?

A Yes.

Q And he talked about this case?

A Yes.

Q Was that after you got the confession from the defendant Noel?

A No, I don't think it was.

Q What time did you get the confession from Noel?

A About eight o'clock.

Edward Reilly, Cross.

Q Did you talk to Von Strom before you got the confession?

A Yes.

Q Now, you have talked to a good number of witnesses in this case.

A Yes.

Q Dozens of them?

A Yes.

Q And can you recall distinctly what each one of them said to you?

A Well, I can remember what this man said.

Q No, I didn't ask you that? Can you recall what all the rest said?

A Well, a good part of it.

Q Did you take a written statement from this man at that time?

A I did not.

JAMES S. MASON recalled in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Do you remember Sunday afternoon, September 6, 1925?

A Yes.

Q Being at the Montclair police headquarters about six o'clock.

A Yes.

Q With Chief Reilly?

A Yes.

Q Do you remember Von Strom, this witness, coming there?

A Yes.

Q Did he say to both you and Chief Reilly that when he had seen Pierce on Thursday night at ten o'clock he made a mistake, that it was Wednesday night?

Mr. Wachenfeld. Unless I am wrong, I think the witness said he told this story as he was asked here.

The Court. Well, wasn't he asked if he had seen Chief

James S. Mason, Cross.

Reilly and Captain Mason later and made a mistake, that it was not Thursdy night but Wednesday night?

Mr. Wachenfeld. Well, I do not recall that.

Q Did he say that?
A He did.
Q Do you remember Mrs. Cueman?
A I do.
Q Now, when did you first see her?
A I seen her in front of her home on Saturday morning.
Q What time?
A I should judge about approximately 11 o'clock.
Q Did you have a conversation with her and did she say anything to you about an automobile she had seen outside there about four A. M.?
A Yes.
Q Did she tell you how long that automobile was out there?
A She said it was out there for four or five minutes.
Q Did she say she saw the automobile?
A She did not. She said she could not see the car from where she was, that she saw the glare of the headlights through the bushes.

Cross Examination by Mr. Wachenfeld.

Q You were a pretty busy man at this time?
A I was.
Q You were scouting around the country side quite thoroughly?
A Yes.
Q Seeing numerous people every minute of the day?
A Yes.
Q And in the meantime you were running in to the defendant?
A Up to this time we had not seen the defendant.
Q But up to the time you saw Von Strom, you saw the defendant?
A Well, I seen Von Strom Saturday.
Q Oh, we are talking about Sunday afternoon, when you had the conversation with Von Strom.

James S. Mason, Cross.

A Yes.
Q And then you had the defendant Noel in your custody?
A Yes.
Q And you had been seeing him alternately all during that day?
A Yes.
Q And you saw others?
A Well, yes, we had been annoyed by lots of people.
Q Well, do you mean to say that when you see people you are being annoyed by them?
A Well, they were coming in with all kinds of wild rumors.

LOUIS BOWDEN recalled in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Do you know the house in which Mrs. Cueman lives?
A I do.
Q Have you been on her porch recently?
A No, sir; I have not been on her porch.
Q Have you been on her porch at any time in front of her houes?
A Well, not in a long while. I go by every day.
Q You know the place very well?
A Yes.
Q Now, standing in front of the house and looking toward the road, can you see an automobile?

Mr. Wachenfeld. I object.

The Court. Sustain the objection.

Cross Examination by Mr. Wachenfeld.

Q Bradford avenue, as shown in this picture S-6, that is rather a steep grade there, isn't it?
A Yes, quite steep.

Henry Staehli, Rebuttal.

HENRY STAEHLI, sworn in behalf of the State, in rebutall.

Direct Examination by Mr. D'Aloia.

Q Mr. Steahli, do you remember Thursday, September 3, 1925?

A I do.

Q About 6 P. M. or 6:30 P. M., did you have occasion to go up near the Quarry, the old Quarry at Cedar Grove?

A I did, at 6 P. M.

Q I show you a paper and ask you if that is a photograph of the old Quarry?

A Yes, it is.

Q Now, just keeping that photograph in mind, I show you another photograph which has marked State's Exhibit 5, which is a Dodge automobile bearing license No. 0722. Did you see that automobile on Thursday, September 3rd, 1925, at or near that quarry?

A Yes, sir.

Q Will you please put a mark on that picture of the quarry where you saw the automobile?

A (Witness marks picture).

Q Where you have marked that X you saw this Dodge automobile bearing this license number on Thursday evening September 3rd, 1925 at 6 P. M.?

A I do.

Mr. D'Aloia. I offer in evidence the picture of the quarry with the lead pencil mark.

(The same is marked Ex. S-18.)

Cross Examination by Mr. Wachenfeld.

Q Mr. Staehli, are you sure that this is the day on which you saw that car?

A Yes, I am positive.

Q And how can you recognize the car?

A By the fact that it is a Dodge car of the latest model and by the license number.

Q Did you recognize the license number at that time?
A Yes, sir.
Q Now, look at this other picture, which is marked S-4. Do you recognize that as being in the locality, some place near that quarry?
A I think that is the road that comes in on the top of the mountain from Bradford avenue.
Q And that is not where you saw the car at the time you are speaking of?
A No sir.

ANDREW A. McGEEHAN, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Mr. McGeehan, about July 18th, 1925 and during the month of July, 1925, were you the editor of the Montcalir Times.
A Yes, sir.
Q Do you know Mrs. Noel?
A Yes, sir.
Q Before this statement in the Times of Saturday morning, July 18, 1925, did you receive from Mrs. Noel a communication in writing?
A Yes, sir.
Q And did that communication in writing contain this statement, that her son had fully recovered——

Mr. Wachenfeld. I object to that because I want to know if the writing is still in evidence.
Q What became of that letter?
A It was used as copy, I think.
Q Then, what became of it, was it kept or recorded or filed or destroyed?
A Destroyed.
Q Do you recall the contents of the letter with reference to Mrs. Noel's manner?
A They were substantially as recorded in the paper.
Q Substantially as printed in the paper?

A Yes, sir.

Q To the effect that Harrison W. Noel——

Mr. Wachenfeld. I object to that, if the court please. Substantially, I don't think, is sufficient, and I object to it on the ground that it is improper and not rebuttal.

The Court. You object to it on the ground that it is not proper rebuttal?

Mr. Wachenfeld. Yes, sir.

The Court. Sustained.

CHRISTOPHER C. BELING, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are regularly licensed physician and surgeon?

A Yes, sir.

Q And have you specialized in nervous and mental troubles?

A Yes, sir.

Q How long?

A Since 1900.

Q And what institutions have you been connected with? Institutions that treat cases of that kind.

A I was an assistant physician at the New Jersey State Hospital at Morris Plains for six and a half years. Since then I have practiced medicine in the City of Newark, and I have had charge of the psycho-pathic service of the wards of the City Hospital since 1908; I have had charge of the mental and nervous department of the City Dispensary, and have been an examiner for the U. S. Public Health Service and the Veterans Bureau.

Q Now, were you asked by the Prosecutor's office to make an examination of the defendant, Harrison W. Noel?

A Yes, sir.

Q When did you first see Harrison W. Noel, and where?

A I saw him on September 21, 1925 at the Essex County Jail.

Q How long did that examination continue?

A For over an hour.

Q Did you put any questions to him?

A Yes sir.
Q Did he make answer to them?
A Yes, sir.
Q Did you ask him this question, "Why he was there?"
A Yes, sir.
Q Did you ask him his name?
A Yes, sir.
Q Did he tell it to you?
A Yes.
Q What was his answer to that question?
A Harrison W. Noel.
Q Did you ask him how old he was?
A Yes.
Q What was his answer?
A Twenty years.
Q Did you ask where he was born?
A Yes.
Q What did he say?
A New York City.
Q What else did you ask him?
A I asked him the date of his birth.
Q What did he say?
A He delayed his answer and then he asked me "Do you know if Mr. Barber is coming to see me?"
Q What did you say?
A I asked him who was he and he said he is a friend of the family. I nave known him a long time. My father knew him before I was born. "Has he been to see you before? Answer: "Yes." I asked him the date of his birth and he did not recall the date.
Q What else did you ask him?
A Then I inquired into his family history. He said his father was living. His name was Dix Noel and he was 52 years of age. I asked him where was your father born? Answer: I think if Mr. Barber——I think Mr. Barber is going to bring me some money to buy pie." I repeated the question. He said in Illinois, his father was born in Illinois and he is a lawyer. I asked him about his mother and he said she was living. I asked him her name. Answer: Annie was her maiden name and then he said, "I don't like to answer ques-

tions." I repeated the question I said, "What is your mother's name?" And he said, "Annie Webster." He took a little time to answer the question. His answer was delayed. I said, "How old is she? Answer: I think she is 48 years." Question: Have you any brothers and sisters? Answer: One brother and one sister. The brother is 19 and the sister is 14 years of age. I am 20." Then I inquired into his personal history. I asked him, "What is your earliest recollection of yourself?" Answer: I don't know. I remember kindergarden in Montclair. I remember making words with paper letters on the table, building with blocks, singing in the morning." Question: How old were you then? Answer: Five years. Question: How long were you in the kindergarden? Answer: A year, I think." I continued in the same school, the Mt. Hebron school in Upper Montclair. Question: How long did you go to this school? Answer: "Why do you ask me all these questions?" When I told him I was studying him he asked me "How do you happen to come here?" I informed him I was sent by Mr. D'Aloia. He asked me, "Who is Mr. D'Aloia?" I was just going to ask you." I replied he is the Assistant Prosecutor of Essex County, New Jersey," and I informed him I was inquiring into his mental condition and he said he understood what I said. I asked him, "How do you come to be here in the jail. Answer: That is a very long story." I said, "Please tell it to me. Answer: It is not a nice story." And he shook his head and remained silent. Then he said, "Will you lend me twenty-five cents until Mr. Barber comes, I want to buy pie with it and newspapers." He kept biting his right thumb nail and staring out of the window. I asked him, "Have you had pie recently?" Answer: the day before yesterday." I said, "Are you hungry?" Answer: Yes, I think it is my supper time. Question: Would you like to eat supper now?" This was about five minutes after five. Answer: Yes, will you lend me twenty-five cents until Mr. Barber comes or my father?" I asked him if he would rather go and have his supper at that time. He answered, "I don't want to talk to you at all. Will you lend me twenty-five cents?" He got up and walked to the door of the room I was examining him in and he kept walking around. I saw one of the keepers and asked him if he could get him some pie and some newspapers—the paper that he wanted. The

pie was brought to him and also the newspapers and he carried them with him and I proceeded to question him again. I asked him how he had been treated in the jail. He said he had been treated all right. I asked him if he had heard any voices in the jail. He said he heard voices on the outside before he came to the jail. He would not tell what these voices were or what they said to him. He thanked me for the pie and the paper and he took a cigarette and lighted it and he said that he only smoked occasionally. When he was asked about shaving, because he had a growth of a beard for several days, he said he shaved about three times a month. He said no one annoyed him in the jail, that he had no complaints about his treatment so, because he would not talk and give any further information, I left him and informed him that I would see him again the next day.

Q Did you see him again the next day?

Q Yes, I saw him the next day, about the same time.

Q What time was that, about four o'clock?

A About four o'clock.

Q Will you tell us what you said to him and what he said to you?

A I went up into his cell, and the cell door was open and he was sitting on the bench and I went and sat next to him and I greeted him and he greeted me and I asked him whether he would talk to me today and he said yes, and he talked freely.

Q What did you say to him?

A I asked him if he would tell me why he had done this, why he had done—why he had committed this crime, and he said, "Do you want me to tell you how I planned it?" He said, "I planned it to get money and he gave a description of how he planned to get a ransom by kidnapping the child. I asked him how he got the idea in his mind and he said it was the Philadelphia case that led him to think about it, of two men who kidnapped a child in a buggy, but that he had used an automobile instead of a buggy. I inquired into his sex life and he said that he had masturbated and only on one occasion did he have sexual intercourse. He said he was not feeling well. He said he never felt well since he had a lumbar puncture down at the hospital, that he was not the same after it, that when he came

out of the hospital he felt as if the top of his head was coming off, that he had had sensations in his head.

Q Did he describe how he sent a postal card telling them to get the ransom—to get the sum of $4,000 and gave them directions how to take the 8:20 train going to Philadelphia and when they saw a red ballon being waved on the side of the tracks that they were to throw the money out?

Witness. He went there and had the ballon in his hand, but the train passed and no money was thrown out, and so he came back. I asked him about himself, whether he knew if any change came over him, and he said, no, that he recognized the fact that he was Harrison Noel, and that there was no change in his personality. I made an examination of him physically, that is, I tested his eye grounds, and tested him out physically, and the only physical change that I found was a blueness of his hands, both hands. He claimed that he could not smell properly. I noticed that his facial expression was rather deadened, and that during the examination his emotional reactions were rather sluggish. I asked him about the girl, I asked him "Why did you kill the little girl?" and he said, "I did not want to be seen with her".

Q Did you ask him whether he knew that it was wrong?

A Yes, I asked him, and he said that he knew it was wrong to kill the girl; that it was wrong to kill a person, he knew what the consequences of killing a girl was.

Q When you asked him this question "Why did you kill her," please give us his answer in full.

A He said he did not want to be seen with her, that he would be found out.

Q Now, you asked this question, didn't you, "Do you know what the penalty is for killing a person", do you remember asking him that?

A Yes, sir.

Q And what was his answer?

A I think he said it was the electric chair. I asked him also what should be done with him and he said, "I think they ought to let me go", because he said he would not do it again. You see, at the second examination, he would not allow me to write anything. He said, "If you write, I will not talk," so I

simply had to jot down little notes. At the first examination every thing was written down word for word what he said, but at the second examination he would not let me write anything.

Q Did you take out a paper and pencil from your pocket and start to write?

A Yes, sir.

Q And what did he say to that?

A He said he would not tell me anything if I wrote.

Q And what did you do with the paper?

A Put the paper back in my pocket, and after a little while, I took the paper out and jotted down some of the main headings of what he said.

Q Now, assuming this man whom you examined on the 21st and 22 nd of September, 1925, such as you have told us, and assuming he went to a street in Montclair known as Upper Mountain avenue, Upper Montclair, and picked out a house No. 136, a nice big house, and that was on September 1st, Tuesday of that week, September 1st, 1925; and with the information that you got from the examination that he wanted to kidnap the girl and had gotten the idea from that Philadelphia case; that after picking out the nice big house on the 1st of September, 1925, on the 3rd of September, two days later, he call up a taxi, and a taxi was brought to him, driven by a colored man by the name of Raymond Pierce, and he got into the taxi and he told Pierce to drive to Little Falls ,and on the way up some spot on the road he shot and killed Pierce, and then he took the body and hid it in a spot under the bridge—

Mr. Wachenfeld. I object to "Under a bridge."

Q Or below the road at a bridge, and he took the automobile, the taxi, the Dodge taxi, and he parked it in a deserted quarry on the afternoon of the 3rd, and then he walked home, and then the next morning, which was the morning of the 4th, he takes his own car, his mother's car, and he drives from his house to the place in the quarry where he left the Dodge car the day before, and he leaves his car in a road off the main road, and takes the Dodge taxi and comes down to this house to 136 Upper Mountain avenue, which he had selected on Tuesday, four days before, and then he kidnaps the little girl and he puts her in that taxi and he drives away with her, and

he notices that he is being pursued, and he leads the pursuer at a very fast rate of speed over a rough road, bad road, and good roads, and then he comes to a stop and allows the pursuing car to come alongside of him and he shoots the driver of the pursuing car and then goes on with his car with the little girl and he goes to a point not in this county, in the woods, and there he shoots the little girl and hides her body in some bushes known as summac bushes; now, assuming all that, and from your examination, would you say that this defendant could distinguish between right and wrong on September 3, 1925?

A Yes, sir.

Cross Examination by Mr. Wachenfeld.

Q Doctor, will you turn back to your memorandum to a question which is very near the beginning of it, in which he said, "Will you lend me twenty-five cents until Mr. Barber comes. I want to buy pie for it and a newspaper," can you find that place?

A Yes.

Q He kept biting his right thumb or thumb nail and kept staring out of the window.

A Yes, sir.

Q Do you find a notation there that he became shut-in and did not want to talk?

A No, he changed his trend, he did not reply to my question, he was not shut-in at the time.

Q He was not shut in at the time?

A No, sir, he changed around and would not answer any questions.

Q All right, let me read your answer on the last examination, you said this, "He kept biting his right thumb, his thumb nail and staring out the window. Immediately after asking the questions where I came from he became shut-in and did not want to talk." Did you answer that way?

A Oh, that was a different time.

Q Did you answer that way?

A Yes, sir.

Q Did he become shut-in?

A Yes, he shut right up.

Q What do you mean by shut-in?

A He kept to himself and would not talk to me.

Q Well, what does that mean in your profession, what does shut-in mean as you doctors use it. Does it mean a withdrawing from reality?

A No, he shut up—

Q I did not ask you about shut up. We all know what that means. I am asking you what shut-in means.

A He kept to himself and he would not talk.

Q Is that what shut-in means?

A In that instance I used it with that meaning.

Q Now, is there a word shut-in which is used by you doctors that means more than that?

A Well, we use the word shut-in very often speaking of the personality of an individual.

Q And what does it mean, does it mean a withdrawal into one's self?

A Yes, it is shut-in in relation to the word personality, it means that one withdraws into himself.

Q In other words, he keeps away from the world at large or from reality, doesn't he?

A Yes, sir.

Q And does it mean the same as introversion?

A Well, to a certain extent, it does.

Q Now, Doctor, did you find this man from your examination, did you find him sane or did you find him insane?

A I found that Harrison Noel showed certain symptoms of mental derangement.

Q Can you tell me whether he was sane or insane?

A I would say that he showed certain symptoms of mental derrangement that led me to the opinion that he showed some evidence of insanity, of being insane.

Q Now, Doctor, how many years of experience have you had?

A Twenty-five.

Q And can't you answer my simple question, as to whether or not this man was sane or insane, either with a yes or a no, was he sane or wasn't he?

A I cannot say, I cannot say that he was insane or that he was sane. I noticed that I observed certain evidences of

insanity; I observed an emotional blunting, a retardation in his answers, and it led me to the opinion that these were symptoms of dementia praecox.

Q Was he suffering from dementia praecox?

A He manifested some of the symptoms of dementia praecox.

Q Oh, Doctor, was he or was he not suffering from dementia praecox?

A With the evidence that I had at the time of that examination, that was the conclusion I came to.

Q Certainly, they are all conclusions, aren't they?

A Yes. Now, with other things added to it, I would conclude that this man had dementia praecox, after what I had up to the time, that is the conclusion I came to.

Q Now, Doctor, if he had dementia praecox, he was insane, wasn't he?

A Yes, but I would say—

Q Was he insane?

Mr. D'Aloia. Let the Doctor finish his answers.

A I would say he was insane, yes, sir.

Q And as you say, you say you found from your examination. you found these symptoms of insanity which you have spoken of?

A I found some symptoms of dementia praecox; at least, I suspected that this was a case of a boy who might be a case of dementia praecox.

Q Now, Doctor, let me ask you this: At the time that you examined him did you take into consideration or did you have before you the Craig Hospital record?

A I did not.

Q Did you have before you the record of the Overbrook Hospital?

A I did not.

Q Any your conclusions, as you have stated them, that the boy was insane at the time you examined him, that was from your own observation and your own examination?

A No.

Q What was it from?

A At the time I did not think that the boy was insane, I thought that the boy showed symptoms of dementia praecox, but that he was able to talk to me properly; that he was able to

communicate with me, I felt that the boy was reasonable at the time and able to answer.

Q Pardon me, I did not ask you at all that. I asked you one simple question, whether or not at the time you had these hospital records before you and knew the contents of them, and whether or not you took them into consideration?

A I did not take them into consideration.

Q Now, with insane people you usually humor them to get them to talk, don't you?

A Sometimes.

Q And you humored this boy to get him to talk, didn't you?

A I did not humor the boy.

Q He wanted pie, didn't he?

A Yes, sir.

Q Did you get him pie?

A Yes, but I got him the pie after the examination. I got the pie and the paper after the examination was over.

Q Didn't you ask him some questions after you got him the pie?

A Yes, I was anxious to see what other symptoms he would manifest, and knowing that in praecox cases we find hallucinations and delusions, I asked him about hearing voices; in fact that was one of the very few straight suggestive questions I asked him, and I asked him if he heard voices, and I wanted to find out whether he was hallucinative.

Q Now, doctor, let me ask you another question.

A Yes.

Q Thank you. Let me read this record to you and see if it is correct. "Yes," he said, "will you lend me 25c until Mr. Barber comes or my father and I made no reply to his request and asked him whether he would rather go and have his supper and then he said, 'I don't want to talk to you at all.'" Is that what he said?

A Yes.

Q And then right after that he said, "Will you lend me 25?"

A Yes.

Q And then he got up and he walked toward the door of the Deputy's office and he kept walking around, is that right?

A Yes.

Q Well, he did not answer any questions then?

A No. I asked one of the keepers who came in, the assistant

to the Deputy Warden, Mr. Mulvaney, and I asked him if it was possible to get him a newspaper.

Q And then you got him a newspaper and some pie?

A Yes.

Q And after you got him the newspaper and got him the pie then you started to ask him some questions and the first question you asked him is this, "Are they treating you all right in this institution?" And he said had no complaint to make, is that right?

A Yes.

Q And after he got the pie and newspaper you said, "Have you heard any voices in the institution?"

A Yes.

Q So am I not right in my conclusion that he stopped talking to you after asking for the pie and you got him a newspaper and pie and started questioning him again?

A Yes.

Q That is true?

A Yes, but he stopped talking and he began afterward. He would not talk to me after I asked him about shaving and I could not get any more answers.

Q I just read the record to you and the record says he stopped talking.

A Yes.

Q That he would not talk with you and he asked you to lend him 25c and that he got up and walked around, and the record shows you then got him pie and then a newspaper and then you started questioning him again, doesn't it?

A Yes.

Q Now, when he told you about these voices if what he was telling you was true, then that wasn't a hallucination.

A He said he had not heard any voices in the jail. Let me see that just a minute.

Q You will find that right after the question I just read, after you got him the pie and newspaper.

A Yes. He said he heard voices on the outside. I omitted to say that on the second examination I again took him up on this subject of hearing voices and he said that he heard voice, if I recall rightly, he said he heard voices when he was at the hospital. I said, "What kind of voices were they?" "They were male and female voices." And he said that they were asking him for help.

That was when he was at the hospital, but after he left the hospital he did not hear or had not heard voices.

Q Was that a hallucinations?

A Yes.

Q It was a hallucination?

A Yes, I think it was a hallucination he had.

Q And isn't it a common experience where insane people suffer from hallucinations that they hear these voices, that after it is all over it is very difficult to get from them what the voices said or what the voices were, isn't that true?

A Yes.

QAnd don't they act toward them as though it is more or less an unpleasant memory?

A Well, there are many reactions to the voices. It depends upon when the voices are heard. If the voices are heard about the time the reaction is different from the reaction later on but, as a rule, insane people suffer from imaginary voices—from what we call hallucinations, which are imaginary, sense impressions.

Q Now, doctor, if this boy tells you that he knew he had done wrong and yet he should not be punished, he wanted to go home, didn't see why they should keep him there, is that common in dementia praecox cases?

A I would say you see that in a praecox case.

Q And that is due to this so-called split personality, is it not?

A Well, I would not say it is due to a split personality.

Q No.

A No.

Q What would you say it was due to?

A It is their way of thinking.

Q In other words, they have a way of their own of thinking?

A Yes.

Q And they are not normal in that respect?

A That is right.

Q Now, you say you think this boy could appreciate the diferenc between right and wrong, is that true?

A Yes, I think he could appreciate the difference between right and wrong.

Q Now, do you mean that in the abstract, or do you mean it in the concrete?

A Well, I mean he can know when he does a thing and he can also think about it.

Q Now, will you answer my question?

A I think in both.

Q You think you can tell both in the concrete and abstract?

A Yes.

Q Well, these dementia praecox, they have periods of excitement?

A Yes.

Q And they have periods of depression?

A Yes.

Q And they alternate from time to time in different ways?

A Yes, and they have intervals when they are quite normal and they have intervals when they are very abnormal.

Q Now, in a period of excitement do you think a dement praecox case can distinguish between right and wrong?

A Yes, if there are no cloudings of his consciousness.

Q How can you tell that?

A That is his ability to recall all he did.

Q Now, you agree with me that memory in dementia praecox cases is usually pretty good?

A Yes, the memory is good.

Q Do you recognize Kretlin as an authority?

A Yes, I know he has written a book.

Q Let me read: "There is also a high degree of weakness of judgment and flightiness although the pure memory has suffered little, if at all." Do you agree with that?

A Are you reading from Kretlin?

Q Yes. Don't you believe me?

A I would like to see it. Oh, this is Johnson's translation of Kretlin's lectures on psychiatey.

Q Is that what he says?

A I don't know what he says. I know that there is a translation of Kretlin's lectures on clinical psychrity by Johnson.

Q What was the original works, in some other language?

A Yes, in German.

Q And this is a translation by Johnson?

A Yes.

Q Let me read: "There is also a high degree of weakness of

judgment and flightness, although the pure memory has suffered little, if at all." Do you agree with that?

A Yes, I think in dementia praecox cases we see that very frequently.

Q Now, doctor, isn't this true, that in dementia praecox cases, although the patient may have an absolute conception of right and wrong, abstractely he may, by reason of his disease, consider himself to be such a personality as not in any way to be bound by any such law and that with respect to him right or wrong, or the abstract conception of right or wrong, does not apply, is that true?

AWell, that applies only in cases where there has been a fundamental change in the personality, when the individual thinks that he is not himself but some other person.

Q Are you through?

A Yes.

Q Do you agree with what I just read to you, or don't you?

A Yes, I answered that question.

Q Well, you do agree with it.

The Court. He agrees with its qualifications.

Q Let me read this question which was asked at the last hearing, page 95, "Now, don't you know that in dementia praecox, although the patient may have an absolute conception of right or wrong, abstractly he, by reason of his disease, considers himself to be such a personality as not in any way to be bound by any state laws and that with respect to him right and wrong, or the abstract conception of right and wrong, do not apply? Answer: Yes, I agree to that." Did you answer it that way, at that time?

A Yes, I answered that the same way this time, only with this qualification, that you must have a change in the personality.

Q Now, will you read this question and answer and see if I read it just as that, and see if you find any qualifications?

The Court. Just a minute. The Doctor says "I answered that this way before, but this time I am qualifying it."

Q So you agree with that?

A Yes.

Q But the last time you answered it in just the simple way, "I agree with that."

A Yes.

Q You did not put any qualifications in at that time, did you?

A No, I didn't.

Q Now, doctor, do I understand you to say that in periods of excitement a dementia praecox may distinguish the difference between right and wrong?

A Yes, dementia praecox cases may or may not distinguish between right and wrong during the period of excitement.

Q And when you say may or may not, what does that depend upon?

A Upon the action of conscience, upon the appreciation of his surroundings, of himself.

Q Can you believe everything this boy tells you, after these things occurred?

A I may or may not. It depends upon the settings, how he tells it to you.

Q Haven't you first to find out whether or not there was a change of personality before you can find out whether he could distinguish between the difference of right and wrong?

A Yes.

Q Now, can you tell in this case whether there had been such a change in personality?

A I could not not discover it as the result of my examination

Q Now, could he tell you, assuming there had been a change in personality, could he tell you about it after it was all over?

A Yes, he seemed to show some in sight into the situation when I questioned him.

Q I am not asking you that.

A Yes, I could tell.

Q I am asking you the simple question, assuming there had been a change in personality, after it was all over could this boy tell you?

A Yes, he could.

Q Always?

A At least in my examinations he could tell me. That is all I can go by.

Q Now, isn't it a fact that if there had been a change in personality and the thing was all over with that he may be able to tell you and he may not be able to tell you?

A Yes, but usually they have in sight into the past because of a preservation of memory.

Q Let me repeat my question. Isn't it a fact that if there

had been a change in personality, this boy, after it was all over, might not be in a position where he could tell you about it?

A Yes, that might be so.

Q And so if that is true and he was in a position where he might not, even though he wanted to, be able to tell you about it, then there is no definite way of telling whether at that time he could tell the difference between right and wrong?

A But he did tell me. That is the difference.

Q He did tell you what?

A He did tell me when he went to Overbrook the first few days he was very much upset and confused—no, that he had a lumbar puncture done and after that he was very much upset and confused. He was able to recite what occurred at Overbrook with the exception of that period when his consciousness was clowded. He did not seem to recall.

Q Now, doctor, you have seen a great many of these patients?

A Yes, I have seen a few of them.

Q You have seen them at calmly for days at a time?

A I have.

Q Almost normal?

A Yes.

Q So that if I as a layman were to have a conversation with one of them that I might not be able to tell if he was insane.

A Yes.

Q And still he would be insane?

A Yes. He would have the symptoms, that might crop out sometimes.

Q And also, in the cases of dementia praecox, sometimes their behavior has improved to such an extent that a layman could not tell the difference, isn't that a fact? Between a sane and insane man?

A Yes.

Q And yet these very same patients that act in an improved manner for a few days will suddenly burst out into an act of violance, wont' they?

A Yes, they burst out quite implusively.

Q And you cannot tell what caused it or how it came about, can you?

A Well, it is very difficult to tell. Sometimes you can get the idea back of it by questioning, but sometimes it comes just

like a bolt from the blue.

Q That is what makes them dangerous patients?

A Yes, they are dangerous under those conditions.

Q Assuming that we withdraw the criminal charges against this defendant Noel ,and your opinion is he was insane, that he should be kept in custody under supervision——

Mr. D'Aloia. I object.

The Court. Sustain the objection.

Defendants counsel prays an exception to this ruling of the court.

Exception allowed, let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY.
Judge.

Redirect Examination by Mr. D'Aloia.

Q Did you find any evidence of any hallucination at the time you examined him except this reference of the voices he heard up in the hospital at Overbrook?

A No.

Q The male and female voices crying "Help me", crying for help?

A Yes.

Q His memory was good as to what had occurred at the hospital several months before?

A Yes.

Q Did you find any evidence of delusions at the jail at that time?

A No, I didn't.

Q Did you find anything from your examination which indicated to you that there had been any fundamental change in the personality during the month of August and September up to the time you examined him?

A Well, he seemed to show me from my examination that he knew about himself after he had left the hospital and after he had gotten over that confusional attack in the hospital.

Q Due to the lumbar puncture?

A He referred to the lumbar puncture as having a bad effect.

Q But from the time the lumbar puncture wore off, had you found in your examination at any time any evidence of any fundamental change in the personality?

Mr. Wachenfeld. I object to that, that this doctor did not have any access to this defendant, that he did not examine him except on two occasions.

The Court. Sustain the objection.

Q From your examination and your conversation with him, did he at any time in answer to your questions, tell you anything about his conduct during the months of August and September? Give you to understand that at any time during those months there had been a fundamental change in his personality?

A I could not say any more than he gave me evidence that he had no change in his personality. If he had and he was unable to tell me, of course, I don't know about that.

Q Did you find any clouding of consciousness in reference to his conduct between the first of September and the fourth of September?

A No.

Recross Examination by Mr. Wachenfeld.

Q He told you that he had gone to the bank—or, he had gone, rather, to the post office and deposited a postal card informing one Edward Brown that they must get the money the next day and take the 8:22 train in the morning going to Philadelphia and that when they saw a red baloon on the railroad track they were to throw this money out, $4,000, is that what he told you?

A Yes, that is about what he told me.

Q Now, Doctor, do you think that is the plan of the normal mind?

A Well, I would say that it showed rather poor judgment.

Q You would say it was rather absurd?

A Yes, absurd.

Q And you find such absurd things in dementia praecox cases, do you not?

A Yes, we do.

Q Now, do you know, as a matter of fact, whether this man ever sent a postal card informing an Edward Brown that he must get this money?

A I do not.

Q As far as you know, there has been no evidence of that postal card in evidence here?

A No.

Q And assuming that that is not a fact, that he did not send that postal to Edward Brown, then he is using his imagination.

A If it is not a fact.

Q Assuming that it is not a fact that he did not send the postcard to Edward Brown, then he used his imagination, didn't he?

A Of course, if it is not a fact.

Q Assuming it is not a fact, then he has used his imagination, hasn't he?

A Yes, if it is not a fact.

Q Now, assuming that he did not go to the railroad track and put up a red balloon, then he used his imagination also, didn't he?

A Well, he used his imagination or he might be lying, I don't know.

Q Do you know of any reason why he should lie about that?

A No, none whatever.

Q You don't think this boy was lying about it, do you Doctor?

A No, sir.

Q And you did not think this boy was feigning, or acting, did you?

A No, sir.

Q Doctor, do you consider it a normal thing for a boy twenty years of age, taken into custody by the police on a charge of murder and kidnapping, to argue with the police, you would not call that normal, you would call that rather absurd, wouldn't you?

A I would consider it absurd.

Q And it is one of those absurdities that you find in dementia praecox cases, isn't it?

A We usually see such absurdities in praecox cases.

Q And would you consider it normal, again, for a normal man, after arguing with the police for $4,000, and being offered by the police more than $4,000 and then say no he only wanted $4,000,

would you consider that normal?

A Absurd.

By The Court.

Q Doctor, did he say anything about this Philadelphia kidnapping in detail as to the use of a red flag or a red balloon in that case?

A He said he followed the Philadelphia case and the method of the Philadelphia case, that they adopted, and that he used an automobile instead of a buggy and then he did not say any more.

Redirect Examination by Mr. D'Aloia.

Q Now, Doctor, if I were to say to you upon his arrest the red balloon, deflated, of course, was found in his pocket, would you say, that in telling you about this Philadelphia case and how he had followed it, how he had used a red balloon would you say that that is a fact or that that was imagination?

Mr. Wachenfeld. Object to.

The Court. Sustained.

Q Now, Doctor, you told Mr. Wachenfeld that these patients in dementia praecox cases break out quite impulsively?

A Yes, sir.

Q Now, you heard me detail what happened between the 1st of September and the 5th of September and his conduct during those four or five days. Do you find anything impulsive in that conduct?

A No, sir, it is too long a period for impulsive conduct. Impulsive conduct takes place momentarily.

Recross Examination by Mr. Wachenfeld.

Q You mean the impulse is carried out momentarily, Doctor, is that right?

A Yes, sir.

Q And assuming that this man was riding in the back of a taxi being driven by a colored man and that he suddenly labored under a delusion that he was being carried back to Overbrook and he shot the man, would you say that that was impulsive?

A Why, yes, taken in that one setting, one would not be able to come to a conclusion, but taking it in association with every-

Q Then, your answer to my question is that under different circumstances it might be impulsive, is that right?

A Yes. If he was suffering under a delusion that he was being taken to Overbrook, that the colored man was taking him to Overbrook, and he shot the colored man, that delusion would

subside, and with it everything else would subside, but if it is carried out and alone, for instance, you take the automobile and use it for other purposes, I cannot find or say that it was blind, impulsive conduct or the result of a delusion that he was being taken to Overbrook. It would have ended then and there.

Q Did you find, Doctor, a delusion on his part against Overbrook?

A No, I did not, except that he said he had been given a lumbar puncture and had been badly treated.

Q Then, you found no delusion on his part against Overbrook?

A Not a delusion, but he had a grievance against Overbrook.

Q What is his red or purplish conduction of the hands, Doctor, why do you call that, syanosis?

Q And what does it indicate?

A That is what we call a blueness or reddish blue or purplish color of the hands which we call principaly syanosis.

A Syanosis of the hands means a blueness or change in the circulation.

Q What does it indicate, Doctor, is that what it indicates?

A Yes, sir.

Q And it is a symptom, is it, of dementia praecox or insanity?

A It is not a symptom of dementia praecox.

Q What is it a symptom of?

A We often see that associated in cases of dementia praecox.

Q In other words, then, you always find, or you do frequently find insane people in that condition, is that right?

A We see that in insane people and we see that also in other conditions, and when we usually see that syanosis in a dementia case we always associate it with a praecox case.

JAMES F. MASON, recalled.

By Mr. D'Aloia.

Q Were you in the Montclair Police Station when this defendant was brought in after being apprehended on the 5th of September, 1925?

A No.
Q Did you see him there?
A Sunday morning.
Q Did you search him?
A Yes, sir.
Q I show you a rubber balloon, a red balloon, where did you find this?
A In the coat pocket of his coat.
Q Which pocket of his coat?
A The right hand coat pocket.
Q Of the small coat?
A Of the small coat that is introduced in evidence.
Q Stand up and show the jury in which pocket you found it.

(Witness indicates to the jury).

Mr. D'Aloia. I offer this balloon in evidence.

Mr. Wachenfeld. I don't think it is strict rebuttal, if the court please, but I have no objection.

The Court. It is not strict rebuttal, but I will allow it.

(The same is marked Ex. S-19).

AMBROSE F. DOWD, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Doctor, you are a regularly licensed surgeon and physician?
A I am.
Q Have you specialized in mental and nervous disorders?
A I have.
Q How long?
A Fifteen and a half years.
Q What institutions, if any, have you been connected with?
A Newark City Hospital, West Chester County Hospital, New York, and Manhattan State Hospital, New York, St. James Hospital, Irvington General Hospital, the Bethany Home, and as consultant in mental and nervous diseases in the New Jersey Rehabilitation Commission with the United State Army at Gettysburg, Pennsylvania, Camp Meade, Maryland, Columbia Barracks, Ohio, and various parts of France.

Q Did you, at the request of the Prosecutor's office make an examination of the defendant Harrison W. Noel?

A I did.

Q When did you first see him and where?

A On the 16th of September, at the Essex County Jail.

Q Will you please tell the jury what he said to you and what you said to him, and what kind of an examination you made?

A I asked him his name. He said that his name was Harrison Webster Noel, and that he lived at 259 North Mountain avenue, Montclair, New Jersey; that he was born in New York City, April 16, 1905; that he has lived in New Jersey approximately fifteen years. I asked him the question if all of that time he had resided in Montclair and he answered, "That has been my official residence."

Q What else did you ask him?

A I asked him how long he had been in jail and he said ten days, and then he went on to talk after that and he said, "It was wrong to do it. I am sorry. It was wrong to take the little girl. It was made that way I am sorry. I don't know why. I remember how the parents were. I have a sister fourteen years old. It would not be right for anyone to take my sister. It would hurt me. I remember taking the little girl. I would feel bad if my sister was taken. It would be wrong to take my sister. It was not right for me to do it. I know it wasn't right when I did it. I knew it was wrong. I hid her because I knew it was wrong. I remember going on the lawn and putting her in the car. I knew it was wrong then. I know the predicament I am in and I want my friends to help. I haven't any plans." Then he inturupted to say, "Do you want me to answer your questions?" and I said yes, and then he went on to say," I had an automatic pistol, I had shot tin cans with it, "I had the pistol and I was afraid Mr. Cox—" and another name that I cannot make out—"would come from Overbrook and get me. If I couldn't get away I was going to shoot them. It is wrong to kill another individual. It depends on the person who was killed and the person who did the killing." That was the end of that day's examination.

Q Did you see him again?

A On the 17th.

Q Where did you see him on the 17th?

A In the Essex County Jail.

Q If I remember correctly the previous day he told you he had been in jail about ten days.

A Yes, sir.

Q And that was on the 16th of September?

A That was on the 16th of September.

Q Now, on the 17th, what did you say to him?

A I saw him on the 17th early in the morning and had seen him late in the afternoon of the preceeding day and he said that he was glad to see us, and he said "This is no place for me to be. I should be at home." I then asked him how he felt and he said, "I feel all right. I would like to go home. I know that you are helping me. A whole lot of things make the world worth living. I would like to get back to my mother and sister. I don't think I should be deprived of my liberty. It would be wrong for both of us to kill another human being. I would think it wrong to go out and shoot a little girl." That was all that morning.

Q Did he say, "I think it would be wrong to go out and shoot a little girl, or another little girl?"

A A little girl.

Q When did you see him next?

A I saw him on the 19th of September.

Q On the 19th of September, 1925, did you know at that he had been down to the Court House the day before?

A I did.

Q Proceed, please.

A I said, "How are you going to plead?" And he answered, "It doesn't make any difference how I plead. They have my signed confession. Captain Mason has it." I asked him, "Do you know right from wrong"? and he said, "Yes." Just as any one else knows it. It may be hard to explain but I know it. I know the Ten Commandments and that is enough". "What do they do with murders?" "Execute them if found guilty" was his answer. I asked him "Should you be executed?" and he answered, "No." I ascked him "Why?" and he answered, "I don't think I should be", and I asked him "Why not?" and he answered, "I don't know." "What would you like to have done with you?' "Whatever my people want. I would like to go free.' I asked him "Do you realize what may happen to you?" and he said, "Yes." I might be executed if found guilty. I might go to pri-

son. I might go to an asylum. I would rather go to prison than back to ward 32 at Overbrook." I asked him, "Did you see anyone in court whom you knew?" and he said, "Mr. Barber." I asked him anyone else, and he answered, "No." I asked him, "Can you name the Judge whom you saw yesterday?" and he said, "No." And I asked him, "Can you tell me if he wore glasses?" and he answered, "I think that he did." Then I asked him, " Do you think that you would go free", and he answered, "No." Then I asked him, "Did you kill anyone?" and he answered, "They say I did." Then I asked him, "Don't you know?' and he made no answer. And then I asked him, "Did you telephone to anyone demanding money?" and he said, "Yes." And I said, "Why?" and he said, "I didn't want to get caught.' He then asked me the question, "Have you seen Mr. Barber?" and I said, "No." Then I asked him, "Do you wish to see him?" and he said, "Yes". I said, "You have confidence in Mr. Barber?" and he answered "Yes." I then asked him "Why did you refuse to answer questions during the early part of this interview?" and he said, "I thought you were trying to put something over on me."

Q That was your last examination?

A Yes, sir.

Q Now, from your examinations of this defendant, and from the questions put to him by you and the answers made by him to you, assuming that on the 1st of September, 1925 he went to 136 Upper Mountain avenue, Montclair or Upper Montclair and picked out a nice big house, and he planned to kidnap a girl from in front of that house, and that on the 3rd of September he called a taxi cab by telephone and instructed the driver to take him over to Little Falls, and when he got to a spot in the road between Montclair and Little Falls he shot the driver and hid his body off the road, below the level of the road and alongside of a bridge and then he took hold of the car which the chauffeur had been using, the taxi, and hid it and went home, and then the next morning he left his home in his mother's car, Overland, and drove out to where he had left the Dodge taxi and hid his car there and took the taxi and drove to the house he had selected on the 1st of September—and this was the 4th, four days later, and he kidnapped the little girl and he drove away with her after forcing her in the car; then he noticed that he was pursued and speeded his car up and later permitted the pursuing car to come

alongside of him and stopped, and then he shot the driver of the pursuing car and he goes on with the little girl until he gets to a deserted spot off the main road in the woods and there he kills the little girl and hides her body, would you say this defendant knew or could distinguish the difference between right and wrong between September 1 st, 1925 and September 4th, 1925?

A Yes, sir.

Q Do you find any other instance of delusions at the time of the examination?

A No, I did not.

Q Did you find any evidence of hallucinations?

A No, sir.

Q Did you find any evidence of clouding of consciousness?

A No, sir.

Q Did you find any evidence, from his answers, of any fundamental change in personality during the month of September?

A No, sir.

CROSS EXAMINATION BY MR. WACHENFELD.

Q Did you find that he was seclusive and shut-in?

A Yes, sir, he is seclusive and shut in.

Q And shut-in means withdrawing into one's self?

A It means practically that, yes, sir.

Q The same as introversion?

A Practically the same.

Q Did you find mutism?

A Yes, at times he was mute.

Q And that is a symptom of domentia praecox?

A It is a symptom of dementia praecox.

Q Did you find inhibition?

A I did.

Q What do you mean by inhibition?

A Inability to reply rapidly or co-operate rapidly.

Q The same as retardation?

A It is associated with introversion and retardation.

Q Did you find emotional dulling?

A I did.

Q Was he sane or insane?

A Insane.

Q There isn't much question in your mind about it, is there?

A No, sir.

Q And would you say from what form of insanity he was suffering?

A Dementia praecox.

Q How did you get him to talk?

A Why, by persistent application to the task.

Q How long did it take?

A On the first day it took about five or ten minutes.

A And did he finally talk to you?

A He did, he talked freely after that.

Q And was that after you talked to him and told him that if he did not talk you would have to remove his tonsils?

A That was discussed with other doctors in his presence.

Q In his presence?

A Yes, sir.

Q And that is what finally got him to talk?

A Yes, sir.

Q He talked right after that?

A Yes, sir.

Q You didn't think that that is the attitude of a sane man, did you?

A I don't think that that is the attitude of an indivdual of good, sound judgment.

Q Now, Doctor, did you find him suffering from the catatonic type of dementia praecox?

A He was not definitely catatonic when I saw him in the jail, but the manifestations were present that are usually found in a catatonic dementia praecex.

Q Did you look at the history of this case while he was at the asylum in Overbrook?

A Yes, I saw the history of the case.

Q And from the history in your examination would you say that it belongs to the catatonic type?

A I think so.

Q Now, is it true in the catatonic type that they have moods of depression and moods of excitement and they change and alter in these moods from time to time.

A That is quite true.

Q And isn't it also true that they have outbursts and you don't know where they come from?

A Yes, sir.

Q And that is why they are called dangerous patients?

A Yes.

Q Did you hear police officer Rush testify on the stand the first day this trial opened?

A I did not.

Q Well, his testimony in substance was that he saw this boy in New York on June 29th and he could not talk and when he would push his face in one postion he would hold it in that position and when he would push his face in another position he would hold it in that other position, and when we would push him gently he would move two or three steps; is that what you call automatic obedience?

A It might be termed that.

Q You recognize Stoddard as an authority, don't you?

A I recognize him as an able physician.

Q Now, Stoddard says this under the heading of automatic obedience: "A patient showing this system will, if touched under the chin, raise his head and keep it raised for a minute or so; touched on the top of the head he will flex his neck forward, and so on." Do you agree with that?

A Yes.

Q Now, Doctor, you say that this man could appreciate the difference between right and wrong, is that right?

A Yes, sir.

Q And why did you come to that conclusion?

A Because that the answers made by him to me pertaining to this particular case, that clearly and coherently and relavently, without any clouding of the consciousness whatever.

Q You found no emotional display at all, did you, when he talked about this crime?

A No, practically none. Once or twice his face flushed, but that was all.

Q Now, dementia praecox is that form of insanity which has an effect upon a man's reasoning power, judgment and upon his will, doesn't it?

A It does show that.

Q And it impairs practically all the mental faculties of a man excepting memory and orientation as to time, places and persons.

A In different degrees varying in all patients.

Q Do you say that a person has a feeling of responsibility who is suffering from dementia praecox?

A He may have a feeling of responsibility.

Q And have you answered that question differently at different times?

A Yes I have answered it differently in different cases. You have to consider them as individual patients.

Q Do you remember the Battles case?

A Yes, sir.

Q Do you remember testifying in that case?

A Yes, sir.

Q And did you say in that case when you were asked if a person has a feeling of responsibility who suffering from dementia praecox, and you answered no.

A I don't remember that answer.

Q Suppose you look at the testimony.

A Yes, sir.

Q You answered that way, didn't you?

A Yes, sir.

Q Now, you say that you found this defendant had withdrawn into himself?

A Yes, sir.

Q A shut-in personality

A There were evidences of that.

Q And you found emotional dulling?

A I did.

Q And when you say a shut-in personality you mean a withdrawal from life, don't you?

A Yes.

Q Let me ask you did you answer these questions in the Battle's case: "Doctor, what would you base that on? (Answer) (the witness) On his conduct, his emotional reaction, his withdrawing from himself and his withdrawal from life. The Court: Purely from what you say that he did not know the difference between right and wrong? The Witness: Yes, and upon my

knowledge of the action of demetia praecox." Did you answer it that way?

A Probably it is right, his withdrawal was not necessarily complete.

Q Well, do you want to say it was complete? Would you like to look at the testimony?

A Yes, I would like to look it all over.

The Court. We will not do it that way.

Redirect Examination by Mr. D'Aloia.

Q Doctor, knowing this case as you do, having outlined the conduct of this boy from the 1st to the 4th of September, 1925, do you find any connection between his conduct, mental ailment, as you found it, from the symptoms that he exhibited?

A Well, there might be a relationishp between his conduct, yes, and his mental ailment. That might exist, but despite that he knew it was wrong to do it.

At this point the Court takes a recess until 2 o'clock p. m.

AFTER RECESS

GUY PAYNE, sworn in behalf of the state in rebuttal.

Direct examination by Mr. D'Aloia.

Q During the months of April, May and June, 1925, were you the superintendent of the institution known as the Essex County Hospital for the insane?

A I was, yes.

Q I show you exhibit D-4 and ask you if the entry of April 3rd is correct?

A I believe it is.

Q Now, there is no entry relating to this particular defendant between the 3rd of April and June 26. I want you to read the entry of June 26.

A Is improving both physically and mentally. He is not so negativistic. He is up and about the ward doing some work. He shows a desire to see his family now, which he did not care to do formerly.

Q Can you say any reason why there was not any record made between April 3 and June 26?

Mr. Wachenfeld; Objected to as incompetent.

The Court. Sustain the objection.

Cross-examination waived.

ESTELLE L. RAYMOND, sworn in behalf of the State in rebuttal.

Direct examination by Mr. D'Aloia.

Q Mrs. Raymond, do you remember the 4th of September, 1925?

A Yes, I do.

Q On that date where were you living?

A 297 North Mountain avenue, Upper Montclair.

Q Is that next door to where the defendant, Harrision W. Noel lived?

A Yes.

Q On Friday evening, September 4, where were you?

Mr. Wachenfeld. Objected to on the ground it is not in rebuttal.

The Court. I will allow this question.

A I was at home, sitting on the porch.

Q Did you see this defendant, Harrision W. Noel?

A Well, not just at that time.

Q Well while you were sitting on the porch did he come out?

A No.

Q Did you see him?

A No, not at that time.

Q Well, when did you see him?

Mr. Wachenfeld. I object to that.

The Court. Speaking of when?

Mr. D'Aloia. The same night.

Q Later on that evening did you see him?

A Yes.

Q About what time did you see him?

A About seven o'clock.

Q Where was he and what was he doing?

Mr. Wachenfeld. I object to that. There has been absolutely nothing in the case as to where the boy was.

The court. It might be competent as bearing upon his mental state.

Mr. Wachenfeld. I object to that. The burden is on the state. They have put on Dr. Washington and Dr. Markens.

The Court: Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed, let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY
Judge.

Q Where was he and what was he doing on that evening?

Mr. Wachenfeld. The same objection.

A I was asked to go driving with Mrs. Noel.

Q Did you go?

A Yes.

Mr. Wachenfeld. The same objection.

Q Will you please tell us who the members of this party were?

Mr. Wachenfeld. The same objection.

A Mrs. Noel, her daughter Mary, Harrision and myself.
Q Who drove the car?
A Harrision.

Mr. Wachenfeld. The same objection.

10

The Court. The same ruling.

Q What time did you leave?
A About seven o'clock.
Q What time did you return?
A About nine.
Q During the ride of two hours between seven and nine, did you hear Mrs. Noel talk to Harrision?

Mr. Wachenfeld. The same objection.

20

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY
Judge.

A At intervals she did.
Q Did you hear Harrison answer his mother?

30

A Yes.
Q Now, when you got back after that two hour ride, did you speak to Harrison?
A Yes, I did.
Q What did you say to him?
Mr. Wachenfeld. The same objection.

The Court. I will allow it.

A I told him I enjoyed the ride.
Q What did he say?

40

A Good-night.

Q Who left from the car when you returned?

Mr. Wachenfeld. What date.

Mr. D'Aloia. Friday, September 3rd.

A My niece and I, the car drove up in front of my house and I really cannot say what happened after that, because I went in the house.

Q Well, can you say you saw him drive away?

A I cannot say I saw him drive away, but I presume he did.

Q Do you know where you went during those two hours?

A Yes.

Q Where did you go?

A We went up North Mountain Avenue to Belleview and up Belleview to Upper Mountain avenue; then turned into Clove road and the street---

Mr. Wachenfeld. The same objection to that, answer, that it is not going into the mental condition of this boy, and I object on the ground that it is not proper rebuttal.

The court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY
Judge.

Q Where else?

A And the street leading to the Great Notch station, and then reached the Great Notch station; we turned directly to the right and from there on we eventually reached Paterson and outside of Paterson, I think we were in the neighborhood of Ridgewood.

Q In the neighborhood of what?

A Isn't it Ridgewood? Yes Ridgewood. And then went back and finally reached the Pompton Turnpike and came home through Bradford avenue.

Q Now, during that two hour period until you said Good-night, did you notice anything out of the ordinary about Harrison?

Mr. Wachenfeld. I object to that. It is a conclusion.

The Court. Sustain the objection.

Q Did anybody drive that car except Harrison on that trip?

A No.

Q You did not meet with any mishap of any kind?

A No.

Mr. Wachenfeld. I object to that on the grounds it is leading.

The Court. Overrule the objection. I will allow that.

Q You say the answer was no?

A No.

CROSS EXAMINATION by MR. WACHENFELD.

Q Mrs. Raymond, on that night while Harrison was driving he finally lost his way, didn't he?

A Yes.

Q And he had to inquire of another man how to get back on the road?

A Yes.

Redirect Examination by Mr. D'Aloia.

Q And he made the inquiry?

A Yes.

Q And he got an answer?

A Yes.

Q And after he got the answer he followed the directions given by the man who answered?

A Yes.

THOMAS DIMOND, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. D'Aloia.

Q Mr. Dimond, you were attached to the Prosecutor's office in the month of September, 1925?

A Yes.

Q Did you have occasion to accompany a Mr. Barber to the jail?

Mr. Wachenfeld. I object to that, if your Honor please, on the ground that it is incompetent and not rebuttal; certainly not rebuttal on anything in defense proved in this case.

The Court. It may or may not be, I will allow the question. Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A I did.
Q You know Mr. Barber?
A I do.
Q What day was it when you first accompanied him to the jail?

Mr. Wachenfeld. The same object.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed, let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A September 10th this year.
Q September 10th, 1925?
A Right.
Q Did Mr. Barber talk to Harrison Noel in your presence?

Mr. Wachenfeld. Objected to upon the same ground.

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A He did.

Q How long did the conversation last?

Mr. Wachenfeld. Objected to upon the same ground.

The Court. The same ruling.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A Pretty near half an hour.

Q During that time, or during that half hour, did you notice any difficulty on the part of Harrison in speaking to Mr. Barber?

Mr. Wachenfeld. I object to it upon the ground that it calls for a conclusion and is not proper rebuttal.

The Court. Overruled.

Defendant's counsel prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

A No, Sir.

CROSS EXAMINATION WAIVED.

Mr. D'Aloia. I will call Dr. Kirkman.
(No response).

Mr. D'Aloia. The State rests.

Mr. Wachenfeld. What about it, are you going to call Dr. Kirkman, is he under subpoena, or what?

Mr. D'Aloia. I expected him to be here.

Mr. Wachenfeld. I am willing to wait for him.

The Court. Just a moment, it is not within the province

of the defendant's counsel to hold up the case waiting for a witness to be called.

Mr. Wachenfeld. I have no desire to do so, but if the prosecution wants the witness I have no objection to waiting for him.

The Court. The Prosecutor has rested his case. Proceed with the summing up.

Mr. Wachenfeld. I demand an opening, if the court please.

Mr. D'Aloia. May it please your Honor, and gentlemen of the jury: the defendant has demanded an opening, and that means I have got to outline for him—for counsel for the defense, the points upon which the State relys upon a conviction in this case. The State relys, first, upon the evidence tending to show, on the State's main case, that on September 3, 1925, this defendant was mentally capable of distinguishing between right and wrong. Second, the State does not contend that this defendant did not suffer from some mental ailment, but that ailment had not connection whatsoever with what he did between the 1st of September, 1925 and the 4th of September, 1925, including the 3rd of September, 1925. The State contends that out of his own mouth, outlining his conduct between the 1st and the 5th of September, 1925, he tells us, beyond peradventure of a doubt, that on September 3, 1925, at about 1:30 in the afternoon, he called up a taxi company, and that this deceased mentioned specifically in this indictment came with a taxi, a Dodge touring car, to a place on Valley Road and that this defendant got into that taxi and ordered the driver to drive him to Little Falls; and he tells you, beyond peradventure of a doubt, that at that time he had in his pocket an automatic pistol, which is in evidence, and that it was loaded, and that he wanted that automobile for the purpose of kidnapping the little girl as part of a scheme and plan that he had conceived two days before or several days before; that on the way toward Little Falls, at a deserted spot in the road, this defendant pulled that gun and shot Raymond Pierce in the back of the head, and as a result of that particular wound and that

shot Raymond Pierce died. The State contends that the defendant was conscious of what he was doing, because immediately thereafter he took possession of that car and drove the dead colored man to a spot which is secluded and hidden, and hid the body; he then hid that car for use the next day The State contends that he did use it the next day and used it to kidnapped the girl as part of the scheme he conceived two days before, and after he did kidnap the little girl with this car that he had obtained from Pierce. That he killed the little girl, and that all of this conduct and all of these criminal acts were done by this defendant in the carrying out of a conceived plan, and that was to get a ransom from the parents of the child he was to kidnap.

We contend that the killing of Pierce, and that is the one you are concerned with in this case, was a deliberate, premeditated and wilfull killing for a purpose and a motive and part of a prearranged plan which included other crimes, and that this defendant by his conduct at that time and subsequently thereto showed that he was conscious that what he to the Criminal Law of this State, notwithstanding the fact was doing was not right, and we contend that he is amenable that he suffered from praecox or some other disease, and we are going to ask you, on the summing up, from all the evidence, for a verdict of murder in the first degree, because what he did on the 3rd of September, 1925, the killing of that man, Raymond Pierce, was wilfull, premeditated and of his malice aforethought, and that he knew that he did it; that it was not right, but it was wrong, and that is the test in this case, and the only test. If we prove that to you we want a conviction.

Mr. Wachenfeld sums up for the defense.

Mr. D'Aloia sums up for the State.

CAFFREY, J.

Gentlemen of the Jury. The defendant has been charged in this case with the murder of one Raymond Pierce.

During the course of the trial references have been made to other offenses, the offense of shooting the chauffeur, the kidnapping and killing of the little girl. However, you are not to

consider the guilt or innocence of this defendant with reference to those crimes. References to those crimes have been admitted as bearing upon the probability of some connection with the offense under the indictment. So the precise question for you to consider is the guilt or innocence under this indictment charging him with the murder of Pierce.

The function of the Court is to instruct the jury with reference to the principles of law governing the case. These principles, as charged by the court, should be accepted by the jury.

The jury, however, are the sole judges of the facts, that is, the weight of the evidence, the credibility of the witnesses and, as judges of the facts, you have a right to draw such inferences from the facts as you see fit.

If I, in referring to the testimony, omit some parts which you think are important, or, if I emphasize some part of the testimony, which, in your judgment, is not justified, of course, you are not to follow the court in its deductions as to the evidence. I am not attempting to decide this case upon the facts and any reference that I make concerninng evidence is only with the hope of elucidating that testimony.

The indictment charges the defendant with murder, that he did wilfully, feloniously and of his malice aforethought, kill and slay Raymond Pierce.

Murder is the killing of a reasonable being with malice aforethought, that is, with an intent to do evil. The statute of this State has classified murder into two degrees, murder in the first degree and murder in the second degree, and the statute requires that upon conviction the jury is to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree.

The distinguishing feature between the two degrees is the intent with which the homicidal act is done. The presumption of law is that all murders rather all homicides are murder in the second degree, and the State has the burden of proving affirmatively, if the first degree is contended for, that the act was with the intent to take life, that the act was premeditated, deliberate and wilful, each requiring some appreciable time, and you must, in order to convict of murder in the first degree, find that the accused contemplated the act, that is, premeditated the act, then

determined upon its commission, that is to say, wilfully intended it, then weighed such intent before carrying it into effect, or, in other words, deliberated. While these words do not require any appreciable time, nevertheless, each act, in the contemplation of the law, is separate and distinct and there must be a concurrence of all in order to justify the finding of murder in the first degree.

The law now provides that every person convicted of murder in the first degree shall suffer death unless the jury, by their verdict and as part thereof and upon and after considering all of the evidence, recommend life imprisonment at hard labor, in which case the court cannot impose a greater punishment.

Murder in the second degree comprehends cases of murder in which an attempt is made to do bodily harm without an intent to take life, where the act is done in the heat of passion without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfullness.

In this case the evidence has been in the form of oral testimony, written statements, record, photographs and the diagram which is before you, which is part of the case, and will have to be considered with the rest of the evidence, because, under your oath as jurors, it is your duty to consider all of the evidence. The testimony relating to the killing of Pierce comes from the lips of the defendant—not on the witness stand, as you know, but from statements made by him to the men who interrogated him after the commission of the crime.

There is proof in the case that the defendant called the Hanlon Taxi Company, requested that a taxi be sent where he was waiting—I think some store on Valley Road near the Athletic Club—and that later the taxi came. The defendant then said he killed Pierce; that the car was running at a moderate rate of speed; that he climbed over and took charge of the car an drove to a spot indicated in Exhibits 1 and 2; that he placed the body in the brush or weeds, or whatever it might be, and then he detailed his actions afterwards to these officers. There is proof in the case that Mr. Maatz discovered the body and, if I recall the testimony correctly, the point where the body was found coincides with the declaration of the defendant as to where he placed it.

The defendant has not taken the stand. You may consider that as a circumstance in this case. The fact that he did not take

the stand, of course, cannot be used against him, but the circumstance of the fact that he did not take the stand may be considered by you.

I do not know whether counsel urges that the defendant did not commit the act, but as a defense to this case, the plea of insanity has been raised and most of the testimony you have heard has related to the mental state of the defendant, not merely as at the time of his arrest, but sometime prior, running possibly two years before the happenings on September 3rd.

I will not recount or go over in detail the testimony of the gentlemen who have testified. Dr. Washington, and Dr. Markens, called in the State's main case, said that the defendant knew the distinction between right and wrong. Dr. MacDonald, Dr. Pritchard, Dr. Kirkwood, Dr. Davies, Dr. Englander and Dr. Horsford testified on behalf of the defendant and said he was suffering from dementia praecox and that by reason of that condition of mind he could not distinguish the difference between right and wrong and, I think, some of the physicians said that he could not be relied upon, that of what he told very little credit could be placed upon that.

In keeping with your function as triers of facts, you have a right to consider that testiomny in the light of what has been established in this case. Can you rely on what the defendant said? Do the facts that have been shown in evidence as coming from the lips of the defendant coincide with the proof? Can you rely or could you rely on the defendant's testimony as to the circumstance of getting the taxi cab or the circumstance of the killing or the placing of the body?

Physicians who have testified on behalf of the State stated that the defendant could distinguish between right and wrong. While Dr. Beling and Dr. Dowd, in their judgment, say the defendant is suffering from dementia praecox, they say that it is in his case—rather, he is of a type that could distinguish right from wrong.

If insanity, as a defense, were such that a case could be disposed of merely on proof that a defendant were insane, the problem would be simple. However, the question of insanity as a defence, and the relation of an insane mind with deference to an act, is something to be further considered by you in the light

of the rule of law as ennunciated by our higher courts. Was the prisoner insane at the time of the alleged commission of the crime? When I speak of insanity, I am going to be definite later on. The law presumes a man sane until the contrary is proven. The defendant in this case was adjudged insane, prior to the third day of September. From that judgment we can presume the continuance of that state until the contrary is proven. However, the fact that a man was insane at some former period in his life will not exonerate him forever if it be proven or if it comes up in the evidence that he has at any time been so far rstored to his right mind as to be capable of moral action and of distinguishing between right and wrong; in other words, a man who had once been adjudged insane or been out of his right mind, might afterwards commit any crime he saw fit and then rely upon the former state as a complete defence to any act he might do. The question raised by this defence is not whether the defendant was ever insane at a former time in his life, but whether he was insane at the time of the killing of Pierce, whether the accused at the time of the doing of the act was conscious that it was an act which he ought not to do. If he was not conscious, of this, he ought to be acquitted. If he was conscious of this, he cannot be exculpated on the ground of insanity and he is then amenable to the law.

This defendant, like all other persons charged with crime, is presumed to be innocent and the burden of establishing his guilt rests upon the state. It must satisfy you that he is guilty beyond a reasonable doubt. When we speak of reasonable doubt. we do not mean beyond all possible doubt, nor do we mean a fanciful doubt, because there is nothing in human affairs beyond possible doubt, but it is that state of the case which, after the entire comparison and consideration of all the testimony, leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge. This case is one of importance. It is important to the defendant, because he is the man charged with a violation of our criminal law. It is important to the State of New Jersey, because one of its laws has been violated. You men, despite your short tenure as jurors are just as important a factor in the administration of the criminal law as the office of the prosecu-

tor or of the court. The obligation of your oath carries with it the duty to render a verdict according to the evidence, as you understand it, in keeping with the principles of law as laid down by the court. If you come to a conclusion based upon the evidence, let the consequences take care of themselves. The question before you is not whether this man should be committed to an insane asylum. The question is is he guilty or innocent under the indictment. If you believe the evidence warrants a conviction, it is your duty to say so. If you believe that the evidence in this case warrants you in returning a verdict of not guilty, it is your duty to do so. That responsibility rests entirely upon you.

I have some requests to charge. "1. The presumption of law is in favor of the innocence of this defendant; every man is presumed to be innocent until he is proved guilty, and if there is a reasonable doubt as to whether or not the defendant committed the crime charged against him your verdict must be Not Guilty." I so charge you.

"2. If, in your opinion, at the time of committing the act the defendant was unconscious that he ought not to do it, or in other words, incapable of distinguishing right from wrong, then you must render a verdict of Not Guilty on the ground of insanity." I so charge you.

The third I deny.

The fourth I deny.

"5. Although evidence of prior insanity does not prove that the defendant was insane at the time of the commission of the crime it is, nevertheless, proof which increases the probability that he was insane.

'6. The law is that when a man is proved to be once insane the presumption is that he continues so until the contrary is shown." I so charge you.

The seventh I deny.

The eighth, ninth, tenth and eleventh I deny.

The twelfth I deny, with this modification, that if you find the defendant not quilty you may certify to me on what grounds.

The thirteenth I deny.

The fourteenth I have already charged.

The fifteenth I have already charged.

The sixteenth I have already charged.

I therefore deny all three.

The seventeenth, eighteenth, nineteenth, twentieth to twenty-seventh, I deny. Already covered.

The twenty-ninth I will deny and the thirtieth I will deny, and the thirty-first I will deny and the thirty-second and thirty-third I will deny.

Exceptions to my refusal to charge each one will be granted.

Exceptions signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

(The jury retire.)

Defendant's counsel prays an exception to that part of the Court's charge in which the Court said the information given by the defendant where the colored man's body was found coincided with the evidence in the case, upon the ground that the defendant never pointed out where the colored man's body was found.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Defendant's counsel prays an exception to that part of the Court's charge wherein the Court stated that Dr. Markens testified the defendant knew the distinction between right and wrong, because he did not so testify.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Defendant's counsel prays an exception to that part of the Court's charge with reference to what the Court said to the insanity question.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

Defendant's Requests to Charge.

Defendant's counsel prays a general exception to the charge of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

EDWIN C. CAFFREY,
Judge.

DEFENDANT'S REQUESTS TO CHARGE

I. The presumption of law is in favor of the innocence of this defendant; every man is presumed to be innocent until he is proved guilty, and if there is a reasonable doubt as to whether or not the defendant committed the crime charged against him your verdict must be Not Guilty.

2. If, in your opinion, at the time of commiting the act the defendant was unconscious that he ought not to do it, or in other words, incapable of distinguishing right from wrong, then you must render a verdict of Not Guilty on the ground of insanity.

3. The burden of proof as to the sanity of the defendant and his ability to distinguish right from wrong in this case is upon the State, and they must prove this fact to you beyond a reasonable doubt.

4. If the evidence of sanity on one side, and insanity on the other leaves the scale equally balanced, or so nearly poised that you have a reasonable doubt of his sanity, your verdict must be Not Guilty upon the ground of insanity.

5. Although evidence of prior insanity does not prove that the defendant was insane at the time of the commission of the crime it is, nevertheless, proof which increases the probability that he was insane.

6. The law is that when a man is proved to be once insane the presumption is that he continues so until the contrary is shown.

7. In the case at trial there is positive proof that the boy was insane from the month of February to June 1925. This is testified to not only by the doctors for the defense, but admitted by the doctors for the State, and I therefore charge you that the presumption arises that he is still insane at this moment, unless the contrary be shown.

Defendant's Requests to Charge.

8. There is evidence in this case that the defendant has been confined in three different insane asylums or institutions for the treatment of mental diseases, 1. at the Creigh House at Beacon, N. Y., for a period of four months; 2. at the Overbrook Asylum, which is the Essex County hospital for the Insane, for a period of approximately four months; 3. at Bellevue Psychopathic Ward for a period of a few hours. All of this evidence you may take into consideration, coming to a conclusion as to whether or not the defendant was insane at the time of committing the act charged against him.

9. There is evidence in this case which you have a right to consider, that the defendant on the 24th day of March, 1925, was lawfully committed by a court of competent jurisdiction in this county to the Essex County Hospital for the insane at Overbrook, N. J., and that he escaped from said institution on or about the 28th of June, 1925. Although this is not evidence which of itself proves that he was insane at the time of the commission of the crime, it is, nevertheless evidence which you may consider in determining whether he was sane or insane at that time.

10. The law does not look with disfavor upon a legitimate defense of insanity, and in this case the law itself, because of the facts as proven, raises the presumption that the defendant was insane at the time of the commission of the crime, and unless you find beyond a reasonable doubt that this condition of insanity changed, and that the defendant was sane at the time of the commission of the crime, your verdict must be Not Gulity on the ground of insanity.

11. From the testimony in this case it appears that the defendant is an escaped lunatic, having escaped from the Essex County Hospital for Insane on the 28th of June, 1925, and if your verdict should be Not Guilty upon the ground of insanity the Court would have the right, and would surrender the defendant to said insane asylum.

12. The mere fact that you bring in a verdict of Not Guilty upon the ground of insanity does not mean that this defendant will go free. The law provides that in that event the Court will carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order the defendant in safe custody and direct the defendant be sent to the New Jersey State Hos-

pital at Trenton to be confined until such time as he may be restored to reason, but such person shall not be releaesed from confinement excepting upon the order of the trial judge having jurisdiction to try such person who has escaped indictment or been acquitted of such criminal charge as aforesaid.

13. There might arise in the minds of you gentlemen the question as to what would be done with the defendant in the event that you brought in a verdict of Not Guilty upon the ground of insanity. The law covers this situation and is plain and understandable, and I will read it to you. It says: "When any person shall escape indictment or have been acquitted of a crime charged upon trial upon the ground of insanity upon the plea pleaded of insanity or otherwise, the Court, being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does shall order him in safe custody and direct such person to be sent to the New Jersey State Hospital at Trenton to be confined as otherwise provided by laws and maintained as to expense as is otherwise provided for maintenance of the criminal insane until such time as he may be restored to reason, but such person shall not be released from confinement excepting upon the order of the trial justice or judge having jurisdiction to try such person who has escaped indictment or has been acquitted of such criminal charge as aforesaid."

14. The only crime for which the defendant is being tried is the one set forth in the indictment which alleges that he murdered Raymond Pierce on the 3rd day of September, 1925. Other testimony has been admitted to show merely the motive of this particular crime, and must not be considered by you for any other purpose excepting as I have stated. If the defendant has committed any other crimes they are separate crimes and will be tried separately.

15. There has been some proof in this case that the defendant killed the Daly child. He is not on trial for that crime now and you most not permit this fact to prejudice him.

16. Any evidence in reference to the killing of the Daly child must be completely eradicated from your mind and it must have no part in making up your conclusion as to whether or not the defendant is guilty on the indictment for which he is now on trial.

Defendant's Requests to Charge.

17: If the jury are satisfied by a preponderance of the proof that the defendant was at the time of the commission of the alleged crime suffering from a mental disease to such an extent if he were not at such time so suffering he would not have committed the alleged crime, the defendant cannot be convicted of murder in the first degree.

18. If there is a reasonable doubt in the mind of the jury arising out of the evidence in the case that whether the defendant would have committed the alleged crime if he were not suffering at the time of the commission from a mental disease he would not have committed the crime charged against him the defendant cannot be convicted of murder in the first degree.

19. If the jury are satisfied by a preponderance of the proof that at the time of the commission of the alleged crime, the defendant was suffering from a mental disease to such an extent as that his mental faculties were so impaired as that he committed the acts alleged to constitute a crime because of the effect of such disease upon his mental faculties, the defendant cannot be convicted of murder in the first degree.

20. This defendant is being tried upon one charge alone—that of killing the colored man.

21. The only evidence you may consider is that concerning the killing of the colored man.

22. Any evidence which has been introduced in reference to the killing of the little girl must be entirely eradicated from your minds, and must not be taken into consideration by you in arriving at your verdict.

23. If the mental condition of this defendant was such on September 3, 1925, that he did not know the nature and quality of the act he was doing, your verdict should be "Not Guilty."

24. If the mental condition of this defendant was such on September 3, 1925, that he did not know that what he was doing was wrong, your verdict should be "Not Guilty."

25. Murder in the first degree consists in the taking of a human life with intent to kill, and that intent must be executed with deliberation and premeditation.

26. If the mental condition of this defendant was such on September 3, 1925 that he could not form a willful, deliberate and

premeditated intent to kill with deliberation and premeditation, your verdict should be one of "Not Guilty".

27. If you find that on September 3, 1925, this defendant did form a criminal intent, but that it was an insane intent, your verdict must be one of "Not Guilty."

28. "The ground on which a confession made by the accused under promise of favor or threats of injury is excluded as incompetent, is not because any harm is done to the accused in using them, but because he may be induced by the pressure of hope or fear to admit facts unfavorable to him, without regard to their truth."

29. The law provides that if any person shall be acquitted of a criminal charge upon trial upon the ground of insanity, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his sanity in any degree continues, and if it does shall order him in safe custody, and direct such person to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to the expense as is otherwise provided for the maintenance of the criminal insane, until such time as he may be restored to reason, but such person shall not be released from confinement except upon the order of the trial justice or judge having jurisdiction to try such person who has been acquitted of such criminal charge as aforesaid.

30. If you find that the defendant is not guilty, and your verdict is arrived at because he was insane, your verdict should be "Not Guilty upon the ground of insanity."

31. If the evidence is sufficient to satisfy you that the insanity of the defendant at the time of the homicide was so great as to prostrate his faculties and render him incapable of forming a specific intent to kill, which is the essential ingredient of murder in the first degree, the defendant is entitled to an absolute acquittal.

32. The defendant is not being tried for the kidnapping of the little girl, and you must not take this evidence into consideration in determining his guilt or innocence at this trial.

33. There is another indictment pending against this defendant for kidnapping, and you must therefore confine yourselves to the charge for which he is now being tried, to wit, the killing of the colored man on the day mentioned in the indictment, and you must not permit any evidence in reference to the kidnapping to prejudice you against the defendant.

Judges Certificate

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *vs.* HARRISON W. NOEL,	On Indictment No. 85, Sept. T., 1925 for MURDER

I, Edwin C. Caffrey, presiding judge of the Essex County Court of 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.

EDWIN C. CAFFREY,
Presiding Judge of the Essex County Court of Oyer and Terminer.

Dated

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* HARRISON W. NOEL, *Defendant.*	On Indictment No. 85, Sept. T., 1925 for MURDER

I, EDWIN C. CAFFREY, Presiding Judge of the Essex County Court of Oyer and Terminer, and the Judge who presided over the aforesaid case, certify that the above printed book, from page 1. to page 513. contains the entire record of the preliminary proceedings from the time of directing the entry of the plea of Not Guilty and the hearing and testimony subsequent thereto to determine whether or not the defendant was able to comprehend his position or rationally consult with counsel in the preparation of a defense, and should be tried.

EDWIN C. CAFFREY,
Presiding Judge of the Essex County Court of Oyer and Terminer.

Stenographers Certificates

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *vs.* HARRISON W. NOEL,	On Indictment No. 85, Sept. T., 1925 for MURDER

We, Harold T. Cook and Joseph S. Fishkind, Official Stenographers of the Essex County Court of Oyer and Terminer, and Walter W. Ressland, Official Stenographer of Essex County Circuit Court B, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by us at the trial of the case of the State of New Jersey vs. Harrison W. Noel, which trial was held before the Hon. Edwin C. Caffrey, presiding Judge of the Essex County Court of Oyer and Terminer, and a Jury, on Monday, November 9, 1925, Tuesday, November 10, 1925, Thursday, November 12, 1925, Friday, November 13, 1925, and Monday, November 16, 1925, at the Court House, Newark, New Jersey.

HAROLD T. COOK,
JOSEPH S. FISHKIND,
WALTER S. RESSLAND.

Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEAL

STATE OF NEW JERSEY, *Defendant in Error,* vs. HARRISON W. NOEL, *Plaintiff in Error.*	*On Writ of Error* *Stipulation as to Exhibits*

It is hereby stipulated by and between the prosecutor of the pleas in and for the County of Essex, counsel for the State and Wiliam A. Wachenfeld, counsel with plaintiff in error in the above cause, subject to the approval of this court that in lieu of printing the same all of the exhibits consisting of photographs, articles of wearing apparel, etc., as follows, may be used upon the argument though not printed, such exhibits being:

S 1. Photo of bridge and road.
S 2. Photo of bridge and road.
S 3 Photo of bullet from body of Pierce.
S 4. Photo of Bradford Avenue.
S 5. Photo of Dodge car.
S 6. Photo of Bradford Avenue.
S 7. Photo of Bower house.
S 8. Photo of Bower house.
S 9. Original receipt of gun.
S 10. Seeds of beggar-lice.
S 11. Box of cartridges.
S 12. Gun.
S 14. Cap worn by Sandon.
S 15. Hat worn by Noel.
S 16. Coat worn by Noel.
S 17. Leather from seat of Dodge car.
S 18. Photo of quarry.
S 19. Red balloon.

J. O. BIGELOW,
Prosecutor of the Pleas of Essex County.

W. A. WACHENFELD,
Counsel with Plaintiff in Error.

7.30 P.M.

Exhibit S. 13.

Exhibit S-13

DEFENDANT'S STATEMENT.

Montclair, N. J., Sept. 6th, 1925.
State vs. Harrison W. Noel
Voluntary statement of Harrison W. Noel, age 20 years.
Residence No. 295 North Mountain Ave., Montclair, N. J.
Statement taken by: Thomas Diamond, County Detective, in the presence of Frederick Gallagher, Chief Reilly, Captain Mason and Officers Brady and Walsh.

On Aug. 24th, 1925, I was living at the Mills Hotel in Bleeker St. and I went down to lower Broadway and purchased a revolver from Francis Bannerman & Sons, 501 Broadway It was a Spanish type pistol, 32 cal automatic and it is the revolver that Captain Mason just showed me.

I purchased it for the purpose of using it if anyone came from Overbrook after me and I ordered it shipped to me under the name of Wallace Payne, Falls Road, Little Falls, N. J.

I went to the Little Falls Post Office and got the revolver about a week later. I paid for the revolver when I bought it for $9.20.

When I got the gun I also purchased a box of cartridges. Windchester make, it was a box containing about 45 bullets.

When I received the revolver at the Little Falls Post Office, I drove to Normal Ave., Montclair, and tried it out. I think I fired about 15 shots, I partly filled the magazine three times.

I kept the revolver under the rear seat of my Overland car and on several occasions I took the revolver to my room in my mother's house.

End of First Page.

Then on Tuesday, Sept. 1st, 1925, I made up my mind to kidnap a young girl that lived at 136 Upper Mountain Ave., Upper Montclair. I got this idea into my head because it was a nice big house and I wanted to get money from her parents for her return.

On Thursday I went to a drug-store on Valley Road and called up a Taxi cab and told the man over the phone to come to the Athletic Club for me. A colored man come with a Dodge touring car and I told him to drive me to a number on 1st Street, Little Falls. I got in and we drove up Valley Road to Belevue Avenue then to Upper Mountain Avenue to Bradford Avenue and going down Brandford Avenue on the hill. As I was going up the hill, I pulled out the pistol I was sitting on the left hand side of the back seat and I felt dizzy but as we came down the hill I took the revolver and shot him in back of the head. He fell over toward his right side. The car was going at a moderate rate of speed and I climbed over front seat and got behind the wheel and stopped the car. I pushed the colored man over out of my way I had stopped the car. I then

End of Second Page.

started the car and drove down to the Pompton Turnpike to the first street beyond the railroad Bridge on the right. I turned in this street and continued to a white cement bridge. I then stopped the

Exhibit S-13

car and pulled the colored man out of the car and dragged him across the road and down in the bushes alongside of the brook.

I then got back in the car and drove out thru the Country a pretty good clip. I don't know where I went but I came back thru the Eagle Rock Reservation. I remember I stopped once and took gasolene from the reserve tank and tried to take the blood off my clothes and the seat of the car. I then came on into Montclair to the stone quarry and I drove the car in there and left it and walked home. I think I got home about 4 P. M. I don't remember whether I went out again that night.

Friday morning I got up about 8 A M. and worked a couple of hours in the back yard. Then I took my Overland car and drove to the other side of the hill back of the quarry and took the Dodge car that I left there and drove it down Highland Ave. to the back of some big places on South Mountain Ave. I then drove along

End of Third Page.

Upper Mountain Ave. and there I picked up this little girl from in front of 136 Upper Mountain Ave. I remembered this number from Tuesday. I stopped the car, got out and told the little girl to get in, she said she did not want to so I lifted her up in my arms and carried her and put her on the front seat. I then drove the car over Highland Ave. to Normal Ave., then to the reservoir and turned to my right and then on into Great Notch, N. J. I passed the Depot turning to the right and then to my left and I might have went two or three or four blocks when some men in a closed car pulled up along side of me and I fired a shot. I don't know whether anyone was hit or not but I saw in the Montclair Time yesterday morning that a man was hit and injured.

I started off again and drove on until I reached the place where I took the officers this afternoon Sunday September 6 h, 1925. When I reached this spot I don't remember what the little girl said. She was talking; took the revolver from my right hip trouser pocket and I had previously told the little girl to step out of the car. I

End of Fourth Page.

led her a few feet off the road and shot her twice in the side of the head and then dragged her body to the spot where she was found in the Summac bushes. I then drove the Dodge car back to Bradford Avenue, Montclair, and drove it into the woods. When I drove it into the woods about 400 feet I turned it around and left it facing Bradford Avenue.

I then went to the back of the quarry got my Overland car and drove home. I think I got home about 1.40 P. M. I know I reloaded my gun and put it under the back seat of my Overland car.

I then left my Overland standing in front of the house, went upstairs, took a bath and put on a clean shirt and got into the car and drove to Montclair to the girls Scout Headquarters and brought my sister home and then rode to theMontclair libray a couple hours

Exhibit S-13

later and got a book named "The Jester" by Moore. I got this book on my card. On my way home from the Library I drove to the D. L. & W. R. R. Station in Glen Ridge, N. J. I went to the

End of Fifth Page.

telephone booth and got the telephone book and started at the A's until I came to the B's watching to see who lived at 136 Upper Mountain Ave. I found the name Joseph A. Bower 136 Upper Mountain Ave. I then called up the number listed under that name. A woman's voice answered the phone. I asked her if she was interested in a little girl with a pink dress that was taken away this morning. She replied yes. I then said I want $4,000 dollars ransom. She said who are you? I didn't reply to that question. I then told her that there were some banks open in the theatre district in upper New York City. I then hung up and left the railroad station and drove home arriving around 5 p. m.

I started to read the book and didn't like it so I took it back to the library and got two others. One was named "Hale Vail." We then had dinner and after dinner I took my mother and the people who live next door ,a Mrs. Raymond, her niece, my mother and my sister for a drive in my Overland car. I don't know what time I got home, it was after dark. I stayed home the rest of the night.

Yesterday, Saturday, I got up about 7 A. M. and drove my car to Newark and went to New York City on the Tubes. I remember

End of Sixth Page.

the conductor giving me an exit coupon dated Sept. 5, 1925, which Captain Mason is not showing me.

I got off at Cortland Street and went to Bleeker Street to the Mills Hotel and there I got some clothing and a suit case that I had left there before.

I then came back to Newark on the Tubes and got into my car and drove back home to Montclair with the suit case and clothes arriving about between 11 and 12 noon. I took a bath and had lunch and stayed home until 5.30 P. M. The Mr. Gallagher and another man came up and said they wanted to speak to my mother. I asked him his name and he told me. Then they went into the front room My mother asked us to go upstairs and she was talking with them. A few minutes later my mother called me down and she said the men wanted to speak to me alone and after having a conversation with them they told me that Chief wanted to talk to me so I accompanied them to the Montclair Police Headquarters.

Exhibit S-13

End of Seventh Page.

When I arrived at Police Headquarters I talked to the Police for awhile and to-day Sunday Sept. 6, 1925, the police took me into an automobile and I directed them over the route I had taken after kidnapping the girl and to the spot where I disposed of the body and pointed the body out to them. On the way back I showed the Officers the spot on Bradford Avenue Cedar Grove where I shot the Taxi driver.

Harrison W. Noel.

Witnessed by
Lt. Harry W. Walsh
Sergt. Patrick J. Brady
E. F. Reilly
F. W. Gallagher
James F. Mason

Stipulations.

NEW JERSEY COURT OF ERRORS AND APPEAL

STATE OF NEW JERSEY *Defendant in error,* *vs* HARRISON W. NOEL, *Plaintiff in error*	ON WRIT OF ERROR STIPULATION AS TO EXHIBITS

It is hereby stipulated by and between the prosecutor of the pleas in and for the County of Essex, counsel for the State and William A. Wachenfeld, counsel with the plaintiff in error in the above cause, that the Clerk's record shows that the juror, Walter Charlton was excused on the court's own motion and that at the time the court made the remarks to the said juror as printed in the state of case, there were eight jurymen in the box having already been selected and that the statements of the court were made before the jury so selected and before the entire panel.

J. O. BIGELOW
Prosecutor of the Pleas of Essex County.

W. WACHENFELD
Counsel with the plaintiff in error.

EXHIBITS

S13 Defendants statement, see pages 772-776.

D1 Order committing defendant to the Essex County Hospital for Insane at Overbrook, see pages 788-792.

D2. Affidavit of Mr. Barber, see pages 17-18.

D3. Essex County Hospital for Insane and record of the Craigh house, an Insane Institution, see pages 779-814.

10 D4. Bellevue Hospital record, see pages 815-818.

D5. Examination of Drs. Davies and Thompson, s. pages 819-835.

D6. Examination of Dr. McDonald, see pages 836-860.

D1. Examination of Dr. Washington, see pages 860-876.

D4. Record of Essex County Hospital for Insane and Craigh House. See D4 Supra, see pages 779-814.

20 D5. Testimony of Dr. Gregory and Bellevue Hospital record (Bellevue record same as D4, see page 877-889.

D6. Letters, 891.

D7. Letters, 891.

D8. Letters, 891.

30 D9. Letters, 892,

D10. Postal Card, 892.

D11. Postal Card, 890

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Exhibit D-3

No. 10755

STATE OF NEW JERSEY
COUNTY OF ESSEX

Application, Certificates and Temporary Order for the commitment
of
HARRISON W. NOEL
as private indigent patient
to the
ESSEX COUNTY HOSPITAL AT OVERBROOK
(Cedar Grove P.O., N. J.)

This form has been approved by the Overbrook Hospital Committee of the Board of Chosen Freeholders of the County of Esssex, N. J.
No Judge's Order
Admitted February 25th 1925.

NOTE

IMPORTANT—Residence of at least five years in Essex County is required for admission to the Essex County Hospital at Overbrook. (If patient is a minor, father's residence applies; if a married woman, husband's residence applies). In case residence is less than five years in Essex County, this application should be changed to the appropriate State or County Hospital. All required information can be obtained at the office of the County Adjuster, Court House, Newark, N. J.

Proceedings for the commitment of insane persons are brought under the provisions of an Act of the Legislature of the State of New Jersey, Chapter 147, Laws of 1918, as amended.

Physicians who use the accompanying forms should classify their patients under A, B, C. or E. These forms should not be used for Class D.

Class A. Where immediate temporary confinement of the patient is not necessary before final order of commitment.

Class B. Where immediate temporary confinement of the patient is necessary owing to the condition of the patient and an order of temporary confinement can be obtained before the patient is admitted to such institution.

Class C. Where such immediate temporary confinement is necessary but an order of temporary commitment cannot be obtained before the patient is taken into such institution.

Class D. Where a patient voluntarily applies for admission to an institution for the insane, for treatment.

Exhibit D-3

Class E. Where a person inconfinement under indictment, committment or sentence is to be transferred to a hospital for the insane.

STATE OF NEW JERSEY

Application for Commitment to the Essex County Hospital at Overbrook

To the Medical Superintendent of the Essex County Hospital at Overbrook

The undersigned, Dix W. Noel of Montclair, Essex County, New Jersey, hereby makes application for commitment to and confinement in the Essex County Hospital at Overbrook, of Harrison W. Noel as an insane patient.

I am interested in the admission of said patient by reason of (relationship to) (having charge or care of) said patient as father.

The patient was born at New York on 16th, April 1906.
Father's name and birthplace, Dix W. Noel, Urbana, Ill.
Mother's maiden name and birthplace, Annie Webster, Schencteady. N. Y.
Present address of patient, 295 North Mountain Ave., Upper Montclair, N. J.
Present addres of parents, if living—Same.
If deceased, did they die intestate or leave a will?
Occupation of patient—Lawyer (N. Y.).

Places of residence of patient during the past ten years. (If married woman, give husband's residence. If a minor, give father's residence. If an immigrant, state where patient resided for three years after arrival.)

See Important Note at Top of Page 3. Give most recent address first.

at—same as above, 14 years.

Name and address of person with whom patient last resided—Same.

The next of kin of said patient and their addresses are:

Name	Relationship	Address
Parents, as above.		

(If no relative known, give name of person having most knowledge of patient's affairs.)

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The patient is (strike out unnecessary words) single,

Religion of patient is Protestant.

Is patient, or husband or wife, the owner of any property, real or personal? If so, describe same and give location—No.

Dated, February 25, 1925.

Signature of applicant, Dix W. Noel.
Street and number, 295 North Mountain Ave.
City or town, Upper Montclair, N. J.
Telephone number 6131 Montclair.

I hereby certify that the condition of this patient is such that it was impossible to obtain an order of temporary commitment prior to he admission of the patient.

Dix W. Noel
Applicant

OATH OF APPLICANT

STATE OF NEW JERSEY
ss.
COUNTY OF ESSEX

Dix W. Noel, the applicant above named, being duly sworn upon his oath, deposes and says that the facts in the above application are true.

Sworn to and subscribed before me
at Cedar Grove, N. J., this
25th day of February, 1925.

Dix W. Noel.

Herbert Walker
Notary Public.

CERTIFICATE OF INSANITY OF PATIENT, BY PHYSICIAN RESIDENT OF NEW JERSEY

I, George W. Davies of Verona, N. J., do hereby certify that I am a graduate of Univerity of Maryland, that I have been duly licensed to practice medicine in the State of New Jersey and hold a degree of Doctor of Medicine; that I am a permanent resident of said State and have been in the actual practice of my profession

Exhibit D-3

for at least five years; that I am not a relative by blood or marriage of the patient named in this certificate, or a director, superintendent, proprietor of or financially interested in any institution for the care and treatment of the insane in this State to which it is proposed to commit said patient, and I am not professionally employed as resident physician at a regularly paid salary by the management thereof.

On the 25th day of February 1925, I made a personal examination of Harrison Noel, alleged to be insane, and whose admission into the Essex County Hospital at Overbrook, an institution for the care and treatment of the insane in this State, has been requested by application hereto attached, and I am of the opinion that the said Harrison Noel (herein called the patient), is insane and a person whose condition is such as to require care and treatment in an institution for the insane, and that said patient should be committed under Class....., as defined in Chapter 147 of the Laws of 1918.

(See page 3 for classes. If under Class E, state, whether patient is held under commitment, indictment or sentence, and upon what charge or sentence and where confined.)

C

The following is a thorough description and identification, and the facts I have been able to learn concerning hereditary taint and previous attacks of the patient sought to be confined:

1. Patient resides at No. 295 N. Mountain Ave., in the Town of Montclair, County of Essex and State of New Jersey.

2. Age about 19 years.

3. Nativity, apparently, U. S.

4. Sex, M., color, W., and other identifying characteristics in addition to information given in the application:.....

5. Number of previous attacks—None; age at first attack, 17 years, present attack began.....; (if patient has been an inmate of an institution for the insane, state when and where) —Craig Sanatarium, Beacon, N. Y., 1923.

6. Was present attack gradual or rapid in its onset?—Gradual.

7. The patient's general physical condition is Good.
(If inflicted with any infirmity or disease other than insanity, state and describe it.)

8. The patient is.....cleanly in personal habits. (If uncleanly, state particulars.)
Cleanly.

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9. If patient exhibits or has exhibited violence, destructiveness, depression, homicidal, suicidal or dangerous tendencies, state symptoms in detail.—Attention impaired, emotional, deterioration, seclusive, defective judgement, silly, laughter, disturbance of conduct. Wanderlust, depressed, mannerism.

10. What, in your opinion, is the supposed cause of the insanity of the patient? (State both predisposing and exciting causes, if known)—Not disclosed.

11. Is there any history of insanity in the patient's family. (If so, state the exact relationship of patient, to the insane relative) (Aunt Suicide.)

12. Does the patient use alcoholic liquor, tobacco, opium,, cocaine or other injurious drugs? (If so, to what extent?) None.

13. State any irregularities of sleep, appetite or other bodily functions—Insomnia.

The following are prominent symptoms upon which my diagnosis of the insanity of the patient is based:

(a) Patient said in my presence: (Give patient's exact words. If persistent silence mainained, so state) I thought a mistake had been made by a Mr. Gray being a Scout Commissioner. I worry over his well-fare. He is a man 60 years of age all alone in this world. I wanted to stay at the Sanitarium with Mr. Gray. They threw me out, "They razzed me." I don't feel like working when Mr. Gray is so sick. I love Mr. Gray. I walked to Virginia.

(b) Patient's behaviour was as follows: (State manner, actions and demeanor) Sat in chair twisting his fingers and would suddenly burst out in laughter, called his physician up at 2 A. M. asking him to stop at his house in the morning. Got up from bed, dressed and was going to make call on his physician at 3 A. M. Was taken to police station for the night.

(c) Patient's general appearance at the time of my examination was: (State condition of clothing whether patient was tidy, untidy, orderly, cleanly or otherwise)—Tidy.

The following, indicating insanity was communicated to me by mother, Mrs. Noel, of the patient: (State names of informants and, if any, change has been observed in patient's disposition, social habits, physical health and ability to follow usual avocation) Patient has not been mentally well for past 2 years. Ran away from home, would not work, lost all interest in home and his companions, unable to control his actions on behavior, is seclusive, laughs without cause, has been failing mentally.

14. Is the patient, in your judgment, insane?—Yes.

Exhibit D-3

15. Is the condition of the patient, in your judgment, such that he should be placed under immediate restraint and confinement in an institution for the insane?—Yes.

My opinion herein before stated that the said Harrison Noel is insane and a person whose condition is such as to require care and treatment in an institution for the insane, is based upon all the foregoing facts and statements.

George W. Davies,
M.D.

PHYSICIAN'S OATH

STATE OF NEW JERSEY
} *vs.*
COUNTY OF ESSEX

George W. Davies being duly sworn according to law, on his oath says, that he is the physician named in and who made and subscribed the foregoing certificate; that he has read the same and knows the contents thereof, and that the facts, matters and things therein set forth are true.

Sworn to and subscribed before me this
25th day of February 1925

George W. Davies.

Herbert Walker
Notary Public.

CERTIFICATE OF INSANITY OF PATIENT, BY PHYSICIAN RESIDENT OF NEW JERSEY

I, Allan S. Kirkwood, of Montclair, N. J., do hereby certify that I am a graduate of New York University and Bellevue Hospital Medical College; that I have been duly licensed to practice medicine in the State of New Jersey and hold a degree of Doctor of Medicine; that I am a permanent resident of said State and have been in the actual practice of my profession for at least five years; that I am not a relative by blood or marriage of the patient named in this certificate, or a director, superintendent, proprietor of or financially interested in any institution for the care and treatment of the insane in this State to which it is proposed to commit said patient, and I am not professionally employed as resident physician at a regularly paid salary by the management thereof.

On the 25th day of February 1925, I made a personal examination of Harrison Noel, alleged to be insane, and whose admission into the Essex County Hospital at Overbrook, an institution for the care and treatment of the insane in this State, has been requested by application hereto attached, and I am of the opinion that the said

Exhibit D-3

Harrison Noel (Herein called the patient), is insane and a person whose condition is such as to require care and treatment in an institution for the insane, and that said patient should be committed under Class....., as defined in Chapter 147 of the Laws of 1918.

(See page 3 for classes. If under Class E, state whether patient is held under commitment, indictment or sentence, and upon what charge or sentence and where confined.)

C

The following is a thorough description and identification, and the facts I have been able to learn concerning hereditary taint and previous attacks of the patient sought to be confined:

1. Patient resides at No. 295 N. Mountain Ave. in the Town of Montclair, County of Essex, and State of New Jersey.

2. Age about 19 years.

3. Nativity, apparently, U. S.

4. Sex, M., color W., and other identifying characterists in addition to information given in the application:.....

5. Number of previous attacks—none; age at first attack, 17 years. Present attack began.....; (if patient has been an inmate of an institution for the insane, state when and where) Craig Sanatorium, Beacon, N. J., 1923.

6. Was present attack gradual or rapid in its onset?—Gradual.

7. The patient's general physical conditions is good.
(If inflicted with any infirmity or disease other than insanity, state and describe it).

8. The patient is.....cleanly in personal habits.
(If uncleanly, state particulars).
Cleanly.

9. If patient exhibits or has exhibited violence, destructiveness, depression, homicidal, suicidal or dangerous tendencies, state symptoms in detail—Attention impaired, emotional, seclusive, silly, laughter, two years ago struck father with an axe but did not remember doing so, father was asleep.

10. What, in your opinion, is the supposed cause of the insanity of the patient? (State both predisposing and exciting causes, if known)
—Not disclosed.

Exhibit D-3

11. Is there any history of insanity in the patient's family. (If so, state the exact relationship of patient, to the insane relative)—Aunt suicide.

12. Does the patient use alcoholic liquor, tobacco, opium, cocaine, or other injurious drugs? (If so, to what extent?) No.

13. State any irregularities of sleep, appetite or other bodily functions.—Insomnia.

The following are prominent symptoms upon which my diagnosis of the insanity of the patient is based:

10

(a) Patient said in my presence: (Give patient's exact words. If persistent silence maintained, so state).
"I worry over Mr. Gray's welfare, a mistake has been made in his being a scout commissioner. I wanted to stay at the Sanitarium (Clifton Spring) but they threw me out, they razzed me. I don't feel like working when Mr. Gray is so sick."

(b) Patient's behaviour was as follows: (State manner, actions and demeanor)—At times quiet, then walked to and fro, walked out on the piazza, said he would not come in until his father came home, called up his physician at 2 A. M., then was taken to Montclair
20 Police Station.

(c) Patient's general appearance at the time of my examination was: (State condition of clothing, whether patient was tidy, untidy, orderly, cleanly or otherwise)—Tidy.

The following, indicating insanity was communicated to me by mother, Mrs. Noel, 295 N. Mountain Ave. of the patient: (State names of informants and, if any, change has been observed in patients' disposition, social habits, physical health and ability to follow usual avocation)—Patient has not been mentally well for past two years, lost interest in town and companions, would stay away from home, taken frequent trips and and then send for money to return.

30

14. Is the patient, in your judgment, insane?—Yes.

15. Is the condition of the patient, in your judgment such that he should be placed under immediate restraint and confinement in an institution for the insane?—Yes.

My opinion hereinbefore stated that the said Harrison Noel is insane and a person whose condition is such as to require care and treatment in an institution for the insane, is based upon all the foregoing facts and statements.

Allan S. Kirkwood,
M. D.

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Exhibit D-3

PHYSICIAN'S OATH

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

Allan S. Kirkwood being duly sworn according to law, on his oath says, that he is the physician named in and who made and subscribed the foregoing certificate; that he has read the same and knows the contents thereof, and that the facts, matters and things therein set forth are true.

Sworn to and subscribed before me this
25th day of February, 1925.
Herbert Walker,
Notary Public.

Allan S. Kirkwood.

Exhibit D-3

(Class B.)

ESSEX COUNTY JUVENILE COURT

In the matter of the aplication for commitment to and confinement in the Essex County Hospital for the insane of

HARRISON W. NOEL
an alleged insane person.

ORDER OF TEMPORARY COMMITMENT
(Instituting inquiry)

I, DANIEL J. BRENNAN Judge of the JUVENILE Court of the County of Essex, having examined the application in writing of DIX W. NOEL for the commitment to and confinement in the Essex County Hospital for the insane of HARRISON W. NOEL (hereinafter called the patient), and the annexed certificates of GEORGE W. DAVIES and ALLAN S. KIRKWOOD ..... two reputable physicians duly qualified by law to sign said certificates, who certify under oath to the insanity of said patient, and that in their judgment the condition of the patient is such that, he should be placed under immediate restraint in an institution for the insane; and having duly considered the same and being satisfied with the form and sufficiency thereof, do hereby ORDER and direct that an inquiry and proof as to the mental condition, legal settlement and indigence of said patient be had before the judicial officer authorized by the law to conduct such inquiry in the County of Essex, at a time and place certain to be fixed by such judicial officer upon the request of the County Adjuster for such county, which shall be not more than twenty days from the date of this order unless adjourned, of which time and place notice shall be given, as provided by law; and I do further ORDER that the said HARRISON W. NOEL be temporarily committed to and confined in said institution for the insane until such final hearing, and adjudication pursuant to the statute in such case made and provided; and this shall be sufficient warrant and authority for the admission and detention of the said patient for such period.

Date Newark, N. J.,

March 4th, 1925

DANIEL J. BRENNAN, J

Exhibit D-3

(Class C.) 10755

ESSEX COUNTY JUVENILE COURT

In the matter of the application for commitment to and confinement in the Essex County Hospital for the insane, of
HARRISON W. NOEL
an alleged insane person.

ORDER OF TEMPORARY COMMITMENT AFTER ADMISSION.
(Instituting inquiry.)

I, Daniel J. Brennan, Judge of the Juvenile Court of the County of Essex, having examined the application in writing of Dix W. Noel for the commitment to and confinement in the Essex County Hospital for the insane, of Harrison W. Noel (hereinafter called the patient), and the annexed certificates of George W. Davies and Allan S. Kirkwood, two reputable physicians duly qualified by law to sign said certificates, who certify under oath to the insanity of said patient and that in their judgment the condition of the patient is such that he should be placed under immediate restraint in an institution for the insane, and it appearing from said application that the applicant was unable to secure an order of temporary commitment of said patient from a judge of any court of record in the county in which the patient resides, or was prior to admission into such institution, and that said patient is detained temporarily in said institution without such order; and having duly considered the same and being satisfied with the form and sufficiency thereof, do hereby approve the admission of said patient and ORDER and direct that an inquiry and proof as to the mental condition, legal settlement and indigence of said patient be had before the judicial officer authorized by law to conduct such inquiry in the County of Essex, at a time and place certain to be fixed by such judicial officer upon the request of the County Adjustor of such county, which shall be not more than twenty days from the date of the admission of such patient into said institution, unless adjourned, of which time and place notice shall be given, as provided by law—and I do further ORDER that the said Harrison W. Noel be temporarily committed to and confined in said institution for the insane until such final hearing and adjudication pursuant to the statute in such case made and provided; and this shall be sufficient warrant and authority for the detention of said patient for such period.

Dated, Newark, N. J., March 4, 1925.

Daniel J. Brennan, J.

Exhibit D-3

MEDICAL DIRECTOR'S CERTIFICATION OF COPIES OF APPLICATION AND PHYSICIANS' CERTIFICATES

I, Guy Payne, Medical Superintendent of the Essex County Hospital at Overbrook, do hereby certify that the foregoing are true copies of the application for the commitment to and confinement in said Hospital as a patient, of.....
and of the verified certificates of.....
and.....
two reputable physicians who examined and who certify under oath to the insanity of the said patient.

Said patient was admitted to the Essex County Hospital at Overbrook on the.....day of.....192..,
under and by virtue of said application and certificates and of an order of temporary commitment, of which the foregoing is a true copy, all of which were filed with the undersigned; and said patient still remains confined in said Hospital. (Strike out if admitted under Class C.)

I hereby further certify that, in my opinion, it would be prejudicial to the health of the patient, or unsafe to produce said patient at the inquiry or final hearing. (Strike this paragraph out if patient is to be produced.)

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the said Hospital this.....day of.....192...

.....
Medical Superintendent.

Exhibit D-3

Essex County Juvenile Court

FINAL ORDER OF COMITMENT

of

Harrison W. Noel

to

ESSEX COUNTY HOSPITAL FOR THE INSANE

AT OVERBROOK

True Copy

John H. Scott,

Essex County Clerk

Per J.

In the matter of the application for the commitment to and confinement in the Essex County Hospital for the insane of *Harrison W. Noel* an alleged insane person.	FINAL ORDER OF COMMITMENT.

I, DANIEL J. BRENNAN, Judge of the Juvenile Court of Essex, having examined a copy of the application in writing, certicates of George **W. Davies** and **Allan S. Kirkwood,** two duly qualified physicians, and the temporary order of commitment, for the admission to and confinement in the Essex County Hospital for the insane of **Harrison W. Noel** as an insane patient, said application, certificates and order having been certified by the MedicalSuperintendent of said hospital under his hand and the seal of said institution, and it appearing therefrom and from the testimony of **Anna W. Noel, mother,** and of **John M. Thompson, M. D.,** two creditable witnesses called and examined upon oath at the final hearing held this day before me, touching the indigence, legal settlement and

Exhibit D-3

sanity of said patient, that said patient is insane; and not deeming it necessary to call a jury to determine the matter, DO HEREBY DETERMINE that said **Harrison W. Noel** is insane and a proper person to be confined in one of the institutions for the insane of this State; that said patient or the person or persons legally liable for support, have sufficient estate to pay for full maintenance in such hospital, that said patient has a legal settlement in the County of Essex, State of New Jersey, that notice of the time and place of final hearing was given as required by law to said wife and to said patient, proof of service of which was made at said hearing; that said patient is now and should be confined in the Essex County Hospital for the Insane; and I do hereby ORDER that said **Harrison W. Noel** be finally committed to the Essex County Hospital for the Insane, there to remain at the charge and expense of **Dix W. Noel,** father of said patient, who is hereby ordered to pay $10 a week, pursuant to the statute in such case made and provided, until restored to reason or until further order of a court, of competent jurisdiction, or until removed or discharged acording to law; and this shall be sufficient warrant and authority for such confinement, detention and maintenance.

Dated, Newark, N. J., March 24, 1925.

DANIEL J. BRENNAN, J.

ADMISSION RECORD

Case No. 10755 Year No. 63.

Name, Harrison W. Noel; Date and hour of Admission February 25,1925, 9 P. M.; Residence, Montclair; County, Essex; Brought by, Father, Dix W. Noel.

Admitted by Dr. Thompson; Sent to Ward, 32; Medical Certificates Made by, Dr. Davies of Verona and Dr. Kirkwood of Montclair, Committed by Hon., Class C; Religion, Protestant; Name of Father, Dix W. Noel; Birthplace, Illinois; Maiden Name of Mother, Annie Webster; Birthplace, New York; Correspondent, Father, Dix W. Noel, 295 N. Mountain Avenue, Upper Montclair, N. J.

Exhibit D-3

ESSEX COUNTY HOSPITAL

STATISTICAL DATA

Case No. 10755 Year No. 63.

Name, Harrison W. Noel; Residence, Montclair; County, Essex; State, N. J.; Age, 19; Sex, Male; Civil Condition, Single; Class, Private; Nativity, U. S.; Occupation, lawyer; Color, White; How long in U. S., Life; Education, High School; Religion, Protestant; Heredity, Aunt Suicidal; No. of Attack, First; Age at First Attack, 17 yrs.; Duration before Admission, two years; No. and Date of Admision: Here, First—Feb. 15, 1925, Other Institutions, Sanitarium Clifton Spring, N. Y.; Tendencies—Suicidal: Homicidal, Specialties, silly laugh; Caused—Assigned, Not Disclosed.
Diagnosis Mental Final, Catatonic Dementia Praecox; Physical, Good.

ESSEX COUNTY HOSPITAL CEDAR GROVE, N. J.

NURSE'S NOTES ON ADMISSION

Consecutive Number 10755

Name, Harrison W. Noel; Ward, 32; Admitted, February 25th, at 9:20 P. M. Bathed at 9:30 P. M. Height, 5.6; Weight, 135; Eyes, Gray; Hair, Brown; Temp., 98.6; Pulse, 64; Resp., 18; Condition of Person, Clean.

General Nutrition, Fairly well nourished.

Vermin, etc., None.

Skin, Birthmarks, Scars, Bruises, Eruptions, Three vaccinations marks left arm, Rash on shoulders and back. Deformities—none. Behavior (Violent, Homicidal, Suicidal, Depressed, etc.), Dull.

Quality and Condition of Clothing, Good.

Remarks (as to Mental Condition, Delusions, etc.), Pt. is oriented, for time, place, and people, says his parents brought him here from Montclair on the advice of a doctor, to get a rest because he was irritable and restless, says there is nothing wrong with his mind. Hallucinations and delusions denied.

(Signed) JOHN BRESNAHAY, Att.

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First Admission

Essex County Hospital, Cedar Grove, N. J.

White Private Continued Notes. Summary

Name, **Noel, Harrison W.,** Feb. 25th, 1925. Number 10755.

PETITIONER: Father, Dix W. Noel, 295 N. Mountain Ave., Upper Montclair, N. J., who states:—

"Patient has not been mentally well for past two years. Ran away from home, would not work, lost all interest in home and his companions. Is unable to control his actions or behavior, is seclusive, laughs without cause, has been failing mentally. Insomnia."

Committed by Drs: George W. Davies of Verona and Allan Kirkwood of Montclair, N. J.

Age, 19, nativity, U. S., in Upper Montclair, N. J. 14 years. Male, white, lawyer, single. Birthplace of parents, U. S. Parents living, heredity—aunt suicide. This is the first attack which began two years ago and was gradual. First admission.

PHYSICALLY: Good.

MENTALLY: Attention impaired, emotional deterioration, seclusive, defestive judgment, silly laughter, disturbance of conduct, wanderlust, depressed, mannerisms. Two years ago struck father with an axe but did not remember doing so. (Father was asleep.) Patient said, "I worry over Mr. Gray's welfare. A mistake has been made in his being a Scout Commissioner. I wanted to stay at the Sanitarium with Mr. Gray. They threw me out, they razzed me. I don't feel like working when Mr. Gray is so sick. I love Mr. Gray. I walked to Virginia."

Physical examination by Dr. J. H. Stamp.

First presentation by Dr. J. H. Stamp.

Diagnosis suggested: Dementia praecox, Catatonic.

Summary presentation by Dr. J. H. Stamp.

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First Admission

Essex County Hospital, Cedar Grove, N. J.

White Private Continued Notes. (1)

Name, **Noel, Harrison W.,** Feb. 25th, 1925. Number 10755

Feb. 26th, 1925, W. 32—

Admitted yesterday. He is a well nourished young man, age 19, who says he was admitted to Harvard College two years, but left before taking his first mid-year exams. for no apparent reason. He has been going from post to pillar since and taking different positions and showing no particular interest in anyone. He is fairly well oriented, has no insight, shows a defective memory, is apathetic with no emotional expression save a silly out of place smile at times. Denies hallucinations, has never been interested in the opposite sex and appears to have lost real ambition. There is evidence of deterioration.

Feb. 28th, 1925, W. 32—This A. M. destroyed a basket, broke a chair and soiled the floor in his room. It was necessary to seclude him till he quited down. (TH)

Mar. 3rd , 1925, W. 32—Is so disturbed that a cold pack was advised and administered. (ST)

Mar. 11th, 1925, W. 32—Is in seclusion most of the time as he is destructive, denuding and untidy, masturbates, even in the presence of the attendants and nurse. He is disagreeable, negativistic, will not answer when spoken to. At times he refuses food. (TH)

Mar. 11th, 1925, W. 32—Mental examination.

Harrison Noel admitted 2-25-25. Nativity U. S. Education High School, Harvard. Religion, Protestant. Address 295 N. Mountain Ave., Upper Montclair, N. J.

STATUS OF ADMISSION: Was fairly well oriented, had no insight, showed a defective memory, was aphetic, with no emotional expression save a silly, out of place smile at times. Denied hallucinations, said he had never been interested in the opposite sex and appeared to have lost real ambition. There was evidence of deterioration.

FAMILY HISTORY: Father born in Illinois. Mother born in New York, living.

Exhibit D-3

PERSONAL HISTORY: Born in New York City 4-16-06. Went thru High School in Montclair. During Junior year flunked every subect, had a tutor during summer and made up every subject. Passed entrance exam. for Harvard after graduating from High School. Met a Howard Finney who induced him to go to Andover claiming he was not sufficiently prepared to go to Harvard. At Harvard carried heavy courses, complained of his heavy courses at Xmas visit home. Before the mid-year exams. the Dean of Harvard wired his father that he could not keep up with his classes. Left college and obtained a position as messenger in Wall St. Went to Germany as an A. B. on the George Washington thru influence of father who is an admiralty lawyer. Lived at Seaman's Institute in New York.

First Admission

Essex County Hospital, Cedar Grove, N. J.

White Private Contnued Notes. Number 10755

Name, **Noel, Harrison W., Feb. 25th, 1925.** Number 10755

Later went to a ranch in N. J. called a Scout Camp. A Mr. Gray was in charge. He fell in love with this man Gray, according to the father's statement who also believes the two had illicite sex relatons.

"I thought a mistake had been made about a Mr. Gray being being a Scout Commissioner. I worry over his welfare. He is a man 60 years of age all alone in the world. I wanted to stay at the Sanitarium with Mr. Gray. They threw me out. They razzed me. I don't feel like work when Mr. Gray is so sick. I love Mr. Gray. I walked to Virginia."

Sat in chair twisting his fingers and would suddenly burst out in silly laughter. Called his physician up at 2 A. M. asking him to stop at his house in the morning. Got up, dressed and was going to make call on his physician at 3 A. M. Was taken to the police station for the night.

Patient wanted to study law, traveled around the country to Williamstown, Burlington etc. He accepts various positions but cannot hold them.

PRESENT ILLNESS: Age at first attack was 17 years. He was first sent to Craig Sanitarium Beacon, N. Y. He presented

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many oddities of manner and behavior thruout his childhood, that he was quite unable to adapt himself to his playmates and that his efforts to obtain an education were not well sustained. He went from one college to another in a restless, purposeless way, getting into many difficulties with his fellow students and professors. His last college admission was at Williamstown where he insisted upon living on a farm and cooking, more or less, his own meals and attending lectures more or less irregularly. He was insistent upon leading a shut-in life. The previous winter he demanded of his parents that he be allowed to live in a cabin on a Mountain in the Ramapo Valley, where he stayed alone all winter cooking his own meals and shutting himself completely out from social contact. His father visited him at stated intervals and apparently could see no harm in this proceedure. His father and mother present a more or less psychotic type. Neither of them are inclined to believe the existence of a well defined psychosis in their son.

The acute attack which caused them to seek care was due to an asault on his father while on a camping trip on July 17th, 1923. Mr. Noel, his two sons and daughter had pitched the tent for the night after a rather strenuous day in the woods, the father occupying the same tent with Harrison. Late in the night Mr. Noel was awakened by someone pounding him on the head. He discovered that it was Harrison who was standing over him with a boy scout hatchet and that he had inflicted a deep scalp wound and had opened some small arteries in his right hand which Mr. Noel had instinctly put up to shield his head. Immediately afterwards Harrison was greatly concerned about it, rendered first aid to his father, who was later taken to a doctor in the middle of the night to have his wounds properly dressed. The next A. M. the young man was taken to Dr. Frederick Tilney in New York, who sent him out here in the P. M.

First Admission

Essex County Hospital, Cedar Grove, N. J.

White Private Continued Notes. (3)

Name, **Noel, Harrison,** Feb. 25th, 1925. Number 10755

During his residence here he was exceedingly difficult to manage. Absolutely refused to eat for long periods, was resistive to

Exhibit D-3

care, refused to put on his clothes at times and would stand or walk for hours about his room clad only in his night shirt and often absolutely nude. He would make unprovoked assaults. At one time pulled an arm from a chair in his room during a momentary absence of attendant, and when he returned the subject struck him a vicious blow on the head. The attendant was incapacitated for three days. We were obliged from then on to keep him under constant observation. He had both a day and night attendant, one sleeping in his room and the other sitting outside his door, in order to deal with his homicidal tendencies. He had a striking lack of insight, was constantly in a deluded state at times giving expression to them and at times hallucinating. Many of his delusions were of a somatic type. At times he would handle his feces and pick them apart to determine if he was given the right kind of food. His moods changed frequently. At times he was quite retarded with a suggestion of depression. On one occasion he ran away from his attendants and invoked the aid of a truckmen he met on the road and succeeded in getting across the Hudson River to Newburg where he was held by a police officer until one of my assistance brought him back to the Sanitarium. His father and mother were constantly interfering with his care and making unwholesome suggestions which could not well be carried out owing to the nature of his illness. They felt that an educational programme should be adopted. To this end they sent an educator here on several occasions to work with him. This man was not thoroughly in accord with us in our medical efforts and finally I believe on the recomendation of one of these men his father took Harrison to their home on Sept. 30th, 1923. I had the father sign a waiver relieving me from any further responsibility in the case.

MENTAL STATUS: The patent is apathetic, silly, irresponsible, very retarded, has delusions, has no ambition, masturbates, excessively, plays with feces, tears up bedding and clothing. He called out one day to female attendant that he wanted 300 intercourses with her daily.

STEAM OF TALK: Unable to obtain.

EMOTIONAL STATUS: Unable to obtain.

HALLUCINATIONS AND DELUSIONS: Outside of a few answers given in a silly manner two weks ago patient refuses to talk.

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INSIGHT: None.

No insight into all other tests.

Physically too restrictive to do a satisfactory physical.

First Admission

Essex County Hospital, Cedar Grove, N. J.

White Private Continued Notes. (4)

Name, **Noel, Harrison,** Feb. 25th, 1925. Number 10755

SUMMARY: We have here a well nourished young man, 19 yrs. Born of American parents. Skin is pasty. Patient is evidently deteriorating. Flunk junior year in high school, made up all subjects. Had a tutor. Graduated from high. Went to Harvard. Said he carried heavy courses. Complained at Xmas visit that he could not carry his work. Left before at mid-year exams. Wandered hither and thither, going to Germany, staying at Seaman's Institute in New York. Was in Craig Sanitarium at Beacon, N. Y., as a result of having attacked his father with a hatchet during sleep. Many abnormalities developed as noted. Has developed seclusiveness and abnormal instincts and feelings. He has lost interest in surroundings. He was impulsive and negativistic. He had alternate periods of stupor and excitement. Poorly oriented and no insight. I am inclined to place this patient in Catatonic Group due to stupor and alternate excitement. (ST.)

Mar. 16th, 1925, W. 32—Is in seclusion. He is denuding, untidy, destructive. Does not speak, grimaces and masturbates. He is treacherous and wants to get away. (TH)

Apr. 6th, 1925, W. 32—Is in seclusion as he is denuding, destructive, and resistive. He shows marked negativism and refuses to eat at times. (TH)

Apr. 3rd, 1925, W. 32—Triple Typhoid vaccine inoculations completed today. (TH.)

June 26th, 1925, W. 32—Is improving both phys. and ment. He is not so negativistic and is up and about the ward doing some work. He shows a desire to see his family now, which he did not care to do formerly. (TH)

June 29th, 1925, W. 32—Was allowed out with his brother for a stroll about the grounds yesterday and insisted on going to his

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home in Upper Montclair. He took dinner, appeared to the family amazingly improved, but at the first opportunity he stole away on his sister's bicycle and has not been seen or heard from since. The family seemed reconciled that he will seek work and soon communicate with them. (TH)

June 30th, 1925, W. 32—Was picked up in N. Y. C. by the police the day he left here and was put in the psychopathic in Bellevue. His father learned of the fact and phoned the ward physician that he would take his boy in custody and return him to E. C. hospital today. (TH)

July 1st, 1925, W. 32—Did not return to the hospital yesterday, as expected. His father phoned the ward physician that he thought his son was in good condition mentally and phys. and desired a trial at work in New York and father promised to take the sole responsibility of the patient, who had shown some improvement before his escape, but was in no way fit to be allowed to asesume any activity outside. (TH)

July, 3rd, 1925, W. 32—Patient reported at hospital today and interviewed Dr. Stamp. Mother who was with him states this was voluntary on part of the patient who promised to report again in a few days. (ST)

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Form CH 8

ESSEX COUNTY HOSPITAL

CEDAR GROVE, N. J.

Name, Harrison W. Noel Dr. Stamp

Feb. 25, 1925. Hour, 9.30 P. M., patient admitted to Ward 32. Bath given and put to bed. Tend.: Dull.
Feb. 26, 1925., 6.30 A. M. Quiet.
Feb. 26, 1925. 7.30 A. M. Light Diet.
Feb. 26, 1925. 8 A. M., Temp. 98.6, pulse 64, Res. 18
Feb. 26, 1925. 10 A. M. Nourishment, Milk zvi. General A. M. care. Patient says hecame here because he was restless and irritable. Visited by Dr. Thompson and Stamp.
Feb. 26. 10.30 A. M. Visited by Dr. Thompson & Dr. Stamp.
Feb. 26, 1925. 12 Noon. Reg. Diet.
Feb. 26, 1925. 3 P. M. Out of bed. Dressed and out on porch. Patient had spinal and Wasserman test taken by Dr. Englander.
Feb. 26, 1925. 4 P. M. Temp. 99, pulse 70, Res. 20.
Feb. 26, 1925. 5 P. M. Milk zvi.
Feb. 26, 1925. 6 P. M. Quiet, but restless.
Feb, 26, 1925. 8 P. M. Temp. 99, pulse 72, Res. 20. Patient Restless.
Feb. 27, 1925. 12 A. M. Patient asleep.
Feb. 27, 1925. 6 A. M. Temp. 98.8, Pulse 70, Patient could get Urine. Spec.
Feb. 27, 1925. 6 30 A. M. Quite but restles.
Feb. 27, 1925. 7.30 A. M. Milk zvi
Feb. 27, 1925. 8 A. M. Temp 98.8 Pulse 68 Res. 18 Usual A. M. care.
Feb. 27, 1925. 9 A. M., Urine 1.
Feb. 27, 1925. 10 A. M. Visited by Dr. Stamp & Thompson.
Feb. 27, 1925. 11 A. M.
Feb. 27, 1925. 12 Noon. Light Diet.
Feb. 27, 1925. 2 P. M. Urine (Doctor's mark).
Feb. 27, 1925. 3 P. M. B. M. (Doctor's mark). Filthy in his habits. Patient says he likes it here. and does not want to go home.
Feb. 27, 1925. 4 P. M. Temp. 99, pulse 70, Res. 18.
Feb. 27, 1925. 5 P. M. Light Diet.
Feb. 27, 1925. 6 P. M. Urine (Doctor's mark). P. M. care.
Feb. 27, 1925. 8.30 P. M. Patient very assaultive and resistive while being put to bed in room.
Feb. 27, 1925. 9.30 P. M. Medicine, Paraldehyde, Urine zii. Medicine ordered by Dr. Stamp.
Feb. 28, 1925. 12 A. M. Patient asleep.
Feb. 28, 1925. 6 A. M. Patient up and dressed. Quiet.
Feb. 28, 1925. 6.30 A. M. Patient is very restless.
Feb. 28, 1925. 7.30 A. M. Light Diet.

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Feb. 28, 1925. 8 A. M. Temp. 98.8, pulse 76, Res. 18. Very talkative and noisy.
Feb. 28, 1925. 9 A. M. Urine (Doctor's mark).
Feb. 10, 1925. Milk zvi Urine (Doctor's mark) Visited by Dr. Stamp and Thompson.
Feb. 28, 1925. 12 Noon. Light Diet.
Feb. 28, 1925. 2 P. M. Patient is noisy and destructive.
Feb. 28, 1925. 3 P. M. Noisy and excitable.
Feb. 28, 1925. 4 P. M. Temp. not taken. Patient is too resistive.
Feb. 28, 1925. 5 P. M. Reg. Diet.
Feb. 28, 1925. 6 P. M. Urine (Doctor's mark). B. M. (Doctor's Mark, Noisy.
Feb. 28, 1925. 8 P. M. Temp. not taken, patient is too resistive. Patient is very restless.
March 1, 1925. 12 A. M. Patient awake. Quiet.
March 1, 1925. 4 A. M. Patient very noisy.
March 1, 1925. 5 A. M. Patient very noisy.
March 1, 1925. 6 P. M. Patient very noisy.
March 1, 1925. 6.30 A. M. Patient quiet, restless and noisy all night.
March 1, 1925. 6.30 A. M. Quiet.
March 1, 1925. 7.30 A. M. Reg. Diet.
March 1, 1925. 8 A. M. Temp. 99, pulse 70, Res. 18. Noisy and excited.
March 1, 1925. 10 A. M. Visited by Dr. Stamp.
March 1, 1925. 12 Noon. Regular Diet.
March 1, 1925. 2 P. M. Urine (Doctor's Mark) Patient is resistive and violent. Was put in a room.
March 1, 1925. 4 A. M. Temp. 99, pulse 74, Res. 18.
March 1, 1925. 5 A. M. Reg. Diet. B.M. (Doctor's mark).
March 1, 1925. 6 P. M. Urine (Doctor's mark) Quiet at 6 P.M
March 1, 1925. 8 P. M. Very talkative and noisy.
March 1, 1925. 9 P. M. Very talkative and noisy.
March 1, 1925. 10 P. M. Patient asleep.
March 2, 1925. 12 A. M. Patient asleep.
March 2, 1925. 6 A. M. Patient quiet. Could not get urine spe.

M. J. Baumann.c.

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ESSEX COUNTY HOSPITAL, CEDAR GROVE, N. J.

NURSES' CONTINUED NOTES

Name—Harrison W. Noel. Number 10755

1925.

First Day—

Patient admitted to Ward 32, February 25th, 1925. Bathed and put to bed.

Tend;—Dull.

Patient is Oriented. Says his parents brought him here on the advice of Doctor, to get rest, because he was irritable and restless. Says there is nothing wrong with his mind. Denies Hallucinations, and Delusions. Pt; visited by Dr. Thompson and Dr. Stamp.

Second Day—

Pt; is quiet during the day. Says he did not sleep during the night, because his mind was disturbed. Says that this is Overbrook Hospital, and likes it here. Says he does not want to go home. Says he intends to stay here. Pt; had Wasserman and Spinal test taken by Dr. Englander. Visited by Dr. Stamp and Dr. Thompson.

Third Day—

Pt; says that there is nothing wrong with his mind. Says he came here Wednesday night, and will be here 2 days this evening. Says he has one sister and one brother, and that he had many positions before he came here, but he never stayed long anywhere. Says the reason he kept changing positions was to have fun, doing different things, and he wanted to meet different people.

Filthy in his habits, Appetite fair. Visited by Dr. Stamp and Dr. Thompson.

Fourth Day—

Patient is very restless and talkative, asked nurse on the ward yesterday. if she will marry him. Says he couldn't support a wife. but he came here to get married. Pt; is very excitable and noisy this P. M., filthy in his habits. Patient masturbates. Is destructive, destroyed all the moveable, objects in his room.

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Visited by Dr. Stamp and Dr. Thompson.
Fifth Day—

Patient continues noisy, excitable, abusive, restive and violent, kept in seclusion. Visited by Dr. Stamp.

Sixth Day—

Condition of patient remains unchanged. Visited by Dr. Stamp, Thompson and Englander.

Seventh Day—

Patient continues noisy, excited resistive and very violent, became very ugly this morning and was put in a cold pack by order of Dr. Thompson. Is quiet at present. Visited by Dr. Thompson and Dr. Stamp.

Eighth Day—

Patient reported as rested well during the night. Continues to be very stubborn, refuses to speak, and will not take his mail when offered to him. Visited by Dr. Thompson and Dr. Stamp.

Ninth Day—

Patient is quiet today. Is confined to bed. Continues delusional negativistic, sullen and resistive. Is very fussy about the food. Nothing is good enough for him. Visited by Dr. Stamp.

Tenth Day—

Patient is still possessed of all the tendencies and symptoms that have been charted on the foregoing notes. No improvement since admission.

M. J. BAUMANN.

CONSENT FOR DENTAL WORK

I hereby consent to the extraction of any teeth of my son, Harrison Noel, and any other dental work that the dentist and physicians of the Essex County Hospital may deem necessary.
Date, June 9th, 1925.

Ward, 32. ANNIE W. NOEL, mother.

Exhibit D-3

Craig House

Beacon-on-Hudson

New York

Guy Payne, M. D. Superintendent

Essex County Hospital

Cedar Grove, New Jersey

March 3, 1925

Re : Harrison W. Noel

Dear Doctor Payne:

I am in receipt of your inquiry of February 25th, concerning Harrison W. Noel, who was admitted here on July 18th and discharged on September 29, 1923. His history on admission showed that he had presented many oddities of manner and behavior throughout his childhood that he was quite unable to adapt himself to his playmates and that his efforts to obtain an education were not well sustained. He went from one college to another in a restless, purposeless way, getting into many difficulties with his fellow students and professors. His last college admission was at Williamstown, where he insisted upon living on a farm and cooking, more or less, his own meals and attend lectures more or less irregularly. He was insistent upon leading a "shut in" life. The previous winter he demanded of his parents that he be allowed to live in a cabin on a mounatin in the Ramapo Valley, where he stayed alone all winter, cooking his own meals and shutting himself completely out from social contact. His father visited him at stated intervals and apparently could see no harm in this procedure. His father and mother present a more or less psychopathic type. Neither of them are inclined to believe the existence of a well defined psychosis in their son.

The acuate attack, which caused them to seek care, was due to an assault on his father while on a camping trip on July 17th, 1923. Mr. Noel, his two sons and daughter, had leges. Remained there and seemed quite happy until he suddenly

Exhibit D-3

pitched their tents for the night after a rather strenuous day in the woods, the father occupying the same tent with Harrison. Late in the night, Mr. Noel was awakened by some one pounding him on the head. He discovered that it was Harrison, who was standing over him with a Boy Scout hatchet and that he had inflicted a deep scalp wound, and had opened some small arteries in his right hand, which Mr. Noel had instinctively put up to shield his head. Immediately afterward Harrison was greatly concerned about it, rendered first aid to his father, who was later taken to a doctor in the middle of the night to have his wounds properly dressed. The next morning the young man was taken to Dr. Frederick Tilney in New York, who sent him out here in the afternoon.

During his residence here, he was exceedingly difficult to manage. Absolutely refused to eat for long periods, was resistive to care, refused to put on his clothes at times, and would stand and walk for hours about his room clad only in his night shirt nad often times absolutely nude. He would make unprovoked assaults, once removed the arm from a chair in his room during a momentary absence of his attendant and when he returned, the subject struck him a vicious blow on the head. The attendant was incapacitated for three days. We were obliged from then on to keep him under constant observation. He had both day and night attendant, one sleeping in the room and the other sitting outside his door in order to deal with his homicidal tendencies. He had a striking lack of insight, was constantly in a deluded state, at times giving expression to them and at times hallucinating. Many of his delusions were of a somatic type. At times he would handle his face and pick them apart to determine if he was being given the right kind of food. His moods changed frequently, at times he was quite retarded, with a suggestion of depression. On one occasion, he ran away from his attendant, invoked the aid of a truckman whom he met on the road and succeeded in getting across the Hudson River to Newburgh where he was held by a police officer until one of my assistants brought him back to the sanitarium. His father and mother were constantly interfering with his care and making unwholesome suggestions, which could not well be carried out owing to the nature of his illness. They felt that an educational program should be adopted. To this end they sent an educator here on several occasions to work with

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him. This man was not throughly in accord with us in our medical efforts, and, finally, I believe on the recommendation of one of these men, his father took Harrison to their home on September 30, 1923. I had the father sign a waiver relieving me from any further responsibilty in the case.

At first, I believe we had to deal with a manic-depressive psychosis, due to the retardation depression, and impulsiveness, but later in the course of the illness, I changed my opinion to that of Dementia Praecox.

I shall be pleased if the foregoing information is of any help to you in caring for this very difficult case. If there is anything further, I can do, please command me.

Very respectfully,

C. J. Slocum, M. D.

Re Harrison Noel

295 N. Mountain Ave.
Upper Montclair, N. J.
March 2, 1925.

My dear Mr. Payne:

Your letter asking Mr. Noel to come to the hospital and give further details was received, but I caught only that line before Mr. Noel put it into his pocket. I think Mr. Noel will be very reluctant to give you full information and I have told Dr. Kirkwood so. It is upon his advice that I am writing to you and he authorizes me to say that both he and Dr. Davies advise my accompaning Mr. Noel. I feel that the fuller information you have, the better able you will be to treat Harrison, since you will not be groping in the dark. I do not wish to see you by myself but in Mr. Noel's company. This again is Dr. Kirkwood's counsel to me. However, Mr. Noel will not allow me to accompany him excepting upon your direct request. If I ask to go with him he will say that you did not send for me. As a matter of fact I used pressure upon Mr. Noel to have Harrison committed—my reasons will be clear to you upon an interview—and although apparently satisfied, at present, he is likely at any time to want to remove Harrison. Mr. Noel has spent the week-end in town, recuperating from the shock, and I think another letter from you will be necessary, to secure his

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coming to you, though I may, of course, be mistaken. I have had Harrison in my personal care for the last year and a half, so you can see I must know something about him. But as I said I would much prefer to come with Mr. Noel than report separately.

Would you be so good as to ask Mr. Noel's attendance again, saying you would like me to come with him? If you think best you may send me a similar letter asking us to come together.

I think that it would help us both if you would set something like an approximate date, to which we could hold.

Of course it is very painful to me and I would be glad to have it done soon. I think Mr. Noel could make arrangements for a morning appointment, if he knew a day or so in advance. Our telephone number is Montclair 6131.

Most sincerely,

ANNIE W. NOEL.

I enclose two letters for Harrison, to be delivered, if thought best.

New Jersey State Library

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ANAMNESIS by ST. CLAIR

FATHER—Dix W. Noel, 295 N. Mountain Ave., Ppper Mountclair. Was an only son. A sucessful lawyer of New York City, a habitual drinker since the third year after marriage. Mr. Noel has an almost unbearable make-up, is extremely abusive, irritable, faultfinding, impulsive, uncontrollable, temper.

MOTHER—Annie Webster, was educated in Germany. In girlhood attractive much admired. A rather peculiar type of woman with a sharp voice, admits she is ecentric and believe if she had not been so herself, she would have heeded the oddities of patient long ago. Has tried to bring children up proper. Mrs. Noel and Mr. Noel have disagreed and there has been friction in the home for a number of years. At present are temporarily separated. Mrs. Noel is faultfinding, hard to please.

PATERNAL—Grandfather was a man somewhat the same as father. Divorced from wife.

PATERNAL Grandmother, divorced her husband for no reason than incompatibility.

PATERNAL Grandfather, Webster, was a Professor at Union College at Schenectady, N. Y. for 20 years. During his last days began to drink and turned out to be a habitual drinker. Died at the age of 63, Dropsy suposed caused.

MATERNAL—Grandmother, a good natured, popular woman, died in early thirties from Blood Poison after childbirth. The Webster were popular, educated people in their home town.

HEREDITY—Maternal aunt committed suicide at the age of 20. She resembled patient in her make-up, and was never dependable. Also maternal brother, alcoholic, and did odd things.

Of the 5 children on the mother's side, 2 of them were not normal, 1 girl and 1 boy, although informant spoke of her pecularities frequently, considered herself normal.

SIBS—Harrison Noel is oldest of 4. Dix Noel, 2nd oldest, a rather shy boy, although he thinks nothing of walking in mther's room nude, but able to adjust himself more readily than his

Exhibit D-3

brother. Bright and inteligent, attending Harvard College.

Ruth Noel, died suddenly from a seizure similar to an epileptic convulsion, which she had not been subject to. The autopsy showed a disturbance of the Thymus gland.

Many Noel, 4th, now 13 years of age and apparently normal, although she had frequent convulsions up to the 7th or 8th year, on average of 2 a month. Mother seems t think she has out-grown them.

DEVELOPMENTAL HISTORY—Born, New York City, 16th of April, 1906. Mr. and Mrs. Noel lived in the tenement district in New York, were poor but happy.

Patient was a welcomed visitor, parents were disappointed because the stork had not visited them before.

GESTATION BIRTH—High forceps delivery after many hours. There was a dent on left side of head about the eyebrow. Disappeared as time went on. Bottle fed. Dentition negative, walked at two years and talked about the same time. Was a normal healthy child, grew in acordance with age. Ensuresis denied after 2 years.

Both Harrison and Dix Jr. were under the care of Dr. Crulley. Guidance as to diet until 7 years of age.

HEALTH—Up to school age good, did have measles, mumps in a mild form. Scarlet fever a few years ago.

SCHOOL—At 5 years of age, entered second grade kindergarten, skipping 4th grade, was bright, made excellent progress in school with very little effort. Conducted himself well at home and in school. Graduated High School at 17 years of age. During Junior High, 16 yrs. began to show a slump in his work. Flunked in French and made poor marks in English. At same time passed College Boys Exams. Made 70 in more than 3 subjects and on these marks was put on probation and made up in French and English. Was thought he disliked his Franch teacher, probably reason for not trying to make god in French, English teacher reported to mother, he was dull, listless, sat in class like a knot on a log.

There was no change noticed in his conduct at school or at home. Was accepted at Harvard after trying several other col-

Exhibit D-3

left, and the Dean gave a report of incompleted work. Excellent Conduct. Was there not quite one year.

OCCUPATION—After leaving Harvard and on the papers of the Dean had given him and his scout papers, was able to get a position as runner at the Stock Exchange in New York City, but only remained there 3 or 4 weeks. Gave no reason for leaving, other than was too hard. His next undertaking was deck hand on the George Washington, going across and returning five weeks later. While on this tour had an impulsive outbreak with the cook for serving him a bad grapefruit, which ended by Harrison leaping over the table and attacking the cook and "doing him up," as he said. Has made several attempts to work, but lasted a short time only. One of the last positins was substituted postman in Upper Montclair four months last summer. He did well, and appeared to be normal. This was after he was in Craig House Sanitarium. Has had odd obs since.

PERSONALITY MAKE UP—Up to 16 years of age other than a few queer ideas, that mother spoke of as eccentricities and shut-in, was a normal child. Mother of course does not admit that her son is insane as was diagnosed by Dr. Slocum at Craig House. Thinks the statements, etc., were absurd. The fact that Harrison was shy, seclusive, shut in and presented many odities of manner and behavior throughout his preceding life, his mother thought were only eccentricities. As he grew older, he found it harded to meet others and adopt himself. Although he made efforts to obtain an education, he usually fell down. During his stay at Harvard College, he developed an abnormal infatuation with one of the students, a wealthy boy, extremely femine in his make-up, and wanted to be near this boy admiring him most of time. He was restless and did not seem to know why he did impulsive things, such as change his mind so frequently. Was extremely moody and insisted on living alone. One one occasion lived in a farm house, cooked and prepared his meals, studied and attended his lectures. Winter before he lived all alone in a cabin on a mountain in the Ramapo Valley. Shutting himself away from all contact other than occasional visits from father and brother. Father could see no harm in his doing so, and mother supposed this was another one of his eccentricities.

Exhibit D-3

Harrison was always quiet and reserved, with fine feelings always was obedient and submissive.

During this time patient became extremely antagonistic to father, which mother thought was justifiable as father was abusive and threatening to him and treated mother unreasonable. Harrison being extremely fond of mother and always showed greatest respects for her. Even when patient was at worse, mother was able to control him.

During month of July, while an a Camping Trip, after all had retired, Mr. Noel screamed out he had been struck, on investigation the axe was found yling along side of the cot Harrison slept on. He said, must have been me that did it, but appeared extremely concerned and really used first aid and fixed up wound, was only half hour in getting father to a Doctor. (Mrs. Noel believes patient was walking in sleep.) Was after this experience Dr. Tillerey advised sending Harrison to a Sanitarium. Mrs. Noel insisted on bringing boy back home. Was sent to Craig House instead few days later. Went on a hunger strike and swore he would not eat until he be allowed to go home, but did change his mind.

While at Craig House, he attacked the attendant who mother described as being a very common man. She believed patient showed a normal reaction by doing so, as the attendant forced a sleeping powder down his throat. He asked for a drink and when the attendant returned, struck him unconscious with the arm from off one of the plush chairs.

Mother laughed and spoke of the absurdity of the Doctor allowing her to take patient around grounds to walk, if he had done the violent things he was accused of.

Since leaving Craig House, patient has gone to several distant parts of the state. He suddenly makes up his mind he wants to go and asks for the money which was given him, and goes, though he did not know where or what for. On one occasion went to Jacksonville, Fla., and caught a freighter to Hamburg. Germany, and worked his way back.

He did hold the postoffice position 4 months and was fine, showed very little abnormal action. His next position was taxi cab driver. Worked by the day there, left and made application to Columbia University.

Exhibit D-3

Police called Mrs. Noel from Clifton Springs, N. Y., recently asking her if her son was sane, etc. Told her he would be admitted to an institution there.

Patient visited daily Mr. Gray a former Scout Commissioner, whom patient was fond of. Would simply sit and look at him with a blank expression half day at a time. Said to Mr. Gray one day, "Mr. Gray, you are an old man and have lived your life, why don't you die and leave me your money." Mr. Gray felt rather uneasy about this remark, and then to have the boy come in every day as he did, was suspicious of the out-come, and turned him over to the police.

There has been a question as to what should be done with patient, as parents did not think him insane. He insisted in living alone at times.

Mrs. Noel is a cunning, shrewd, unreasonable woman in her judgment. A woman that will pick everything to pieces to make trouble. She criticised severely the care and treatment given patient at Craig House.

Mrs. Noel stated that Mr. Noel was apt to come up to hospital suddenly and without warning take patient out, as he did that when he brought Harrison from Craig House.

B. ST CLAIR.

The above patient was taken home for dinner by his brother on June 28. Soon after they arrived home the patient secured a bicycle and rode away and his friends were unable to overtake him. His father reports today, June 29, that he was picked up by the New York Police and taken to Bellevue Hospital. His father will personally assume the responsibility of his return to this hospital.

June 29, 1925.

Exhibit D-3

ESSEX COUNTY HOSPITAL, CEDAR GROVE, N. J.
NURSES' CONTINUED NOTES

Name—Harrison Noel. W. Number 10755

June 28th, brother of Harrison Noel took patient for walk and to his home for dinner, while there patient made escape on sister's bicycle. Patient had permission to go out order of Dr. Thompson. B. Pickstock.

LABORATORY CHART

Name, Noel, Harrison W.; Number , 10755; Date, Feb. 25th, 1925.

Blood—Feb. 27, 1925, C. F. T. for Syphilis neg. Kahn test neg. (Eng).

Spinal Fluid—Feb. 27, 1925, Wassermann neg. CCper cumm 2 plus. AASA neg. Gloubulin neg. Goldsol 0000000000, Gamhoge prec. 000000, (Eng).

Urine—May 28, 1925, Plate 2509.

Other excretions—May 28, 1925. Plate 2509. (TH) Negative for bone pathology or fracture. (DM).

Harrison Noel, Thursday, March 12, 1925. Dr. Stamp.

Ad. Feb. 25, 1925. For diagnosis—Case reported, read and presented as CATATONIC DEMENTIA PRAECOX. Drs. Payne, Englander, Thompson, Kildee and Stamp voted CATATONIC DEMENTIA PRAECOX.

Feb. 27, 1925.

Mr. Dix W. Noel,
295 N. Mountain Ave.,
Upper Montclair, N. J .

Re Harrison W. Noel

Dear Sir:

I understand you desire to make your son a private patient in our hospital. Will you therefore kindly sign and return the enclosed contract.

Very truly yours,
Superintendent
M. D.

GP GR

EXHIBIT D4.

Montclair 6131.

BELLEVUE HOSPITAL—Psychopathic Department

Case Record

Ward 38 Serial No. 81834
Record Room Serial No.....
Name Harrison Noel Admitted June 29 1925.
Residence, 295 North Mountain Ave., Montclair, N. J.
Discharged 6-29, 1925.
Correspond with Dix W. (father). Diagnosis—Undiagnosed.
64 Wall Street, Hanover 5225
Admitted by Dr. Miller at 12.35 P. M.
Brought from 9th Pct. by Nurse Complications
Requested by
Petition made by
Medical Certificate —Dr. Result Contract to Father
made by —Dr.
on the day 19
Committed by Hon Justice of Re-admission
the Sup eme Court of the State of New York on
the day of 19 Previous Diagnosis
Prisoner of
Charged with

Sex Male Age 20 Color White Religion P
Birthplace US. (in U. S. L.) (in New York 1 day) Citizen Yes
Education High School
Occupation: Efficiency Wages
Economic Condition: Poverty Comfortable Affluence
Civil Condition: S. M. W. D. Sp. If married, how long. Happy
age of eldest
Children: No. living Dead Miscarriages Still Births
age of youngest
Make-up:
Neurasthenoid
"Shut-in"
Frank and Vivacious
Intellectual Defect
Moral Obliquity
Histerical
Artistic, etc.
Tendencies: Quarrelsome Destructive Criminal Suicidal
Homicidal
Sexual Life:
Menstrual Life:
Previous Diseases:

Exhibit D-4

Veneral Diseases
Convulsions
Fainting Attacks, etc.
Trauma (Mental, Physical)
Admissions in other hospitals Essex Co. Hospital
Habits:
Alcohol o
Drugs o
Tobacco, etc. o
History of Previous Attacks:
No. of Attacks
Nature
Termination
Hospital Residence
How Discharged
Family History
Grand Parents: Paternal o
Maternal o
Parents:
Dix W Father
Cause of Death
Nativity, Montclair U S, N. J.
Residence, Montclair
Habits
Psychoses or Meuroses
Annie W. Mother
Cause of Death
Nativity, U. S.
Residence, Montclair, N. J.
Habits
Neuroses or Psychoses
Vesanic or Neurotic taints in the other branches of the family o.

Exhibit D-4

BELLEVUE HOSPITAL

Ward Notes

June 1925.
Ward 38.
Name Harrison Noel Sheet No.
Date 29
Hour 1.30
108
107
106
105
104
103
102
101
100
99
98
97
96
Pulse 88
Resp. 20
Date June 29
Stools Urine 95
Diet Reg.
Medication, 6 G. 3x10.

Nurse's Notes on Admission: Mental State—Confused, Dull, Stupid, Comatose, Nervous, Apprehensive, Depressd, Excited, Delirious, Flighty, etc.

Physical State: General Condition, Character of Breathing, Pulse,etc.

Brought from 9th Precint. Quiet upon admission to ward. Would not answer questions, seemed dazed. Later when spoken to by Dr. Gregory gave his name and address . He says he is very tired, did not sleep last night. Is reluctant to give information. Transferred 28. Request Dr. Henschel. Room 38. Quiet.

Development of the Psychosis.

Change indisposition. Habit Disorganizations. Hallucination. Illusions or Delusions, Memory Defect, Excitement, Suicidal or Homicidal Tendencies, etc.

Development of Intemperate Habits.

Alcohol, Morphine, Cocaine, Heroin, etc. Age: Moderate or Excessive at First; Periodic or Continuous, Following Illness or Nervous Breakdown. Episodic Outbreaks (Delirium, Hallucinosis, etc.)

PSYCHOPATHIC WARDS

I hereby agree to provide for and to assume all responsibility upon the discharge of Harrison Noel to my custody. SUCH DISCHARGE is against the advice of the physicians in charge.
Date, N. Y., June 29, 1925.

Dix W. Noel

Exhibit D-4

CONTINUED NOTES

Pt. Unknown man.
Brought from 9th Pct.

Lieutenant stated he found patient standing in front of Station House in a dazed condition. Unable to get any information from him.

Apparently suffering from loss of memory. Will not talk or answer questions, and does as you tell him in a mechanical way. Quiet at Pct., and in ambulance.

C. E. Patten.

6-29-25.

Pt. says: I was at the Essex Co. Hospital. I was home and did not want to go back. I left home, and called up my father but he was not at work. In February 1925 I went to Essex Co. Hospital because I woke up a doctor early in the morning. I could not sleep and got up 4.00 in the morning. I heard some one talk about a spinal puncture. They put something in my back. I went out for a walk with my brother Sunday. We got home, and I asked Dr. Thompson if I could stay for lunch. He said "Yes." After lunch I hopped on sister's bike and beat it. I abandoned the wheel at Battery Park, N. Y. I had a $1.00 when I left home. I stayed at the Rescue Society last night. I loafed around Bat. Park till 10 A. M., then took "L" to 42nd St., and then went to Police Station. I was afraid I would get hungry and better get police to send me to some hospital.

STATE OF NEW YORK
ss.
COUNTY OF NEW YORK

I hereby certify that the within is a correct copy of the records at Bellevue Hospital, Psychopathic Division, in re Harrison Noel.

E. J. Barnes, M.D.

Sworn to before me, this
29th day of Sept., 1925.

Leo |May.

Exhibit D-5

EXAMINATION OF HARRISON WEBSTER NOEL by Dr. Thompson and Dr. Davies, held at the Newark City Jail, Newark Street, Newark, New Jersey, on Monday, September 28, 1925, at 2:15 P. M., in the presence of Joseph L. Smith, Esq., and Nicholas W. Bindseil, Esq.

DR. DAVIES: What is my name?

HARRISON W. NOEL: Dr. Davies.

DR. THOMPSON: what is my name?

HARRISON W. NOEL: Dr. Thompson.

Examination of Harrison W. Noel by Dr. Thompson:

A (Hesitation) Ward 32, Overbrook.

Q What was the date?

A I remember you came and sat near my bed and said "You have arrived, have you?"

Q What day of the week and month was that?

A Thursday, February 25th.

Q When did you last see me, Harrison?

A The day I left Overbrook.

Q What date was that?

A I think that was the day—the last part of June.

Q Do you remember the exact day?

A On a Sunday.

Q I mean—you don't remember the date? Did you leave the Ward that day?

A Yes, sir.

Q With whom?

A Dix.

Q What did you do after you got outside of the Ward?

A (Hesitation) Walked home across the fields.

Q Why did you walk home that day, Harrison?

DR. THOMPSON: Facial grimaces.

A Why I walked home that day? (Hesitation) I don't re-

Exhibit D-5

member. We didn't start out for home; we just started out for the town, Montclair.

Q After you arrived home, what did you do? Be honest with me, Harrison; I am here to help you.

A Called up you on the phone; that was one of the things.

Q Why did you call me on the phone?

DR. THOMPSON: Silly smile.

Q (Hesitation) Why did you call me on the phone?

A So that you wouldn't send anyone after me.

Q Did you think you had done wrong to go home on that day?

A No.

Q Why didn't you go back to Overbrook that day?

A I don't like Overbrook.

Q What did you do after that? What was the next thing that happened in which you took part?

A My mother asked me to call up the taxi company and engage a taxi for four o'clock.

Q For what purpose?

A To go back to the hospital.

Q Why didn't you come back to the hospital?

A I didn't want to.

Q What happened after that, Harrison?

A Dix went over in the car to get some ice cream from the village and while he was gone I left on Mary's bicycle.

Q Where did you go on Mary's bicycle?

A To Battery Park, in New York.

Q Did you intend to go to New York when you started out on Mary's bicycle?

A No.

Q Where did you intend to go?

A I didn't have any idea.

Q When you reached New York what happened to you then?

A (Hesitation) I left the bicycle, I remember, in Battery Park and spent the night at the Rescue Society; I didn't have any money.

Q What happened after that?

A You remember me, don't you? (Indicating Dr. Davies) Why don't you say "Yes?"

Exhibit D-5

Q Harrison, what happened after that, after you had spent a time at the Rescue League Club, was it? What took place after that?

A I don't remember.

Q Do you remember getting into the hands of the police in New York?

A No.

Q Where did you go after that, after leaving the Rescue League?

A No place; just wandered around the city, I think; I don't remember.

Q Were you arrested while wandering around the city?

A Not that I can recall.

Q Do you remember going to Bellevue Hospital?

A No.

Q When did you meet your father first after you arrived in New York?

A Bellevue Hospital.

Q At Bellevue Hospital; what were you doing at Bellevue Hospital?

A I was on the third or fourth floor of the building there with a lot of other men, in pink pajamas.

Q Why were you taken into Bellevue Hospital?

A I don't know.

Q How long did you stay there?

A I don't know.

Q Who took you out?

A My father.

Q What day was that, Harrison, after the Sunday you left us?

A I havn't any idea.

Q Wh ere did your fathe rtake you?

A (Hesitation) Washington Place, New York City.

Q How long did you remain there?

A Six or seven weeks.

Q Do you recall ever having come up to Overbrook at any time after the day you left?

A I was over there seven or eight times; once I saw—once I went there with my mother.

Exhibit D-5

Q What did you go there for with your mother?

A To see you, I believe; I don't remember that part. I think it must have been to see you.

Q Did you want to have a talk with me at the time?

A I didn't want to, but my mother and sister done it. I wanted to, but I was afraid of you.

Q Why were you afraid of me, Harrison?

A No good reason.

Q Harrison, did you do right or wrong all during this time; from the moment you left on that Sunday, did you do right or wrong?

A I acted wisely.

EXAMNINATION BY DR. DAVIES

Q In what way did you act wisely, Harrison?

A I didn't like Overbrook, and so I didn't—I got as far away from it as I could.

Q The Doctor asked you, after leaving the hospital did you do anything wrong, and your reply was you acted wisely. Wisely in what way?

A I thought he meant about leaving Overbrook.

Q Wihtout regard to Overbrook, did you commit any unlawful act after leaving Overbrook?

A (Hesitation) No.

Q You did not? Do you remember seeing me before today?

A No.

Q Never saw me before?

A Maybe I did.

Q Did you see me before?

A Yes.

Q Where?

DR THOMPSON: Shows mannerisms and grimaces again

Q Where did you first see me before?

Exhibit D-5

Q Where did you first see me before?
A I don't remember.
Q See if you cannot think. Where did you see me before today. (Hesitation) Did you see me in Montclair?
A **Verona.**
Q Is that the first time you ever saw me—was in Verona? (Hesitation) Did you come to my office to see me?
A Yes.
Q Who was with you?
A **My mother.**
Q And you remember the conversation that day?
A **No.**
Q Did you ever see me at your home?
A **Yes.**
Q Did you ever see me at Ovrebrook?
A Yes.
Q When was that?
DR. THOMPSON: Silly smile.
A Two or three nights after I got there.
Q Two or three nights after you got there, you saw me?
A Yes.
Q What was I doing?
A You were pretending to read something at a desk there.
Q Was I on the Ward?
A Yes.
Q You remember seeing me on the Ward? Did I say anythink to you?
A Don't you remember my calling to you?
Q No, I don't quite remember that; did I say anything to you?
A I was locked up in a room.
Q Did I come up and speak to you?
A **No.**
Q Did I say anything to you at all?
A No, you didn't come withni one hundred feet of me.
Q Did you call to me?
A Yes.
Q Did you recognize me?
A Yes.
Q Call my name?

Exhibit D-5

A Yes, I asked you what was on your mind. Don't you remember that?

Q Oh, yes. Do you remember meeting me in the office at Overbrook?

A No.

Q Do you remember my being up at your home in Montclair?

A Yes.

Q Do you remember talking to me?

A Did you have trouble sleeping that night?

Q Yes, somewhat.

A It was on account of that interview with me?

DR. DAVIES: Yes.

Q Harrison, had you been asleep when I called you up?

A Yes.

Q Do you remember talking to me about a man named Mr. Gray?

A Yes.

Q Do you remember telling me how interested you was in his welfare?

A I don't remember what we said.

Q Do you remember telling me that you was at Clifton Springs to visit him there?

A No.

Q Do you ever remember telling me that you was in love with Mr. Gray?

A No.

Q You don't remember that. Who accompanied you to the hospital the night that you went over to the Overbrook, your mother?

A My mother and my father.

Q Who else?

A Two fat men, with cigars in their mouths.

Q Were they rather curious?

A No.

Q Were they firemen?

A I know one of them was a detective, because I have seen him since.

Q What was his name, do you remember?

A No, I didn't know.

Exhibit D-5

Q You remember after you was at Overbrook for a while, do you remember killing this negro?

A Yes.

Q Can you tell me why you killed him? (Hesitation) Had he injured you in any way?

A No.

Q Then why did you kill him (Hesitation) Was it wrong for you to kill him?

A I don't think so.

Q Why not? (Hesitation) Had you ever seen him before?

A Because I needed his automobile.

Q That is the reason you killed him. If he had been a white man, would you have killed him just the same?

A Yes.

Q And then you remember, after killing him, do you remember where you put the automobile?

A Yes.

Q What was the name of the street?

A It was in the quarry.

Q What was the name of the street where you drove this automobile up?

A When? I don't know what you mean.

Q You remenber Cedar street, in Cedar Grove?

A Yes.

Q You remenber where you placed the car up the end of Cedar Street? Do you remenber going up over the mountain to Montclair through the woods?

A (Hesitation) Yes.

Q Do you remember killing this little girl?

A Yes.

Q Do you feel justified in doing that?

A Yes.

Q Why?

A (Hesitation).

Q What justification have you for killing this little girl? (Hesitation) Go on, tell us; give us the reason why. Why were you justified in killing her?

A (Hesitation) I thought it would do me a lot of good.

Q In what way, financially or morally?

Exhibit D-5

Q In what way morally?
A (Hesitation) Make me like other people.
Q In what way would it make you like other people?
A Make me so I enjoy talknig nice like that.
Q Did you derive pleasure from it afterwards? (Hesitation.)
DR. THOMPSON: Grimaces and mannerisms.
Q Fro mthe act?
A Yes.
Q Did the committing of this act give you pleasure? (Hesitation) Did it?
A No, I was very hopeful.
Q Did it give you the sensation of joy?
A No.
Q Did it worry you after you committed this crime?
A No.
Q It didn't worry you at all; were you able to sleep?
A Yes.
Q And during the sleep did you hear nay strange voices at any time talknig to you?
A No.
Q Never heard any strange voices?
A I don't think so.
Q Did you ever at any time that you was at Overbrook hear strange voices talking to you?
A Yes—no.
Q Did you or did you not?
A No. Once, but other times, people I knew.
Q Q Was there at any time anybody that you know of persecuting you in any way, doing anything against you?
A Yes.
Q Who was it?
A Mr. Bresnehan, Mr. Coddington, Mr. Cranzy.
Q What were they doing against you?
A They forced me into a room.
Q That is while you were at Overbrook?
A Yes.
Q Harrrison, did you plan to commit this crime, three or four days before you committed it? (Hesitation) Did you? (Hesitation) What do you think about it; did you?
A (Hesitation) No.

Exhibit D-5

Q Do you think that there is anything wrong with you mentally?

A Yes.

Q Do you think you realize the seriousness of the crime that you committed?

A I don't know.

Q Do you realize that you could be punished for it? (Hesitation) Do you realize that?

A I don't believe they are are lying to me.

Q Who do you mean, they ar lying to you?

A Doctors.

Q In what way do you mean?

A They say I am liable to be punished by death for it.

Q Do you think you are?

A What?

Q Liable to be punished for that?

A I believe them.

Q You believe that is a possibility, do you? (Hesitation) Would you fear to go to the electric chair for committing this crime?

A (Hesitation) Do you mean would I be afraid of it?

Q Yes. (Hesitation) Would it worry you .

A It wouldn't worry me, but I would be sorry.

Q Do you think that justice would be vindicated if you were sent to the electric chair for this crime?

A I don't know just what you mean.

Q Do you think that the authorities would be doing the proper thing by sentencing you to the electric chair for committing this crime?

A No, I don't.

Q You don't think that you have committed any great wrong, then, do you?

A No.

EXAMINATION BY DR. THOMPSON:

Q Harrison, why do you say you didn't like Overbrook? (Hesitation) Why do you say you didn't like Overbrook?

A There was nothing t odo there excepting to go to different parts of the Ward when you are told to, and nobody enjoys

Exhibit D-5

that very much.

Q Do you remember refusing to put your clothes on when you were in the room?

A No.

Q Do you remember insisting on going about barefooted?

A I remember I didn't want to put my shoes on—yes, I think I remember that.

Q What is the color of the room you were in?

A Yellow and green.

Q Did you see any strange objects on the walls at any time?

A You know how the rooms have been painted, green and yellow over it, and locerated with some blunt instrument. You know those rooms(don't you?

Q Did you see any strange objects on the walls of the room at any time?

A No.

Q Have you any particular enemies?

A No.

Q Has anybody tried to harm you at any time in any way? Tell the truth, now.

A I don't know.

Q Did they try to harm you at Overbrook while you were there?

A I used to think so, but I don't think so now.

Q For what reason would they harm you at Overbrook?

A I thought they wer emaking—I thought they were trying to make a superior being out of me. Ithought I was a superior be ing at the time.

Q What kind of a superior being?

A I thought I was a second Jesus Christ.

Q Harrison, tell us frankly now, if at any time in your past life nad up to the present moment you have considered yourself mentally deranged; of unsound mind, I mean.

A I don't know just what you mean by an unsound mind. Yes, I think my mind has been unsound.

Q At what time in the past was your mind unsound?

A During periods when I was in Overbrook and periods before that.

Q How about your mind today?

Exhibit D-5

A I am pretty smart when I first try to think something.
Q Is your mind sound today?
A I don't know.
Q Was your mind sound the day that you left Overbrook?
A I don't know that either.
Q Was your mind sound the time you committed this crime?
A I don't know, but I don't think so; I am pretty sure it wasn't.
Q Did anybody prompt you or suggest to you committing this crime?
A No.
Q Did a voice speak to you and tell you to do this thing?
A No.
Q What motive did you have, Harrison, in doing such a thing?
A I thought it would help me.
Q In what way?
A I thought it would make me like to talk, and make me a per son like toher people appear to be.
Q Do yo uremember being silent a great part of the time while at Overbrook?
A Yes.
Q How do you account for that, Harrison?
A I didn't know what to say.
Q You didn't know what to say?
A I don't know just how to account for it.
Q Why didn't you hold conversation with me, Harrison, when I approached you at times?
A I thought you were just joshing me.
Q Do you remember your conduct and behavior at Overbrook?
A I remember I was very wlid in the first few weeks and got less wild as time went on.
Q What did you do during the period you were wild; tell us.
A (Hesitation) I couldn't stay in bed and I used to—I remember running around without very many clothes on.
Q Do you remember refusing to eat at times?
A Yes.
Q Why did you do that, Harrison?

Exhibit D-5

A I thought that you—I thought I would be transferred to some other ward if I didn't eat anything in that ward.

Q Did you think there was anything wrong about the food, that there was anything dangerous or poisonous in the food at any time?

A I thought that the bread was poisoned, sometimes.

Examination by Mr. Davies:

Q Was the poison put in there for your special benefit, to poison you?

A Yes.

Q You remember being in a room, do you not, at Overbrook?

A I will never forget it.

Q Do you remember th ewalls, how they were painted, what color they were painted?

A Yes.

Q What was it?

A Yellow and green and white in spots.

Q Any pictures on the wall?

A They were not pictures, they were lacerations.

Q Was there any painting of images on the wall?

A The yellow paint was scratched off, so as to make images, and they stood out on the green paint.

Q What did those images represent?

A I think they were supposed to appear as if they had been made at random by other fellows, by other crazy fellows, who had been in the room before I had.

Q Were they put there for your special benefit?

A No.

Q All the time that you was in the room did you notice whether there was a register in the room or not?

A There was one two-thirds of the way from the ceiling; that was very black.

Q Did you ever hear any voices coming from that radiator or register?

A No, but I heard Dr. Thompson's voice coming up through the lower one several days.

Q You say that when you committed this crime, or when you was at Overbrook, I mean, that you wanted to appear like Jesus

Exhibit D-5

Christ, is that right?
A I didn't want to.
Q What did you say?
A I thought that—that the doctors wanted me to.
Q Harrison.
A And that the operation affected me that way.
Q Did Jesus Christ tell you to commit this crime?
A No.
Q He didn't?
A No.
Q Did you ever speak with Jesus Christ?
A No.
Q Never held any conversation with him?
A No.

EXAMINATION BY DR. THOMPSON:

Q Do you ever get depressed and weep and cry?
A No.
Q Do you ever get excited to an extent that you cannot control yourself?
A Sometimes.
Q How do you account for that?
A I guess it is because I get indigestion.
Q Are you eating well now?
A Yes.
Q Are you sleeping well?
A Yes.
Q Are you feeling happy?
A I would like to be home.
Q Do you feel contented?
A Most of the time.
Q Have you any feeling of sorrow for what has happened?
A I sometimes think it must hit my mother and my brother pretty hard.
Q I mean so far as you are concerned yourself.
A No.
Q Where are you now, Harrison?
A I am in the County Jail.

Exhibit D-5

Q Where is it located?

A Newark.

Q What kind of a place is this: what is it for?

A It is for crazy people and people who aren't crazy but who have broken the law.

Q Do you think you belong here?

A I don't know what you mean.

Q Do you think this is the right place for you now at the present time?

A I don't know.

EXAMINATION BY DR. DAVIES:

Q Why don't they let you go home, Harrison? What are they keeping you here for?

A I don't know; I think they ought to let me go home.

Q You haven't broken any law, have you?

A Not recently.

Q Have you been punished for breaking it heretofore?

A No. I broke the law when I killed the colored man.

Q But you didn't break it when you killed the little girl, did you?

A No.

Q Did you break the law when you shot the man in the automobile, the chauffeur?

A Yes.

Q Suppose we let you go home today, what would you do?

A Cut the grass, work in the garden.

Q Do you have any feeling against the people here for holding you here?

A No.

Q Don't you think you are held here without any reason or cause?

A What?

Q Don't you feel that you are being held for no reason whatsoever?

A I am here because I killed the colored man.

Exhibit D-5

Q And you realize that you are going to be tried for that, do you?

A No.

Q Do you think that you are able to assist your lawyer in the defense, in your defense in this trial?

A No.

Q Do you remember calling me up early one morning?

A Yes.

Q What did you say to me; what did you call me up for?

A I wanted to look at you and talk to you.

Q About anything in particular?

A I wanted to do it right away, because I couldn't sleep.

Q What was the reason. Then do you remember going down to the station house that night?

A Yes.

Q Stay all night, did you?

A From half past three in the morning until the next day.

Q Then you remember seeing me the next day at your house, talking to you up in the room, you remember that? You was lying on a sofa up in the room?

A No, that was the day before I went to the police station.

DR. THOMPSON: I think we should examine his palate

HARRISON W. NOEL: My palate is gone, I coughed up my spine, to, in Overbrook.

Q Have you no spine now?

A No.

Q Where did you cough it up?

A I spit it out on the floor.

Q You spit your spine out on the floor?

A Not all at once; it took two or three days.

Q Have you any spine left? Stand up and let me see; have you any spine left here at all?

A I don't think so.

Q What did they do that day after you spit it up?

A I just spit on the floor.

Q What did they do; did they take your spine away?

A I don't remember; I don't think so.

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Q Did they do that for some specific reason; did they make you spit up your spine?

A They had a man there three rooms away; they had a man in the middle room without any spine, and they put me from one room into the other; that was hypnotism.

Q How did this fellow without a spine look; could he sit down and stand up?

A He was a hunchback.

Q Did they make you a hunchback taking your spine out?

A No.

Q It doesn't seem to interfere with you in any way, does it? (No answer.)

EXAMINATION BY DR. THOMPSON:

Q How did you and I get along in Overbrook together?

A Very well, indeed.

Q You liked me while there?

A Yes.

Q Did I ever do anything to harm you, Harrision?

A No.

HARRISION W. NOEL: Dr. Thompson, will you make me a promise?

DR.THOMPSON: What is it?

HARRISION W. NOEL: If I should be taken back to Overbrook, will it be some other Ward than 32?

DR. THOMPSON: I will see about that, Harrision; I will do all I can for you.

HARRISION W. NOEL: Because I would rather go to prison than I would to Ward 32.

Q Why, Harrision? Tell us why.

A I don't like the men that are working there.

Q Did you find things all right when you first went on 32?

A Yes.

Q Did anything change to dissatisfy you?

A Yes, the food was changed for the worse.

Q Was there anything else on 32 that you were dissatisfied

Exhibit D-5

with; I mean the attendants and nurses there.

A The attendants seemed to become sort of hardend and coarsened while I was there - Mr. Bresnehan and Mr. Coddington.

Q Did they persecute you at all and make it hard for you?

A Yes.

DR. THOMPSON: Physical examination: Marked sionosis of the hands.

Will you open your mouth, Harrision?

(Harrision does as requested)

Have you had your tonsils taken out?

HARRISION W. NOEL: No, the tonsils are all right.

DR. THOMPSON: You haven't had them taken out?

HARRISION W. NOEL: No.

DR. THOMPSON; Did you want to have them taken out?

HARRISON W. NOEL: No.

DR. THOMPSON: Did they try to take them out at Overbrook?

HARRISION W. NOEL: No.

DR. THOMPSON: Did anybody speak to you about your tonsils at any time?

HARRISION W. NOEL: You mean at Overbrook?

DR. THOMPSON: At Overbrook or since you left Overbrook?

HARRISION W. NOEL: Why, the doctors said if I wouldn't answer their questions they would take my tonsils out.

DR. THOMPSON: What did you think of that action?

HARRISION W. NOEL: I thought it was wrong to say that, because they said my tonsils were all right, and the doctors from Newark said my tonsils were all right.

DR. THOMPSON: Patient is physically well nourished. There are no positive physical finding of importance. He shows some facial acymnetries. All during the interview, patient showed no emotion whatever, and was neither depressed nor excited. He was decidedly shut in, showed poverty of emotion and made frequent aces and peculiar facial expressions.

Exhibit D-6

EXAMINATION OF HARRISON NOEL by Dr. Carlos F. MacDonald, of New York, for the purpose of determining his mental and physical condition, held at the Newark City Jail, Newark Street, Newark, New Jersey, on Tuesday, September 22, 1925, at 445 P. M., in the presence of Dr. MacDonald, Mr. Joseph L. Smith, Howard Clark Barber, Mr. N. W. Bindseil and the defendant.

MR. BARBER: Harrison, I want you to know Dr. MacDonald, who has come here at our request, and this gentleman (indicating) is Mr. Smith, from Mr. Lane's office, and this gentleman (indicating) is Mr. Bindseil.

Ths is the first realy private conference we have had, and Dr. MacDonald wants to talk to you, and I want you to talk to hi mjust as you would talk to me.

EXAMINATION BY DR. MACDONALD:

Q Mr. Noel, what is your ful name, please?

A Harrison Webster Noel.

Q I am Dr. Carlos F. MacDonald, from New York. I came here at the request of your counsel, to examine you with reference to your mental condition, and I am not here in any unfriendly spirit or capacity, but to find out, if I can, what your real condition is, both mental and phyical, and to report the same to your counsel and my conclusions based thereon, and I will be very glad if you wil talk with me frankly and answer my questions. I will try not to ask you any offensive questions or anythink to annoy you at al, but I assume that you will be quite wiiling to let me examine you on the terms and conditions as I have stated to you. Are you willing I should examine you?

A Yes.

Q Your name is Harrison Noel?

A Harrison Webster Noel.

Q How old are you?

A Twenty.

Q Where were you born?

A In New York City.

Q Have you had any serious illness in your lifetime, in your younger days, boyhood days, in the way of serious diseases of any kind? Have you ever had scarlet fever, for instance?

A I don't think so.

Q Or pneumonia?

A No.

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Q Or have you ever had fainting spells?
A No.
Q Or any fits?
A When I was in Overbrook I had fits.
Q When you were where, at Overbrook?
A Yes.
Q Do you remember how those fits affected you; what happened, whether you fell down or lost consciousness, or what?
A I used to throw myself against the door, principally; that is all I did.
Q Did you do that often, or was it only on rare occasions?
A The first two weeks I was there.
Q Have you ever had any other disease of childhood, such as measles?
A Yes.
Q Have you ever had a prolonged fever of any kind, pneumonia or anything of that kind?
A No.
Q Have you been subject to headaches?
A No.
Q In your lifetime?
A No.
Q Harrison, what about your habits, do you use tobacco?
A Only occasionally.
Q In what form do you use it; do you smoke?
A I smoke cigarettes sometimes.
Q But you haven't smoked to excess, have you, at any time?
A No.
Q Have you been in the habit of drinking at all, alcoholic liquors?
A Sometimes.
Q Would you drink so that you became intoxicated at any time?
A No.
Q But you would take a drink occasionally, is that what you mean?
A Only since I left Overbrook.
Q You didn't drink any before you went there?
A No.
Q What would you drink when you did take a drink, whiskey or beer or wine or what?
A Gin and whiskey.
Q What?

Exhibit D-6

A Gin and whiskey, when I was with my father and my uncle.

Q Did you drink at other times when you were alone or when you were with young men?

A No.

Q So that you didn't dissipate?

A No.

Q Have you ever had—I am going to ask you a question now that I want you to answer me frankly, because it is important to you. Have you ever had any venereal disease?

A No.

Q Have you ever had sexual intercourse?

A (After hesitating) No.

Q Have you ever practiced what is known as self-abuse since you were a boy?

A Yes.

Q Do you know where you are now?

A Yes.

Q What is the name of this institution?

A It is the County Jail.

Q How long have you been here?

A Two weeks.

Q How is you appetite?

A Pretty good.

Q Do you sleep well?

A Yes.

Q Are you subject to any pains or aches now, headche or anything of that kind?

A I had a headache yesterday.

Q Have you had any conditions since you have been here that required the attention of the physician, the jail physician.

A No.

Q Do you know what you are charged with?

A Yes.

Q What is the charge against you?

A Murder and kidnapping.

Q When did you first go to an institution for the insane, and where?

A That would be Beacon, wouldn't it, Mr. Barber?

Q Is that your first experience in an institution for the insane, at Beacon?

A Yes.

Q That is a private institution?

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A Yes.

Q How long were you there, Harrison, about?

A About three months.

Q Did you have any trouble while you were there with the attendants or the doctors or anybody there?

A (After hesitating) They wouldn't let me go: I wanted to go.

Q Did you demand to go?

A Yes.

Q And they told you they wouldn't let you go?

A Yes.

Q Did you try to run away or get away from there?

A I ran away once.

Q Where did you go to when you ran from there, and how far?

A I went to Newberg.

Q How did you get back to the institution from there?

A An employee of the company brought me back—the doctor brought me back.

Q What was the doctor's name?

A I don't remember.

Q Did you have any struggle with anyone there or make any attack upon anyone while you were there?

A Once I was given a powder to take, and instead of taking it, I blew it over the bedclothes, and the attendant thought I was trying to blow it into his face.

Q What did he do.

A He chocked me.

Q Did he strike you?

A No.

Q But he seized you and chocked you?

A Yes.

Q Did you have any trouble—any other trouble besides that while there?

A I hit a man over the head once.

Q What with?

A A piece of wood from a chair.

Q The leg of a chair, was it?

A No, the arm.

Q And why did you hit him over the head; did you think he was trying to injure you, or that he was going to injure you?

A No.

Q You didn't do it in self-defense, then?

A No.

Q What was your object, Harrison, in hitting him over the

Exhibit D-6

head? You must have had some motive in doing it.

A It was to get away.

Q And finally you were discharged from there, were you?

A I don't know.

Q Who took you away from here?

A Dad did.

Q Your dad, and then where did you go when you left there?

A Home.

Q And how long did you stay at home?

A A few weeks.

Q And then were you sent away again?

A No.

Q Where did you go? You remained home a few weeks, you say. Then where did you go after that, at the end of a few weeks?

A On a walking trip.

Q With your father?

A By myself.

Q Where did you go? Were you gone any long distance? Where did you go on this walking trip?

A North Carolina.

Q Did you walk all the way?

A No.

Q How much walking did you do on that trip? You didn't walk al the way to North Carolina?

A No.

Q Did you ride some of the way?

A Yes.

Q What did you ride in, a train or automobile or what?

A Sometimes on the train and sometimes in automobiles.

Q Did you have money to pay your fare?

A Yes.

Q And would you stop over night at hotels?

A No, just farm houses.

Q Did you have any trouble with anyone when you were on that walking trip?

A No.

Q Anybody annoy you or abuse you or threaten you, or anything of that kind?

A No.

Q And you were gone about how long?

A A couple of months.

Exhibit D-6

Q Did your parents know where you were?
A Yes.
Q Did you communicate with them while you were away?
A Postal cards.
Q And then at the end of two months did you return home?
A Yes.
Q How long did you remain at home after that?
A Two days.
Q Then where did you go?
A Florida.
Q By train?
A Yes.
Q Whereabouts in Florida did you go to?
A St. Petersburg.
Q Were you alone?
A Yes.
Q How long did you stay away that time?
A I went clear over to Denmark.
Q Where did you sail from?
A Tampa.
Q From Tampa. Were you alone on that trip?
A Yes.
Q How long did you stay in Denmark?
A I was a mess boy on a hsip.
Q And you were paid for your services, were you?
A Yes.
Q Did you have any trouble on the ship with anyone?
A No.
Q Not at all?
A No.
Q How long did you stay in Denmark?
A About a week.
Q Come back on the same ship?
A No.
Q Did you come back as an employee of the ship? When you came back, were you employed on the ship?
A No, I came back third class.
Q And when you got back, where did you land, in New York?
A Yes.
Q And where did you go then?
A I stayed home.
Q For how long?

Exhibit D-6

A Several months; I went to school.
Q Have you been to High School?
A Yes.
Q Ever been to college?
A Yes.
Q What college were you in?
A I was at Harvard College.
Q How long were you there?
A Four months.
Q You didn't graduate, of course?
A No.
Q Why did you leave Harvard?
A To go into business?
Q Did you succeed in your classes in Harvard while you were there?
A No.
Q You failed, did you, in your classes?
A I didn't wait for the examinations; I was afraid of the examinations; I didn't think I would pass them.
Q Then did you go into business, when you left Harvard?
A I got a job as runner on the Stock Exchange in New York City; I only kept it two weeks.
Q Why did you give it up?
A I was going to study to be a lawyer.
Q Did you commence the study of law?
A Yes, I got some books.
Q Where, in Brooklyn?
A Some books; I got some books and took them out on a farm and tried to study by myself for six weeks.
Q But you got some books and took them out on a farm?
A Yes.
Q How long did you try to study law?
A Only part of the time I was up there.
Q Did you study under the advice and direction of a lawyer?
A I remember I got an outline of the Newark school; I couldn't get in the Newark law school, so I got their course of studying and started out to do it by myself.
Q Why couldn't you get into the Newark Law School?
A It wasn't the right season.
Q You didn't try to pass an examination, did you, to get in?
A They only start in the fall, you see.
Q Then you gave up the study of law, did you, after that?

Exhibit D-6

A Yes.
Q Why did you give it up, Harrison?
A I wasn't learning anything.
Q You were not making satisfactory headway?
A No.
Q And then what next did you do after you gave up the study of law?
A I studied Latin, tried to.
Q You studied it by yourself or under a tutor or what?
A By myself.
Q How long did you study Latin?
A Just a couple of weeks.
Q What was your purpose in taking up Latin?
A I don't remember.
Q You don't remember, but you soon gave it up, did you?
A Yes.
Q And then what next did you do in an educational or in any way?
A I tried to study mathematics.
Q How long did you study that?
A A month or so.
Q Did you make good headway in that?
A Yes. I got—my mother let me take lessons from a man in Montclair.
Q How far did you go in Mathematics?
A I did quite a little work in Algebra and Solid Geometry.
Q And that you did for how long, about?
A A month.
Q And then gave that up?
A Yes.
Q Why did you give that up? Was it because you were not making satisfactory progress?
A I don't remember.
Q And after that, after you gave up Mathematics, then what did you do next?
A What did you ask me?
Q I asked you what you did next after you gave up Mathematics.
A (Hesitation) Just loafed.
Q Did you work at anything at all physically, manual or otherwise?
A No, just travelled around through the woods up there in Williamstown.

Exhibit D-6

Q Did you have any particular objective or purpose of travelling around through the woods?

A No.

Q How long after that was it before you went to Overbrook?

A Two years.

Q And did you loaf al of those two years?

A No.

Q You worked some of the time, did you?

A Yes.

Q What did you work at?

A Carrying mail and driving a taxi.

Q Did you have a license to drive a taxi?

A Yes.

Q Did you pass an examination and get a license?

A Yes.

Q In driving a taxi did you have any trouble or any accident of any kind?

A No.

Q Did you ever have any complaint against you as a taxi driver?

A No.

Q And what else did you work at besides taxi driving?

A Delivering mail.

Q Working for the Post Office Department?

A Yes.

Q Were you a mail carrier?

A Yes.

Q How long did you work at that?

A Ten weeks. Exactly ten weeks.

Q Why did you quit?

A It was a temporary position.

Q And your services were no longer required; is that the idea?

A Yes.

MR. SMITH: Where was that, Harrison?

Q That was summer employment, was it?

A Yes.

Q As a mail carrier?

A Yes.

Q Did you have any trouble while you were carrying the mail, with anybody or in regard to your work?

A No.

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Q And then what next did you do?

A I had some trouble with the work, because it was very hard; I mean I had a big route.

Q The work was very hard?

A Yes, strenuous.

Q But did you have any trouble with any of the post office employees or any persons to whom you delivered mail?

A No.

Q No complaints about you?

A No.

Q And when your employment in the mail service expired, what next did you do?

A I just worked on radio.

Q Did you make radio, get the parts and put them together?

A Yes.

Q That is, for your own use, or for sale?

A (After hesitating) I was going to use radio in a crime.

Q In what way were you going to use it in a crime?

A Instead of the telephone.

Q Instead of telephone; that is, you mean you were going to communicate by radio with persons?

A Yes.

Q What kind of a crime did you contemplate committing by radio?

A Blackmail.

Q Did you attempt blackmail by radio?

A No.

Q But you contemplated doing it, is that it?

A Yes.

Q But never did it?

A Yes, kidnapping for ransom.

Q What is that?

A Kidnapping for ransom.

Q Did you think you could succeed at that?

A Yes.

Q But you never really undertook to do it?

A No.

Q After you worked at radio and gave that up, what next did you do or take up?

MR. SMITH Will you develop that, how he was going to do it, and when that was?

Q What was your plan or scheme for effecting kidnapping by

means of radio? How did you contemplate bringing it about? Tell me, if you please, what your idea was in undertaking that and what you expected to accomplish by it, and with whom, if anyone?

A I didn't make any plans for kidnapping, but I expected to use the radio and have a receiving station somewhere, as to what they should do with the money.

Q You mean that you expected them to pay you in the nature of blackmail?

A Yes.

Q And you contemplated notifying these persons through the receiving station as to where they could send the money?

A Yes.

Q Did you actually make any effort to blackmail in that way?

A No.

Q You did not. Did you abandon the idea finally of doing it? (No answer) Harrison, what next did you take up and do?

A I took up taxi driving.

Q Is that what you told me about before, or did you take it up again? You have already told me that you were a taxi driver for a while, and what you did at that time and gave it up; did you take it up again?

A No, that was the first time.

Q Then we have gone over that, haven't we, about the taxi driving?

A I first got the idea from the Leopold-Loeb case.

Q From whom?

A The Leopold-Loeb case.

Q Oh, you did. Reading that case suggested—

A I was a bricklayer up in Hartford, and I read that in the paper.

Q And then did you think it over and thought you would drive a taxi for the purpose of committing crime?

A No, just because I had to earn my own living.

Q But I don't see the connection, Harrison, between your driving a taxi and what you read about the Loeb case.

A It was half a year later.

Q Did the reading about the case of these young men suggest to you the idea of doing something of that kind yourself?

A Yes.

Q And did you do anything in connection with that idea in the way of a criminal act, or attempt a criminal act?

Exhibit D-6

A No.
Q About when did you go to Overbrook?
A February 22, this year.
Q Did you go there voluntarily or were you committed there?
A I was taken there for an appointment with Dr. Davies and persuaded to stay.
Q Do you know whether you were under legal commitment there or were you there as a voluntary patient?
A I was committed after I got there.
Q By an examination by physicians?
A Yes.
Q Do you know who the examiners were?
A Yes.
Q What were the doctors' names who committed you?
A Davies and Kirkwood.
Q Where did they live, here in Newark?
A Verona and Montclair.
Q Did you have any trouble while you were at Overbrook with any of the attendants or other employees there or the physicians?
A Yes.
Q What was the nature of the trouble you had; did you make an assault on any one?
A No.
Q Did they assault you?
A Yes.
Q In what way?
A With their fists.
Q They struck you, did they?
A Yes.
Q Who struck you there, the attendants?
A Yes.
Q Did you resist them and fight back?
A No.
Q What do you suppose their object was in striking you with their fists?
A I wouldn't do as I was told.
Q Oh, you wouldn't, and they undertook to make you do it by punishing you in that way?
A Yes.
Q How long were you there?
A Four months.
Q And did your father visit you there?

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A Yes.
Q Your mother?
A Yes.
Q So that you kept up friendly relations with your parents, did you, while you were there?
A Yes.
Q Did you ask them to take you out, take you away from there?
A Yes, sir.
Q You were there four months, you said?
A Yes.
Q When you first went there did you like it and get along pleasantly?
A Yes.
Q And then after that you had trouble, did you?
A Yes.
Q Do you think there was a change in the tone or atmosphere of the place or in the attitude toward you?
A Yes.
Q When you had trouble?
A Yes.
Q What do you think was the cause of this change?
A A spinal puncture.
Q You had a spinal puncture while you were there?
A The day after I got there.
Q And then that caused a change in the attitude of those in charge of you there, the attendants and doctors?
A It drove me wild.
Q Did it make you feel vindictive?
A No, it made me think I was Jesus Christ. I remember very clearly, I thought I was sick, and Jesus Christ and the doctors had done it—just to benefit society.
Q That they had brought it about in that way, by giving you a spinal puncture?
A Yes.
Q What do you think about it now? Do you think that that was their motive, to change you and make you a secnd Jesus Christ?
A I learned since that it was just a test that they had, like a blood test.
Q Did you feel for a while after that spinal puncture that you were a second Jesus Christ?

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A Yes.
Q Do you feel that you are now?
A No.
Q How did you come to leave there; did your parents take you away?
A My brother came and I went out for a walk with him and I insisted on walking home.
Q How far was it to your home from there?
A Three miles.
Q Did you walk home from there?
A Yes.
Q Your brother went with you?
A Yes.
Q So that you never went back there again?
A No.
Q Did your parents want you to go back or were they willing to keep you at home?
A They were willing to keep me at home.
Q What did you do while you were at home, after you ran away from Overbrook?
A No, my mother wasn't willing to keep me home.
Q She wasn't?
A No.
Q She wanted you to go back, did she?
A Yes, and she called a taxi for four o'clock.
Q To take you back?
A Yes.
Q And did you refuse to go back?
A Yes.
Q So that you never went back?
A No.
MR. SMITH: What did you do instead of going back, Harrison?
WITNESS: I ran off on my sister's wheel.
Q Where did you go to?
A New York City.
Q How long did you stay in New York City, about? I don't mean to be exact; about how long did you stay in New York City?
A A couple of months.
Q What did you do while you were there?
A (After hesitating) Just hung around my dad's apartment.

Exhibit D-6

Q Did your dad have an apartment in New York?
A Yes.
Q And you hung around there?
A Yes.
Q You didn't do anything in the way of work then, did you, or occupation?
A I got one job.
Q Whereabouts and what kind of a job was it?
A In a machine shop at Morris Heights.
Q What did you do in the machine shop there; did you run a lathe or what did you do?
A I helped another helper to carry castings around on a wagon.
Q Did anything else happen to you while you were in New York; did you have any trouble of any kind with anyone there?
A I was in the Bellevue Hospital.
Q How did you happen to go there, were you arrested by the police and sent there, or what?
A I don'tt remember, but what I read in the papers.
Q You read in the paper that you were sent to the Bellevue Hospital or that you were in Bellevue Hospital, rather?
A The policeman took me to the police station, and the ambulance came for me.
Q And took you to Bellevue?
A I don't remember, excepting—I remember being in the hospital there.
Q What they call the psychopathic ward, where there were mental cases?
A Yes, I had on a pink bathrobe and pink pajamas.
Q Yes, that is right. And they took your ordinary clothing away from you while you were there?
A Yes.
Q You wore the hospital clothing?
A Yes.
Q What doctors did you see when you were in Bellevue?
A The doctor had his office on the same place there, right next to the hall.
Q Do you remember the doctor's name?
A No.
Q Do you know Dr. Gregory?
A No.
Q You don't remember the names of any of the doctors there?

Exhibit D-6

A I saw just one.
Q How long did you stay there in Bellevue? Do you remember how long you stayed in Bellevue?
A I just remember when I was leaving it.
Q Were you taken away from there by somebody?
A Yes, my father.
Q Your father came and took you away?
A Yes.
Q You were not there a long time, were you?
A No.
Q Only a few hours?
A I think so.
Q Did you stay over night?
A I don't know for certain.
Q You don't remember about that?
A I know I was in a bed there with a rubber sheet on.
Q Did you hear the doctor say what he thought about your condition?
A What did you say?
Q Did the doctor there—you saw a doctor; you saw one doctor?
A Yes.
Q Did he tell you what his opinion was about your condition?
A No.
Q He didn't tell you whether you had any mental trouble or not?
A No.
Q And your father took you away?
A Yes.
Q And took you home to Montclair or to his apartment?
A To his apartment.
Q Then how long did you stay there?
A Until about three weeks ago.
Q Until about two weeks ago?
A Three weeks.
Q Then where did you go?
A Up to Montclair.
Q And what did you do there, go to your mother's home there?
A Yes.
Q And then you left there, did you?
A (After hesitating) No.
Q You didn't leave there; what did you do? Did you go about

Exhibit D-6

anywhere? (Hesitation) Tell me what you did when you left there, the last you remember. You went somewhere, didn't you; you went out? (Hesitation) Did you go away the next day after you got home, or the same day?

A I didn't go away at all.

Q Were you arrested at your home there? (Hesitation) Did you stay in the house all the time there up to three weeks ago? (hesitation) Harrison, can't you answer my question? (Hesitation) Did you stay in your mother's home all the time after that, or did you go somewhere else? (Hesitation) Can't you tell me? (Hesitation) Harrison. (Hesitation) You understand my question, don't you? (Hesitation) Is there any reason why you don't answer? (Hesitation) Harrison. (Hesitation) I think you ought to tell me and answer my question, in order that I may be able to —or at least help me to decide about your condition. (Hesitation) Where did you go after you went to your mother's home in Montclair, and what happened? (Hesitation) Is it because you don't remember, or because you are not willing to tell me?

A I just went around the house.

Q I know, but you didn't go out anywhere?

A Yes.

Q Where did you go?

A I took long drives through the country.

Q With a taxi or an automobile?

A With my mother's Overland.

Q What did you do when you took any rides; did anyone go with you?

A Sometimes my mother went with me.

Q Anybody else?

A No.

Q Did you take anyone to ride with you after you left the house? Did you pick anyone up on the way?

A (Hesitation) I used to—I picked up; sometimes I picked up men who asked me for a lift and took them a long ways.

Q Anybody else?

A No.

Q You told me, early in my examination of you, that you were charged wiht what? What did you say? What did you tell me you were charged with? The reason why you were here in jail?

A Oh, for murder and kidnapping.

Exhibit D-6

Q Did you commit murder?

A Yes.

Q Whom did you murder? (Hesitation) Harrison, whom did you murder? (Hesitation) Can't you tell me?

A What time is it?

DR. MAC DONALD: It is quarter to six. I haven't but a few more questions to ask you, if you will answer them.

Q You say you committed a murder; whom did you murder? You know, of course. (Hesitation) Was it a white man?

A No.

Q A colored man?

A Yes.

Q What was your object in killing him? Had he done anything to you, wronged you in any way? (Hesitation) How did you commit this murder, Harrison, with a weapon of any kind? (Hesitation) You know, of course, how you committed it?

A With a pistol.

Q Did you purchase a pistol for that purpose? What was your object when you purchased the pistol? I assume you purchased it, didn't you?

A What?

Q You purchased a pistol, didn't you?

A Yes.

Q What was your object when you purchased it; what did you have in mind to do with it?

A To defend myself against Mr. Coddington and Mr. Breston, if they should come after me.

Q Who were they, employees at Overbrook?

A Yes.

Q How did you come to use it to commit a murder and kill a colored man, as you say; had you had any trouble with him?

A No.

Q He hadn't done anything to injure you, had he?

A No.

Q What was you object? Tell me frankly. What was your object in killing him? (Hesitation) Harrison, you must have had some motive for an act of that kind; how did it occur? Were you in the car with him? (Hesitation) Tell me about it. (Hesitation) Can't you tell me? (Hesitation) Harrison, tell me how it happened (Hesitation) Did you think, Harrison, that it would benefit you in any way to kill this negro?

A Yes.

Exhibit D-6

Q In what way? Now, tell me frankly. Don't wait so long. In what way did you think it would benefit you? Were you unhappy at the time?

A Yes.

Q Did you think killing him would relieve you in any way of the unhappiness?

A Yes.

Q You thought it would. Was that the only object—only motive you had in killing him?

A Yes.

Q Where were you when you shot him; were you in the car or on the street or where?

A In his taxi.

Q Were you in the seat behind him or beside him? (Hesitation) Harrison, were you riding behind him or beside him in his car?

A Behind him.

Q And did you shoot him in the back of the head?

A Yes.

Q Did you give him any warning at all that you were going to shoot him?

A No.

Q Did he fall over at once?

A Yes.

Q And you realized that you had killed him, did you?

A Yes.

Q Then what did you do after that? Did you run his car? What did you do with his body? Did you leave it in the car? Harrison, tell me what you did with his body. (Hesitation) Can't you tell me? Did you throw it out of the car? (Hesitation) Harrison.

A Who is the doctor that was talking to me this afternoon?

DR. MAC DONALD: I don't know.

MR. SMITH: After we came, Harrison?

WITNESS: Yes.

MR. SMITH: How many doctors spoke to you this afternoon?

WITNESS: Just one.

Q Do you remember who he was; did you hear his name?

MR. SMITH: Dr. Beling?

Exhibit D-6

WITNESS: I don't know.

Q Did he tell you who he was?

A Yes.

Q Did he ask you about these things this afternoon that I have been asking you about?

A Yes.

Q Did you tell him more than you have told me? (Hesitation) You know, Harrison, perfectly well, of course, what you did with the body after you shot him. Did you run the car then or did you get out and leave the car and leave him in the car? Tell me, Harrison. (Hesitation) You have told me that you shot him. Why not tell me what you did with the body after you shot him, or what you did, whether you got out and left the car and left his body in there, or whether you ran the car away from where it was? Tell me what you did in regard to that matter, won't you? (Hesitation) Can't you tell me? You know perfectly well what you did, don't you? Hesitation) Harrison, why won't you tell me? (Hesitation) Now, what about the kidnapping? Did you kidnap anybody? You told me you were charged with kidnaping. Did you kidnap anybody? (Hesitation) I would like to find out from you just what the real facts are, if you will tell me. Hesitation) Why don't you answer? (Hesitation) Harrison, is it because you are not willing to answer? You told me, you know, when I came in, that you would answer my questions. Tell me about the kidnapping. How did you kidnap and what did you do in connection therewith? (Hesitation) As soon as you will tell me about these things, we will end the examination.

A I—

Q Go ahead.

A I used the colored man's car and kidnapped a girl on Upper Mountain Avenue.

Q Yes, What did you do, invite her to ride in your car?

A Yes.

Q And she got in to ride with you, and you kidnapped her and took her to some place, did you; were did you take her to? Tell me, and then we will get through pretty soon. Where did you take her to? (Hesitation) Tell me.

A Out through—

Q Go ahead.

A Great Notch, and out through the country.

Exhibit D-6

Q Did you know her before; had you ever seen her before you got her in the car?

A No.

Q Well, what did you do to her? You took her out in the country, through Great Notch. Did you leave her there? (Hesitation) Go ahead and tell me about it, please. Hesitation) Did you leave her there? (Hessitation) Harrison. Hesitation) You know whether you left her there or not, don't you?

A Yes.

Q You did leave her there. Did you kill her?

A Yes.

Q What with?

A A pistol.

Q Did you shoot her in the head or in the body?

A In the head.

Q Then what did you do after that? You left the body there, did you? Did you shoot her in the car or after she got out?

A After she got out.

Q Did you have any struggle with her?

A No.

Q Did you try to have intercourse with her?

A No.

Q Kiss her?

A No.

Q What did you tell her your reason was for shooting her? Did you tell her any reason why you killed her, or why you shot her?

A No.

Q What was your object in shooting her; did you think that would also benefit you, to kill her, as you said you thought it would to kill the negro?

A Yes.

Q In what way did you think it would benefit you, Harrison, to kil the negro and to kill this girl? How did you think it would benefit you? Did you think it would make you feel better?

A Yes.

Q Was she a young girl?

A Yes.

Q How old would you say she was?

A Six.

Exhibit D-6

Q Six years old?
A Yes.
Q Did she scream and resist when you killed her?
A No.
Q She didn't?
A No.
Q And you left the body there, did you?
A Yes.
Q And went back home in the car, is that right? Where did you go after you killed her?
A I left the car on the mountain there.
Q And where did you go?
A Home.
Q Walked home?
A No.
Q How did you go home?
A In my Overland.
Q You didn't tell me whether you left the body of this negro in the car or whether you dumped it out on the road or what. What did you do with it?
A I dumped it on the road, in Little Falls,—opposite the road.
Q Do you know what your defense is going to be? You expect to have a trial, don't you?
A (Hesitation) I don't know.
Q Do you know what your defense is to be?
A No.
Q Do you think you are insane?
A I don't know.
Q Do you think you were insane when you committed these crimes?
A Yes.
Q You think you were. What do you think about your mental condition now? You think it is better than it was, since you committed these two murders? Hesitation) Has your mind improved since then?
A (Hesitation) Yes.
Q At one time do you recall an incident that happened in a tent when you were camping with your father, when you asaulted him in the night, up at Sag Harbor? Do you remember that occasion?
A Yes, I remember the occasion.

Exhibit D-6

Q What was your object in attacking your father in that way?

A I didn't have any object.

Q What weapon did you use, a hatchet?

A Yes.

Q What did you do, strike him on the head?

A I don't remember.

Q Did you try to kill him?

A I don't remember.

Q You remember whether you wanted to kill him or not, but he didn't do anything to provoke you, did he, to make an assault upon him?

A No.

Q Your relations with him were pleasant and friendly, weren't they?

A Yes.

Q Always. What explanation can you make why, in the night, when he was asleep in the tent, that you got up and assaulted him with a hatchet?

A I think I had indigestion.

Q Do you think that was sufficient to account for your making a murderous assault upon your father, when your relations with him were pleasant and kind?

A I don't know how else to account for it.

Q You think you had indigestion. Had you been subject to indigestion at times?

A Yes.

Q By the way, how are your bowels; do they move every day?

A No.

Q You have to take medicine to move your bowels?

A You mean now?

Q Yes.

A No.

Q Have you had any movement today?

A No.

Q Did you have one yesterday?

A I don't remember.

Q But you think you didn't have a movement today?

(No answer)

Exhibit D-6

DR. MAC DONALD: I think I will make some physical examination.

(Physical examination commenced at 6:15 P. M.)

DR. MAC DONALD: Eyes: Pupils normal in appearance. Consensual reflex, normal. Pupils respond normally to light and accommodation.

Put your tongue out, please. Put it out.

Tongue coated and tremulous and jerky on protrusion.

Hold your hand out this way (indicating) and separate your fingers.

This hand (indicating) the same way.

(Lead pencil placed on the back of Noel's hand.)

Hands, cold and clammy; slightly tremulous on extension of arm and finegrs.

Pulse, feeble but regular. 74 beats to the minute.

Stand up and put your feet close together. Right leg, and stand up traight. Close your eyes tightly. Keep your eyes closed. Do you feel as if you were swaying a little? Keep your eyes closed tightly. That is right. I won't let you fall if you sway.

In standing erect, with feet approximately in paralled and eyes closed, there is a slight swaying of the body, or Romberg symptom.

I wish you would close your eyes, Harrison, and put your arm right out, and with your eyes closed, touch the tip of your nose with your finger. Don't look up. Do it rather quickly. That is right. Do it with the other hand.

Co-ordinates perfectly in the finger to nose test.

Now, if you will sit down a moment. This don't annoy you?

WITNESS: No.

DR. MAC DONALD: Let your leg come right down limp. You are holding it a little. I can tell by the feel of it. Let go all control of it. Just let me hold it.

I will do the same thing with this (indicating left leg). Let it sag on my knee. You don't seem to have any knee reflex at all.

Knee reflex, absent.

Now, stand up a moment. Face.

Face, unsymmetrical and ears project at about one-quarter

Exhibit D-6

angle from face.

Have you ever had an injury to your head?

WITNESS: No.

DR. MAC DONALD: Have you ever had any severe injury of any kind, a broken bone or anything?

WITNESS: A broken bone in the shoulder once.

DR. MAC DONALD: That is when you were a child?

WITNESS: Yes.

DR. MAC DONALD: One more test. Turn around and face me. When I tell you, just close your eyes and walk toward me. Close your eyes tightly, and walk toward me. Keep your eyes closed. You opened them, didn't you? Look down.

WITNESS: No.

DR. MAC DONALD: Keep your head up, so I can see your eyes. Now, then, with your eyes closed, come right to me.

Walk correctly with eyes closed. No inco-ordination of movements.

Sit down again and try once more. Sit farther on the chair. Now, then, let your leg hang down perfectly limp. Let go of it entirely. Let it sag right down. Now, let this one (indicating the other leg) sag down the same way.

I cannot get any response.

Well, I think that is about all, Harrison.

I hope I haven't annoyed you, have I, Harrison?

WITNESS: No.

DR. MAC DONALD: (After listening to heart) Heart beats normally.

Did you ever have any sore of any kind in the groin, a lump or swelling?

WITNESS: My leg used to be sore for a year or so in this joint (indicating).

DR. MAC DONALD: No evidences of scars in the groins or the penus, that is, no evidence of any venereal sores.

No nodes on the shins.

(Examination closed at 6:35 P. M.)

Exhibit D-1

EXAMINATION O FHARRISON W. NOEL

at the

COUNTY COURT HOUSE, NEWARK, N. J.

ON

THURSDAY, SEPTEMBER 10, 1925,

at 2:30 P. M.

by

DR. WALTER S. WASHINGTON

PRESENT: Thomas Dimond, Prosecutor's Detective

Josepr S. Fishkind, Stenographer

HARRISON NOEL, examined as follows: by Dr. Washington.

Q What is your name, young man?
A Harrison Noel.
Q How old are you?
A Twenty.

Mr. Dimond. Noel, this is Dr. Washington. You know, a man was up to see you this morning and told you that some men would come and see you and this is one of the men. Answer all the questions he asks.

Q How old did you say you were?
A Twenty and six months.
Q Where were you born?
A New York City.
Q When?
A In 1905.
Q What time in 1905?
A April 16th.
Q That makes you a little over twenty years since last April, doesn't it?
A Yes, sir.
Q Is your father and mother alive?
A Yes, sir.
Q What is your father's name?
A Dix W. Noel, Dix Webster Noel.

Exhibit D-1

Q How old is he?
A Fifty-two.
Q Where does he live?
A New York City.
Q Where in New York City?
A Delta Upsilon.
Q Club, is it?
A Yes, sir.
Q Where is that?
A 38th street and Madison avenue.
Q What is your mother's name?
A (No answer).
Q Can you tell me?
A Yes, sir.
Q Well, what is it?
A Anna Noel.
Q How old is she?
A Fifty.
Q Where does she live?
A Upper Montclair.
Q Where?
A 295 North Mountain avenue.
Q Where is your home?
A At the same place.
Q How long have you lived there?
A Most of my life.
Q How long did you live in New York—I suppose your parents moved out there, did they?
A Yes, sir.
Q How old were you when you moved to Montclair?
A Between four and six, I don't remember.
Q You went to school there?
A Yes, sir.
Q Have you any brothers or sisters?
A Yes, sir.
Q How many brothers?
A One.
Q How old is he?
A Nineteen.
Q How many sisters?

Exhibit D-1

A One.
Q How old is she?
A Fourteen.
Q Have you any grandparents alive?
A A grandmother.
Q On your mother's or father's side?
A Mother's.
Q On your mother's side, your maternal grandmother?
A Yes, sir.
Q How old is she?
A I don't know.
Q Where does she live?
A Binghamton.
Q In New York State?
A Yes, sir.
Q Has your father any brothers?
A Yes, sir.
Q How many?
A Two.
Q Are the two alive?
A Yes, sir.
Q Any dead?
A No.
Q How old are those two?
A Older than he is.
Q Has your mother any sisters?
A No.
Q Never had any?
A Yes, sir.
Q Dead?
A Yes, sir.
Q What is your father's business?
A Lawyer.
Q Where?
A New York City.
Q Where is his office in New York City?
A 64 Wall street.
Q Your father lives in New York City and your mother lives in Montclair?
A Yes, sir.

Exhibit D-1

Q At what age did you begin to go to school, do you remember?

A As soon as I got to Montclair.

Q Where did you go to first, what school?

A Kindergarten.

Q And how long were you in the kindergarten?

A One year.

Q Then what did you go to?

A School.

Q What do you call that, grade school?

A Primary school.

Q How long did you go there, about how long?

A Six years.

Q Then what school did you go to?

A Junior high school.

Q And how long were you there?

A Three years.

Q And then you went to high school?

A Yes, sir.

Q When did you graduate from there?

A 1922.

Q Did your examinations there fit you to enter any college in this country?

A Yes—no, I took extra examinations.

Q Now, during all of those years did you pass your examinations at the proper time?

A No.

Q You had to be tutored?

A No.

Q What did you do, how did you make out?

A By myself.

Q Did you have to make any extra time to do it?

A In the summer.

Q But you did not lose any years at school?

A No.

Q Then, after you left high school, what college did you enter??

A Harvard College.

Q How long were you there?

A Four or five months.

Exhibit D-1

Q When did you enter there?
A In the fall, September.
Q Of what year?
A 1922.
Q And you stayed there four or five months and then you left?
A Yes, sir.
Q Did you go to any other college?
A No.
Q Where did you go?
A New York City.
Q Why did you leave Harvard?
A To earn money.
Q Was that the only reason?
A No.
QWhat was the real reason?
A I don't remember.
Q Did you keep up with your studies, your Harvard studies?
A No.
Q You did not keep up?
A No.
Q Did they request you to leave or make any move to have you leave?
A No, sir.
Q And you went to New York City, you say?
A Yes.
Q To earn money?
A Yes, sir.
Q Didn't your parents furnish you with money to take care of yourself at Harvard?
A Yes, sir.
Q Then, why did you want to go to work to earn money, can you tell us?
A I was envious.
Q Envious of who?
A The students.
Q Why?
A Because they had a lot of money.
Q They had more money than you did?
A Yes, sir.

Exhibit D-1

Q And that is the reason you left Harvard, to go down to New York to earn money?

A Yes, sir.

Q What did you do in New York, what did you do when you went down there?

A I got a job in the stock exchange.

Q In an office?

A Messenger boy.

Q How long did you retain that?

A Three weeks.

Q Why did you leave?

A I wanted to do some studying.

Q For what purpose?

A I don't remember, exactly, it was law, I think, at one time.

Q Where did you live in New York when you were there?

A I had a rented room.

Q Did your father and mother know that you were in New York?

A Yes—no, not at first.

Q They learned afterwards, did they?

A Yes, sir.

Q How long were you there before your father or mother knew that you were there?

A I don't remember.

Q Did you write to them?

A I don't think so.

Q Are you sure or are you not sure?

A I am not sure.

Q Well, then, after you had worked these three weeks, then what did you do, look for another job?

A No.

Q Well, what did you do?

A I rented a farm near the Boy Scouts Camp at Oakland.

Q In what state?

A In New Jersey.

Q Where is Oakland?

A Twenty miles from Montclair.

Q It is in the northern part of the state, isn't it?

A Yes, sir.

Q How large a farm was it?

Exhibit D-1

A A small farm.
Q How many acres?
A I don't know.
Q How long did you live there?
A Six weeks.
Q What time of the year was that?
A February and March.
Q What year?
A 1923.
Q Why did you leave there?
A I don't remember.
Q Where did you go?
A I went home to Montclair.
Q With your mother?
A Yes, sir.
Q Your father and your mother both knew you were up there?
A Yes, sir.
Q Did they visit you?
A My father came up once.
Q And your mother didn't go?
A No.
Q That would be in the spring of 1923, wouldn't it, you said you were up there in February and March.
A Yes, sir.
Q What did you do then, after that?
A I studied geometry and algebra home.
Q At home, why?
A I don't remember now.
Q You don't remember why you did it?
A No, sir.
Q How long did you remain at home then?
A Not very long.
Q Well, what do you mean by "Not very long"?
A Several weeks.
Q How did you get along studying alone?
A I didn't do anything to amount to anything, I did not accomplish much.
Q Then, what did you do after that?
A (No answer).

Exhibit D-1

Q Can't you tell us, what did you do at any time after that, after those several weeks were over, what next did you do to try to earn your living, or what next did you do after that?

A I know I went to Williamstown.

Q Why, what did you go up there for? Did you go to college there?

A No, I rented a house there, a small house there, $10 a month and lived there.

Q And what work did you do there?

A What did you say?

Q What work did you do while you were up there, how did you occupy your time, what were you doing?

A Fooling around on the hills most of the time.

Q Did you try to enter Williams College as a student?

A No, sir.

Q You did not make any effort to do that?

A No.

Q You did not try to pass any of the examinations?

A No, sir.

Q Did you study for the examinations?

A No, sir.

Q How long were you there?

A Three, four or five months.

Q What would that bring you to, in the summer, the late summer of 1923, do you remember?

A (No answer).

Q Well, did you go to work again after that anywheres?

A That brought me up to June.

Q And what did you do after that?

A (No answer).

Q Can't you tell us anything about what you did after that?

A (No answer).

Q Can't you tell us anything about what you did after that?

A (No answer).

Q How did you put in your time since June, 1923, what work did you do, where did you work, what did you do, can't you tell us anything about it?

A (No answer).

Q Have you ever been in Overbrook?

A Yes, I have.

Exhibit D-1

Q When were you sent there?
A Have you ever been up there?
Q Oh, many times, when were you sent there?
A February.
Q February, do you remember the day in February?
A The 24th.
Q The 24th of February, what year?
A (No answer).
Q Was it this year or last year, do'nt you remember that?
A This year.
Q How long were you there?
A I don't know, I was there four months. I didn't know I was going or I would not have gone.
Q Why?
A Because I did not think I should have been taken there.
Q Was there anything the matter with you mentally at that time?
A No.
Q Is there anything the matter with you now?
A Yes, sir
Q What is the matter with you now, menttally?
A Nothing special.
Q But you did not think there was anything the matter with you at that time, in February, when you were sent up there?
A No.
Q You do not think you ought to have gone there?
A No, sir.
Q Had you ever been in an institution for people troubled with their minds prior to that, prior to February, do you remember that?
A (No answer).
Q Were you ever in Beacon, New York, can you tell us that?
A Yes, sir.
Q You were? When was that?
A July.
Q When was that?
A 1924.
Q 1924, you say?
A Yes, sir.
Q How long were you there?

Exhibit D-1

A No, it was 1923.

Q How long were you there?

A Three months.

Q Why were you sent there, who took you there, your father or your mother?

A (No answer).

Q Do you remember in that year being up in a camp with your father and your brother and your sister?

A Yes, sir.

Q Where was that?

A Sag Harbor.

Q How long were you there?

A A week.

Q Do you remember attacking your father with a hatchet?

A I don't remember doing that. I remember it after it happened, I remembered it in the morning.

Q But you did not remember making the attack?

A No.

Q Did you injure your father?

A Yes, sir.

Q Is that the reason you were taken to Beacon, New York?

A Yes, sir.

Q Were you examined by any physician in New York, did your father take you to any phsycian in New York?

A Yes, sir.

Q What doctor?

A Dr. Tilney.

Q Did he recommend your being taken to Beacon?

A Yes, sir.

QWell, now, why were you taken to Beacon, then, did you have any mental trouble at that time?

A No.

Q You did not think you ought to have been taken there, or did you?

A I dont' know, I don't think so.

Q Now, you say you haven't had any mental trouble when you were taken to Beacon and you had no mental trouble when you were taken to Overbrook.

A Excepting Dr. Davies came and talked to me and he asked me questions the way you are, the same questions, and that upset

Exhibit D-1

me very much. I seemed to be very excited and I could not sleep that night and I was sure that he would not sleep, I was absolutely certain he would not sleep.

Q Why did you think that?

A I don't know, I still think so.

Q That was the thought in your mind and you still think so?

A Yes, he was over in Verona.

Q Do you think it has affected Dr. Davies' sleep since that time?

A No, he must have gotten over it in a couple of days, but I was not the same person then that I am now.

Q In what way are you different?

A Oh, I had a whole lot of life in me and everything.

Q At that time?

A Yes, sir.

Q Then, the last place you were in was Overbrook?

A Yes, sir.

Q Now, are you sure it was 1923 that you were at Beacon, or was it 1924; are you sure it was 1923?

A Yes, sir.

Q What have you been doing since 1923, then, tell us some of the things you have been doing since 1923 when you were at Beacon and after you left there and went home. Have you had any positions, any work, that you have done, or earned money?

A I carried mail for three months and drove a hack for ten months—no, ten weeks.

Q Ten weeks you carried mail?

A That's right.

Q How long did you carry the mail and where were you at the time, where was this?

A The job was in Upper Montclair.

Q And then you say you drove a hack for three months?

A Yes, sir.

Q Where?

A In New York City.

Q A taxicab, was it?

A Yes, sir.

Q Did you have a license to drive in New York City?

A Yes, sir.

Q Did you pass an examination to get a license, or not, over there?

Exhibit D-1

A What is a spinal puncture, Doctor, do you know?

Q Yes.

A What is it?

Q It is drawing the spinal fluid from the spinal canal. What about it?

A What does it do to the person?

Q It doesn't do anything to the person, it is drawn for the purpose of examination microscopically generally for some headache or something.

A They did it to me at Overbrook and I was simply wild. They didn't do that to other persons.

Q Oh, they do it to lots of people.

A Well, I mean they just had headaches.

Q You say that between 1923, or at least between then and February, 1924, you had driven the mail or carried the mail for ten months?

A Ten weeks.

Q And you drove a taxicab in New York for three months?

A Yes.

Q What else did you do, did you have any other positions, what other work did you do during that time?

A (No answer).

Q Can you tell us anything else, don't you remember any other things you did?

A Yes, sir.

Q Well, go ahead and tell us, what were they?

A Making little round pom poms and delivering them. I was only at that a week.

Q Where?

A In New York.

Q Well, what else did you do, did your father ever get you another position anywheres in New York?

A No.

Q Is that the only thing you can tell us about it, about what you did prior to February, 1924, and in that interval, carrying the mail, driving a taxi, making pom poms, is there anything else you did? There is a good deal of time that you have not accounted for and you must have been doing something?

A (No answer).

Q By the way, were you ever in Virginia?

Exhibit D-1

A Yes, sir.
Q When, what year?
A 1924.
Q What time in 1924?
A In the spring.
Q How long were you down there?
A Three weeks, I guess.
Q What did you do while you were there, what did you work at?
A I stopped several places on farms.
Q Did you meet a man by the name of Payne down there?
A Yes, sir.
Q How does he spell it,—P-a-y-n-e.
A How does he spell it?
Q Yes. Do you know the right way to spell it?
A Why, I would spell it with a "y".
Q P-a-y-n-e?
A Or else it is P-a-i-n-e, but I think it is "y".
Q You say that was in Virginia. How old a man was he?
A Forty.
Q How long did you work for him?
A The old man was 80 years, there were two of them.
Q Were they both on the same farm?
A Yes, sir.
Q Father and son?
A Yes, sir.
Q And the father, you think, was about 80, is that right?
A Yes, sir.
Q How old was the son?
A Forty.
Q Now, where was that in Virginia?
A In the mountains.
Q What was the address, what was the post office address there where they were, do you know?
A Crest Hill.
Q Do you know what county it was in?
A No.
Q You do not?
A No, sir.
Q Crest Hill was the Post Office?

Exhibit D-1

A Yes, sir.

Q Where you got your mail and where you sent your mail away?

A Yes, sir.

Q That was it, Crest Hill, Virginia?

A Yes, sir.

Q Do you know the old gentleman's or the son's first name, either one, do you remember?

A (No answer).

Q How long were you down in Virginia, can you tell us that?

A (No answer).

Q Have you got a headache?

A Yes.

Q Are you subject to headache?

A No.

Q How long have you had it now?

A About half of the time you have been questioning me, it has been growing on me.

Q Your memory is not good, is it, you have to think before you can answer, don't you?

A No.

Q Well, why don't you answer promptly?

A I have been asked most of these questions before and they are in my mind.

Q Then, I should you think that you would readily answer them now that you have gone over them, but you seem to be slow in answering. Have you been told not to answer questions?

A No, sir.

Q Have you seen any lawyer or has any lawyer talked with you?

A No.

Q Have you been told not to answer the questions?

A No, sir.

Q Now, here is another thing, Harrison, you worked in quite a number of places. You do not seem to have retained any job very long, do you.

A No, sir.

Q Were you dissatisfied always, so as to change about that way. Couldn't you settle down and be contented, if you had a job that suited you and worked without changing so frequently, or

Exhibit D-1

did you get dissatisfied easily?

A Well, I was always generally pretty well satisfied.

Q Well, you didn't retain the job, did you, no matter what it was?

A (No answer).

Q Are you frightened?

A No.

Q Do you know the position you are in, do you know what you are locked up for?

A I do feel frightened sometimes.

Q Do you know what you are locked up for?

A Sure.

Q What is it you are locked up for?

A (No answer).

Q Can you tell me, was it for something that you did that was unlawful, was it for shooting a man by the name of Pierce, do you remember?

A (No answer).

Q Was it for shooting a little girl by the name of Daly?

A That is what they tell me.

Q Now, did you shoot either one of those two people or didn't you?

A No.

Q You did not shoot either one of them?

A No.

Q Do you think it is wrong to shoot people and kill them?

A Yes, sir.

Q Do you know what the punishment is?

A Yes.

Q What, what is the punishment?

A (No answer).

Q Can you tell us?

A (No answer).

Q If you tell us that you did not shoot them, how was it that you confessed that you did shoot them, can you account for that reason?

A (No answer).

Q If you did shoot them have you any regrets over it?

A (No answer).

Q During the last year or two when you attempted to study—

Exhibit D-1

A I just said——
Q Go ahead, tell me.
A They would ask me questions and I would say no——
Q All right, go ahead.
A (No answer).
Q Who is the superintendent of Overbrook, what is his name?
A Guy Payne.
Q Who is the assistant superintendent?
A I don't know.
Q Who was the doctor in charge of you there, in the ward you were in?
A Dr. Thompson and Dr. Stamp, and another man used to come around but he did not speak to me. I don't know what his name is, a big, tall man.
Q Did you ever practice self-abuse?
A Yes, sir.
Q Much?
A No, at times much.
Q How old were you when you began it?
A Twelve.
Q And you practiced it ever since?
A Yes, at long intervals not at all.
Q Are you tired?
A Yes, sir.
Q You are tired?
A Yes.
Q All right, I will talk to you again some time. Do you mind my talking to you?
A No. What is your name?
Q My name is Washington, will you remember that?
A Yes, sir.

At 3:35 the examination was discontinued.

Exhibit D-5

Essex County Court of Oyer and Terminer

State of New Jersey vs. Harrison W. Noel	On indictment No. 85, Sep. T., 1925, for Murder DEPOSITION.

DESPOSITION of Menas S. Gregory, a witness on behalf of the defendant in the bove entitled matter, taken at Bellevue Hospital, East Twenty-sixth Street, New York City, on Thursday, November 5, 1925, at 10:30 o'clock, A. M., before Thomas F. Bresnahan, a memeber of the Bar of the State of New York, under an order of Hon. Edwin C. Caffrey, Judge, dated November 4, 1925, and in the presence of William A. Wachenfeld, Counsel for the defendant, and J. Victor D'Aloia, Assistant Prosecutor of the Pleas of Essex County.

It is stipulated by and between counsel that the signature of the witness to his deposition be waived.

MENAS S. GREGORY, benig duly sworn according to law, testifies as follows.

DIRECT EXAMINATION by Mr. Wachenfeld.

Q You live in New York City?
A Yes.
Q Where?
A Wyoming Apartments, 853 Seventh avenue.
Q You are connected with Bellevue Hospital?
A Yes.
Q In what capacity?
A I am Director of the Psychopathic Department of Bellevue Hospital.
Q Doctor, how long have you had experience with mental and nervous diseases?
A Oh, twenty-five years.
Q And have you been connected with any institutions outside of Bellevue Hospital?

Exhibit D-5

A Yes, I was assistant physician in several state Hospitals for the insane in the State of New York, at Willard State Hospital, at Binghamton State Hospital, and particularly King's Park State Hospital King's Park, Long Island. I was also assistant physician at the Craig Colony for epileptics and state institutions for the care and treatment of epileptics and I was appointed here in 1903 an assistant alienist. In 1904 I was made alienist in charge of the department and then later I was made director, and so forth. I am Professor of Psychiatry at New York University, Bellevue Medical College and formerly a teacher at Columbia University.

Q In other words, Doctor, you followed this same line for twenty-five years in these different institutions you told us of?

A Yes, exclusively.

Q Now, on the 28th or 29th of June, did you see the defendant, Harrison W. Noel, here in this institution?

A Yes. I have a very distinct recollection that I saw him.

Q Will you tell us the circumstances that you saw him under?

A It was in the afternoon, I think about a quarter of two or thereabout—right after luncheon. I was making rounds through the hospital and the assistant physician, who was in charge of ward 38, called my attention to the fact that a young boy and been brought to the hospital about an hour before that and that he could not talk at all, and he would not answer any questions and that they thought that he was suffering from aphasia, a loss or disorder of the speech. Since he was unknown and nobody seemed to know his name, he called my attention to him and I took a special interest in the case. When I saw him and after I started to talk to him for a few moments, he started to talk.

First he refused to answer questions, and then after about ten or fifteen minutes we got his name and where he lived and so on, and I passed on to see other patients in the ward.

Q How long do you suppose you saw him all told?

A I imagine about fifteen to twenty minutes. I cannot tell you exactly.

Q And when you finally got him to talk, did he tell you anything about the Essex County Hospital?

A Well, while I was talking I had the assistant physician take

Exhibit D-5

notes and here are the notes he took in this record.

Q On refreshing your recollection, will you tell us what he said about the Essex County Hospital?

A I think he said he was at the Essex County Hospital and he said, (Reading) "I went home and did not want to go back. I left home and"—I cannot read this little word—

MR. D'ALOIA. Is it Overbrook?

WITTNESS. No.

(Reading)

A (Continuing.)—"and called up my father."—

Q Can you read this paper? This is the typewriting of it.

A Yes. "I was home and did not want to go back. I left home, and called up my father but he was not at work."

Q Did he say why he was sent to the Essex County Hospital?

A No. This statement was gotten from him not as a running story but in answer to repeated questions. He would stop and halt in the middle of sentences and his answer would be broken here and there, and this is a story of what he said—what I was able to get out of him after repeated questions.

Q Yes, but after repeated questions, did he tell you why he was sent to the Essex County Hospital?

A (Reading) "In February, 1925, I went to Essex County Hospital because I woke up a doctor early in the morning. I could not sleep and got up four o'clock in the morning. I heard someone talk about a spinal puncture. They put something in my back. I went out for a walk with my brother Sunday. We got home, and I asked Dr. Thompson if I could stay for lunch. He said, 'Yes! After lunch I hopped on sister's bike and beat it. I abandoned the wheel at Battery Park, New York. I had one dollar when I left home. I stayed at the Rescue Society last night. I loafed around Battery Park till ten A. M. and then took the 'L' to Forty-second street, and then went to the Police Station. I was afraid I would get hungry and better get the police to send me to some hospital." He might have said a few other things besides, but these were the most material things he said.

Q Does the record show what date you saw him on?

A Yes. June 29, 1925, and it was in the afternoon.

Q How long did he stay here in the institution?

Exhibit D-5

A Well, from the record?

Q From the record.

A He remained about three hours longer. I think in the afternoon his father had been notified—this I was my assistant, who is not with me now—to come to the hospital, that his boy was here, and that when he came here he insisted to take him home with him, and it is our rule here that any patient who is a non-resident and belongs to another state, and whose father, who was apparently a responsible person practicing attorney in the State of New York, comes for him, that he be discharged in his custody, and he was requested to sign an affidavit that he would fully be responsible for the discharge of this boy to his custody.

Q And the paper that Mr. Noel signed, does that say it was against the advice of the physicians to take him out?

A Yes. That is a rule we follow.

Q And was it against the advice of the physicians here to take him out?

A Well, not entirely so, but we wished to relieve the city, or the hospital, of responsibility in discharging the patient, and at the same time impress the fact upon the individual taking the patient away that he must look out for him.

Q Do you know whether at that time, when he took the patient out, he promised to return the patient to the Overbrook Hospital in New Jersey?

A No, but I was told after the patient had been taken out by his father that the Essex County or Overbrook Hospital—Dr. Thompson telephoned here after the patient was gone an hour or two—

MR. D'ALOIA. Did he talk to you?

WITTNESS. No.

MR. D'ALOIA. That is not admissible.

Q Now, Doctor, during your observation of him, could you come to any opinion as to whether he was suffering from any mental disease?

A Well, I could see that he was suffering from some mental trouble.

Exhibit D-5

Q And what would you say the trouble was?

A Let me just qualify it.

Q Yes.

A From his attitude and manner, the way he answered questions and the way he looked and the way he moved, I believed that he was mentally ill.

Q And do you know what mental disease he was suffering from, what name?

A Well, I was not willing to make a definite diagnosis on a very short and brief examination and, when the assistant physician who discharged him the next morning came to see me about the diagnosis, I said, "You put there undiagnosed; since he has been here a short time.

Q You had no record of him at all?

A No.

Q And would you hazard an opinion from what little you did see of him what he was suffering from?

A I would not state under oath what he was suffering from. I could give you my impression.

Q Give us your impression, please.

A My impression was that he was suffering from dementia praecox.

Q And is a person suffering from dementia praecox, as you saw him at that time, able to distinguish between right and wrong?

A No, of course not.

Q And what is the prognosis of that diseases, doctor, favorable or unfavorable?

A The prognosis is uniformly bad. Occasionally there might be a cessation of the actual diseased processes, the individual then will remain weak and simple minded, but in eighty or ninety per cent of the cases it is progressive and a complete mental deterioration or dementia ensues.

Q Then, Doctor, what is your opinion, conceding the disease to be as it impressed you and without any medical care from that time on for a period of two months, would you think his condition would be better or worse.

WITNESS. May I ask if this is within the provision—

MR. WACHENFELD. I do not think you are compeled to answer.

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WITNESS. Am I testifying to facts, or expert opinion? I thought my deposition was only for facts.

MR. WACHENFELD. Well, that is true. That is all we can ask you.

MR. BRESNAHAN. You can refuse to give your opinion.

(Question read.)

A Well, there are a lot of elements entering into a situation of that kind so that I would rather not answer that question.

MR. WACHENFELD. I would like to offer now, in place of the original record which the doctor has before him, this, marked as a true copy.

Paper marked Exhibit D-1.

CROSS EXAMINATION by Mr. D'Aloia.

Q Doctor, when you saw this young man for about a fifteen or twenty minute period on this day, June 29, and he began to talk, do you recall any question that you put to him to which the answer was unresponsive?

A No, I do not, but I recall that he did not answer a good many of the questions; in fact, for a few moments he did not answer them, just as he had done with the other doctors.

Q That you simply would call retardation?

A Not necessarily.

Q What would you call it?

A It might be in some cases. It might be retardation or negativism, according to the character of the slowness in answering.

Q How many questions do you think that you put to him in that fifteen or twenty minutes?

A I do not know.

Q He did not have any defect in memory when he gave you this date of February, 1925, when he first went to the Essex County Hospital, and did not have any trouble in remembering the month, did he?

A Well, I did not particularly test his menory. I was getting some information. He was able to answer some questions, which indicated that he had memory.

Q Now, it was the patient who gave you this specific date,

Exhibit D-5

'February, 1925, I went to the Essex County Hospital, because I woke up a doctor early in the morning."

A Assuming that those things are correct, that is so.

Q Now, assuming that that is correct, and assuming, also, that it was correct that he could not sleep and he got up at four o'clock in the morning, if he told you all these things that would indicate that his memory was pretty good?

A For those things.

Q Now, assuming he told you, also, this, "They put something in my back;" assuming it was a fact that they did make a lumbar puncture at this hospital where he was for a while, you would say that that showed his memory was good.

A Yes, for that thing, because he could remember.

Q Assumnig that the Sunday previous to the visit here to the hospital—the Sunday previous to the 29th of June—he had left the hospital with his brother and had gone home—that is, had left Overbrook with his brother and had gone home and obtained permission from Dr. Thompson, an alienist in charge of him, and had been told by Dr. Thompson that he could stay home for lunch and then he made this statement to you, "I went out for a walk with my brother Sunday; we got home and I asked Dr. Thompson if I could stay for lunch and he said yes," now, wouldn't that indicate that his memory was pretty good as to what occurred the previous Sunday, if those facts were true?

A Yes.

Q Well, when he told you, also, that he had taken his sister's bike, as he put it, and abandoned the wheel at Battery Park, New York, and he only had a dollar when he left home, and that he had stayed at the Rescue Society the night before, and those were facts that would indicate that his memory was good?

A Yes.

Q When he went on and told you that he loafed around Battery Park until ten o'clock in the morning and then he took the elevated road to Forty-second street and then he went to a police station because he was afraid he would get hungry and he better go to the police to send him to some hospital, and those were facts, that he had gone to the police station and taken the elevated road and loafed around Battery Park until ten o'clock A. M., and that he had gone around on his sister's bike and left it down at Battery Park, that would indicate his memory

was pretty good?

A Yes, for those things.

Q Now, outside of this retardation or negativism that you described as a symptom, you observed, did you observe any other symptoms?

A Well, I didn't say that I observed retardation. You asked me, "Isn't that retardation." It might be retardation, according to the case. Now, my opinion was it was negativism.

Q Now, outside of that symptom which you called negativeism, was there any other symptom?

A Well, his general attitude. There was a constrained attitude, and it is quite difficult to describe it but easily understood when you look at him. He was in an attitude of this kind (illustrating) his hands down on his lap and his face quite mask like and his lips tight. We would look upon that as a symptom of a catatonia dementia praecox.

Q Could you differentiate between that man and a young fellow who is tired from loss of sleep and who had slept in the park and who had loafed around all night and had not had any proper rest and had gone hungry and had not had the proper food.

A Yes, a man of that kind you describe would be relaxed instead of being tight and in a constrained attitude of the kind I have mentioned.

Q Any other symptoms besides that?

A The way he answered the questions. Here was a boy, after he began to answer the questions, as you put it, that seemed to have a pretty good memory and that had an idea that he knew what he wanted to say in answer to questions. His answers to questions would come in piecemeal, in fragments, in stops and halts everywhere, but they would be responsive and I could see that he understood what I said to him and that he was answering the questions.

Q Well, the questions you put to him and the answers he gave indicated, first, that he comprehended the questions and, secondly, that he made responsive answers and at no time was his speech incoherent.

A No, except that he would halt and give the impression that he did not care to talk unless—

Q Made to.

Exhibit D-5

A Yes.

Q The impression was he would not talk unless you compelled him?

A Yes.

Q Now, isn't it true when he did talk that you did not find any evidence in what he said of a disassociation of ideas?

A You do not mean disassociation of ideas. You mean any disorder of association of ideas.

Q Well, we will put it that way. We will put it every way. Did you find any evidence?

A Yes. The fact that his ideas were not flowing in a fluent manner, indicated some disorder of association of ideas.

Q Yes, but you did not find any evidence of disorder of association except this pause between one statement and another?

A Yes.

Q But both statements related to each other?

A Yes. And another disorder of association of ideas was that

A Yes. The fact that his ideas were not flowing in a fluent he was trying to answer the questions in as few words as possible and not answer questions—I might use the same word as you used, compelled, forced to answer, and also a disorder of association of ideas we find in insane persons.

Q But you did not find any evidence of disconnected thought?

A Not the kind that would have been disconnected such as association incoherency verbigeration and coining of new words.

Q The next day when you were asked to diagnose the ailment that this young man might have been suffering from, you did not make any such diagnosis, because your examination of him had been rather cursory and superficial?

A Yes.

Q And had only lasted fifteen or twenty minutes?

A Yes.

Q Now, this clause that Mr. Wachenfeld called your attention to in the alleged affidavit made by the father that he was being discharged against the advice of physicians, that particular phraseology was simply with the idea of protection generally for the institution?

A As well as for the patient.

Q Yes, protection for the patient, but it did not relate particularly to the patient's condition.

Exhibit D-5

A Well, it only related so far as to state that the patient was not well. If the patient had been well, he would have been discharged and the diagnosis would have been not insane or not psychopathic.

Q Your first impression was that he was suffering from aphasia?

A No, not mine. They told me that they had a case of aphasia. Those that brought him here diagnosed the case as one of aphasia.

Q And after your examination you came to the conclusion that it was not a case of aphasia.

A When I examined him I said it was not a case of aphasia.

Q Because he answered your questions?

A Not exactly.

Q Well, one of the things, and the answers were responsive. Therefore, you removed from your thoughts that he was suffering from aphasia.

A No. In answer to question he did not show any form of aphasia.

Q Well, as I can sum up your examination of this man, he was not suffering from aphasia and he showed the symptoms you mentioned and you would not make any diagnosis at that time of his condition.

A Not a definite diagnosis, but I would say he was insane.

Q Well, when you use that word insane, you mean there was evidence of a mental trouble?

A Yes.

Q Doctotr, were you given a proper opportunity by your examination of fifteen or twenty minutes to definitely conclude and make up your mind as to what this particular young man was suffering from?

A No, for this reason, that my examination was a very brief one and I expected that he would remain here for at least several days for careful examination and observation, as is the custom with other cases.

REDIRECT EXAMINATION by Mr. Wachenfeld.

Q Now, Doctor, you said, as I recall it, that you were convinced of his condition and thought that he would stay here so

Exhibit D-5

you might observe him further?

A No, I didn't say that.

Q You were convinced that time that he was insane?

A I think I have so stated.

Q Now, dementia praecox cases frequently have good memories, haven't they?

A Well, that is one mentatl faculty that is not effected very much in dementia praecox cases.

Q Now, did you find this boy—is it your opinion that when he says, "I went to the Essex County Hospital because I woke up a doctor early in the morning," that that was a delusion or hallucination?

A I did not look upon it in any other way. I didn't know whether it was a delusion or not.

Q In other words, if it were a fact, it would not be a delusion?

A Yes.

Q But if it were not a fact, it would be a delusion?

A Well, it could be a lie. Insane people do lie.

Q But if he said to you, "I went to the Essex County Hospital because I woke up a doctor early in the morning," and that was not a fact and he believed that was why he was sent to the hospital, then he was laboring under a delusion.

A I would say that he had given to that particular fact a delusional interpretation.

RECROSS EXAMINATION by MR. D'ALOIA.

Q Now, Doctor, did you find any evidence of any delusion from your examination?

A Well, it was very difficult for me to find that he had any delusions, because my examination was very brief, as I said before.

Q Did you find any evidence of this young man suffering from any hallucination in your examination?

A No, I, in fact, didn't go into that matter at all.

Q Is Bellevue Hospital an insane asylum?

A No.

Q Is Bellevue Hospital a hospital for the insane?

A No. sir. This is a general hospital.

Q What is the psychopathic division of this hospital?

Exhibit D-5

A The psychopathic division of this hospital is intended for the care of emergent cases and for observation within a few days and a recommendation to the families and friends of the patients as to their proper disposition.

Q And do I understand you to say that the majority of patients received in the psychopathic ward are discharged as sane after a period of observation?

A I would say that only one third of the patients that are received by the psychopathic department are committed to hospitals for the insane as insane persons.

Q What treatment,if any, is given to any person brought into the psychopathic division?

A This division is not intended for the treatment of mentally sickpeople, only for observation, as I stated before, but if there are any acute physical disorders of any sort, they receive treatment for conditions of that kind.

Q Do you know the exact hour when Harrision W. Noel was first seen by you?

A No, but I would say between half past one and half past two.

Q Do you know about what time after you saw him and asked him questions for fifteen or twenty minutes he left there in the custody of his father?

A Well, in the afternoon I was not present at the hospital at the time his father came.

REDIRECT EXAMINATION by MR. WACHENFELD.

Q Doctor, Do I understand that the object of this particular section of the hospital is to observe people who are supposed to be or are thought to be by some one mentally defective or to have something the matter with them mentally.

A Well, the object of this division of the hospital, using the legal phraseolgy, is for the observation and examination of alleged insane persons, which also includes defective mental factors.

Exhibit D-5 Certificate of Examiner.

ESSEX COUNTY COURT OF OYER AND TERMINER.

State of New Jersey vs. Harrison W. Noel	On indictment No. 85, Sep. T., 1925, for MURDER. Certificate of Examiner.

I, Thomas B. Bresnahan, a member of the Bar of the State of New York, do hereby certify and send to Hon. Edwin C. Caffrey, Judge of the Essex County Court of Oyer and Terminer, the within deposition of Menas S. Gregory, taken before me in pursuance of an order of said judge dated November 4, 1925.

Witness my hand this 6th day of November, 1925.

THOMAS B. BRESNAHAN.

Exhibit D-11

William M. Kingsley, Chairman E. Graham Wilson, Secretary

West Side

Young Men's Chirstian Association

318 West 57th Street

New York

Telephone Columbus 1020

Public Correspondence

318 West 57th St.

New York, New York.

Mr. Frank F. Gray

My dear sir:

Please send me twenty-five dollars and have the rest of your estate put in my name, that is, legally fixed so that it becomes mine automatically when I am twenty-one. If there is not enough to support me, a wife and kids, in dependent of my work, we must raise some more.

You had better come away from that sanitarium. It is

(Reverse Side)

sinfully expensive anyway, and for all I know to the contrary, beyond my means. I suppose there is a lease on those rooms in the Madison building.

If you do not wish to comply with my demands, I shall consider you unfit to be shot, and will "spurn you utterly."

Respectfully,

Harrison Noel.

Exhibit D-6

11-12-25

Dear Uncle:

Please die.

I wish you had some money, so you could leave it to me. But if you haven't, never mind. Die anyway. You see, I'm sure there's somebody somewhere in the world who wants to be preserved, protected and defended by me, so please die.

Harrison.

P. S. If this request meets with your approval, kindly O K and return.

Exhibit D-7

Dear Uncle:

Please die.

I wish you had some money, so you could leave it to me. But if you haven't never mind. Die anway. You see, I'm sure there's somebody somewhere in the world who wants to be preserved, protected and defended by me, so please die.

Harrison.

Exhibit D-8

Dear Uncle:

I have been thinking about some of my friends and acquaintances who know you. It strikes me that I am the only one who has ever thought you anything but kind and generous. I ask your forgiveness.

Harrison.

295 No. Mt. Ave.
Friday the 6th evening.

Exhibit D-9

Dear 'Uncle:"

You must have gotten the letter I sent last night saying I was home again.

Dad had to go into town last night about nine, so I was left alone with the ladies, for which I was thankful.

Started school to-day. Columbia Extension. Get well quick.

H. N.

Saturday Morning

(Inside Sheet)

My dear sir:

I am attending school again as I trust a young man should. I am to study history, economics, and, for the sake of certain regulations, French, with a view to preparing for law and politics.

Love,

H. N.

Exhibit D-10

Dear Uncle:

If you haven't gotten the letter I wrote last evening and mailed this morning, let me know, 412 West 115th Street.

Love,

Harrison.

Assignment of Error

NEW JERSEY COURT OF ERRORS AND APPEALS.

State of New Jersey, Defendant in Error. —against Harrison W. Noel, Plaintiff in Error	On Writ of Error. Assignment of Error.

Afterwards, that is to say, on the first Tuesday of February, in the year of our Lord, Nineteen Hundred and Twenty-five, at the February term of the New Jersey Court of Errors and Appeals in the last resort in all causes comes the said Harrison W. Noel by William A. Wachenfeld, his attorney, and says that in the entire 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 aforesaid, there is manifest error in this, to wit:

1. That the court directed that the defendant should enter a plea. Steno's Min. P. 16.

"MR. LANE: If your Honor has concluded to let this defendant plead, I ask your Honor to premit us an exception.

"THE COURT: Yes, I have decided the defendant shall enter a plea."

2. Because the court entered a plea of not guilty. Steno's Min. Page 16.

3. That the court decided an order directing that the defendant Harrison W. Noel "do now stand trial upon the indictment herein and that he be remanded to the Essex County Jail to await said trial."

4. That the decision and order of the court directing the defendant, Harrison W. Noel, to stand trial is not supported by the evidence.

5. The decision of the court and the order directing that the defendant, Harrison W. Noel, stand trial is against the weight of the evidence.

6. That the said court before whom etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Harrison W. Noel aforesaid at the opening of the trial the

court on its own motion dismissed a juror, Walter Charlton, without just cause and made remarks which were prejudicial to the interest of the defendant. Steno's Min. Page 1.

Question by MR. D'ALOIA.

"Have you any conscientious scruples against capital punishment?

A Yes, Sir.

"THE COURT: What are they?

"THE WITNESS: I believe in a life sentence instead.

"THE COURT: You are another one who puts yourself above the law where, in a proper case under the law of New Jersey in first degree murder the sentence is death you are above the law.

"The Witness: I wouldnd't say I am above it, but I don't believe in it.

The Court: Why?

"THE WITNESS: I don't think the State has got a right to take a life.

"THE COURT: Is that a religious scruple?

"THE WITNESS: Yes Sir.

"MR. D'ALOIA: I will challenge this juror for cause.

"MR. WACHENFELD: I object, if the court please, to this challenge for cause being permitted. First, it is not sufficient in itself. Secondly, because of the statute of the State of New Jersey the law of this state says it is up to the jury to determine what the sentence should be and the mere fact that a man has objections to capital punishment is not sufficient in itself. I object to the dismissal of this jurror for cause on those grounds.

"THE COURT: Objection overruled.

"MR. WACHENFELD: Then as I understand it the record is that he is being dismissed at the decretion of the court?

"THE COURT: Yes."

7. That the said court before whom etc., and upon the trial of the issue so joined during the opening of the prosecutor to the

jury permitted the prosecutor to state that defendant had committed other crimes not charged in the indictment for which the defendant was on trial. Steno's. Min Page 5.

"He left the Overland car which belonged to the Noel family where the Dodge car which had been driven by Pierce the day before had been left by him the afternoon before, and took the Dodge car leaving the Noel car there.

"MR. WACHENFELD: I would like to object on the ground that anything that happened on the following day is evidence of another crime and not admissible in this case.

"THE COURT: Objection overuled.

"THE PROSECUTOR continuing page 6: And that as this defendant was waiting there and as the chauffeur stopped and came toward his car he pulled out his automatic pistol which he had and fired a shot at the chauffeur who was pursuing him.

"MR. WACHENFELD: Same objection.

"THE PROSECUTOR continuing page 6: And the defendant kept on going and got across the Essex County line with the little girl, whose name was Mary Daly.

"MR. WACHENFELD: I will press my objection to anything which the Prosecutor will say as to what happened from this point on, on the ground that it is something which is not admissible in evidence in this case.

"THE COURT: Objecton overruled.

"THE PROSECUTOR continuing page 7: He drove over the Essex County line to a part of Passaic County known as Wayne Township and then and there we will contend he discovered, this defendant discovered that the little girl he had taken was not the little girl he had intended to take, and in his haste he had made a mistake and that he killed that little girl.

"MR. WACHENFELD: I ask an exception now to the prosecutor's remarks in regard to the killing of the little girl on the ground that it is no part of this case, on the ground that there is another indictment pending against this defend-

ant upon the ground that it is entirely separate and distinct from anything which the defendant is being tried for under this indictment, and upon the ground that it is no part of this scheme of things at all. I am admitting that the question of motive may be admissable in evidence, but I say that when the prosecutor makes any statement as to the killing of this little girl, he is putting in something that is Prejudicial to the defendant, and is stating something which is not admissible as evidence in this case, and I ask an exception to any such remarks and ask the Court to admonish counsel and to instruct to the jury to disregard it.

"THE COURT: I will overrule the objection at this time and say at the proper time I will instruct the jury as to my understanding of the law and the facts relating to them.

"MR. WACHENFELD: Then for the purpose of the record may I at this time ask for a mistrial if your Honor please on the ground that the defendant has been prejudiced.

"THE COURT: Overruled.

"THE PROSECUTOR continuing page 13: He also succeeded in maintaining his denial that he did not know anything about the killing of Pierce or about the disappearance of the little girl.

"MR. WACHENFELD: I make the same objection with the same request that the court instruct the jury with reference to this phase of the case and will ask your Honor to grant me an exception to anything which the Prosecutor might say."

8. That said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness Fred Gallagher to give testimony concerning the commission of other crimes committed by the defendant, page 67.

"Leaving Montclair Police Headquarters, who did the directing of the driving?

A Noel.

"MR. WACHENFELD: I object to anything done or said after this on the ground that it is another crime and not admissible in this case.

Assignment of Error

"THE COURT: Overruled."

9. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to testify to admissions made by the defendant concerning other crimes. Page 69.

"Q Did Noel get out? A Noel got out.

"MR. WACHENFELD: I object on the same ground that it is prejudicial to the defendant and on the ground that is is a separate crime, on the ground there is another indictment pending against this boy for the crime and on the ground that it has nothing to do with the indictment for which this boy is being tried at this time.

"THE COURT: Overruled."

10. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to testify to admissions made by the defendant concerning other crimes. Page 70.

"Q After you alighted from the car at that particular point in the woods with Noel, tell us what happened.

"MR. WACHENFELD: I object.

"THE COURT: Overruled.

"A We crawled underneath the fence there.

"Q Who did? A Noel and myself and Sargeant Lennon and all the occupants of the car and Noel.

"MR. WACHENFELD: The same objection.

"THE COURT: Same ruling.

"A (continuing) And he said 'There she is there' and she was lying there with some sumac bushes over her.

"MR. WACHENFELD: May I move to strike out the testimony of the officer on the same ground?

"THE COURT: Motion denied."

11. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to testify in reference to other crimes. Page 71.

"Q Who was lying there?
"MR. WACHENFELD: The same objection.

"THE COURT: The same ruling.
"A Mary Daly.

"MR. WACHENFELD: And may I move to strike it out?

"THE COURT: Overruled.

Page 72.

"Q Will you describ that body?

"MR. WACHENFELD: Same objection.
"A She was lying there on her back.

"MR. WACHENFELD: Wait. The same objection.
"Q How do you know it was the body of Mary Daly?

"MR. WACHENFELD: The same objection.

"THE COURT: I will allow that.

"A Well, Noel had told that was the body of the girl he had taken away."

12. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witnessed Fred Gallagher to testify to admissions made by the defendant after the defendant was promised that he would not be taken back to Overbrook or would not be prosecuted and that he would be given the sum of Four thousand dollars. Steno's. Min. Page 80.

"MR. WACHENFELD: I object to anything that was said by the defendant under those circumstances.

"THE COURT: Overruled.
"MR. WACHENFELD: Shall I state my record further?
"THE COURT: If you want to.
"MR. WACHENFELD: Upon the ground that it is perfectly apparent that this boy was promised three different things at least by the police officers, and upon the ground that under the case of State v. Bullock that presumption continues and the burden of proof is upon the State to show that the boy's mind was disabused by the promises made by the police officers and other people, and there is no evidence in

this case that it was disabused, and there is no evidence in this case that the officers told him about it.

"THE COURT: Same ruling.

"Q What was it that you said coming back?

Page 81.

"MR. WACHENFELD: I object to what the defendant said to Gallagher or what Gallagher said to the defendant, upon the same ground.

"THE COURT: Objection overruled.

"Q What did he say?

Page 82.

"MR. WACHENFELD: Same objection.

"THE COURT: Same ruling.

"A He said he had shot Pierce."

Page 85.

"Q What did you say to him, what did he say to you, or what did you hear him say to anybody else about him?

"MR. WACHENFELD: Same objection.

"THE COURT: Same ruling.

"A We asked him what became of the gun and he said, 'It is in the rear seat of his car'."

13. That the said court before whom etc., and upon the trial of the issue so joined erroneously sustained the objection of the prosecutor to a question submitted to the witness on cross-examination by counsel for the defense. Page 94.

"Q Why did you keep that from him if you told him everything else?

"Mr. D'Aloia: I object to that."

The Court: Sustained.

14. That the said court before whom etc., and upon the trial of the issue so joined eroneously sustained the objection of the prosecutor to a question porpounded by counsel for the defendant to the witness, Chief Reilly. Page 113.

"Q And you started to talk to him about somewhere around five o'clock?

"MR. D'ALOIA: I object to that as not proper cross-examination.

"THE COURT: Sustained the objection."

15. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the defendant's confession, marked "Exhibit S12" to be offered in evidence. Page 124.

"MR. D'ALOIA: I offer this in evidence.

"MR. WACHENFELD: I object on the ground that it has not been properly proven; second, that I have already mentioned, to wit: that there had been promises made to this boy at the time, under the case of State v. Bullock; thirdly, that the confession contains evidence of the commission of other crimes for which the defendant is not on trial and which are inadmissible for that purpose."

Page 132.

"MR. WACHENFELD: May I add an additional objection to the admission of the confession on the ground that it does not appear that it was voluntary?

"THE COURT: Overruled the objection.

16. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness John Sandin to answer the following questions: Page 134.

"Q And when you got out there to West Paterson what did you do?

"MR. WACHENFELD: I object to what was done in West Paterson on the ground that it is evidence of another crime and not admissible in this case.

"THE COURT: Overruled.

"Q What did you do?

"A I pulled up alongside of this car and.

"MR. WACHENFELD: I object and make the same objection to the answer.

"THE COURT: Same ruling.

"A I pulled up alongside of the Dodge car and this fellow Noel was sitting in the driver's seat."

Assignment of Error

17. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to answer the following question, page 136:

"Q How big a person is she?

"MR. WACHENFELD: Objected to.

"THE COURT: Same ruling.

"A Six years old."

18. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to answer the following questions:

"Q When you got to this car state what happened.

"MR. WACHENFELD: Same objection.

"THE COURT: Same ruling.

"A I pulled up alongside of this car and the little girl was sitting right close to him and I could not see her and I wondered if he threw her out, and I took a good look around and I saw the litle girl in the car.

"Q Then what did he do?

"MR. WACHENFELD: The same objection.

"THE COURT: Overruled.

"A He pulled the gun."

19. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted said witness to answer the following question, Page 137:

"Q When you drew alongside of this car on this pohtograph, what did this defendant do, if anything?

"MR. WACHENFELD: Objected to on the same ground.

"THE COURT: Same ruling.

"A He reached for the gun.

"Q What did he do?

"MR. WACHENFELD: Same objection.

"THE COURT: The same ruling.

"A He shot me."

20. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the same witness to answer the following question, Page 139:

"Q Were you taken to the hospital?

"MR. WACHENFELD: Objected to, if the court please, on the same ground.

"THE COURT: Overruled.

"A Yes Sir."

21. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the prosecutor to mark in evidence Exhibit S14, page 141:

"MR. D'ALOIA: I offer this cap in evidence.

"MR. WACHENFELD: Objected to on the ground it is another crime and not relevant.

The Court: I will admit it.

22. That the said court before whom etc., and upon the trial of the issue so joined eroneously permitted Exhibit S16 to be marked in evidence over objction of defendant. Page 144.

23. That the said court before whom etc., and upon the trial of the issue so joined erroneously sustained the objection of the prosecutor and refused to permit counsel for the defendant to ask the following question of the witness, Dr. Washington, page 202:

"Q Assuming, Doctor, that he did follow these various occupations, would you say there had been . . .

"MR. D'ALOIA: I object to that question.

"THE COURT: Sustained the objection.

"MR. WACHENFELD: May I have it on the record? I do not think I finished it.

"THE COURT: Well, you have gone far enough for me to conclude it is not in evidence.

24. That the said court before whom etc., and upon the trial of the issue so joined erroneously refused to direct a verdict for the defendant, page 205.

25. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the following ques-

tions to be answered, over objection by the witness, Dr. Thompson, page 319:

"Q Now when he continues and he tells you this: "When said she was talking. I took the revolver from my right hip she was talking. I took the revolver from my right hip trouser pocket and I told the little girl to step out of the car. I led her two feet out of the road. I shot her twice in the side of the head and dragged her body to the spot where she was found in the sumac bushes.' Would you say that was a series of associated ideas of a person who is undergoing that mental process, having for an object the hiding of the little girl's body after he had shot the little girl twice?

"MR. WACHENFELD: I object to the question, if the court please, and I object to the recitation of by the prosecutor on the ground that it is another case and is not admissible here.

"THE COURT: Overruled."

Page 320:

"Q What would you say about the association of ideas, the goal idea being the hiding of the body of the little girl whom he had previously shot twice?

"MR. WACHENFELD: Same objection.

"THE COURT: Overruled.

"A Granted that this statement was dictated by the defendant and by him alone, I would say that the association of ideas is all right."

Page 352:

"Q This particular bit of information that you gleaned from him about why he had killed, first, the chauffeur, and then the little girl, was that in line with the story that you had sometime previous to this examination given vent to, that his emotions were damned?

"MR. WACHENFELD: The same objection upon the ground that the question is not admissible, improper, irrelevant and evidence of another crime which is prejudcial to this defendant.

"THE COURT: Overruled the objection.

Page 357:

"Q Do you know whether he understood that he was under a charge of murder and that you and Dr. Davies, together with his attorney, Barber, from New York, were there to have an examination so as to help him out?

"MR. WACHENFELD: I object to that because there is no evidence in this case that Mr. Barber was his attorney.

"THE COURT: Objection overruled.

26. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness, Dr. McDonald, over objection, to answer the question propounded by prosecutor on cross-examination. Page 429:

"Q Now let me ask you a question. Assuming that on the first of September this very young man you examined for two hours on the 12th of September, goes to 136 Upper Mountain Avenue, Upper Montclair, and sizes up a very beautiful house and comes to the conclusion he is going to kidnap a girl from that house and ask for $4000. ransom—this is Tuesday, September 1st—and he thinks it over on the 2nd and on the 3rd he procures an automobile in some manner or other, and then on the 4th he kidnaps the girl, would you say there was a continuity of purpose of kidnapping that girl when he sized up the residence of the girl, or the place he thougt she lived on the 1st of September, and carried out this plan on the 4th?

"MR. WACHENFELD: I objected to the question on the ground it does not incorporate the facts proved in this case.

"THE COURT: Overruled.

"WITNESS: Will you read the interrogatory?

"NOTE: Question read.

"MR. WACHENFELD: I object on the ground there is no proof in this case that he thought it over, and the ground that he did not come to any conclusion that the Prosecutor said he was going to do it for a ransom of $4,000.

"THE COURT: Overruled."

27. That the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness, Estelle

L. Raymond, over objection, to answer the following question: Steno's. Min. Page 612.

"Q Where was he and what was he doing?

"MR. WACHENFELD: I object to that. There has been absolutely nothing in the case as to where the boy was.

"THE COURT: It might be competent as bearing upon his mental state.

"MR. WACHENFELD: I object to that. The burden is on the State. I have put on Dr. Washington and Dr. Markens.

"THE COURT: Overruled."

28. Because the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness, Estelle L. Raymond, over objection, to answer the following question: Steno's. Min. Page 613.

"Q During the ride of two hours between seven and nine, did you hear Mrs. Noel talk to Harrison?

MR. WACHENFELD: I object to that. The burden is

"THE COURT: The same ruling."

29. Because the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness, Estelle L. Raymond, over objection, to answer the following queston: Steno's, Min. Page 615.

"Q Where did you go? A We went up North Mountain Avenue to Belleview and up Belleview to Upper Mountain Avenue; then turned into Clove road and the street—

"MR. WACHENFELD: Same objection to that answer, that it is not going into the mental condition of this boy, and I objected on the ground it is not proper rebuttal.

"THE COURT: The same ruling."

30. Because the said court before whom etc., and upon the trial of the issue so joined erroneously permitted the witness, Thomas Dimond, over objection, to answer the following question, propounded by the Prosecutor, Page 617

"Q Did you have occasion to accompany a Mr. Barber to the jail?

"MR. WACHENFELD: I object to that your Honor

please, on the ground that it is incompetent and not rebuttal; certainly not rebuttal on anything in defense proved in this case.

"THE COURT: It may or may not be, I will allow the question.

"Q What day was it when you first accompanied him to the jail?

"MR. WACHENFELD: The same objection.

Page 618.

"Q Did Mr. Barber talk to Harrison Noel in your presence?

"MR. WELCHENFELD: Objected to upon the same ground.

"THE COURT: The same ruling."

"MR. WACHENFELD: Objected to upon the same ground.

"THE COURT: The same ruling."

Q During that time, or during that half hour, did you notice any difficulty on the part of Harrison in speaking to Mr. Barber? Page 619.

"MR. WACHENFELD: I object to it upon the ground that it calls for a conclusion and is not proper rebuttal.

"THE COURT: Overruled."

31. Because the trial court before whom etc., and upon the trial of the issue so joined charged the jury as follows: (page 625).

"The distinguishing feature between the two degrees is the intent with which the homicidal act is done. The presumption of law is that all murders rather all homcides are murder in the second degree, and the State has the burden of proving affirmatively, if the first degree is contended for, that the act was with the intent to take life, that the act was premeditated, deliberate and wilful, each requiring some appreciable time, and you must, in order to convict of murder in the first degree, find that the accused contemplated the act, that is, premeditated the act, then determined upon its commission, that is to say, wilfully intended it, then weighed such intent before carrying it into effect, or, in other words, deliberated. While these words do not require any appreciable time, nevertheless, each act, in the contemplation of the law, is separate

and distinct and there must be a concurrence of all in order to justify the finding of murder in the first degree."

32. Because the court before whom etc., and upon the trial of the issue so joined charged the jury as follows:

"The law now provides that every person convicted of murder in the first degree shall suffer death unless the jury, by their verdict and as part thereof and upon and after considering all of the evidence, recommend life imprisonment at hard labor, in which case the court cannot impose a greater punishment."

33. Because the court before whom etc., and upon the trial of the issue so joined charged as follows:

"Murder in the second degree comprehends cases of murder in which an attempt is made to do bodily harm without an intent to take life, where the act is done in the heat of passion without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfullness."

34. Because the court before whom etc., and upon the trial of the issue so joined charged as follows:

"There is proof in the case that Mr. Matz discovered the body and, if I recall the testimony correctly, the point where the body was found coincides with the declaration of the defendant as to where he placed it."

Upon the ground that there was no such testimony in the case.

35. Because the court before whom etc., and upon the trial of the issue so joined charged as follows: (Page 629).

"If insanity, as a defense, were such that a case could be disposed of merely on proof that a defendant were insane, the problem would be simple. However, the question of insanity as a defence, and the relation of an insane mind with reference to an act, is something to be further considered by you in the light of the rule of law as enunciated by our higher courts. Was the prisoner insane at the time of the alleged commission of the crime? When I speak of insanity, I am going to be definite later on. The law presumes a man sane until the contrary is proven. The defendant in this case was adjudged insane, prior to the third day of September. From that judgment we can presume the continuance

of that state until the contrary is proven. However, the fact that a man was insane at some former period in his life will not exonerate him forever if it be proven or if it comes up in the evidence that he has at any time been so far restored to his right mind as to be capable of moral action and of distinguishing between right and wrong; in other words, a man who had once been adjudged insane or been out of his right mind, might afterwards commit any crime he saw fit and then rely upon the former state as a complete defence to any act he might do."

36. Because the court before whom etc., and upon the trial of the issue so joined charged as follows: (Page 629).

"The question raised by this defence is not whether the defendant was ever insane at a former time in his life, but whether he was insane at the time of the killing of Pierce, whether he was insane at the time of the killing of Pierce, whether the accused at the time of the doing of the act was conscious that it was an act which he ought not to do. If he was not conscious of this, he ought to be acquitted. If he was conscious of this, he cannot be exculpated on the ground of insanity and he is then amenable to the law."

37. Because the court before whom etc., and upon the trial of the issue so joined, charged the jury as follows:

"The defendant has not taken the stand. You may consider that as a circumstance in this case. The fact that he did not take the stand, of course, cannot be used against him, but the circumstance of the fact that he did not take the stand may be considered by you."

38. Because the court before whom etc., and upon the trial of the issue so joined charged as follows: (Page 631).

"The question before you is not whether this man should be committed to an insane asylum."

39. Because the court before whom etc., and upon the trial of the issue so joined charged the jury as follows: (Page 628).

"I will not recount or go over in detail the testimony of the gentlemen who have testified. Dr. Washington, and Dr. Markens, called in the State's main case, said that the defendant knew the distinction between right and wrong."

40. Because the court before whom etc., and upon the trial of the issue so joined charged the jury as follows: (Page 629).

"Can you rely or could you rely on the defendant's testimony as to the circumstance of getting the taxi cab or the circumstance of the killing or the placing of the body?"

41. Bcause the court before whom etc., and upon the trial of the issue so joined charged the jury as follows: (Page 630).

"This defendant, like all other persons charged with crime, is presumed to be innocent and the burden of establishing his guilt rests upon the state. It must satisfy you that he is guilty beyond a reasonable doubt. When we speak of reasonable doubt, we do not mean beyond all possible doubt, nor do we mean a fanciful doubt, because there is nothing in human affairs beyond possible doubt, but it is that state of the case which, after the entire comparison and consideration of all the testimony, leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge."

42. Because the court before whom etc., and upon the trial of the issue so joined charged the jurry as follows: (Page 631).

"You men, despite your short tenure as jurors are just as important a factor in the administration of the criminal law as the office of the prosecutor or of the court."

43. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 3, Stenographer's Minutes, page 636.

44. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 4, Stenographer's Minutes, page 636.

45. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 7, Stenographer's Minutes, page 637.

46. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 8, Stenographer's Minutes, page 637.

47. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 9, Stenographer's Minutes, page 637.

48. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 10, Stenographer's Minutes, page 638.

49 Because the court before whom etc., and upon the trial of

the issue so joined refused to charge the defendant's request to charge No. 11, Stenographer's Minutes, page 638.

50. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 12, Stenographer's Minutes, page 638.

51. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 13, Stenographer's Minutes, page 639.

52. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 14, Stenographer's Minutes, page 640.

53. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 15, Stenographer's Minutes, page 640.

54. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 16, Stenographer's Minutes, page 640.

55. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendan't request to charg No. 17, Stenographer's Minutes, page 640.

56. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 18, Stenographer's Minutes, page 641.

57 Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 19, Stenographer's Minutes page 641.

58. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 20, Stenographer's Minutes, page 641.

59. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 21, Stenographer's Minutes, page 641.

60. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 22, Stenographer's Minutes, page 641.

61. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 23, Stenographer's Minutes, page 642.

62. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to

charge No. 24, Stenographer's Minutes, page 643.

63. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 26, Stenographer's Minutes, page 643.

65. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to No. 27, Stenographer's Minutes, page 643.

66. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 28, Stenographer's Minutes, page 643.

67. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 29, Stenographer's Minutes, page 643.

68. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge No. 30, Stenographer's Minutes, page 643.

69. Because the court before whom etc., and upon the trial the issue so joined refused to charge the defendant's request to charge No. 31, Stenographer's Minutes, page 643.

70. Because the court before whom etc., and upon trial of the issue so joined refused to charge the defendant's request to charge No. 32, Stenographer's Minutes, page 643.

71. Because the court before whom etc., and upon the trial of the issue so joined refused to charge the defendant's request to charge, No. 33, Stenographer's Minutes, page 644.

72. Because the guilt of the defendant of murder in the first degree was not made out by any competent evidence.

73. Because the verdict of the jury was contrary to the evidence.

74. Because the whole evidence in the case is insufficient to warrant the finding beyond a reasonable doubt of the guilt of the plaintiff in error of murder in the first degree.

75. Because the trial court in one or more things submitted the case to the jury upon a misunderstanding of the law and the evidence.

76. Because the trial court otherwise erred in ruling upon the evidence.

77. Because the verdict is against the weight of the evidence and the law as charged by the court.

78. Because upon the whole evidence and upon all the facts

and circumstances in the case the plaintiff in error was entitled to an acquittal.

79. Because there are divers and other errors in the record and proceedings aforesaid and in the giving of judgment and in the passing of sentence aforesaid by reason of which the said judgment and sentence should be reversed and set aside.

WHEREFORE, Because the aforesaid reasons, or some of them, constitute error prejudicial to the said plaintiff in error, he the said Harrison W. Noel, prays that the said judgment and sentence may be reversed annuled and altogether held for nothing, and that he may be restored to all things by occasion thereof.

W. WACHENFELD.
Attorney for and of Counsel with Plaintiff in Error.

Specification of Causes

NEW JERSEY COURT OF ERRORS AND APPEALS.

State of New Jersey, Defendant in Error, against HARRISON W. NOEL, Plaintiff in Error.	In Error. SPECIFICATION OF CAUSES FOR REVERSAL.

And now comes the said Harrison W. Noel by William A. Wachenfeld, his attorney, and says that in the entire record and proceedings aforsesaid, and also in the matters recited and contained in the said writ of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Harrison W. Noel says that the said judgment should be reversed and assigns the following causes:

1. Because the court directed that the defendant should enter a plea. Steno's Min. P. 16.

"MR. LANE: If your Honor has concluded to let this defendant plead, I ask your Honor to permit us an exception.

"THE COURT: Yes, I have decided the defendant shall enter a plea."

2. Because the court entered a plea of not guilty. Steno's Min. Page 16.

3. Because the court decided and entered an order directing that the defendant Harrison W. Noel "do now stand trial upon the indictment herein and that he be remanded to the Essex County Jail to await said trial."

4. Because the decision and order of the court directing the defendant, Harrison W. Noel, to stand trial is not supported by the evidence.

5. Because the decision of the court and the order directing that the defendant, Harrison W. Noel, stand trial is against the weight of the evidence.

6. By reason of the decision and the order of the court and the entering of a plea for the defendant, the defendant suffered manifest wrong and injury.

7. Because the court on its own motion dismissed a juror, Walter Charlton, without just cause and made remarks pre-

judicial to the defendant and the defendant suffered manifest wrong and injury. Steno's Min. Page 1.

Question by MR. D'ALOIA.

"Have you any conscientious scruples against capital punishment?

A Yes, sir.

"THE COURT: What are they?

"THE WITNESS: I believe in a life sentence instead.

"THE COURT: You are another one who puts yourself above the law where, in a proper case under the law of New Jersey in first degree murder the sentence is death you are above the law.

"THE WITNESS: I wouldn't say I am above it, but I don't believe in it.

"THE COURT: Why?

"THE WITNESS: I don't think the State has got a right to take a life.

"THE COURT: Is that a religious scruple?

"THE WITNESS: Yes, sir.

"MR. D'ALOIA: I will challenge this juror for cause.

"MR. WACHENFELD: I object, if the court please, to this challenge for cause being permitted. First, it is not sufficient in itself. Secondly, because of the statute of the State of New Jersey the law of this state says it is up to the jury to determine what the sentence should be and the mere fact that a man has objections to capital punishment is not sufficient in itself. I object to the dismissal of this juror for cause on those groudns.

"THE COURT: Objection overruled.

"MR. WACHENFELD. Then as I understand the record is that he is being dismissed at the discretion of the court?

"THE COURT: Yes."

8. Because the court in the opening by the Prosecutor to the

jury permitted the Prosecutor to state that the defendant had committed other crimes not charged in the indictment, which was prejudicial to the defendant. Steno's Min. Page 5.

"He left the Overland car which belonged to the Noel family where the Dodge car which had been driven by Pierce the day before had been left by him the afternoon before, and took the Dodge car leaving the Noel car there.

"MR. WACHENFELD: I would like to object on the ground that anything that happened on the following day is evidence of another crime and not admissible in this case.

"THE COURT: Objection overruled.

"THE PROSECUTOR continuing page 6: And that as this defendant was waiting there and as the chauffeur stopped and came toward his car he pulled out his automatic pistol which he had and fired a shot at the chauffeur who was pursuing him.

"MR. WACHENFELD: Same objection.

"THE PROSECUTOR continuing page 6: And the defendant kept on going and got across the Essex County line with the little girl, whose name was Mary Daly.

"MR. WACHENFELD: I will press my objection to anything which the Prosecutor will say as to what happened from this point on, on the ground that it is something which is not admissible in evidence in this case.

"THE COURT: Objection overruled.

"THE PROSECUTOR continuing page 7: He drove over the Essex County line to a part of Passaic County known as Wayne Township and then and there we will contend he discovered, this defendant discovered that the little girl he had taken was not the little girl he had intended to take, and in his haste he had made a mistake and that he killed that little girl.

"MR. WACHENFELD: I ask an exception now to the

prosecutotr's remarks in regard to the killing of the little girl on the ground that it is no part of this case, on the ground that there is another indictment pending against this defendant upon the ground that it is entirely separate and distinct from anything which the defendant is benig tried for under this indictment, and upon the ground that it is no part of this scheme of things at all. I am admitting that the question of motive may be admissible in evidence but I say that when the prosecutor makes any statement as to the killing of this little girl, he is putting in something that is prejudicial to the defendant, and is stating something which is not admissible as evidence in this case, and I ask an exception to any such remarks and ask the court to admonish counsel and to instruct the jury to disregard it.

"THE COURT: I will overrule the objection at this time and say at the proper time I will instruct the jury as to my understanding of the law and the facts relating to them.

"MR. WACHENFELD: Then for the purpose of the record may I at this time ask for a mistrial if your Honor please on the ground that the defendant has been prejudiced.

"THE COURT: Overruled.

"THE PROSECUTOR continuing page 13: He also succeeded in maintaining his denial that he did not know anything about the killing of Pierce or about the disappearance of the little girl.

"MR. WACHENFELD: I make the same objection with the same request that the court instruct the jury with reference to this phase of the case and will ask your Honor to grant me an exception to anything which the Prosecutor might say."

9. Because the verdict is contrary to the weight of the evidence to support the verdict of murder in the first degree.

10. Because the verdict is contrary to the weight of the evidence because it appears from the evidence that the defendant was insane and irresponsible.

11. Because the evidence does not show any wilful premedi-

tation and deliberation with intent to commit murder on the part of the defendant.

12. Because the court erroneously permitted the defendant's confession, exhibit S 12, to be marked in evidence whereby the defendant suffered manifest wrong or injury because it appears from the testimony that the defendant was not mentally capable of making a confession which was binding upon him, and because the confession was made after promises were made to the defendant that he would not be prosecuted, that he would be paid a sum of money as a reward, and that he would not be sent back to Overbrook.

13. Because the court permitted the witness, Fred Gallagher, to give testimony concerning the commission of other crimes and admissions made by the defendant who had already been adjudged insane. Steno's Min. Page 67.

"Leaving Montclair Police Headquarters, who did the directing of the driving? A. Noel.

"MR. WACHENFELD: I object to anything done or said after this on the ground that it is another crime and not admissible in this case.

"THE COURT: Overruled."

14. Because the Court permitted the same witness to testify to admissions made by the defendant concerning other crimes. Page 69.

"Q Did Noel get out? A Noel got out.

"MR. WACHENFELD: I object on the same ground that it is prejudicial to the defendant and on the ground that it is a separate crime, on the ground there is another indictment pending against this boy for the crime and on the ground that it has nothing to do with the indictment for which this boy is being tried at this time.

"THE COURT: Overruled."

15. Because the court permitted the same witness to testify in reference to other crimes. Page 71.

"Q Who was lying there?

"MR. WACHENFELD: The same objection.

"THE COURT: The same ruling.

"A Mary Daly.

ceeded inm aintaining his denial that he did not know anypiad a sum of money as a reward, and that he would not be

"Q Will you describe that body? Page 72.

"Q Why was lying there?

counsel and t oinstruct the jury to disregard it.

"Q How do you know it was the body of Mary Daly?

"MR. WACHENFELD: The same objection.

"THE COURT: I will allow that.

"A Well, Noel had told that was the body of the girl he had taken away."

"MR. WACHENFELD: And may I move to strike it out?

"THE COURT: Overruled.

"Q Will you describe that body? Page 72.

"MR. WACHENFELD: Same objection.

"A She was lying there on her back.

"MR. WACHENFELD: Wait. The same objection.

"Q How do you know it was the body of Mary Daly?

"MR. WACHENFELD: The same objection.

"THE COURT: I will allow that.

"A Well, Noel had told that was the body of the girl he had taken away."

16. Because the court permitted the witness Fred Gallagher to testify to admissions made by the defendant after the defendant was promised that he would not be taken back to Overbrook or would not be prosecuted and that he would be given the sum of Four thousand dollars. Steno's Min. Page 80.

"MR. WACHENFELD: I object to anything that was said by the defendant under those circumstances.

"THE COURT: Overruled.

"MR. WACHENFELD: Shall I state my record further?

"THE COURT: If you want to.

"MR. WACHENFELD: Upon the ground that it is perfectely apparent that this boy was promised three different things at least by the police officers, and upon the ground that under the case of State vs. Bullock that presumption continues and the burden of proof is upon the

State to show that the boy's mind was disabused by the promises made by the police officers and other people, and there is no evidence in this case that it was disabused, and there is no evidence in this case that the officers told him about it.

"THE COURT: Same ruling.
"Q What was it that you said, coming back? Page 81.

"MR. WACHENFELD: I objected what the defendant said to Gallagher or what Gallagher said to the defendant, upon the same ground.

"THE COURT: Objection overruled.
"Q What did he say? Page 82.
"MR. WACHENFELD: Same objection.
"THE COURT: Same ruling.
"A He said he had shot Pierce."
"Q What did you say to him, what did he say to you, or what did you hear him say to anybody else? Page 85.
"MR. WACHENFELD: Same objection.
"THE COURT: Same ruling.
"A We asked him what became of the gun and he said 'It is in the rear seat of his car'."

17. Because the court erroneously sustained the objection of the Prosecutor to the question submitted to the witness on cross-examination by counsel for the defense. Steno's. Min. Page 94.

'Q Why did you keep that from him if you told him everything else?
"MR. D'ALOIA: I object to that.
"THE COURT: Sustained."

Because it became a matter of material importance to show that during the period of twenty hours the defendant had been informed by the police that every detail of the crime was known to them with the exception of the man who committed it, and it became, therefore, most important for counsel to have a right to cross-examine the witness as to why the most important detail was not given to the defendant.

18. Because the court erroneously sustained the objection of the Prosecutor to a question propounded by counsel for the defendant to the witness, Chief Reilly. Steno's Min. Page 113.

"Q And you started to talk to him about somewhere around five o'clock?

MR. D'ALOIA: I object to that as not proper cross-examination.

'THE COURT: Sustain the objection."

Because the witness was testifying to admissions made by the defendant, counsel had a right to cross-examine to find out under what circumstances such admissions were made.

19. Because the court permitted the witness, John Sandin, to answer the following questions which was evidence concerning another crime and is, therefore, inadmissible. Steno's Min. Page 134.

"Q And when you got out there to West Paterson what did you do?

"MR. WACHENFELD: I object to what was done in West Paterson on the ground that it is evidence of another crime and not admissible in this case.

'THE COURT: Overruled.

"Q What did you do? A I pulled up alongside of this car and . . .

"MR. WACHENFELD: I object and make the same objection to the answer.

"THE COURT: Same ruling.

"A I pulled up alongside of the Dodge car and this fellow Noel was sitting in the driver's seat."

20. Because the court erroneously permitted the same witness to answer the following questions for the same reason as the following question, Steno's Min. Page 139:
fendant had committed another crime for which he was not not on trial.

"Q How big a person is she?

"MR. WACHENFELD: Objected to.

"THE COURT: Same ruling.

"A Six years old."

21. Because the court permitted the same witness to an-

swer the following questions:

"Q When you got to this car state what happened.

"MR. WACHENFELD: Same objection.

"THE COURT: Same ruling.

"A I pulled up alongside of this car and the little girl was sitting right close to him and I could not see her and I wondered if he threw her out, and I took a good look around and I saw the little girl in the car.

"Q Then what did he do?

"MR. WACHENFELD: The same objection.

"THE COURT: Overruled.

"A He pulled the gun."

22. Because the court permitted the same witness to answer the following question: Steno's Min. Page 137.

"Q When you drew alongside of this car on this photograph, what did this defendant do, if anything?

"MR. WACHENFELD: Objected to on the same ground.

"THE COURT: Same ruling.

"A He reached for the gun.

"Q What did he do?

"MR. WACHENFELD: Same objection.

"THE COURT: The same ruling.

"A He shot me.

23. Because the court permitted the same witness to answer question, Steno's Min. Page 139:

"Q Were you taken to the hospital?

"MR. WACHENFELD: Objected to, if the court please, on the same ground.

"THE COURT: Overruled.

"A Yes, sir."

24. Because the court permitted the Prosecutor to mark in evidence Exhibit S 14, page 141, which was evidence that the de-

"MR. D'ALOIA: I offer this cap in evidence.

"MR. WACHENFELD: Objected to on the ground it is another crime and not relevant.

"THE COURT: I will admit it.

25. Because the court sustained the objection of the Prosecutor and refused to permit counsel for the defendant to ask the following questions of the witness, Dr. Washington, Steno's Min. Page 202.

"Q Assuming, Doctor, that he did follow these various occupations, would you say there had been . . .

"MR. D'LOIA: I object to that question.

"THE COURT: Sustain the objection.

"MR. WACHENFELD: May I have it on the record? I do not think I finished it.

"THE COURT: Well, you have gone far enough for me to conclude it is not in evidence.

26. Because the court refused to direct a verdict for the defendant. Steno's Min. Page 205.

27. Because the court permitted the following question to be answered over objection by the witness, Dr. Thompson, Steno's Min. Page 319:

"Q Now when he continues and he tells you this: 'When I reached this spot I do not remember what the little girl said, she was talking. I took the revolver from my right hip pocket and I told the little girl to step out of the car. I led her two feet out of the road. I shot her twice in the side of the head and dragged her body to the spot where she was found in the sumac bushes.' Would you say that was a series of associated ideas of a person who is undergoing that mental process, having for an object the hiding of the little girl's body after he had shot the little girl twice?

MR. WACHENFELD: I object to the question, if the court please, and I object to the recitation of it by the Prosecutor on the ground that it is another case and is not admissible here.

"THE COURT: Overruled."

Page 320.

Q What would you say about the association of ideas, being the hiding of the body of the little girl whom he had previously shot twice?

"MR. WACHENFELD: Same objection.
"THE COURT: Overruled.

"A Granted that this statement was dictated by the defendant and by him alone, I would say that the association of ideas is all right."

Page 352.

"Q This particular bit of information that you gleaned from him about why he had killed, first, the chauffeur, and then the little girl, was that in line with the story that you had sometime previous to this examination given vent to, that his emotions were damned?

MR. WACHENFELD. The same objection upon the ground that the question is not admissable, improper, irrelevant and evidence of another crime which is prejudicial to this defendant.

'THE COURT: Overrule the objection."

Page 357.

"Q Do you know whether he understood that he was under a charge of murder and that you and Dr. Davies, together with his attorney, Barber, from New York, were there to have an examination so as to help him out?

"MR. WACHENFELD: I object to that because there is no evidence in this case that Mr. Barber was his attorney.

"THE COURT: Objection overruled."

28. Because the court permitted the witness, Dr. McDonald, over objection, to answer the question propounded by the Prosecuttor on cross-examination. Steno's Min. Page 429:

"Q Now let me ask you a question. Assuming that on the first of September this very young man you examined for two hours on the 12th of September, goes to 136 Upper Montclair, and sizes up a very beautiful house and comes to the conclusion he is going to kidnap a girl from that house and ask for $4000. ransom—this is Tuesday, September 1st—and he thinks it over on the 2nd and on the 3rd

he procures an automobile in some manner or other, and then on the 4th he kidnaps the girl, would you say there was a continuity of purpose of kidnapping that girl when he sized up the residence of the girl, or the place he thought she lived, on the 1st of September, and carried out this plan on the 4th?

"MR. WACHENFELD: I object to the question on the ground it does not incorporate the facts proved in this case.

"THE COURT: Overruled.

"WITNESS: Will you read the interrogatory?

"NOTE: Question read.

"MR. WACHENFELD: I object on the ground there is no proof in this case that he thought it over, and the ground that he did not come to any conclusion that the Prosecutor said he was going to do it for a ransom of $4000.

"THE COURT: Overruled."

28. A Because the court permitted the witness Esteele L. Raymond, over objection, to answer the following question, Steno's Min. 612.

"Q Where was he and what was he doing?

"MR. WACHENFELD: I object to that. There has been absolutely nothing in the case as to where the boy was.

"THE COURT: It might be competent as bearing upon his mental state.

"MR. WACHENFELD: I object to that. The burden is on the State. I have put on Dr. Washington and Dr. Markens.

"THE COURT: Overruled."

28. B Because the said court permitted the witness, Estelle L. Raymond, over objection, to answer the following question, Steno's Min. Page 613.

"Q During the ride of two hours between seven and nine, did you hear Mrs. Noel talk to Harrison?

MR. WACHENFELD: The same objection.

"THE COURT: The same ruling."

29. Because the said court permitted the witness Estelle L. Raymond, over objection, to answer the following question: Steno's Min. Page 615.

"Q Where did you go? A We went up North Mountain Avenue to Belleview and up Belleview to Upper Mountain Avenue; then turned into Clove road and the street—

"MR. WACHENFELD: Same objection to that, answer, that it is not going into the mental condition of this boy, and I object on the ground that it is not proper rebuttal.

"THE COURT. The same ruling."

30. Because the court permitted the witness Thomas Dimond, over objection, to answer the following questions propounded by the Prosecutor, Page 617:

"Q Did you have occasion to accompany a Mr. Barber to the jail?

MR. WACHENFELD: I object to that, if your Honor please, on the ground that it is incompetent and no rebuttal; certainly not rebuttal on anything in defense proved in this case.

"THE COURT: It may or may not be, I will allow the question."

"Q What day was it when you first accompanied him to the jail?

"MR. WACHENFELD: The same objection.

Page 618.

"Q Did Mr. Barber talk to Harrison Noel in your presence?

"MR. WACHENFELD: Objected to upon the same ground.

"THE COURT: The same ruling."

"Q How long did the conversation last?

"MR. WACHENFELD: Objected to upon the same ground.

"THE COURT: The same ruling."

Page 619.

"Q During that time, or during that half hour, did you notice any difficulty on the part of Harrison in speaking to Mr. Barber?

"MR. WACHENFELD: I object to it upon the ground that it calls for a conclusion and is not proper rebuttal.

"THE COURT: Overruled."

31. Because the court charged the jury as follows:

(Page 625)

"The distinguishing feature between the two degrees is the intent with which the homicidal act is done. The presumption of law is that all murders rather all homicides are murder in the second degree, and the State has the burden of proving affirmatively, if the first degree is contended that the act was with the intent to take life, that the act was premeditated, deliberate and wilful, each requiring some appreciable time, and you must, in order to convict of murder in the first degree, find that the accused contemplated the act, that is, premeditated the act, then determined upon its commission, that is to say, wilfully intended it, then weighed such intent before carrying it into effect, or, in other words, deliberated. While these words do not require any appreciable time, nevertheless, each act, in the contemplation of the law, is separate and distinct and there must be a concurrence of all in order to justify the finding of murder in the first degree."

32. Because the court charged the jury as follows:

"The law now provides that every person convicted of murder in the first degree shall suffer death unless the jury, by their verdict and as part thereof and upon and after considerating all of the evidence, recommend life imprisonment at hard labor, in which case the court cannot impose a greater punishment."

33. Because the court charged as follows:

"Murder in the second degree comprehends cases of murder in which an attempt is made to do bodily harm without an intent to take life, where the act is done in the heat of passion without justification and lacking the essential

elements of the highest degree of crime, premeditation, deliberation and wilfullness."

34. Because the court charged as follows:

"There is proof in the case that Mr. Maatz discovered the body and, if I recall the testimony correctly, the point where the body was found coincides with the declaration of the defendant as to where he placed it."

Upon the ground that there was no such testimony in the case.

35. Because the court charged as follows:

(Page 629)

"If insanity, as a defense, were such that a case could be disposed of merely on proof that a defendant were insane, the problem would be simple. However, the question of insanity as a defense, and the relation of an insane mind with reference to an act, is something to be further considered by you in the light of the rule of law as enunciated by our higher courts. Was the prisoner insane at the time of the alleged commission of the crime? When I speak of insanity, I am going to be definite later on. The law presumes a man sane until the contrary is proven. The defendant in this case was adjudged insane, prior to the third day of September. From that judgment we can presume the continuance of that state until the contrary is proven. However, the fact that a man was insane at some former period in his life will not exonerate him forever if it be proven or if it comes up in the evidence that he has at any time been so far restored to his right mind as to be capable of moral action and of distinguishing between right and wrong; in other words, a man who had once been adjudged insane or been out of his right mind, might afterwards commit any crime he saw fit and then rely upon the former state as a complete defense to any act he might do."

36. Because the court charged as follows: (Page 629)

"The question raised by this defense is not whether the defendant was ever insane at a former time in his life, but whether he was insane at the time of the killing of Pierce, whether the accused at the time of the doing of the act was conscious that it was an act which he ought not to do. If he was not conscious of this, he ought to be acquitted. If he was conscious of this, he cannot be exculpated on the ground

of insanity and he is then amenable to the law."

37. Because the court charged the jury as follows:

"The defendant has not taken the stand. You may consider that as a circumstances in this case. The fact that he did not take the stand, of course cannot be used against him, but the circumstance of the fact that he did not take the stand may be considered by you."

38. Because the court charged as follows: (Page 631)

"The question before you is not whether this man should be committed to an insane asylum."

39. Because the court refused to charge requests Nos. 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33.

40. Because the court charged the jury as follows: (Page 623)

"I will not recount or go over in detail the testimony of the gentlemen who have testified. Dr. Washington, and Dr. Markens, called in the State's main case, said that the defendant knew the distinction between right and wrong."

41. Because the court charged the jury as follows: (Page 629).

"Can you rely or could you rely on the defendant's testimony as to the circumstance of getting the taxi cab or the circumstance of the killing or the placing of the body?"

42. Because the court charged the jury as follows. (Page 633).

"This defendant, like all other persons charged with crime, is presumed to be innocent and the burden of establishing his guilt rests upon the state. It must satisfy you that he is guilty beyond a reasonable doubt. When we speak of reasonable doubt, we do not mean beyond all possible doubt, nor do we mean a fanciful doubt, because there is nothing in human affairs beyond possible doubt, but it is that state of the case which, after the entire comparison and consideration of all the testimony, leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge."

43. Because the court charged the jury as follows: (Pages 631).

44. Because the guilt of the defendant of murder in the first

degree was not made out by any competent evidence.

45. Because the verdict of the jury was contrary to the evidence.

46. Because the whole evidence in the case is insufficien tto warrant the finding beyond a reasonable doubt of the guilt of the plaintiff in error of murder in the first degree.

47. Because the trial court in one or more things submitted the case to the jury upon a misunderstanding of the law and the evidence.

48. Because the trial court otherwise erred in ruling upon the evidence.

49. Because the verdict is against the weight of the evidence and the law as changed by the court.

50. Because upon the whole evidence and upon all the facts and circumstancces in the case of the plaintiff in error was entitled to an acquittal.

51. Because there are divers and other errors in the record and proceedings aforesaid and in the giving of judgment and in the passing of sentence aforesaid by reason of which the said judgment and sentence should be reversed and set aside.

WHEREFORE, because the aforesaid reasons, or some of them constitute error prejudicial to the said plaintiff in error, he, the said Harrison W. Noel, prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

WM. WACHENFELD,

Attorney for and of Counsel with Plaintiff in Error.

70 JAN.T.1926

70 FEB.T.1926

Filed after the Oral Argument by leave of Court.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HARRISON W. NOEL, *Plaintiff-in-Error.*	*On Error.*

BRIEF FOR THE STATE.

Second Part.

This brief is confined to the points raised by Mr. Merritt Lane, of counsel with the defendant.

I.

Specifications of cause for reversal, Nos. 1 to 6 inclusive, should not be considered by this Court.

These specifications complain that the Court directed that the defendant should enter a plea, that the Court entered a plea of not guilty, and that the Court entered an order directing the defendant to stand trial.

All of these specifications relate to matters occurring before the trial, and for that reason alone, they should not be considered by this Court. The practice of bringing the entire record before the Appellate Court and specifying cause for reversal thereon, is authorized only by Sections 136 and 137 of the Criminal Procedure Act. These sections relate solely to the trial.

> *Kohl* v. *State*, (E. & A.) 36 Atl. 104. "Under the statute mentioned only 'the proceedings had upon the trial' can be brought before us, and it is only when the plaintiff-in-error shall appear to have 'suffered mani-

fest wrong or injury upon the trial' that we can remedy it.''

Accordingly, it was held in this case that a denial of a new trial cannot be reviewed under these sections.

State v. *Harris,* 124 Atl. 602, holds that a refusal to quash an indictment cannot be reviewed since it precedes the trial itself and is not part thereof.

State v. *Tonghanni,* 96 N. J. L. 63, 114 Atl. 250, applies the same rule to the ordering of a severance of defendants for trial.

II.

The matter printed in the state of the case, pages 9 to 327 inclusive, should not be considered by this Court.

The matter printed on the pages above mentioned, is a transcript of the stenographer's notes taken at the arraignment and pleading of the defendant, and at a hearing conducted by the Court of Oyer and Terminer, on the question whether the defendant was in fit mental condition to stand trial.

This transcript cannot, as above shown, be considered under Sections 136 and 137 of the Criminal Procedure Act. Nor can it be considered on a strict writ of error, for it is no part of the record proper, or of the bill of exceptions.

The record in this case is printed in the State of the Case, pages 3 to 7 inclusive, and is in the ordinary form. It requires no citation of authorities or argument to demonstrate that the matter under consideration does not and cannot form part of the record.

In order to determine whether or not it forms part of the bill of exceptions, it will be necessary to consider briefly the nature and history of such bills.

> *Belton* v. *Gibbon,* 12 N. J. L. 76. "At common law there was no bill of exceptions. It was introduced into the English courts by the statute of Westminster, 13 Ed. 1, of which our Act is substantially a copy. Rev. Laws 293."

The New Jersey act to which the Court referred, was "An Act directing bills of exceptions to be sealed," passed March 7, 1797, and provided,

> "That when any person who is or shall be impleaded before any court and in any cause, where a writ of error lies to a higher court, shall allege an exception, praying that the justice or justices will allow it, and he or they will not allow it, if he who alleged the exception instantly writes the same and requires that the said justice or justices will put thereto his or their seal or seals, in testimony thereof, such justice or justices, or the greater part of them present, shall do so."

This enactment was carried forward in the various revisions of our laws and may be found in the Revision of 1874 as Section 242 of the Practice Act. In the Practice Act of 1903, it was much abridged and appears as Section 211.

3 Enc. of P. & P. 378.

> "A bill of exceptions is a formal statement in writing of exceptions taken by a party on the trial to a ruling, decision, charge or opinion of the trial judge setting out the proceedings on the trial, the acts of the trial judge alleged to be erroneous, the objections and exceptions taken thereto, together with the grounds therefor, and authenticated by the trial judge according to law."

Bills of exceptions usually relate only to matters arising at the trial, though it is established in this State that they need not be so restricted in civil cases.

Ford v. *Potts,* 6 N. J. L. 388, 391;

Defiance Fruit Company v. *Fox,* 76 N. J. L. 482, 70 Atl. 460.

The foregoing applies only to civil cases.

3 Enc. of P. & P. 379. "The statute of Westminster was applicable only to civil cases sued in courts following the common law. The statute was not applicable to criminal cases and no bill of exceptions would, at common law, lie therein."

The rule above stated was followed in New Jersey until 1848, as may be ascertained by a study of our reported cases until that time.

Halsey v. *State,* 4 N. J. L. 324;
Woodruff v. *State,* 4 N. J. L. 344;
State v. *Burroughs,* 7 N. J. L. 426;
State v. *Price,* 11 N. J. L. 203;
Cruiser v. *State,* 18 N. J. L. 206;
Stone v. *State,* 20 N. J. L. 401;
Stone v. *State,* 20 N. J. L. 404;
Berrian v. *State,* 22 N. J. L. 9.

The foregoing are, I believe, all our reported criminal cases on writ of error to 1849. The reviewing court had before it, in all these cases except the first *Stone* case, only the record proper, and considered only errors appearing on the face of the record. In the first *Stone* case, it was assigned as error that the proof did not support the indictment, and the Court considered this question upon a "statement in the nature of a bill of exceptions signed by the Prosecutor of the Pleas."

In 1848, P. L. 1848, p. 226, Rev. of 1877, p. 284, the Legislature extended the provisions of the

Act of March 7, 1797, above mentioned, "to trials of indictments for crimes and misdemeanors which, by law, are punishable by imprisonment at hard labor."

Immediately after the passage of this Act, there appear in the reports, in addition to questions arising on the face of the record, questions on the reception of evidence and the charge to the jury, founded upon bills of exceptions under this statute.

West v. *State,* 22 N. J. L. 212;
State v. *M. & E. R. R. Co.,* 23 N. J. L. 360;
Smith v. *State,* 23 N. J. L. 130, 712;
Francisco v. *State,* 24 N. J. L. 30;
Cook v. *State,* 24 N. J. L. 843;
Dodge v. *State,* 24 N. J. L. 455.

The Act of 1848 extended the provisions of the Act of 1797 only to trials of indictments. It may be argued, of course, that the statute should be given a liberal interpretation and extended to rulings before and after trial, but I have found no case under this statute where such a contention was made.

This statute however was amended in 1877, P. L. 1877, p. 138, Rev. of 1877, p. 1298, to read as follows:

> "That if, on the trial of any indictment in any court of this State, for any crime or misdemeanor, any exception shall be taken to any decision of the court during the trial of such indictment, to the prejudice or injury of any defendant, in the same indictment it shall be the duty of the judge to settle a bill of such exceptions and to sign and seal the same bill to the end that the same may be returned with a writ of error to the court having cognizance thereof."

This is now Section 135 of the Criminal Procedure Act of 1898 and the present law on the

subject and the only authority for a bill of exceptions in the case at bar. Clearly, it is limited to exceptions at the trial.

This construction is in harmony with the interpretation of similar language in Section 136.

> *Clifford* v. *State,* 61 N. J. L. 217, 39 Atl. 721. "Before the adoption of the supplement to the Criminal Procedure Act above referred to (Sections 136 and 137), a court reviewing by writ of error, a conviction in a criminal case, was limited to the consideration of errors pointed out by proper assignments, either in the record or in such occurrences at the trial as were disclosed by bills of exceptions allowed by the trial court."

As this transcript is not part of the docket, or of the clerk's file, it could not be certified to this Court, on alleging diminution of the record.

The matter contained in the State of the Case, pages 9 to 327, is neither a part of the record nor of the bill of exceptions, and should not be considered by this Court.

The difficulty of the defendant is deeper than a mere question of procedure. It is the general rule that on writ of error the Appellate Court will not review findings of fact or acts of discretion of the lower court, or matters which have been cured by verdict or otherwise. That is probably the basic reason why there is no apt procedure by which this Court can consider the questions which counsel for the defendant seek to raise.

III.

Assignment No. 1, "That the Court directed that the defendant should enter a plea."

A.

The first contention under this assignment is that the Court did not have jurisdiction of the person of Noel and hence, that he could not plead. The record does not support this argument. On the contrary, it shows that at the time for pleading,

> "Comes the said Harrison W. Noel, in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, in the above custody in the jail of the County aforesaid, he has been before committed for the cause aforesaid, being brought to the bar of this Court in his own proper person by the said Sheriff to whom he is also committed" (Cas., p. 4, l. 19).

Defendant's counsel attempts to contradict this part of the record by referring to the order of commitment made by Judge Brennan, and inferring therefrom a continuance of the defendant in the custody of the superintendent of Overbrook Hospital.

Even if the defendant had been in Overbrook, or the State Prison, or any other institution, when the indictment was found, he could have been brought into the Oyer to plead by a writ of habeas corpus *ad respondendum,* or other proper process.

But the defendant was not, in fact, in the hospital when indicted; he was in the County Jail, having escaped from the hospital.

The Act under which the defendant was committed to Overbrook, P. L. 1918, 343, Sec. 212, contemplates that a patient in an insane hospital

may escape or leave before discharge, and for crime or other cause, become "confined elsewhere in this State," and that in such case, he shall not be returned to the hospital until "the expiration of the pending confinement."

There is no foundation for the contention that the defendant was not legally before the Oyer.

B.

The second ground of argument under this assignment is that defendant, by reason of insanity, was unable to plead. There is, of course, nothing in the record to support this contention.

The proper way to raise the question is not by the ordinary writ of error, but by a writ of *coram nobis* or *vobis.*

> *Howie* v. *State* (Miss.), 83 So. 158, 10 A. L. R. 205;
>
> *1 Bishop Cr. Pro.,* Sec. 1369;
>
> *5 Enc. of P. & P. 27.* "The office of the writ of *coram nobis* is to bring the attention of the court to, and obtain relief from, errors of fact, such as the death of either party, pending the suit, and before judgment therein, or infancy, * * * or insanity, it seems, at the time of the trial."

Dennis v. *Dennis,* 2 Saund. (K. B.) 328; 85 Eng. Rep. 1126. On a writ of error *coram vobis,* removing the judgment record from the Common Pleas to the King's Bench, the plaintiff-in-error (defendant below) by next friend assigned as error in fact that on the day of suing out the original writ and from thence continually, she was an idiot. Issue was joined on the assignment and sent down to the assize for trial. The report of this case sets forth in full the record in both courts.

Turning to the stenographer's notes, it appears that here was a preliminary question of

fact to be determined by the Oyer—were the indicia of incapacity sufficient to require an inquest by the Court into defendant's mental condition before arraignment?

The Oyer decided that question in the negative and this Court should not review that decision.

Freeman v. *People,* 4 Den. (N. Y.) 9. There was a preliminary trial by jury to determine defendant's capacity to plead. The verdict was that the defendant was able to distinguish between right and wrong. The prisoner's counsel objected that this was not the proper test, but the Court ordered the defendant to be tried and granted an exception. The Court of Appeals held:

> "None of the exceptions taken by the prisoner's counsel on the trial of the preliminary issue in this case, can be regarded as regularly before us; nor could they, if held to be well taken, constitute a ground for reversing the judgment of the court below."

I will assume, however, that the action of the Court below in ordering defendant to plead is properly before this Court.

That the Oyer decided correctly is quite clearly indicated by the following:

The defendant was first arraigned on Friday, September 18, 1925, and after some argument the arraignment was continued until the following Monday. On the Saturday between these two days, Dr. Ambrose F. Dowd saw the defendant at the jail and testified (at the hearing later) to the conversation as follows:

> "He (defendant) then started to talk and talked freely. 'Were you at the jail yesterday?' I asked. 'I was taken to the Court House.'
>
> 'Were you there alone?' 'I was handcuffed to two or three others and there were two or three guards.'

New Jersey State Library

'Where did you go at the Court House?' 'The lawyers made speeches. I didn't say anything. My lawyer told the judge that nothing could be done because of the act of the Juvenile Court. He said a lot of things but I didn't hear them all.'

'Did you expect to plead to a charge?' 'Yes, I was to plead to a charge for murder and kidnapping.'

'But you did not plead?' 'No. The lawyers are going to renew their argument on Monday. I don't know whether I will be taken down or not.'

'How are you going to plead?' 'It doesn't make any difference how I plead. They have my signed confession. Captain Mason has it.' '' (Cas., p. 47, l. 19.)

The matter presented to the Court before arraignment consisted of the order of Judge Brennan and the affidavit of Mr. Barber.

The affidavit states that the affiant is a member of the bar of New York, a friend of defendant's family of twenty years' standing, and that he is of the opinion that Noel is insane, etc.

Mr. Barber was not an expert; as an intimate friend he was biased. His affidavit might well be given scant weight by the Court below.

The order of Judge Brennan has already been considered in my principal brief in the case at page 33, where I have endeavored to show that it was not evidential in this cause. At the risk of repetition, I point out the following considerations with reference to the order.

(1) The State was not a party to the proceeding before Judge Brennan, and hence the order of Judge Brennan is not evidence against the State.

(2) The safeguards thrown around an inquisition in Chancery such as ample notice and full

hearing, as well as the element of fixing the status of the alleged lunatic, were absent from the proceeding in question.

(3) The order of Judge Brennan was not an order of the Juvenile Court but of a special statutory tribunal.

(4) The statute, Section 415, requires only one day's notice to the alleged lunatic and provides that he shall not be given opportunity to attend the hearing if the superintendent of the hospital deems it inadvisable. In this case, Noel was not allowed to attend the hearing. (Cas., p. 790, l. 18.)

(5) The only other notice required by the statute is two days' notice to be given the applicant or the nearest relative. The application in this case was made by Dix W. Noel, father of the defendant, and stated that the defendant was single. (Cas., p. 781, l. 1.) The statute, Section 426, requires that the final order shall recite the notices given of the inquiry. The order of Judge Brennan does not disclose that any notice was given to Dix W. Noel, or to anyone except "to said wife and to said patient." No wife is elsewhere mentioned in the order or proceedings, nor is there any proof of mailing notices to anyone, elsewhere in the file. This failure to comply with the statutory direction as to notice in an extraordinary summary proceeding makes the order void.

(6) The only evidence considered by Judge Brennan was the testimony of Mrs. Noel, the mother of the defendant, and of Dr. John M. Thompson, taken apparently before the County Adjuster. (Cas., p. 590, l. 11.)

(7) The matter was heard in a summary way without a jury although it has been held that

an alleged lunatic cannot be deprived of his liberty without the intervention of a jury. *In re Dey,* 9 N. J. Eq. 181.

(8) The character of the proceeding is indicated by the fact that it is the same proceeding used for admitting tuberculosis patients to the State sanitorium (Sections 401 and 604) as well as numerous other State institutions.

(9) While the final order is filed with the County Clerk, pursuant to Section 426, all other papers such as the application, certificates and order of temporary commitment, which, in a legal proceeding, would be filed with a clerk of the court to constitute the record, are, under Section 412, filed at the hospital or the tuberculosis sanitorium or other institution concerned.

(10) Section 450 expressly preserves the right to a writ of habeas corpus under "An Act regulating the practice of writs of habeas corpus sued out by, or in behalf of, persons confined in any hospital for the insane or lunatic asylum in this state," 2 Com. St. 2646, Section 31a, etc.

(11) On a writ of habeas corpus under that act, the question of insanity is tried *de novo;* it seems that the order of commitment is not evidential even against the alleged lunatic.

The remarks of Vice-Chancellor Garrison on the Act of 1906, apply with almost equal force to the Act of 1918, under which Noel was committed:

> *Allgor* v. *Hospital,* 80 N. J. Eq. 386, 84 Atl. 711. "The first impression one gets from reading this 1906 statute is that it is intended as a regulation and protection of the public insane asylum, and was designed to prevent persons from obtaining lodgment therein unless certain formalities were complied with—

> such formalities as would result in restricting the patients to those who have been found to be insane."

The question before Judge Brennan was not whether Noel was capable of pleading but whether he should be confined and treated at the hospital.

Neither the affidavit of Mr. Barber nor the order of commitment, was sufficient to require an inquest into defendant's mental condition, before arraignment.

Immediately the plea had been entered, the Court announced,

> "I am going to take testimony beginning Thursday, for you to determine whether or not the defendant is able to go on with the trial under the plea to this indictment." (Cas., p. 19.)

It may be argued, of course, that this shows that the Court recognized that the matter presented by counsel, in opposition to the arraignment, sufficed in fact to require an inquest, and hence that the Court erred in law, in not continuing the arraignment until after a determination of defendant's mental condition.

In answer to that, I would say that it requires a greater degree of mentality to confer with counsel in preparation for, and at the trial, than it does merely to plead.

The whole matter was within the discretion of the Court.

But even if there were error in ordering the defendant to plead, it should not lead to a reversal. Viewing the matter in a light most favorable to the defendant, he was mentally incapable of pleading at the time of his arraignment, Sep-

tember 21, but within two weeks thereafter, he sufficiently recovered his reason to be capable of standing trial. This latter fact was determined by the Oyer after a full inquiry.

After having recovered his reason, he did not ask leave to withdraw his plea, but went to trial without any objection. By so doing, he waived any objection to the arraignment and ratified his plea.

Even at common law it seems that the plea of an insane man stood as a good plea.

> 1 *Hale P. C.* 35. "But in case a man in a frenzy, happen, by some oversight or by means of the gaoler, to plead to his indictment and is put upon his trial, and it appears to the Court upon his trial that he is mad, the Judge, in discretion may discharge the jury of him and remit him to gaol to be tried after the recovery of his understanding."

Counsel does not cite a single case where an appellate court has reversed a conviction on the ground that the defendant had insufficient mental capacity to plead.

IV.

Assignment of error No. 2, "Because the Court entered a plea of not guilty."

Under this assignment, counsel for the defendant contends that the defendant stood mute and that the Court should have empanelled a jury under Criminal Procedure Act, Section 58, to determine why he stood mute, and that the Court instead of so doing, erroneously ordered that a plea of not guilty be entered.

The State replies that the defendant did not stand mute, that he refused to plead, and thereupon, the Court properly entered a plea of not

guilty, pursuant to the last sentence of Section 58.

The record before the Court shows that on arraignment,

> "He, the said defendant, Harrison W. Noel, refusing to plead to the said indictment, the Court (Judge Edwin C. Caffrey), ordered a plea of not guilty entered," etc. (Cas., p. 4, l. 27.)

Counsel contends in effect, that this record is inaccurate, that the defendant did, in fact, stand mute.

State v. *Savage,* 79 N. J. L. 583, 76 Atl. 1079, is exactly in point. Savage was convicted of murder in the first degree and sentenced to death. His defense was insanity. In this Court, his counsel assigned as error that defendant, when arraigned, stood mute and that Judge Blair in the Oyer, erroneously entered a plea of not guilty instead of impanelling a jury.

The record proper showed that when the defendant was arraigned, "he refuses to answer or plead, whereupon the Court orders that a plea of 'Not Guilty' be entered."

The transcript disclosed that when the indictment was moved for trial, defendant's counsel asked to have entered on the record that, on arraignment, defendant had stood mute. Judge Blair denied the application saying,

> "If the Court were not satisfied that he was *obstinate in his muteness,* the Court would take some other course."

The foregoing appears in the State of the Case, which may be found in the State Library in Volume 491, of the cases of this Court.

Obviously, if the Court of Errors had permitted the record to be contradicted by the im-

plied admission of the Trial Judge that the defendant had in fact stood mute, there ~~must~~ might have been a reversal. But this Court held (79 N. J. L., bottom of p. 584), "* * * we are limited in our consideration of the question" by the record, and affirmed the sentence.

Even if the record now before the Court be inaccurate, there is no authority in this Court to amend it or order the court below to amend, after a writ of error. Counsel should have moved for an amendment before coming to this Court.

Cruiser v. *State,* 18 N. J. L. 207.

If the Oyer had refused to amend, it is possible that counsel could have compelled such amendment—assuming it should have been made—by a writ of mandamus.

Clifford v. *Hudson Oyer,* 61 N. J. L. 493, 39 Atl. 909.

For the sake of argument, I turn again to the stenographer's notes of what occurred at the arraignment.

At the time set for pleading, Friday, September 18, 1925, Merritt Lane, Esq. (Cas., p. 9, l. 12), appeared for the natural guardian of defendant, and produced to the Court a certified copy of an order of Judge Brennan of the Essex County Juvenile Court, dated March 24, 1925, determining "that said Harrison W. Noel is insane." (Cas., p. 12.)

Mr. Lane urged that a condition of insanity once adjudicated is presumed to continue until the contrary be proven. He then called attention to the case of *State* v. *Peacock* (Cas., p. 16, l. 12), and asked the Court to institute a proceeding to determine whether Noel was sane or insane.

The Court continued the matter for consideration until the following Monday, when Noel was brought into court and Mr. Lane appeared again (Cas., p. 17), and presented the affidavit of Mr. Barber.

The Court then announced "I have decided the defendant shall enter a plea" and granted an exception. (Cas., p. 19.)

The defendant was then arraigned as follows:

> "Mr. D'Aloia: The Grand Jurors of this county have presented this indictment against you and it charges that on the third day of September, in the year 1925, at the Township of Cedar Grove, in the County of Essex, you did wilfully, feloniously and with malice aforethought, kill and murder Raymond Pearce, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same. How do you plead?
>
> "The Court: The defendant does not answer. A plea of not guilty will be entered." (Cas., p. 19, l. 10.)

This stenographic transcript shows, I contend, that the defendant did not stand mute. He spoke at length through the attorney of his next friend and, it may be inferred, on the advice of counsel, he refused to plead.

Whether a defendant "stands mute" or "refuses to plead" is a question of fact to be determined by the Court before which the defendant is arraigned. The stenographic report cannot show all the data on which the Court acts. Just as the demeanor of a witness on the stand should be considered by the jury in determining whether he is speaking the truth, so the demeanor of the defendant, when called to plead, must be observed by the Court, and constitutes

an important basis of the decision whether or not he is standing mute.

The Oyer found as a fact that defendant refused to plead. This determination, embodied in the judgment record, should not be disturbed by this Court.

Counsel does not cite a single case where the reviewing court has disturbed the action of the court below in this regard.

Lastly, counsel did not suggest at the time, even remotely, that defendant was standing mute or that the Court should empanel a jury under Section 58. On the contrary, he urged an entirely different procedure to inquire into the defendant's sanity, and the Court eventually instituted the inquiry urged by counsel. Counsel should not now be permitted to complain that the Court did not adopt a different procedure.

V.

Assignments Nos. 3, 4 and 5, "That the Court ordered the defendant to stand trial."

Although there is nothing in the record proper to support these assignments, probably on alleging diminution of the record, the order of the Oyer (Cas., p. 337) and the opinion of Judge Caffrey (Cas., p. 328) which is made part of the order, would be certified into this Court and properly considered on this writ of error.

The order recites that the Court had considered testimony on the question whether the defendant "is in a mental condition as that he can appreciate the predicament in which he is and can consult with and aid and assist counsel in his defense, and as to whether he is at this time triable." (Cas., p. 337.)

Although there is no formal finding of fact, the Oyer, by ordering the defendant to trial, answered these questions in the affirmative.

The opinion of Judge Caffrey states that the Court found "that the prisoner is able to comprehend his position and to make a rational defense." (Cas., p. 336, l. 11.)

It must be conceded that the Court having so found, did not err in placing the defendant on trial.

Counsel for defendant, however, considers at length the evidence which was before the Oyer. Does he contend that this Court, upon reading the evidence, and without actually hearing the witnesses, or seeing or talking to the defendant, should reverse the action of the Oyer because this Court, judging only from the printed page, is of the opinion that the defendant could not rationally assist in his defense?

Or does counsel contend that this Court should reverse if the finding of the Oyer was against the weight of the evidence?

Or lastly, does counsel contend that this Court should reverse if there was no legal evidence before the Oyer to support its finding of fact?

Certainly—and no argument is necessary on this point—this Court will not reverse merely because it is of the opinion from a reading of the testimony that it would have come to the conclusion, if it had been the Oyer, that the defendant was unable rationally to make a defense.

And certainly this Court will not consider the weight of the evidence.

If this Court will review at all the order of the Oyer placing the defendant on trial, the rule

to be followed should be the one usually employed in reviewing preliminary findings of fact by a Trial Court. The settled rule is that such findings will not be disturbed if there be any legal evidence to support them.

State v. *Monich,* 74 N. J. L. 522, 64 Atl. 1016;

State v. *Dolan,* 86 N. J. L. 192, 90 Atl. 1034.

> "If, on the other hand, the ground of objection intended to be expressed was that the confession was inadmissible because of the defendant's mental condition at the time of making it, the admission of the confession cannot be made the basis of a reversal. Assuming that the competency of the confession as evidence depended upon the mental state of the defendant at the time of making it, and that the trial court was therefore required, before admitting or rejecting it, to hear evidence pro and con upon the question of the mental capacity of the defendant, and, by its ruling in admitting it, by necessary implication found that the defendant was able to fully understand and appreciate what he was doing when he made it, that finding cannot be attacked in this court. The rule is entirely settled that a finding of fact by a trial court as a necessary preliminary to the determination of the question whether or not a confession is admissible is not reviewable on writ of error, if there be any legal evidence to support that finding."

Applying this rule to the question under consideration, I will only say that there was ample evidence before the Oyer to support its finding that the defendant had sufficient mental capacity to stand trial, and refer the Court to the opinion of Judge Caffrey. (Cas., pp. 328 to 336.)

Counsel does not cite a single case where an Appellate Court has disturbed the action of the court below in this regard.

VI.

The criminal responsibility of defendant.

Counsel contends that on the trial of the defendant, the Court erred in charging the law as to insanity and in refusing to charge certain requests, and that the verdict was against the weight of the evidence with respect to the defendant's mental condition.

These contentions are based upon this proposition of law advanced by counsel, namely: That if the defendant was impelled to commit the act by an irresistible impulse due to disease, he should have been acquitted.

> *State* v. *Carrigan,* 93 N. J. L. 268, 108 Atl. 315; affirmed, 94 N. J. L. 566, 111 Atl. 927. "We consider to be unsound the suggestion that the law recognizes a form of insanity in which the faculties are so affected that the person suffering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them, and is urged by some mysterious pressure, which he cannot resist, to their commission. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty, in respect to it, has no place in the law."

For other cases, see the main brief for the State in this case.

The gist of counsel's argument is that our courts originally adopted the right and wrong test without hearing argument of counsel and that they have retained this test without due consideration, and that our law on the subject is wrong and should be changed by this Court.

The names of counsel who have appeared for the plaintiffs-in-error in the cases wherein our law as to insanity has been laid down, make apparent that every argument which could be advanced in behalf of the prisoner, was forcefully presented to this Court.

> *People* v. *Taylor,* 138 N. Y. 398, 34 N. E. 275.
> "Eminent alienists criticize the rule of the Penal Code because it excludes consideration of the question whether the accused possessed sufficient power of self-restraint to forbear the commission of an act which he clearly perceived to be criminal. They contend that it is unreasonable and unjust to punish a human being for that which he does not have the power to refrain from doing; but, if such a result may follow, which we by no means admit, it is an argument to be addressed to the body which makes the law, and not to the tribunal whose sole duty it is to construe, apply, and enforce it."

Respectfully submitted,

J. O. BIGELOW,
Prosecutor of the Pleas.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY *Defendant-in-Error.* *vs.* HARRISON W. NOEL. *Plaintiff-in-Error.*	*On Indictment for Murder.* *Brief for Plaintiff in Error* *on Main Case*

This case comes up on a writ of error to the Essex Oyer and Terminer to review the conviction of Harrison W. Noel, the plaintiff in error here, defendant below, of the crime of murder in the first degree.

FACTS.

On Friday, September 4, 1925, at about six o'clock, the body of Raymond Pierce, a colored man, was discovered in the Township of Cedar Grove, within five feet of Little Falls Road. He had been shot in the back of the head, and according to Dr. Martland, had been dead longer than fourteen hours and under forty-eight hours, probably in the neighborhood of twenty-four hours. The deceased, Raymond Pierce, had been employed as a taxi driver for James Hanlon, and was last seen by Hanlon at 1:30 on Thursday afternoon, September 3rd.

On Friday, September 4th, at about twelve o'clock, a little girl by the name of Mary Daly, who was accompanied by two other girls, was walking on a public highway, Upper Mountain Avenue, in Upper Montclair, New Jersey, in front of the Bower residence at 136 Upper Mountain Avenue, going to the public playground for recreation. The little girl, Mary Daly, was forcefully seized, put into an automobile and carried off. The person who kidnapped Mary Daly was subsequently identified as the defendant, Harrison W. Noel.

The defendant was arrested on Saturday, September 5th at about five o'clock. He was questioned by the various police officers from that time on and

until seven o'clock on Sunday night, September 6th, at which time he made a statement admitting that he shot the colored man, Raymond Pierce. The indictment against him was for the murder of Raymond Pierce on the 3rd day of September, 1925. There were absolutely no witnesses to the crime, the defendant saying that he killed Pierce on Thursday afternoon, September 3rd, somewhere around 1:30 or two o'clock, and that he returned home at four o'clock on the same day. The defendant, on the 25th day of March, was adjudged insane by the Juvenile Court of Essex County, and committed to the Essex County Hospital for the Insane. He escaped from that institution on the 28th day of June, 1925.

The Jury convicted the defendant of murder in the first degree and the defendant has been sentenced to death.

This case is brought before this court on Assignments of Error and Specification of Causes for Reversal, and the entire record under Section 136 of the Criminal Procedure Act of 1898.

POINT I.

THE COURT IMPROPERLY EXCUSED A JUROR WALTER CHARLTON AND MADE REMARKS PREJUDICIAL TO THE DEFENDANT.

Assignment of Error No. 6 Case page 893 Specification of Causes No. 7 Case page 913.

On examination of the juror Walter Charlton the following occurred (case page 338.)

Prosecutor: Q "Have you any conscientious scruples against capital punishments? A Yes. sir.

The Court: "What are they?

The Witness: "I believe in a life sentence.

The Court: "You are another one who puts themselves above the law where in a proper case under the law of New Jersey in first degree murder the sentence is death. You are above the law.

The court then on its own motion and over objection of counsel excused the juror. This occurred after eight jurors had been selected and were seated in the jury box and before the entire panel of jurors. See Stipulation Case page 777.

The action of the court in this respect is attacked upon two grounds; first, the remarks were prejudical to the defendant and an attempt to influence the discretionary power vested by the statute in the jury; second, the court arbitrarily of its on motion excused the juror without cause.

The statute of 1916 as amended in 1919 provides that the jury shall have a right if they find the defendant guilty of murder in the first degree to recommend life imprisonment.

The Court in State vs. Rombolo, 89 N. J. L. page 565, on page 570 said:

> "By force of this legislation, however, an additional burden is put upon the jury, in case they shall adjudge the defendant to be guilty of murder in the first degree, and that is to determine within the limits fixed by the statute, what his punishment shall be."

In State vs. Martin, 92 N. J. L. page 436, Judge White in a dissenting opinion on page 448 said:

> "Is the court prepared to say that since the passage of the act of 1916 conscientious scruples against capital punishment are to continue as heretofore a disqualification for service upon murder juries, although the act was passed to accomodate just such scruples?"

The statute above-referred to as construed in the Martin case holds that the sentence is entirely discretionary with the jury and therefore conscientious scruples against capital punishment would not act as a disqualification of a juror and becomes wholly immaterial. Nevertheless, the court in strong, vigorous and emphatic language told this juror in the presence of the other members of the jury already selected and before the entire panel that undr ready selected and before the entire panel that under the law of the State of New Jersey in a case of first degree murdr the sentence was death and that because the juror had objections to capital punishment, he was putting himself above the law. The court therefore dismissed him.

It is difficult to conceive of a more impressive way of informing the jury that a death penalty should be imposed and that any other disposition by the jury would be in violation of the law.

When objection was made upon the ground that the statute gave the jury discretion in the matter of sentence counsel was promptly over-ruled without any further comment.

It is respectfully insisted that twelve laymen under the circumstances would of necessity arrive at the conclusion that counsel was wrong in his contention and that the death penalty would have to be imposed if the jury complied with the law.

In State vs. Martin, 92, *Law*, 436, *Justice Bergen on page* 442, *said, in referring to the remarks made by the court*:

> "What inference would any jury draw from this, if, having found the defendant guilty of murder in the first degree they were considering a recommendation to life imprisonment, manifestly its influence on the jury would be that under the matters submitted by the court, there was no justification for a recommendation, and it undoubtedly would have a tendency

to influence a jury to withhold the recommendation.

> "It was clearly an undertaking by the court to influence the discretionary power vested by the statute in the jury, and, as was said by Mr. Justice Gray, speaking for the Supreme Court of the United States, construing a similar statue, in Winston vs. United States, 172, U. S. 303,313, 'The act does not in itself prescribe, nor authorize a court to prescribe, any rule defining or circumscribing the exercise of this right; but commits the whole matter of its exercise to the judgment and consciences of the jury.' "

The remarks and actions of the court in the case at bar were undoubtedly more effective upon the jury than the remarks of the court in the Martin case. It must have left indelibly upon their minds that they could only return one verdict in the event they decided on first degree murder.

It is respectfully contended that the court committed error in excusing this juror on its own motion.

In ***Aaronson vs. State,*** 56 *N. J. L.* 9, *Chief Justice Beasley on page* 10, *said*:

> "Nor do we think there is any substance in the suggestion that the power thus conceded will be liable to be abused, for it is certain that the court cannot arbitrarly and of its own motion excuse any of these jurors from serving in the given case; for if no ground for the dispensation exsited, the judicial action would be erroneous and could be reviewed by means of a writ of error."

This case was cited and followed in State vs. Lang, 75 *N. J. L.* 1, *and in State vs. Tietjen* 93 *N. J. L.* 22, *in which case Chief Justice Cummere on page* 23 *said*:

> "On the contrary he admits that the principle

> controlling in matters of this kind is that laid down by this court in State vs Lang, 75 N. J. L. 1 viz; that they must necessarily be left largely to the discretion of the trial judge; that unless it be made plain that he has abused this discretion and that the defendant may have suffered injury thereby the propriety of the judicial action cannot be challenged upon review."

The court in this case dismissed the juror because he had conscientious scruples against capital punishment. This was wholly immaterial and the dismissal was an abuse of the discretion vested in the court. The action and the remarks of the court were undoubtedly prejudicial to the defendant.

POINT II.

THE COURT IMPROPERLY ADMITTED EVIDENVE AND STATEMENTS OF THE PROSECUTOR.

Assignment of Errors Nos. 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 25 and 26, p. 895, 896, 897, 900, 901, 902, 904, Specification of Causes Nos. 8, 13, 14, 15, 19, 20, 21, 22, 23, 24, 27 and 28, p. 914, 917, 920, 921 and 923.

In his opening to the jury the prosecutor, after stating all of the facts in reference to the killing of Raymond Pierce, said:

> "He left the Overland car which belonged to the Noel family where the Dodge car which had been driven by Pierce the day before had been left by him the afternoon before, and took the Dodge car leaving the Noel car there.
>
> "MR. WACHENFELD: I would like to object on the ground that anything that happened on the following day is evidence of another crime and not admissible in this case.

"THE COURT: Objections overuled. (P. 341).

"THE PROSECUTOR continuing page 342: And that as this defendant was waiting there and as the chauffeur stopped and came toward his car he pulled out his automatic pistol which he had and fired a shot at the chauffeur who was pursuing him.

"MR. WACHENFELD: Same objection. (P. 342).

"THE PROSECUTOR continuing page 342: And the defendant kept on going and got across the Essex County line with the little girl, whose name was Mary Daly.

"MR. WACHENFELD: I will press my objection to anything which the Prosecutor will say as to what happened from this point on, on the ground that it is something which is not admissible in evidence in this case.

"THE COURT: Objection overruled. (P. 342).

"THE PROSECUTOR continuing page 342: He drove over the Essex County line to a part of Passaic County known as Wayne Township and then and there we will contend he discovered, this defendant discovered that the little girl he had taken was not the little girl he had intended to take, and in his haste he had made a mistake and that he killed that little girl.

"MR. WACHENFELD: I ask an exception now to the prosecutor's remarks in regard to the killing of the little girl on the ground that it is no part of this case, on the ground that there is another indictment pending against this defendant upon the ground that it is entirely separate and distinct from anything which the defendant is being tried for under this indictment, and upon the ground that it is no part of this scheme of things at all. I

am admitting that the question of motive may be admissible in evidence but I say that when the prosecutor makes any statement as to the killing of this little girl, he is putting in something that is prejudicial to the defendant, and is stating something which is not admissible, as evidence in this case, and I ask an exception to any such remarks and I ask the Court to admonish counsel and to instruct the jury to disregard it. (P. 343).

"THE COURT: I will overruled the objection at this time and say at the proper time I will instruct the jury as to my understanding of the law and the facts relating to them.

"MR. WACHENFELD: Then for the purpose of the record may I at this time ask for a mistrial if your Honor please on the ground that the defendant has been prejudiced. (P. 343).

"THE COURT: Overruled.

"THE PROSECUTOR continuing: He also succeeded in maintaining his denial that he did not know anything about the killing of Pierce or about the disappearance of the little girl.

"MR. WACHENFELD: I make the same objection with the same request that the court instruct the jury with reference to this phase of the case and will ask your Honor to grant me an exception to anything which the Prosecutor might say." (P. 343).

(Assignment No. 7, Specification No. 7).

The court then permitted the witness, Fred Gallagher to testify to a trip made with the defendant to Paterson (Assignment of Error 8, p. 394), and what happened in Paterson (Assignment of Error No. 10, p. 396); that the defendant showed the

police officers where the body of the girl was and the identity of the girl (Assignment No. 11, p. 397).

The witness, John Sandin, was permitted to testify to what happened in West Paterson on the day after the day named in the indictment (Assignment No. 16, p. 439); that the defendant at that time assaulted the witness (Assignment Nos. 16, 17, and 19) by shooting at him (p. 440-442). After being struck, the witness was taken to the hospital (Assignment No. 20, p. 443).

The cap worn by the witness at that time was admitted in evidence (Assignment No. 21, p. 444). The court permitted the Prosecutor to cross examine Dr. Thompson as to the killing of the little girl (Assignment No. 25, p. 566,567). All of the above evidence was objected to upon the ground that it was evidence of another crime, and therefore not admissible.

In Clark vs. State, 47 *N. J. L.* 558, *the court, on page* 558, *said*:

> "As a general rule, the state, for the purpose of showing that the defendant would be likely to commit the crime charged, cannot prove that he committed other crime although of a like nature."

In State vs. Raymond, 53 *N. J. L.* 265, *Justice Dixon states*:

> "And in general it may be said that whenever the defendant's guilt of an extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried, such guilt may be shown. But it must not be supposed that the defendant's propensity to commit crime, or, even commit crimes of the same sort as that charged can be put in evidence to prove his guilt of the particular offense; for however reasonable would be the deduction that, when a pocket is picked

> in a group of persons, of whom only one is addicted to picking pockets, he is the offender, his singularity in this respect could not, under our legal theory, figure as proof of his guilt. There must appear between the extraneous crime offered in evidence and the crime of which the defendant is accused, some other real connection beyond the allegation that they have both sprung from the same vicious disposition."

Meyer vs. State, 59 *N. J. L.* 310.
Leonard vs. State, 60 *N. J. L.* 9.
Parks vs. State, 59 *N. J. L.* 573.
State vs. Sprague, 64 *N. J. L.* 419.
In State vs. Ryan, 60 *N. J. L.* 552, *the court, on page* 556, *said*:

> "The general rule is that the state may not for the purpose of showing that a defendant would be likely to commit the crime charged against him, prove that he had committed other crimes, although of a like nature. Clark vs. State 18 Vroom, 556, 558. Upon the trial of a person for one crime, evidence that he has been guilty of other crimes is irrelevant. Meyer vs. State 30 Id. 310; Clark vs. State, Id. 573; Leonard vs. State, 31 Vroom, ante p. 8. There are exceptions to this rule most of which are well summarized by Mr. Justice Dixon in case of State vs. Raymond, 24 Id. 260, 264. The testimony now being considered comes within none of them, nor within any other that I have been able to find."

In State vs. Jackson, 65 *N. J. L.* 62, *the court said, on p.* 64:

> "The later cases almost uniformly declare such evidence to be admissible, and that it is an exception to the general rule that when a defendant is on trial for one crime, the jury shall not be prejudiced by having another proved

against him. McLeod vs. State, 35 Ala. 395; People vs. Jenness, 5 Mich. 305; State vs. Bridgman, 49 Vt. 202; State vs. Potter, 52 Id. 33; State vs. Williams, 76 Me. 48; Crane vs. People, 168 Ill. 395; State vs. Briggs, 27 N. W. Rep. 358; 2 Whart. Cr. L. Sec. 2663."

In State vs. Deliso, 69 *Atl.* 218, *the court said*:

"The assault upon Cansarano was, it is true, an offense for which, standing alone the defendant might have indicted so that it was in that sense a separate offense; and it is also true that, regarded as a separate offense, it was inadmissible for the purpose of exhibiting the defendant's disposition in a bad light, or of showing his predisposition to commit acts of violence."

The court then continues and holds that the evidence, however, was admissible to prove the timely presence of the defendant at or near the scene of the crime with which he was charged. This case is cited and followed in the case of *State vs. Fisher*, 114 Atl. 247, in which Chief Justice Gummere says on p. 248:

"In the case of State vs. Raymond, 53 N. J. Law, 264, 21 Atl. 328, the general rule on this subject is stated to be that 'upon the trial of a person for one crime, evidence that he has been guilty of other crimes is irrelevant,' and that, although there are a number of exceptions to this rule, it may be said in general that the testimony is irrelevant and incompetent, unless the defendant's guilt of the extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried; that there must appear between the extraneous crime and the crime of which the defendant is accused some other real connection beyond the allegation that they have both

sprung from the same vicious disposition. The court adds:

"'But it must not be supposed that the defendant's propensity to commit crime, or even to commit crimes of the same sort as that charged, can be put in evidence to prove his guilt of the particular offense.'

"And in the case of State vs. Deliso, 75 N. J. Law, 816, 69 Atl. 218, it is declared that testimony which merely tends to show the criminal character and predisposition of the accused is, as a general rule, irrevelevant and inadmissible, and that 'one cogent reason for the rejection of testimony as to unconnected crimes is the impracticability of trying a defendant for such unconnected crimes with a view to reading his guilt thereof if established into the specified crime with which the jury is directly concerned.' Our conclusion upon this point is that the testimony was incompetent, under the cases cited, and that its admission was plainly injurious to the defendant. For this reason the conviction under review must be set aside."

State vs. Hendrick and Stanton, 70 *N. J. L.* 41 *on page* 45, *the court says*:

"The general rule is that upon the trial of a person for one crime, evidence that he has been guilty of other crimes is irrelevant. *State vs. Raymond*, 24 *Vroom* 260, 264; *Whart. Cr. Ev.* 30. Nor is it competent to admit such proof for the purpose of showing that the accused would be likely to commit the crime charged in the indictment. *Bullock vs. State*, 36 *Vroom* 557, 574, and cases cited.

"There are well understood exceptions to the general rule. Among them are those where the extraneous crime grows out of the resgestae of the principal offence or is one of a system of independent crimes or is offered to

> prove a particular intent. The exceptions to this rule, in general, are quite fully stated by Mr. Justice Dixon, in the opinion in *State vs. Raymond*, supra. See, also, Whart, cr. Ev., Secs. 8, 31-48. The offence here charged is a conspiracy to defraud legatees under a will in the manner and by the means before stated, and we are unable to perceive how the proof of acts of unchastity on the part of the witness with persons who were in no way connected with the conspiracy charged can be brought within the exceptions alluded to. * * *"

On page 47 the court said:

> "When the court of review can see that the error complained of may have harmed the plaintiff in error, it is the court's duty to reverse. *Bell vs. Samuels*, 31 *Vroom* 370; *Buckman vs. Bergholtz*, 8 *Id.* 437, 441

This case is cited and followed in *Beyer vs. United States*, Circuit Court of Appeals, reported *in Vol.* 282, *Federal Reporter*, *page* 225, in which the court, on page 227, says:

> (4) While proof of the possession of liquor at another time was collateral and immaterial, so far as establishing the issue on trial was concerned, its effect upon the jury was detrimental and prejudicial to the defendant. Evidence that he committed other crimes at other times may not be admitted to show that he had it within his power and was likely to commit the particular crime with which he was charged. *State vs. Hendrick & Stanton*, 70 *N. J. Law*, 41 45, 56 *Atl.* 247; *Taliaferro vs. United States*, 213 *Fed.* 25, 129 *C. C. A.* 611; *People vs. Sharp*, 107 *N. Y.* 427, 14 *N. E.* 319, 1 *Am, St. Rep*, 851, *Rau vs United States*, 260 *Fed* 131, 171 *C. C. A.* 167; *Boyd vs. United States*, 142 *U. S.* 450, 458-12 *Sup. St.* 292, 35 *L. Ed.* 1077. It is easy to see

how such evidence might prejudice the jury, render a fair trial impossible, and lead to conviction.

"We are therefore constrained to reverse this case and grant a new trial."

The Hendrick case is also cited and followed in *Thompson vs. United States,* Circuit Court of Appeals, reported in *Vol.* 283 *of the Federal Reporter, page* 895, in which the Court, on page 896, says:

"(1) The general rule of law, with certain exceptions collected in the case of *People vs. Sharp,* 107 *N. Y.* 427, 14 *N. E.* 319, 1 *Am. St. Rep.* 851, is that on a prosecution for a particular crime, evidence, which shows or tends to show that the accused has committed another crime wholly independent of that for which he is being tried, even though it is a crime of the same character, is irrelevant and inadmissible, for it affords no legal presumption or interference as to the particular crime charged, and may be prejudicial to defendant. *Boyd vs United States,* 142 *U. S.* 420 12 *Sup Ct.* 292 32 *L. Ed.* 1077; *Fish vs. United States,* 215 *Fed.* 544, 132 *C. C. A.* 56, *L R. A.* 1915A, 809; *State vs Hendrick et al,* 70 *N. J. Law,* 41, 45 *Atl.* 247."

In *Shaffner vs. Commonwealth of Penn.* 72 Pa. St. Rep. 60,, 13 Am. Rep. 649, the defendant, Emanuel Shaffner, was indicted for the murder of his wife, Nancy, by poisoning. The Commonwealth offered to show the death of the defendant's first wife, Sarah Shaffner, and that of John Sharlock, husband of Susan Sharlock, were from the same cause, poison; that they had the same symptoms as Nancy, the last wife, and that the defendant was the attendandt of each, and that they all died at his house. The Court said:

"The admission of the evidence as to Sharlock's death required the defendant to meet a

> charge for which he was not indicted, and to defend two distinct charges in one trial. Evidence of the commission of one crime is not admissible to prove another. Commonwealth vs. Ferrigan, 8 Wright, 387; Stone vs. State, 4 Humphreys, 27; State vs. Wisdom, 8 Porter, 511; Rex vs. Ellis, 2 Russell, 698; Rex vs. Birdseye, 4 C & P 386; United States vs. Mitchell, 2 Dallas, 357; 1 Greenleaf Evidence, Section 52; 1 Phillips Evidence 645."

In *Farris vs. State of Ill.* 4 L. R. A. 582, 21 N. E. 821, it was held that on a trial for murder, the admission of evidence that the defendant committed the crime of rape upon the wife of the murdered man within half an hour after the killing upon the theory that such evidence tended to prove the motive or intent with which the homicide was committed, was prejudicial error. The court held that evidence of a distinct substantive offense as a general rule cannot be admitted in support of another offense Such proof is never admissible unless there is some logical connection between the two crimes of which it might be said that one tends to establish the other. The court, at p. 585, said:

> "In this case, it must be borne in mind that there is no evidence whatever connecting the two acts, or tending to show wherein the commission of the rape had any bearing upon the tendency to explain the commission of the homicide; and, therefore, if it be held that evidence of the one tended to prove the other, it must be upon the ground that there is some natural or obvious connection between the two acts. Did proof of rape in this case tend to prove the defendant guilty of murder? What element in the crime of murder was wanting when this evidence was admitted? Or what facts in evidence, necessary to make out the crime of murder, did

it tend to strengthen, or corroborate? It seems clear to us that these are questions which puz--zle the legal mind, and can only be answered so as to sustain the admissability of the evidence in question, if at all, by drawing exceedingly fine destinctions.

"To the other question—was it not evidence calculated to inflame the minds of the jury, and prejudice them against the defendant, rather than prove him guilty of murder?—the answer is obvious. It is insistent that the object was to show a motive and for that purpose the learned judge held it competent. In the first place, under the facts proved, it was not necessary to prove a motive. In case of doubt as to whether the party charged did the criminal act, proof of motive is important, and often decisive; but in this case the State having shown the deliberate shooting, under circumstances showing both express and implied malice, proof of motive was not necessary to a conviction; and while the prosecution doubtless had the right to add that proof by competent evidence, it may well be doubted whether testimony so strongly calculated to prejudice the jury against the defendant should have been admitted, even though it tended to prove a motive; such proof not being necessary to the case.

"But no theory has been suggested upon which it can be said that the commission of the crime of rape tended to show a motive for the homicide; and after the most careful examination of all the evidence, and a consideration of it in all its phases, we can discover no rational connection between the two acts, whereby it can be inferred that desire, purpose or intent to commit the crime upon Mrs. McGehee could have influenced the mind of defendant to take the life of deceased. To so hold seems to us not only illogical, but unnatural and unreasonable."

In the case of *People v. Molineux*, 168 N. Y. 264, 62 L. R. A. 193, the New York Court of Appeals reviewed the law on the subject of introducing testimony relative to other offenses than those charged against the defendant.

In the course of the opinion it is stated that the exceptions to the general rule cannot be be stated with precision, but that, generally speaking, evidence of other crimes is competent to prove the specific crime charged when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so relate to each other that proof of one tends to establish the other; (5) the identity of the person charged with the commission of the crime on trial.

Under the fourth subdivision as to a common plan or scheme, the court observes that it sometimes happens that two or more crimes are committed by the same person in pursuance of a single design, or under circumstances which render it impossible to prove one without proving all. To bring a case within this exception, there must be evidence of system between the offense on trial and the one sought to be introduced. They must be connected as parts of a general or composite plan or scheme, or they must be so related to each other as to show a common motive or intent running through both. The court quotes Underhill on Criminal Evidence as folows:

> "No separate and isolated crime can be given in evidence. In order that one crime may be relevant as evidence of another, the two must be connected as parts of a general and composite scheme or plan. Thus, the movements of the accused prior to the instant of the crime are always relevant to show that he was making preparations to commit it. Hence, on a trial for homicide, it is permissable to prove that the

> accused killed another person during the time he was preparing for or was in the act of committing the homicide for which he is on trial. And, generally, when several similar crimes occur near each other, either in time or locality—as, for example, several burglaries or incendiary fires upon the same night—it is relevant to show that the accused, being present at one of them, was present at the others if the crimes seem to be connected. Some connection between the crimes must be shown to have existed in fact and in mind of the actor, uniting them for the accomplishment of a common purpose, before such evidence can be received. This connection must clearly appear from the evidence. Whether any connection exists is a judicial question. If the court does not clearly perceive it, the accused should be given the benefit of the doubt, and the evidence should be rejected. The minds of the jurors must not be poisoned and prejudiced, * * by receiving evidence of this irrelevant and dangerous description."

Evidently the court considered this an exact statement of the law on the subject and observes that it is so accurate and concise that no other text writers need be cited.

In State v. Bullock, 65 N. J. L. p. 557, the court, after citing the general rule, defined the exceptions by saying, p. 574:

> "There is a class of cases in which the knowledge, good faith, motive or intent of a party is material on which evidence collateral to the main subject is sometimes admitted, but the competency of such evidence is limited to the facts which are so connected with the subject in controversy as to make it apparant that the party had a common purpose in both transactions."

In State v. Raymond, supra, after laying down the general rule which has been followed in every case in this state, and in practically every other jurisdiction, the court said the exceptions are as follows: (1) Where the crime was committed by a similar novel contrivance and the presence of the defendant could be shown to establish identity; (2) opportunity to commit crime; (3) when several crimes may have sprung from a single motive; (4) motive; (5) when one crime may have been perpetrated as a preparation for or means of committing, concealing or escaping from another; (6) to prove intent or knowledge.

In the case at bar the facts are simple. According to the defendant's own statement, he killed the colored man for which he was on trial, he took his car and used that car for the purpose of kidnaping the little girl. He kidnaped the little girl to obtain a ransom.

This is the theory upon which the state proceeded and which it proved. The Prosecutor then in his opening said:

> "He drove over the Essex County Line into a part of Passaic County known as Wayne Township and then there we will contend he discovered, this defendant discovered, that the little girl he had taken was not the little girl he had intended to take, and in his haste he had made a mistake, and that he killed that little girl." (Case p. 342.)

Confining the argument at this time entirely to the evidence in reference to the killing of the little girl, it is insisted that it is a separate crime and not admissible in evidence under the general rule, or any of the exceptions thereto as above stated.

If there were a scheme or plan by this defendant it was, as stated by the Prosecutor, a scheme to kidnap the little girl for ransom, and in order to accomplish the kidnaping he killed the colored man to obtain his automobile. The object of the scheme or

plan was to obtain a ransom. It might, therefore under the broadest interpretation of the exceptions to the general rule, be logically argued that it was admissible to show that on the day following the murder for which the defendant was on trial he had in his possession the automobile driven by the colored man on the day previous, and that he used that automobile to kidnap the little girl. This might be admissible because it was part of the scheme or plan, but having admitted this as a part of the plan or as a motive for the killing of the colored man, it was certainly not admissible to permit the state to go further and prove that the defendant killed the little girl.

According to the state's own theory, he killed the little girl because he made a mistake—because he found the little girl was not the girl he intended to take.

There is absolutely no evidence that the killing of the little girl was part of the scheme or plan, or that the defendant ever intended to kill the little girl. All he intended or hoped to do was to kidnap the little girl for a ransom. It is a separate crime caused by an entirely different motive which had absolutely no bearing upon the kiling of the colored man for which the defendant was on trial. What element in the crime of Pierce's murder was wanting when the evidence of Mary Daly's murder was admitted? Or what fact in evidence as to the murder of Pierce did it strengthen or corroborate?

There was no connection between the two acts. They were separated by a full day, and had absolutely no relationship. There is no proof in this case that the defendant killed the colored man so that he might kill the little girl, or that there was any intention on his part to kill her. To hold that there is any connection between the two acts under the evidence submitted seems illogical, unreasonable and unnatural. It was, on the other hand, evidence which undoubtedly inflamed the minds of the

jury and prejudiced them against the defendant, but it had nothing to do with proving the question as to the murder of Pierce.

Secondly, all of the evidence in reference to the assault made by the defendant upon the chauffeur, Sandin, was inadmissible for the same reason— being a separate and distinct crime. What evidence of the killing of Pierce did this testimony tend to strengthen or corroborate? What relevancy or what bearing had it upon the killing of Pierce? There was certainly no connection between the assault made by the defendant upon Sandin and the murder of Pierce, and it was, as already argued, evidence calculated to prejudice the jury against the defendant.

The same is true of the admitted testimony showing that the witness, Sandin, was taken to a hospital, presumably because he was so seriously hurt, and the cap that he wore at that time was admitted in evidence. This had absolutely nothing to do with the crime for which the defendant was on trial.

For the reasons above stated it is respectfully insisted that the evidence admitted concerning the killing of the little girl, Mary Daly, where her body was found, the position that it was in, and all of the other details in reference thereto, and the assault upon the chauffeur, Sandin, the fact that he was taken to a hospital, and the admission of his cap in evidence was prejudicial to the defendant and reversible error.

POINT III

DEFENDANT'S CONFESSION WAS ERRONEOUSLY ADMITTED

Assignment of Error No. 15, *page* 900
Specification of Causes No. 12, *page* 917

The defendant's confession was admitted over objection and marked S 12 (Case p. 432). The objection was based upon the following grounds: (1) It was not properly proven because it appeared from the testimony that the defendant had been adjudged insane, and was presumed to be insane, (2) because of promises made to the defendant; and (3) because the confession contained evidence of the commission of other crimes.

The defendant was adjudged insane and committed to an insane asylum on March 24, 1925, (Exhibit D. 1. p. 12). The presumption of insanity, therefore, continued, and at the time of the admission of the confession there was absolutely no evidence before the court to overcome this presumption, and the defendant in the eyes of the law was still insane. It does not seem necessary to quote authorities to show that the statements of an insane man are not admissible.

For this reason alone there was error in the court's admitting the confession.

The defendant was arrested at 5 P. M. on Saturday, September 4 (Case p. 400), and he was questioned from that time until 7 P. M. on Sunday, September 5 (Exhibit D 13, Case p. 773), making a total of 26 hours of constant questioning. Detective Gallagher questioned and stayed with the defendant until 5 o'clock the next morning (Case p. 401). He was questioned by Dr. Kirkwood around four or five o'clock in the morning; he was questioned by Dr. Payne around nine o'clock in the morning (Case p. 402). He was also questioned by Mason, Diamond, and numerous other police officers.

On numerous occasions the defendant informed Detective Gallagher, and Chief Riley that he wanted $4,000 (Case p. 398) and the police officers offered him $4,000. They also offered to give him more than $4,000, and the defendant said he only wanted $4,000 (Case p. 398):

"Q When you got to Headquarters, Noel wanted $4,000, did he?
A He did.
Q Who did he tell he wanted $4,000?
A The Chief and I.
Q And did he say it to you more than once?
A Yes.
Q Did you offer him the $4,000?
A We did.
Q Did you tell him you would give him more than $4,000?
A We did.
Q You told him you would give him more than $4,000 and he told you he wanted $4,000?
A $4,000.
Q And he argued with you police officers when he was in Police Headquarters about getting from you men who represented the law $4,000?
A He did.

(Case p. 399).

Q And then you made him some promises because you wanted to get that information?
A Well, he wanted $4,000 and we told him we would get him the $4,000."

The $4,000 was also promised by Chief Riley and by Mr. Daly (Case p. 399).

He was also told if he would confess he would not be prosecuted at all. He was informed of this

by Mr. Daly in the presence of Chief Riley and Mr. Gallagher.

(Case p. 400) :

"Q Now did you hear any one else say at that time if you will tell us what happened and where the little girl is we will let you go free?
A Well, I think Mr. Daly told him that if he told him where the girl was that he would not prosecute him.

(Case p. 400) :

A I think Mr. Daly told him that if he would tell him where his girl was he would not prosecute him at all.
Q Did you make any other promises about his going free outside of what you told him about the girl?
A Yes.
Q Did you make any promise about not going back to Overbrook?
A Yes.
Q And you told him of the promises made at that time up until around one o'clock?
A Yes, Sir.

It is apparent from this testimony that the defendant was promised three different things by the police officers in order to get him to make a confession. He was promised, first, to be rewarded to the extent of $4,000 or more; secondly, that he would not be prosecuted at all; and thirdly, that he would not be sent back to Overbrook.

Capt. Mason did not see Noel until Saturday morning about quarter past eight (Case p. 428) after he had been questioned all night by Chief Riley and Detective Gallagher. He did not know that the other officers had promised the defendant

$4,000, nor did he know that they had informed the boy that he would not be prosecuted if he would confess (Case p. 429). Capt. Mason himself promised the defendant that he would not be taken back to Overbrook if he would confess (Case p. 430). Th only statement made by anyone after the numerous and repeated promises made to the defendant, was made by Capt. Mason, who said (Case p. 427) : "I am a representative of the Prosecutor's office and anything you say I will put in writing, and I may use it against you at a later date." The defendant was not told at that time by Mason, or by Gallagher or by Chief Riley, or by any of the other six detectives who were present when the confession was made, that the repeated promises theretofore made to the defendant were withdrawn and that he could not rely upon them, and it is respectfully insisted that there is nothing in the evidence to show any proper warning of the consequences or any other circumstances from which there was reason to presume that the delusive hope instilled by the former promises had been effectually dispelled.

This was necessary before the confession could be admitted. State vs. Kwiatkowski 83 N. J. L. 650.

In State vs. Bullock, 65 *N. J. L.* 557, *the court, through Chief Justice Depue, said* (*p.* 566) :

> "The question is, whether a confession made to him may be received in evidence as a voluntary confession after what had previously occurred between the two officers and the prisoner. It is well settled that where promises or threats have been once used of such a nature as to render a confession inadmissible, all subsequent admissions of the same or like facts will be rejected unless from the length of time intervening, from proper warning of the consequences, or from other circumstances,

there be good reason to presume that the delusive hope or fear that influenced the first confession has been effectually dispelled."

The court also said on page 567:

"It is readily admitted that the antecedent hopes or fears or other sources of influence are to be brought into account and weighed. It may even be conceded that when once a confession under influence is obtained, a presumption arises that a subsequent confession of the same nature flows from the like influence and that such a presumption should be overcome before the confession ought to be given in evidence."

In the *Bullock case*, supra, the Chief of Police warned the defendant not to talk, told him that "You need not say a word, and if you do it will be used against you on the trial." The facts in the case at bar are much stronger than the circumstances in the Bullock case, and it will be noticed that Capt. Mason did not advise the defendant that whatever he said would be used against him, but merely used the phrase "may be used against you, later on."

It must be borne in mind that the defendant was not mentally normal; he was insane, and undoubtedly would have much more difficulty in comprehending the consequences of his act than the average individual. It therefore became the duty of the police officers to make it plain and clear to him prior to taking his confession that the previous promises meant nothing and had been withdrawn. The various promises made by at least three different individuals made repeatedly and covering a long period of time, undoubtedly left their impression upon the mind of the defendant, and it is difficult to conceive how the mere statement by Capt. Mason would be sufficient to eradicate any hope that was instilled in the defendant's mind by

the promises made to him. Because of the mental condition of the defendant, the situation should be treated more cautiously than in the average case.

In the Bullock case the question as to whether or not the confession was voluntary was left to the jury, but in the case at bar that question was decided by the court, and the jury were given no discretion, nor were they permitted to decide from the evidence whether or not the confession was voluntary.

In State vs. Aaron, 4 *N. J. L.* 263, *Chief Justice Kirkpatrick said, on p.* 272:

> "In Leach's edition of Hawkins, we find it said that: 'The human mind under the pressure of calamity is easily seduced and is liable in the alarm of danger to acknowledge indiscriminately a falsehood or a truth as different agitations may prevail. A confession, therefore, whether made upon an official examination or in discourse with private persons which is obtained from a defendant either by the flattery of hope or by the impressions of fear, however slightly the emotion may be implanted, is not admissible evidence; for the law will not suffer a prisoner to be made the deluded instrument of his own conviction."

State vs. Guild, 10 N. J. L. 192, holds that a verbal confession of guilt made by a person accused of a crime, if produced by a delusive hope of immunity existing in his mind, will not be received in evidence, and a written examination of the accused made by a justice within a few hours after the verbal confession will also be inadmissible upon the presumption that the same inducement which operated upon his mind at the time he made the verbal confession may have continued to operate at the time of the making of the written confession. The court said, p. 213:

> "Then it follows that the true criterion is the actual state of mind of the accused at the time the confessions were made, and the true question for solution, whether at that time he was under undue influence of hope or fear. It is readily admitted that the antecedent hopes or fears or other sources of influence are to be brought into account and weighed. It may even be conceded that once a confession under influence is obtained, a presumption arises that a subsequent confession of the same nature flows from the like influence and that such presumption shall be overcome before the confession ought to be given in evidence."

In this case the second confession which was objected to was made five months after the first confession.

In *State vs. Roessel*, 62 N. J. L. p. 216, the court. through Justice Depue said, on p. 236: "The burden of proof is on the state to show that the confession was voluntary."

All of the above cases are cited and followed in *State vs. Mowser*, 103 Atl. 805 and *State vs. Morehous*, 117 Atl. 296.

The Chief of Police, Detective Gallagher and Mr. Daly in the presence of the police officers promised the defendant before making the confession (1) $4,000, or more than $4,000; (2) that he would not be sent back to Overbrook, which he seemed to be very much afraid of; and (3) that he would not be prosecuted at all.

To the lay mind, and especially to a boy twenty years of age, the Chief of Police is a powerful and influential official, as his name of Chief implies. He was undoubtedly looked upon by the boy as the person in absolute charge and control of the situation. He had questioned the boy for many hours longer than any other person, and undoubtedly gave numerous orders which the boy heard. The

defendant had a right to rely upon his promise, and if he was going to be given a sum of money, was not going to be prosecuted, and was not going to be sent back to Overbrook, what difference did it make to him if a man by the name of Mason, who was only a "representative" of the Prosecutor's office, said: "I may use it against you at a later date." He did not say it would be used against him, and even if it were used, the defendant was promised by the Chief that he would not be prosecuted, would not be sent back to Overbrook and would get a sum of money. Mason did not say he would or might be prosecuted, might be sent back to Overbrook or would not get his money. As long as the other promises were kept, the defendant probably did not care in what other respects the statement might be used.

Mason, himself, definitely promised the defendant that he would not be sent back to Overbrook, and it cannot be argued that merely because he subsequently said, in reference to the statement: "I may use it against you at a later date," that this meant the promise was cancelled. The hope engendered by that promise undoubtedly was still in the mind of the boy when he made his confession.

The hope implanted by the promises of the Chief of Police was not removed by Mason's mere statement. The burden of showing the confession to be voluntary is on the state, and the state has failed to support that burden.

After having made these various promises to the defendant, the officers who took the confession were obligated to inform the defendant frankly and plainly that the promises were withdrawn; that the defendant would be prosecuted; that he might be sent back to Overbrook, and that he would not be given a sum of money.

In State vs. Bullock, 65 *N. J. L.* 557, *Chief Justice Depue on p.* 556, *said*:

> "The ground on which a confession made by the accused under promises of favor or threats of injury is excluded as incompetent, is not because any wrong is done to the accused in using them, but because he may be induced by the pressure of hope or fear to admit facts unfavorable to him without regard to their truth."

This is exactly what happened in the case at bar. The defendant, according to his own statement. shot the colored man, Raymond Pierce, on Thursday afternoon, September 3, at about 1:30 or 2 o'clock, disposed of his body, and returned home at 4 o'clock (See Exhibit S-13, p. 773). Yet two witnesses saw Pierce, the colored man, alive that very same night as late as 8 o'clock. Emil Von Thorn had known Pierce intimately for a year and a half before his death (Case p. 494), saw him practically every day (case p. 493), conversed with Pierce on Thursday evening, September 3, in his store, between 7 and 8 o'clock. He remembered the occasion distinctly, recalled and testified to the conversation and the purchases made by Pierce (Case p. 494). Emeline Schaeffer knew Mr. Von Thorn and where his store was located; she knew Raymond Pierce and had known him since April (Case p. 498) ; she saw Raymond Pierce on Thursday evening, September 3, coming out of Von Thorn's store at 7:45 P. M. She was positive it was Thursday night because she had an engagement on Wednesday night that she could not keep, but kept it on Thursday night instead, and it was on returning from that engagement that she saw Pierce (Case p. 498). Mrs. Anna Cueman said that she lived on Little Falls Road, Cedar Grove, within fifty feet of where the body of the negro was found (Case p. 502) ; that during the afternoon of Thursday, September 3, she was on the front lawn with her three children, from one o'clock until five. During

the time she was there she did not see any car drive up to the bridge and stop there for a period of time. She was certainly in a position readily to have seen such an unusual incident as a car stopping within fifty feet of her, and a man or a boy drag a body from it down into the bushes on the side of the roadway. She says no such thing ever happened.

The defendant's mother testified that he was home on the day in question for dinner, around six o'clock, and did not go out again that evening. (Case p. 622).

There are therefore three witnesses who absolutely rebut the truth of the defendant's statement, and it is insisted that the confession is untrue and was induced by the promises made to the defendant.

The confession contained evidence of other crimes not admissible in evidence, which is fully covered under Point II.

It is respectfully contended that for the reasons above stated, the confession was not admissible in evidence, and by its admission the defendant suffered manifest wrong and injury.

POINT IV.

THE COURT IMPROPERLY ADMITTED THE FOLLOWING TESTIMONY:

Assignment of Error No. 12, p. 898; Specification of Causes No. 16, p. 918.

The witness, Fred Gallagher (Case p. 404):

"Q What did you say to him?

A Now that you have got this over, what has become of Pierce?

Q What did he say?

MR. WACHENFELD: Same objection.

THE COURT: Same ruling.

A He said he had shot Pierce."

The same objection refers to the objection made on page 403, which was based on the following ground:

> "On the ground that it was perfectly apparent that this boy was promised three different things at least by the police officers, and upon the ground that under the case of State vs. Bullock, that assumption continues, and that the burden is upon the state to show that the mind was disabused of the promises made by the police officers and other people and there is no evidence in this case that it was disabused, and there is no evidence in this case that the police officers told him about it."

Page 406.

"Q What did you say to him? What did he say to you, or what did you or he say to anybody else?

MR. WACHENFELD: Same objection.

THE COURT: Same ruling.

A We asked him what became of the gun, and he said 'It is in the rear seat of his car.'"

The testimony clearly shows that up to this time the police officers had promised the defendant he would not be prosecuted, he would not be sent back to Overbrook, and he would be given a sum of money, to wit, $4,000.

This testimony is specifically set out under Point III and the reference to the testimony there given. The law and the cases are also set forth under this same point.

It must be apparent from the testimony that these three different promises were made to the defendant frequently during a long period of time. After the making of these promises and without giving any warning, without advising him that the promises had been revoked, without telling him that anything that he might say would be used against him, the court admitted the statement of Noel, which was in the form of a confession to the effect that he had shot Pierce. It is respectfully insisted that under Point III, this was error and prejudicial to the defendant. The same argument is true in reference to the admission of the defendant as to the possession of the gun. After having instilled the defendant with hope by promises, it was improper for the court to permit his admission in reference to the colored man or the possession of the gun.

These admissions were also inadmissible because the defendant was insane, and the law presumed the continuance of that state of insanity. The admissions or statements of an insane person are not binding upon him or admissible in evidence.

POINT V.

THE COURT ERRONEOUSLY SUSTAINED THE PROSECUTOR'S OBJECTION TO CERTAIN QUESTIONS.

Asignment of Error No. 13, p. 899; Specification of Causes No. 17, p. 919.

"Q Why did you keep that from him, if you told him everything else? (Case p. 413).

MR. D'ALOIA: I object to that.

THE COURT: Sustained."

It will be noted that there was no ground upon which the objection was made, and it would be difficult to conceive of any proper grounds upon which it could be based. Nevertheless the court sustained the objection.

This situation occurred after Gallagher had testified to long conversations with the defendant after he had admitted that he knew every fact or circumstance in connection with the crime, excepting the perpetrator of it, and counsel for the defendant was attempting to impress upon the court and the jury that the information obtained from the defendant by way of admissions was merely confirming the knowledge already in the possession of the police; that the police knew where and when the girl had been kidnapped, the kind of car that was used, where it had been driven, the fact that the colored man had been killed, that his body had been found in a certain location, and it was of the utmost importance to show that Detective Gallagher was consantly saying to the defendant, We know this, and we know that, reciting the facts within his knowledge.

Prior to this there were no objections to counsel's questions and the witness admitted that all of this information had been imparted to the defendant.

He admitted that he told the defendant that he knew the defendant had taken the little girl; that he knew the defendant had been pursued by the chauffeur, that he had been using this particular Dodge car, and that the car had been found by the police. When asked about the most important fact, to wit, the body of the man whose death the defendant was charged with, Detective Gallagher said that this information had not been imparted to the defendant.

Case p. 413:

"Q Did you tell him about Pierce's body being found?
A No. sir.' '

Apparently the court thought that it was proper cross-examination to go into the various details as to what the detective had told the boy before obtaining his admissions, and when the most important factor is reached, and the witness says that he did not give this information to the defendant, the court does not permit counsel to cross-examine on that point, or permit him to ask the witness why he did not give the defendant this important information.

Counsel was attempting to impress upon the court and jury that these various facts had been repeated by the police authorities to the defendant throughout a period of a great many hours; that the plaintiff was susceptible to suggestions by reason of his mental ailment, and the admissions contained nothing excepting the same information which had been instilled in his mind by the police themselves. It was also readily admitted by the witness that all of the other facts had been recited by the police to the defendant with the exception of the fact that Pierce's body had been found.

It is respectfully insisted that it made a material difference as to whether or not defendant first gave

this information on his own initiative, or whether it was an admission by the defendant after having been repeatedly told by the police that they knew the colored man was dead, had been murdered, and his body had been found.

Counsel was not obliged to take the simple answer "No," without the right to cross-examine the witness as to the facts and circumstances involved and to test his credibility on this point.

POINT VI.

CHARGE OF THE COURT.

Assignment of Error No. 31, p. 906, Specification of Causes No. 31, p. 926.

The court charged as follows:

> "The distinguishing feature between the two degrees is the intent with which the homicidal act is done. The presumption of law is that all murders rather all homicides are murder in the second degree, and the State has the burden of proving affirmatively, if the first degree is contended for, that the act was with the intent to take life, that the act was premeditated, deliberate and wilful, each requiring some appreciable time, and you must, in order to convict of murder in the first degree, find that the accused contemplated the act, that is, pre meditated the act, then determined upon its commission, that is to say, wilfully intended it, then weighed such intent before carrying it into effect, or, in other words, deliberated. While these words do not require any appreciable time, nevertheless, each act, in the contemplation of the law, is separate and distinct and there must be a concurrence of all in order to justify the finding of murder in the first degree."

The court in its charge laid emphasis upon the fact that the distinguishing feature between murder in the first and murder in the second degree was the intent to take life. Its natural interpretation by a jury would be that if the defendant intended to take life, he must be guilty of murder in the first degree.

The law seems to be well settled that the intent to kill is not the distinguishing feature between first and second degree murder, but may be present

in both forms of homicide. In *State vs. Bonofiglio*, 67 N. J. L. 239, Chief Justice Gummere said:

> "This is manifest, for the word 'Wilful,' although broader in its signification than 'intentional,' embraces the latter in its meaning. A reading of our statute shows that the legislature meant that something more than the bare intent to kill should exist in order to constitute murder in the first degree, for it first specified two cases of homicide in which both deliberation and premeditation are present to a marked degree, viz., by the administration of poison and by lying in wait, and then declared that murder perpetrated by any other kind of wilful, deliberate and premeditated killing should be murder of the first degree. The specifications of these two cases is significant; it emphasizes the meaning which the legislature desired should be given to the words 'deliberate' and 'premeditated.'
>
> "In our opinion, notwithstanding the great respect we have for the learning and accuracy of statement of the distinguished jurist who delivered the opinion of the Supreme Court in the Donnelly case, the presence of a specific intent to take life is not, standing alone, conclusive that the homicidal act was done with deliberation and premeditation."

In State vs. Manzona, 77 *N. J. L.* 544, *the court, on page* 546, *says*:

> "It is therefore settled in this state that murder in the first degree cannot be predicated upon the mere circumstance of an intent to kill at the time of committing the crime."

The charge of the trial judge did not, therefore, correctly state the law, or properly distinguish be-

tween murder in the first and second degrees, but undoubtedly impressed the minds of the jury that if there was any intent to take life, the defendant must be guilty of murder in the first degree. This error was committed at the time the court was charging the jury in reference to first degree murder, and is contained in the same paragraph, having reference to first degree murder.

It was therefore prejudicial to the defendant because in conjunction with the definition of first degree murder, the court erroneously laid emphasis upon the fact that the distinguishing feature was the intent with which the homicidal act was com mitted.

The court also confused the minds of the jury when it said:

> "While these words do not require any appreciable time nevertheless each act in the contemplation of the law is separate and distinct, and there must be a concurrence of all in order to justify a finding of murder in the first degree."

It did not make any difference whether the "words" as used by the court "required any appreciable time." The question was as to the acts requiring appreciable time. It was confusing, and had a tendency to nullify the previous statement of the court that each act "required some appreciable time." It left the jury in doubt as to the exact meaning intended to be conveyed by the court.

It is therefore contended, for the reasons above stated, that the charge of the court was erroneous and prejudicial to the defendant.

POINT VII.

CHARGE OF THE COURT.

Assignment of Error, No. 33, p. 907; Specification of Causes No. 33, p. 926.

The court charged the jury as follows in reference to second degree murder: (Case p. 762).

> "Murder in the second degree comprehends cases of murder in which an attempt is made to do bodily harm without an intent to take life, where the act is done in the heat of passion, without justification and lacking the essential elements of the highest degree of crime —premeditation, deliberation and wilfulness."

This charge is erroneous in that it does not include every other killing where the specific intent to take life might be present but in which the essential elements of murder in the first degree, to wit, premeditation, deliberation and wilfulness, or any of them, might be absent.

State vs. Bonofiglio, 67 N. J. L. 239;

State vs. Deliso, 75 N. J. L. 808;

State vs. Manzano, 77 N. J. L. 544;

State vs. Mosely, N. J. Adv. Rep. vol. 3, No. 52, p. 1972.

The charge also creates only one situation in which the defendant could be found guilty of murder in the second degree, and by its express language constitutes the killing as a second degree murder only where there is an attempt to do bodily harm, when the act is done in the heat of passion, etc. It will be noticed that the disjunctive preposition "or" is not inserted between the words "life" and "where", and therefore, in order to comply with the definition, the jury would have found it necessary to conclude, first, that the intent was to

do bodily harm, and, second, that the act must have occurred in the heat of passion. This is error. The cases clearly hold that if there was merely an intent to do bodily harm, it would be murder in the second degree, or if it was done in the heat of passion it would also be murder in the second degree.

This error is much more palpable than the error committed by the trial court in the Mosely case, and prevented the jury from bringing in a verdict of murder in the second degree. There is an abundance of medical testimony to the effect that the defendant could not commit any act wilful, deliberate and with premeditation because of his insanity and mental ailment. There is the testimony of Mulcahy that the defendant was laboring under the insane delusion that he was being taken back to Overbrook by the colored man whom he killed. From this evidence the jury could readily have concluded that the defendant shot the deceased intending to do only bodily harm, or that he acted under an insane delusion, but there was no evidence from which the jury could possibly conclude that the defendant acted in the heat of passion; yet it was necessary for them, if they were to comply with the charge of the court, to find that the defendant acted in the heat of passion before they could bring in a verdict of murder in the second degree.

It is respectfully insisted that from the charge of the court, the question of murder in the second degree was entirely eliminated from the jury, unless they found that the act was done in the heat of passion.

This we respectfully contend was prejudicial error to the defendant.

See dissenting opinion of Justice Kalisch in the Mosely case.

This erroneous statement of the law undoubtedly

had a tendency to mislead the jury in determining the degree of murder. Assume for the purpose of argument that the jury first considered, after having concluded that the defendant was guilty of some crime as to whether or not he was guilty of murder in the second degree. There was no evidence from which they could find that the killing occurred in the heat of passion, and they would therefore of necessity, and under the instructions of the court, have to conclude that the defendant was guilty of a higher crime than murder in the second degree.

It is respectfully submitted that if the jury first considered murder in the first degree and without considering the definition of second degree murder, and concluded that the defendant was guilty of murder in the first degree, it would then be harmless error; but the jury is not obligated by the law or by the charge of the court to proceed in any definite way, and it is a fair assumption, therefore, that is considered first, whether or not the defendant was guilty of murder in the second degree. The court having restricted them on this issue by its charge to one classification, to wit, where the act was done with the intent to do bodily harm and also done in the heat of passion, they would of necessity, because of the erroneous definition, have to conclude that the defendant was guilty of murder in the first degree. This we contend was error.

POINT VIII.

CHARGE OF THE COURT.

Assignment of Error No. 39, p. 908; Specification of Causes No. 40, p. 928.

The court charged: (Case p. 763).

> "I will not recount or go over in detail the testimony of the gentlemen who have testified." Dr. Washington and Dr. Markens, called in the state's main case, said that the defendant knew the distinction between right and wrong."

Dr. Marken's testimony will be found on pp. 454, 455 and 456 of the State of the Case. He merely testified to certain questions asked by him of the defendant and answers given thereto. He did not testify that the defendant could distinguish between right and wrong, nor did he say one word as to the mental condition of the defendant.

The court did not inform the jury that if testimony was mis-quoted to them, they had the right to correct it. He merely said:

> "If I, in referring to the testimony, omit some parts which you think are important, or if I emphasize some part of the testimony which in your judgment is not justified, of course you are not to follow the court in its deductions as to the evidence."

It is respectfully insisted, however, that this was limited to where the court omitted parts of the testimony or where it emphasizes parts which, in the minds of the jury, was not justified. Nowhere in the court's charge does he tell the jury that they have a right to disregard the remarks of the court if they are not in the evidence.

There being no such testimony in the case as charged by the court, it was error which was prejudicial to the defendant.

POINT IX.

CHARGE OF THE COURT.

Assignment of Error No. 37, p. 908; Specification of Causes, No. 37, 928.

The court charged the jury as follows: (Case p. 762).

> "The defendant has not taken the stand. You may consider that as a circumstance in this case. The fact that he did not take the stand of course cannot be used against him but the circumstance of the fact that he did not take the stand may be considered by you."

The court failed to charge the jury in what respect or how the failure of the defendant to take the stand might be used against him. The mere statement as made by the court was prejudicial and injurious to the defendant under the circumstances.

The defendant had been adjudged insane by a court of competent jurisdiction; there was an abundance of medical testimony, both for the state and for the defendant, which indicated conclusively that by reason of his mental ailment he suffered from mutism, and for long periods at a time would not talk. In the face of the adjudication of insanity, and the medical testimony in reference to the condition of the defendant, it is respectfully insisted that the mere fact that he did not testify could not be used against him, and the charge of the court in this respect was prejudicial.

POINT X.

THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

Assignment of Errors No. 73, case page 911; Specification of Causes Nos. 9, 10 and 11, case page 916.

It was understood that the State now admits that the defendant was insane both prior to and at the time of the commission of the crime, the prosecutor in opening to the jury, saying (Case p. 759):

> "The State does not contend that this defendant did not suffer from some mental ailment."

There is, therefore, hardly any necessity of presenting the full facts concerning the history of the case to the court, but it does seem advisable to at least submit a brief resume in order that the court may appreciate the mental condition of the defendant and the nature of the form of insanity from which he suffered.

He is twenty years of age, born in New York City, and lived for fifteen years in the Town of Montclair. There are two other children in the family, one child having died at the age of seven years from convulsions resembling epilepsy. (See Exhibit D-4 p. 781.) His father was a heavy drinker and drank constantly after his marriage to the defendant's mother. (See Exhibit D-4 p. 781). There was insanity on his mother's side, his mother's sister having died at the age of twenty. She committed suicide, having suffered from melancholia. (P. 781). There was also a maternal brother who was alcoholic and did odd things. Of the five children on the mother's side two were not normal. (Exhibit D-4 p. 781).

The defendant attended school in Montclair, going to the Montclair High School, and apparently experienced no difficulties until his Junior year. At

this time he failed in all of his examinations at the close of the year. During the summer, without any aid or assistance, he studied and in the Fall successfully passed every examination he had failed in at the close of the year, and completed his Senior year in high school.

He then passed his College Board Examinations for Harvard and made all arrangements to go to Harvard. (P. 593).

After completing his arrangements he suddenly conceived the notion that he must go to Andover. Obtaining the consent of his parents to do so he did go to Andover and stayed there only two days and then went to Harvard. He attended Harvard up to the Christmas vacation and then informed the Dean that he must leave. He returned home and applied for a position in the Stock Exchange and was employed as a messenger. This position he retained for two weeks. He then returned home and said he was going to study Latin and Mathematics and nothing else at all.

He stayed home for a period of two or three weeks, secluded himself in his room constantly, excepting at meal times. He would not associate with his brother or other members of the family. (P. 594). He did not associate or play or go out with any other boys or girls, not even the members of his own family.

His room was located on the third floor and was quiet and secluded. He obtained a whole bolt of black cheese cloth and built a little coop around his desk and chair in the middle of the room, enclosing it completely with the black cheese cloth, and stayed inside the little black house he had so built for days at a time apparently studying.

This was not secluded enough to suit him so he made arrangements to rent a cottage in the Ramapo Valley near Oakland in an isolated section some five or six miles from the railroad station. He left suddenly at nine o'clock one night in the middle of

winter with a heavy snow fall to go his new abode. The objections and urging of his mother to remain until morning were of no avail. He took with him a large bundle of law books, saying he was not going to study Latin or Arithmetic any more but was going to study law.

He stayed in this cottage for about three weeks absolutely alone, cooking his own meals and doing his own house work. At the end of this time he unexpectedly came home and announced that he was going to Middlebury College in Vermont. He went to Middlebury, Vermont, but did not enter the college, living in a small farm house. He stayed there two or three weeks and then went to Williamstown intending to go to Williams College. He did not, however, actually attend Williams but rented another small farm house located in the hills about seven miles from Williamstown. He then said that he had discovered that the thing which would make him strong was to live on ordinary cow bran and he carried a bag weighing fifty-five pounds from Williamstown to his little secluded place, a distance of seven miles into the hills. He insisted that ordinary cow bran was what he must have and no other bran would do. He stayed in this cottage for approximately two months. (p. 598). He then came home for a week and upon learning that certain friends of the family were to make a visit to Montclair he immediately departed for Williamstown again giving no reason at all for doing so, staying there for approximately one week, until after the company had departed and then returned home.

A camping trip was then planned by the family, and Mr. and Mrs. Noel, the defendant, his brother and sister started out. Mr. Noel, the defendant and his brother Dix slept in one tent, and Mrs. Noel and her daughter in the other. All retired and late at night the rest of the family were awakened by cries from Mr. Noel saying that he

had been attacked. Mr. Noel was struck several violent blows on the head with a hatchet. He then threw up his arms to protect his head having his arm cut severely by another blow. He bled profusely. There were no admissions made by the defendant that he had attacked his father until the hatchet with blood on it was discovered in the defendant's tent bed. When asked if he had attacked his father the defendant merely said: "Why then I must have struck him." He gave absolutely no explanation but wrapped himself calmly in his blanket and went to sleep. He was the only member of the family who slept that night, and his act apparently gave him no concern at all because he slept soundly until awakened in the morning. He experienced no grief concerning what had happened and gave absolutely no explanation. There had been no friction between the boy and his father or the other members of the family and absolutely no excuse or occasion for the assault.

The defendant was then examined by Dr. Tilney in New York City, a nerve specialist, and at his suggestion was committed to the Craig House, Dr. Slocum's Sanitarium at Beacon, New York. (P. 601). He stayed there for a period of approximately four months. He was visited on several occasions by his mother and complained to her that he was not being properly fed, that he was being given merely the same food as the other patients, that in order for him to recover he would have to have round steak and nothing but round steak three times a day. He would never speak unless spoken to and on frequent occasions would not answer at all. He refused to leave his room for long periods of time, insisting upon remaining there naked.

On one visit his mother induced him to take a walk with her, and upon coming to a place where the sun shone on the ground he informed his mother that he could not go past this, saying "Because I cannot cross any place where the sun is shining."

On being asked why not, he said: "Because of the effect it has on my head." It was necessary to return to his room to get his cap and then being covered in addition to this with his mother's umbrella, she finally succeeded in getting him past the spot. He was very much relieved and very much pleased with his accomplishment and said: "I did not think I could cross that place. It is a great relief to me to think that I can cross a place where the sun is because I did not think I could." (P. 603). He could not, however, be induced to cross a large sunshiny place for the same reason, to wit: it would effect his head. (P. 603).

Dr. Slocum, the head of the institution, said concerning the defendant, (See Exhibit D-4 p. 805):

> "During his residence here, he was exceedingly difficult to manage, absolutely refused to eat for long periods, was resistive to care, refused to put on his clothes at times, and would stand and walk for hours about his room clad only in his night shirt and often times absolutely nude. He would make unprovoked assaults, once removed the arm from a chair in his room during a momentary absence of his attendant and when he returned, the subject struck him a vicious blow on the head. The attendant was incapacitated for three days. We were obliged from then on to keep him under constant observation. He had both day and night attendants, one sleeping in the room and the other sitting outside the door in order to deal with his homicidal tendencies. He had a striking lack of insight, was constantly in a deluded state, at times giving expression to them and at times hallucinating. Many of his delusions were of a somatic type. At times he would handle his feces and pick them apart to determine if he was being given the right kind of food. His moods changed frequently, at

times he was quite retarded, with a suggestion of depression. On one occasion, he ran away from his attendant, invoked aid of a truckman whom he met on the road and succeeded in getting across the Hudson River to Newburg where he was held by a police officer until one of my assistants brought him back to the sanitarium. His father and mother were constantly interfering with his care and making unwholesome suggestions, which could not well be carried out owing to the nature of his illness. They felt that an educational program should be adopted. To this end they sent an educator here on several occasions to work with him. This man was not thoroughly in accord with us in our medical efforts, and, finally, I believe on the recommendation of one of these men, his father took Harrison to their home on September 30, 1923. I had the father sign a waiver relieving me from any further responsibility in the case.

"At first, I believed we had to deal with a maniac-depressive psychosis, due to the retardation, depression, and impulsiveness, but later in the course of the illness, I changed my opinion to that of Dementia Praecox."

He was finally taken from the Craig House because the expense was beyond the father's means and returned to the house at night after Mrs. Noel had retired. He then said (p. 604): "Well, here I am home, but I won't stay home unless I can have exactly what I want to eat." He then said that he wanted round steak and only round steak three times a day. He had grown heavier and his face was pasty white. He looked tired out.

He insisted on purchasing his own round steak. This delusion lasted for two or three days and then he said (p. 604): "Round steak won't do me any good. I will have to have Roquefort cheese." He

then purchased his own Roquefort cheese and ate this three times a day.

After further difficulty with the defendant he was finally taken by his father and mother to Dr. Emerson in Boston, where the defendant stayed for a week undergoing a course of treatment. At the end of this time the defendant called Dr. Emerson an old fool, said that he could do nothing for him because he was approaching the subject in the wrong way. He also said that the only thing that would help him was to weigh his food and he must have a weighing machine in order to do so. He purchased such a weighing machine in Boston, refused to be treated by Dr. Emerson any longer and returned home with his mother. Thereafter, for a period of time he weighed each morsel of food before he would eat it and then had a delusion that he must have salt pork with every meal. (P. 606).

On one occasion he stood at the foot of the stairs in the front hall and said it was impossible for him to go upstairs and insisted upon living downstairs so as to eliminate the necessity of walking up a flight of stairs. His mattress was brought down and for a period of time he slept downstairs.

He then insisted that he must eat rye bread and no other kind and he visited different cities in quest of this particular kind of rye bread and bought some in a small shop in Jersey City. He made frequent trips to Jersey City in order to buy the rye bread which could be bought in any delicatessen store or bakery shop, and then changed to pumpernickel which he travelled to New York City to buy.

In pleasant, mild November weather he would pull a cap down over his ears and wear a heavy scarf. He then slept in the coal bin for a week or two. (P. 608).

Arrangements were made for him to take a trip South with his father. His father proceeded the defendant to the railroad station and was to be joined by the defendant there. In about a half hour

his father returned home and said the defendant had not appeared at the station. As soon as his father left for New York City the defendant appeared home saying that he would not go with his father, but he must go alone. He made arrangements to take the trip, which was to be a walking trip, alone. He took a train to Tennessee and was then to walk through the hilly section of Tennesee. He returned home and stayed approximately a week, which was around Christmas time. He then took another trip to Jacksonville and unexpectedly informed his parents that he had shipped as a mess hand on a Danish steamer bound for Hamburg. He telegraphed from Hamburg for money in order to come home and this was forwarded to him.

He stayed home approximately twenty days (p. 610). He seemed somewhat improved. He then entered Columbia College, remaining ther approximately two or three weeks and announced that he would have to take a hiking trip through the Alleghenys. He did not follow out his original plan but was next heard from from Dover. He returned home, stayed there a little while and then took up a brick laying course at a New York Y. M. C. A. He went to Hartford and was employed there as a bricklayer. He then became engaged in making pompoms, which position he held for one week.

He refused to take a trip abroad with his father but preferred to remain at home and was kept company by his mother. He obtained some old machinery and installed it in his room for the purpose of making pompoms, which work lasted only a very short period of time. He was then employed as a mail carrier. He gave up this job and went to New York City for the purpose of going into the pompom business.

The next his mother heard from him was a call from the police authorities at Clifton Springs, New York, advising her that he was in their custody,

asking her to take charge of him. He came home next morning and then went back to Columbia College, lasting there about ten days. She was again advised by the Montclair police that the boy was arrested at Clifton Springs. Mrs. Noel talked to the Health Officer at Clifton Springs and was advised that he thought the boy was insane and that unless she agreed to take possession of him and have him committed in New Jersey he would be committed in New York.

In addition to the doctors already mentioned, the boy was treated by Dr. De Forest of New York, Dr. Emerson, Dr. Tinley and Dr. Riggs.

The defendant knew a Mr. Gray, scout master at Montclair, and during the year 1925, while Gray was confined to the Hospital in Montclair, visited him every day, sometimes twice a day, staying hours at a time and not saying anything; usually sitting with his head in his hands similar to the position which he evidenced at the trial.

Gray was obliged to go to a sanitarium at Clifton Springs, New York, near Rochester, and shortly after his arrival there the defendant appeared. (P. 509). He said that he did not know why he came there and had nothing to say. On another occasion, at night, the defendant by some means or other gained entrance to Gray's room and stood there in the dark, Gray being unaware of his presence until he turned on the light. On being asked why he was there he said he did not know. (p. 5511). This was the occasion when he was taken into custody by the Clifton Springs authorities because of his peculiar actions and because they thought he was insane. In Gray's opinion he was insane, and one could hardly come to any other conclusion after considering the manner in which the boy acted. He wrote letters to Gray (Exhibits D 6, p. 891, D. 7, 891, D 8, p. 891, D 9, p. 892, D. 10, p. 892, D 11, p. 890). which clearly indicate the peculiar trend of mind and the insane ideas possessed by the defendant.

It was after the Clifton Springs incident that the boy was examined by Dr. Davies and Dr. Kirkwood and committed to the Essex County Hospital for the Insane by Judge Brennen of Essex County. (See order of commitment Exhibit D 1 p. 12).

Ernest DeLisle, a night attendant at the Overbrook Asylum, said he was assaulted by the defendant on the second night after his admission to the asylum and the defendant was then confined to a strong room reserved for violent patients. (P. 521). The guards were reinforced and the strong room had heavier doors than the ordinary rooms. The defendant was violent and was put into the strong room so that he would not do bodily harm to the other patients. (P. 521). The defendant frequently rushed at the door attempting to break it down, (P. 5521). It required four guards to hold the door to prevent its being smashed. The defendant would walk around his room naked, (p. 521), stand in the center of the room gazing at the ceiling and constantly masturbating. (522). He would frequently deposit his bowel movement on the floor and wet his own bed, which was a common practice with the defendant. He had delusions about poisoned food, insisting upon having it weighed. He desired to be called Tessie, saying he was a female.

In this witness' opinion the defendant was undoubtedly insane.

Mary Baumann, a nurse at the hospital, said that his habits were filthy and untidy, that the patient was orienated, knew the correct time and place and person, said that his parents brought him there on advice of a doctor to get a rest because he was irritable and restless, said there was nothing wrong with his mind, he did not sleep during the night because his mind was disturbed, said he liked it at Overbrook and did not want to go home, said he intended to stay there, said he came to the institution because he wanted to have fun and to meet different people. He would frequently attempt to

denude himself while in the presence of other patients and would take off his clothes and refuse to put them on, requiring the attendants to seclude him in his own room. He refused to wear shoes. He would not talk but sat with his head in his hands for long periods of time. He proposed to Mrs. Baumann and asked her to marry him, said that he came to the asylum to be married. He became violent at times and tore sheets and pulled down curtains.

In the opinion of this witness he was insane.

Francis J. Baumann, the husband of Mrs. Baumann, also a nurse at the asylum, with eight years experience, testified that the defendant, while there, would not eat for two or three days at a time. At other times he would eat in a ravenous manner using his hands and disregarding the table utensils. At one time he said: "I want to go out on the grass to heal people." He would constantly attempt to denude himself and it was necessary to keep him secluded from the other patients. It was a common occurrence for him to have bowel movements in his own bed and also on the floor.

The following abstracts from the official record of the Essex County Hospital for the Insane indicate the advanced stage of insanity of the defendant (Exhibit D-4, p. 794) :

> "The patient has not been mentally well for past two years. Ran away from home, would not work, lost all interest in home and his companions. Is unable to control his actions or behavior, is seclusive, laughs without cause, has been failing mentally. Insomnia."
>
> "Mentally: Attention impaired, emotional deterioration, seclusive, defective judgment, silly laughter, disturbance of conduct, wanderlust, depressed, mannerisms. Two years ago struck father with an axe, but did not remember doing so. (Father was asleep). Patient

said, 'I worry over Mr. Gray's welfare. A mistake has been made in his being a Scout Commissioner. I wanted to stay at the Sanitarium with Mr. Gray. They threw me out, they razzed me. I don't feel like working when Mr. Gray is so sick. I love Mr. Gray. I walked to Virginia."

"Admitted yesterday. He is a well nourished young man, age 19, who says he was admitted to Harvard College two years ago, but left before taking his first mid-year exams for no apparant reason. He has been going from post to pillar since and taking different positions and showing no particular interest in any one. He is fairly well oriented, has no insight, shows a defective memory, is apathetic with no emotional expression save a silly out of place smile at times. Denies hallucinations, has never been interested in the opposite sex and appears to have lost real ambition. There is evidence of deterioration. (TH).

"Feb. 28th, 1925. W 32. This A. M. destroyed a basket, broke a chair and soiled the floor in his room. It was necessary to seclude him till he quieted down. (TH)

"Mar. 3rd, 1925. W. 32—is so disturbed that a cold pack was advised and administered. (ST).

Mar. 11th, 1925. W. 32—Is in seclusion most of the time as he is destructive, denuding and untidy, masturbates, even in the presence of the attendants and nurse. He is disagreeable, negativistic, will not answer when spoken to. At times he refuses food. (TH)"

"*Mental Status*: The patient is apathetic, silly, irresponsible, very retarded, has delussions, has no ambition, masturbates excessively, plays with feces, tears up bedding and clothing. He called out one day to female attendant that he wanted 300 intercourses with her daily."

"*Summary.* We have here a well nourished young man, 19 years, born of American parents. Skin is pasty. Patient is evidently deteriorating. Flunked Junior year in High School, made up all subjects. Had a tutor. Graduated from High, went to Harvard. Said he carried heavy courses. Complained at Xmas visit that he could not carry his work. Left before mid-year exams. Wandered hither and thither, going to Germany, staying at Seaman's Institute in New York. Was in Craig Sanitarium at Beacon, N. Y., as a result of having attacked his father with a hatchet during sleep. Many abnormalities developed as noted. Has developed seclusiveness and abnormal instincts and feelings. He has lost interest in surroundings. He was impulsive and negativistic. He had alternate period of stupor and excitement. Poorly oriented and no insight. I am inclined to place this patient in Catatonic Group due to stupor and alternate excitement. (ST) Mar-16th, 1925. W. 32—Is in seclusion. He is denuding, untidy, destructive, does not speak, grimaces and masturbates. He is treacherous and wants to get away. (TH) Apr. 6th, 1925. W 32—Is in seclusion as he is denuding, destructive and resistive. He shows marked negativism and refuses to eat at times. (TH)
Apr. 3rd, 1925. W. 32—Triple Typhoid vaccine inoculation completed today. (TH)
June 26th, 1925. W. 32—Is improving both phys. and ment. He is not so negativistic and up and abuot the ward doing some work. He shows a desire to see his family now, which he did not care to do formerly. (TH) June 29th, 1925. W. 32—Was allowed out with his brother for a stroll about the grounds yesterday and insisted on going to his home in Upper Montclair. He took dinner, appeared

to the family amazingly improved but at the first opportunity he stole away on his sister's bicycle and has not been seen or heard from since. The family seem reconciled that he will seek work and soon communicate with them. (TH) June 30th, 1925. W. 32—Was picked up in N. Y. C. by the police the day he left here and was put in the Psychopathic in Bellevue. His father learned of the fact and phoned the ward physician that he would take his boy in custody and return him to the E. C. H. today. (TH) July 1st, 1925. W. 32—Did not return to the hospital yesterday, as expected. His father phoned the ward physician that he thought his son was in good condition mentally and phys. and desired a trial at work in New York and father promised to take the sole responsibility of the patient, who had shown some improvement before his escape, but was in no way fit to be allowed to assume any activity outside. (TH)"

The defendant was confined to the Overbrook Asylum from February 25, 1925 (Case p. 535) until June 28, 1925) when he escaped from the institution (Case p. 536). He returned home, much to the surprise of his mother, who immediately notified the Overbrook authorities, and promised to return him after lunch.

While his mother was telephoning to Dr. Thompson, the defendant took his sister's bicycle and rode all the way to New York City.

On the next day, June 29th, 1925, he was seen at the Ninth Precinct Police Station in New York City, 45 West 47th Street, by Officer Robert J. Rush, who attempted to talk to him, but was unable to get any response (Case p. 491). The officer took the defendant to Bellevue Hospital and testified, (p. 491):

"Well, his appearance was something similar to his appearance right now. He had a blank stare on his face, and you would have to lead him to bring him from one part of the room to another. If you told him to come on, he wouldn't hear you. If you wanted him to walk across the room, he would'nt hear you. **(p. 207). Well, his eyes looked glassy, just sort of a blank stare, and I moved it (meaning defendant's face) to the right and to the left and he kept it in the same position at all times."

At Bellevue Hospital, New York City, the defendant was examined by Dr. Menas S. Gregory, who testified that he was insane and suffering from dementia praecox.

He was taken from Bellevue Hospital on the same afternoon by his father, who signed a certificate saying that the patient was removed against the advice of the physician, and that he, the father, would be wholly responsible for the defendant.

He remained in New York for a while, and then returned home to Montclair with his mother. On Thursday, September 3rd (the day of the commission of the crime) he returned home before dinner time, which was between six and seven, stayed to dinner, and did not go out again that night (case p. 622). There was nothing unusual about him in his appearance or his actions.

The following doctors testified on behalf of the defendant: Dr. Carlos MacDonald, Dr. William B. Pritchard, Dr. Allen S. Kirkwood, Dr. George W. Davies, Dr. Charles Englander, Dr. Frederick B. Horsford and Dr. Menas S. Gregory. There appeared for the State, Dr. Washington, Dr. Markens, Dr. Beling and Dr. Dowd.

Dr. Markens gave no testimony as to whether plaintiff was sane or insane, but merely testified to a certain conversation with defendant.

Dr. Washington testified that the boy was sane.

He also testified that at the time he was committed and during his confinement at Overbrook Asylum he was undoubtedly insane and suffering from dementia praecox. He is unable to explain how or why the boy recovered in a period of two months, but admits that it would be an unusual and rapid recovery.

Dr. Beling and Dr. Dowd, both for the State, admitted that the defendant was insane, suffering from dementia praecox, and that he was also insane for a long period of time prior to the commission of the crime. Every doctor who testified, with the exception of Dr. Washington, stated that the defendant was insane, suffering from dementia praecox.

Drs. MacDonald, Pritchard, Kirkwood, Davies, Englander, Horsford and Gregory all testified that the defendant was hopelessly insane and unable to distinguish between right and wrong because of lack of sufficient mentality to do so.

Dr Kirkwood was the first doctor who saw the defendant after the commission of the crime, and he is the same doctor who examined the defendant at the time of his commitment on February 25th, 1925. He saw him on the 6th day of September, between two and three o'clock in the morning, at the Montclair Police Headquarters. He talked to the defendant and examined him, both alone and in the presence of a police officer (Case p. 677). At first he received no answer. After repeated questioning, and the giving of some answers, he finally said to Dr. Kirkwood (Case p. 679): " 'When did you visit Overbrook lately?' And I said, 'Why do you ask that?' And he said, 'Do faces of the doctors change? And I said, 'What do you mean?' 'Well,' he said, 'the faces of the doctors change, sometimes once a week, sometimes twice a week, sometimes three times a week.' I said, 'Do you mean the faces of the same doctors change?' He said. 'Yes.' I said, 'Why do they change?' He said,

'I don't know.'" In the doctor's opinion the defendant was insane and unable to distinguish between right from wrong.

The defendant was under the care of Dr. Thompson for four months while an inmate of the Essex County Hospital for the Insane. Dr. Thompson probably had a better opportunity for observation than any other doctor. The patient's condition, both before and immediately after the commission of the crime, was known to Dr. Davies and Dr. Kirkwood, who examined him prior to his commitment, and also after the alleged crime. Dr. Englander also was familiar with the boy's condition during his commitment at Overbrook.

The testimony of these doctors is to be given considerable weight because of their continued opportunity of observation and their contact with the patient over a long period of time. As Chief Justice Hornblower said, in *State vs. Spencer,* supra, p. 208-9) :

> "The evidence of competent medical men, who have had frequent opportunities of observing him about the time in question, especially if they have been in attendance upon, or have visited him with a view to probe the state of his mind, is entitled to very great consideration. It has always been held that medical men may give their opinions in evidence. These are always valuable, and more or less so according to their opportunities of observing the accused at, or about the time of the act complained of. But if they have not been in the habit of seeing him, if they were not familiar with his habits and symptoms, at or about the time in question, their opinions in relation to a particular individual, are of no more weight, and in my judgment of not so much weight, as those of unprofessional persons of good sense, who have had ample opportunities for observation."

Dementia praecox affects the patient's reasoning power, judgment and will, and impairs practically every mental faculty of the mind with the exception of memory and orientation as to time, place and persons. (Dr. Dowd's testimony, (case p. 749-50). All of the doctors recognized Dr. W. A. White as an authority and agreed with his following opinion (p. 541, in reference to dementia praecox) :

> "Quite characteristic, of this condition, too, are the impulsive acts of these patients. They will suddenly and with absolutely no warning whatever, commit some act of violence, such as assulting another patient, or the breaking out of a window, and quite as suddenly lapse into their previous state. It is quite impossible to get any adequate information as to the causes of these acts. The patient is inaccessible to a degree, and either gives some senseless reply to the questions asked, a puerile reason, perhaps, or retires behind an 'I don't know,' or complete silence. These attacks come out of a clear sky, cannot be foreseen, and make these patients at times very dangerous."

Paul Mulcahy testified to an interview between the defendant and his counsel, in which it was clear that counsel could obtain no assistance or any information from the defendant in reference to the commission of the crime or the connection that the defendant had with it, or any of the surrounding circumstances or facts. In reply to the repeated questions as to whether or not the defendant was in Montclair on the third of September, he finally answered (Case p. 702) : "I saw a cockroach on the ceiling of my cell this morning."

On repeating the question as to where the defendant was on the third of September, and what connection he had, if any, with the killing of the colored man, he said (Case p. 702) : "Do I look like

a cocaine addict?" He finally said (p. 702): "I remember a colored man who was taking me back to Overbrook." And he then turned to the jailer and said: "Are you Johnny-lock-me-up?" He would answer the same question sometimes with a yes and sometimes with a no, finally saying, in reference to the killing of the colored man: "Well, I don't know; sometimes I think I did and sometimes I think I didn't."

Without reviewing further the medical testimony, it is respectfully insisted that the acts of the defendant indicate beyond any doubt whatsoever that he was totally insane and irresponsible. According to his own statement he bought a gun for the purpose of using it if anyone came to take him back to Overbrook. It is apparent from this statement alone that he was laboring under a delusion in reference to persecution at Overbrook, and the treatment he received there, and it will also be noted that the gun was purchased for the purpose of preventing his being taken back to that institution.

In his statement, he says he made up his mind "to kidnap a young girl who lived at 136 Upper Mountain Avenue." There is no evidence in the case, that there was a young girl living there and it is a fact that no girl lived at 136 Upper Mountain Avenue. The Bower family who resided there had no children, and it must have been the operation of an insane mind to come to the conclusion to kidnap a little girl who was not in existence.

The Daly child who was kidnaped was in the company of two other children, one of whom was twelve years of age, certainly sufficiently old to recognize the perpetrator of the crime. It was done in broad daylight on the open highway, absolutely without any caution.

The defendant had lived in Montclair for a period of fifteen years. He was more or less marked by reason of the fact that he was insane, and had been committed to two different asylums, and if he

were at all normal must have appreciated that he could be easily identified and taken into custody.

He picked out at random one of the three little girls, not knowing who she was, what her name was, where she lived, and not making any inquiry or using any normal method to determine the identity of the girl.

He insanely assumed that it was the little girl who lived in the house at 136 Upper Mountain Avenue.

At the time this occurred these three little girls were walking in the open highway past the Bower residence intending to go to the public playground for recreation.

According to the defendant's own story, the killing of the colored man for which he was on trial occurred in the afternoon some time between 1:30 and 2 o'clock. His own story is difficult to believe. He says that while they were going downhill on Bradley Avenue he became dizzy, took out his gun, shot the colored man in the head, stepped over the front seat, took possession of the car, and then drove a distance of from one and three-quarters to two miles in broad daylight to the place where the body was disposed of.

It is difficult to believe that the defendant could do all these things and drive approximately two miles, undoubtedly passing other vehicles, without having anyone observe the dead man seated next to him.

The spot where he says the colored man was shot was much more deserted and a much better hiding place than the place where the body was disposed of.

The body of the negro was not concealed, and, according to the evidence, was only five feet from the roadway and easily seen. The witness Matz testified that he saw the body the first time he walked in the vicinity that day. He was attracted to it by the white shirt which it had on. It was

apparently thrown or dragged from the car to the roadside, and left there, regardless of the ability of passersby to see it.

It was within a few feet of the bridge, under which it could easily have been hidden, making it very difficult for anyone to discover it. He left his own car in plain view of the people occupying Chief Bogan's house and apparently took no pains to secrete it, or to prevent its being seen.

After killing the little girl, he went to the D. L. & W. Railroad station at Glen Ridge, took the telephone book and starting at the A's., read until he came to the B's., watching to see who lived at 136 Upper Mountain Avenue. He found the name of Joseph A. Bower. He called up the number listed under that name and a woman's voice answered. He asked her if she was interested in a little girl in a pink dress that was taken away that morning, and when she said yes, said: "I want $4,000 ransom. * * There are some banks open in the theatrical district in Upper New York City." He then hung up.

The defendant, from this statement, did not even know the name of the family whose girl he intended to kidnap, and calmly sat in a telephone booth after the commission of the crime, going through the entire telephone directory in order to find out who lived at 136 Upper Muntain Avenue. If the name of the party who resided at that address had begun with a "W," it would have taken a considerable period of time.

The boy undoubtedly conceived the idea of obtaining a $4,000 ransom, and his method of committing the crime and his attempts to obtain the money after the commission of the crime, indicate beyond any question the operation of a totally insane mind.

The only directions he gave in reference to the $4,000 were that there were some banks open in the theatrical district in Upper New York City. No specific bank was designated, no name given, no in-

structions as to when or how the money was to be deposited or left, and if the recipient of the message had been entirely willing to pay the amount demanded, it would have been a physical impossibility to have deposited the money so that it could have been obtained by the boy. It is apparent that he had the insane idea of obtaining $4,000, but that his mentality was not sufficient to permit him to work out any plan or scheme whereby he could obtain the money.

There was introduced in evidence a red balloon found in the possession of the defendant at the time of his arrest, and this is connected with the story told by him to Dr. Beling, who testified for the State. He told Dr. Beling he had sent (Case p. 726) a postal card addressed to Edward Brown (Case p. 739) demanding that the sum of $4,000 be taken on the 8:22 train to Philadelphia, and when they saw a red ballon being waved on the side of the tracks, they were to throw the money out, which plan Dr. Beling admitted was absurd. The defendant at that time knew, according to his own statement, that a man by the name of Joseph own statement, that a man by the name of Joseph A. Bower resided at 136 Upper Mountain Avenue. He had already called up on the telephone and delivered his ridiculous message in reference to some banks in the theatrical district in New York City being open, and yet, for some unknown reason which certainly indicates insanity, and an inability to follow out any definite trend of thought, he wrote a postal card to a man by the name of Edward Brown, who, as far as anyone knows, had absolutely no connection with the facts involved or the people concerned.

It will be noted that he again had in mind the sum of $4,000.

After the defendant was arrested, he asked the police in whose custody he was, for the $4,000 (Case p. 399). He asked for this sum of money from Detective Gallagher and Chief Riley, and he

asked for it more than once (Case p. 399). They offered him more than $4,000, and he said that he wanted $4,000. They did not actually have the $4,000 to offer, but told him that they would get him the $4,000, (Case p. 399).

Again it will be seen that the sum of $4,000 predominated this boy's mind, and upon being offered more than $4,000, insanely insisted upon only that sum.

In all the history of criminal cases, it is doubtful if you can find one instance where a sane defendant ever asked the police authorities for the reward which he had hoped to obtain by the commission of a crime and upon being offered more, insisted upon having only the amount named. It seems almost ridiculous to argue that this twenty year old boy, while in the custody of the police, was sane or responsible when he asked the police authorities whom he knew had arrested him and whom he knew were accusing him of committing a crime, for the sum which he had hoped to obtain by the commission of that crime.

If the boy knew the difference between right and wrong, if he could appreciate the quality of the act which he had committed, he would certainly never have asked the Montclair police for the sum of money which was dominating his insane mind. This indicates more clearly and convincingly than any other state of facts or circumstances involved in the whole case, that the plaintiff was insane, irresponsible, and unable to appreciate the difference between right and wrong.

Shortly after the boy was arrested he was interviewed at the solicitation of the police authorities by Dr. Kirkwood, Dr. Stamp and Dr. Payne, the latter being the head of the Overbrook Asylum and Dr. Stamp being a resident physician. It is most unusual for the police to call in doctors to assist them in talking to defendants or attempting to obtain information from them, and there is no

stronger indication of the opinion of the police department than the fact that these various doctors were called upon for assistance.

Although this boy was questioned constantly for twenty-four hours before he made a statement, although he was in the presence of eight or ten different police officers, detectives, and members of the Prosecutor's staff, questioned and interrogated and observed for that length of time, not one police officer, not one detective and not one member of the Prosecutor's staff is put upon the stand to testify that the plaintiff was sane and rational.

In considering whether or not the verdict is against the weight of the evidence, it must be remembered that the burden of proof was upon the state to prove the defendant sane beyond a reasonable doubt. Seven doctors testified on behalf of the defendant; four on behalf of the state. Dr. Markens gave no opinion; Dr. Washington said the plaintiff was sane; Dr. Beling and Dr. Dowd both said the defendant was insane, but that in their opinion he could appreciate the difference between right and wrong.

It is respectfully submitted that the medical testimony alone establishes even beyond a reasonable doubt that the defendant was not only insane but totally irresponsible. This is testified to not only by experts who made examinations for that purpose, but by Dr. Englander and Dr. Thompson, who had the defendant in their charge for a period of four months shortly prior to the commission of the crime. It was testified to by Dr. Kirkwood and Dr. Davies, who had previously had the opportunity of observation. It is corroborated by five lay witnesses and a history of insanity covering a period of more than three years.

It is respectfully contended that the defendant was insane and irresponsible, and that the verdict was against the weight of the evidence.

There is considerable doubt as to whether or not

the defendant actually killed the deceased. The only testimony to prove it is his own statement. He says that it occurred Thursday afternoon, September 3, 1925, at around 1:30 or 2 o'clock, and that he returned home at 4 o'clock. There is proof by the testimony of his mother that he did return in the afternoon for supper, and that he remained in the house after eating his supper. The testimony of the witnesses, Emil Von Thorn, Emeline Schaeffer and Mrs. Anna Cueman shows that the deceased was not killed Thursday afternoon, as stated by the defendant, because the first two of these witnesses saw him alive that night as late as 8 o'clock, and Mrs. Cueman, on the entire afternoon of September 3, 1925, was within fifty feet of the place where the body of the deceased was found, and says that the body was not placed there during that afternoon.

This testimony is covered fully and in the reference to the pages on which it is found is given under Point 3.

There is no proof sufficient to sustain the conviction of first degree murder. The only testimony as to how the deceased met his death is the confession of the defendant, in which he says:

> "I felt dizzy, but as we came down the hill I took the revolver and shot him in the back of the head."

There is nothing to indicate that he intended to take the life of the deceased, and if he did, there is no proof that it was wilful, deliberate and premeditated. The burden of proving these elements is upon the State.

POINT XI

IT WAS ERROR IN REFUSING TO CHARGE REQUESTS NOS. 3, 4, 7 AND 10

Assignment of error Nos. 43, 44, 45, 48 *Page* 909

Specification of Causes No. 39 *Page* 928

The court was requested to charge the jury as follows:

3. The burden of proof as to the sanity of the defendant and his ability to distinguish right from wrong in this case is upon the State, and they must prove this fact to you beyond a reasonable doubt. (Case p. 767)

4 If the evidence of sanity on one side, and insanity on the other leaves the scale equally balanced, or so nearly poised that you have a reasonable doubt of his sanity, your verdict must be Not Guilty upon the ground of insanity. (P. 767)

7. In the case at trial there is positive proof that the boy was insane from the months of February to June 1925. This is testified to not only by the doctors for the defense, but admitted by the doctors for the State, and I therefore charge you that the presumption arises that he is still insane at this moment, unless the contrary be shown. (Case p. 767)

10. The law does not look with disfavor upon a legitimate defense of insanity, and in this case the law itself, because of the facts as proven, raises the presumption that the defendant was insane at the time of the commission of the crime, and unless you find beyond a reasonable doubt that this condition of insanity changed. and that the defendant was sane at the time of the commission of the crime your verdict must be Not Guilty on the ground of insanity. (Case p. 768)

Each request was refused and an exception taken. They all dealt with the question of the burden of proof as to insanity.

The court charged the jury as follows: Page 764

> "The law presumes a man sane until the contrary is proved. The defendant in this case was adjudged insane prior to the third day of September. From that judgment we can presume the continuance of that state until the contrary is proved."

The court also charged the jury as follows: Case page 765:

> "The law is that when a man is proved to be once insane the presumption is that he continues so until the contrary is shown."

The charge of the court as far as it went is supported by the law of this state as laid down in State v. Spencer, 21 Law, page 196, and by a great many cases in other jurisdictions.

The objection made is that the court should also have charged that because of the presumption in favor of insanity the burden of proof rested upon the state to overcome the legal presumption. *In Ex Parte Brown* (*Washington*) *reported in* 1 *L. R. A. New Series, page* 540, *the court on page* 547 *said*:

> "The presumption being that general insanity, once shown to exist, still continues, unless of a temporary sort, like the delirium of drunkenness or a fever, the burden of proof to establish a lucid interval or mental restoration rests upon the party who asserts it.' Schouler Wills, 3d ed. Par. 189, and cases cited. In the chapter on the subject of 'Insanity' in volume 16, Am. Eng. Enc. Law, 2d ed. under the discussion of the continuance of insanity of a permanent nature, at page 604 of said volume, the following statement of the rule as to presumption is made: 'When habitual insanity in the mind of the person whose act is in question is once established, then the party who would take advantage of the fact of restoration to a sane condition, or of an interval of reason, must

prove it, for insanity of that character is presumed to continue until the contrary is shown.' Decisions from 26 of the American States are cited in support of the above text, as well as a long list of English decisions. With such an array of citation, it would seem that the rule is well established, and that a review of the decisions is unnecessary. We have examined a number of the authorities cited, and find that they fully sustain the rule announced by the text writer—that, when insanity of a permanent character is once established, it is presumed to continue, and the presumption prevails until the contrary is shown; *the burden of showing which is upon him who asserts sanity.*"

In State v. Spencer, 21 *N. J. L., the court on page* 210 *says*:

> "It is undoubtedly law, that when a man is proved to have been once insane, the presumption is, that he continues so until the contrary is shown .....So, in the case in hand, if the prisoner has proven that he was once insane, the presumption arises that he is still insane at this moment, unless the contrary be shown."

In the case at bar there is a legal presumption of insanity not only because of the abundant proof of the defendant's insanity years prior to the occurrence of the crime, but by reason of the fact as the court itself stated that the defendant was, prior to the date of the commission of the crime, adjudged insane by a court of competent jurisdiction and committed to the Overbrook Asylum from which he escaped two months prior to the commission of the offense.

The final order of commitment made by Essex County Juvenile Court is dated March 24, 1925, Exhibit D-1 case page 12.

There are numerous cases in which the defendant

was not adjudged insane prior to the crime charged against him in which the burden of proof was shifted to the defendant because there was a presumption of sanity.

Sherlock v. State 60 *N. J. L. page* 31, *the court on page* 32 *said*:

> "In the case of insanity as a defense, the burden is shifted to the defendant upon the express ground that the presumption of sanity exists throughout the trial until overcome by proof from which the jury are satisfied to the contrary."

Again in Graves v. State, 45 *N. J. L.,* 347, *Chancellor Runyon on page* 359 *said*:

> "They had charged that the burden of proof of the alleged insanity was on the accused; that the law presumes that every man is sane until the contrary be proved, and that therefore, when an accused sets up a defense of insanity, the burden of proof is upon him, and that to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory, and that the accused must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."

If the burden is "shifted to the defendant" upon the expressed ground that the presumption of sanity exists (as stated in Sherlock v. State supra) then it must be of necessity be true, but if there was a presumption as there was in this case of insanity rather than sanity, then the burden of proof to overcome that presumption was upon the state. In State v. Spencer supra, in speaking of a situation in which the burden of proof was upon the defendant to prove insanity, the court said on page 202:

> "What I mean is, that when the evidence of sanity on the one side, and of insanity on the other, leaves the scale in equal balance, or so nearly poised that the jury have a reasonable doubt of his insanity, there a man is to be considered sane and responsible for what he does."

The fourth request to charge which was denied by the court embodies this same principle in the same phraseology as stated by the court in the Spencer case excepting it covers the case in bar in which there was as the court directed the jury, a presumption of insanity.

It is the law of this state as laid down in the Spencer case, and should have been charged.

The court in the Spencer case also said on page 205:

> "And the whole matter may be summed up in this: If the evidence makes it clear to your minds, beyond a reasonable doubt, that the prisoner at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not."

The third request to charge is in conformity with the law as stated by the court above. It was the proper legal doctrine covering the case in bar and should have been charged.

Requests number seven and ten dealing with the same subject are also in accord with the law as found by the courts of this state. It is clear from the above citation that in as much as there was a presumption of insanity, the state was obilgated to overcome that legal presumption beyond a reasonable doubt and the burden of proof was upon the state. The court, however, refused to charge any of the requests in reference to the burden of proof and made absolutely no comment thereon. The de-

fendant was entitled to have the court charged with reference to the burden of proof, its legal meaning and what evidence was necessary to overcome such a legal burden. It is respectfully contended that the court's failure to charge as requested, or to say anything to the jury in reference to the burden of proof, was prejudicial to the defendant and reversible error.

POINT XII.

THE COURT IMPROPERLY REFUSED TO CHARGE AS REQUESTED.

Assignment of Error 67 *Page* 911.

Specification of Causes No. 39 *Page* 928.

The court was requested to charge as follows:

> "29 The law provides that if any person shall be acquitted of a criminal charge upon trial upon the ground of insanity, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his sanity in any degree continues, and if it does shall order him in safe custody, and direct such person to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to the expense as is otherwise provided for the maintenance of the criminal insane, until such time as he may be restored to reason, but such person shall not be released from confinement except upon the order of the trial justice or judge having jurisdiction to try such person who has been acquitted of such criminal charge as aforesaid."

This request to charge is taken word for word from Chapter 101 of the Laws of 1922, page 186 (third paragraph page 189). A similar request to charge was No. 12, which embodied the same substance using a slightly different phraseology.

The jury had a right to know what the law was on the situation which confronted them. If the jury thought that a verdict of not guilty would mean the liberation of the defendant and that he would then be in a position to mingle with society and again practice his dangerous and insane acts, there is no question but that it would be prejudicial

to the defendant. The law specifically provided what should be done under the circumstances and the jury should have been acquainted with the law. The court not only refused to charge the request, but in refusing to charge request No. 12 he said (page 765) :

> "The twelfth I deny with this modification, that if you find the defendant not guilty you may certify to me on what ground."

This was placing an obligation upon the jury to explain to the court why they found the verdict of not guilty. It was prejudicial and harmful to the defendant.

The court also charged the jury (Page 765) :

> "The question before you is not whether this man should be committed to an insane asylum. The question is—is he guilty or innocent under the indictment."

This likewise precluded the defendant from having the benefit of the Law of 1922 as incorporated in the twenty-ninth request to charge. The jury under that statute had a right, if they found him not guilty on the ground of insanity, to so certify to the court.

POINT XIII.

THE COURT IMPROPERLY REFUSED TO CHARGE THE FOLLOWING REQUEST.

Assignment of Error No. 52, p. 910. Specification of Causes, No. 39, p. 928.

> 14. "The only crime for which the defendant is being tried is the one set forth in the indictment which alleges that he murdered Raymond Pierce on the 3rd day of September, 1925. Other testimony has not been admitted to show merely the motive of this particular crime, and must not be considered by you for any other purpose excepting as I have stated. If the defendant has committed any other crimes they are separate crimes and will be tried separately."

If evidence of other crimes was admissible in evidence, it was admissible only to show the motive of the crime for which the defendant was being tried. It could be used against the defendant for no other purpose. The above request to charge properly incorporates the law on this point, and should have been charged.

The failure to charge it was prejudicial error.

POINT XIV.

THE COURT IMPROPERLY REFUSED TO CHARGE THE FOLLOWING REQUEST.

Assignment of Error No. 53, p. 910. Specification of Causes No. 39, p. 928.

> 15. "There has been some proof in this case that the defendant killed the Daly child. He is not on trial for that crime now and you must not permit this fact to prejudice him."

As stated in *State v. Jackson*, 65 N. J. L. 62, the law is that evidence of other crimes is not admissible when the defendant is on trial for one crime, so that the jury will not be prejudiced by having another crime proved against him. All of the authorities agree with this case. What is attempted to be avoided is prejudice generated against a defendant by the introduction of other crimes.

If the killing of the little girl was admissible to prove motive, or for any other purpose, the court nevertheless should have charged the above request to charge in an attempt to prevent the defendant from being prejudiced in the eyes of the jury.

The court not only refused to charge as requested, but instructed the jury; "As judges of the facts, you have a right to draw such inferences from the facts as you see fit." (Case p. 761). The jury did not have the right to draw any inference that it saw fit, but only had a right to draw reasonable inferences which logically followed from the evidence. It could not conclude that the defendant committed the crime for which he was on trial merely because he committed another crime. It was prejudicial error to charge as the court did and to refuse to charge as requested.

POINT XV.

THE COURT IMPROPERLY CHARGED THE JURY.

Assignment of Error No. 40, p. 908.

Specification of Causes No. 41, p. 928.

The court charged the jury as follows (Case p. 763):

> "Can you rely, or could you rely, on the defendant's testimony as to the circumstances of getting the taxi cab or the circumstances of the killing or the placing of the body?"

The defendant did not testify, and the court improperly referred to "the defendant's testimony." Whether or not the defendant spoke the truth was a fact for the jury, and properly left by the court to the jury to pass upon. The court, however, did not leave to the jury the question of fact whether or not the witnesses, the police officers who testified that the defendant made certain statements, testified truthfully. The court decided this fact itself and precluded the jury from considering it on the assumption that what the police officers testified to was the truth.

The Chancellor, in Sate vs. Kwiatkowski, 83 *N. J. L.* 650, *on p.* 655, *cited and quotes from the case of State vs. Monich,* 45 *Vroom,* 522:

> "Whether the deceased spoke the truth when she declared that the defendant had shot her was for the jury's determination. Whether the witnesses who testified that she made such a declaration testified truthfully was likewise for the jury to decide."

The court concluded and charged the jury that the defendant's statements had actually been made. It did not leave the question for the jury to decide

as to whether or not the witnesses who testified as to what the defendant said were telling the truth.

It was error for the court to decide this question of fact and not present it to the jury for its consideration.

CONCLUSIONS.

It is respectfully insisted that error was committed in the admission and exclusion of testimony; in the charge of the court and the failure to charge as requested, and for the other reasons as herein set forth; that the defendant suffered manifest wrong and injury, and the judgment of conviction should be reversed.

Respectfully submitted,

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New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY *Defendant in Error* vs. HARRISON W. NOEL *Plaintiff in Error*	On Indictment FOR MURDER Reply Brief for Plaintiff In Error On Main Case

POINT II

THE COURT IMPROPERLY ADMITTED EVIDENCE OF OTHER CRIMES.

It will be noticed that in answer to the contention of the plaintiff in error in reference to the admission of evidence of other crimes, the Prosecutor in his brief under Point IV does not contend that the evidence in referring to the killing of the little girl or the assault upon the chauffeur, Sandin, was part of the scheme or plan of the defendant. He says, however, that the evidence was admissible to prove (1) an attempt to escape, and (2) the identity of the defendant.

The assault made by the defendant upon Sandin was made for the purpose of successfully accomplishing the taking or kidnaping of the girl. If it is to be construed as an attempt to escape, it was certainly an attempt to escape from the crime that he was then committing, to wit, kidnaping. The murder of Pierce, for which he was on trial, was committed the day before, and the defendant had been at liberty for approximately twenty-four hours, had spent the night in his own home and had ample time to escape if he so desired. The assault upon Sandin cannot be construed as an attempt to escape from the crime of killing Pierce, which is the only crime for which the defendant was on trial.

As to identity, the defendant admitted that he had used Pierce's car, Pierce's car had been found in the place spoken of by the defendant, Sandin testified that he saw the defendant in this particular car, and there was absolutely no necessity for the purposes of identification to permit evidence as to the assault upon Sandin or the fact that the defendant killed the girl. It need not be argued that this evidence would prejudice the minds of any jury.

POINT III

ADMISSION OF CONFESSION

The prosecutor, in his brief, states that the defendant's counsel did not object to the admission in evidence of the defendant's confession on the ground that he was mentally incompetent.

It was objected to on the ground that it was not properly proven, which included the question of the competency of the defendant.

It was repeatedly called to the court's attention that the defendant had been adjudged insane and was at the time of the commitment of the crime an escaped lunatic. The presumption of insanity continued and the statement was not properly proven until there was some testimony to show that the defendant had been restored to sanity. It is respectfully insisted that this objection was included in the phraseology used by counsel.

The general rule seems to be, in reference to the competency of an insane person as a witness, that there is a presumption of his disqualification because of his mental condition, but that presumption may be overcome by an examination and a ruling of the court to the effect that he is qualified to act as a witness.

"So, general insanity of a witness having

been proved, the presumption is that it continues and it rests with the party offering him to show that he has been so far restored to sanity that reliance may be placed upon his memory and judgment." *Armstrong vs. Timmons*, 3 Har (Del.) 342.

"Proof that the person has been found insane and is an inmate of an insane asylum affords prima facie evidence that he is of an unsound mind and operates to throw the burden of proving competency upon the party offering him as a witness." *Pittsburg & W. R. R. Co. vs. Thompson*, 27 C. C. A. 333, 54 U. S. App. 222, 82 Fed. 720.

"An imposition of lunacy found against one is prima facie evidence of his incompetency as a witness and unless it be overcome by evidence of his sanity he should not be permitted to testify even as against one not a party to the proceedings in lunacy." *Hoyt vs. Adee*, 3 Lans. (N. Y.) 173.

"And one who has been adjudged insane, and is under guardianship, and whose condition has not improved since that time, is not a competent witness. *Hull vs. Louth* 109 Ind. 315, 58 Am. Rep. 405.

Under Point VI (Mental Condition of Noel) the Prosecutor, in his brief, says:

"The evidence in this case demonstrates beyond question that Noel at the time of the commission of the crime and for a year or two theretofore was insane, suffering from a well-recognized disease of the brain—dementia praecox. He was not a border line case, but a typical lunatic.

> "This fact was established not only by the history of Noel and the doctors called by the defense, but also by the testimony of all the alienists who testified for the state except one."

It is respectfully insisted that under this admission that the defendant was and had been a "typical lunatic" and was "not a border line case," he was disqualified as a witness because of his insanity and that the confession made by him was not binding.

The testimony of Dr. Thompson, Dr. Davies, and Dr. McDonald referred to by the Prosecutor on pp. 825 and 852, refers to the examination made by these doctors prior to trial which was admitted on the preliminary hearing (Exhibits D5 and D6,) but was not marked in evidence at the trial of the cause.

It is quite true, however, that one or two of the doctors did testify that Noel admitted to them that he had killed Pierce.

This testimony was admitted purely for the purpose of permitting the doctors to testify as to the mental condition of Noel as they observed it from the manner in which he acted, his general demeanor and what he said. It was not admitted to confirm or deny the confession made by Noel, as the defendant was disqualified from testifying to any facts under the decisions above stated. If the defendant was incompetent as a witness, nothing that he said could be used against him. The testimony of the doctors as to what they said to the defendant and what he said to them was perfectly admissible, either on direct or cross examination, to determine the weight or credit to be given their testimony as to his mental condition. It must be restricted purely to this phase of the situation and not as a question of fact as to where the defendant was or what he did. It will be noticed that the doctors all assumed that the defendant shot Pierce,

which, it is respectfully insisted, was instilled in the mind of the defendant through twenty-six hours of cross-examination by the police authorities, narrating to Noel each fact as it occurred in the crime. The presumption that these admissions were made by the defendant because of the different promises made by the police officers still continues and it cannot be said to be harmless error because the doctors testified as aforesaid. Nor can it be said that a confession consisting of seven full pages should be admitted simply because the defendant admitted to the doctors one or two incidents contained in the confession.

POINT VII

Under Point VII, the Prosecutor cites the case of State v. Sweet, 81 N. J. L. 250, to the effect that the control of cross examination is within the discretion of the trial court. It is respectfully insisted that under Point VII. the court did not control or limit any cross-examination of the witness, but absolutely eliminated it and prevented counsel from asking any questions in reference to a most material point.

POINT VIII.

CHARGE OF THE COURT

In answer to the plaintiff's contention that the court improperly charged the jury that Dr. Markens testified that "the defendant knew the distinction between right and wrong," the Prosecutor says that it was only comment and not a statement of a fundamental fact.

In view of the Prosecutor's admission that the defendant was insane, and assuming the defendant's guilt, the only remaining issue under the charge of

the court was whether or not the defendant could distinguish right from wrong.

It was, therefore, most material as to whether or not Dr. Markens so testified.

It is admitted that there is no such testimony. The case is parallel to *State* vs. *Herbert,* 105 Atl., 796, in which Justice Kalisch on p. 804, said:

> "3. Another ground urged for reversal is that the court in instructing the jury that the 'defendants on trial and Helen Knittel all tesified before the master in support of the good faith of the divorce.' For the state it is conceded that this statement of the facts was inaccurate as to Weinberg. He was not a witness and did not so testify in the divorce case. But it is insisted that this misstatement of a fact was cured by what the court said in other parts of his charge, and reference is made to what the court said at the beginning of his charge:
>
> " 'If the court errs in its statement of any evidence, or assumes the existence of evidence that is not actually before the jury, the jury are to rely upon their recollection, and not upon the recollection of the court."
>
> And in another portion of the charge the court said:
>
> " 'There are some facts which seem to have been established by the evidence, I do not state that they are, it is for you to determine whether or not they are.'
>
> Of course this can only refer to disputed questions of fact. Immediately preceding the statement that 'defendants on trial and Helen Knittel all testified before the master,' etc. the learned trial judge was dealing with Weinberg's

activities in connection with the divorce proceedings and was apparently reading from copies of the stenographer's notes or from his own, as is manifested by lengthy quotations from the testimony, and therefore it seems to us that such a statement of fact made by the court, with material before him to refresh his memory, carried with it great force and conviction and would naturally have impressed the mind of the jury of the existence of a fact (which on account of the great length of the trial the jury might have forgotten) to such an extent so as to overrule any recollection that the jury might have had of that very important and material circumstance. The statement, made by the court, had no foundation in fact, and was harmful, being a material factor in the case to be weighed by the jury, as to Weinberg's connection with the unlawful agreement, and hence bearing materially on his guilt or innocence. And for this reason the plaintiffs in error are also entitled to a reversal of the judgment.

"Judgment is reversed, and a *venire de novo* awarded."

It was also particularly called to the court's attention by a special exception to the charge (Case p. 766.)

POINT IX

Under the cases as set forth in this reply brief under Point III. it is respectfully insisted that the defendant was disqualified as a witness because of his insanity It must be remembered that the Prosecutor admits "he was not a border line case, but a typical lunatic."

He had been adjudged insane and the presumption of insanity continued and there was a presumption that he was not a competent witness.

In view of the fact that he was disqualified as a witness, it was improper for the court to call the attention of the jury to the fact that he did not testify and to say "the circumstances of the fact that he did not take the stand may be considered by you."

Respectfully Submitted

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