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CERTIFICATE OF CHANCELLOR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* v. LOUIS FINE, *Plaintiff-in-Error.*	Sur Indictment for Murder. Certificate of Chancellor.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for review of the judgment of the Atlantic County Court of Oyer and Terminer in this State, convicting the said Louis Fine of the crime of murder in the first degree, and wherein the defendant has been sentenced to death, and without exhibiting to me the record of the proceedings in the cause or any part thereof, and showing any error in those proceedings, and that I have refused to order a writ of error for the review of said judgment solely because no cause, arguable or otherwise is shown for the granting of such writ of error to the Supreme Court.

Dated July 6, 1932.

E. R. WALKER,
Chancellor.

WRIT OF ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, TO RALPH W. E. DONGES, ESQUIRE, Judge of the Atlantic County Court of Oyer and Terminer holden at
(Seal) Mays Landing, New Jersey, of the April Term, 1932.

Because in the records and proceedings, and also in the giving of judgment upon a certain indictment against Louis Fine, late of the City of Atlantic City, in the County of Atlantic, aforesaid:

For that "on the second day of March, in the year of our Lord one thousand nine hundred and thirty-two, at the City of Atlantic City, in the County of Atlantic aforesaid, did wilfully and feloniously and of malice aforethought, kill and murder Mattie Schaaf, 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."

Pro ut said indictment, whereof, before you, said Louis Fine hath been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Louis Fine, as it is said, manifest error hath intervened to the great damage of the said Louis Fine, 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 the said Louis Fine, 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-seventh day of July, 1932, 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, Esquire, our Chancellor and the President Judge of our Court of Errors and Appeals, at Trenton, New Jersey, this seventh day of July, 1932.

Thomas A. Mathis,
Clerk.

Edward I. Feinberg,
John Rauffenbart,
Attorneys for Plaintiff-in-Error.

RETURN.

The answer of Ralph W. E. Donges, Judge of the Court of Oyer and Terminer of the County of Atlantic within-named, the record and proceedings whereof mention is within made, with all things touching the same, I certify to the Court of Errors and Appeals of the State of New Jersey at the day and year within contained, in a certain schedule to this writ annexed as I am commanded.

RALPH W. E. DONGES,
Judge of the Court of Oyer and Terminer of Atlantic County.

———

JUDGMENT RECORD.

ATLANTIC COUNTY, TO WIT:

Be it remembered, that at a Court of Oyer and Terminer and a Court of Quarter Sessions holden at Mays Landing, in and for the County of Atlantic, on the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty-two, at which the Clerk of said Courts by an order in writing then filed according to the Statute in such case made and provided, was directed to take and receive and thereafter file, such indictments and presentments, as the Grand Jury, then sitting in and for the said County of Atlantic, might then offer and de-

liver, and the said Clerk being present in the said courts and the said Grand Jury then being assembled, and being desirous of making presentments of sundry bills of indictment according to the form of the statute in such case made and provided, and by the oath of Harry Rupp, Charles Karrer, Myrtle Donovan, Albert Dunbar, Benjamin A. Ritz, David Peterson, Ellen Shea, Robert R. Mitchell, Mary Skinner, William H. Hepburn, Rose Tractman, Joseph Benson, Joseph Bauer, William J. Howard, Harry Blitzstein, Daniel Scott, Charles Smith, Floyd Oliver, Catherine V. Hickey, Michael T. Cawley, Joseph Nealing, Nathan Ginsburg and Allen M. Sheppard, good and lawful men and women of the said County of Atlantic, duly summoned and then and there sworn to inquire for the State of New Jersey, in and for the body of the County of Atlantic, now, therefore, then and there to said clerk:

It is presented in manner and form following, that is to say:

State of New Jersey v. Louis Fine, Murder.

The bill herewith presented is a true bill.

HARRY RUPP,
Foreman.

To William A. Blair, Clerk of the Court of Oyer and Terminer and Quarter Sessions, in and for the County of Atlantic, and to any duly authorized Deputy Clerk of said Courts:

You are hereby notified, ordered and directed to take and receive any and all indictments, present-

ments and documents, by whatsoever name they may be known, that may be returned and presented to you by the Grand Jury, in and for the County of Atlantic at the conclusion of its deliberation during the present term of 1932 and to impound same until released by order of the Court.

Dated March 15, 1932.

WM. H. SMATHERS,
Judge.

Filed, entered and impounded March 15, 1932, at 4:30 P. M., by Henry McIntyre, Special Deputy Clerk.

WM. A. BLAIR,
Clerk.

IN THE COURT OF OYER AND TERMINER OF ATLANTIC COUNTY.

January Term, A. D. 1932.

ATLANTIC COUNTY, TO WIT:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Atlantic, upon their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, present that Louis Fine, late of the City of Atlantic City, in the said County of Atlantic on the second day of March, in the year of our Lord one thousand nine hundred and thirty-two, at the City of Atlantic City aforesaid, in the county aforesaid, and within

the jurisdiction of this Court, did wilfully, feloniously and of his malice aforethought, kill and murder one Mattie Schaaf, in the peace of God and of this State, then and there being, to the evil example of all others in like case offending, 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.

LOUIS A. REPETTO,
Prosecutor of the Pleas.

No. 12215.
Atlantic County Court of Oyer and Terminer.
January Term, 1932.
Indictment for Murder.
The State,
v.
Louis Fine.
Louis A. Repetto,
Prosecutor of the Pleas.
A True Bill.
Harry Rupp,
Foreman.
Plea 4/4/32 Not guilty.
Trial 6/9/32.
Guilty of Murder in 1st degree.
6/9/32 Death.
Filed, entered and impounded 3/15/1932.
William A. Blair,
Clerk.

ATLANTIC COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY,		On Indictment for Murder.
v.		Order for Struck Jury.
LOUIS FINE.		

On motion on behalf of the State, made in open court, in the presence of the defendant, Louis Fine, and Edward Fineberg, his counsel, and which motion was assented to by the said defendant and his counsel.

It is, as asked for in said motion and so consented to, on this fourth day of April, A. D. nineteen hundred and thirty-two, ordered in open court in the presence of the defendant and his attorney, that a jury be struck for the trial of the issue framed under the indictment in the above cause.

By the Court,
RALPH W. E. DONGES,
Justice of the Supreme Court of New Jersey and sitting in the Atlantic County Court of Oyer and Terminer.

Filed April 5, 1932.
WILLIAM A. BLAIR,
Clerk.

Judgment Record

ATLANTIC COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY,	No. 14215.
v.	Sur Indictment for Murder.
LOUIS FINE.	List of Jurors.

I, RALPH W. E. DONGES, Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for the County of Atlantic, and State of New Jersey, do hereby certify that the list of sixty names hereto annexed has been selected by me, pursuant to the statutes in such case made and provided, as the list of persons qualified to serve as jurors in the county of Atlantic, from which the jury to try this cause is to be drawn. In accordance with the statute, I do fix Saturday, April 23rd, 1932, at 10:30 in the forenoon, at the Court House, in Mays Landing, New Jersey, as the time and place for the striking of names from said list.

RALPH W. E. DONGES,
Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for said County of Atlantic, in the State of New Jersey.

Filed April 16, 1932.
WILLIAM A. BLAIR,
Clerk.

Judgment Record

ATLANTIC COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY, v. LOUIS FINE,	Sur Indictment for Murder. January Term, 1932. Notice of Striking Jury.

Please take notice that a jury will be struck under the Statutes and the order of this Court, made the fourth day of April, A. D. nineteen hundred and thirty-two, for a struck jury, for the trial of the above named defendant, on indictment as above, at the Court House in Mays Landing, in the County of Atlantic, and State of New Jersey on the twenty-third day of April, A. D. nineteen hundred and thirty-two, at ten-thirty o'clock in the forenoon, by and before the above-named Court.

Dated April 16, 1932.

Respectfully,

LOUIS A. REPETTO,
Prosecutor of the Pleas.

To LOUIS FINE, *Defendant,*
and
To EDWARD FEINBERG, ESQ.,
Attorney for Defendant.

Judgment Record

Filed April 16, 1932.
WILLIAM A. BLAIR,
Clerk.

ATLANTIC COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, v. LOUIS FINE.	Sur Indictment for Murder.

To the Honorable Ralph W. E. Donges, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of Louis Fine, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows:

1. That your petitioner is now confined in the common jail of the County of Atlantic at Mays Landing, New Jersey.

2. That he is therein confined awaiting trial on an indictment found by the Atlantic County Grand Jury at the January Term of court charging him

with the murder of one Mattie Schaaf to which indictment he has entered his plea of "not guilty."

3. That May 9, 1932, has been fixed by the Court for his trial; that he has been served with a list of persons qualified to serve as jurors in the said County of Atlantic, from which the jury to try his cause is to be drawn and received notice in accordance with the Statute that Saturday, April 23, 1932, at 10:30, at the Court House in Mays Landing aforesaid, was fixed as the time and place for the striking of names from said list.

4. That although he has made every effort to procure through relatives and friends and such Jewish organizations that he was a member of, financial assistance, he has met with no success; that he is without funds to procure counsel to prepare and present his defense.

Therefore, your petitioner prays that your Honor assign to him counsel to prepare and present his defense to the charge, for the commission of which he stands indicted.

And your petitioner will ever pray, etc.

LOUIS FINE,
Petitioner.

State of New Jersey,
County of Atlantic, } ss.

Louis Fine, of full age, being duly sworn according to law, upon his oath deposes and says that he has read the foregoing petition; that the facts therein set forth are true to his knowledge.

Louis Fine.

Sworn and subscribed to before me this 20th day of April, A. D. 1932.

Morton Glick (Seal).

My commission expires March 30, 1936.

Filed April 23, 1932.

Ralph W. E. Donges,
J.

Filed April 23, 1932.

William A. Blair,
Clerk.

State of New Jersey,
v.
Louis Fine.

Order Assigning Counsel.

Louis Fine, above-named defendant, having been indicted for murder by the Grand Jury of the County of Atlantic and having appeared before the Court of Oyer and Terminer and entered a plea of not

guilty and having informed the Court that he was without counsel and without means to employ counsel, and asked that counsel be assigned to him to defend him in the trial on the above charge.

The Court having considered the matter it is thereupon on this 23rd day of April, A. D. 1932, ordered that John Rauffenbart, Esq., an attorney at law for the State of New Jersey, and residing in Atlantic City, in the County aforesaid, be assigned to defend the said Louis Fine at the time of his trial under the said indictment and that the fee, to such amount as the Court shall hereafter approve, be paid by the County Collector.

RALPH W. E. DONGES,
Justice of the Supreme Court and Presiding Judge of the Atlantic County Court of Oyer and Terminer.

Filed April 23, 1932.

WILLIAM A. BLAIR,
Clerk.

Atlantic County, ss.

The State of New Jersey, to our Sheriff of the County of Atlantic:

We command you that you cause to come before the Court of Oyer and Terminer to be holden at Mays Landing, in and for the County of Atlantic on Monday the ninth day of May, A. D. nineteen

hundred and thirty-two, at the hour of nine-thirty o'clock (daylight saving time), in the forenoon of that day, the persons named in the annexed list or panel subscribed by a Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for said County, to make a certain jury of the said County of Atlantic between the State of New Jersey and Louis Fine, in a plea of not guilty to an indictment for murder, because as well the State of New Jersey as the said Louis Fine, between whom the contention is, have put themselves on the said jury, and in what manner you shall have executed this our writ, make appear at Mays Landing aforesaid, and have you then and there the names of those persons and this writ.

Witness Honorable Ralph W. E. Donges, Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for said County at Mays Landing aforesaid, this twenty-third day of April, A. D. nineteen hundred and thirty-two.

WM. A. BLAIR,
Clerk.
HENRY MCINTYRE,
Sp. Deputy.

LOUIS A. REPETTO,
Prosecutor of the Pleas of
Atlantic County.

Filed April 23, 1932.
WILLIAM A. BLAIR,
Clerk.

Atlantic County, ss.

The State of New Jersey to our Sheriff of the County of Atlantic, we command you that you cause to come before the Court of Oyer and Terminer to be holden at Mays Landing, in and for the County of Atlantic, on Monday the sixth day of June, A. D. nineteen hundred and thirty-two, at the hour of nine-thirty o'clock (daylight saving time), in the forenoon of that day, the persons named in the annexed list or panel subscribed by a Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for said County, to make a certain jury of the said County of Atlantic between the State of New Jersey and Louis Fine, in a plea of not guilty to an indictment for murder because as well the State of New Jersey as the said Louis Fine between whom the contention is, have put themselves on the said jury and in what manner you shall have executed this our writ, make appear at Mays Landing aforesaid, and have you then and there the names of those persons and this writ.

Witness Honorable Ralph W. E. Donges, Justice of the Supreme Court, sitting in and holding the Court of Oyer and Terminer in and for said County at Mays Landing aforesaid, this sixteenth day of May, A. D. nineteen hundred and thirty-two.

WM. A. BLAIR,
Clerk.

LOUIS A. REPETTO,
Prosecutor of the Pleas of
Atlantic County.

Judgment Record

Filed May 17, 1932.
WILLIAM A. BLAIR,
Clerk.
(Filed by Mr. Hinkle.)

ATLANTIC COUNTY CLERK'S OFFICE.

May Term, 1932.

COURT OF OYER AND TERMINER.

Held at Mays Landing in and for the County of Atlantic, on the ninth day of June, in the year of our Lord one thousand nine hundred and thirty-two,

---

PRESENT:
RALPH W. E. DONGES, Judge.

STATE, v. LOUIS FINE, alias SAMUEL MILLER, alias NATHAN KAPLOVITZ.	Sur Indictment for Murder. No. 14215. Convicted of Murder in the First Degree.

Thereon ordered, on motion by the Prosecutor of the Pleas of the County of Atlantic, that the pris-

oner be placed at the bar for sentence, and being accordingly set to the bar the Court doth order and adjudge that the prisoner, Louis Fine, alias Samuel Miller, alias Nathan Kaplovitz, be confined in State Prison pending Court order for death in the manner prescribed by law.

State of New Jersey, }
Atlantic County, } ss.

I, William A. Blair, Clerk of the Court of Oyer and Terminer, held at the Court House in Mays Landing, in and for the County of Atlantic do hereby certify that the foregoing is a true copy from the records of said Court, of the sentence of Louis Fine, alias above-named.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court the ninth day of June, in the year of our Lord one thousand nine hundred and thirty-two.

Wm. A. Blair,
Clerk.

By Henry McIntyre,
Special Deputy Clerk.

Judgment Record

No. 14215.

THE STATE OF NEW JERSEY.

Atlantic County Court of Oyer and Terminer holden before Hon. Ralph W. E. Donges, one of the Justices of the Supreme Court.

May Term, 1932.

STATE OF NEW JERSEY,
v.
LOUIS FINE, alias SAMUEL MILLER, alias NATHAN KAPLOVITZ.

June 6th, 7th, 8th & 9th, 1932.
Hon. Ralph W. E. Donges presiding;
S. Cameron Hinkle and Robert McAllister for State.
John Rauffenbart and Edward Fineberg, for Defendant.
Charge, Murder.
Plea, Not Guilty.

ATLANTIC COUNTY, TO WIT:

Be it remembered that at a Court of Oyer and Terminer holden at Mays Landing, in and for the

County of Atlantic on the second Tuesday of January, in the year of our Lord one thousand nine hundred and thirty-two before Hon. Ralph W. E. Donges, one of the Justices of the Supreme Court of Judicature of the State in and for the said County according to the form of the Statute in such case made and provided, by the oaths and affirmation of Harry Rupp, Charles Karrer, Myrtle Donovan, Albert Dunbar, Benjamin A. Ritz, David Peterson, Ellen Shea, Robert R. Mitchell, Mary Skinner, William H. Hepburn, Rose Tractman, Joseph Benson, Joseph Bauer, William J. Howard, Harry Blitzstein, Daniel Scott, Charles Smith, Floyd Oliver, Catherine V. Hickey, Michael T. Cawley, Joseph Nealing, Nathan Ginsburg and Allen M. Sheppard, good and lawful men and women of the said County of Atlantic, duly summoned and then and there sworn to inquire for the State of New Jersey in and for the body of the County of Atlantic.

It is presented in manner and form following, that is to say:

IN THE COURT OF OYER AND TERMINER
OF ATLANTIC COUNTY.

January Term, A. D. 1932.

Atlantic County, to wit:

The Grand Inquest of the State of New Jersey in and for the body of the County of Atlantic, upon their respective oath and affirmation, those who affirmed having first alleged themselves to be con-

scientiously scrupulous against taking an oath, present that Louis Fine, late of the City of Atlantic City, in the said County of Atlantic on the second day of March, in the year of our Lord one thousand nine hundred and thirty-two, at the City of Atlantic City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did wilfully, feloniously and of his malice aforethought, kill and murder one Mattie Schaaf, in the peace of God and of this State, then and there being to the evil example of all others in like case offending, 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.

ATLANTIC COUNTY, TO WIT:

The Grand Inquest of the State, which said indictment was, to wit, on the second day of March, in the term of January, in the year of our Lord one thousand nine hundred and thirty-two, at the Court of Oyer and Terminer in and for the County of Atlantic aforesaid before Hon. Ralph W. E. Donges, Judge of the Court of Oyer and Terminer of the said County holden at Mays Landing, duly delivered here in court by the Grand jurors aforesaid in due form of law to be tried.

Whereupon the Sheriff of the County of Atlantic aforesaid is commanded to take the said defendant, Louis Fine, if he may be found and he safely keep to answer to the said indictment. Afterwards, to wit, at the Court of Oyer and Terminer holden at Mays Landing aforesaid in the County of Atlantic

aforesaid, on the sixth day of June, in the year of our Lord one thousand nine hundred and thirty-two, before Hon. Ralph W. E. Donges, one of the Justices of the Supreme Court of the State of New Jersey in and for the County of Atlantic, here cometh the said defendant, Louis Fine, under the custody of Daniel D. Conway, High Sheriff of the said County of Atlantic in whose custody in the jail of the said County for the cause aforesaid he had been committed and being brought to the bar here in his proper person by the said Sheriff to whom he is here also committed and the said defendant, Louis Fine, having heard the indictment read and forthwith being demanded of and concerning the premises in the indictment above specified and charged upon how he will acquit himself thereof, he said that he is not guilty thereof and, therefore, for good and evil he puts himself upon the County and S. Cameron Hinkle, Prosecutor who prosecutes for the State of New Jersey, in this behalf, do the like.

Therefore, let a jury thereupon here come before the said Court of Oyer and Terminer and as yet of the term of May in the year of our Lord one thousand nine hundred and thirty-two at Mays Landing, in the County of Atlantic aforesaid, on the sixth day of June, in the year of our Lord one thousand nine hundred and thirty-two of good and lawful men each of whom shall be a citizen of this State and resident within the County of Atlantic, 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 known and who are not of kin to the said defendant, Louis Fine, to recognize upon their

oaths whether the said Louis Fine be guilty of the murder in the said indictment aforesaid above specified or not guilty, because as well the said S. Cameron Hinkle who prosecutes for the State of New Jersey in this behalf as the said defendant, Louis Fine has put himself upon the said jury, at which day, to wit: on the sixth day of June, one thousand nine hundred and thirty-two as yet of the term of May on the year aforesaid before the Court of Oyer and Terminer at Mays Landing aforesaid in the County of Atlantic aforesaid held by the Judge aforesaid, here cometh as well as S. Cameron Hinkle who prosecutes for the State of New Jersey, in this behalf as the said defendant, Louis Fine, upon his own proper person under the custody of Daniel D. Conway, Sheriff as aforesaid, accompanied by John Rauffenbart and Edward Fineberg, counsels for Louis Fine and the trial of the said indictment being moved against the defendant and

1. James S. Murphy, sworn
2. Walter Clark, Jr., sworn
3. Robert Wilson, sworn
4. Robert Picken, sworn
5. Ira Smith, sworn
6. Carlton Adams, sworn
7. Milton S. Lindsey, sworn
8. Alfred Whitehead, sworn
9. Ralph Scull, sworn
10. Curtis Frambes, sworn
11. Gerald L. Gormley, sworn
12. A. S. Bowen, sworn

being called come, who being chosen, tried and sworn and affirmed in accordance with law to speak the

truth of and concerning the premises, and the trial of the said issue having been regularly continued from day to day until the ninth day of June, in the aforesaid year and the following witnesses who were sworn, Marguerite Gall, Annie Middleton, Jessie Fitzgerald, John Odenwelder, Jean Houser, Clara Nevine, Walter Weiss, Harry Rose, Richard Nugent, John McDevitt, Robert Berkett, Earl Steelman, Margaret Albright, Pearl Lichow, Mitchell Lichow, Morris Weinstein, Charles Washington, Julius Hoffman, Earl Steelman (recalled), Mrs. Emley Hoffman, Samuel Delmauer, Jacob J. Williams, Thomas F. McFarland, Morris Zuckerman, Annie Middleton (recalled), Mabel Milone, Dr. Louis H. Myers, Frank L. May, James E. Ebbecke, Dr. William Wadsworth, Frank Juliano (recalled), Pauline G. Logan, Frank Juliano (recalled), Frank L. May (recalled), Cecelia Heenan, Valentine Hoffman, Virginia E. Moore, S. Cameron Hinkle, Harry Stein, Thomas Ward, Frank Juliano (recalled), Katherine R. Gerber, Allen Wiesenthal, Frank S. Bossler, Florence Hale, Frank Juliano (recalled), Albert S. Osborne, Hardbrook T. Stokes, Harry S. Bossler (recalled), Hardbrook T. Stokes (recalled), Florence Hale (recalled), Albert S. Osborne (recalled), Eldridge Stein, Albert S. Osborne (recalled), Morton Glick, Joseph Blaustein, Stanley S. Miller, Dr. William Cole Davis, Dr. Edward Guion, and Dr. Isaac Leonard, having been called for the State and Dr. Henry B. Schmooker, Dr. John Arleth, Dr. Henry A. Cotton, Barnett Gorson, Norman Andrews, Dr. John J. Riley, Dr. John Arleth (recalled), and Dr. Henry B. Schmooker. (recalled), having been called

for the defendant and the evidence being closed, a motion was made by Mr. John Rauffenbart to dismiss, said motion being denied and the Court having charged the jury, they retired at 12:55 P. M. on June the ninth with Constable Theodore Whitmayer, Jessie James and Wilson Turner, who were sworn according to law to attend them and being absent until 2:51 P. M. the same day they returned into the Court before the Justice aforesaid and the said defendant, Louis Fine being present in his proper person, whereupon the jurors being called all appear and being asked say they have agreed upon a verdict and by their foreman further say that they find the defendant, Louis Fine, guilty of murder in the first degree and so say they all. Jury polled by motion of Mr. Rauffenbart.

Whereupon it is on this ninth day of June, A. D. in the aforesaid year on motion of S. Cameron Hinkle, prosecutor of the Pleas on the part of the State of New Jersey, ordered that the said defendant, Louis Fine, be placed at the bar and he being accordingly set at the bar the Court doth order and adjudge that the defendant, Louis Fine, be confined in State Prison pending Court order for death in the manner prescribed by law.

Oyer & Terminer Judgment Book No. 1, page 125.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. LOUIS FINE, *Plaintiff-in-Error.*		On Writ of Error. Request for Transcript.

To Claude W. Myrose:

Request is hereby made for a transcript of the evidence in the above-entitled cause to be returned with the Writ of Error out of the New Jersey Court of Errors and Appeals issued July 7, 1932, and returnable July 27, 1932.

JOHN RAUFFENBART,
Attorney for Plaintiff-in-Error.

I, CLAUDE W. MYROSE, hereby acknowledge receipt of request for a transcript of the evidence reported by me in the above-entitled cause in compliance with Paragraph 2, chapter 125, of the Laws of 1927.

CLAUDE W. MYROSE.

Filed July 11, 1932.
WILLIAM A. BLAIR,
Clerk.

TESTIMONY.

ATLANTIC COUNTY COURT OF OYER AND TERMINER.

STATE,
v.
LOUIS FINE. } Indictment for Murder.

Mays Landing, N. J., June 6, 1932.

Before HONORABLE RALPH W. E. DONGES, Judge, and a jury.

APPEARANCES:

For the State, LOUIS A. REPETTO, ESQ., Prosecutor of the Pleas; S. CAMERON HINKLE, ESQ., Assistant Prosecutor of the Pleas.

For defendant, JOHN RAUFFENBART, ESQ., and EDWARD I. FEINBERG, ESQ.

(The impaneling of the jury and the swearing of each juror as he was accepted by the State and the defense was concluded at 10:30 A. M.)

(Mr. Hinkle opened the State's case to the jury.)

Mr. Hinkle: If the Court please, I beg to offer in evidence a map or drawing of the premises, 31 South Connecticut Avenue in Atlantic City, being the premises where Mr. and Mrs. Schaaf lived, and wherein she was killed. I understand there is no objection?

Mr. Rauffenbart: No objection.

(The map was marked Exhibit S1.)

MARGUERITE GALL, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Gall, where do you live?
A. 170 South Maryland Avenue.
Q. Can you talk a little louder, so they can hear you back there?
A. 170 South Maryland Avenue.
Q. Have you been living there for some time?
A. Years.
Q. Did you know Mattie Schaaf?
A. I did.
Q. Had you ever visited her at her home, 31 South Connecticut Avenue?

A. Yes.

Q. When did you last visit her there?

A. I slept there on Monday night.

Q. On Monday night? That is the night before she disappeared?

A. I just forget the date. The 29th, isn't it, of March?

Q. The 29th of February was Monday night. Yes, the 29th of February.

A. February.

Mr. Rauffenbart: I object to that. The witness should designate the date.

The Court: Yes.

Q. You slept with Mrs. Schaaf that night?

A. Yes, sir.

Q. In her room?

A. In her room and in her bed.

Q. Which room did she occupy?

A. Her sleeping room was on the first floor.

Q. Which room on the first floor?

A. That would be the second room in the building.

Q. Will you just turn to the exhibit, S1, please? Are you able to understand what this is?

A. Yes.

Q. This is Connecticut Avenue as you see marked.

A. I see.

Q. This is marked living room. Do you recognize that room?

A. Yes.

Q. And then this is marked bedroom?

A. That is where I slept.

Q. That is where you slept?

A. Where I slept with her.

Q. The bed stood where? As indicated on this map?

A. Yes.

Q. How was that room furnished, please?

A. Well, it had a bed in it, a desk in it and a bureau and some chairs. That's about all.

Q. Did it have a canary bird, by the way?

A. Yes, and a lot of plants in her bay window.

Q. Where was the canary bird?

A. About in the bay window.

Q. In the bedroom?

A. Yes.

Q. What time did you leave Mrs. Schaaf on the morning of the 1st of March?

A. I had to be at business at nine o'clock, so I left before nine o'clock, and Mrs. Schaaf got my breakfast that morning for me.

Q. That was Tuesday morning?

A. That was Tuesday morning.

Q. Up to that time did she say anything about going away?

A. No, she didn't intend to go away.

Q. When did you next hear from Mrs. Schaaff?

A. She called me up that night, Tuesday night.

Q. Called you up on the phone?

A. On the telephone.

Q. What did she say?

A. Asked me to come over.

Mr. Rauffenbart: I object.

The Court: The question had been answered. The witness was volunteering.

Q. Did she invite you to come——

Mr. Rauffenbart: I object.

The Court: Let the question be finished.

Q. Did she ask you to come and visit her that night?

Mr. Rauffenbart: That is objected to, if the Court please. I do not believe, in the absence of this defendant, the conversation held by the deceased and this lady is admissible.

The Court: I am not sure about that, Mr. Rauffenbart, in view of the fact that this is the decedent, and that the statements of the decedent as to her movements, what she proposed doing, are admissible. I think you will find that directly passed upon in the case of State v. Hunter. That case is approved in a more recent case within the past year, the name of which I do not now recall, but the doctrine of State v. Hunter that statements of the decedent as to his movements—in the Hunter case one Armstrong, a resident of Philadelphia, came to Camden and was there killed by Hunter through someone else and this was admitted by the word of Armstrong's wife, that Armstrong told her that he intended leaving

Philadelphia to go to Camden to meet Hunter about a job of carpentering; so that it is settled, I think, in this State that statements of a decedent as to her intended movements would be competent.

Mr. Rauffenbart: On the theory that it is part of the res gestae?

The Court: Yes.

Mr. Rauffenbart: I ask an exception. I want to interpose another objection. This is over the telephone, and it might be quite dangerous. There has been no identification.

The Court: If you object that she has not yet shown familiarity with the voice of the decedent so as to identify it, Mr. Hinkle may proceed along that line.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

Q. Did she ask you to come and visit her that night?

The Court: Further objection is interposed that it has not been established yet that it was the decedent that was actually talking.

(The question was withdrawn.)

Q. Miss Gall, did you call Mrs. Schaaf or did she call you?

A. That night, Tuesday night, she called me up and said——

The Court: Just answer the questions.

Q. Are you sure that it was Mrs. Schaaf?

A. Positive.

Q. Why are you positive?

A. Because I knew her voice.

Q. You had talked with her before on the phone?

A. Many a time.

By the Court:

Q. How long had you known Mrs. Schaaf?

A. I met her in a business way, but I had known her pretty near a year.

Q. Frequently with her?

A. Yes.

Q. How frequently did you talk over the telephone to Mrs. Schaaf?

A. She called me up every day. Every day.

Q. So you were able to recognize her voice on the phone?

A. Very much.

The Court: Go ahead.

By Mr. Hinkle:

Q. Did she ask you to visit her that night?
A. She did.
Q. What did you say?
A. I told her I had a headache that night and I wouldn't be able to come over.
Q. Did you make an arrangement when you would see her again?
A. No. She was to call me up the next day. She said, "I will see you later." That is all.
Q. During that conversation did she say where she would be the next day, whether in town or out of town?
A. No. She intended to be home.
Q. She told you that?
A. I know she did. I am positive she was home that night.

The Court: Wait.

Mr. Rauffenbart: I do not want to interpose objections to every question——

The Court: I think it is objectionable. I think you are entitled to have what was said, and not the conclusion of the witness.

Mr. Rauffenbart: May that last question and answer be stricken?

The Court: Yes, the last answer may be stricken, and likewise so much of the next to the last answer

where she said, "She intended to be home," may be stricken out.

Q. During the conversation did she say anything to you about seeing you at a future date?

The Court: Yes or no.

A. Yes.

Q. That would be at a time after your telephone conversation?

A. Yes.

Q. Did she at any time notify you that she was going away from Atlantic City?

A. No.

Mr. Rauffenbart: I do not think this is fair to the defendant.

The Court: No; I think the question ought to be, "What, if anything, was said?"

Q. Miss Gall, tell us, then, as nearly as you can, the entire telephone conversation.

A. Well, she asked me to come over that evening and I said I couldn't, and then she said, "Well, I will see you later," and that is all it was, and it was the next day that I was going to see her.

Q. The next day you were going to see her?

A. Yes.

Q. What time did you have this telephone conversation?

A. Around nine o'clock.

By the Court:

Q. In the evening?
A. In the evening.
Q. This would be on Tuesday?
A. Tuesday.
Q. The first day of March?
A. Yes.

By Mr. Hinkle:

Q. Did you hear from her after that time?
A. No.
Q. She didn't call you?
A. No.
Q. Did you call her?
A. I did.
Q. Did you get her——
A. No.
Q. —on the phone?
A. No.
Q. How often did you call Mrs. Schaaf's number after that conversation on Tuesday night?
A. Why, I called her on Wednesday, because——

The Court: Not "Because."

A. I called her on Wednesday and every day on until I read about the death.
Q. And you got no answer?
A. No.
Q. Not from anyone?
A. No one.

Q. Do you remember what kind of weather we had the Sunday following?

A. Terrible.

Q. You mean what? Rain?

A. Rain. A cold day.

The Court: Which Sunday do you mean?

Mr. Hinkle: The Sunday after Mrs. Schaaf's disappearance, which would be March 6th.

Q. Did you make efforts to reach her through neighbors' telephones?

A. I did. I got the operator to give me the nearest telephone number, in order to find out why she didn't answer the telephone.

Q. You didn't get her, of course?

A. I didn't get her personally.

Q. Whom did you call first? Do you recall?

A. I got the operator and she rang the number and I asked her if there was anything the matter with that telephone, because I knew somebody should be there, and she said to me——

Mr. Rauffenbart: I object.

Q. Never mind what she said. You tried through the other persons, neighbors?

A. Yes.

Q. Miss Gall, did you notice in what manner Mrs. Schaaf's room was locked?

A. Why, with just an ordinary key.

Q. An ordinary key?
A. Yes.

The Court: A dead-latch or the ordinary bolt?

A. A latch-key. Just the ordinary key.
Q. Did you ever see what would be known as a padlock on the outside of her door?
A. No.

By the Court:

Q. How often had you been at her bedroom?
A. How often had I been in her room?
Q. Yes.
A. I couldn't tell you the number of times. Numerous times.
Q. You mean as much as once a week or twice a week or less frequently?
A. I stayed with her every night that she was ill, pretty near every night she was ill.

By Mr. Hinkle:

Q. I will show you a picture. Do you recognize this as part of her room?
A. Yes, I do.
Q. Can you point out where her door is on that picture?
A. Right here.

(The photograph was offered in evidence and marked Exhibit S2.)

Q. I call your attention on this photograph, Exhibit 2, that there faintly appears there in the picture a white spot. Did you ever see a thing like that on her door?

A. No.

Mr. Rauffenbart: I object to that. That may be a defect or may be anything else. This witness is asked if she has ever seen a spot on the photograph. I don't think that is permissible.

Mr. Hinkle: I will connect it all up.

The Court: All right.

Mr. Rauffenbart: I withdraw the objection, because I do not see it will do any harm.

Q. Did you ever see a lock like that on the outside of her bedroom door?

A. No.

Mr. Hinkle: I offer it for identification.

(The lock was marked S3 for identification.)

Q. Will you say, if you can, whose watch that is?

A. Mrs. Schaaf's.

Q. Mrs. Schaaf's watch?

A. Yes.

Q. Whose ring is that?

A. Mrs. Schaaf's ring.

Q. You have seen her wear them, have you?
A. I have.

Mr. Hinkle: I offer them in evidence.

(The ring was marked Exhibit S4 and the watch was marked Exhibit S5.)

Cross-examination.

By Mr. Rauffenbart:

Q. Mrs. Schaaf in the last two weeks of her life had been quite ill, hadn't she?
A. Yes.
Q. Pains in her back?
A. Well, I don't know just everything that was the matter with her. I don't know just what was the matter with her. She had the doctor.
Q. Did she complain of pains in her back, Miss Gall?
A. I couldn't just tell you just pains in the back. It was more her stomach, I think.
Q. Stomach?
A. I think. She had the doctor, and the doctor can tell you what was the matter with her.
Q. What made you think it was her stomach?
A. Because he changed the medicine every time he came.
Q. And she was feeling quite miserable, wasn't she?
A. She was very miserable. I used to give her a hot water bottle and all like that.

Q. Where would you put the hot water bottle?
A. On her stomach.
Q. When she attempted to move she had quite some pains in her back and limbs, didn't she?
A. I won't say about that. I have no recollection about that.
Q. She had some difficulty getting around, didn't she, complained?
A. I couldn't tell you what was the matter with her. I couldn't tell you where her pains were.
Q. You had to get up and assist her and get hot water bottles for her once in a while?
A. I had to get hot water bottles during the night for excessive pains, but they weren't from her back that I know of.

The Court: Her complaints were from pains in her stomach?

A. More so the intestines, I think.

ANNIE MIDDLETON, sworn.

Direct examination.

By Mr. Hinkle:

Q. You live in Atlantic City?
A. Yes, sir.
Q. Did you work for Mrs. Schaaf?
A. Yes, I did.

Q. How long had you been working for her before she died?

A. I worked for her one year.

Q. One year?

A. Yes, sir.

Q. What were your duties?

A. Duties?

Q. Yes. What did you do?

A. I washed and ironed and cooked for her. General housework.

Q. At number 31 Connecticut Avenue?

A. Yes.

Q. Did you know the people that roomed in the house?

A. I only know Fine and the other man, Mr. Weiss.

Q. Mr. Fine?

A. Yes.

Q. You know Mr. Fine? Is he sitting here now?

A. Yes.

Q. Is this he?

A. Surely, yes, sir.

Q. He was one of the roomers there?

A. Yes, sir.

Q. And then there was another gentleman, a roomer there, was he not?

A. Yes, Mr. Weiss.

Mr. Hinkle: Mr. Weiss, will you step forward, please? Stand up.

Q. Is that Mr. Weiss?

A. That is him.

Q. Was there a Mr. Miller rooming there?

A. No, sir.

Q. Did you ever have a Miller around the house?

A. No, sir.

Q. On Tuesday night, March 1st, did you leave Mrs. Schaaf about the usual time?

A. Yes, I left about half-past five.

Q. What did you usually do for her the last thing?

A. I went and got a couple of papers for her.

Q. Newspapers?

A. Yes, sir.

Q. Then you left her?

A. Yes, sir.

Q. Did she say anything to you about coming to work the next day?

A. All she says, "I will see you in the morning."

Q. "See you in the morning"?

A. Yes, because I went every day.

Q. You went every day?

A. Yes.

Q. She had a little canary bird, didn't she?

A. Yes.

Q. And that was kept where? In her room?

A. She kept it in the dining room, next to her bedroom.

Q. Next to her bedroom?

A. Yes, right near the window.

Q. Did you take care of her bird while she was there?

A. Yes, I take care of the bird.

Q. When she talked to you and said she would see you in the morning, you went on out?

A. Yes, after I got the papers. I got two papers for her.

Q. Did you go back the next morning?

A. Yes, I went back the next morning.

Q. Did you get in?

A. No, sir, I didn't get in.

Q. Why?

A. Why, I met Fine out in the street and he told me that she had gone away for a week, and I said, "That's funny for her to go away for a week and didn't tell me, and owing me my money." He says, "I don't know, she went away with a lady and a man."

Q. What else did he say?

A. Then he told me to come in to work on Saturday.

Q. Told you to come in to work on Saturday?

A. Yes.

Q. Then you didn't get in to Mrs. Schaaf's that morning?

A. No, sir, I didn't get in. I went back home.

Q. Did you return to Mrs. Schaaf's on Saturday?

A. On Saturday morning I returned.

Q. That was because Mr. Fine told you to do that?

A. Yes.

Q. Did you get in that day?

A. Well, he was out, but he was coming in. I was ringing the bell as he was coming up the street. He let me in.

Q. What did he say to you then?

A. Just, "Good morning," and I went on back in the kitchen and made some coffee and gave him a cup of coffee and cooked a couple of eggs for him.

Q. He told you to cook a couple of eggs?

A. Yes, sir.

Q. Did you do it?

A. Yes, sir.

Q. What kind of work did you do around the house that day?

A. I didn't do anything but just straighten the kitchen up and just set around. There wasn't nothing to do.

Q. Did you get in Mrs. Schaaf's room?

A. No, I didn't get in there.

Q. Did you try to get in?

A. No, I didn't try to get in because I seen the lock on the door and he says, "She put the lock on there and went away."

Q. You saw the lock on the door?

A. Yes.

Q. What kind of a lock?

A. A big, old padlock.

Q. On the outside of the door?

A. Yes, sir.

Q. Had that lock ever been on the door before?

A. No, sir, she never had any lock there before.

Q. And it was locked?

A. Yes.

Q. And he told you what?

A. He told me she put—he says, "She put the lock on the door when she was going away."

Q. He said so?

A. Yes. The telephone was ringing in the room.

Q. Couldn't you get in?

A. No, I couldn't get in.

Q. Could you feed the bird?

A. I couldn't feed the bird. I didn't know the bird was in there until that Monday.

Q. Did you ever see this lock before?

A. I never seen that one. It was a little bigger.

Q. You think it was bigger?

A. Yes.

Q. But there was a lock on the outside of the door?

A. Yes, sir.

Q. Did Mr. Fine say that she went away——

Mr. Rauffenbart: One minute.

A. Yes, he said she went away.

The Court: I suppose your objection is that it is somewhat leading?

Mr. Rauffenbart: Yes.

The Court: I think it is.

Q. Did he say Mrs. Schaaf went away on Wednesday morning?

Mr. Rauffenbart: That is objected to.

A. He said she went away. Yes, Wednesday.

The Court: Wait.

Mr. Rauffenbart: I think in view of the serious-

ness of this case and the apparent intelligence of the witness——

The Court: Yes, I think she should be asked what was said upon the topic.

Q. Did you talk with Mr. Fine on Wednesday morning for the first time?

A. Yes, I talked to him Wednesday morning.

Q. What did he say?

A. He told me that Mrs. Schaaf had gone away for a week.

Q. Anyone with her?

A. Gone away for a week with a lady and a man. I thought it was her niece come down.

Mr. Rauffenbart: I object.

The Court: Yes.

By the Court:

Q. What time was this on Wednesday morning you had the first conversation?

A. Around half-past nine.

Q. When did you first notice the lock upon the bedroom door?

A. Not until Saturday when I went to work. Saturday morning.

Q. You didn't get in the house on Wednesday?

A. No, sir, I didn't get in.

By Mr. Hinkle:

Q. Did you speak to Mr. Fine about money?
A. About money?
Q. Yes.
A. No, I didn't speak to him about money.
Q. Did you say anything to him at all about what Mrs. Schaaf had said to you about money?
A. No, I didn't.

By the Court:

Q. Didn't I understand you to say earlier in your testimony that you stated to Mr. Fine something about funny that Mrs. Schaaf would go away and leave you, owing you money?
A. I did tell him that Wednesday morning on the street.

By Mr. Hinkle:

Q. That is what I am talking about.
A. Yes, sure.
Q. She did owe you money?
A. Yes.
Q. And you told Mr. Fine that?
A. Yes, I told him.
Q. What did he say?
A. He said he didn't know, she had gone away.
Q. He said what?
A. He said he didn't know, she had gone away for a week.

By the Court:

Q. He didn't know she had gone away?
A. He didn't know about the money, but she had gone away for a week.

By Mr. Hinkle:

Q. Did he say who the gentleman and the lady were?
A. No, he didn't say, because I asked him and he said he didn't know them.
Q. He didn't know them?
A. No.
Q. Did you see any lady and gentleman around there the night before, the day before?
A. No, not a soul.

Cross-examination.

By Mr. Rauffenbart:

Q. You first met Mr. Fine on the street. That is on Connecticut Avenue, isn't it, Miss Middleton?
A. Yes.
Q. And you spoke with him and he told you that Mrs. Schaaf had gone away?
A. Yes.
Q. And that she was going to be away about a week?
A. Yes.
Q. And you had better come in on Saturday?
A. Yes.

Q. When you spoke about the money, he said he knew nothing about that?

A. Yes.

Q. She was only gone away for about a week?

A. About a week.

Q. It wasn't anything unusual for her to owe you money, was it?

A. She always paid me.

Q. Did she always pay you promptly?

A. Until she got a little sick and couldn't get out and get the money.

Q. Beg pardon?

A. Yes, she always paid me until she got sick and couldn't get out to get the money.

Q. Didn't she sometimes let the pay run over until the next week?

A. No. Always paid me that week. If she didn't pay me on Wednesday she paid me on Saturday. I always got paid on Wednesday.

Q. Several days would intervene? She would pay you at the end of the week?

A. Yes.

Q. This time she owed you a couple of weeks?

A. Yes.

By the Court:

Q. How much did she owe you?

A. I got $10.00 a week.

Q. For what length of time did she owe you? Two weeks?

A. Two weeks.

By Mr. Rauffenbart:

Q. So she let the first week go over?
A. Yes.
Q. You didn't think anything of that, did you?
A. No.
Q. When Mr. Fine told you that she was away for a week and that you wouldn't have to come in until Saturday, you just went home, didn't you?
A. Yes, went on home.
Q. You didn't attempt to go in at all?
A. No. I rung the bell and no one answered, and I met him and he said she was away, and I went on back home.
Q. You were on the way out when you met him?
A. Yes.
Q. So you kept on going?
A. Yes.
Q. You didn't notice anything about Mr. Fine out of the ordinary, did you?
A. I never noticed him.
Q. You have seen him before, haven't you?
A. Sure.
Q. Quiet man?
A. Yes, quiet.
Q. In and out quietly, wasn't he?
A. Sure, when he was there.
Q. Sometimes came in and you wouldn't even know he was there, would you?
A. Well, unless I was upstairs making his room up.
Q. That was the only way you would know it, when you were making his room up; isn't that true?

A. Sure. I would see him coming in and going out.

Q. And he didn't appear to be any different on the day that you met him, on that Wednesday, than he was when you would see him when you were making his room up, did he?

A. Not to me, he didn't.

Re-direct examination.

By Mr. Hinkle:

Q. Annie, did you know whether Mr. Fine went to Philadelphia daily or not?

A. I don't know where he went, because he left our house Saturday and I didn't see him until eight o'clock Saturday night.

Q. No. During all of the time would he go away day after day, to business or something of that kind?

A. Only I know he went out Saturday.

Q. Went out on Saturday?

A. Yes.

Q. What Saturday?

A. The previous Saturday I came in to work.

Q. That was the day after Mrs. Schaaf——

A. Yes. He went out and he came back, I guess, around eight o'clock, because I waited until he came.

Q. Came in at eight o'clock Saturday night?

A. Yes.

Q. Before that was it his habit to go back and forth to Philadelphia or to some other place of business?

A. I don't know. I didn't see him.

Q. You don't know?

A. No.

Q. By the way, on the last day that Mrs. Schaaf was alive did Tailor Rose come to her?

A. Yes.

Mr. Rauffenbart: I object. There is no evidence of the last day she was alive.

The Court: I suppose Mr. Hinkle means on Tuesday?

Mr. Hinkle: Yes.

A. Yes, he came on Tuesday.

Q. Did Mr. Rose have any conversation with Mrs. Schaaf?

A. No, he didn't. She was upstairs; upstairs putting up a curtain, and he rung the bell and I answered the door, and he asked if Mrs. Schaaf was in, and I told him—Mrs. Schaaf said, "Who is downstairs?" and I said, "Mr. Rose," and she said, "Tell him I will see him tomorrow," and she never came down.

Q. She told you to tell Mr. Rose——

A. She would see him tomorrow.

Q. —she would see him tomorrow?

A. Yes.

The Court: Tomorrow would have been Wednesday?

A. Yes.

Q. That was the day that Mr. Fine didn't let you in?

A. Wednesday.

Re-cross examination.

By Mr. Rauffenbart:

Q. Who else roomed there?

A. I didn't know anyone but that Fine and Weiss. That's all I seen.

Q. There may have been others rooming there that you wouldn't see?

A. I never seen no more than them.

Q. What?

A. I never seen no more than him and Weiss.

Q. How about the lady that lived in the second floor front?

A. She was there, just came there the week when Mrs. Schaaf wasn't sick then, hadn't been sick then. She didn't stay any longer than a week. I don't know her.

Q. If the room was rented out to a couple and they attended to their room, you wouldn't know whether they were in there, would you?

A. If they tended to their own room, but I always tended to the rooms myself.

Q. If they attended to their own room, you wouldn't know whether or not they were in there, would you?

A. If they did, I wouldn't know.

Q. It would have been possible for Mrs. Schaaf

to have rented rooms out to persons whom you knew nothing about, wasn't it?

A. Sure, because I was there every day and I knew everyone that would be there.

Q. This Mr. Weiss——

A. Yes.

Q. Was that Mr. Weiss you looked at?

A. Sure, that's him. I rented him the room when he came there.

Q. Did you recognize this gentleman that stood up as Mr. Weiss?

A. Sure, that's him.

Q. Is he any different today in appearance, facial appearance?

A. He has had a shave.

Q. Did you ever see him before with his whiskers off?

A. Yes, but he come there and taken a room and I took him to the room and he paid me for the room and I carried it downstairs and gave her the money.

Q. He had red whiskers then, didn't he?

A. I know he did.

Q. You have never seen him with his whiskers off, have you, before?

A. No, I have never seen them off before until to-day.

Q. Was he a quiet roomer?

A. He was quiet sometimes, and would talk to himself sometimes.

Q. Had a habit of talking to himself, didn't he?

A. Sometimes, but he was quiet.

Q. Do you know where he lived before he came there?

A. No, sir. He just came there and got the room and I took him to the room and he paid me.

JESSE FITZGERALD, sworn.

Direct examination.

By Mr. Hinkle:

Q. You live in Atlantic City?
A. Yes, sir.
Q. What is your work? What kind of work do you do?
A. I am a janitor, 28 South Connecticut.
Q. In addition to being a janitor at 28 South Connecticut, did you also take care of fires and do work for Mrs. Schaaf at 31?
A. Yes, I did.
Q. How long had you done that for Mrs. Schaaf?
A. Practically all winter.
Q. Did you know this defendant, Fine?
A. Yes.
Q. Knew he roomed there, did you?
A. Yes, he roomed there.
Q. Did you ever talk with Mr. Fine?
A. Never did.
Q. That is, before Mrs. Schaaf's death?
A. No, not before.
Q. After Mrs. Schaaf's death did you talk with Fine?
A. Only met him at the door. He met me at the

door on Friday evening. I rang the doorbell, seeing the house lit up, and I thought I would ring the bell to see if Mrs. Schaaf was there.

Q. Was that after she disappeared?

A. After she disappeared.

Q. On the Friday night after she disappeared?

A. Yes.

Q. You saw the house was lit up?

A. Yes.

Q. Then what did you do?

A. I rang the bell and he answered the door, so I asked him was Mrs. Schaaf there, and he said no, she hadn't returned yet, she was away for a few days.

Q. Did he say when she was coming back?

A. No, he didn't say.

Q. When did you last see Mrs. Schaaf alive?

A. On Tuesday evening around about five or six o'clock.

A Juror: What date was that?

A. I don't know what date it was. It must have been the last of March, about the 28th.

The Court: Tuesday would be the 29th of February.

Mr. Hinkle: Tuesday was the first of March.

Q. Tuesday, the 1st of March?

A. Yes.

Q. That is the last time you saw her alive?

A. That is the last time.

Q. Where was she then?

A. She was sitting in the bay window reading the paper.

Q. Did you speak to her?

A. No, I didn't.

Q. Did you ever see any other man around the house except Mr. Fine?

A. Well, the gentleman back there, I have seen him there for about a week.

Q. The gentleman who just stood up, Mr. Weiss?

A. Yes, Weiss was his name.

Q. Did you see the trunk when it was taken out of the house?

A. I seen the driver placing the trunk on the truck.

Q. Do you remember what day that was?

A. That was on a Wednesday. Yes, Wednesday.

Q. Wednesday afternoon?

A. I think it was in the afternoon.

Q. About what time do you think?

A. I really couldn't know exactly what time it was. I imagine it was around three or four o'clock, or maybe later.

Q. You saw the expressman putting the trunk on the truck?

A. He was closing up his end gates to the truck already. The trunk was already on the truck.

Q. Where was Mr. Fine?

A. He was standing on the top step of the porch.

Q. Did he go away with the truck?

A. I didn't see. I was only sweeping the front off of the apartment house.

Cross-examination.

By Mr. Rauffenbart:

Q. Where did you say you were employed, Mr. Fitzgerald?

A. What?

Q. Where did you say you were employed? Where are you employed?

A. At 28 South Connecticut, the La Grande apartments.

Q. That is right opposite where Mrs. Schaaf used to live?

A. Yes.

Q. And you sometimes took care of work for her?

A. Yes, I did.

Q. How long were you employed around there, Mr. Fitzgerald?

A. At the apartment?

Q. Yes.

A. 28?

Q. Yes.

A. Working there near two years now.

Q. How long have you been doing little work for Mrs. Schaaf?

A. Practically ever since she opened up the house. She opened up the house the last of April or March or sometime.

Q. The spring of last year?

A. Yes.

Q. About a year ago? She had a rooming house there?

A. Rooming house, yes.

Q. And she rented to different people whom you have seen come in and out of there, haven't you? At different times you have seen different people walk in and out, haven't you?

A. During the season she had plenty of roomers there.

Q. She also had visitors out of season, didn't she?

A. Well, I suppose. I didn't never pay no particular notice to that.

Q. There was no reason why you should pay any particular notice, was there?

A. I had no reason to pay any notice to that, no.

Q. If a person should go in there, you wouldn't stop to investigate or interrogate? You were not nosey about it, were you?

A. I should say not.

Q. You wouldn't have paid any more attention to a man or woman walking in there than you would if they walked into a house next door or down the street?

A. No, I wouldn't, because she had a rooming house and that was her business.

Q. When you saw men or women walking in there, you considered they were either going in there to get a room or were friends of hers?

A. Yes.

Q. Had you known Mr. Fine before this day that you went to the door, this Wednesday?

A. Oh, yes, I have seen him in and out there off and on all winter.

Q. You saw him this day the trunk was loaded onto the express wagon?

A. Yes, he was there the morning the trunk was on the porch.

Q. Did you observe any difference in his actions at that time?

A. None whatever. Just the same.

Q. He didn't appear to be unduly perturbed or nervous, did he?

A. Not at all.

Q. Calm?

A. Calm and quiet.

Q. Collected, as ever was he?

A. Yes, just the same as ever.

JOHN ODENWELDER, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?

A. My vocation? Carpenter.

Q. Live in Atlantic City?

A. Yes, sir.

Q. Did you know Mrs. Schaaf?

A. Yes, sir.

Q. Did you do work for her?

A. Yes, sir, I did.

Q. How long had you worked for her?

A. Why, when she took that house over there, it was in April, April a year ago, I done some work for her there.

Q. Just before she died did you do some work in her place?

A. I finished all the work in there around the 17th of February, but there was some money owing me, you see——

Q. Never mind about that just yet. You did some work and finished it about the 17th of February?

A. Yes, sir.

Q. What kind of work did you do?

A. I put up a partition through the hallway; cut the living room and dining room off and made a hallway through there.

Q. Point out to us on this Exhibit S1 what you did.

A. I put this partition through here to go to the kitchen. That is the hallway. Closed these two rooms off.

Q. That is, you closed this room and this room off?

A. Yes, sir.

Q. Put that hallway through?

A. Yes, sir.

Q. Did you add anything here?

A. I put a transom in over the door there so as to put a lavatory in there.

Q. Put a little partition in here?

A. No, sir, I didn't do that.

Q. And you finished that the 17th of February?

A. Yes, sir.

Q. When did you last see Mrs. Schaaf alive?

A. On the 27th day of February.

Q. Did you talk with her about anything in particular?

A. I stopped at the house——

Mr. Rauffenbart: This is the 27th day of February. I object to any conversation he may have had with Mrs. Schaaf.

The Court: What is the offer? It seems somewhat remote.

Mr. Hinkle: I confess it is, perhaps. I will withdraw that question.

Q. During that conversation did she tell you that she would pay you some money on a certain day?
A. Yes, sir.

Mr. Rauffenbart: That is just an easier way of getting around it, it appears to me.

Mr. Hinkle: It is part of the res gestae. It comes within the Hunter case.

The Court: I think several days in advance is rather remote as part of the res gestae.

Mr. Rauffenbart: I ask it be stricken, the answer.

The Court: I think not. The objection stands.

Q. You did talk with her on the 27th?
A. Yes, sir.
Q. That is the last time you talked with her?
A. That is the last time I talked with her.
Q. Where were you talking then?

A. I was in the kitchen.

Q. Her kitchen?

A. Her kitchen.

Q. When did you next go to that house?

A. On the 2nd of March.

Q. That was Wednesday?

A. Yes, sir.

Q. Why did you go that day?

A. She was to pay me some money, and I went there to collect.

Q. Did you get in?

A. No, sir, I did not.

Q. What time did you go there?

A. I was there a little before noon.

Q. Whom did you see?

A. No one.

Q. Could you get in?

A. No, sir. I rang the front doorbell and the back doorbell, and no answer.

Q. Couldn't get in?

A. No, sir.

Q. When did you go again?

A. The following day, Thursday.

Q. What time?

A. Right around noon, I was there.

Q. Did you get in?

A. I rang the front doorbell and the back doorbell, and no answer.

Q. When did you go again?

A. I took a walk down there Thursday night, I should judge it was between seven and eight o'clock. I walked by the house and I seen a light in the front room, and I rang the bell.

Q. Then what?

A. Mr. Fine come to the door.

Q. Did you talk to him?

A. Yes, sir. I asked him where Mrs. Schaaf was. He said, "She is away," and he asked me to tell her who called. I said, "John." He looked as though he didn't know me. I said, "You tell her John, the carpenter." He said, "All right."

Q. Did you go again?

A. I went down there Friday. I went by around noon and somebody had wet shoes or something and I seen foot tracks on the step. I went up and rang the bell and Mr. Fine come to the door.

Q. Did you talk with him?

A. Yes, sir, I asked him where Mrs. Schaaf was and he says, "She is still away." I says, "Where is she at?" He says, "New York." I says, "When will she be back?" He says, "Probably Tuesday." That is all the talk.

Q. During that time that you were working around there making those alterations did you see Mr. Fine around there?

A. I met him twice while I was there. I was introduced to him.

Q. See any other persons rooming in the house?

A. No, I didn't see nobody else.

Cross-examination.

By Mr. Rauffenbart:

Q. Then you visited there, Mr. Odenwelder, every day from Tuesday down to Friday, including Friday?

A. I didn't visit Tuesday. Wednesday, Thursday and Friday.

Q. You are sure you were there Thursday?

A. Yes, sir.

Q. And you met Mr. Fine on two occasions?

A. I met him on Wednesday—now, wait a minute. I don't want to get wrong now. I couldn't get no answer Wednesday, that's it, and Thursday night —I was there at noontime, and at night time I walked by there and I seen a light. I should judge probably it was eight o'clock, and I went up and rung the bell.

Q. That was Thursday?

A. Thursday.

Q. And Mr. Fine was there?

A. Yes, sir.

Q. Came to the door when the bell rang?

A. Answered the bell.

Q. And then again on Friday evening he came to the door?

A. Friday at noon.

Q. And he told you that Mrs. Schaaf was away?

A. Yes, sir.

Q. He didn't seem to recognize you, and you told him to tell her it was John, the carpenter, that called?

A. That was Thursday, yes, sir.

Q. He didn't seem unduly perturbed at that time, or disturbed, did he?

A. No.

Q. He was just as he had appeared to you when you saw him before?

A. Sure.

Q. Calm and collected?

A. Yes.

Q. Talked to you the same as anybody else would?

A. Yes.

JEAN HAUSER, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Hauser, do you live in Atlantic City?

A. I do.

Q. Did you know Mrs. Schaaf?

A. I do.

Q. You knew her quite well?

A. Yes, sir.

Q. Did you visit her many times?

A. Yes, sir.

Q. When did you last see Mrs. Schaaf alive?

A. I couldn't tell you the exact date. Sometime in February, the latter part of February, but just the date I couldn't tell you.

Q. When did you go to her house? Do you remember an occasion when you were at the moving pictures?

A. Yes, sir.

Q. And stopped at her house?

A. On Tuesday night.

Q. What date was that?

A. It would be around March 1st.

Q. Tuesday night?

A. Yes, sir.

Q. About what time did you stop at Mrs. Schaaf's house?

A. Well, it was the last show. Around—I would judge around half-past eleven. I couldn't tell you. I came right out of the show at the Capitol, walked right up the street. The house was all lit up and I rang the bell two or three times, and I wondered that the house was all lit up and no one answered me.

Mr. Rauffenbart: I object to what she wondered.

The Court: Yes.

Q. The house was all lighted?

A. Yes, sir.

Q. Downstairs?

A. Yes.

Q. Were the shades up or down?

A. As usual. Just as usual, as they always were.

The Court: How was that, up or down?

A. Up.

Q. Could you see in?

A. I could see in—I didn't look in the window. I looked in the door. I put my face up against the door and I could see all the way back to the kitchen, to see if anyone was coming. I wondered why no one answered the bell.

Q. No one answered the bell?

A. No.

By the Court:

Q. What shades did you see? In what part of the house were the shades that you noticed?

A. The front of the house.

Q. That would be the living room shades?

A. Yes.

Q. Any others?

A. The shade was up in the door. I could see through the door.

By Mr. Hinkle:

Q. Did you notice the shades on the side of the house?

A. Not around to the side, no. I didn't take that much notice.

Q. How many times did you ring the bell to try to get in?

A. About three times.

Q. You were not admitted?

A. No.

Q. During your visits to Mrs. Schaaf's home, did

you at any time see any of the persons who roomed in her house?

A. I seen one man that owed her rent.

Mr. Rauffenbart: I object. The question was, "Did you see any man that roomed in the house?"

The Court: The first of her answer was, "I saw one man," and the balance of the answer will be stricken.

Q. What man was that?

A. The gentleman sitting right there at the desk.

Q. The defendant, Fine?

A. Yes.

Q. Did you hear a conversation between Mrs. Schaaf and Mr. Fine?

A. Yes, sir.

Q. Was that the occasion of your last visit to her?

A. Well, it was two or three occasions that she approached him while I was there.

Q. You could hear what was said?

A. Yes.

Q. What would she say and what would he say?

A. She asked him when he was going to pay the money that he owed her for the room, and he said—I couldn't quite catch it all. He said he expected a check or something, for her not to worry, that she would get her money.

Q. Was that the conversation on more than one occasion?

A. On three different occasions that I was in there when she approached him.

Q. Were those occasions shortly before her death?
A. Well, the latter one, yes.

By the Court:

Q. Are you able to say about how long before this Tuesday evening when you say you rang the bell and endeavored to get in and didn't that this last conversation between Mrs. Schaaf and Mr. Fine took place?
A. No, I couldn't tell you. I would run in and out, and I couldn't tell you the exact time.

By Mr. Hinkle:

Q. Mrs. Hauser, do you recall whether or not you visited Mrs. Schaaf's home on the Friday before that Tuesday night that she disappeared?
A. It could probably be, yes. It wouldn't be a Saturday, because I was quite busy on Saturday. It could be Friday.
Q. Do you remember one time saying anything about its being on Friday?
A. I couldn't say. It would be a Thursday or a Friday.
Q. It was either Thursday or Friday before her death?
A. It was either Thursday or Friday, but I couldn't say positive.
Q. And that was the last time you talked with her?
A. Yes.
Q. On that occasion did she speak to Mr. Fine about the rent?

A. Yes.

Q. And he told her what?

A. That he expected a check, expected some money, not to worry, that he would take care of the matter.

Cross-examination.

By Mr. Rauffenbart:

Q. Where do you live, Mrs. Hauser?

A. At that time I lived at 517 Pacific, right around the corner from 31.

Q. Where do you live now?

A. 10 South Connecticut.

Q. What is your business?

A. I have a rooming house, also.

Q. You have a rooming house?

A. I have now. Before that I had a tea room, a store.

Q. Where was your tea room?

A. 517 Pacific Avenue.

Q. 517 Pacific?

A. Yes.

Q. And you had a tea room there?

A. Yes.

Q. Where you sold tea?

A. Sandwiches, cigars.

Q. And sandwiches?

A. And cigarettes.

Q. Did you at times go to the movies with Mrs. ——

A. No, I did not go to the movies.

Q. You didn't go to the movies with her?

A. No.

Q. Were you in the habit of visiting her towards midnight?

A. Well, as a rule it would be after I would come from the show myself, and if I saw a light and knew she was up, I would run in for a little while.

Q. It wasn't anything unusual for the light to be in the front room, was it, at that hour?

A. She always kept a light.

Q. If she was out at the late movie and hadn't arrived home yet, that light would be there, wouldn't it?

A. Not a bright light. A dim light.

Q. Just where was this light?

A. In the front room.

Q. Was it a gas light?

A. No, I think she had her house equipped with electric.

Q. Would she remove a bright electric bulb and put in a small one?

A. No. She had plenty of lamps and small lights, and I suppose she would put the larger ones out and leave the smaller ones.

Q. You know Miss Gall, of course?

A. Well, I have seen her. I don't know her very well.

Q. Do you know that—didn't you meet her there when you visited Mrs. Schaaf?

A. No, Miss Gall was never there when I was there.

Q. Did you visit her at night during the two weeks previous to March 2nd?

A. I just run in for a minute.
Q. What time?
A. I couldn't tell you what time.
Q. Night? It was night, was it?
A. Sometimes.
Q. Just tell me what day during the two weeks previous to March 2nd you saw Mrs. Schaaf?
A. I told you before I can't tell you exactly.
Q. Why can't you?
A. Well, I wasn't that much interested that I should remember dates. I didn't think that I would have to remember the dates. I didn't think anything like that was going to happen.
Q. Do you mean, then, to say to this Court and jury that you can say definitely that you did see her at any night during the two weeks previous to March 2nd and during the time she was ill?
A. Well, she wasn't ill in bed any time I was in. She was able to be around. She had a cold and wasn't feeling well, but she wasn't in bed at any time I was in there.
Q. I am asking you if you can definitely say that any one of these days—two weeks, mind you, previous to the second day of March—that you saw her in her home in the evening?
A. Yes.
Q. What day was it?
A. I don't know.
Q. Was it in February?
A. It was in February, yes.
Q. Do you know what date?
A. No.
Q. Sometime in February?

A. Yes.

Q. And you don't know what date?

A. No.

Q. And you don't know whether it was two weeks previous to March 2nd or not, do you?

A. I do not.

Q. When was the first occasion that you heard Mrs. Schaaf ask Mr. Fine for rent?

A. She was sitting so she could see the door, and she says to me, "You don't mind me sitting here"

Q. No. When was the first occasion?

A. I have told you I can't remember the dates.

Q. What month was it?

A. February.

Q. Well, was it the early part of February?

A. No, it was the latter part of February.

Q. What do you mean by the latter part?

A. Well, the last week or so of February.

Q. You just said now that you couldn't say if it was within two weeks that you were there?

A. I couldn't say the date. You can't corner me on that. I don't know the date.

Q. I don't want to corner you. I just want to see if you can tell us definitely. What time of day was it?

A. I didn't go in in the daytime.

Q. It was in the evening?

A. Yes.

Q. Was Mrs. Schaaf indisposed? Was she ill?

A. Well, she wasn't feeling well.

Q. What did she say was the matter with her?

A. She didn't tell me. She just said, "I don't feel good."

Q. She drank considerably, didn't she?

A. What is that?

Q. She drank considerably? A woman who drank a whole lot?

A. I don't know that she drank a whole lot. I guess she liked it, the same as the rest of you like it.

Q. The rest of us? Did you say the rest of us?

A. Yes.

Q. Would you imbibe on these evenings when you visited her?

Mr. Hinkle: That is objected to.

(The question was withdrawn.)

Q. If you did, however, you wouldn't imbibe so much you couldn't remember what took place?

Mr. Hinkle: That is objected to.

(The question was withdrawn.)

Q. Tell me the second occasion. When was that and where was it that you heard this conversation between Mrs. Schaaf and Mr. Fine?

A. At the end of the hall, at the door right at the foot of the stairs.

Q. The same spot?

A. Yes, sir.

Q. Where were you?

A. I was just about to leave, ready to go.

Q. Where were you the first time?

A. The same place.

Q. Just about to leave and ready to go? Give us a third time.

A. The third occasion was practically the same.

Q. Just about to leave and ready to go?

A. He always came in late and that was when she would have to catch him, because he was out in the morning before she got up.

Q. And it just happened on each occasion you were about ready to leave and go; is that it?

A. Yes.

CLARA NEVINS, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Nevins, were you for a while rooming at the premises 31 South Connecticut Avenue?

A. Two weeks.

Q. Do you remember what two weeks?

A. It was in February. I don't know the date.

Q. Were you still rooming there at the time that Mrs. Schaaf disappeared?

A. Yes, sir.

Q. Did you ever see any men roomers in the house?

A. One.

Q. Which one?

A. Mr. Fine.

Q. The one here at the table?

A. Yes.

Q. Did you ever talk with Mr. Fine or he talk with you?

A. On Friday morning.

Q. That would be Friday——

A. Before the Monday when I got stopped when I went in.

The Court: The Friday before the Monday you got stopped when you attempted to go in did you say?

A. Yes, sir.

Mr. Hinkle: The Prosecutor's office stopped her. That is the explanation of what she means.

Q. Would that be Friday, the 4th of March?

A. The 4th of March?

Q. Friday, the 4th of March, wouldn't it?

A. I don't know. I don't really know the date.

Q. It was the Friday before the Prosecutor's office stopped you from going in?

A. That's right.

Q. What did Mr. Fine say to you?

A. He asked me if I wanted my room cleaned would I leave the door open, and I says, "That's all right, I can take care of it on Sunday."

Q. You said you could take care of it on Sunday?

A. Yes.

Q. What else did he say to you about Mrs. Schaaf, if anything?

A. I said, "Where is Mrs. Schaaf? Is she sick?" and he said, "No, she is away for a few days."

Q. What did he say about who was in charge?

A. He said he was taking care of her place.

Q. Did he say anything about to whom to pay the rent?

A. No, sir.

Q. What did he say to you or tell you to do if you wanted anything?

A. Come down to the second floor, the first bedroom right at the head of the stairs.

Q. Come down from the second bedroom, the first bedroom at the head of the stairs?

A. That would be the second room on that floor.

Q. Whose room did he say that was?

A. His room.

Q. If you wanted anything, you were to come down there?

A. Yes, sir.

Q. Did you see any other men in the house, any other boarders besides him——

A. No, sir.

Q. —and yourself?

A. No, sir.

Cross-examination.

By Mr. Rauffenbart:

Q. How long did you say you roomed there?

A. Two weeks.

Q. Did you know this colored girl that was on the stand?

A. No, I never saw anyone. I went out early in the morning.

Q. Never saw anyone? Where were you employed?

A. I was working for my brother at the time.

Q. Who is your brother?

A. Joe Moncrief.

Q. What does he do?

A. Working, driving a yellow cab.

Q. You say you are Mrs. Clara Nevins?

A. That is right.

Q. Did your husband live there with you?

A. No.

Q. Where is your husband?

A. Divorced.

Mr. Hinkle: That is objected to, if your Honor please.

The Court: She says they are divorced.

Q. What kind of work did you do for the brother that drove the yellow taxicab?

Mr. Hinkle: That is objected to.

The Court: She may answer it.

A. I just attended to his children and kept the house.

Q. Is he married?

A. Yes, sir.
Q. Where does he live?
A. He lives 313 North Massachusetts Avenue.
Q. Wasn't his wife there?
A. She worked, also.
Q. 313 North Massachusetts?
A. That's right.
Q. Where did his wife work?
A. She worked at Myerson's. Mattress factory on Arctic Avenue.
Q. Did you have any other kind of income except what your brother gave you?
A. No.
Q. Why did you room at Mrs. Schaaf's instead of where your brother lived?
A. There wasn't room there.
Q. What?
A. There wasn't room there.
Q. What kind of a home has he got?
A. He only lives in a small basement.
Q. Did he pay your room rent at Mrs. Schaaf's?
A. No.
Q. What did you do for a living?
A. I tended his children.
Q. How much did you get a week?
A. He gave me about three or four dollars.
Q. No stipulated sum?
A. No.
Q. How much was your room rent?
A. $3.00 a week.
Q. You never saw this colored girl, Miss Middleton?
A. No, I never did.

Q. Didn't even know she was there?

A. No, I never did.

Q. Didn't see her in the evening or during the morning?

A. No, sir.

Q. How about Sundays?

A. I never was there at all in the day.

Q. What did you do Sundays?

A. I stayed there also.

Q. Would you get up early on Sunday, too?

A. Yes, sir.

Q. Why?

A. Because I didn't want to stay there.

Q. Your brother's wife was home attending the children on Sunday, wasn't she?

A. Yes, sir.

Q. So there was no necessity for your getting up real early Sunday morning?

Mr. Hinkle: If this is of any moment——

Mr. Rauffenbart: I will withdraw the question.

Q. What day was it you met Mr. Fine, Mrs. Nevins?

A. It was on a Friday.

Q. Had you ever seen him before?

A. No, sir.

Q. Did you see Mr. Weiss there before?

A. No, sir.

Q. Did you see a lady that roomed a week or so previous to that in the room next to where you say Mr. Fine was, the front room?

A. No, sir.

Q. You, of course, have gone over this case with someone from the Prosecutor's office?

A. Yes, sir.

Q. Concerning the location of rooms and so forth?

A. No, sir.

Q. Didn't talk about rooms?

A. Just that he had the second floor, that was all.

Q. Who was that person you talked with?

A. Mr. Hinkle.

Q. Who before Mr. Hinkle?

A. No one whatsoever.

Q. Didn't anyone come after you to go to Mr. Hinkle's office?

A. Yes.

Q. Who?

A. I don't know who they were.

Q. Do you see them in the court room, around the table?

A. I don't really remember.

Q. Do you know Mr. Juliano?

A. Yes.

Q. You know him, don't you?

A. Yes.

Q. You have known him for some time?

A. No.

Q. How long have you known him?

A. I have only known him since this case came up.

Q. What did you first say to Mr. Fine? Where did you meet him and what did you first say to him?

A. I was starting down the steps.

Q. What time was this?

A. About ten to eight, five minutes to eight, around there.

Q. About eight o'clock?

A. Yes.

Q. What was said?

A. He said, "If you want to clean your room, leave the door unlocked," and I says, "That's all right, I can do it Sunday," and then I says, "Where is Mrs. Schaaf? Is she sick?" He says, "No, she is away for a couple of days." That is all. I went on my way.

Q. How did he appear to you, Mrs. Nevins?

A. I never saw the man before. He acted all right to me. I didn't see nothing.

Q. He wasn't nervous, apparently, was he?

A. No.

Q. Unduly excited?

A. No.

Q. He appeared calm, didn't he?

A. I didn't notice. I never saw him before.

Q. Well, if he had been excited and wasn't calm, you would have noticed it, wouldn't you?

A. Sure.

WALTER WEISS, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Weiss, were you living for a time at premises 31 South Connecticut Avenue?

A. Yes, sir.

Q. Do you remember when you first went there?

A. I don't recall. It was on a Monday.

Q. From whom did you rent the room?

A. I rented the room—I gave the money to the colored girl, and Mrs. Schaaf was standing in the rear in the hall and walked upstairs, and I asked Mrs. Schaaf if she had a room for rent, and I think I asked the colored girl at the same time, and she says, "Yes," and the colored girl took me upstairs to the room.

Q. Show you a room?

A. Yes.

Q. How many weeks did you occupy that room?

A. I occupied that room, I think, about five weeks.

Q. During the time that you were there did you see any other roomers?

A. I did not see any roomers.

Q. Did you see this defendant, Fine?

A. I saw Mr. Fine.

Q. You didn't see Mrs. Nevins, the lady that was here?

A. I did not see Mrs. Nevins.

Q. Didn't see any other roomer except Mr. Fine?

A. No other roomer to my knowledge. There may have been others in the place, but I didn't see them. I wasn't interested.

Q. Did you talk with Mr. Fine at any time?

A. I said, "Good morning," one——

Q. One morning?

A. One morning.

Q. Do you remember when that was?

A. I don't recall the day.

Q. Was it before or after Mrs. Schaaf's death?

A. I don't know when it happened. I don't recall. I recall seeing Mr. Fine coming from the bathroom and I said, "Good morning," to him. I don't know whether it was before or after.

Cross-examination.

By Mr. Rauffenbart:

Q. You have just recently removed the——

A. I have.

Q. —the red whiskers?

A. I have.

Q. How long did you live at Mrs. Schaaf's, Mr. Weiss?

A. I presume it was five weeks. I wouldn't say for a certainty, because I don't endeavor to attempt to keep those kind of matters in my head.

Q. About five weeks?

A. About five weeks.

Q. Were you employed during that time?

A. I was not.

Q. Beg pardon?

A. In a certain sense of the word I was employed. In another sense of the word I can't say I was. It was more analytic work that I was doing.

Q. When did you finally give up your room there, Mr. Weiss?

A. I gave the room up on a Monday.

Q. That was Monday the what? Do you recall the date?

A. I don't recall the date.

Q. It was in March, wasn't it?

A. It was in March.

Q. On a Monday?

The Court: Was that at the time the authorities came in?

A. No, that was before the authorities came in.

Q. It was the same day, wasn't it, but before they got there?

A. No, it wasn't the same day. The authorities wasn't there the same day. I came downstairs and gave the key to Mr. Fine. He was standing in the hall, where the portieres were, and I handed him the key and I said, "I am leaving," and I left there and I got a room in another place. I don't recall the day, but I thought I had left some written work in the bedroom upstairs, so I came back to the South Connecticut Avenue address and asked if I might not go to my bedroom—up to the bedroom that was my bedroom at that time, to get the work, where I believed I had left it, and at that time I met Mr. —the young man who took me over here in an automobile.

Q. Mr. Juliano?

A. Mr. Juliano, and there was altogether three other men.

Q. How many days after you had left there was that, Mr. Weiss? A couple of days?

A. That was a couple of days.

Q. You gave the key, you say, to Mr. Fine?

A. I did.

Q. Did you give it to him because he was the only one there?

A. He was the only one there. I was going to leave the key lay on the stand, but he accepted it.

Q. You handed it to him?

A. Yes.

Q. Did you say anything to him at the time, other than you were going to leave?

A. No.

Q. Didn't give him any reason for leaving?

A. No. There wasn't any reason to give.

Q. He didn't ask you why you were leaving?

A. No.

Q. He didn't ask you if you owed any money, did he?

A. He asked me at the time, he said—he asked me at the time why I was going to leave and I said well, I just felt like leaving, that was all.

Q. What was your business before you moved down to Mrs. Schaaf's place? What kind of work did you do?

A. I had first worked as an accountant, and after that I had worked in newspaper work.

Q. Worked here on the Atlantic City Daily Press?

A. I did.

Q. Where did you live before you went down to Mrs. Schaaf's?

A. I lived on 12 South Massachusetts Avenue.

Q. Just before going to Mrs. Schaaf's?

A. Yes.

Q. Where did you live before you went to Massachusetts Avenue?

A. 701 Arctic Avenue.

Q. Where before that?

A. That is my home.

Q. Did you live for a while with Dr. Guion at the asylum over on the Shore Road?

A. I did.

Q. And you are still under his care, aren't you?

A. No, I am not under his care. That is a personal matter. If you will walk over here, I will explain it to you.

Q. You are out on probation, aren't you, just a visit?

A. No, I am not out on probation whatever.

Q. Were you insane when you were there at that place?

A. If you consider me an insane man——

Q. Beg pardon?

A. I say would you consider me an insane man?

Q. I am asking you. Don't leave it to me. You look very much as though you were sane. You are sane, aren't you?

A. Yes, sir. You can come over here. I will explain to you.

Q. I don't believe the Court will permit me.

Mr. Hinkle: I don't think any of this is relevant. I will ask that it stop.

The Court: I don't suppose it is.

Mr. Rauffenbart: I don't think there is anything further at this time, but I would like this witness to remain here.

Mr. Hinkle: They will all be here.

(A recess was taken until 1:30 P. M.)

AFTERNOON SESSION, 1:30 P. M.

HARRY ROSE, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?
A. Tailor.
Q. Where do you have a shop?
A. 33 South Connecticut Avenue.
Q. Shortly before or sometime in February or March did you go to see Mrs. Schaaf?
A. On a Thursday afternoon.
Q. About the collection of some money?
A. A bill.

Q. Did you see her?
A. Yes, I spoke to her.
Q. You spoke to her?
A. Yes.
Q. Did she tell you when to come and get your money?
A. She told me to come on the 1st, not to come on Monday.
Q. To come on the 1st?
A. Yes.
Q. But not to come on Monday?
A. On Monday.
Q. Did you go?
A. Yes, I come over between eleven and twelve and I ring the bell. The maid comes out and tells me Mrs. Schaaf isn't at all well, to come the end of the week.
Q. What did you do?
A. I walked away.

Cross-examination.

By Mr. Rauffenbart:

Q. Had you been there previously, Mr. Rose?
A. After that?
Q. Before that?
A. No. I was looking through the window, because my window has got two windows, one faces Connecticut Avenue, one faces right to the porch, right to the house, a big window, and I was looking through the window Wednesday and Thursday and Friday. Friday evening I saw a light about seven

o'clock in the evening, and I walked over and ring the bell and Mr. Fine opened the door, and I was asking for Mrs. Schaaf, and he tells me she is away, she is out of town. I was asking him when she will be back and he told me maybe Saturday, if not Monday.

Q. Saturday or Monday?

A. Yes.

Q. What was Mr. Fine's condition at that time? Was he nervous or upset?

A. Not at all.

Q. Did he appear to be calm?

A. Calm.

Q. Cool?

A. Cool.

Mr. Hinkle: I think they should say how the man acted, and not suggest these things.

The Court: Yes.

Q. Did he act anything but normal?

A. No.

Q. How about the other people in the house that you saw there before that time?

A. I didn't see nobody.

Q. Did you see Mrs. Schaaf sometime before that?

A. Only I spoke to Mrs. Schaaf on a Thursday.

Q. Hadn't you seen her before that?

A. Before that day?

Q. Yes.

A. Several times, yes.

Q. Did she drink a whole lot?

Mr. Hinkle: That is objected to.

(The objection was sustained.)

By the Court:

Q. You lived next door to the house where Mrs. Schaaf lived?
A. Right.

RICHARD NUGENT, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?
A. Employed by the railway express. Chauffeur.
Q. Did you receive through your office an order to go to 31 South Connecticut Avenue?
A. I did.
Q. Do you remember what date it was?
A. March 2nd.
Q. What time did you get that order?
A. I got the order at four o'clock and I was at 31 South Connecticut at five.
Q. To be at 31 South Connecticut at five?
A. I was there at five.
Q. Whom did you see there?
A. The gentleman here.

Q. The defendant, Fine?

A. Fine.

Q. Does he look now as he looked then?

A. It is the same man, but I think he has changed a little bit.

Q. In what way?

A. In appearance. In other words, he looks like he has lost a little weight.

Q. Face the same?

A. Yes, sir.

Q. No doubt about it that it is he?

A. No, it was Mr. Fine.

Q. When you got there tell us all that happened, all he said and did and all you said and did.

A. I called there at five o'clock, rang the bell and the gentleman came to the door, and he asked me where my helper was. I told him we don't have helpers, and he said he had a heavy trunk and I would need somebody to help me. So lots of times people say that and the drivers themselves can handle the trunk and I says, "Let me look at it and I will tell you whether I can handle it or not." He took me back in this room——

The Court: What room?

A. Went through the hall. It was in a bedroom, I believe it was. I remember going through the hall. I didn't pay much attention. I walked in, and after I seen the trunk and tried to lift it I found out it was an impossibility, and I told him I couldn't handle it, so he told me he had to get the trunk out, and I says, well—he says, "Get somebody to help

you and I will pay extra whatever it is worth." I said I didn't know anybody in the neighborhood to assist me with that trunk, so he says—I says—the man was in a hurry, I imagined, and I thought he was going away some place, a salesman or something, and I says, "All right, leave the trunk here if you are in a hurry and are going out of town, and I will come back tomorrow with a man, tell the boss to send up an extra man to get the trunk," and he said no, that wouldn't do, and I says, "Well, if you insist on getting the trunk out tonight, go down and get a local man; they generally have a helper, and they will haul it down to the station for you," so that is what the man done.

Q. Now, Mr. Nugent, did you see anybody else around the place except the defendant, Fine?

A. No. I asked if there was anybody in the house to help me, and he said no.

Q. Did you ask him to help you?

A. I asked him, but he said there was something wrong with him. I don't know.

Q. He said there was something wrong with him and he didn't help you?

A. No.

Q. You entered this door on S1?

A. Yes.

Q. That is the hall?

A. Yes.

Q. Do you know in which of those rooms you were? Look at the map.

A. After we came out of the hall, it was in this room. We passed one room, and the next room was the bedroom.

Q. Into the bedroom?

A. Yes.

Q. I call your attention to what is marked, "Fireplace," there. Here is the bed. Do you remember where the trunk stood?

A. No.

Q. You don't remember it?

A. As soon as I seen it I knew I couldn't handle it, and I walked out and he walked out after me. I walked on the porch.

Q. Is that the trunk?

A. I can't say positive.

Q. Well, does it look like it?

A. It looks like it.

Q. What is the best of your belief and opinion about it?

Mr. Rauffenbart: I object to any further examination on this line. He says it looks like it.

The Court: I suppose unless he can identify it.

A. I haul so many trunks I don't pay particular attention to any of them.

Q. How was it fastened?

A. It had ropes around it.

Q. Do you know whether or not that is the rope?

A. I don't know whether that is the rope or not, but there was rope just like that around it.

Q. Either that or rope just like it?

A. Yes, sir.

Mr. Hinkle: I offer for identification at this time the trunk and the rope.

(The trunk was marked S6 for identification and the rope S7 for identification.)

Q. Was the door of the bedroom open when you entered to get this trunk?

A. Mr. Fine led the way back. If I recollect correctly, I think Mr. Fine opened the door. I don't think the door was left open.

Q. Do you know whether he used a key to open it?

A. I wouldn't say.

Q. Do you know whether there was a padlock hanging on the outside?

A. I couldn't say. I didn't pay that much attention.

Cross-examination.

By Mr. Rauffenbart:

Q. You say you haul many trunks, Mr. Nugent?

A. Yes, sir.

Q. And this was just another job?

A. Just another job.

Q. You didn't notice anything different there from any other job you handled, except the trunk was heavy?

A. That is all. An exceptionally heavy trunk. We might get one or two from them in approximately a year, if it came from the theatre or something like

that. The average run of a trunk is about 165, 170 pounds.

Q. When you tried this trunk, you found it too heavy to handle?

A. Yes, sir.

Q. When you suggested Mr. Fine help you, he said there was something wrong with him and he couldn't lift it?

A. Yes, something was the matter with him or something. I don't know just what it was. He said he couldn't assist me.

Q. Meaning he wasn't strong enough?

A. Wasn't strong enough to help me.

Q. Did you notice anything else about him in particular that attracted your attention?

A. No. The only thing is he was in a hurry.

Q. He wanted to get the trunk out that day?

A. Yes.

Q. You often meet people in a hurry who want to get a trunk out?

A. Yes, quite often.

Q. Some of them want to make a train?

A. As a rule, when anybody wants to make a train, if you tell them you will come the next day with a helper and take the trunk out, they are generally satisfied.

Q. Unless they want the trunk to go on that particular train?

A. Yes. We don't make any particular trains in the express.

Q. He acted in a perfectly normal manner?

A. Perfectly normal except he was in a hurry.

He said he wanted me to take that trunk and I told him I couldn't do it.

Q. When you suggested getting somebody else, he said he would do that?

A. He said get somebody in that neighborhood to help me with it, he must get it out, and I told him I didn't know anybody, and I was there talking about five or ten minutes, and I was in a hurry, I wanted to get through my day's work.

Q. You were in a hurry, too?

A. Yes.

Re-direct examination.

By Mr. Hinkle:

Q. Fine didn't say he was going to take a train, did he?

A. No, he didn't say he was going to take a train, but he wanted to get that trunk out. The way it appeared to me, the man was going to make a train.

Re-cross examination.

By Mr. Rauffenbart:

Q. He said he wanted to take it to Philadelphia, didn't he?

A. I don't just recollect where he said he was going, but I understood him to say in the beginning he was going to ship the trunk to Philadelphia and would tell them the address when it reached there, where to send it.

JOHN MCDEVITT, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. McDevitt, what is your business?

A. Expressman.

Q. Do you know this defendant, Louis Fine?

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. Do you remember meeting him on or about the second day of March of this year?

A. Yes, sir.

Q. What time of the day did you meet him?

A. Twenty minutes of six.

Q. Where did you meet him?

A. Pennsylvania railroad station, South Carolina Avenue.

Q. What did he say to you and what did you say to him and what happened after that?

A. He said he had a trunk at Connecticut Avenue to go to the American Express, that it had to be there before six o'clock. I said, "All right." He says, "It will take two men." I said, "All right, it will cost you a dollar," so he said, "All right," and he went with me and got the trunk.

Q. Where did he take you?

A. Took me to 31 South Connecticut, got the trunk and took it back to the American Express.

Q. When you entered——

By the Court:

Q. This was on Wednesday, was it?
A. Wednesday evening, yes.
Q. Five-forty, you said?
A. Five-forty.

By Mr. Hinkle:

Q. When you entered number 31 Connecticut Avenue, what room did you find this trunk in?
A. The second room as you go in.
Q. Look at the map, S1.
A. I can tell better by this, because this was over by that radiator, in the room back of that radiator.
Q. Was it a bedroom?
A. Yes, but it was dark. I couldn't see whether there was a bed in there or not.
Q. Couldn't see anything?
A. No.
Q. Was the trunk a heavy one?
A. Yes, sir.
Q. And you and the helper carried it out?
A. Yes, sir.
Q. Look at this exhibit here. Is that the trunk?
A. It looks like it. One handle was off one end of the trunk that was up there.
Q. Examine it carefully. Just come down and look it all over and see what you see about it and see whether you can say that is the trunk.
A. Yes, it looks like it. Handle off that end of it. I don't know; there might have been more like it, but that looks like it.

Q. Is that the trunk?

A. I wouldn't swear to it. It looks like the trunk.

Q. When you went in the room was the door open?

A. No, sir.

Q. Who opened the door?

A. Mr. Fine.

Q. Where did he get the key to open it?

A. Got the key in his pocket for the outside door, but I don't think there was any key for the inside door. It looked like he opened that without a key.

Q. The outside or street door he opened with a key?

A. Yes.

Q. But the inside door?

A. I think that was open, because I didn't see him get no key out.

Q. Did you notice whether there was any padlock on that door or not?

A. No, I did not.

Q. Well, when you put it on the wagon or on your truck, you took it down to the Railway Express. Who went with you?

A. Mr. Fine.

Q. And your helper?

A. Yes, sir.

Q. What is his name?

A. Burkitt.

Q. Look at those ropes. What do you think about them? Do you know whether they are——

A. It looks like the same ropes, because I wanted to lift it by the rope and he wouldn't let me, on account of that handle being off that end. That is what makes me think it was the same trunk.

Q. Do you think it is the same rope?

A. Yes.

Q. Is there any doubt in your mind about it?

A. No. I wouldn't swear, because there might be dozens like it, but it looks like the same rope. Window sash cord rope was on there.

Q. Have you any doubt about that being the trunk?

A. No.

Q. When you attempted to move the trunk, what, if anything, did Fine say to you about handling it?

A. He says, "Don't stand it on its end. It is patent medicine. It will break."

Q. In other words, it was flat, like it is now?

A. Like it is now.

Q. And when you stood it up——

A. He wouldn't let me stand it up.

Q. What did he say?

A. He said, "Don't stand it up. It is patent medicine and it will break." He says, "You have got to pick it up like it is."

Q. And did you do that?

A. Yes.

Q. And put it in the truck?

A. Just like it was.

Q. Like it is? When you got to the railroad station or to the express office, what did you do?

A. Took it off the wagon and put it on the scales at the American Express.

Q. Where was Mr. Fine then?

A. With me, right on the platform.

Q. How much did you charge him?

A. One dollar.

Q. Did he pay you?
A. Yes, sir.
Q. With what did he pay you?
A. A one dollar bill.
Q. About what time was that?
A. Just about five minutes of six.

Cross-examination.

By Mr. Rauffenbart:

Q. You are pretty sure that that is the trunk, because one of the handles was broken off?
A. And the rope around it is another thing that makes me pretty sure.
Q. You couldn't take hold of that end because the handle was off?
A. Yes.
Q. There was one handle off, was there?
A. One handle off.
Q. That is on that far end towards Mr. Hinkle?
A. Yes.
Q. You have seen many other trunks like that, haven't you, Mr. McDevitt?
A. Plenty.
Q. And the only reason you can say you believe that is the trunk is because this handle is off? It is off, too, isn't it?
A. Yes.
Q. Did you ever see Mr. Fine before this occasion on which you moved the trunk?
A. Lots of times.
Q. Because he told you there was patent medicine

in it and to stand it as it was standing, you thought he had liquor in there?

A. Sure.

Q. You thought you should get more than a dollar for moving it?

A. Yes.

Q. Did the fact it came out of 31 make you feel there was liquor in it?

A. No, but men generally coming with a heavy trunk like that, mostly they are liquor. You have got to take that chance.

Q. How long had you known Mr. Fine previous to this?

A. About a year.

Q. You met him on several occasions?

A. Yes, I ate with him in the restaurant.

Q. Did he appear any different in his demeanor the day he moved the trunk from the day you met him in the restaurant?

A. Not a bit.

Q. Acted just the same?

A. The same thing.

ROBERT BURKITT, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Burkitt, what is your business?

A. Expressman helper.

Q. Do you know this defendant,——

A. No, sir.

Q. —Louis Fine?

A. No, sir.

Q. You did see him once before?

A. Once.

Q. Once before?

A. Just once.

Q. Where did you see him?

A. At the railroad station.

Q. Do you remember the date?

A. It was on a Wednesday, I think, Wednesday the 2nd. I think it was the 2nd.

Q. 2nd of what?

A. March.

Q. Do you remember about what time it was?

A. I judge about twenty minutes to six or quarter to six.

Q. What did he say?

A. I wasn't—I was on the other side of the station and I don't know what he said. All I done, when Mr. McDevitt got the order, he called me over to help him.

Q. Then you went up to 31?

A. To the house and helped him with the trunk.

Q. Mr. Fine rode up on the truck with you?

A. Yes, sir.

Q. When you got there, what did you do?

A. They went inside and I waited outside.

Q. Then were you called in?

A. Yes, sir.

Q. When you got in where did you go?

A. Right to the radiator.

Q. Did you take the trunk out?

A. I got hold of one end and Mr. McDevitt on the other.

Q. What way did you carry the trunk?

A. From the body. From the bottom.

Q. Was any objection made as to how you handled it or turned it up or anything like that?

A. No, I didn't know nothing about that.

Q. You carried it flatwise?

A. Yes.

Q. Out and down the steps and on to the truck?

A. Yes, sir.

Q. Did Mr. Fine go with you?

A. Yes, sir.

Q. You took the trunk where?

A. To the railroad station; express.

Q. How was the trunk fastened?

A. Had ropes around it.

Q. Do you see those ropes?

A. Yes.

Q. Do they look like them?

A. I couldn't tell you.

Q. Get down and look at them.

A. I know we had a trunk with one of the handles off.

Q. Does that look like the trunk?

A. Couldn't tell you that.

Q. You don't know whether it is the trunk or not?

A. No, sir.

Q. When you got to the station, what did you do with the trunk?

A. Put it on the scale and left .

Q. Did you see Mr. McDevitt get paid?

A. Yes, sir.
Q. How much?
A. One dollar.
Q. How was he paid?
A. One dollar bill.
Q. Did Mr. Fine pay him?
A. Yes, sir.

(No cross-examination.)

MERRILL C. STEELMAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?
A. Clerk at the Railway Express Agency.
Q. Stationed in what place?
A. Pennsylvania.—South Carolina Avenue station of the Pennsylvania Railroad.
Q. Do you know this defendant, Louis Fine?
A. I only saw him once.
Q. Saw him once? Do you remember when that was?
A. On March 2nd.
Q. What time?
A. Between five and six o'clock in the evening.
Q. What brought you together?
A. He had a trunk to ship.

Q. Did you ship it?

A. Yes, sir.

Q. Tell us everything that he said, everything he did and everything that you said and did to him.

A. He brought a trunk in between five and six o'clock on March 2nd and said he wanted to ship it to Philadelphia, so it was on the scale, and I gave him a way bill for it and he had signed it. I stood it up on its end and he said, "Don't stand that trunk on the end." I said, "What have you in it?" He said, "Patent medicines," so I shook it to see if it was packed properly and he said, "Don't shake the trunk," so I didn't any more, and I gave him a receipt for it and put it in the car.

Q. What name did he ship it under?

A. S. Miller.

Q. Did he insure it?

A. I don't remember.

Q. Do you remember what the charges were?

A. No, sir.

Q. Do you remember whether he paid them?

A. He did not.

Q. What did he say about the charges?

A. He didn't say anything, because it went collect.

Q. What?

A. It went collect.

Q. At his instruction?

A. Yes, sir.

Q. Do you remember to what place he directed it?

A. No, I don't.

Q. Have you got your record with you?

A. Yes, sir.

Q. Look, please, and see where he sent it.

A. 846 North Fifth Street.
Q. In care of whom?
A. The name is Lickow.
Q. In care of Lickow?
A. Yes. M is the initial.

The Court: What is the last name?

A. L-i-c-k-o-w.
Q. In care of M. Lickow?
A. Yes, sir.
Q. 846 North Fifth Street?
A. Yes, sir.
Q. Did you give him a receipt or bill of lading?
A. Yes, sir.
Q. In the name of what?
A. S. Miller.
Q. Did you ask whether this trunk would likely open or anything of that kind when he was so particular about how it should be handled?
A. No, sir.
Q. Didn't say anything about that?
A. No, sir.
Q. Did Fine ask you when he could get the trunk in Philadelphia?
A. Asked me how soon he could get it.
Q. What did he say?
A. I told him it went up on the 8:55 and he could get it the first thing in the morning.
Q. It would go up 8:55 that night?
A. Yes, sir.
Q. And he could get it the first thing on Thursday morning?

A. Yes, sir.
Q. What did he say about that?
A. Didn't say anything then.

By the Court:

Q. What was the weight of the trunk?
A. I will have to look. Three hundred pounds.

By Mr. Hinkle:

Q. Three hundred?
A. Yes. He put a valuation of $500.00 on it. You asked me and I didn't know.
Q. He put a valuation of $500.00?
A. Yes, sir.
Q. Did he say whether he wanted the trunk delivered to this address in Philadelphia or whether he would call for it?
A. He didn't say. He just said how soon could he get it?
Q. How was the trunk fastened?
A. It was roped.
Q. With ropes?
A. Yes, sir.
Q. Can you say whether that was the trunk?
A. I couldn't. It looks like the trunk. I couldn't say whether it was or not.
Q. How about the rope?
A. It looks like the rope.
Q. Examine that trunk carefully and see what you think. Get down from the witness stand, if you want to, and tell us whether that is the trunk or not.

A. I wouldn't be sure of that.
Q. You would not be sure?
A. No, sir.

Cross-examination.

By Mr. Rauffenbart:

Q. It isn't unusual for a person shipping a trunk to ask what train it will go out on, is it?
A. No, sir.
Q. It isn't unusual to ask what time it will be received in Philadelphia, either, is it?
A. No, sir.
Q. On the contrary, that is the usual thing, isn't it?
A. Yes, sir.
Q. Did you see anything out of the usual about Fine at that time? Did he act anything out of the usual?
A. The only thing I noticed, he came back the second time.
Q. What was that for?
A. To be sure he could get his trunk in Philadelphia.
Q. That it would be there on the 8:55 and there the next morning?
A. Yes, he wanted to be sure he could get it the next morning.
Q. That it would go out on that train?
A. Yes, sir.

MARGARET ALLBRIGHT, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your name, please?
A. Margaret Allbright.
Q. What is your work? Where are you employed?
A. I work at the railway express company, 8th & Master, in Philadelphia.
Q. On the night of the 3rd of March did you have a trunk that had been shipped from Atlantic City?
A. I did.
Q. Is this the trunk?
A. Well, the trunk was standing on its end when I had it, and it was sort of an old, dilapidated looking thing like that, and it was standing up on its end and it had one of the handles broke off, and it was tied with rope.
Q. White rope?
A. It was white rope, yes.
Q. What time had that trunk been delivered to you at 8th & Master?
A. The driver brought it back to me around five-thirty in the afternoon.
Q. Do you know who that driver was?
A. One of the railway express drivers.
Q. What is his name?
A. Jimmy McDevitt.
Q. Is he here today?
A. No, he isn't.

The Court: What day was this?

A. This was on Thursday afternoon, I am positive.

Q. Did you turn that trunk over to someone that afternoon?

A. No, I did not. Mr. McDevitt turned it over to me and said that these people it was consigned to on 5th Street didn't want the trunk because the charges were collect, so he said, "We will have to place it in the on-hand department," and I said, "All right," and that night we had an expressman call for that trunk.

Q. The expressman that called was a man by the name of Weinstein?

A. It was.

Q. Was anyone with him?

A. A colored gentleman.

Q. A helper?

A. Yes.

Q. Did they pay the charges?

A. They did.

Q. How much were they?

A. I think it was $3.85, but I am not just positive.

Q. They paid and took the trunk away?

A. They did.

Q. Do you know what time that was?

A. I think it was around eight-thirty. I had two telephones on it, one about eight-fifteen and then one about eight-thirty, and they called for the trunk then.

Cross-examination.

By Mr. Rauffenbart:

Q. Have you a record here of when that trunk was taken?

A. No, but I understood from the express company that record was to be down here.

Q. Do you know whether it was Thursday or Friday?

A. That I delivered the trunk? It was Thursday evening, I am positive. What makes me think that was because I asked the driver next day why he didn't deliver his own stuff and save me that inconvenience.

Q. That made it Friday?

A. It made me ask him on Friday.

Q. Why do you say it was Friday that day?

A. It was Thursday, and then I didn't see him again until Friday.

Q. How do you fix that it was Friday, the day that you saw him?

A. I see the driver every day.

Q. May it not have been some other day you saw him?

A. No, it couldn't have been.

PEARL LICHOW, sworn.

Direct examination.

By Mr. Hinkle:

Q. Miss Lichow, you live in Philadelphia?
A. Yes, sir.
Q. At what address?
A. 846 North 5th Street.
Q. You work for your brother?
A. Yes, sir.
Q. Mitchell Lichow?
A. Yes, sir.
Q. What kind of business does your brother conduct?
A. Real Estate.
Q. Do you know this defendant, Louis Fine?
A. Yes.
Q. How long have you known him?
A. For about five or six years.
Q. Do you remember on the afternoon of the 3rd of March an expressman coming to deliver a trunk to your office?
A. Yes, sir.
Q. Did you see the trunk at that time?
A. No.
Q. Did you receive the trunk?
A. No, I didn't.
Q. Why?
A. Because there were charges of $3.50 and I

didn't know who the trunk was from, even if there was charges to be paid, so I didn't receive it.

Q. Did you know to whom the trunk had been addressed?

A. I asked him, and he said to M. Lichow.

Q. The driver said that?

A. Yes.

Q. When you wouldn't pay, then the driver went away?

A. Yes, sir.

Q. Did you see Mr. Fine that afternoon?

A. Late that afternoon.

Q. What time did the expressman come there with the trunk and want to collect?

A. About twelve o'clock; noontime.

Q. What time did Mr. Fine appear?

A. Well, he appeared that same day about four o'clock, four or four-thirty.

Q. Came into your office?

A. Yes, sir.

Q. What was said by him?

A. He came in and sat down and didn't say anything.

Q. He came in and sat down?

A. Didn't say anything.

Q. Didn't say anything to you? Didn't even speak to you?

A. No.

Q. How long did he stay there?

A. Well, he was sitting there for about twenty minutes or so.

Q. And all of that time he didn't say a word?

A. No.

Q. You knew who he was?
A. Oh, certainly.

The Court: That was about four o'clock, you said?

A. Yes, sir.
Q. Then after twenty minutes what did Mr. Fine do?
A. Well, he was sitting there and a man came in, Mr. Weinstein, and he talked with him.
Q. A Mr. Weinstein came in?
A. Yes.
Q. You knew Mr. Weinstein?
A. Yes.
Q. What is his business?
A. He is an expressman.
Q. Mr. Weinstein came in and spoke to Mr. Fine?
A. Yes.
Q. By the way, during the time that Mr. Fine was in your office those twenty minutes, did you say anything to him?
A. No.
Q. Did you tell him that the trunk had been there and you refused to take it?

Mr. Rauffenbart: That is objected to. The witness says she did not say anything to him.

A. No, I didn't say anything.

Mr. Hinkle: I am directing her particular attention.

A. No, I didn't say anything.
Q. You didn't say a word to him?
A. No.
Q. Did he ask you about a trunk?
A. No, he didn't say anything to me.
Q. Then Mr. Weinstein came in?
A. Yes, sir.
Q. Did you hear what they said?
A. No, I didn't overhear the conversation.
Q. Then what did Mr. Fine do?
A. Well, I don't remember any—he didn't do anything. Just Mr. Weinstein walked out and he stayed for a little while.
Q. Mr. Fine did?
A. Yes.
Q. Stay alone?
A. Yes.
Q. Did he say anything to you then?
A. No.
Q. Did you say anything?
A. Not a word.
Q. About how long did Mr. Fine stay there?
A. Well, I don't know. He stayed for a little while.
Q. When he went out, did he go out alone?
A. I didn't see when he walked out.

Cross-examination.

By Mr. Rauffenbart:

Q. What day of the week was it, Mr. Lichow, that the expressman came there?

A. Thursday.

Q. During the time that Mr. Fine sat there in Mr. Lichow's office, Mr. Lichow wasn't there, was he?

A. No, he wasn't there.

Q. And he was apparently waiting for Mr. Lichow?

A. No, he didn't say he was. He didn't say anything.

Q. He didn't say?

A. No.

Q. He got up and went out several times, didn't he? Got up and went out in the street several times and came back each time?

A. I don't remember.

Q. What?

A. I don't remember. I think he was sitting there in the office.

Q. Don't you recall telling me he got up and went out several times, as though he was looking for someone?

A. No.

Q. You don't remember telling me that?

A. No, sir.

MITCHELL LICHOW, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Lichow, what is your business?
A. Real estate broker.
Q. Where?
A. 5th & Parrish. Northwest corner 5th & Parrish.
Q. Talk louder. You are a lawyer. Talk it out.
A. Northwest corner 5th & Parrish, Philadelphia.
Q. Mr. Lichow, do you know Louis Fine?
A. I do.
Q. How long have you known him?
A. Known him for about ten years, I would say; about ten years.
Q. Were you at home or at your office, rather, on Thursday the 3rd of March——
A. No, I wasn't.
Q. —when the trunk was delivered?
A. No, sir.
Q. Did you afterwards learn that a trunk had been sent there and refused?
A. Yes, sir.
Q. Had any arrangement been made with you to take care of that trunk upon its delivery at your office?
A. No, sir.
Q. Do you know one S. Miller?
A. I do not.

Q. Did you ever give S. Miller permission to send a trunk to your office?

A. I did not.

Q. Did you see Louis Fine on or about Thursday the 3rd of March?

A. I saw him the day previous to the time when the trunk was delivered.

Q. The day previous to the trunk being delivered?

A. Yes.

Q. That would be Wednesday, wouldn't it?

A. I don't know exactly what day. It was early in March, sometime during the day.

Q. Did you see him?

A. I saw him, yes; just for a few seconds.

Q. Talk with him?

A. Yes, sir, he asked me if we had an apartment to rent—a room, rather. I told him we had no rooms to rent, only apartments. That's all the conversation I had with him.

Q. That was on the day before the trunk was delivered?

A. Yes, sir.

Q. On that day he asked you if you had a room to rent?

A. Yes, sir.

Q. You said only apartments?

A. Yes.

Q. Did he say what he wanted with a room?

A. No, I didn't ask him.

Q. When did you next see Louis Fine?

A. Haven't seen him any more since then.

Q. Were you there when the expressman called?

A. I was not.

Cross-examination.

By Mr. Rauffenbart:

Q. Mr. Lichow, what time of day was it when you talked to Mr. Fine about the room?

A. I can't recall the time of the day. I know sometime during the day. I can't recall exactly the time.

Q. Morning or afternoon?

A. I can't say that. I haven't a vivid recollection of the time.

Q. But you are sure it was Wednesday?

A. I won't say it was Wednesday. It was sometime before the trunk was delivered.

Q. Could it have been on the same day, or aren't you sure?

A. I am not so sure, no.

Q. How long did you talk to Mr. Fine that day?

A. For a few seconds, because I was ready to go out, you know, and he came in just as I was going out.

Q. You knew him before?

A. I did.

Q. Did he appear to be any different that day from any other time, in his demeanor?

A. No, he didn't appear any different. About the same as usual.

Q. Nothing out of the ordinary?

A. I haven't noticed anything.

Q. And you saw him many times before?

A. Yes, sir.

MORRIS WEINSTEIN, sworn.

Direct examination.

By Mr. Hinkle:

Q. You live in Philadelphia, Mr. Weinstein?

A. Yes, sir.

Q. What is your business?

A. Express.

Q. Did you ever see this defendant, Louis Fine, before?

A. No, sir.

Q. Before when?

A. Before the day when he hired me to take that trunk down.

Q. Talk loud. The day that he hired you to take a trunk?

A. Yes, sir.

Q. What time did you first meet Mr. Fine?

A. Well, Mr. Fine come over—it was about four o'clock.

Q. Yes.

A. I wasn't outside. I was in the house—to find out whose truck that is. My working man was outside and he says, "The boss is inside." When I saw my working man talking with this man I walked out, and he says, "Here is the boss." I went over to him and I asked him what he wanted, so he said he has got a trunk to be delivered. I says, "Where at?" "American Railroad, 18th & Market." "To where?" He said, "846 North 5th, name, Mr. Li-

chow." I says, "Have you got the bill of lading?" He says, "Yes." I says, "Let's see it." I looked at it and I says, "All right, I will go down and take it out." "How much will you charge?" I says, "$2.00." He says, "You will have to take another man with you; that trunk is a heavy trunk." I says, "I have got such heavy stuff as this down," I says, and he says, "This is a heavy trunk," and I took my working man and I went down there. That was about half-past five. Went down to 18th & Market and I asked for the trunk and the clerk took the slip off of me and went down to look for the trunk, and he said, "The trunk is on the street to be delivered." At the time this man gave me $3.00 to pay the freight, and when the expressman told me, the express office told me the trunk was on the street to be delivered, I went back home. I left the truck near my house and I told my working man, "You stay here and I will go over to Lichow's office and I will see him." He said, "I am going to meet him out there."

Q. Meet who?

A. This man over there. I came in the office and he was sitting on the chair, and I told him, "Your trunk is on the street to be delivered." I says, "Here is $2.00 back, and I am taking a dollar for myself for driving the truck down there, but," I says, "If you don't get the trunk, tonight by six o'clock come back to me and I will call up and find out where the trunk is." I went home and told the working man, "Stay here until about six or seven o'clock." About seven o'clock the man wasn't there, so I pulled in the

garage. When I am out in the garage I seen the man already talking to the working man.

Q. Which man talking with the working man?

A. Mr.——

Q. Fine?

A. Yes. At that time I didn't know his name. I said, "Come in the house." We went in the house and I called up 18th & Market again and they told me they transferred that trunk to 8th & Master. I called up 8th & Master and they said yes, they have got the trunk there. I says, "Could I get it?" and the young lady answered me and says, "Yes, you can get it unless you bring something to identify this is the trunk." I says, "Well, the man is here." She says, "That man is here who shipped the trunk?" and I asked him and he says, "No." He says, "The name is S. Miller." So I told the lady, "The man isn't here, the man will be here late tonight or maybe tomorrow." The lady asked me to bring the key over and see if that key fits that trunk so we can have it. I asked the man if he has got the key and he said, "No, the other man has got it." I called up again and she told me, "All right, the trunk is here," and I went down and got the trunk and paid $3.85. He give me $3.00 and I had $1.00 from before, out of $4.00, and I paid him $3.85, and they brought the trunk out and I put it on the truck and delivered it to 846 North 5th Street. When I delivered it there it was dark.

Q. Is that Lichow's place?

A. Lichow's place, yes, sir, real estate. I saw the man there and he says, "Drive around here." I says, "I can't buck traffic."

Q. Who was that, Fine?

A. Yes, "I can't buck traffic, because 5th Street is one-way." I says, "You go back and stay right on the step, and I will take the truck up and go down Randall Street into Brown, and then from Brown to 5th and if I see you on the step I will stop there," and I drove down there and got the trunk off. When I got the trunk off, I took in in the middle room.

Q. What number?

A. 824.

Q. 824 North 5th Street?

A. Yes. I put it downstairs right near the radiator where the heat was coming, and he took out a dollar and give me. I says, "Here is fifteen cents; you have got to give me two, because I paid $3.85 for the freight," he says, "Oh, yes," and he took out a two dollar bill, I mean two single dollars and he give it to me and I walked out and that is all there was to it.

The Court: What was the number you delivered the trunk to?

A. 824 North 5th.

Q. Is this the trunk?

A. A trunk like that.

Q. What did you say?

A. It was a trunk like this.

Q. Look it over. Don't be too quick. Look it over and see whether that is the trunk or whether it isn't the trunk.

A. I didn't examine the trunk over there. It was a trunk like this.

Q. Get down and look at it. It won't hurt you.

A. I know it won't hurt me. I couldn't say. It was a trunk like that. I couldn't say whether this was the trunk or not.

Q. How was it fastened?

A. With a rope like that.

Q. Did you ever see that before?

A. There was a lock on that trunk, but I didn't take notice what kind of lock it was.

Q. Was it a lock that looked like that?

A. I didn't take notice.

Q. Was it black or white or green?

A. I couldn't say that, whether it was black or white or yellow or green. There was a lock on it.

Q. On this outside trunk?

A. Yes.

Q. Where was it, on the front or the end?

A. I didn't take notice where it was.

Q. There was a lock on it?

A. Yes.

Q. In addition to the rope?

A. Yes.

Q. What name did Fine tell you—who he was, when he talked with you?

A. He didn't tell me no name at all. He said, "S. Miller shipped the trunk from Atlantic City."

Q. "S. Miller shipped the trunk from Atlantic City?"

A. Yes, sir, to M. Lichow, 846 North 5th Street.

Q. S. Miller shipped the trunk from Atlantic City to M. Lichow?

A. It was on the bill of lading, the same name.

Q. You saw that, didn't you?
A. I read it that night.

Cross-examination.

By Mr. Rauffenbart:

Q. Did you handle the trunk yourself, Mr. Weinstein?
A. No, I had my working man there with me.
Q. Could you have handled it yourself?
A. No.
Q. Could one man have handled it?
A. No, sir.
Q. Could one man have lifted the contents in it?
A. No.

CHARLES WASHINGTON, sworn.

Direct examination.

By Mr. Hinkle:

Q. You live in Philadelphia?
A. Yes, sir.
Q. What is your business?
A. Helper, furniture truck, moving and hauling.
Q. Turn to the jury and talk louder.
A. Furniture man and hauling, helper. Long distance hauling.

Q. Did you work with Mr. Weinstein on the night of Thursday, the 3rd of March when you got a trunk?

A. Yes, I did.

Q. Is this the trunk?

A. I won't say for sure that is the trunk, but it looks like the one. Just like it.

Q. What about the rope?

A. It looks like the rope. It had window cording on it.

Q. Do you recall how it was fastened? With a lock?

A. I wouldn't say for sure how it was fastened, but there was a lock on the outside.

Q. With a padlock?

A. There was a padlock on it.

Q. Are you able to say whether or not that is the padlock?

A. I wouldn't be positive to say whether that is the same lock, but it looks just like it.

(The lock was marked S8 for identification.)

Q. Did you see Mr. Fine, this defendant, that night?

A. I did.

Q. Tell us what he said to you and you said to him.

A. He asked me who owned the truck standing in front of 840 North Marshall Street. I told him, I says, "It is my boss's truck." He says, "I want a small truck to go and get a trunk for me; I have got a trunk in the depot, and I want a small truck." By

the time he was standing there talking to me, my boss came out and I told him what he wanted, so he asked him where the trunk was and he told him 18th & Market, so he told him he would go over there and get it. He asked him how much he would charge and he said $2.00, and he said, "All right." "Can one man get it?" and he said, "No, it takes two men to get it because it is an awfully heavy trunk," and he says, "All right, I will go over and get it for you," so he went over and got it. He went over after it and he didn't get it from there because it was out on the truck. So then we goes back home and we waits a little while longer and my boss tells me to wait until he came back, so I waited until he came back, and when he came back he says, "The fellow ain't come; I will put the truck in the garage and we will wait a little while longer," and by the time he went to put the truck in the garage this fellow came up to me again and asked him where was the boss, and I told him he went away and would be back in a few minutes, and by the time he was talking with me my boss walks up and he goes back to the garage and gets the truck and we goes out to 9th & Master and gets the trunk.

Q. Where did you deliver the trunk?

A. 824 North 5th Street.

Q. That is a private house, is it?

A. Yes, sir, I think it was a private house.

Cross-examination.

By Mr. Rauffenbart:

Q. You didn't say you were a long distance helper, did you?

A. Yes, sir, I did.

Q. Was that trunk heavy?

A. It was. Too heavy for me to carry. My boss and me taken it together.

Q. You are not sure this is the trunk?

A. It was one like that. I am not sure that is the trunk, but it was one like it. A square trunk.

Q. You have seen many a square trunk?

A. Sure. I wouldn't be positive that is the one.

Q. This trunk you lifted, was it heavy?

A. Yes, sir.

Q. Could one man have lifted it?

A. One man could not have lifted it.

Q. It took two pretty good men, didn't it?

A. It did.

JULIUS HOFFMAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Hoffman, where do you live?

A. 824 North 5th Street, Philadelphia.

Q. You rent rooms occasionally?

A. I have got one furnished room.

Q. On or about the 3rd of March, which I think was Thursday, did some man come to you to rent a room?

A. Yes, between half-past three and four o'clock.

Q. Do you know who that man was?

A. Yes, this man.

Q. This man here?

A. Yes.

Q. What did he say to you?

A. He asked about a furnished room. I said, "Yes, I have a place. Do you care to see it?" I showed it to him and he asked the price. I told him; asked him how many persons. For two persons, $5.00, for one person, three and a half a week, and he said he can't decide, he will have to see his friend first and talk it over, so he went away, returned about forty-five minutes later, about between half-past four and five he returned, and he said he was going to take the room for himself; came in my room and sit down on the rocking chair. He handed me $5.00 and I give the $5.00 to my wife to bring the change, and I went in the front room to write out a receipt. My wife returned the money to me and I went to him in the room and handed him the receipt and a dollar and a half, and I can't tell now whether he asked about a key or whether I asked him, "You want a key for the front door?" I says, "You have to deposit fifteen cents for a key, and when you return it you will get your money back," so he got the key. He gave me fifteen cents, and he asked if the door can be locked. I say, "Yes, there

is a key to lock inside," but I did not mean to lock the door from outside. It isn't used that a furnished room locks the door from outside and takes the key with him, but he locked the door, but before he went out he opened the window at the top about eight or nine inches. Well, I didn't say anything. I thought some persons don't like it very hot and I says, "If it isn't warm enough, turn on the radiator, because the radiator is closed," and he didn't say nothing; just went out, closed the door and went. My wife said, "He closed the door." I said, "Well, what can you do, run after him and tell him to leave the door open? He paid for the room; he has to come back."

Q. That was on Thursday, was it?

A. On Thursday the 3rd of March. It was after suppertime, about a quarter after seven, I stood in the little room. I could look through the entrance and I see the front doors are open. I have got a double door, and I seen that they are moving something in, so I went to the front door and I seen Mr. Weinstein coming first and that colored man. I could look in the face of the colored man. I had to get out of the road and leave him in. I seen them carrying in a big box. Mr. Fine was in the entrance. He had the door open and went ahead to show them where to put it. He opened the room again and showed them where to put the box down. I tried to go in the room, too, because he had to pay them some money. They started to argue about fifty cents or something, and Mr. Fine closed the door, so I went and closed the front door, so I was wondering in a furnished room with such a big trunk.

Mr. Rauffenbart: I object to what he wondered.

Q. Go ahead and tell us what happened.

A. I thought how they got that trunk here, they couldn't carry it. I didn't know that that was the driver, so I looked out, how the trunk got there, and I seen the truck, and I thought maybe there was something——

The Court: Don't tell us what you thought. Just tell us what happened.

A. Well, I thought I for safety—I would take the number from the truck license.

Q. You took the truck license?

A. Yes. If something should happen, I know where it comes from. That was my thought, anyhow.

Q. Let me show you a picture, Mr. Hoffman. Is that a picture of your hallway, the hallway of your home?

A. That is the entrance, yes, up to the steps.

Q. Is that a picture of one of your rooms?

A. That is the room and there is the mantelpiece where the trunk was laying.

Q. The trunk stood right——

A. Right where that table is, just between the bed and the mantelpiece.

Q. And what is that?

A. That is the back of the room. That is a rocking chair. That is a wardrobe, and that is the thing over the electric light.

The Court: In what room?

A. You see, that is double room. There was a partition in there that was taken out, and that is a double room. The middle room has no window. Only the back room has a back window and a skylight. The light comes from the back. That is a sleeping room, and that is for the yard.

Mr. Hinkle: I offer these photographs in evidence.

(The photographs were marked Exhibits S9, S10 and S11.)

Q. Now, Mr. Hoffman, turn this way please. This is the entrance?

A. This is the entrance up to the steps.

The Court: That is Exhibit S9.

Q. What is this room?

A. That is a room which was the furnished room.

Q. That is the one you rented to Mr. Fine?

A. Yes. Right where the steps are is the door.

Q. Number 10, that is——

A. That is the bedroom.

Q. That is the bed that he had in the bedroom?

A. Yes.

Q. And number 11 is the same bedroom, this being the bed, I suppose?

A. Yes.

Q. And that a wardrobe?

A. Yes.

Q. And this is a little adjoining room?

A. Yes, an adjoining room to the kitchen.

Q. How much did you charge him per week for that?

A. Three and a half a week. That is what I regularly get when I rent it out.

Q. For one person?

A. For one person. For a couple, $5.00.

Q. I want to call your attention to the bed clothing in the bed in this Exhibit S10. Is that bed clothing turned down by you?

A. No. It was only one corner, and Mr. Fine picked up the pillow. Only one corner was over, it wasn't used.

Q. It wasn't used?

A. No.

Q. He never slept there?

A. No.

Q. That was on Thursday?

A. It was on Thursday night, quarter after seven, when he brought the box there.

Q. When did you again see Mr. Fine in that place?

A. Seen Mr. Fine the next morning; about fifteen minutes before nine o'clock he left the room. I don't know what time he entered in the morning. I just saw him leaving the room.

Q. That was on Friday morning?

A. Friday morning.

Q. When did you again see him in that room?

A. Saturday afternoon between eight minutes after three and ten minutes after three. He just came in and said, "Hello." When he passed the

door I was sitting in the room and he asked me if I am busy, and I was reading, and I say, "Yes," and Mr. Fine went to the room. I wanted to go after him and ask him why he didn't sleep there, because there is two nights passed and he didn't sleep there, so when I reached the door, where it shows, that is, about fifteen feet from the door, I came out to his door, Mr. Fine was out and closed the door already so I couldn't go in. We just meet right underneath the electric light by the door. He must have known what I wanted to ask, because he said he went out of town.

Mr. Rauffenbart: I object to that and ask it be stricken.

The Court: Yes.

Q. You didn't have any chance to talk with him?

A. Just talked with him and he said he was out of town with his friend, that is all.

Q. Did any other person come to that room during the time that trunk was there?

A. Never seen any, no.

Q. Never saw anybody?

A. No.

Q. That was on Saturday?

A. Saturday afternoon, after three o'clock.

Q. On Sunday did Mr. Fine appear?

A. No. I was home all day myself. It was raining all day and there was nobody.

Q. Did any other person appear and go in that room?

A. No.
Q. On Monday did Mr. Fine appear?
A. No.
Q. What did you do about this trunk on Monday?
A. Well, we kind of smelled something funny Monday.

The Court: What did you do?

A. Well, it stink too much and we say, "We have to report it, something wrong."
Q. There was a smell?
A. Yes.
Q. And you reported it?
A. Sunday we thought it came from upstairs, from sauerkraut, but it turned out it wasn't.
Q. You reported it then to the police?
A. My son went over and report it. It was very cold. I can't go out in cold weather. I have got sore eyes.
Q. Did the police come?
A. My son asked right for a special officer——

The Court: Did the police come?

A. No. A special officer. He told him to bring tools with him.
Q. When the officers came, how did they get into this room?
A. We could go in through the window. My son went in and opened the second door. The second room has a door, too. It was only hooked inside. We opened that and we tried our best to open the

other door, but there was no key to fit the lock, but we got it open, anyhow.

Q. No key to fit what?

A. The door which was locked, but we got it open.

Q. When the special officers were there, did you show them the trunk?

A. Yes, my son went in and opened the door and he came in and looked at the trunk, and when he came there, the trunk he could smell some already, and he looked at it all around and looked around, and well, he said, "We will have to open it and I will have to see," and he took a knife, cut the strings through and he tried all the keys on the lock but there was no key to fit the lock.

Q. What kind of a lock was it?

A. Somewhat like an aluminum lock, a white lock.

Q. What about this?

A. That's the lock.

Q. This is the lock?

A. Yes.

Mr. Hinkle: I offer it in evidence.

(The lock was marked Exhibit S8.)

A. He tried all the keys he had and there was none to open it, and he put his screw driver behind it and the whole thing came up very easy.

Q. Pried it off?

A. Yes. It came off easy.

Q. Mr. Hoffman, will you come over and look at this trunk carefully? Look that trunk over and tell

me whether that is the trunk that was in your house or whether it wasn't.

A. Yes, that is correct.

Mr. Hinkle: I offer the trunk in evidence.

(The trunk was marked Exhibit S6.)

A. It was in my house, and when the policeman pulled this out, he ripped this off.

Q. The policeman opened it, didn't he?

A. No; a special officer.

Q. He opened it this way?

A. Yes. Not so far. The other one was tied again the same way. This was tied again two times here, two times here, one time here and one time here.

Q. That same little trunk was inside?

A. Yes.

Mr. Hinkle: I offer the little trunk in evidence.

(The trunk referred to was marked Exhibit S12.)

Q. What about these ropes?

A. They was around two times on this end, two on this end, and a couple of——

Q. Are you satisfied they are the ropes?

A. Yes, they are the same ropes.

Mr. Hinkle: I offer the ropes.

(The ropes were marked Exhibit S7.)

A. That rope was on the inside box. That is bloody.

Mr. Hinkle: I offer it in evidence.

(The rope was marked Exhibit S13.)

Q. On Saturday, when Mr. Fine was with you or in the room, did he say anything about being at Blackwood?

Mr. Rauffenbart: I object. I think he should be asked for the conversation.

Mr. Hinkle: I was going to ask him for the entire conversation. I was only directing his attention.

Mr. Rauffenbart: He seems to be an intelligent witness, and he seems to be an anxious witness.

Q. Was there any further conversation?

A. We didn't talk nothing else. Meet right on the door. When I got to the door he closed the door and keep the key, and a couple of words we exchanged only, that he was out of town, that he was in Blackwood, New Jersey, with his friend.

Q. Tell me if anything at all was ever said by him to you about Blackwood, if anything at all was said.

A. Yes, that same moment. That was the last words in this. Between two minutes he was in the house, in the room and out.

Q. But he didn't say anything about Blackwood?

A. Yes. He excused himself. He said he was out of town, he had a long ride with his friend, he was in

Blackwood or something in New Jersey. That was all. He went. I couldn't hold him back. I didn't have any reason.

Q. Did you give Mr. Fine a key?

A. Yes, from the front door, and from the room he closed himself and took it with him.

Q. Did you give him a receipt for rent?

A. Yes.

Q. What name did he give you?

A. I understood something like H. Miller, or was it S. Miller, but I put H. Miller, but I heard it was S. Miller. He didn't talk so clear. He sit this way and talked this way, so I couldn't catch it right, because he didn't look up, only this way.

Q. But he gave the name Miller?

A. Yes. I understood H. Miller.

Q. Did he at any time tell you his name was Fine?

A. No.

Cross-examination.

By Mr. Rauffenbart:

Q. When you told him the price of the room, he told you he would have to go out and see if that price suited his friend, didn't he?

A. Yes, he said he had to talk it over with his friend.

Q. When he talked about a car going down to, you say Blackwood, it might have been Lakewood?

A. No, it was something, Blackwood or——

Q. Something like that?

A. Yes.

Q. Might have been Lakewood?

A. He had a long ride.

Q. You asked him if he had a car?

A. Yes.

Q. And he said no, his friend had a car?

A. Yes.

Q. You say you took down the number off the truck, thinking there might be trouble?

A. Yes.

Q. You were in the habit of taking numbers off of cars that stopped out there?

A. Well, I do this often when I see something wrong on the street. I am sitting always in the window.

Q. Sitting there watching cars stop at your neighbors', and you take numbers?

A. When I see something wrong, I take the number.

Q. What do you mean, something wrong?

A. Sometimes something turns out, you know, seeing chased with the police, and the other side chasing cars and searching them for whiskey, and we see sometimes they stop them, going around the street for whiskey, so that is a hobby.

Q. Just a hobby? You had hundreds of numbers there, didn't you?

A. Well, not many. I had five or six on the window from last year. That was the first one this year. I did not have any for the new year, the new licenses.

Q. Didn't you say to Mr. Williams, the officer, when you showed him the window sill, that when you

became suspicious of a machine you wrote the number down and you had hundreds of them?

A. No, never had hundreds. I had five or six, but that was last year. This was the first this year, since New Year's, when the new license came out.

Q. You started off on another one of them?

A. Yes.

Q. You say you thought it was funny for a man who rented a room or an apartment in your house to lock his door when he went out?

A. Yes. Never had that.

Q. What is funny about that?

A. Well, they generally leave the door open so it can be cleaned, the floor, and the bed made new. Never had anybody closing the door.

Q. What kind of a lock was it?

A. It was a regular lock inside the door, a lock. A regular lock.

Q. Didn't he have a right to suppose you had a key to go in there to clean?

A. No, we haven't got a duplicate. There was once two, but one was taken away.

Q. The stairway was open which led up to other rooms which were occupied by roomers?

A. That door is right by the stairway. Here is the steps and here is the door.

Q. And this stairway here leads up to other rooms which you rent, and apartments?

A. Yes, that second floor is a two-room apartment.

Q. And it was right at the door of this room——

A. Across from the—that is, the steps are there and that is the door.

Q. —the room which you say you rented to Mr. Fine or Mr. Miller?

A. Yes.

Q. You didn't expect him to leave that open for the people who are rooming upstairs to walk in?

A. There is nobody walking in. Them people come home at night and go away in the morning. They are not home all day.

Q. You said without a question from Mr. Hinkle that when he walked in he pulled a window down?

A. Yes.

Q. This is the window here?

A. Yes.

Q. And that is the only window in the room, isn't it?

A. Yes, the only window from the back yard.

Q. That is the back part of the room?

A. Yes.

Q. And this is the front floor?

A. Yes.

Q. And that window was down?

A. He pulled it down before he went out.

Q. The window, of course, being down, it wasn't locked, was it?

A. No, when it is down it isn't locked.

Q. Then why didn't you go out in the yard and go through that window, instead of breaking the lock on the door?

A. We didn't break the lock on the door.

Q. What did you do?

A. We went in through the window Monday when they came.

Q. You said something here about your son having broken through this lock and another door?

A. No. He went in through the window and opened the other door. The other door was only with a hook inside closed. Just pushed it open and the other door was open. Then later on we opened that lock. We tried to get that lock open and we took some keys. There is another room here.

Q. Why did you open that door in the other room? What was the necessity for that?

A. We did open it because we couldn't get it open where it was locked. We didn't have a key to open it, so we opened the other door. It was just with a hook. Just opened the hook and the door was open and then people could come in.

Q. You say that when Mr. Fine came in you told him the room was $5.00 for two?

A. Yes.

Q. And three and a half for one?

A. Yes.

Q. And he said that he would have to go out and talk to his friend about it and see what price he wanted to pay, or see if the price was all right.

A. If he wanted to pay or if he wanted to stay with him. I don't know what he wants to talk. He only said he wanted to talk it over with his friend.

Q. When he spoke on Saturday about going down to Lakewood or somewheres in New Jersey——

A. He was, he said.

Q. —he said that—you asked him if he had an automobile?

A. Yes, I did.

Q. What did he say to that?
A. He said no, his friend had it.

MERRILL C. STEELMAN, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Steelman, when Mr. Fine brought the trunk to you for shipment, did he sign anything?
A. Yes, sir.
Q. I show you a paper. Did he sign that paper any place?
A. Yes, sir.
Q. Where?
A. He signed right here.
Q. What name did he sign right there?
A. S. Miller.

Mr. Hinkle: I offer it in evidence.

(The paper was marked Exhibit S14.)

Q. What is this, please?
A. They are copies of the original.
Q. That is, they are copies of the tail-end of that piece of paper?
A. That is his. This is ours and this goes to Philadelphia.

Q. So that the "S. Miller" signed here, and "S. Miller" signed there are simply copies that were taken when he signed the "S. Miller" on that sheet?
A. Yes, sir.

Mr. Hinkle: I offer them both in evidence as one exhibit.

(The two papers referred to were fastened with Exhibit S14.)

The Court: They are carbon copies, are they?

A. Yes, sir.

Cross-examination.

By Mr. Rauffenbart:

Q. Was that the result of one signature?
A. Yes, sir.

EMILY HOFFMAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Hoffman, are you the wife of Julius Hoffman?

A. Yes.

Q. Were you at home on the evening of the 3rd of ——

A. We was both home.

Q. You were both home?

A. Yes.

Q. When Mr. Fine called?

A. Yes.

Q. What did Mr. Fine say about a room?

A. He said to my husband he wants a furnished room, and my husband showed him that room, and I was back in the kitchen, and I came from the kitchen in the front and saw who was there, so it was Mr. Miller, he said was his name.

Q. Mr. Miller?

A. Yes. So my husband showed him the room and he said to him for two persons it cost $5.00 and for one person three and a half, so he said he had to go and talk it over with his friend, and he left, and about a half-hour again he came back and he said, "I will take that room for myself," and then he give my husband $5.00, and the $5.00 my husband give it to me, and I give a dollar and two quarters to my husband, and he handed the dollar and two quarters to him, and I went back again to the kitchen, and Monday—not Monday—Friday morning we saw him before nine o'clock walking out of the room.

Q. When did you see him again?

A. That was the last time ever I saw him. Then Saturday afternoon, about after three o'clock, my husband saw him walking out——

Mr. Rauffenbart: I object.

The Court: You didn't see him?

A. No.
Q. Well, now, Mrs. Hoffman, were you there when the trunk was brought in?
A. Yes.
Q. The big trunk that is here——
A. Yes.
Q. —offered in evidence? Did you hear Mr. Fine say what the trunk contained or anything of that kind?
A. I didn't speak with him.
Q. You did not?
A. No, only that day——

Mr. Rauffenbart: I object.

The Court: Yes.

Q. Did you talk with him at any time?
A. Just once, and he didn't answer me no questions at all.
Q. When was that?
A. That was that same night when he rent the room.
Q. What did you ask him and what did he refuse to answer?

Mr. Rauffenbart: No.

The Court: What was said?

Q. Go ahead. What was said?

A. I said, "Isn't it awful about Mr. Lindbergh's baby?" and he hold his head down like this and he couldn't look me straight in my face, and I had flowers on the table and I carried the flowers out and he didn't say nothing, not one word.

Cross-examination.

By Mr. Rauffenbart:

Q. You also peeked through the keyhole, didn't you?

A. Well, I saw that man, he didn't sleep there.

Q. You peeked through the keyhole?

A. I did, because I am the only one who has to clean the room.

Q. Are you in the habit of peeping through the keyholes in all the other rooms?

Mr. Hinkle: That is objected to.

A. No.

The Court: Let it stand.

Q. What does your husband do? How big a house have you got there, Mr. Hoffman?

A. Got a big house.

Q. How big is your house? How many rooms?

A. We have got six rooms on the first floor and five rooms on the second floor, and on the top floor we have got three rooms.

Q. Your husband has a kind of an office in the front room downstairs?

A. He has got no office at all.

Q. He has a table in there, a desk, in the corner?

A. He has got all his books and things what he reads in there.

Q. He reads in there?

A. Yes.

Q. He has got a rolltop desk?

A. He has got no rolling top desk. Just a plain table, like here.

Q. He is kind of manager of the house for you?

A. Well, he is just the same like I would be. We are always both home. What I know he knows.

Q. And what he knows you know?

A. Yes. That should be.

Q. And some of the things he told you, you have testified to here because you believe him, don't you?

A. That is my husband. I have to believe him. That is my husband. Every woman should stick up for her husband.

Q. Right. You feel very kindly towards this gentleman, don't you?

Mr. Hinkle: That is objected to. I object to the form of the question. Certainly how she feels toward this defendant makes no difference.

The Court: Unless it is shown that she has some prejudice.

Mr. Hinkle: I object to that question in that form.

Q. Didn't you say you wished something would happen to him because you lost business because of the fact that that trunk was standing in your room?

A. Business? I have got no business at all.

Q. I mean rooms. You couldn't rent the room afterwards.

A. Nobody wants the room now. Everybody knows in the neighborhood there was a box brought in with a dead body.

Q. It makes you feel badly?

A. Certainly. I guess everybody would feel bad about it.

The Court: Just answer the questions.

Q. You feel mad at him about it, don't you?

A. I have got nothing to do with him.

Q. You wouldn't say anything that would help him, would you?

Mr. Hinkle: I object to that.

(The question was withdrawn.)

SAMUEL DERMANER, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Dermaner, where do you live?
A. 911 North 5th.

The Court: Philadelphia?

A. Philadelphia.
Q. What is your business?
A. Restaurant.
Q. Do you know Mr. Fine, this defendant?
A. Yes, I know him.
Q. How long have you known him?
A. Since I have got the restaurant. Over three and a half years.
Q. Since what?
A. About three and a half years.
Q. Since you have a restaurant?
A. Yes.
Q. Did he come in and talk with you at any time?
A. Yes.
Q. He would eat at your place?
A. Eat in my place.
Q. Was he in there on the night of Thursday, the 3rd of March?
A. Yes, sir.
Q. Did he talk with you?
A. Yes.

Q. What did he say?

A. Oh, he talked several paper questions, you know, business questions. Always talking business questions, news.

Q. What else did he say?

A. Nothing. Just——

Q. Don't you recall something in particular that he said?

A. He was talking about several weeks ago when the case came up in Philadelphia about a murder case, he was talking about that, and that night he repeated the same subject and he said the jury acted very nice. That is all we were talking. We were talking especially about business, how business was. In fact, many a time he asked me to go with him in business and I didn't have the money to go, so I had to lay off. He always acted very nice. Only complained about——

Q. The night of the 3rd of March, Thursday night, when he came in there, did he eat anything?

A. Yes.

Q. He ate his supper?

A. Yes.

Q. And he talked with you about this murder case?

A. He talked about—not exactly about the murder case. He talked about the murder case and talked about different cases.

Q. Who brought the subject of the murder case up?

A. I don't remember. Several people were there. You know, it is like a home restaurant and everybody knows each other.

Q. Was there anybody in there that night?

A. I can't recollect. There was some people there.

Q. Was he in the same cool and calm manner as usual, or was he a little different?

A. Oh, he was—he feel a little bad. He always complained about three or four months or six months that business was very much against him and he can't make no living. That's all.

Q. Didn't you recently say to someone that he acted nervously?

A. Nervously? I will tell you the truth, ninety per cent of the people today are nervous.

Q. And Mr. Fine was one of the people that were nervous?

A. Yes.

Q. Well, he was sufficiently nervous, you say, and you told the fact to one of the Prosecutor's detectives recently that he was nervous, didn't you?

A. I will tell you, the Prosecutor's detective came in at a time when I was busy, and I myself was nervous at that time, too, so I couldn't recollect it. I told him he was a little—he didn't feel very good, but in my line of business I find everybody that comes in is a little upset, business upset.

Q. That isn't what you told the detective, is it?

A. He was a little bit nervous.

Q. That isn't what you told the detective, is it?

A. I told the detective the same as I have told here. I told him he was a little bit nervous. What he means——

Mr. Rauffenbart: That is all.

Mr. Hinkle: Who says it is all?

Mr. Rauffenbart: I object. I think I have given Mr. Hinkle plenty of latitude.

Mr. Hinkle: This witness is not as willing as I anticipated, and he is a little bit of a surprise here. That is why I am interrogating him in the way I am doing.

Q. Did you tell the detective Mr. Fine didn't eat?

Mr. Rauffenbart: I think he should be asked what he told the detective, and I cannot see how that can be evidence here, what he told the detective in the absence of Mr. Fine.

The Court: The ground upon which counsel puts the question and bases its propriety is that the State is surprised at the answers of the witness, inasmuch as the answers differ from what the witness stated.

Mr. Rauffenbart: I understand, but it simply goes to his credibility. It is not evidence of anything.

The Court: It would simply be for the purpose of neutralizing his testimony upon that point.

(The question was repeated.)

The Court: Did you tell the detective Mr. Fine didn't eat on this night?

A. I didn't tell him that. My wife told him that he didn't feel like eating.

Mr. Rauffenbart: I object and ask that be stricken out.

The Court: Strike it out. You are asked whether you told the detective that Mr. Fine did not eat on this night when he came to your restaurant.

A. I didn't tell him.

The Court: Very well. That is your answer.

Q. Did anybody else tell him?

Mr. Rauffenbart: That is objected to.

(The objection was sustained.)

Cross-examination.

By Mr. Rauffenbart:

Q. Mr. Dermaner, you run a restaurant?
A. Yes, sir.
Q. You say Mr. Fine was in there on what day?
A. On Thursday, March 3rd.
Q. And he discussed with you business conditions?
A. Business conditions, and, of course, the other —you know, news conditions.
Q. Articles in the newspapers?
A. Yes.
Q. There was nothing in particular discussed?

A. Discussed about—you see, we had a conversation about two months or three months ago about a certain murder case what happened in Philadelphia, and that night we was talking and he says, "See, I thought it was going to happen, the jury would say, of course, he wasn't in the position to act better."

Q. Well, was he any more nervous or upset than anyone else that comes in your restaurant?

A. He was a little bit nervous, but just as I explained to you, he was a little bit nervous, but today pretty near everybody is nervous. Business conditions makes nervousness.

Q. The same as everybody else that comes in your restaurant?

A. The same as anybody else.

Q. The same as the other ninety per cent?

A. Ninety per cent.

Q. The same condition? Nothing unusual, was there?

A. No, not unusual today.

Q. Nothing unusual in him, was there, that night?

A. I couldn't tell you nothing unusual, but he says he don't feel good, so I thought maybe business conditions made him don't feel—but we didn't—he was sitting down and he was eating, and he says he don't feel good.

Q. Just said that he didn't feel good?

A. Yes.

Q. You have a lot of people tell you that?

A. Yes.

Q. And that is the only thing that you recall was said?

A. Yes.

Re-direct examination.

By Mr. Hinkle:

Q. What was the name of the man in the murder case?

A. Buchen and Drossen, I think it is.

Q. That is the case you were discussing?

A. Yes.

Q. When the officers were talking with you, that is the case you told them you and Fine had been talking about?

A. Yes.

Q. Did the officers ask you this question: "What did he—that is, Fine—say to you?" Did they ask you that question?

A. Yes.

Q. And do you remember what your answer was?

A. My answer was, he said the man wasn't—the man was insane and he should be free.

Q. Fine said the man was insane and should be free?

A. Yes, because he ruined his wife, and that is all.

Q. When this officer asked you that question, didn't you say, "Well, he was talking about a murder case without me saying anything to him"? Did you say that to the officer?

A. I don't remember that. I told him we were talking about the murder case.

Q. Were you not asked this question by the officer: "On previous occasions when Louis Fine ate at your restaurant, did he appear nervous?" Do you remember that question?

A. Yes.

Q. Do you remember that you answered, "Oh, on that night he was nervous."

A. A little bit nervous.

Q. You said that, didn't you?

A. Yes.

Q. And then you were asked this question——

Mr. Rauffenbart: I want to interpose an objection here, because I do not believe this testimony comes within the rule that Mr. Hinkle is attempting to get it in under. This witness is not evasive, he is not antagonistic in the least, and I do not believe it is within the province of the Prosecutor, because the man's memory might be a little bad, to read to him an alleged conversation that he had and ask him if that was had at his restaurant. The man does not appear to be antagonistic, he does not appear to be evasive, and I do not believe it is proper examination. It is really a cross-examination of his own witness.

The Court: I think the rule is that where a party, the State or any party, has a statement from a witness and the witness has declared certain facts, and then does not testify in accordance with it, the State or any party to a trial may, for the purpose of neutralizing that testimony which was not as anticipated, ask whether at some time statements that are contrary were not made. Not for the purpose of establishing the truth of what the witness may at any time have said, but for the purpose of showing that conflicting statements were made, so that one

statement may, if believed by the jury, neutralize the other.

Mr. Rauffenbart: If his testimony adduced on the direct contradicts what he was suposed to have said previously, but where is there any testimony here of this witness which contradicts any statement previously made?

The Court: The witness has said, certainly, in response to Mr. Hinkle's questions on direct examination, that the defendant did not appear to be nervous. Now his attention is directed to a certain statement and he is asked whether he did, in fact, make those statements.

Mr. Rauffenbart: I understood him to say he was nervous, but no more nervous than ninety per cent of the people. He just added something to it. This testimony in no way contradicts.

The Court: It is not designed to contradict. It is designed to neutralize.

Mr. Rauffenbart: He has not contradicted any statement he made previously.

The Court: Then it can do no harm. If there is no difference between the statements he is now asked concerning and what he has testified, if they are, as you suggest, in harmony, it can do no harm.

Mr. Rauffenbart: It can do this harm; it permits

testimony of a conversation to be given which was had in the absence of the defendant, that is, between the officer and the witness. It gets to the jury and you can never get that from the minds of the jury.

The Court: Do you concede that there is a difference in his testimony and the questions and answers as propounded by Mr. Hinkle?

Mr. Rauffenbart: Only in one respect, and that is this: Not that it is a contradiction. He said, "Yes, he was nervous, but no more nervous than ninety per cent."

The Court: Then the extent to which you are willing to go is that there is a modification?

Mr. Rauffenbart: Yes.

The Court: It seems to me that makes it admissible.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

Q. Do you remember being asked this question by the officer: "What did he say about the murder trial?"

A. That is what I answered.
Q. What did you answer?

Mr. Rauffenbart: I object. There has been no question about him having denied any conversation concerning a murder trial.

Mr. Hinkle: It is a conflict.

The Court: Yes, there was.

Mr. Rauffenbart: I do not know what you mean by a conflict.

The Court: In other words, the State, when it puts a witness upon the stand, having called him and having, as counsel says, a statement from this witness that certain things were known by him and would be testified to, it would be assumed, finds that the witness has not testified in accordance with the statement. A party to a proceeding is not obliged to rest in that situation, if upon a matter of importance, as a matter of fact—if it is not material, of course, it ought not to be in at all—the witness has, in fact, said something to the contrary and the State is surprised by the answer, then it may neutralize the testimony by showing that at some other time he said something different, and that is its purpose.

Mr. Rauffenbart: I cannot see where there is any testimony to the contrary. It appears here that they are simply going to embellish and paint a broader picture of what was said, by having what

was said by the detective, out of the presence of this man, go before the jury, and what the witness might have said. The Court knows and we all know that when a detective is investigating, he goes to this witness with a certain idea in his head, and he wants to get testimony to cover a certain point, and he drives and drives and drives at that. It does not seem to me, unless there is a direct contradiction by this witness of a statement previously made, that this question comes within the rule, and I say with all respect to the Court I cannot recall at this time that there was any contradiction along that line, and for that reason I object to the question.

The Court: I shall permit it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

Q. You were asked this question: "What did you say about the murder?"

Mr. Rauffenbart: I object on the ground it is irrelevant and immaterial.

The Court: The objection is overruled.

(Whereupon the defendant, by his counsel, prays

a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

Q. What was your answer?

A. My answer was, I says I don't know anything about any case. I says, I said anybody that takes a man's life, he should be punished if he got caught, for it.

Q. Didn't you say to the officer that he, that is, meaning Mr. Fine, said that he should be acquitted because he had ruined somebody's family?

A. Yes.

Q. You said that, didn't you?

A. Yes, sir.

Q. Fine said that?

A. Yes, sir.

JACOB J. WILLIAMS, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Williams, you live where?

A. Philadelphia.

Q. What is your business?

A. I am a member of the detective bureau, bureau of police.

Q. How long have you been connected with the bureau of police in Philadelphia?

A. Seven years.

Q. In the detective department?

A. No, I have been in the detective department two years.

Q. On or about Monday, the 7th of March, were you obliged to visit the premises of Mr. Hoffman on North 5th Street?

A. I was.

Q. What time did you get there?

A. I got there eight-fifteen A. M.

Q. Were you the first officer to arrive?

A. I was.

Q. Your attention was directed to a trunk, I suppose, wasn't it?

A. Yes, sir.

Q. Did you see the trunk?

A. Yes, sir.

Q. Is this the trunk, S6?

A. Yes, sir.

Q. Where did you find that trunk?

A. In the middle room on the first floor.

Q. In what manner was it fastened?

A. It was tied up on the outside with a lot of sash cord, knotted up.

Q. Would you say that was the sash cord?

A. Yes. The bottom cord there with the knots in it.

Q. How, otherwise, was it fastened?

A. There was a hasp and a lock on the outside here, on the side.

Q. Are you able to say whether that is the one?
A. Yes, that is the one.

Mr. Hinkle: Showing him Exhibit S8.

Q. In what manner was this hasp placed on this large trunk?
A. It was placed right alongside of the old lock there.
Q. Here?
A. That's right. I forced it off with a pair of pliers and a screw driver.
Q. You had no key to open it?
A. I tried to pick it, but it wouldn't open.
Q. You couldn't pick it?
A. No.
Q. You cut the cords and pried the lock off?
A. Yes, sir.
Q. Then, of course, you opened this lid?
A. I opened it.
Q. Then what did you find?
A. There was a piece of black oilcloth throwed over the top, and I threw that back——

The Court: Over the top of what?

A. Of another smaller trunk on the inside, which was also trussed up with rope.
Q. And oilcloth thrown over this?
A. Yes, sir.
Q. Was a photograph of that taken?
A. Yes, sir.

Q. Is this the picture that was taken at the morgue?

A. Yes, sir.

Q. As the thing appeared to you when you first opened it?

A. Yes, sir.

Q. Of course, you detected a strong odor, didn't you?

A. Yes.

Mr. Hinkle: I offer this photograph in evidence.

(The photograph was marked Exhibit S15.)

Q. At the Hoffman home did you cut that cord?

A. Not the inside trunk, no.

Q. You knew what was in there?

A. Yes, I became suspicious.

Q. And you took the trunk to the morgue?

A. I accompanied the trunk to the morgue in the patrol wagon.

Q. When you got to the morgue did you assist in opening the smaller trunk?

A. I did.

Q. How was that opened?

A. That had rope on the outside, too, and we lifted it out and brought it on the floor and then I undone the rope on the smaller trunk.

Q. And opened it?

A. And opened the smaller trunk.

By the Court:

Q. Was the smaller trunk locked?
A. No, sir. That is, it just had the snaps shut on it, and the rope. There was no padlock on it.
Q. No lock of any kind?
A. No, sir.

By Mr. Hinkle:

Q. Is that the condition of it?
A. The black oilcloth was in the larger trunk. That was on the outside.
Q. Strapped across?
A. Yes, that is right. There was an Adams' express label on that end on the trunk, on the side.

Mr. Hinkle: Will the jurors look in this trunk while it is open, if they will, please?

By the Court:

Q. This oilcloth was over the small trunk or was it under the small trunk and then brought over it?
A. Under the small one and then brought over the top of it.
Q. So that the larger trunk was, so to speak, lined with the oilcloth and then the oilcloth put over the smaller trunk?
A. Yes, sir.

By Mr. Hinkle:

Q. This larger trunk had also a piece of oilcloth at the bottom, didn't it?

A. It was all lined around the sides.

Q. Tacked up around the sides?

A. Yes.

Q. About how far?

A. All the way up to the top.

Q. And that is the oilcloth that now lies in the bottom?

A. Yes, and then there was an additional oilcloth wrapped around the outside of the smaller trunk.

Q. So that piece down there, when folded up around the sides, was tacked all the way around?

A. All the way around.

Mr. Hinkle: I ask that the oilcloth be marked as an exhibit. We may as well include it with the trunks.

(The oilcloth referred to was made a part of Exhibit S12.)

Q. When you opened the small trunk, found it open, you found what inside?

A. The body of a white woman.

Q. Were photographs of that made there?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. Is that one of the photographs?

A. That was the smaller trunk as soon as it was opened up.

Q. As soon as it was opened up, and that shows the woman?

A. Yes, sir.

Mr. Hinkle: I offer it.

Mr. Rauffenbart: I object. I cannot see the purpose. The testimony is that there was a white woman in there, and they have testimony, I suppose, to identify her. This is simply a gruesome picture that will answer no purpose.

The Court: It may be part of the corpus delicti. It will be admitted.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

(The photograph referred to was marked Exhibit S16.)

Q. Was that body later taken out and placed upon a slab?

A. It was.

Q. And photographed in your presence?

A. Yes, sir.

Q. Is that one of the pictures?
A. Yes.

Mr. Hinkle: I offer the picture in evidence.

Mr. Rauffenbart: I make the same objection, and irrelevant and immaterial.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

(The photograph was marked Exhibit S17.)

Q. I show you another position of the body on the slab. Is that a correct photograph?
A. Yes, sir.

Mr. Hinkle: I offer the photograph in evidence.

Mr. Rauffenbart: I make the same objection.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES, (Seal),
Judge.

(The photograph was marked Exhibit S18.)

Q. And then a close-up picture of the face and head. Is that a picture of the same body?

A. Yes, sir.

Mr. Hinkle: I offer the photograph in evidence.

Mr. Rauffenbart: I make the same objection.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

(The photograph was marked Exhibit S19.)

Q. After the discovery of this body in the trunk did you go back to the house of Mr. Hoffman on 5th Street to ascertain how the trunk got there?

A. I ascertained that when I first got there.

Q. You ascertained that it had been brought there, I suppose, by a truck?

A. That is it.

Q. And you got the number of that truck?

A. Yes, sir.

Q. Which led you where?

A. Which led us to the owner of the truck, Morris Weinstein. Of course, I didn't go that far—that is,

I just got the number, the owner's name and address, and then Detective Zuckerman and Captain McFarland took it up.

Q. You turned that part of the information over to Captain McFarland?

A. Of the homicide squad.

THOMAS F. MCFARLAND, sworn.

Direct examination.

By Mr. Hinkle:

Q. You live in Philadelphia?

A. Yes, sir.

Q. And a captain in the police department?

A. Yes, sir.

Q. In the seventh police district?

A. In the seventh police district.

Q. Is that the district in which 824 North 5th Street is located?

A. Yes, sir.

Q. On or about the 7th of March, your district was notified of something unusual about a trunk in 824, wasn't it?

A. Yes, sir.

Q. You sent down there, did you?

A. Yes, sir.

Q. Did you go down, too, yourself?

A. Yes, sir.

Q. Tell us what you ascertained when you got down there?

A. I arrived there about nine-fifteen. Detective Williams was in the middle room on the first floor; there was a trunk there bound up in sash cord. I left Williams—on the strength of the odor and the suspicion we had, we obtained a license number from Mr. Hoffman, S-16422. I, in company with Detective Zuckerman, left the house with Williams in care of the trunk and proceeded to locate the truck. We located the owner's address, name and address, at 840 North Marshall Street. We arrived there, and there was a Chevrolet truck standing before the door bearing those license numbers. We entered the store and interviewed Mr. Morris Weinstein, who owned the truck, and also, after a conversation, said he had hauled the trunk from 8th & Master to 824 North 5th Street.

Q. Did you subsequently go to the office of Mitchell Lichow at 5th & Parrish?

A. Yes, sir.

Q. Did you ascertain there whether the trunk had been brought to their place first?

A. I did.

Q. Did you ascertain in whose name this shipment had been made?

A. Yes, sir.

Mr. Rauffenbart: That is objected to. It has all been testified to and I cannot see that it answers any purpose. It is simply cumulative. It is getting in the results of conversations out of the presence of the defendant, and taking up time.

The Court: He may tell what he did.

Mr. Hinkle: That is all I am asking him to do.

Q. You talked with Mr. Mitchell Lichow?

A. First talked with Miss Pearl, Mr. Lichow's sister.

Q. And then with Mr. Lichow?

A. Yes, sir.

Q. And as a result of that, you got in touch with the Atlantic City authorities?

A. After I had learned from Mr. Lichow——

The Court: As a result of your conversation at Lichow's, you got in touch with the Atlantic City authorities?

A. I did not, sir. I took Mr. Lichow and his daughter to police headquarters at City Hall, in company with Lieutenant of Detectives Grannis, and there, after hearing of a man's name, we communicated with the Atlantic City authorities.

(No cross-examination.)

MEYER ZUCKERMAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Zuckerman, are you a detective?
A. I am.
Q. Attached to the Philadelphia department?
A. I am.
Q. Did you, on Monday the 7th of March, receive orders to investigate the finding of a body in 824 North 5th Street?
A. I did.
Q. Tell us in your own way what you did?
A. I went to 824 North Fifth Street, where I met Detective Williams, and the outer trunk had been opened when I entered the room, and I immediately notified Captain Healey, who is my commander, and he left orders that no one was to touch the trunk until it was removed to the morgue, and there it would be opened. I then, in company with Captain McFarland, after learning the license number of the truck that had brought the trunk, went to the City Hall, where we communicated with the Department of Highways and through them learned the name of the owner of the truck. We then went to 840 North Marshall Street and interviewed Mr. Morris Weinstein, and after a short conversation with him, he related how he had delivered the trunk to 824 North 5th Street on Thursday, March 3rd, about seven-thirty P. M., after being hired by Mr. Fine. We

then went to the American Railway Express Company and secured a duplicate copy of the bill of lading for this trunk, and from there we went to the office of Mr. Lichow and interviewed Mr. Lichow and his sister, Pearl. From them learned the name of the man that had consigned the trunk to their address. Mr. Lichow notified us that his name was Fine instead of Miller, and that he had known him for some time.

(No cross-examination.)

(A recess was taken until 9:30 A. M., Tuesday, June 7, 1932.)

Mays Landing, N. J., June 7, 1932.

TRIAL OF THE CAUSE RESUMED AT 9:30 A. M.

ANNIE MIDDLETON, recalled.

Direct examination.

By Mr. Hinkle:

Q. After Mrs. Schaaf's death and you got in the room after some days, did you notice some spots near the fireplace?

A. Yes, sir.

Q. Did you have them before?

A. No, sir, not before.

Q. Were they new? Not before?

A. No, sir, not before.

Q. That was something new?

A. Yes, something new.

By the Court:

Q. When were you in that room last before this occasion when you noticed the spots?

A. I was in it—I noticed those spots on Monday.

Q. Tuesday was the last day you worked there?

A. Tuesday I cleaned her room, run the vacuum cleaner over the rug.

Q. You cleaned the room on Tuesday?
A. Yes.

By Mr. Hinkle:

Q. And the next time you got in was the following Monday?
A. Following Saturday.
Q. Saturday?
A. Yes. You see, I left Tuesday.
Q. What?
A. I was at work Tuesday.
Q. Then did you get in Saturday to clean her room?
A. No, I couldn't get in her room Saturday.
Q. You did get in Monday?
A. Yes, I got in Monday evening.
Q. That was when the officers were there?
A. Yes.

By the Court:

Q. And then you noticed the spots for the first time?
A. Yes, I noticed the spots for the first time Monday.

By Mr. Hinkle:

Q. Whose trunk is that?
A. Mrs. Schaaf's trunk.
Q. That is S6. You say it is Mrs. Schaaf's trunk?
A. Yes, her trunk. She had it in the laundry room.

Q. Whose trunk is that little one?
A. Both of them is hers.
Q. Where were those trunks kept?
A. Kept in the laundry room.
Q. In the basement?
A. Yes. A feather mattress in the big trunk.
Q. A feather mattress was kept in the big trunk?
A. Yes.
Q. Did you ever see that rope or a rope like it around the place?
A. Yes, I seen a rope like it. A clothes line.
Q. A clothes line?
A. Yes.
Q. Did you ever see that around the place?
A. She bought that when she had the windows fixed, the sash.
Q. Where was that kept?
A. Kept downstairs on the shelf in the laundry room.

Mr. Hinkle: I offer it in evidence.

Mr. Rauffenbart: I object to it. I cannot see the relevancy.

The Court: It may be marked for identification.

(The rope referred was marked S20 for identification.)

Q. Where was this piece of rope kept?
A. It was downstairs in the laundry room on a

shelf. That is where she put it at after John got through fixing the windows.

Q. After the officers came there on that Monday afternoon, were they able to get in Mrs Schaaf's room?

A. No, they couldn't get in until I gave them a hammer.

Q. Gave them a hammer?

A. And they opened the lock.

Q. Do you remember which one of the officers used the hammer?

A. No, I don't know which one.

Q. Is that the man that used the hammer?

A. Yes, he is the one.

Q. You were sent later to Philadelphia?

A. Yes.

Q. To see the body of a woman that had been taken from a trunk?

A. Yes.

Q. Did you see her?

A. Yes, I seen her.

Q. Who was it?

A. It was Mrs. Schaaf.

Cross-examination.

By Mr. Rauffenbart:

Q. Did you look these trunks over this morning?

A. I know the trunks.

Q. Did you look them over this morning?

A. I didn't have to look them over. I know them.

Q. Did you look them over this morning?

A. Sure, I looked them over. I know them.
Q. When did you look them over?
A. I am looking at them now.
Q. Can you see the trunk inside?
A. Sure, I know it was her trunk. It had a feather mattress. I ought to know them.
Q. You couldn't see that trunk from where you sat, the inside trunk.
A. Sure, I could see the top. I know both of them. Sure I know the trunk. I worked there a year. I know what is around the cellar.
Q. Who called your attention to the spots on the floor on Monday?
A. On Monday?
Q. Yes.
A. Who called my attention to the spots on the floor?
Q. Yes.
A. The ones that came in. I was with them.

By the Court:

Q. How many spots were there, if you know?
A. There was just a kind of a right good-sized spot.
Q. What?
A. Kind of a good-sized spot.
Q. One spot?
A. Yes.
Q. How large did you say that spot was?
A. I don't know. I guess it was around like that.
Q. About six inches?
A. I guess it was.

By Mr. Rauffenbart:

Q. Just where was that spot you refer to?

A. Right near the radiator like. There was a big chair sat there.

Q. Near the radiator?

A. Yes, a big Morris chair.

Q. That is the only spot, of course, they called your attention to?

A. Yes.

Re-direct examination.

By Mr. Hinkle:

Q. Just look at this photograph. Can you say whether that is Mrs. Schaaf's room?

A. Yes, that is her room. That is the big chair and that is the bed.

Q. Where is the radiator?

A. Right back of the big chair, setting near the door that goes to the dining room.

Q. What is this thing here?

A. That is a mantelpiece there with a vase on it.

By the Court:

Q. And the radiator was to the right of this mantelpiece, was it?

A. Yes.

By Mr. Hinkle:

Q. Where were the spots? Can you point them out on the photograph?
A. No, I can't.
Q. That is her room, is it?
A. Yes, that is her room.

Mr. Hinkle: I offer the photograph in evidence.

(The photograph was marked Exhibit S21.)

Mr. Rauffenbart: I assume those articles of furniture are the way they always were?

By the Court:

Q. Is that the way Mrs. Schaaf's room was generally?
A. Yes, sir, the way it was.

MABEL MILONE, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Milone, where do you live?
A. I live 40 North Rhode Island.
Q. Were you related to Mrs. Schaaf?
A. Mrs. Schaaf was my aunt.

Q. She was your aunt?
A. Yes.
Q. Did you go to Philadelphia?
A. I did.
Q. For the purpose of examining a body that was shown you there?
A. I did.
Q. Whose body was that?
A. My aunt, Mrs. Schaaf.

By the Court:

Q. Where did you examine this body?
A. At the morgue in Philadelphia.

(No cross-examination.)

Dr. Louis H. Myers, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?
A. Chemist.
Q. Work for the Prosecutor's office?
A. I do.
Q. Been working for them for some years?
A. About eight years.
Q. Were you taken with the first assistant prose-

cutor and some other officers of the Prosecutor's office to the Schaaf home on the morning following the discovery of her body?

A. I was.

Q. Did you discover some spots on the rug?

A. I did.

Q. Did you take specimens?

A. I did.

Q. For the purpose of ascertaining what caused the spots?

A. I did.

Q. What was it?

A. The spots were human blood.

Q. How old do you suppose that blood was?

A. It was quite hard——

Mr. Rauffenbart: I object to the form of the question.

The Court: I suppose he may give his judgment as to the age.

Mr. Hinkle: That is all he can give.

The Court: The question is reframed.

A. I would say it was there for a number of days. I couldn't say exactly how long.

Q. A number of days?

A. A number of days.

Q. What would you say? What number of days?

A. I couldn't say. It might have been a week, it might have been four or five days.

Q. It might have been a week or it might have been four or five days?

A. It might have been. It was quite hard. It had been there for some time.

Q. Would you think it was over a week old?

A. I couldn't say.

Q. If over a week old, would it be as much as ten days old?

A. It might have been.

Q. Did you examine some paper found—pieces of paper found in the room?

A. I did.

Mr. Rauffenbart: I do not know how this witness can testify how papers were found in a room.

Mr. Hinkle: He was there.

The Court: Unless he found the papers himself or was present when the papers were picked up. You had better develop that, perhaps.

Mr. Hinkle: I did ask him whether he accompanied myself and the other officers and he said he did.

The Court: Yes, but your question was, did he examine some papers which were found in the room.

Q. In addition to taking specimens from the rug, did you also find some papers, pieces of paper in the room?

A. Mr. George Thomas found a piece of paper under the radiator, which had a spot on it.

Q. Mr. George Thomas was one of the Prosecutor's officers?

A. Yes, sir.

Q. What did he do with it?

A. He turned it over to me.

Q. You saw him pick it up?

A. Yes.

Q. What was on that piece of paper?

A. Blood.

Q. Human blood?

A. Human blood.

Mr. Hinkle: Cross-examine.

Mr. Rauffenbart: May I reserve my cross-examination until a little later in the morning?

The Court: Yes.

FRANK JULIANO, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Juliano, what is your business?

A. County Detective for the County of Atlantic.

Q. How long have you been connected with the Prosecutor's office?

A. About eight years.

Q. On or about Monday the 7th day of March were you advised of the finding of the body of a woman in a trunk in Philadelphia?

A. Yes, sir.

Q. Were you assigned then to the investigation?

A. Yes, sir.

Q. What officers from the Prosecutor's office accompanied you and assisted you in this work?

A. Frank May and James Ebbecke.

Q. Did you go to the premises, 31 South Connecticut Avenue?

A. I did.

Q. Did the other men go with you?

A. Yes, sir.

Q. Did you find anyone at the premises?

A. Yes, sir.

Q. Who did you find?

A. Annie Middleton.

Q. This colored girl who has been on the witness stand?

A. Yes.

Q. What was she doing?

A. She was sweeping the snow off the sidewalk.

Q. Then just what did you do from then on, and what did the others do, so far as you observed?

A. I talked to Annie Middleton and asked her if she was at home when Mr. S. Miller shipped his trunk.

Q. Don't tell your conversations out of the presence of this defendant. You talked with Annie Middleton about something. Did you finally get in the house?

A. Yes, sir.
Q. Did you find any person in the house?
A. Mr. Fine.
Q. Did you know Fine?
A. Yes, sir.
Q. Tell us all that happened right there.
A. I opened the door and walked in the hall and Mr. Fine was standing in the hall. I said, "Hello, Louis." He said, "Hello, Mr. Detective." I said, "What are you doing here?" He said, "I live here." I says, "Was you in when Mr. Miller shipped his trunk from this address on the 2nd of March?" He says, "Trunk?" I says, "You know what a trunk is."

Mr. Rauffenbart: If your Honor please, if this testimony is to go in in any way as a confession, I desire now to cross-examine the witness.

Mr. Hinkle: In the first place, the man was not under arrest.

The Court: I do not suppose it is in the nature of a confession. I suppose this is a conversation had with the defendant, not in the nature of a statement or narrative. I do not see that it comes within the rule as to a statement.

Mr. Rauffenbart: May I ask the witness one question?

The Court: I see no objection to that.

By Mr. Rauffenbart:

Q. Were you there to arrest Fine?
A. No, sir.

By the Court:

Q. You were there investigating?
A. Yes, sir.

Mr. Rauffenbart: All right.

By Mr. Hinkle:

(The answer was repeated by the stenographer.)

A. He hesitated, and then he said, "Yes, I was here." I asked him where Mr. Miller's room was. He says, "Mr. Miller didn't have a room here." I asked him where the trunk came from and he took me to the second room on the bottom floor, on the main floor.

Q. Just a minute. What room is this?
A. That is the living room.
Q. Is that the first room?
A. That is the first room.
Q. What room is that?
A. That is the second room.
Q. Is that——
A. That is a bedroom. That is the room where he showed me the door.
Q. This is the door?
A. Right there.

Q. All right. Go ahead.

A. I asked him if that was the room that the trunk came out of and he said yes. I asked him whose room that was. He says it was Mrs. Schaaf's room. I asked him where Mrs. Schaaf was. He said she had went to Philadelphia. I asked him if he had a key to get into that room. He says no.

Q. How was it locked?

A. It had a padlock on it.

Q. I show you a padlock already marked for identification S3. Is that the lock?

A. That is the padlock.

Q. How was that fastened?

A. It had two small screw eyes, one in the door and one in the sill, or the frame of the door.

Q. What is that?

A. They are the screw eyes. Not the small ones. These two here, the two large ones.

Q. Will you look and see if I am demonstrating this correctly on this door? One was in here?

A. That is right. Down lower, though.

Q. There?

A. Yes.

Q. And this other one was in here?

A. That is right.

Q. So that when the door shut, one was over the other?

A. Yes.

Q. Was this padlock through them?

A. The padlock was through them.

Mr. Hinkle: I offer the screw eyes in evidence.

(The articles referred to were marked Exhibit S22.)

Q. Now, go ahead.

A. I asked Annie Middleton if she had a key, and she says, "No." Then I tried to pull the lock off and I couldn't, and I asked for a hammer or something to break the lock.

Q. Where was Fine all of this time?

A. Standing right there in the hall.

Q. Near you?

A. Right there, right near me. So was Annie. The other detectives were there, too.

Q. Go ahead.

A. Annie Middleton got a little hammer, a small hammer, and I tapped the lock with that and pulled it open. I went inside and it was dark, the room was very dark. I asked someone to turn the light on, because I didn't know where the lights were. I don't know who turned the light on, but a small light was turned on right over the desk, a small desk in the room setting at the head of the bed. I looked around the room and the room was very orderly. The bed was made up and everything was clean. Looked around and we—well, we thought we was in the wrong place. We didn't see anything there, and I sat on the bed and Frank May sat in the big chair. Frank May says to me, "Well, son, you broke the lock, what are you going to do about it now?" So I was sitting on the bed like this and I noticed a spot on the floor, and then I asked for more light. Annie Middleton walked across the room and turned on the big lights, and I put my hand on the spot and it

smelled like kerosene. I asked Annie if she had ever seen those spots there before. After the larger light went on, you could see two spots, one about six inches in diameter and one about two inches in diameter. She said she had never seen those spots there before. I asked her when she had been in the room last and she said sometime last week, she wasn't certain what day. Then Detective Ebbecke took Fine out in the hall and talked to him for quite a while. He came back and said, "Mr. Fine just told me that he shipped this trunk from this room."

Q. Ebbecke said that?

A. Ebbecke told me.

Q. Was Fine there when he said it?

A. Yes.

Q. Go ahead.

A. Then I questioned Fine——

Mr. Rauffenbart: If your Honor please, now I think—there is no doubt but what these men were there to place this man under arrest.

The Court: It does not appear.

Mr. Rauffenbart: I would like the right of cross-examination at this time.

The Court: I do not think so. It does not appear that these men were doing any more than making an investigation, and in the course of the investigation interrogated the occupants of the house, one of whom was this defendant. It does not appear at that time they were securing any statements from

him with the expectation of using them against him. No accusation had been made against him.

Mr. Rauffenbart: It appears in the testimony that word came from the City of Philadelphia that the trunk was shipped by a man by the name of Fine——

The Court: No. Miller.

Mr. Rauffenbart: Yes, but he was identified as Fine on receiving the trunk there. That word came to the Prosecutor's office, and naturally the Prosecutor was sending out to get Fine. I now desire the privilege of cross-examination.

The Court: No.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

Q. Go ahead.

A. I questioned Fine as to the trunk. He said that a man by the name of Miller gave him $25.00 to ship the trunk to Philadelphia. I asked him where to in Philadelphia and he said to a friend of his by the name of Lichow. I then told Fine I was going to take him to the Prosecutor's office for questioning. I took Fine and Annie Middleton. I left Frank May and Ebbecke at the premises and brought them

into the office to talk with Mr. Hinkle, the Assistant Prosecutor.

Cross-examination.

By Mr. Rauffenbart:

Q. Before you left the Prosecutor's office were you given orders to bring Fine in?

A. No, sir.

Q. Did you get any orders or directions respecting Fine?

A. No, sir.

Q. What were your orders?

A. My orders were to find if there was anybody murdered in Atlantic City and put in a trunk and shipped to Philadelphia.

Q. Fine's name was never mentioned to you?

A. No, sir.

Q. Do you know of your own knowledge where the information came from which sent you down to 31 South Connecticut?

A. Yes, sir.

Q. Where?

A. From the American Railway Express.

Q. From the American Railway Express?

A. Yes, the office there. The girl gave it to us.

By the Court:

Q. You mean by that that you obtained information that that trunk was shipped from 31 South Connecticut?

A. S. Miller's trunk was shipped from 31 South Connecticut Avenue.

By Mr. Rauffenbart:

Q. That isn't just what I want, Mr. Juliano.

The Court: I think that is what you asked.

Mr. Rauffenbart: I probably did.

Q. Did any information come from the Philadelphia Police Department concerning this body that was found in Philadelphia, to your knowledge?

A. To my knowledge. I got it from someone else. They didn't give it directly to me.

Q. Didn't it come through the Prosecutor's office?

A. It came to Mr. Hinkle. Mr. Hinkle gave me the orders.

Q. Do you know where that came from?

A. I do not.

Q. It came over the phone from Philadelphia, didn't it?

A. I don't know.

By the Court:

Q. Just by hearsay?

A. Mr. Hinkle gave me the orders. He didn't tell me where he got his information.

By Mr. Rauffenbart:

Q. And he never mentioned Fine's name to you?

A. No, sir.

FRANK L. MAY, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. May, what is your business?

A. County Detective, Prosecutor's office, Atlantic County.

Q. How long have you been there?

A. A little over nine years.

Q. Do you remember being sent to investigate the murder of a woman on the 7th of March?

A. Yes, sir.

Q. You went with Juliano and Ebbecke, also of the Prosecutor's office?

A. Yes, sir.

Q. You were directed to go to 31 South Connecticut Avenue, weren't you?

A. We got that information from the railway express.

Q. You went there?

A. Yes, sir.

Q. Now, tell us what happened. Talk loud.

A. Mr. Juliano was driving his car, and when we got there we saw a colored woman sweeping, and Mr. Juliano says, "You sit in the car and let me talk to her." After he talked to her he went in and motioned for us to follow him, and they went in and left the door open, and Mr. Ebbecke and I followed him in. When we got in there we saw Mr. Fine in the hall.

Q. You knew Fine?

A. Not so well. I had saw him, but I hadn't worked on——

Q. Previous?

A. Previously, on that.

Q. On anything?

A. On that case, no.

Q. Then what happened?

A. Well, there was a conversation in front of the door there which was supposed to be Mrs. Schaaf's room, where the trunk was taken from, and Mr. Juliano asked for a hammer, and Annie, the maid, got him a small hammer and he tapped the lock and the door opened, and the room was very dark. We went in and sat down there and looked it over, and, of course, everything was in perfect order. There was nothing demolished or anything. The bed was made, and a clothes tree there with clothes hanging on. So I looked at Mr. Juliano and I thought probably he had made a mistake by breaking the lock, so Fine—first Mr. Juliano asked for a light, and then after looking there we saw that spot, and we started to look around, and Mr. Fine and Mr. Ebbecke went out of the room while Mr. Juliano and I was looking around at the desk. Mr. Juliano was looking at the desk and I stood there watching him. So finally Mr. Juliano said that he would take Fine and Annie down to the Prosecutor's office. Mr. Ebbecke and I stayed at the premises until Mr. Hoffman came back and relieved Mr. Ebbecke, and then Mr. Juliano came back and got Mr. Hoffman and I.

Q. Did you notice a canary bird, Mr. May?

A. A canary bird was in the room adjoining the

bedroom, which was supposed to be a dining room, connected with Mrs. Schaaf's private apartment.

Q. That was also locked away from the rest of the premises?

A. Oh, yes, that was.

Q. Was the bird alive?

A. The bird was still alive.

(No cross-examination.)

JAMES EBBECKE, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business, Mr. Ebbecke?

A. Connected with the Prosecutor's office. Investigator.

Q. Did you go with Juliano and May on the 7th of March?

A. Yes, sir.

Q. To 31 South Connecticut Avenue?

A. To 31 South Connecticut Avenue.

Q. Tell us in your own way just what happened. Don't tell anything, any conversation that occurred at which Fine wasn't within hearing.

A. We got there and Mr. Juliano got out of the car and told us to remain in the car, and Middleton, the lady who was on the stand here, the colored lady, was sweeping off the sidewalk, and finally Juliano

called us and we entered the house, and Fine was standing at the foot of the stairway.

Q. Did you know Fine?

A. I knew Fine well. He said to me, "Hello, there." I said, "Hello." Then Juliano and May went over to the door, and Fine said, "I would like to talk to you." He said to me, "What is it?" I said, "I don't know." He said, "A robbery?" I said, "I don't know." He said, "Do you think it is about the trunk?" I said, "What trunk?" He said, "A man named Miller gave me $25.00 the other day to ship a trunk to Philadelphia." I says, "Where did you ship it, Louis?" He says, "Up to Lichow's." I says, "Where is Lichow's?" "846 North 5th Street." He says then, "I hired a room at 824 North 5th and paid three and a half and put the trunk in the room there." I said, "Yes?" and he said, "What is it all about?" I said, "I don't know." So then after Mr. Juliano and May came out, then we went—Fine and Middleton went down to the Prosecutor's office and I remained there with Mr. May.

By the Court:

Q. That is, you remained at 31 South Connecticut Avenue?

A. At 31 South Connecticut, yes.

Cross-examination.

By Mr. Rauffenbart:

Q. Did you hear Mr. Juliano when he first went into the place talk to Mr. Fine?

A. Yes. Louis was standing at the foot of the stairs, and he said, "Hello, Louis." He looked at him and he said, "Hello." Then I walked on back further.

Q. Nothing was said about the trunk until he mentioned it to you?

A. Well, he said something about the trunk to Juliano there at the foot of the stairs.

Q. Did Juliano say anything to him about the trunk?

A. I didn't hear Juliano say anything to him about the trunk.

Q. Did you hear Juliano on the stand?

A. Yes.

Q. Mr. Juliano says that he asked Mr. Fine when he first spoke to him whether or not he was there when Mr. Miller sent the trunk.

A. Well, the conversation took place and I walked back towards the table in the rear.

Q. You don't want this jury to believe that the first time the trunk was broached was broached by Mr. Fine to you, do you?

Mr. Hinkle: That is not proper.

The Court: I think it is objectionable.

Q. Who broached the subject of the trunk first?

A. Who broached the subject of the trunk first? It was spoken to Juliano by Fine as he entered the door, and then he followed it up by calling me back in the hallway and telling me about the trunk.

Q. What did Mr. Fine say to Juliano first about the trunk?

A. Something, "Are you here about the trunk?" Something to that effect.

Q. Mr. Juliano didn't ask him if he was there when Miller sent the trunk?

A. Well, now, that may have happened, but I walked back in the hallway.

Q. You didn't hear what Mr. Juliano first said to Mr. Fine?

A. Not all of it.

Q. And you don't know whether Juliano first broached the subject of the trunk or not?

A. There was some remark about a trunk as we entered the door, and I walked on back in the hallway.

Q. Do you know whether Juliano first broached the subject of the trunk?

A. I understood him to say trunk.

Q. Juliano?

A. Yes.

DR. WILLIAM S. WADSWORTH, sworn.

Direct examination.

By Mr. Hinkle:

Q. Dr. Wadsworth, where do you live?

A. Philadelphia.

Q. What position do you hold in the City of Philadelphia?

A. Physician to the coroner.

Q. How long have you held that position?

A. For thirty odd years.

Q. Thirty odd years?

A. Yes, sir.

Q. Do you remember the circumstance of the trunk containing the human body brought to your notice sometime about the 7th of March?

A. Yes, sir.

Q. Will you tell the jury in your own way what you did about that, all that occurred?

A. I was notified by our detective that there was a body in a trunk at the morgue on the 7th of March. In the afternoon I reached the morgue, a trunk similar to the one in front of me, and a body which had been taken from the trunk on the slab. The body was fully dressed at the time and a cord was about the neck, and the trunk was in the room and I examined that, but made no special notes on the trunk, because it would be in evidence. I removed the clothing, had it carefully cleansed so it could be put into court, examined the body carefully as

could be for the advanced decomposition, and removed from the neck a cord which had been drawn very tightly about the middle of the neck. This woman had been dead some days, no care of the body. There were some marks that showed that there had been compression on the body after death, which I could not interpret exactly, on account of not having seen the body in the case. Decomposition was so far advanced that it was difficult to determine how much bruising there had been upon the body. The skin did not show any ante mortem lesion that I could determine, except possibly on the chin and possibly on one of the arms, but those marks were doubtful. There was considerable suffusion of the face, more than I believe would be due to the decomposition, because the tightness of the ligature about the throat was so pronounced as to entirely cut off not only air but circulation of blood and entirely obstruct the large veins through which circulation would be carried back, the blood would be carried back to the heart. Do you suppose it would be proper for me to present at this time the cord taken from the body?

Q. Yes, if you have the cord I will be glad to have you present it to us.

A. It took a little skill to clean this thing so it would be fit to be presented, and not to disturb the relations, even to disturb the hair which caught in the knot. It will be seen to be cut slightly to the side, and there is a loop making a very narrow ring for the neck. The woman was very fat and was very heavy, and from the size of that ring it is perfectly clear at this time——

Mr. Rauffenbart: I object. I think you can present the loop, but I do not think he should argue it.

The Court: Yes.

A. I am not arguing. What I am trying to state is the relation that this shows to the size of the neck, as I took it off.

The Court: You were not asked about that at this time.

Mr. Hinkle: First of all I should like to have counsel state his objection. It may be that my next question will be objectionable.

The Court: Go ahead. The objection was that the witness was characterizing the effects of the rope rather than stating the facts, as he was asked to do.

Mr. Rauffenbart: Yes.

Mr. Hinkle: I have always thought and still think that a physician who has removed, for instance, a rope from a neck, can tell whether or not that rope was so tight that it would do something to the body.

The Court: Unquestionably, if he is asked, but he was not asked that. He was asked by your question to narrate in his own way what he found, not the effects of what he found.

Q. You found that rope about the neck of this woman, and what was the effect of that rope being placed in that position and drawn as tightly as is apparent from the examination of the exhibit? What was the effect of that upon this woman?

A. A neck of her size, a rope of this tension, drawn to this loop, would be complete obstruction of circulation and air.

Q. And that would mean what?

A. Death by asphyxia.

Q. Death?

A. Death by asphyxia.

By the Court:

Q. The rope was twice around the neck as you have it there, I take it?

Mr. Hinkle: I can help your Honor in a moment.

By Mr. Hinkle:

Q. Doctor, have you a piece of cord that you can demonstrate how this was tied in its original state about the neck of this woman?

A. In order to see the conditions——

Q. Suppose you just put that around my arm in the same way that that rope was put around this woman's neck.

A. In the first place, let me say this: That I have measured this rope piece by piece, I didn't untie it. I didn't feel justified in doing that, but

measured piece by piece and bringing it out, and this is about the length of that rope.

Q. In its original state?

A. As it was before it was tied.

Q. How was it used?

A. Well, I can only say how it could be to produce this particular thing.

Q. Go ahead.

(The witness demonstrated, using Mr. Hinkle's arm and a piece of rope.)

By the Court:

Q. First a loop and then a knot?

A. The ends were knotted quite firmly at a sufficient distance to allow—this is a little too far. Then by throwing it around and drawing it in that way, and then after drawing it tight, a simple knot. This knot is in place and the loop is in place. It isn't a double wrap, but a loop thrown around and just right through that way.

Q. But there were two thicknesses of the rope around the neck?

A. Two thicknesses of the rope, but it was by reason of the loop so fashioned and pulling on the loop, rather than by a double tying, as is more apt to be the case. During the tying of the knot which allowed this still to go, this double knot here, during the tying of that, the hair had been caught in this knot.

Q. In the hard knot?

A. In the hard knot which fixes this loop so it doesn't slide backwards, fixes it taut.

Mr. Hinkle: I offer this rope in evidence.

(The rope was marked Exhibit S23.)

By Mr. Hinkle:

Q. What was the cause of the woman's death?
A. Strangulation.

By the Court:

Q. You were not able to say, if I understood you, Dr. Wadsworth, whether some marks which may have been bruises were, in fact, bruises or not, due to the condition of the body?

A. They might have been considered bruises, but at an advanced stage of decomposition the blood passes out from the vessel walls and simulates very closely an ante-mortem bruise that is decomposed, and it is not safe—I don't believe I would be justified in stating positively that they were bruises. I think that there were several bruises on the arm and on the chin, but to state that positively, as I believe the other matters to be stated, I do not feel justified.

By Mr. Hinkle:

Q. That was because of the advanced stage of decomposition?

A. Yes, sir. You see, the hair was coming off and the skin of the hands was just hanging, and the skin of the body was loose, and the body was—the organs were decomposed.

Q. Will you just turn, please, to the photograph, for instance, S18, the hands dropping down there, that fringe around the fingers, is that the flesh?

A. The skin of the hands separated like a glove after a period of time in which the outer skin and the nails and the palm all are like a glove, separated. That is the condition. That is the body as it was laid on the slab.

Q. I direct your attention to Exhibit 19.

A. There is the cord in place. The photographs were taken before I arrived, and you wouldn't recognize this because it has been cleaned.

Q. Is this rope in picture 19, is that the way it appeared to you when you saw it, the rope on the neck of that body?

A. That is the position of the rope. That is a photograph of it before I saw it.

Cross-examination.

By Mr. Rauffenbart:

Q. Doctor, the neck and the face of the deceased would swell following this decomposition or as the decomposition progressed this swelling would increase, would it not?

A. I think it had about reached the extreme swelling which would take place. I don't think it would go on any further.

Q. Could it have been possible that this rope had been placed around the neck of the deceased subsequent to her death?

A. It is so hard to say what is possible and what

is not possible. It is hard for me to say that it is absolutely impossible, but I don't think, and I am quite sure it is highly improbable. From the condition of the tissues and the suffusion of the face, I believe there was a residual condensation or congestion from the stoppage of the return circulation. I don't know whether I have made that too technical and confused for you or not, but I believe there was sufficient suffusion there to indicate that there was before death a suffusion, that it did not look as though it was a pure decomposition suffusion. That is a rather technical matter and it requires a great many post mortems on a great many different bodies.

By the Court:

Q. What would you normally find in a case of strangulation on the face?

A. I have seen so many of these floaters——

Q. The face would swell, would it?

A. Floaters come up in the river at all stages, and we see them in all conditions, and they are bloated and they are bloated, but they are also—the swelling is also in other parts in proportion, and the best that I can do is to judge from the series that I have had.

Q. Won't you tell the jury——

A. The best I can do is to estimate from the series of cases that I have had, that I believe there is a decided element of ante mortem suffusion, due to the stoppage of return circulation of the blood in this case.

By Mr. Rauffenbart:

Q. Would that suffusion have occurred if this rope had been placed around the neck within a short period, a number of hours, after the death of the decedent?

A. No, there would be no such action as that.

By the Court:

Q. Be no circulation after death?

A. There might be a pumping up through the veins, but not the arteries, because the arteries are empty, except in unusual conditions, and the stoppage of the circulation would be on the veins and would prevent the suffusion passing up through the veins.

By Mr. Rauffenbart:

Q. You arrived at your conclusion that this was death by asphyxia from your inspection of the neck, this noose and the body, did you not?

A. In a large measure, yes.

Q. Because of the fact that the body was so advanced in decomposition that you could not do otherwise?

A. Well, I was not able to adduce from the internal organs the finer points which are sometimes seen in asphyxia, on account of the decomposition. I was reduced, therefore, to the necessity of drawing conclusions rather more carefully and studying the effects more carefully than I would otherwise have

found necessary. Had there not been eliminated—by the process of decomposition, elimination of the internal hemorrhages and the evidence of raised blood pressure which we find in fresh bodies, which would have helped me very materially to make a positive determination as to asphyxia, that being eliminated I had to go back more carefully and study more particularly the minute details of the head and face and the condition of the neck.

Q. Ordinarily if decomposition had not set in, you would have examined the brain and heart and the lungs and other organs to determine?

A. Well, at the time the hair was coming off and we had not identified the body, and I did not feel—at the time of the first examination I didn't feel we ought to interfere with the examination and identification, so I didn't cut the scalp, but I very carefully went over the scalp and made an examination of the internal organs without so far opening them that it would destroy certain other processes which might be called for, but the organs were examined in situ, that is, each organ was examined, the lungs, heart, liver and spleen were examined by simply opening the front of the body and examining each organ in its position, but as for any cutting or minute examination, the condition was such that it would have been only a pretense.

Q. It couldn't——

A. There was no remaining evidence for me to determine whether or not there had been a slight increase in blood pressure. In fact, with a woman of this type there isn't a good deal of blood pressure. She generally goes out by shock and asphyxia and

brain anemia, and doesn't have the asthenic reactions of a strong man. You don't find that internal evidence, anyhow.

FRANK JULIANO, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Juliano, after you made—did you make an inspection of these two trunks that have been offered in evidence here?

A. Yes, sir, after it was returned.

Q. After they were returned? Did you find any piece of material in or about Mrs. Schaaf's home that belonged to either of these trunks?

A. I found a tray to the large trunk in the basement and a partition from the small trunk also in the basement.

Q. Is that the piece that came from there?

A. That came from the basement. That is the tray to the large trunk.

Q. That, you say, belongs in this trunk?

A. In the large trunk.

Mr. Hinkle: I offer in evidence the tray that came from this trunk.

(The article was marked Exhibit S24.)

Q. I show you a bunch of pieces of material, wood. Where did you find them?

A. In the basement of the house.

Q. Mrs. Schaaf's house?

A. Yes, sir.

Q. Where do they come from? Where do they belong?

A. These small pieces are the partition of the small trunk.

Q. You mean the partition in the lid of this small trunk?

A. Yes, sir.

Q. Where did you find them?

A. In the basement of the Schaaf home.

Q. Did you find near them any tool of any kind?

A. A hatchet.

Mr. Hinkle: I desire to offer the pieces of lumber.

(The articles referred to were marked Exhibit S25.)

Q. What is this?

A. That is a hatchet.

Q. You found that with those pieces of lumber?

A. Yes.

Mr. Hinkle: I offer the hatchet in evidence.

(The hatchet was marked Exhibit S26.)

Q. Mr. Juliano, where did you find this piece of rope?

A. In the kitchen cabinet.
Q. In whose home?
A. Mrs. Schaaf's.

Mr. Hinkle: This has been marked for identification S20. I now offer it in evidence.

The Court: It may be marked.

(The piece of rope was marked Exhibit S20.)

Q. I show you another small piece of rope. Where did you find that?
A. I found that in Mr. Fine's room, in a derby hat in the closet.
Q. You say in a derby hat. What do you mean?
A. A black derby.
Q. Rolled up in the crown of the hat?
A. Put right inside of the derby like that, and the derby was in the closet on the shelf.

Mr. Hinkle: I offer it in evidence.

(The hat was marked Exhibit S27.)

Q. I show you Exhibit S8 and Exhibit S3 for identification.

Mr. Hinkle: I offer S3 for identification in evidence.

The Court: It is admitted.

(The article previously marked S3 for identification was marked Exhibit S3.)

Q. Is that the lock that was taken, S3, from her door?

A. Yes, sir, that is the one.

Q. That is the one you cracked open with the hammer?

A. Yes, sir.

Q. Let me call your attention to two keys. Here are two keys, and we will note that these keys will open that lock that was found upon her door. Where did you get these keys?

A. They were found the next day on the mantelpiece over the fireplace in Mrs. Schaaf's room.

Q. Look at the picture number 21.

A. They were found right here on that shelf.

Q. The keys were?

A. The keys to that lock, yes, sir.

Q. Mr. Juliano, I call your attention to the fact that on the lock, Exhibit S3, there is a number. What is that number?

A. There is a serial number.

Q. What is the number on the lock?

A. There are two numbers on it.

Q. Well, what are they?

A. One is the serial number and one is the combination number.

Q. What number is on the lock you have, what number there?

A. This is combination 10.

Q. And on the lock, S8, what number have you there?

A. Combination 11.

Q. Do you know about how locks of this kind are sold?

A. Yes.

Q. How are they sold?

A. They are sold in dozen lots.

Q. What do these two numbers, ten and eleven, mean?

A. It means the combination number. They are numbered from one to twelve.

Q. So that if I went in and bought two locks, they would come from the package in numerical order, would they?

A. It they wasn't disturbed in the box.

Q. So that when we find number ten and number eleven, we find two locks that were side by side in the same box?

A. That is right.

(No cross-examination.)

PAULINE D. LOGAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Logan, where do you live?

A. 600 40th Street, North Bergen, New Jersey.

Q. How long have you been living there?

A. Since the first of March.

Q. Prior to March first where did you live?

A. 128 West 47th Street in Bayonne.

Q. How long had you lived in Bayonne?

A. Since September.

Q. Are you in any way related to the deceased, Mattie Schaaf?

A. My aunt.

Q. Your aunt? I show you a piece of paper and ask you whose writing that is?

A. Mine.

Q. You wrote that?

A. I did.

Q. Having written it, what did you do with it?

A. I sent it to my aunt, 31 South Connecticut Avenue.

Q. Mrs. Schaaf?

A. Mrs. Schaaf.

Q. Do you remember the date?

A. Not exactly. About the 7th of September.

Q. About the 7th of September?

A. Somewhere about there.

The Court: 7th of September last?

A. Yes.

Q. I show you another letter.

A. That is my writing.

Q. Does that tell you about when you sent this letter?

A. Yes. They both were sent out at the same time.

Q. The same day? When did you talk with Mrs. Schaaf last?

A. 30th day of January, this year.
Q. Was that conversation over a telephone?
A. Yes.
Q. From where to where?
A. From Bayonne to Atlantic City.
Q. Did you advise Mrs. Schaaf at that time——

Mr. Rauffenbart: I cannot see the relevancy of this.

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

Q. Did you advise Mrs. Schaaf at that time when you would leave Bayonne?
A. I told her we were going to move somewhere around the first of March.

Mr. Rauffenbart: I interposed an objection, and, of course, that is in, but I cannot see under what theory this telephone conversation or any other conversation between her and her aunt in January is admissible.

The Court: I do not know. There is nothing pending now, however.

Mr. Hinkle: I will say to the Court this: This is a case of circumstances, and I am showing the circumstances, and, of course, the threads will all come together in the end. I am not foolish enough to bother with something I do not think belongs in

here, and I would not be unfair enough to the defendant, either.

Mr. Rauffenbart: Do you mean to say you can introduce telephonic conversations between this lady and Mrs. Schaaf?

Mr. Hinkle: I am going to show the pertinence of that telephone conversation.

The Court: Go ahead.

Mr. Hinkle: You may cross-examine.

(No cross-examination.)

———

Frank Juliano, recalled.

Mr. Rauffenbart: Is this proper, to recall a witness time after time?

The Court: I suppose there are times when the calling of a witness to establish facts in continuity is proper. It is not unusual in my experience for a witness to be withdrawn in order for some fact to be established.

Mr. Rauffenbart: It seems that all this testimony should have been put in on direct examination of this witness when he was first on the stand.

The Court: Perhaps, if there had been no objection to it, and there might not have been any, but there might have been. Go ahead, Mr. Hinkle.

Direct examination.

By Mr. Hinkle:

Mr. Hinkle: I neglected to have this marked for identification when the lady was there.

(The paper referred to by Mr. Hinkle was marked S28 for identification.)

Q. Mr. Juliano, I show you a piece of paper that has been marked S28 for identification. Did you ever see that paper before?

A. Yes, sir.

Q. Where did you see it first?

A. The first time my attention was drawn to it was in the Prosecutor's office.

Q. In the Prosecutor's office? Do you know how the Prosecutor got it? Which Prosecutor called your attention to it?

A. You did. Mr. Hinkle.

Q. Do you know how Mr. Hinkle got hold of it?

A. I brought it in.

Q. In what?

A. In that black bag.

Q. When you brought that in in the black bag, did you know the paper was in the bag?

A. There was many papers in there.

Q. Where did you get the papers that are in this bag?

A. Out of Mr. Fine's room.

The Court: Where did you get the bag?

A. I got the bag in the Schaaf home in the closet in the hall.

Q. Will you tell us how you came to get all that?

A. When I went back to Mrs. Schaaf's home after bringing Fine to the Prosecutor's office, I asked Frank May if he had found——

Mr. Rauffenbart: I object.

The Court: Don't tell what you asked anyone else. You are asked what you did.

A. I went to Fine's room and there found a lot of papers in his dresser. In order to keep them all together, I went through the house and looked for a bag, and I found that black bag in a linen closet underneath the stairway. There was some articles in there, and I dumped them all out, shook the bag out, looked in the bag to make sure there was nothing in it, took it up to Fine's room and took all the papers that were in Fine's room and placed them in that black bag and took them to the Prosecutor's office.

Q. Who was with you when you gathered up this lot of papers?

A. Frank May and Hoffman.

By the Court:

Q. Do I understand that the paper, S28 for identification, was in Mr. Fine's room with other papers?

A. At the time I took the papers I didn't examine them.

Q. Well, was it?

A. Yes, sir.

(No cross-examination.)

FRANK L. MAY, recalled.

Direct examination.

By Mr. Hinkle:

Q. Were you with Detective Juliano when you took this lot of papers from the defendant's room?

A. I was.

Q. Was this bag empty when you put the papers in it?

A. It was.

Q. You are sure about that?

A. Yes, sir.

Q. Did you ever see this paper, S28, before?

A. Only in our office.

Q. In your office?

A. Yes.

(No cross-examination.)

CECILIA HEENAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Miss Heenan, where are you employed?
A. In the Atlantic County Prosecutor's office.
Q. In what capacity?
A. Secretary to Mr. Hinkle.
Q. Did you assist Mr. Hinkle in the preparation of this case?
A. I did.
Q. I show you Exhibit S28 and ask you if you ever saw that paper before?
A. Yes, I have.
Q. Where did you see it first?
A. That was found in the black bag that was turned over to me.
Q. This black bag that has just been used?
A. Yes, sir.
Q. Who was present when you found that?
A. I found it myself.
Q. No one present?
A. No.
Q. You were examining the contents of the bag under Mr. Hinkle's direction or under his order?
A. That is right.
Q. And you found that paper?
A. That is right.

Mr. Hinkle: I offer it in evidence.

(The paper was marked Exhibit S28.)

Mr. Hinkle: May I read this into the record?

The Court: Yes.

Mr. Hinkle: Reading into the record Exhibit S28: "How and where to stop through train from Atlantic to New York. Stops at Market Street, Newark, New Jersey. We will be there. This station is nearer to us than New York station is. Our telephone, Bayonne, 37797. Street address, R. L. Logan, 128 and 130 West 47th Street, Bayonne, N. J."

Q. Miss Heenan, were you in Mr. Hinkle's office on the afternoon of the 7th of March, when Detective Juliano brought this defendant, Fine, into the room?

A. I was.

Q. Was Mr. Hinkle there?

A. Yes.

Q. Was the Prosecutor there?

A. Prosecutor Repetto, yes.

Q. Do you remember that Mr. Hinkle asked Mr. Fine a number of questions?

A. Yes.

Q. Did you make a memorandum of the so-called high spots, as you thought they might be?

A. Yes.

Q. Did you later type that yourself?

A. Yes, I did.

Q. Is this it?

A. Yes, that is my original transcript.

Q. Using that to refresh your memory, would you tell the jury, please, what was said generally between Mr. Hinkle and the defendant?

Mr. Rauffenbart: Is the question directed to the so-called high spots?

Mr. Hinkle: Those are the high spots that she took down. She can tell other things, perhaps. I want her to tell as best she can from her memory. At that time Fine was not under arrest.

The Court: Go ahead.

Mr. Rauffenbart: Fine was in custody, however, was he not?

Mr. Hinkle: Not then.

The Court: As I understand it, simply brought in for questioning in connection with the finding of this body?

Mr. Hinkle: Yes. Juliano said, "We are going to take you down to the Prosecutor's office for questioning."

Mr. Rauffenbart: Suppose Fine had said, "I am not going down to the Prosecutor's office."

Mr. Hinkle: I can't answer what they would have done then.

Mr. Rauffenbart: To all intents and purposes, this man was under arrest.

The Court: It does not so appear. If he was in custody, charged with a crime, a different rule would prevail, but he was not in custody.

Mr. Rauffenbart: I submit it is not necessary that he at the time be charged with a crime if he was in custody.

The Court: No. He was neither in custody—no one had been taken into custody. No one had been accused of the perpetration of any crime.

Mr. Rauffenbart: It is not necessary to say in so many words, "You are under arrest or in custody," but if the circumstances indicate that he was in custody, then I don't believe, without the usual warning and the usual preliminaries, testimony of any statement that he may have made would be admissible.

The Court: I think a different rule obtains under the circumstances here involved.

Mr. Rauffenbart: Will the Court permit me to ask a few questions of the witness previous to the examination?

Mr. Hinkle: I have no objection to his making the inquiry.

The Court: Go ahead.

By Mr. Rauffenbart:

Q. Who were present in this room besides Mr. Fine?

A. Prosecutor Repetto, Mr. Juliano, Mr. Hinkle, and, of course, Mr. Fine and myself.

Q. Who brought Mr. Fine in?

A. Juliano.

Q. Who is Mr. Juliano?

A. Mr. Juliano is a county detective attached to our office.

Q. Do you of your own knowledge know whether or not Mr. Fine knew that Mr. Juliano was a detective?

A. Not of my own knowledge.

Q. Was anything said in the room previous to the taking of this statement that would indicate that Fine knew that Mr. Juliano or Mr. Ebbecke were detectives?

A. Mr. Ebbecke wasn't there.

Q. Who was there besides Mr. Juliano?

A. Prosecutor Repetto, Mr. Hinkle, Mr. Juliano and myself.

Q. Was anything said to indicate to you that Mr. Fine knew that Mr. Juliano was a detective?

A. Well, we were each individually introduced.

Q. And he was told that?

A. Yes.

Mr. Rauffenbart: I object to the question asked by Mr. Hinkle.

The Court: The objection is overruled.

Mr. Rauffenbart: On the ground that Mr. Fine had been brought to the office of the Prosecutor of the Pleas; he was told that he was in the presence of the Prosecutor; he was told he was brought there by a county detective; and I submit while he was not directly told, that he was in custody, and, therefore, this question is objected to.

The Court: I think a different rule obtains in the case of a statement made by a person not in custody.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

By Mr. Hinkle:

Q. Miss Heenan, did anyone threaten Mr. Fine if he did not talk?

A. No.

Q. Did anyone use any abusive, coarse, vile, foul, vulgar language to him?

A. No.

Q. Did anyone offer him any reward if he would make a statement?

A. No.

Q. Did anyone threaten to do anything to him if he didn't talk and make a statement?

A. No.

Q. As a matter of fact, Mr. Hinkle said, "Mr. Fine, I will ask you some questions," didn't he?

Mr. Rauffenbart: I object.

The Court: I suppose it is rather suggestive.

Q. What did Mr. Hinkle say to him when he first came in?

A. Mr. Hinkle just talked to him in a general manner. He said, "Mr. Fine, have a seat," of course, and, "Mr. Fine, this is Prosecutor Repetto and I am the assistant, the first assistant; this is Miss Heenan, the stenographer, Mr. Juliano, detective attached to the office," and you said, "I am going to ask you some questions and probably you can help me on a matter." Just words to that effect. You see, it wasn't a statement.

Mr. Rauffenbart: I ask that the other part be stricken out.

The Court: That will be stricken.

Q. Now, go on and tell us generally what was said, using your memorandum there to guide you.

A. Well, Mr. Fine was asked his name so that I would get it, his address and his age. He gave his name as Louis Fine, his address 31 South Connecticut and his age as forty-five or forty-six. He said

that he lived in Atlantic City for about fifteen years and he gave his recent address as 31 South Connecticut Avenue. He said that he lived here in a room and he had roomed there since about last October. He gave the name of the landlady as being a Mrs. Schaaf. He said that his business was real estate, but that he wasn't doing anything now. He gets a job every now and then doing some tailoring. He worked for a man by the name of Sam Slotoroff ——

Mr. Rauffenbart: Are you reading from that?

A. No, not exactly. Not word for word. Just referring to notes.

Mr. Rauffenbart: I think it should be used to refresh your memory, but I think she should testify to what the conversation was from her memory.

The Court: If she can. If she can recall, if she can testify, of course, from memory; but if she cannot recall, she may refresh her recollection by the use of notes made at the time.

Mr. Rauffenbart: I don't care to interpose an objection, but unless my eyes deceive me, the young lady is reading directly from that paper, and in view of the statement of Mr. Hinkle that these were the high spots, I thought she should attempt to testify from her memory, rather than read from that paper, because we are entitled to the whole conversation and not the high spots alone.

The Court: Yes. As far as she recalls it, you are entitled to the whole conversation. Suppose you propound questions and answers.

Q. Do you remember, Miss Heenan, he was asked what his business was, what he said?

A. He said his business was real estate but that he was doing some tailoring now.

Q. Tailoring?

A. Yes.

Q. Did he say for whom he worked as a tailor?

A. Why, he suggested the name of Sam Slotoroff, as a salesman, I think, and another place—he didn't give the name, in the ten hundred block on Arctic Avenue, and another place down on Atlantic Avenue, but it was impossible to get the names.

Q. You can refer to your notes, if you don't recall.

Mr. Rauffenbart: I withdraw my objection to the use of the paper.

A. Then I may read from the paper?

The Court: Yes.

A. Said he had no particular reason for locating at 31 South Connecticut Avenue. He claims to have always lived around that vicinity. That is, he lived at 117 South New Jersey Avenue at a Mrs. MacBride's; claimed to have lived there for eight or nine years, and after leaving 117 he went to live for a few weeks at 208 North Massachusetts Ave-

nue, and then moved to 31 South Connecticut Avenue. He claimed that he left 117 South New Jersey Avenue due to the fact that he owed Mrs. MacBride money for rent and she asked him if he wouldn't do her the favor and move on account of it being the beginning of the season, and he did so.

Said that Mrs. Schaaf went away last week, Tuesday night. Said he had forgotten his key and he rang the bell and Mrs. Schaaf answered it and let him in. Another man, he claims, came out from Mrs. Schaaf's room, that she didn't say anything to him, only, "Mr. Fine, I think tomorrow I will have to leave for a few days, and if anyone calls, tell them I'll be back Monday or Tuesday." Fine then went on his way. Said the man that night who was with Mrs. Schaaf was a Mr. Miller. He did not know then that he was Mr. Miller until the next day. Saw him for the first time on Tuesday night. Does not know where he lives. Said that on Wednesday, about one or two o'clock, he came home and found that gentleman—meaning the man whom he called Miller— said he did not know him, but that Miller said to him, "I guess you recognize me." He then asked Fine if he had been living there long, that Mrs. Schaaf must know him well, because she told him that she was going away and that he should tell anyone that would ask for her that. He then asked Fine to do him a favor. Told Fine that his business was patent medicine. Fine then said to Miller, "I thought you went away with Mrs. Schaaf." Miller then said, "I did, but she won't be back until Monday or Tuesday." Fine told Miller that he would do the favor for him. He asked

Fine to ship a trunk that he had to Philadelphia, Pennsylvania, he was so busy and did not have time to do it, and told Fine to be very careful with that stuff, it was patent medicine. Gave Fine directions that he wanted it insured for $500.00 and wanted it to go to Philadelphia, and then gave him $25.00 to pay expenses. Fine then took the money and went and got men to come and get the trunk. When men came he showed where the trunk was and took it to the railroad express. Miller told him that trunk was to go to 846 North 5th Street, Mitchell J. Lichow. Fine said that he recognized the name, because he had collected rent for Lichow. Fine then asked Miller whose name he should put on the receipt and he said, "My name—S. Miller." Said he got receipt from railroad, then he started home and met this man Miller in front of the Chelsea National Bank, South Carolina and Atlantic Avenues —"Just as if he had expected me." Miller asked him if he had shipped it, and asked for receipt and bill of lading. After that Miller came back to house and locked room. Then he told Fine to meet him in Philadelphia the next day, meaning Thursday. Fine asked where he was to meet him, where his office was, and he told Fine to just meet him on the corner where trunk was shipped. Went to Philadelphia and met Miller before he went to Lichow's store. Miller told him to go to Lichow and ask him if he had a store or room in that vicinity that he could rent. Fine went to Lichow but Lichow had nothing. Fine then went out and met Miller and told him what Lichow had said. Then Miller told him to go and get something for him around that vicinity, and

after I got it to go and get the trunk and put it in. He gave him the trunk receipt and bill of lading. Miller gave him no money with which to rent a room. He got a room at 824 North 5th Street, Philadelphia, and then went and got an expressman to take the trunk there. Paid $3.50 for room; gave expressman $3.00 for taking trunk there and then gave him $2.00 for service. Then Fine started to look for Miller, but could not find him—he wanted Miller to see what he had paid for everything. Could not find Miller so he stayed in Philadelphia until Friday morning, then he went around to the neighborhood where he rented room and met Miller on the street, probably Fifth and Parrish or Potler. Fine then told Miller that he rented the room and had the trunk put in, and then told him what he had paid for everything, told him where the room was and gave him the receipt and told him I had put it in the name of S. Miller. Gave Miller all receipts, but he did not pay him. Friday morning when he talked with Miller.

Trunk was left at 824 North 5th Street Thursday night. Stayed in Philadelphia Thursday night and came home Friday after he met and talked with Miller. Spent Thursday night at Mr. Kline's, 1401 North Park Avenue, Philadelphia. Went to this house many times, probably six, seven or eight. (He hesitated before giving 1401 North Park Avenue.) Said his wife's name was Bertha Fine, but that she had left him since last December. That he had had some trouble at his store on 17 South Kentucky Avenue, where he and his wife lived. (Never before mentioned that he lived on Kentucky Avenue, only

that he had lived uptown.) Said also, that he lived with his wife at 616 Pacific Avenue, and that he had lived at Mrs. MacBride's son on New Jersey Avenue before he was married. Last time that he had seen his landlady, Mrs. Schaaf, was on Tuesday night, and that was when he saw her with this man, Miller.

Miller's description, according to Fine: He is a man a little taller than himself—Fine. A little bit like Mr. Hinkle. That he was a good dresser, a refined looking, well-dressed man.

Fine said he took Miller's word for it that it was patent medicine. Said that the maid at Mrs. Schaaf's had told him that she did not know Miller and that she had never seen him, and that the maid left early, and that she did not work on Wednesday. Said that Miller was with Mrs. Schaaf at about seven o'clock, Tuesday; that the colored maid left about five o'clock.

Fine said that he was married to Bertha, his wife, about two years ago in New York. (He was married to her in 1927 probably.) Denied that he killed or had anything to do with the killing of Mrs. Schaaf. Said that she was as good as gold to him. When he didn't have rent, she never said a word to him. Does not know if Miller killed her. Said he was home on Tuesday night, likewise on Wednesday night, but on Thursday night was in Philadelphia, and on Friday night was home. Mrs. Schaaf told him on Tuesday night that she was going to leave tomorrow—meaning Wednesday, with this man, known to Fine as Miller, and that she said to him (Fine) that if anyone called, to tell them that she

would not be home until Monday or Tuesday. Only night in Philadelphia was Thursday night. Positive that trunk was delivered to 824 North 5th Street on Thursday night.

Admits he never knew anyone that sold patent medicine except this man known to him as Miller. He claims to have paid particular attention to this Miller because he had respect for him on account of Mrs. Schaaf.

Can't remember dress worn by Mrs. Schaaf on Tuesday night, when he last saw her. Fine again gave Miller's description: He is on the form of Mr. Hinkle; light complexioned; well dressed; about forty-five or forty-six or fifty years of age; believes he is an American, not Jewish.

Q. After that statement was given, there was a conference between the Prosecutor and the first assistant, Mr. Hinkle, wasn't there?

A. Yes, there was.

Q. And after that Fine was ordered held ——

A. Yes, he was ordered held.

Q. —for future investigation.

(No cross-examination.)

VALENTINE HOFFMAN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Are you a detective attached to the Prosecutor's office?

A. Yes, I am.

Q. How long have you been there?

A. A little over nine years.

Q. Were you sent to the premises 31 South Connecticut Avenue in Atlantic City on the afternoon of the 7th of March to assist in the investigation?

A. I was, about five P. M.

Q. In going through the room said to have been Fine's room, did you find some papers?

A. There were numerous papers and numerous keys.

Q. I call your attention to a letter. Did you find that in Mr. Fine's room?

A. I did.

Q. With the contents that are in the envelope now?

A. There was a card in the letter at the time. I paid no particular attention to it, because it was not addressed to Mr. Fine.

Q. And that you found in his room?

A. Yes, sir.

Q. Who was with you at that time?

A. Mr. May.

Mr. Hinkle: I offer the letter in evidence.

Mr. Rauffenbart: This letter is dated back in 1930. I cannot see the relevancy of it. It seems to me it is rather remote.

The Court: Well, I have not seen it.

Mr. Rauffenbart: I object to it as irrelevant and immaterial.

The Court: It will be admitted.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES, (Seal),
Judge.

(The paper was marked Exhibit S29.)

Mr. Hinkle: I desire if I may at this time to read this into the record. Reading first the envelope, it bears the postmark, "Philadelphia, Pa., July 10, 1 P. M., 1930," and the cancellation is, of course, the usual cancellation. Then on the corner there is written M. Leese, N. E. corner 5th & Lombard St. It is addressed to S. Miller, Atlantic City Post Office, Pacific & Pennsylvania Avenues, Atlantic City, N. J., general delivery. The letter itself is on plain paper, written with pen and ink, dated 7/10/1930: "Mr. S. Miller: Received your letter

from 6/23/1930 in reference to ad in the Jewish World. The woman has turned over her affairs to me and I send you this letter. If you will be in town, you can call on me and I will explain everything to you. I send you my address: N. E. corner Fifth & Lombard, Morris Leese, Lombard 4263. You can always find me from eleven to twelve A. M. or by mail." Enclosed with that letter is a paper the size of a card, and it says, "M. Leese, 422 South Street," it looks like, "L-o-m. 3794, from eleven to twelve A. M."

(No cross-examination.)

VIRGINIA E. MOORE, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Moore, are you a stenographer?

A. I am.

Q. Were you called in the Prosecutor's office sometime in the forepart or middle of March for the purpose of taking stenographically a statement or a conversation had with this defendant, Fine?

A. Yes.

Q. Did you take such a statement?

A. I did.

Q. Did you transcribe your notes ——

A. Yes.

Q. —into typewriting?
A. Yes.
Q. I have two copies here ——
A. Both made with one impression.
Q. By you personally?
A. Yes.
Q. According to your stenographic notes?
A. Yes.
Q. Before that interview was taken down—do you recall who was present at the time?
A. I don't believe I would recall without looking.
Q. You may look at the memorandum there.

The Court: Is there any objection to using the typed copy?

Mr. Rauffenbart: No objection at all.

A. Mr. Repetto, Mr. Hinkle, Mr. McAllister, Mr. Mallin, Mr. Harrold, Mr. Juliano, Mr. May and myself.
Q. Was anything said to Fine ——

The Court: Was Fine there?

A. Oh, yes.
Q. Anything said to Fine to the effect that he must talk?

Mr. Rauffenbart: I think, if the Court please, before the statement, the question should be framed what was said to Fine, if anything.

The Court: Yes, I think perhaps so.

Mr. Hinkle: I wanted to ask this first question.

The Court: Very well. She may answer.

(The question was repeated.)

A. No, indeed.

Q. What was said to him concerning the interview, whether he was obliged to talk or not? Any threats made to him?

A. No. When he came in the room—I remember this particularly—Mr. Hinkle was very courteous to him, and apparently he had been ill or something, and the first thing Mr. Hinkle said to him was, "Are you able to talk a little bit?" and he said, "Yes."

Q. Then what happened?

A. Shall I read you what went on from there?

Q. Did he go on and talk?

A. Yes. You said, "That is fine."

Mr. Rauffenbart: I object. He was then in custody, was he not?

Mr. Hinkle: Yes. What is your objection?

Mr. Rauffenbart: Was he given any warning?

Mr. Hinkle: There seems to be an impression that there must be a warning given. There is no law requiring that. If a warning is given, it does not change the situation at all. The man can say he

was present, he was coerced, he was invited and so on. The question is, did his statements come voluntarily and freely, without any reward, without any promise, without any coercion. If they did, they are competent evidence. I admit I did not go through any warning with this man, but I asked him if he wanted to talk, and he talked, and you will see through the interview he frequently said—I said, "Well, are you willing to go ahead and talk?" and he said, "Perfectly willing," and he went ahead, as I think the stenographic notes will show. I have always contended that a warning is never required.

The Court: The question, I assume, is whether or not it was a statement voluntarily made without threats, without any coercion, of the free will of the person making the statement. I assume that is the test.

Mr. Rauffenbart: I suppose I am entitled to ask a few questions?

The Court: Yes, you may.

By Mr. Rauffenbart:

Q. Mrs. Moore, just what was said before the statement was made, by Mr. Hinkle or any other attaché of the Prosecutor's office to Mr. Fine?

A. That is all. Just asked him if he was able to talk a little bit and he said yes.

Q. Was anything said to the effect that, "It will be better for you to get it off your chest?"

A. Oh, no; no.

Q. Nothing like that?

A. In fact, during the whole time he was there Mr. Hinkle very often cautioned him, he said, "Now, you don't need to say anything that you don't want."

Mr. Rauffenbart: I think it is all right.

Mr. Hinkle: May I read this into the evidence, and I will suggest, if I may, in order that it be more intelligent to the jury, that I ask the witness the questions and she read the answers.

Mr. Rauffenbart: It can be read any way you want it.

Mr. Hinkle: May I ask the other Assistant Prosecutor, Mr. McAllister, take my place in the reading of the questions?

The Court: Yes. I suppose the question is whether or not these questions were propounded and these answers made by the defendant at that interview?

Mr. Hinkle: That is the question.

(Mr. McAllister read from the transcript of the conversation held between the defendant, Louis Fine, and the persons present in the Prosecutor's office at the time before-mentioned by the witness, and Mrs. Moore, the witness, read the answers contained in the before-mentioned transcript.)

Q. Able to talk a little bit?

A. Yes.

Q. That is fine.

A. Can Mr. Fineberg come in here?

Q. Can he? Not just now, but later; later, when we have another examination. This is a private one. Mr. Fineberg represent you; he your lawyer now?

A. Yes; that is, the only thing, of course, I haven't got no money.

Q. All right; he represents you. I wonder if you can tell us the names of some of Mrs. Schaaf's friends that used to come there?

A. That is something that is hard for me to tell. I know a whole lot people came there.

Q. If you can tell.

A. I forgot. I wanted to tell yesterday, was Mr. Fineberg by me; I forgot to tell him that. And I thought after I tell, and I couldn't, he went away and I couldn't tell him and I didn't tell you about it. Sometimes—she was a very nice sociable lady, Mrs. Schaaf, very nice. She knowed I was once a rich man and now I haven't got no money. She said, "During the winter the house is vacant, if you have something you will give me, and if you not, it is all right, too." Of course, whenever she send something, I went for her. She was a very nice old lady. One time she told me—she was only here one year—no, in March she said it will be a year, she came in last year here, she has been working there for a gentleman, for a very rich man, and he died and he left her a will, his house, and some kind of an income, she said. But this they been fighting, the nephews or the other people, I don't remember,

and she said they didn't like she should get it the house, but a lawyer fixed it so she should get it. And then—what else she said—and then she said—then she said she received once a letter from Mays Landing, they will have to come up in March something the last disposition; and she went to that lawyer who took care of her, and that was his lawyer. I think that is the way she said.

Q. Did she say who the lawyer was?

A. She said some kind of a nice old lawyer. He is friends with Judge Cole. He was his lawyer, that man's lawyer.

Q. Yes.

A. And she went and she showed him the notice, and she asked him if she is to be there. He said, "No, there is nothing to it, it is just a notice but you don't have to be there. But it will come the time everything will be fixed for you. Everything is all right. Don't worry." That is what she told me. She said last year she didn't make out so good, but this year she hopes she will make better, and if I will live there she says, if I will be willing, she says I will always give her some place, if I help her a little. I said any time, because she was so good to me; slow time now. Why shouldn't I? And that is all I know about the conversation. But who is the relations, I don't know. But I know people used to come in there. She was kind of a lady was —liked a little drink. Sometimes she spoke to me and she was a little intoxicated; but I had respect for her, you know. She is an old lady. I don't drink myself.

Q. You never drank?

A. Never. Don't drink at all; don't use no stuff at all, for years and years.

Q. I was asking about these people.

A. She was sick a few weeks ago and I didn't know it, and I was in Philadelphia to look for a job. Then I came back. Then the colored woman, she says she is sick, and I am trying to go in back, and I knocked on the door. And she has been sitting there with that colored lady, and she said, "I don't feel very well." I said, "You had a doctor?" She said yes, how she expected the doctor right away, and right away hear the bell, and I have opened the door.

Q. The doctor?

A. The doctor. Tall gentleman. He come in and I went out, see, I went upstairs. And that day I haven't seen up until the evening.

Q. What evening?

A. In the same evening—in the same day. Then I went down, I say—I knocked on the door, I say, "How are you?" The door was open but I didn't want to go in. I says, "How are you, Mrs. Schaaf?" She says, "I feel very bad." I said, "You better make that girl she shouldn't go away at night;" which she did. She did. She get her to stay all night with her. Then I said, "You have a sister; why don't you let them know? Let them come to you, help you." She was a very good woman to everybody. She says, "I tell you the truth I don't like to bother with relations." I don't want to—well, I don't want to say nothing. Then that lady stood over night, and the morning before I went, I went to the back and I knocked on the

door. She said, "Come in." I said, "How you feeling, Mrs. Schaaf?" I say, "The lady took care of you?" She said, "I tell you the truth, she has been sleeping all night in the other room, in the front room she didn't come in even to see me at night. I wanted a little water and she didn't give me." I says, "Do you want something, I will bring to you." She told me I should bring her some water. Wait a minute. Then—I brought her pitcher of cold water one time, and then she told me the doctor told her the colored woman wasn't in the house. Then she said I should go to work and warm her a little water because she warm, a little water—no, milk, and she puts in something, a little bit, you know, the doctor told her she shouldn't drink plain milk, that makes her better that way. I warm up a little milk and she had it. She was satisfied. And then I walked away. After I walked away then I come in and find the colored girl. I ask her, Mrs. Schaaf—"How is Mrs. Schaaf?" in front of Mrs. Schaaf. She said, "All right." I say, "Did you slept last night here?" She says, "Yes." I said, "Do you know how"—I asked her, "Do you know, Anna"—Anna is her name—"Do you know one time is a friend of mine was sick and I been sleeping by him, and what did I do at night, I get up four or five times and I went in extra to his room, see perhaps he needs something." Why did I said it? Mrs. Schaaf understood it. She smiled. Why did I said it, she should call little better attention than she done. She kept quiet; she didn't say anything, the colored woman. But Mrs. Schaaf understood what I meant by that. That is all. Then after that,

whenever she wanted I should bring her in—I asked her in case she wants something, she should tell me, she shouldn't be ashamed, I will do anything. She —I always told her—I should bring her in a paper, something like that.

Q. When was it that Mrs. Schaaf was sick?

A. That was only about a week ago, that is all. It is only a week ago.

Q. Not long before her disappearance?

A. No. Sure not. The doctor knows it.

Q. Well, now, I want to ask you some more questions, too. Of course, if you don't want to answer these, you can just say so.

A. Anything I know.

Q. We are not threatening you or promising you anything.

A. No, no, no. One thing I want to tell you, here is a matter which I feel is white as—just as this paper, anything you want me to tell you, what I know, all about it, from beginning to the end.

Q. You will tell it freely?

A. I will, just willing to tell everything. That is what I told yesterday, when Mr. Fineberg was. I will tell everything just what I know. Why should I hide? Nothing to hide.

Q. Well, you talked freely the other day.

A. Everything what I know. That is all. Nothing else.

Q. Yes. I see. Tell me this, please. When you went there to live with Mrs. Schaaf did you know her?

A. No.

Q. She was a stranger?

A. No; I just went across the street, try to look for a room, and she has been sitting on the porch, and the other woman, ask her, I don't know how much she ask, $5 a week, and I know I can't pay. And she has been sitting and she called me up to the porch. She has been sitting on the porch. And I went up on the porch. She says, "Well, you looking for a room?" I said, "Yes." She says, "I will show you a nice room." And I went up with her and she show me the rooms, nice room. She said, "I got only about two roomers, that is all, and I want to pay the coal. I will let you have for three dollars." And I ——

Q. You took it?

A. Yes. It was a nice room; that is what it was.

Q. Where did you live before that time?

A. In 210 North Massachusetts Avenue.

Q. Yes.

A. A few weeks I live there.

Q. When you moved from 210 North Massachusetts Avenue to 31 Connecticut, did you take all your clothing and everything?

A. Yes.

Q. Your trunk and all?

A. Everything. I didn't had no trunk.

Q. Didn't have no trunk. What did you have?

A. I had paper boxes.

Q. Paper boxes. You took them all over?

A. Yes.

Q. So that there is nothing left at 210?

A. I had everything in the closet there, see, when was—when was here, when they come in there in the house, the officers.

Q. The officers went in there last Tuesday afternoon the first time.

A. Oh, no, no; now, was it Monday or Tuesday?

Q. Last Tuesday.

A. Tuesday?

Q. Yes.

A. Now, one man asked me, he says, "Where is your room?" I told him upstairs, and I went up with him and I showed him, and he saw in the closet mine two boxes. He says, "What is in these boxes?" I told him some clothes, some—something like that; he could see it. He saw it, the boxes.

Q. Did you ever see any trunks around the house?

A. I don't know.

Q. Don't know?

A. I never went all over the house—I seen one trunk standing on the second floor front, covered up with a blanket. I don't know what it is.

Q. What kind of a blanket?

A. Some kind of a colored cover.

Q. You mean an oilcloth cover?

A. No, kind of a closet cover, like some time they are covering this couch with it. I have seen this in the front of the place.

Q. Like a couch cover?

A. Yes, something like that, I seen it in the second floor there.

Q. What kind of a trunk was it?

A. It is a big trunk.

Q. Big one?

A. Yes.

Q. Whose was that?

A. I don't know; this I don't know. I have an idea it belongs to the house.

Q. What gave you that idea?

A. Because it always stood there when the time I were there.

Q. That was there before any of the other roomers came?

A. When I came in I seen it.

Q. It was there all the time?

A. Yes.

Q. Where was it, the front of the hall, on the second floor?

A. On the second floor, right in the front, by the window.

Q. Right by the window?

A. When you go up on the third floor you have to go by the trunk.

Q. Pass right close to it to go up to the third floor?

A. Yes.

Q. Did you see any trunks in the basement?

A. I never were in the basement.

Q. Never were in the basement?

A. No, sir. Never had the opportunity to be in the basement, because she has a janitor who takes care of that stuff. "Many times I ask you if you want—if you want I should help you something about the fire I will be willing to do it." She says, "No, I have the janitor, he take care of that."

Q. Yes.

A. Yes.

Q. When did you last see Mrs. Schaaf alive?

A. That was Tuesday night; Tuesday night. And she opened me herself the door.

Q. Yes. About what time?

A. That was about seven o'clock when I came in.

Q. Are you sure it was Tuesday?

A. That was Tuesday night. Positively. And I came in and I forgot mine key upstairs.

Q. Yes.

A. Then I ring the bell and she came to the door. That is the reason I know it. She opened me the door. And when she opened me the door she says, "Where is your key?" I said, "I have mine key, I didn't lost them, but I got them upstairs, I forgot it, in the other pants." She said, "All right." And then she was so lively, full of life. Then another gentleman I saw in the back, but I didn't pay much attention. I never liked to look in too much when she has company. And then after that, about nine o'clock, I came down from upstairs, I want to go buy a bottle of milk, and I went and bought a bottle of milk, and I went walking upstairs. She saw me. She says, "Mr. Fine, what are you carrying there?" I said, "It is a bottle milk." She says to me, she says, "Mr. Fine," she says, "I have an idea I will go away," she says, "for a few days tomorrow morning, and if you will be home, if anybody will answer—will ring the bell, try to answer," she said, "just I will be back Saturday or Monday."

Q. That was what time Tuesday night?

A. Around nine o'clock.

Q. On Tuesday night?

A. When I went back again, and then I said,

"Certainly I will do that." See? And that is what I said, and I went upstairs.

Q. Well, did you have any quarrel with Mrs. Schaaf?

A. No. Not with her. Always good friends. Always friends; good friends, too. I tell you, she were good to everybody.

Q. Did she owe you any money?

A. No.

Q. Did you owe her any money?

A. No, because I tell you the truth, she made me the price that time three dollars a week, and afterwards she told me, "Whenever you have little, give me; if you won't have, you won't give me; I know how you feel."

Q. Did you always pay her?

A. All the time, yes.

Q. Beg pardon?

A. I just gave her five dollars, that was about—when she was sick, that is right. I think the colored woman knowed it, because she told me the colored woman want it, "When you gave me the money, she wanted money in advance again." That is what she complained to me. I says, "Mrs. Schaaf, if you need it for yourself why should you give it away?" See. That is what I answered her.

Q. When did you see Miller?

A. That was Wednesday.

Q. Wednesday. How do you know it was Wednesday? Why—how do you know that?

A. It was the next day.

Q. The next day?

A. The next day after Tuesday.

Q. And you are sure it was Tuesday?

A. Tuesday night; I says—just I had the conversation that way.

Q. I see.

A. That was plain as—just as plain as now.

Q. What time on Wednesday did you first meet Miller?

A. When I come in, in the house, it was about one o'clock, and I went—when I went upstairs.

Q. In the daytime?

A. In the daytime. I went up, upstairs, and then when I came down ——

Q. Yes.

A. That man were downstairs. And he saw me. And, in fact, in that time there was another man who lived next door, I forgot to tell you, that had a little beard but he moved out just two hours before; this is Tuesday, when the officers come in, he moved out just two hours before, he moved out. And I told him, "Why should you move, why should you leave here? The lady will be here tomorrow." He said, "No; I don't want to discuss; I got to move." The colored woman told him the same way.

Q. He didn't want to what?

A. Didn't want to discuss, he says, no like to talk with everybody. He never talked even with Mrs. Schaaf much. Then he says to me, that Miller says, "Mr. Fine," he says. "Pardon me, how do you know my name is Mr. Fine?" He said, "I heard you—the way Mrs. Schaaf speak to you last night."

Q. He said—Miller said?

A. Yes, that is the reason I know it, because I wasn't introduced to him. He says, "My name is

Mr. Miller." I said, "All right." Then he says to me, "Would you do me a favor? Are you working now?" I said, "I ain't working now exactly." He says, "If you haven't got much to do," he says, "make yourself a little change." I said, "What is it?" He says, "I have something," he say, "a trunk, to ship to Philadelphia, and I am a little bit too busy now; I like you should go and get for me and express, to go around to get to the depot and send it away." I said, "I thought you went with Mrs. Schaaf to—she comes and goes to Bayonne, somewhere near New York." He says, "Yes, we did go, but I have business to attend over here and—I have business to attend over here and she went up there, and I went back over here." Then he says to me—puts in the hands in the pocket, and he gives me that way twenty-five dollars; he says, "That is—you will have change in your pocket, and you will need to pay for the expressman, you will pay it and I will take care of you," he says. I stood a while and I looked at him. He is a very nice-looking man. I thought, I haven't got anything to do; why shouldn't I go to work and do it?

Q. What denomination was this $25; were they five-dollar bills or ——

A. Five-dollar bills.

Q. —two tens?

A. Five-dollar bills.

Q. Five five-dollar bills?

A. Five dollars. He said to me, "You should go and do it." I figure I could make $25; is no harm in that. Why shouldn't I go and a little earn? I says —he says to me, "And I am a little busy," he says,

"I couldn't attend myself, and I will appreciate very much." I said, "All right." And I walked away to look for the expressman. I went away and looked for the expressman, and I find one expressman—no; I went in once to the express office.

Q. Yes.

A. And I gave the order she should go—they should send a man to take the trunk. That is right. And the lady took the order, and I told them the man—told her the address where the expressmen should come. And afterward she said he will be from four till five. Of course, from five—around five I go out, the man come in, he saw the trunk, one man. He said it is too heavy for him to lift it, "I couldn't do it unless you help." I says, "I couldn't help anything," I says.

Q. You are willing to tell me all this, aren't you, willingly?

A. Why not? Why shouldn't I?

Q. All right; go ahead.

A. I said I couldn't help it, because, the only thing, I said, "If you could do it, all right, and if not I can't help it, let it stay." He said, "I couldn't do it myself. Then let it go," he says, "till tomorrow," he says. Well, all right. Then he went away. After that the man come in, what is it the name, Mr. Miller come in. I says, "Just now were the expressman here and he couldn't lift this trunk by himself, and I couldn't give him a lift," I said. I said, "I couldn't do it." He said, "Wasn't there two men?" I said, "No; only one." He says, "Well," he said, "perhaps tomorrow he will come

with two men." He said, "Go and get some two men." I said, "All right."

Q. Yes.

A. And he went away, he said he will be back within an hour and a half. Then he walked away and I went to look for another express. And I found near South Carolina Avenue, I found a wagon standing, and there is a man stood there—a man stood there with the wagon, and I know him by his face, and I told him there is a trunk to be shipped, there was a trunk ——

Mr. Hinkle: He said he knows the man by his face.

Q. Is that what you said?

A. Yes, the expressman.

Q. He was the man that went down to the hospital and looked at you down there?

A. Yes. I know him, sure.

Q. Go ahead.

A. Then I said to him, "There is a trunk to be gotten—trunk to be gotten from 31 South Connecticut Avenue to the railroad express, and if you could do it." He says yes. "That is a heavy trunk." "All right;" he says, "We got two men." And two men came along and they took the trunk and they shipped it to the railroad express. I don't know if that is the American or the other one; I don't know.

Q. Did you go down with them on the wagon?

A. Certainly.

Q. You went right along with them?

A. Yes, I went with them on the wagon. And I went with them on the wagon because the man told me, Mr. Miller, I should send this to Philadelphia and insure this in five hundred dollars, because this is a very important stock, it shouldn't break it.

Q. What did he say it was?

A. Patent medicine stuff. That is what he said. And I told him, the people, because they asked me, I told them what they told me, it is patent medicine stuff. And they weighed it and made a bill of lading and asked me I should—and before I went out there, I said, "Now, listen, Mr. Miller, when I will send away the express—the trunk, shall I sign my name or your name, because otherwise you won't be able to get it, if it would be my name." "No," he said, "you could sign my name, and that will be all right." I didn't know his first initial. He said, "Miller; S. Miller."

Q. S. Miller?

A. S. Miller. And when he weighed it up, he made out the bill of lading, he made out, and then give me two tags to mark it down the place from where it goes and where it goes. Then I asked him, "Where does it go?" He said, "To M. Lichow." I say, "What is the address?" He said, "846 North 5th Street." And 846 North 5th Street, Lichow, I know the man myself for years.

Q. What kind of a man? What business?

A. He was a real estate man and used to collect rent for me for years. And he paid my building association for years. But I don't call him like that. I call him Mitchell Lichow, instead of M. Lichow. I always called him by the first name, Mitchell. I

said to him, "I know that man; I think this is the same." He said, "Well, it is still better." I said, "All right." I said, "Well, what is up there?" He said up there from him he will get a room, "Try a little store," he says, when he will come and he will rent it, and whatever he will spend he will take care of it. All right. Then when I were in the depot then I registered and I insured that in five hundred dollars, just as he told me. And he gave me a bill of lading.

Q. How much did you pay for the insurance, do you recall?

A. Didn't collect over here.

Q. Nothing over here?

A. Up there had to be collect. And he gave me a bill of lading, and when I took the bill of lading I walked away from there in the street, here in town. And I came with the South Carolina Avenue, called Chelsea National Bank, he met me.

Q. What time was that?

A. Then that was after—I don't know what time it was.

Q. About what time?

A. I guess it was around six; something like that.

Q. Six o'clock in the evening?

A. Yes; I don't know what time. The express people should know it, but I don't know exactly.

Q. Go ahead.

A. When I met him he says, "Well, did you fix it up?" I said, "Yes." He said, "I owe you, it will cost you a whole lot money, it is so heavy." He said, "Well, it will cost a few cents more. Where is the bill of lading?" I took it out and I give it to

him, and he took it of me. And he took it of me. He said to me, "Do you know what I want you, you should go to Philadelphia, and you said you know Mitchell Lichow, and get from him a room or store and give him the deposit, whatever you will spend I will take care of it." I said, "All right." I said, "When do yon want me to go? Do you want me to go in a machine?" He said, "No; you could go tomorrow." I said, "All right." Then I went home by myself, and that time then I went home right to the house.

Q. That is, to 31?

A. In 31, yes. I had a little lunch upstairs. And then I walked out in the street. And after, at night, I went to bed. And in the morning I went to Philadelphia. I thought I will make a few dollars of him. I went to Philadelphia. I came to Philadelphia.

Q. What time did you go up?

A. With the bus.

Q. What time?

A. I took with the bus.

Q. What time?

A. That was about—I can't remember exactly.

Q. Morning?

A. In the morning, yes.

Q. Yes.

A. I couldn't exactly make out right; I can't remember.

Q. All right.

A. But I know it is in the morning I went to Philadelphia, because I promised him I will go, and he told me he will meet me around Lichow. That is what he told me that time.

Q. And that was on Thursday, wasn't it?

A. Yes; that was in the time when I give him the bill of lading, in the afternoon.

Q. That was Thursday?

A. No, that was Wednesday.

Q. Wednesday afternoon?

A. Yes.

Q. Yes. All right.

A. And he said—and he came up there in Philadelphia, and I went right down on 5th Street, and I walked up on 5th Street, I see standing with a machine from far away, and he stood nearer right to the door, and I came up to him, I says, "Are you here now? I thought you come a little later." He said, "No, I didn't get a bus before." I say, "Well, was you already by Mitchell?" He said, "No, I haven't got much time to go there." He says, "You go in yourself and I have to go downtown. Because you said you know him anyway, and in case," he says, "if you will get it up there, then there is a bill of lading," and gives it to me, "And you will try to go and look for an express and get it in the place where you will rent it, the trunk."

Q. Where were you talking to Miller then? Where were you?

A. That was outside of the corner of Mitchell's; outside.

Q. Right out on the street?

A. On 5th Street, that was. I said, "All right." When I asked him, "In case if I couldn't get it the way you want it, cheap store, the way you say, or the room, what price shall I pay?" He says, "Don't pay too much." "If they can't get it cheaper—if

you can't get a store"—I said, "A store I haven't got enough money to pay a month rent." That is what I told him. He said, "Just give him deposit if you rent a store; and if you rent a room you will have enough money to pay for the week," he says, "and then I will return to you." All right. Finally when he walked away from me, and he went in the machine, and he drove up right to Poplar Street side.

Q. His own machine?

A. He had a machine of two-seated machine.

Q. Go ahead.

A. Then I went in to Mitchell, and I just find Mitchell, I said, "Good morning. Good morning. Have you got a cheap room to rent?" He says, "No." "No store?" He said, "No." Then I walked away.

Q. Whom did you ask that?

A. Mitchell.

Q. Mitchell?

A. Yes.

Q. Say anything?

A. He said he hasn't got it.

Q. Did you say anything else to him?

A. No. He said he ain't got it. Then I walked away; then I walked up to Poplar Street, and looked on the signs if I can see a furnished room sign, and I haven't seen it exactly; then I walked back and I walked back on 5th Street, and I seen the sign, and I went in and I asked the rent. He says for two people is five dollars or six dollars, I don't remember; for one he says is three and a half dollars a week. I said, "I will let you know. See, I want to

see him to ask him whether he likes it that way, because it is not for myself.'' Finally I looked around for him and I couldn't see him. Then I seen it gets late. Then I went in and I rented for one man for three and one-half dollars, and I paid the three and one-half dollars, and he give me a receipt for week rent, that man from whom I rented it.

Q. What was his name, do you know?

A. No.

Q. Didn't ask him?

A. No.

Q. What was the number of the house?

A. 824 North 5th Street.

Q. Yes.

A. 824.

Q. 824?

A. 824 North 5th Street. Then I went—when he give me the receipt he gives me a key. He asks me fifteen cents deposit for the key. I give him. Then I had the key and I walked away. And I been trying—when he told me I will meet him—I asked him, ''Where can I see you afterwards?'' He said, ''You will see me around here.'' Finally I looked around for him, and I looked around, and I couldn't see him. When did I saw him? Then I stood over night Thursday in Philadelphia. And Friday ——

Q. Where did you stay in Philadelphia?

A. In Park Avenue; in North Park Avenue, in 1401. I say whenever I were in Philadelphia when I always looked for work, then a man give me the privilege and, in fact, he give the key, he brought me down himself. ''Whenever you will be here,'' he says, ''you are welcome to sleep there.''

Q. Didn't you have to pay?

A. Not a cent.

Q. Who was that man?

A. He used to be a tenant of mine.

Q. Who is he?

A. His name, Mr. Klein.

Q. Klein?

A. Klein.

Q. What is his first name?

A. Max Klein. He was a tenant of mine for years before, and he knows I am down. He says, "Any time you could go out there and sleep," he says, "you don't have to ask nothing."

Q. You slept there that night?

A. That night I went out I slept there.

Q. Then where did you go?

A. After that I went away from there, and I went in some section to look for the—perhaps I will meet Mr. Miller, because I have his receipt and I have key, receipt from the room rent, and I had the keys; and I expected he should pay me, if that is what I spent it.

I forgot to tell you, Counsellor, when I had the room then I went for the expressman to try to get the trunk.

Q. Yes.

A. See. And I found an expressman, he said he wants two dollars. And he went and he got—he went to the express people, 8th and Market, and he didn't find the trunk there. He came back without it. He takes it half of the two dollars. I asked him how much it will be. He says, "How much does it weigh?" I said weighed about three hundred

pound, that trunk, it is a heavy trunk. He said, "I bet you it will be about three dollars. Then you give me, better," he says, "three dollars. Whatever I will spend I will bring you a receipt." Say all right, and I give him three dollars. He went to 8th and Market and came back without the trunk. He said, "The trunk isn't there. The trunk must be somewhere on the wagon, on the express wagon, or whether on 8th and Master, in the storage house." Then he takes it one dollar for his trouble, because he didn't brought the trunk, anyway, it takes it off one dollar and he gives me back the two dollars and the bill of lading. After that he says, "You wait," he says, "around seven o'clock, if they won't bring the trunk," he says, "you come to me," he says, "and I will call it up and I will see to get the trunk." All right. Around seven o'clock I waited, and I came up to him, it was in Marshall, near Parrish, and he called up the express people there, and he had a long talk with them. Then they said to them he located where the trunk is. Then the girl asks him, "Are you the owner of the trunk?" He says, "I am the expressman." "Who is the sender of the trunk?" He says, "The sender sits right here."

Q. Were you there?

A. Yes, that is what I say, I were there. He says, "Have you got the keys to the trunk," the girl asks the expressman. And I didn't had any keys to the trunk I am not the boss, he has the keys. I told him the truth. I said—I didn't want to tell the expressman what we call—in just that way. I said, "I haven't got the keys; the keys is

left in Atlantic City." That is what I told him. I said, "I haven't got the keys."

Q. You didn't tell him you weren't Miller, did you?

A. No, I didn't tell him nothing.

Q. Didn't tell him that?

A. No.

Q. You kept that to yourself, of course?

A. Yes. I told him, "I haven't got the keys of the trunk, but the only thing," I said, "I were the man who sent it."

Q. Yes.

A. Well, all right. Then he tells him that, he says, "I guess you come in and we will give you the trunk." And that is the time he went out there and he brought the trunk. And after that I went away to sleep, after that.

Q. Where did you sleep that night?

A. That is just what I say, that is where I went, in Park Avenue. I told you that.

Q. Oh, in Park Avenue.

A. Now the next day when I did locate him, I told him, "I looked for you so much, and I had a whole lot trouble of getting the trunk, and I spent a dollar more how much I had to spend." I told him the trouble was. He says, "You oughtn't." "But," I said, "I did. If you want, I will show you the expressman." He says, "Never mind about that," and he took from me the receipt of the room and the keys of the room, and he marked it down how much I spent, and he said, "I will see you in Atlantic City, and I will take care of you." That is the only time I saw him. That is all. That is

the last time, and he never showed it up. This is just exactly how it was. And you told that night somebody hit her in the head and they killed her. That was funny to hear, very funny. Before I said this, just exactly how it was, what I know about it. And then when you told me after that—you remember what you told me?

Q. I remember.

A. And you told me somebody hit in the head and killed her, why, I looked at you. Certainly, you are a man I couldn't say it is not true, if you say something it must be so, but I felt funny, I felt that time like I could die, when you told me that.

Q. Well, it was true; she was dead.

A. Of course, I know that later. She was good to everybody. She certainly was good to any poor person; I saw it.

Q. Well, do you know any reason why Miller should have killed her?

A. That is something—I would like to say a thing what I know, what I see, but how can I say a thing—

Q. What do you think?

A. I don't understand what it is.

Q. Couldn't think?

A. The only thing, what I have been laying in bed ——

Q. Yes.

A. —and thinking, when Fineberg went away from me ——

Q. Yes.

A. And I had in my mind, certainly I don't say, I am not an officer, but it looks to me kind of funny, the way she explained to me one time.

Q. Yes; tell me about that.

A. I think I told you right now, when she told me one time she worked by that man who—for whom she worked for where the house belong to.

Q. Curry?

A. This lady worked for a man.

Q. That was Mr. Curry.

A. I don't know his name.

Q. You don't know his name?

A. To whom she—for whom she worked for, and he liked her, a good housekeeper, good housekeeper, and he left her in the will that house and some kind of an income; that is what she told me. He said all the heirs he has been kicking on the way he didn't want to stand for it; in fact, they didn't want to sign the papers; they just signed it not long ago. On account of the—but the lawyer told her they couldn't do nothing, it will have to be for her. That is what she explained. And one time she said she received some kind of a paper or a letter, I don't know what she told me, from Mays Landing, was going to come up in March the last disposition about the dividing the—an estate, something like that. When she went to the lawyer, she told me that, she asked me, and advise it: "You know something a little bit about it, too," she says, "whether I have to be there in that time or not." I said, "What did your lawyer said? You have a lawyer, you told me yes, he is a wonderful, honest man." She says her lawyer tell me she don't have to be there, it is just notice, that is what.

Q. Did you ever see Miller around the house, num-

ber 31 Connecticut Avenue, before the day that he told you who he was?

A. Not in my knowledge.

Q. Not to your knowledge?

A. Just as I said before, Tuesday night, when Mrs. Schaaf spoke to me.

Q. Did you ever see him around?

A. When she spoke to me, I seen somebody in the back of her, looking out from the back and looking in the room again, but I couldn't see no face. I know it is somebody there, but I can ——

Q. You don't know whether it was Miller or not?

A. I don't know. If you should ask me to say yes or no for sure, I can't.

Q. But you never saw that man around there before?

A. Not as I know.

Q. Was Miller around there before that night?

A. Not as I know.

Q. Did you speak to Annie that time about coming to work—did Annie, the maid, come?

A. Yes.

Q. What was that?

A. And Mrs. Schaaf told me when I will see Annie in the morning I should tell her she shouldn't come till Saturday or Monday when she—till she will come, because she went away for a few days; and Wednesday morning I did saw her and I told it to her. That is all.

Q. You told Annie to come Saturday morning?

A. On Saturday. I can't stay all the time in the house myself. I thought—I don't think if she will feel so bad at me, Mrs. Schaaf, I thought I will make

her to come, and whatever it will be she will pay it. See what I mean? When her husband come up Friday ——

Q. Whose husband?

A. Annie's.

Q. Annie?

A. I said, "You tell your wife let her better come in tomorrow morning," because it is hard to do for myself I should take care of the house. See, I couldn't go to work and make the rooms, and she knows the people and I don't. See. Then she came in Saturday morning, and I told her the same thing, she should stay, she don't be afraid, she don't pay, I will pay, don't be afraid. I said I think she give.

Q. Did you open the door for Annie when she came there that morning?

A. In the front door.

Q. Yes.

A. Sure.

Q. And did you open Mrs. Schaaf's bedroom door for her, too?

A. No, that was locked. Nobody has to go in there. The telephone has been ringing all the time and nobody could answer.

Q. Beg pardon?

A. The telephone has been ringing all the time, and nobody answer.

Q. And nobody could answer?

A. No.

Q. How was the door locked?

A. It was locked with the door made like here a door, a key.

Q. Just an ordinary lock?

A. And a lock has been hanging.

Q. Lock hanging?

A. Yes.

Q. Where was the lock?

A. Outside.

Q. On the outside?

A. Yes.

Q. What kind of a lock was that?

A. That was padlock.

Q. Did you ever see that on there before the day that Annie came there?

A. Before Annie came in?

Q. Before Annie came there that Saturday?

A. Yes, yes; I saw it right in the same day; sure.

Q. Same day?

A. Yes.

Q. When was the first time you ever saw that lock on there?

A. That lock, I saw it when this man—when this people took it out, the trunk, these people took it out the trunk, and after when Mr. Miller come in, he locked the door and he went away. That is the time I saw it.

Q. Well, now, let me see. You say that Mr. Miller had a car?

A. Yes, two-seat car.

Q. Do you know what kind of a car it was?

A. That was a Paige.

Q. Paige?

A. Yes; Paige. It was Jersey license.

Q. Do you know its number?

A. This I can't tell. I didn't notice. It was Jersey license.

Q. Did you ever have any friend by the name of Miller?

A. Well, I have friends Millers all right, but no that kind.

Q. No that kind of a fellow?

A. This wasn't a Jewish man, that man.

Q. Not?

A. No, he was a higher—a high type of a man, looked to me.

Q. Well, let me see if we got this straight. When this expressman came in there the first night to move the trunk ——

A. Yes.

Q. —he said it is too heavy for him?

A. Yes.

Q. Where was the trunk then?

A. In the room.

Q. In the room?

A. Yes; it was not locked.

Q. Beg pardon?

A. It was not locked.

Q. The room wasn't locked?

A. No.

Q. When the expressman came the next day, the other expressman, or the next night ——

A. It was the same night.

Q. The same night, that is right; was the room locked then?

A. No.

Q. Room was open?

A. After that when I give him the bill of lading, just as I said before, he went back to the house.

Q. Yes.

A. And lock the door, and I went away.

Q. After the expressman had taken the key out—the trunk out?

A. Yes, and that was—the trunk was already in the depot that time, and he locked the door, and he went away, and he make the arrangement with me I should be in Philadelphia the next day, in the night, tonight.

Q. When the expressman and his helper came there and took the trunk out where was Mr. Miller?

A. He went out, he said he was busy, he got to go somewhere.

Q. Do you know where he was?

A. No. He went somewhere with the machine.

Q. You went down with the expressman and the trunk to the railroad station?

A. Yes.

Q. Yes?

A. Sure.

Q. Now, when did you give Miller the key of the trunk?

A. I didn't had the key of the trunk.

Q. What key did you have?

A. I didn't have no key. I give the—the keys from the—keys to the room what I rent in—in Philadelphia.

Q. How did Miller get in 31 Connecticut Avenue?

A. I don't know. He was right inside.

Q. Inside where?

A. Right in the hall when I went downstairs.

Q. When?

A. Wednesday morning. He were right downstairs, in the hallway.

Q. But when you went away with the expressman that night—now, listen; when you went away with the expressman and his helper and the trunk, how did Miller get in the house again?

A. Well, how did he get in before?

Q. I don't know.

A. Well, that is it. I believe he had a key.

Q. You think he had a key?

A. Otherwise how can he get in the house, if he hasn't got no key?

Q. When you took the trunk out, you took it out of this woman's room, didn't you?

A. Sure.

Q. And you left the door open?

A. I just close it, that is all.

Q. Just closed it; and you didn't lock it?

A. No.

Q. Sure about that?

A. I couldn't because I didn't had the key. He had the key; see.

Q. What key?

A. The keys from the doors.

Q. Did you try to lock it?

A. I can't. I had no key.

Q. Did you try?

A. No; I didn't had no key.

Q. What keys are you talking about?

A. Because they had a key what hangs in the lock out there, and I didn't had no key.

Q. The key to the padlock?

A. Yes.

Q. You tried to lock that, but you didn't have any key?

A. It is not that I tried; I didn't see no lock that time. See what I mean?

Q. Wasn't any lock there?

A. No, I saw the lock before, but I haven't—a little later, but I haven't seen that time. That was just what you call—he left me free.

Q. Well, Mr. Fine, can't you tell us ——

A. Tell you anything I know.

Q. —a little bit more about Miller?

A. Anything I know I will tell you.

Q. Can't you tell us anything more about Miller? What was his business?

A. That is something I ——

Q. You don't know?

A. Just like you ask me; I don't know.

Q. Well, he told you patent medicine?

A. Patent medicine.

Q. Did you believe it?

A. Yes; he tells me patent medicine.

Q. Did you?

A. What did I have to ask him over and over, yes or no?

Q. Did you believe he was acting properly when he gave you $25 to ship a trunk away?

A. No, he said to me that time in that way. He says, "The way I understood, you a very good friend of Mrs. Schaaf."

Q. Yes.

A. That is what he said. I said, "Why shouldn't I?" He says, "The way she told me, you were once a rich man." I said, "Well, what of it?" I felt embarrassed; why should he know my business. He says, "Listen, Mr. Fine, I want you to do," he says,

"a little errand for me, and if you ain't doing anything now." I said, "No, I ain't doing anything; if it is within my power, I will." And he told me the same thing what I told you, to do it. I thought that was nothing to do. If you tell me can I do something, I would be too glad to do it, or anybody. Why shouldn't I?

Q. Didn't you think it was a lot of money for a little service?

A. I didn't took it because he paid me for that exactly. I didn't took it in that way. The way I took at it—the way I looked at it, because he looked to be a very wealthy man, he looked to me, and he knows I got to spend a little money over there; that is the way I looked on it. I thought, well, it is well worth it.

Q. You are a business man, and you know a lot of things that most business men know. You thought —you knew it wouldn't cost you $25?

A. No; but he figured let me have something for mine trouble, what I went; that is the way I looked on that.

Q. You knew then it wouldn't cost you over five dollars at the outside, and you would have twenty dollars for just simply doing that little service?

A. I figured that way.

Q. Don't you think that is stretched ——

A. That is what I figured, I thought that was wonderful for me, and I will have it couple weeks; but after, when he told me I should go to Philadelphia and it cost me money to go, I thought he will give me some extra fare; but he didn't. Then he said I should go to Philadelphia and I should go and

see if I could get a room or a little store, and haul —and pay for it, and get an express and haul this to the place, and I should pay for it and he will take care of it, and I thought I may be, afraid to be short. That is what I figured. I didn't like much the idea, but I thought I am in it, I will go; perhaps he will pay me for it. That is what I thought. I thought I will go, and I figured ——

Q. Did he pay you?

A. No, he said—I told him—I give him the receipt of the room, and I told him what I spent for the express. He said, "That is a little too much." I said, "I could go with you and show you the expressman, and he will tell you how much I paid him for it," and then he will know whether it is too much or not. "And then if you like it," I said, "you could go to see it." He said, "No, that is all right." He marks it down, he took the receipt of me, with the keys from the room, and he says, "All right, I will see you in Atlantic City; I will take care of you." And that is the way I was left. That is all.

Q. How much did he give you all together?

A. $25.

Q. You didn't get any more?

A. No; that is all.

Q. How much does he owe you?

A. I don't know, whatever I spent it, see.

Q. Do you know how much you spent?

A. Well, I don't remember exactly. I spent it just what you call, dry money—just the real money what I spent, the dollar, the express over here ——

Q. Let's see how much you spent: You took the trunk from 31?

A. Yes; a dollar.

Q. That was how much?

A. One dollar.

Q. One dollar?

A. Yes.

Q. Then you didn't pay anything at the express office, did you?

A. No.

Q. Well, then, when you got—went to Philadelphia, you spent how much on the bus?

A. Costed me dollar and a half.

Q. Round trip?

A. Yes.

Q. That is two dollars and a half?

A. Yes.

Q. How much did you give the driver in Philadelphia?

A. Up there I give him three dollars one time, and ——

Q. That is five dollars.

A. And he took it over one dollar, and he took—two dollars he give me back, then when he went in—when he went up there again I give him again three dollars, and he said he had to pay $3.85, and I had to give him $3.85, and two dollars for hauling.

Q. Yes.

A. That is what I done.

Q. How much for the room?

A. Three and one-half dollars for the room, and fifteen cents for the deposit for the key. That was for his business.

Q. Now, did you have any meals, anything to eat?

A. Yes, I had some lunches there, yes.

Q. Didn't you charge them up to him?

A. I didn't have to charge them, because he said he would see me in Atlantic City.

Q. How much did you have when you come back?

A. I don't remember. I think I had about six dollars, something like that.

Q. Six dollars?

A. I don't remember.

Q. How much did you have in your pocket when he gave you the twenty-five?

A. I didn't had anything.

Q. Not a cent? So that you had no money at all when he gave you the twenty-five, so that whatever you had left was left out of that $25?

A. Yes, out of the $25.

Q. And that, you think, was about six dollars?

A. Something like that, yes.

Q. Well, now, Mr. Fine, I told you that that trunk contained Mrs. Schaaf's body when you were here the other day, didn't I?

A. Yes, that is what you told me.

Q. Well, that is true. She was in that trunk.

A. Tsk! tsk!

Q. There was two trunks.

A. Two trunks?

Q. One inside of the other.

A. Why the two?

Q. Two trunks. She was in the inside trunk. That was tied with a rope and locked.

A. Mm!

Q. And that was in a bigger trunk; and that was tied with a rope and locked. Do you know anything about it?

A. Now, I will ask you, Counsellor, how can you make it out?

Q. Well, I am asking you to help me.

A. I like to help you all I can, if it is possible.

Q. Yes.

A. I want to help. I would help anything in that line.

Q. I don't want you—now, listen; I don't want you to tell me anything if you don't want to tell. If you don't want to tell me, just say so. I am not threatening you, not offering you any reward.

A. No. I said, even Mr. Fineberg today, when he were by me ——

Q. Yes.

A. I will tell them everything the truth what I know.

Q. Yes.

A. I told him that.

Q. You are talking freely now?

A. No, I told him that.

Q. Told him you were ——

A. I said whatever I told him, I told him just exactly, I said, whatever I will know; but this I didn't get it in my mind to tell it, I forgot about it, what she told me about that man who left her the house; this I forgot to tell; this I didn't tell.

Q. Yes.

A. I forgot it.

Q. Yes. You don't know who put her in that trunk, then, do you?

A. The only thing what I know, next door to me, my room ——

Q. Yes.

A. —live another man there.

Q. Another man?

A. Yes, next door to my room.

Q. Oh, yes.

A. Colored woman knows him, too. She knows him before I know him.

Q. But that wasn't Miller?

A. No, no. But he moved out the same day what was happen, when this gentleman and the other gentleman come in, on Tuesday, in this afternoon, about two hours before, he moved out. In fact, I asked him, because I would like to take care of them, "Why should you move?" I told him, "Why should you move?" He said, "I don't want to discuss."

Q. That wasn't Miller, was it?

A. No.

Q. Did he know Miller?

A. I don't know. This I couldn't tell.

Q. If that man moved out ——

A. There was another lady lived there, but she had a little fight with Mrs. Schaaf.

Q. Yes; who was she?

A. Annie knows her. The colored lady, she will tell you more about it than I could tell. This I do know, she had the key with her. She didn't give her the key back. Yes, I know about that. And something else I don't know, see.

Q. Yes. What were you going to say?

A. I say something else I say, but I should say something I don't know. But this I am telling you everything what I am thinking, what I know, what I didn't tell you everything, but I remember what she told me, that lady moved out and she had a big

fight with her, and she didn't give her the key back, street door key. And she burn her up upstairs, she take up some stuff you had there, she told me, Mrs. Schaaf. She was a funny woman there, upstairs. This I know it. But something what I don't know, I don't know what to say. See.

Q. Well, now, Mr. Fine, if this other man went away and he wasn't Miller, then he couldn't have had anything to do with this trunk, could he? This was Miller's trunk, wasn't it?

A. Sure, I don't—I hardly believe this man should do something.

Q. It must have been Miller all through?

A. He was a quiet man.

Q. The other man was?

A. Yes; quiet man.

Q. So that it is Miller only that is in the case, isn't it?

A. Yes.

Q. And this woman couldn't have had anything to do with it if Miller was handling the trunk, could she?

A. I don't know.

Q. Well, all right.

A. That is something what I—I can't answer things what I don't know. I like to answer, something else I would be able to tell you something.

Q. Will you answer me this question?

A. Yes.

Q. Did you kill that woman?

A. Oh, my! As I—true as I live, of God, I don't know nothing about it, counsellor. Nothing of that kind; don't think of me.

Q. Would you tell me?

A. Have I got a reason for do that? Why shall I do that?

Q. I don't know; I am asking you.

A. I have no reason. She were good to me, she keep me house. If I had a dollar to give her, I give, she was satisfied. She told me herself. What can I benefit by it, I should do a thing like that?

Q. I don't know.

A. There is no reason why. How can I do that? Why should you think even how?

Q. Yes.

A. Why should you think?

Q. I have to ask everybody.

A. That is true, but this, it makes me to feel so unnatural. Why, if you would know that woman, I must tell you the truth, she was like a mother, she was like an old mother to everybody. Not only to me; to everybody. To Annie, too. She didn't appreciate it. To her, too. Why shall I do a thing like that?

Q. Why should Miller kill her? She was good to everybody?

A. Very good. Very good to everybody. The only thing what I have seen in the house, she were good to everybody, always nice and quiet, and acted with a smile to everybody. That old lady were like that. And I believe, in fact, the neighbors liked her. Yes, even the neighbors liked her.

Q. You see it is just as likely that you killed her as Miller.

A. I ——

Q. You are closer to the case than anybody else.

A. Oh, because I done—because I done the errand asked, because I was unfortunate and I listened, because I fall for the few dollars, that is what you are thinking of me.

Q. No, I am not thinking anything. I am asking you.

A. No. There is one hundred per cent the truth, by God! this is the truth, what I am telling you. I have no reason whatever I should have any idea about that line, with that woman. If you would know how she were—she were good to me, very good; to tell you the truth, she give me many times a bottle of milk. How can it be done? She—when she was sick, she asked me I should go and call the next door, the tailor, that woman, she said they are friends with her. He said Rose, she didn't care for the colored woman to sleep with her, I should go and call her she should sleep with her. I did. That Mrs. Rose was out. Then the man sent the girl, when he brought it in the girl, see. I would do anything for her. I don't see no reason in that. I feel in that way like I can't express myself when you are telling me this I did it.

Q. Let me help you a little bit. You say that you saw this other man in the other room leave, is that right; he told you he was going to leave, and he didn't want to discuss why he was leaving?

A. Yes, I was downstairs, too, that time.

Q. What time was that?

A. That was about two hours before that; just as I said when the gentlemen came in.

Q. Before what?

A. Before this gentleman come in, and the other.

Q. How long had you been in that house that day?

A. That day I were—I were I could say pretty near all morning, all morning.

Q. What time did he get there, do you recall, this man here? (Indicating Mr. Juliano.)

A. I don't remember. I think it was in this afternoon, around two or three o'clock.

Q. That is right.

A. Something like that.

Q. And you say that Miller left about two hours before?

A. Miller left about two hours before.

Q. You saw Miller going?

A. Yes, I saw him going. He give me the keys.

Q. He gave you the keys?

A. Yes, and that lady walked out, too, the colored lady.

Q. What keys did he give you?

A. A key from upstairs, from his room a key, and one from the street door a key.

Q. Gave you both keys?

A. Yes.

Q. What did you do with them?

A. I don't remember whether I put them in the pocket or whether I put them away somewhere; I don't remember that.

Q. Don't remember?

A. This I don't remember, no. But the colored lady walked out, and she said it is funny—I say I asked him why shall he move now, I don't see why he had to pay rent that day, and she always collects from him the rent, the colored lady; I don't understand the idea, I ask him why he move. He

said he don't want to discuss. She says he is always like that, he don't talk to nobody.

Q. Where were you born, Mr. Fine?

A. In Russia.

Q. Russia?

A. Yes.

Q. What part of Russia?

A. Minsk.

Q. Were you ever in Hungary?

A. Hungary? No.

Q. How old were you when you came to this country?

A. I don't remember. I been for years already.

Q. How many?

A. I am here for years already.

Q. How old are you now?

A. Forty-six, forty-eight, I can't remember. I have my citizen papers.

Q. Were you married in Russia?

A. No, I was married here.

Q. Married here. To whom?

A. To a lady by the name of Jennie.

Q. Jennie what?

A. Her second name was Fliegleman.

Q. Fliegleman?

A. Yes.

Q. She living?

A. Yes.

Q. Where?

A. On Marshall Street.

Q. In Philadelphia?

A. Yes; I am divorced.

Q. Divorced from her?

A. Yes.

Q. When were you divorced?

A. The divorce was out 1927; December 12, 1927, was out the divorce.

Q. And when did you marry Mrs. Abrams?

A. Just about February—the 20th of February, two years when I married her.

Q. Where did you marry the first wife?

A. New York.

Q. In New York. By whom were you married?

A. In court and in Jewish.

Q. And where did you marry Mrs. Abrams?

A. Also the same way, in court and in Jewish.

Q. In New York?

A. Yes.

Q. Where were you divorced from the first woman?

A. In Philadelphia.

Q. In Philadelphia. Who was your lawyer?

A. William A. Gray.

Q. William A. Gray?

A. Yes.

Q. Did you ever have any children?

A. Two children.

Q. Where are they?

A. Philadelphia.

Q. They by the first wife?

A. Yes.

Q. They take the name Fine?

A. Yes; Fine.

Q. Where do they live?

A. I don't know where they live. I heard they are married now.

Q. Both of them?
A. Yes.
Q. Girls or boys?
A. Both girls. I don't know where they live now.
Q. You don't know their name?
A. No.
Q. How long since you heard from your daughters?
A. I don't know exactly.
Q. Long?
A. It is a long time.
Q. Long time. Have you heard from them since this affair occurred?
A. There is one son-in-law came up to me to the hospital.
Q. One son-in-law?
A. Yes.
Q. What is his name?
A. He spoke to me. I didn't recognize him. He told me who he is.
Q. He told you what?
A. He told me who he is.
Q. Had you never seen him before?
A. I saw him before, he used to come to my office one time and before he were married.
Q. Did you hear from the other daughter?
A. No.

Mr. Harrold: What were their first names?

Q. What was the name of the son-in-law that came to you at the hospital?
A. The first name is Jake.

Q. Jake. Last name?

A. Second name I can't remember.

Q. You don't remember? How long has your daughter been married to that man?

A. I think a few years.

Q. About how many?

A. Oh, about three years, I believe, three or four years.

Q. Three or four years; and they live where?

A. In Philadelphia.

Q. But do you know where?

A. No.

Q. And the other girl?

A. Also in Philadelphia.

Q. In Philadelphia. And what was the name of your first daughter, your oldest daughter?

A. This is the oldest daughter that the one he came here yesterday.

Q. What is her name?

A. Rosie.

Q. What is the other daughter's name?

A. Gussie; Augusta.

Q. Gussie?

A. Yes.

Q. What is her married name?

A. I couldn't tell you. I have no reason to lie, to say I don't know if I would know it.

Q. No, no, no; I know that.

A. I don't want you to have any suspicions of that, because anything I don't answer I don't know.

Q. If you don't want to answer ——

A. No, no; I do want to.

Q. You do?

A. See the idea, but I just don't know. Whatever I don't know, I ——

Q. If you don't want to answer say so; we won't make you answer.

A. No, no. Anything I know, I will answer. The only thing, I say anything I don't answer I don't know.

Q. Well, now, there is another thing that is troubling us. Do you know how that blood got on the floor of Mrs. Schaaf's room?

A. Whereabouts?

Q. Right in front of the fireplace.

A. No. I never had anything to do with this.

Q. Well, two spots of blood there.

A. Nothing—I had been in this room to do up there as much as I have to do up here; the same thing.

Q. You don't know?

A. Whenever I said hello to Mrs. Schaaf, I just stood right by the door.

Q. You don't know how that blood got there?

A. Couldn't tell you a thing from that; see. Whenever I come in the room to say hello, Mrs. Schaaf —

Q. Did you ever go into the room at all?

A. When Mrs. Schaaf were—that is, when Mrs. Schaaf was right in the front of the room I always were there when I said hello to her.

Q. When you went in to let the expressman out or come in for the trunk, where was the trunk standing?

A. Right in front of the door.

Q. Right in front of the door?

A. Yes, there was roped up with the rope.

Q. Tied with a white rope?

A. White rope.

Q. Yes. See if you can recognize the picture of Mrs. Schaaf's room. There is her bed, you know, and there is the clothes tree with some clothes hanging on it. And here was the fireplace and the mantelpiece.

A. Here is the bed.

Q. That is the bed; that is right. And this is the door.

A. Right here was the trunk.

Q. Right there was the trunk?

A. Right here.

Q. And there is where the blood spot is. How do you account for that; do you know? You see that dark thing there? See this?

A. This is blood?

Q. Yes; it wasn't dry when we got it.

A. I ask you, this is blood?

Q. Yes; the chemist says so.

A. Right here stood the trunk. (Indicating.)

Q. Right here stood the trunk?

A. Yes.

Q. Was it on its bottom?

A. Of the floor, stood it on.

Q. Yes; I see.

A. Yes, right on the floor; yes.

Q. You see, here is the two trunks (showing photograph). There is the one trunk inside of the other trunk. Was that the kind of a rope it was tied with, you saw, if you know?

A. There was a whole lot of rope here.

Mr. Hinkle: Let me see that rope.

The Witness: You know, it was knot—it was a few ropes.

Q. Few ropes? Several times?
A. Yes.
Q. Yes; something like that?
A. Something like that.
Q. Yes.
A. Yes, white rope.
Q. White rope?
A. Yes.
Q. Well, this rope was found up there in 31.
A. In 31?
Q. Yes.
A. Mm.
Q. That was the rope that this piece was cut off.
A. This piece was cut it off?
Q. Seems to be.
A. Tsk! tsk! I seen it whole lot rope around the box.
Q. And the outside, this lid was closed down. This is a piece of an oilcloth that was thrown over that other trunk, and this lid was closed down, and that outside trunk was tied with that same kind of a rope.
A. Well, I am speaking about the outside.
Q. Yes.
A. That is what I am speaking about, the outside.
Q. Now, look at this picture; see, there is the woman. See, there is her head, that is her arms,

that is her fingers, here is her feet sticking up in the air. Here is the ropes.

A. I didn't see the face.

Q. See the face? Well, look down in there. There is her head. She has turned black.

A. Tsk! tsk! That was in that trunk?

Q. That is the woman that was in that trunk. That is Mrs. Schaaf.

A. That is certainly terrible.

Q. Terrible! Certainly it is terrible!

A. It is.

Q. Terrible; no doubt of it. There she is again. See, there is a piece of the rope around her neck.

A. A what?

Q. Piece of rope around—see it around her neck?

A. Didn't you tell me she was hit ——

Q. I was wrong about being hit. Choked to death.

A. Oh, she was choked.

Q. Choked.

A. And that Mr. Fineberg, he told me she was killed.

Q. That is what they first told me.

A. Tsk! tsk! tsk!

Q. Terrible, isn't it?

A. That is a murder.

Q. That is a murder, sure. She didn't do that herself.

A. I didn't see the reason why a man should do that, or a woman.

Q. There she is again laying on a stretcher.

A. That is hard to recognize that face.

Q. You couldn't recognize her face?

A. No, I can't recognize it.

Q. But that is her.

A. It is hard to recognize it.

Q. Now, there she is facing you a little bit more.

A. It is hard to recognize.

Q. See; that is her face. See her hands hanging down there? See her feet; how she is all swelled up? Horrible!

A. She wasn't such a big woman.

Q. Not big, eh? Was she very heavy, do you think? How much do you think she would weigh?

A. I don't know, but she wasn't such a big woman. She swelled up.

Q. She weigh a couple of hundred pounds?

A. I don't know. About two hundred.

Q. You imagine she would?

A. 180, something like that.

Q. About 180?

A. Tsk! tsk! tsk!

Q. That is the room in Philadelphia that you rented, isn't it? (Showing picture.)

A. Yes.

Q. That is the room?

A. Yes.

Q. That is the room. And the trunk, I think, right alongside of the table; that is where you told them to put it?

A. Yes, the mantelpiece, I remember.

Q. Why did you turn these bedclothes down?

A. What bedclothes?

Q. Here on the bed, they were turned down when we went in there. You didn't go to bed there, did you?

A. No.

Q. Why did you turn them down for?

A. What bedclothes were they.

Q. This thing here. See how that picture shows the bedclothes turned down?

A. You mean on the bed?

Q. Yes.

A. Oh, I lift the top of the bed, I thought I lay down and wait for him till I will see him, and then I thought I wouldn't lay here in that kind of a bed, I better walk around and look for him. Oh, that is what it is. I wouldn't sleep over night.

Q. Wouldn't sleep there?

A. No.

Q. Trunk hadn't anything—the trunk didn't scare you away, did it?

A. Why should the trunk scare me away?

Q. I don't know. I am asking you.

A. No; not at all. I didn't had no attention what the trunk was. Nothing of that kind, counsellor.

Q. There is another picture.

A. What kind of a picture is that?

Q. That is a picture of the room.

A. What room is that?

Q. That is the room that you rented up there. Didn't it have a little table in the front place, like that? Here is a little closet.

A. Yes.

Q. That is right, isn't it?

Mr. Hinkle: Let me see that lock.

The Witness: Can't you call Mr. Fineberg, please?

Q. I will give you a chance.

A. He asked me.

Q. Yes, I know. I will talk with Mr. Fineberg after a while. These inquiries are always private. You are going to have a public hearing after a while.

Mr. Hinkle: Let me have that small bunch of keys, those two small keys.

Q. Did you ever see a lock like that?

A. Yes, it was in the door.

Q. That was on the door, hanging on the door? Do you know where she got that lock?

A. I couldn't tell you.

Q. What are those keys?

A. I don't know.

Q. Got them out of your overcoat pocket. Tell you where I got everything.

A. My overcoat pocket?

Q. Yes, the overcoat that you got on now. You went out to the hospital the other night, you didn't take it with you, but we sent it down there, but before we went down we went through your overcoat, and there were the keys. Where do they belong?

A. What keys is that?

Q. I don't know. I am asking you.

A. I had a whole lot keys, I don't know what kind it is.

Q. This little pair—not these two; they don't belong together.

Mr. Juliano: They was in his pocket.

A. I didn't have them.

Mr. Juliano: Same as the other ones.

Q. These keys were in your overcoat pocket just like that.

A. I didn't had any.

Q. Well now, the men found them here; here is one, two, three men here that took them out of your overcoat pocket.

A. I had keys, but I don't think if I should have them kind of a keys.

Q. You say that don't open that lock?

A. No.

Q. Don't you know what those keys are? Why would you carry keys around your overcoat pocket that you don't know anything about?

A. I had a whole lot keys.

Q. In your overcoat pocket?

A. Yes, I had a whole lot keys.

Mr. Hinkle: Put them back.

The Witness: I had plenty keys over there.

Q. What were the other keys in your overcoat pocket?

A. I had different kind of keys.

Q. What are these keys?

A. This I carry for years. This keys, that was once of the house that I live.

Q. Where you lived, 31?

A. That was in 616, I believe, Pacific Avenue, I

think that was when—and this was—these two little keys was of a machine I had.

Q. Automobile? Where is your automobile now? Sell it?

A. Yes; sold long time ago.

Q. What are these keys?

A. That was one of my room, and that was one of the—no; this is one of the man what give me in Park Avenue, to go in to sleep, this key, because I could recognize how it is made; and this is one of my room; and these two keys I been trying to rent a corner in another house for friend of mine what stands vacant on 4th and Poplar; he is an attorney. That is the two keys over there, one belongs to the private house, and one belongs to the store.

Q. Was he the attorney that was down here to see you the other day?

A. No.

Q. Another attorney?

A. This is the two keys.

Q. What are these keys for?

A. That is my key what I always have in the pocket. One is for the outside door and one is for the chifforobe what I have in the room. See, that is what I always have in the pocket.

Q. Was this lock on the door when you took the trunk out?

A. No; not that—not that time.

Q. Not that time; when was it on the door?

A. On the door is—it was before on the door, see.

Q. Was it on there when she was sick?

A. No, no.

Q. Put on after she was sick?

A. No. After, and she leave it, it was locked, when she left. No—before no lock at all; I haven't seen no lock.

Q. When did you first see that lock on her door?

A. That lock I seen on that door, it was when he spoke to me about taking that trunk, and he said right here from Mrs. Schaaf's room, it was locked that time, he said it was locked, "but I will leave it open." So then I saw it, it hangs a lock.

Q. Who said that?

A. That Mr. Miller. He says, "Right in this Mrs. Schaaf's room you should go and take that trunk, but it will be," he says, "unlocked; I will leave it open." I saw a lock out.

Q. The first time?

A. Yes; that is the only time.

Q. Then Miller must have put that on there.

A. That is possible. I don't know.

Q. You never saw it before you saw Miller, did you?

A. I didn't know—this comes in the back, and I didn't go there in the back.

Q. That is the first time you ever saw it, was that time? Now, are those the things that were in the door, screws like that?

A. Something like that; just hang the lock on that.

Q. Just hang the lock on that. One was in the door and one was in the ——

A. Just what I saw.

Q. —— jamb, and then the lock went through?

A. Yes.

Q. And you never saw them until Miller appeared; is that right?

A. No; no.

Q. You mean no ——

A. Because he said right from this room, he says, "When you bring the man you should take it out from this room." I said, "That is locked." He said, "That will be unlocked."

Q. That is the first time you saw the lock?

A. That is the only time, yes, Saturday night I haven't seen it because she were home that time.

Q. Now, Mr. Fine, I think you killed that woman.

A. Honest ——

Q. I forgot to tell you that.

A. Honest to God, like I don't know nothing about it.

Q. Well, I can't help it; that is the conclusion.

A. How can I say a thing?

Q. I don't want you to say it if it isn't true.

A. That would be absolutely a lie of myself.

Q. I don't want you to lie.

A. Well, I am telling you as true as I am sitting with you, before God, I don't know nothing about that killing business.

Q. I can't believe that.

A. Nothing. Believe me.

Q. I can't.

A. You should.

Q. I can't.

A. I don't know nothing of that kind.

Q. Can't believe you.

A. For what reason shall I do a thing like that?

Q. I don't know.

A. I have no reason to.

Q. I don't know anything about that.

A. I have no reason for it.

Q. I can't help it.

A. How can you figure on me?

Q. Because you are the only one that had anything to do with her.

A. I am the only one because I have this transaction?

Q. Yes.

A. Because I lifted—I shipped the trunk.

Q. That and some other things.

A. That was my fault.

Q. That and some other things.

A. But in the real honest-to-God truth, I have nothing to do in that killing business. I never know anything about it. No cause whatever for a woman like that, to do that. I don't think anybody should have a cause.

Q. Can't help it.

A. Nothing of that kind.

Q. Can't help it.

A. I can't see why should you think of it even because I would never have any reasons.

Q. Where did you get them? (Showing witness two staples.)

A. I didn't have them.

Q. Where did you get them? They were in your overcoat pocket.

A. I didn't had it.

Q. Oh, yes.

A. I didn't. What did I need that for?

Mr. Juliano: Wrapped up in this.

Q. Wrapped up in this piece of paper.
A. What did I need that for?
Q. Do you know a man by the name of E. O. Munger?
A. Munger? No.
Q. What is this the plan of on the back of this paper?
A. I don't know.
Q. Did you make those marks on there?
A. No.
Q. You don't know anything about them? Well, what is this key?
A. Isn't that the key belongs to Mrs. Schaaf?
Q. I don't know. I am asking you.
A. This, sure; certainly.
Q. That was in your overcoat pocket.
A. Sure; they give it to me.
Q. Who gave it to you?
A. The man give it to me. I had a few keys.
Q. What man?
A. Who moved away. That is what I told you.
Q. Who moved away two hours before the officers took you?
A. Yes, he give me two keys.
Q. All right. Where did you get that key?
A. This keys belongs to 1802 North Broad Street.
Q. What were you carrying them around in your pocket for?
A. I rented that house up there, a store, with a property, the first of January.
Q. When?
A. The first of January.
Q. Yes.

A. And the lock wasn't any good on there, somebody took the keys from them and mislaid it, and I had to get a little furniture to move it in, and somebody stole it out. I went to work to the lawyer and told him. He goes to work and notifies that owner they should—that padlock—that lock, they should make over the—should make out the keys there, and he made out the keys. This was left, and one keys belongs there yet from that property. That is what it was.

Q. What are these keys?

A. That belongs to that same property.

Q. Same property?

A. Yes. That is just exactly.

Mr. Hinkle: Get a court room and arrange for a hearing.

The Witness: You should think of me.

Q. I can't help it, Mr. Fine.

A. Counsellor, you are mistaken, entirely—entirely.

Q. I wouldn't have any reason to be prejudiced.

A. Perhaps you think that way, but you are absolutely mistaken, entirely, of this ideas—entirely.

Q. I don't look as though I am lying to you, do I?

A. Absolutely. You are mistaken. You should think on me, a thing like that. I have no reason whatever to do that. If I would have any reason. If she would do me something. If she would owe me any money. If I would get any money. If I

would get something. But I have no reason whatever. Why shall I go to work and do a thing like that?

Q. And still I think you did it.

A. I can't see no reason. I have no reason to do it. I wish she would be alive; it would be better for me.

Q. I wish she would.

A. A whole lot better for me, because I know the way she been treating me; a whole lot better for me; a whole lot better. She was a good old lady to everybody, the whole neighborhood. See. And I can't see no reason why a thing like that should happen right on me. And I tell you conscientiously, counsellor, if you feel in this case honest what you don't know nothing about it, that is as much I feel about it.

Q. That is the way I feel.

A. That is the way I feel about it. I feel honest just as free as you are about this case; nothing else.

Q. All right. All I want is the truth.

A. Just like you feel about it, you are honest in this case, that is the way I feel I am honest in this case. And I can't show you how I should show you. That is all. See.

Q. Just a minute.

A. Oh, God! God!

Q. Did you ever buy anything in any hardware store here? Now think well.

A. No; I have no—I have nothing to buy.

Q. Think well. Don't make a mistake on this.

A. No. I don't know, what can I buy?

Q. Did you buy that rope that I showed you a while ago?

A. No, sir.

Q. Sure about it?

A. Sure; what did I need a rope for?

Q. I don't know. I am asking you.

A. No, sir.

Q. Did you buy any of those locks?

A. No, sir.

Q. Sure about that? You didn't buy those staples that you had in your pocket?

A. Staple?

Q. Those two pronged things? You didn't buy those?

A. No. I don't know that.

Q. What kind of a looking man is Mr. Miller? Describe him again.

A. He looks something a little bit like you.

Q. About my size? Yes. Well-dressed man?

A. Well-dressed man.

Q. Good-looking as I am?

A. He is a well-dressed man; moustache.

Mr. Harrold: About what age?

The Witness: About forty-five or forty-six, something like that. Very well-dressed man.

Mr. Harrold: Dark hair?

The Witness: No; blond hair. Light man.

Mr. Harrold: Hair parted; pompadour or parted?

A. I didn't get you.
Q. How did he comb his hair?
A. I think on the side. On the side. On the side.

Mr. Harrold: When did you shave your moustache off?

The Witness: He had moustache.

Mr. Harrold: When did you shave yours off?

The Witness: On, never wear any moustache, never. I never wear moustache since I know myself; I never wear no moustache.

Q. Did you try to help the expressman down with the trunk the first time, the first man that came there?
A. No.
Q. Didn't you help him lift it?
A. No, I told him I couldn't help him.
Q. Why couldn't you help?
A. I can't lift because I am not strong enough.
Q. You knew it was heavy, didn't you?
A. I told him if he wants to have another man, let him get it; that is all.
Q. You knew it was a heavy trunk?
A. It is not what I know. I told him I couldn't help him. He says that is heavy, that is what he said.
Q. How did you know it was heavy?
A. He said that is heavy.

Q. Oh, he said that?
A. Yes.

By Mr. Harrold:

Q. Were you ever arrested in Philadelphia?
A. Just about my wife's affair, that is all.
Q. How long ago?
A. Some years ago.
Q. How long?
A. About twelve or fifteen years ago, or something like that.
Q. What were you arrested for?
A. Supporting of her.
Q. Weren't you ever arrested for maintaining a disorderly house?
A. Never in my life.
Q. You weren't? Twenty years ago?
A. I never was arrested in my life.
Q. Weren't, at 8th and Christian?
A. Never.
Q. Fined ten dollars?
A. Not me.
Q. Not you, eh?
A. Not me.
Q. Didn't you live at 824 North 5th at one time?
A. 824 North 5th? Never in my life.
Q. Never, eh?
A. No. You are mistaken on me.
Q. Just asking you questions.
A. You can find the record out. Never was arrested in my life.
Q. Do you know Detective Gold?

A. Yes.
Q. Do you?
A. Yes.
Q. Ever—did he ever arrest you in Philadelphia?
A. Never arrested me.
Q. He didn't? All right.

By Mr. Hinkle:

Q. Well, you had some trouble here with the police at one time, didn't you? That is the time that you were arrested for that trouble about the—killing Mrs. Fine?
A. You mean about the gas business? That is all I had here. That is all. Nothing else.
Q. Well, they broke open your trunk here at one time to search for something; what was that?
A. Oh, that was my wife squealed on me; she didn't know what to do on me. That is the only, here.
Q. She squealed on you?
A. Yes, she said I am doing this and doing that and they should go and open the trunk. And they opened it. What did they find in there? Nothing. Because I didn't have anything.
Q. What was in your trunk?
A. Something, just old papers, just ——
Q. What did you do with the trunk?
A. It stand there even now.
Q. Where?
A. In Mrs. McBride's.
Q. In Mrs. McBride's?
A. Yes.

Q. Still there?

A. Yes. She didn't know what to do on me. She said a whole lot things on me.

Q. What are you doing with these keys of 616 Pacific Avenue?

A. I just got it that way.

Q. When?

A. I keep it in the pocket since then.

Q. How long since you moved out of there?

A. Oh, it is for some time.

Q. What do you mean some time?

A. Since I moved there, I don't remember what it was. What did I do now with the keys even for the machine? I don't do anything, but I got it.

Q. When did you move out of 616 Pacific Avenue? 616 Pacific Avenue, when did you move out?

A. That was—I don't remember exactly. Some times ago.

Q. Who ran the house?

A. Where; 616? I ran that time.

Q. Who is Mrs. Jones?

A. Mrs. Jones didn't live there. I live there with Mrs. Fine.

Q. At 616 Pacific; but when was it, three years ago?

A. About that.

Q. About three years ago?

A. Yes.

Q. And you still carrying the keys of that house?

A. It lays keys in my pocket for years already, what I never use. I don't know everywhere they belong. See. It lays keys, I don't know even where it belongs, even, in the house.

Q. You just carry them around, your pocket?

A. I just had them in the pocket, and sometimes I put them in the pocket on account of the other key, that is all. I don't use them; I don't know to use them.

Q. What did you carry them away for?

A. Sometimes I put them away in the closet.

Q. Why don't you throw them away?

A. I put another pants, it lays in the pocket. No such things it should happen to never in a criminal way I should do something; this I want you to know, counsellor, because you can never see anything on me, because I don't do it.

Q. You carried those keys how many years; three or four years?

A. I have keys for years.

Q. In your overcoat?

A. In the trunk you will find some keys I got for twelve years. Keys could lay that way for years.

Q. Whom did you sell your automobile to?

A. I didn't sell. My wife sold it.

Q. She sold it?

A. Yes.

Q. Who owned it?

A. She sold it. My automobile, she sold it.

Q. How could she sell it without your signature?

A. She went to Pennsylvania, to Philadelphia.

Q. But you know you can't sell an automobile without the owner signs it.

A. I know, but she done it. She done the trick.

Q. And you have to turn the keys over.

A. She had a pair of keys, and I had keys.

Q. She turned these keys over?

A. She give away her keys.

By Mr. Harrold:

Q. Where did she sell it?

A. Philadelphia.

Q. To whom?

A. I wrote once a letter to the Harrisburg, and they answered me somewhere a man by—in—bought it on 9th Street.

Q. When did she sell it?

A. That was about a year ago.

Q. About a year ago. She couldn't have sold it without your signature under the State law of Philadelphia.

A. She did.

Q. That can't be.

A. Even Harry Best (?) knows that. I had machine in his garage, and she went to work without my knowing and took it to Pennsylvania, and she got some way—she took away my title from the pocket.

By Mr. Hinkle:

Q. Never mind about that. By the way, how many men did you know by the name of S. Miller?

A. I don't know.

Q. Do you know any?

A. Used to know Millers, but I don't remember the first names. I used to know Millers.

Q. There is a lot of Millers. Do you know an S. Miller?

A. S. Miller? I used to know one. Sam Miller, yes.

Q. How long do you know him?

A. He used to be in Philadelphia. He is a waiter.

Q. A waiter?

A. I think he is in New York.

Q. When did you see him last?

A. Oh, it is a long time.

Q. How long? Ten years?

A. No.

Q. Five?

A. About that.

Q. About five years.

A. He used to come around to the office.

Q. Haven't seen him since?

A. No.

Q. And you haven't had anything to do with any S. Miller since, except this S. Miller now; eh?

A. No.

Mr. Juliano: Who is Packer (?)?

The Witness: 30 or 32 South Massachusetts Avenue; he is a carpenter. He helped me to take the room in a house.

(Mr. Fineberg comes in the room.)

Mr. Hinkle: Mr. Fineberg, we are going to arraign this man on a warrant. Complaint has already

been entered. Before Magistrate Reinberger. Take him over now in the court. You represent him?

Mr. Fineberg: Yes.

(No cross-examination.)

(During the reading of the defendant's statement to the jury the Court took a recess until 1:30 P. M., and on reconvening at 1:30 P. M. the reading of the statement was concluded.)

S. Cameron Hinkle, sworn.

Direct examination.

By Mr. McAllister:

Q. You are the Mr. Hinkle mentioned in the statement just read to the jury?

A. I am, yes.

Q. Did you at any time tell the defendant, Fine, before the taking of this statement Mrs. Schaaf had been hit on the head?

A. I never did.

(No cross-examination.)

HARRY STEIN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Where do you live?

A. I have been living at 452 North Seventh Street, below Spring Garden.

Q. In Philadelphia?

A. Yes, sir.

Q. Do you know this defendant, Fine?

A. Yes, sir.

Q. How long have you known him?

A. Between 1917 and 1918.

Q. Do you know what his right name is?

A. His right—what he been using, Louis Fine.

Q. What is his right name?

A. Louis Kaplowitz.

Q. Did you ever know him to use the name Miller?

A. Miller, yes, sir.

Q. What initial?

A. I can't place the initial, but I remember the name Miller.

Q. Miller?

A. Yes, sir.

Q. Did you ever know him to use any other name but Kaplowitz?

A. Kaplowitz, Costello and Miller. I can't place exactly every name, but I can find it if you want it, by the mortgages which he give.

Q. You heard him use the name Miller?

A. Yes, sir.

Q. You knew that he used that name?

A. Yes. He signed often his name Miller.

Q. Costello, did you say?

A. Yes, sir.

Q. Did he ever use the name Stein?

A. Yes, sir. I took mortgages for him.

Q. Any other name that you can recall?

A. Just a minute and I will remind myself. Fox. I can't place all the names.

Q. He used all of those names?

A. Yes, sir. And by the name Miller he signed his name always. His mail came in in the office, also in the house.

Q. He signed his name as Miller?

A. Yes, he signed his name Miller. Miller isn't anybody else only him.

Cross-examination.

By Mr. Rauffenbart:

Q. You are a friend of Mr. Fine's?

A. I am a friend of his also. He moved last year with a woman here in Atlantic.

Q. Do you know me, Mr. Stein?

A. I met you here.

Q. Where?

A. Here in court.

Q. When?

A. The last few days.

Q. Did you meet me here when you were at Mays Landing sometime ago?

A. No.

Q. Don't you remember talking to me in the lunch wagon?

A. In the lunch wagon?

Q. Across the street here in this lunch wagon.

A. No, I don't remember. Some Jewish people I have been talking to. Not to me. Even if I did, I can't place you.

Q. You were in a lunch wagon when you were down here before.

A. I have been in the lunch wagon. Whenever I come over here.

Q. You volunteered to come here to testify, didn't you?

A. They subpoenaed me.

Q. But you let them know you wanted to come so they would subpoena you, didn't you?

A. I saw if they wanted anyone by the name Miller, and I seen right away this Miller isn't in existence; he is Miller. That's all I can tell you.

Q. You wanted to come here and testify against him, didn't you?

A. No, only the name.

Q. You came down here once before when you wanted to testify against him, didn't you?

A. I helped the poor woman which he robbed and he tried to kill her, and he done the same to my wife also.

Q. You said you wanted to come here and send him to jail, didn't you?

A. No.

Q. Didn't you tell me that?

A. No.

Q. Didn't you tell me you were going to send him to jail if you could?

A. Excuse me. If you will permit me——

Q. Didn't you tell me that?

A. No, sir.

Q. You had some court trouble in Philadelphia with Mr. Fine, didn't you?

A. That is in a business matter.

Q. Got a judgment against you?

A. Who? Him? Well, they can have a lot.

Q. Six hundred and sixty some dollars?

A. Excuse me——

The Court: Just answer the question.

Q. Isn't that true?

A. This is a different——

The Court: You are asked whether or not Fine has a judgment for $660.00 against you in Philadelphia.

A. Yes, sir, but it is——

The Court: Wait. You have answered.

Q. You had him arrested in Philadelphia, didn't you?

A. Yes, sir.

Q. And the case was thrown out of court, wasn't it?

A. It was fixed up by politicians, like the one with the woman.

The Court: Just answer the question.

Q. And the Court threatened you with jail, didn't it?

Mr. Hinkle: I object to that.

The Court: I sustain the objection.

THOMAS N. WARD, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Ward, where do you live?
A. Camden, New Jersey.
Q. At one time did you have some business that would bring you in contact with this defendant, Fine?
A. Yes, sir.
Q. How long have you known Mr. Fine?
A. September 1, 1925.
Q. What names have you known him by?
A. Louis Fine and S. Miller.
Q. Louis Fine and S. Miller?
A. Yes, sir.

Cross-examination.

By Mr. Rauffenbart:

Q. How long did you know Mr. Fine?
A. September 1, 1925.
Q. By what name did you first know him?
A. Louis Fine.
Q. When did you then afterward know him by the name of Miller?
A. About a month later. S. Miller.
Q. What is that?
A. S. Miller.
Q. Where was this?
A. Next door to him. 720 Spring Garden.
Q. Didn't you think that quite peculiar?
A. Yes, sir.

Mr. Hinkle: I object to what he thought.

Mr. Rauffenbart: All right. He says, "Yes, sir."

Q. What kind of business was he in?
A. Real estate.
Q. Did he have his name out on the window?
A. Yes, sir.
Q. What was the name?
A. L. Fine.
Q. L. Fine? You didn't think his name was Miller then, did you?
A. I knew that he traded under all kinds of names.
Q. What do you mean by trading under all kinds of names?

A. Because I received mail by the name of S. Miller, that is, a package, more than one, and more than—many times.

Q. You did?

A. Yes, sir.

Q. Why did you receive them?

A. Because they couldn't put them under the door and nobody was there to receive them.

Q. Did you assume then that he was the man Miller because it came to that address?

A. I did.

Q. Don't you think that was rather a violent assumption?

A. I moved out on account of that.

Q. You moved out on account of that?

A. Yes, sir.

Q. When did you last see Stein?

A. What do you mean?

Q. When did you last see Stein before coming to Mays Landing in this case?

A. When did I last see him? Rode down in the automobile with him.

Q. Beg pardon?

A. Rode down in the automobile with him.

Q. Sure. That is all.

Re-direct examination.

By Mr. Hinkle:

Q. The automobile you rode down in with him is one that is supplied by the County?

A. Yes, sir.

Q. Witnesses are collected and brought here?
A. Yes, sir.
Q. That is how you came to come with him?
A. He sat in the front seat and I sat in the back.

Re-cross examination.

By Mr. Rauffenbart:

Q. When previous to that did you see Stein?
A. Any date?
Q. Well, not exactly. As near as you can.
A. The week previous.
Q. How long have you known Stein?
A. Since September 1, 1925.
Q. Know him pretty well?
A. The same as I know Mr. Fine.
Q. And you saw him a week previous to coming down?

FRANK JULIANO, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Juliano, in your examination of the effects of the defendant did you find these things?
A. Yes, sir.
Q. Where did you get them?

A. Out of his overcoat pocket.
Q. After he was picked up?
A. The evening of the 7th.
Q. They were in his overcoat pocket?
A. Yes, sir.

Mr. Hinkle: I offer them in evidence.

(Marked Exhibit S30.)

Q. I show you a package containing a great lot of keys. Where did you get them?
A. Got them out of his overcoat pocket.

The Court: All of those keys?

A. Yes, sir.

Mr. Hinkle: I offer the package as one exhibit.

Mr. Rauffenbart: I cannot see the relevancy. He was in the real estate business. I don't see it can do any harm at all.

(The package was marked Exhibit S31.)

Cross-examination.

By Mr. Rauffenbart:

Q. Mr. Juliano, there was some reference made in the statement which was read—you were here while that statement was being read?

A. Part of it.

Q. —about a couple of keys which fit a padlock being found in the overcoat pocket of Mr. Fine. Did you find those also in the overcoat pocket of Mr. Fine?

A. Didn't find any keys in his pocket that fit the padlock, no.

KATHERINE A. GERBER, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mrs. Gerber, do you know Louis Fine?

A. I do.

Q. How long have you known him?

A. Eight years, about.

Q. Where do you live?

A. I live with my mother, Mrs. McBride, at 117 South New Jersey Avenue.

Q. Did Mr. Fine ever have a room at your mother's house?

A. He did. He lived with us over a period of eight years.

Q. When he left, did he leave with you a trunk?

A. He did.

Q. What kind of a trunk was it?

A. It was a brown trunk, somewhat on the order of that one in front of me here.

Q. But not that one?
A. No, not that one. Smaller.
Q. Smaller than that?
A. Yes. Also two bags.
Q. A bag?
A. Yes.
Q. They were turned over by you to the authorities?
A. Yes.
Q. Mr. Juliano of the Prosecutor's office?
A. Yes.
Q. How was the trunk fastened?
A. When Mr. Fine left it at our house it was tied by a rope, but it was afterwards cut.
Q. Who did that?
A. The police of Atlantic City.
Q. When?
A. Last August.
Q. Long before this thing had happened?
A. Yes.
Q. You turned the trunk and contents, then, over to Mr. Juliano?
A. Yes.
Q. Still in his possession?
A. Yes.

(No cross-examination.)

ALLEN WEISENTHAL, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Weisenthal, where do you live?
A. 601 Arctic Avenue, Atlantic City, New Jersey.
Q. In what business are you?
A. I am the treasurer of the Bankers' Trust Company.
Q. In Atlantic City?
A. In Atlantic City.
Q. Do you know this defendant, Louis Fine?
A. I faintly remember him having an account in our bank.
Q. Did you have a signature card of this?
A. Yes.
Q. Have you got it with you?
A. Yes.
Q. Produce it, please.

(The witness produced a paper.)

Q. This is the card that controlled the account that he had in your bank?
A. That is right.

Mr. Hinkle: I offer it.

(The paper was marked Exhibit S32.)

(No cross-examination.)

FRANK JULIANO, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Juliano, did you get a trunk from Mrs. McBride, delivered to you by Mrs. McBride?

A. Got it in the cellar at 117 South New Jersey Avenue.

Q. Did you get some bags, suitcases, also?

A. Two old suitcases and a trunk.

Q. And you also got some things from his room which you put in this black bag, as you have testified to?

A. Yes, sir.

Q. I have here a number of papers. I show them to you and I will ask you to just look them over. Maybe we can put them in all at one time. Just look at them.

A. This came out of the trunk. This came out of the trunk.

The Court: When you say, "This," it doesn't mean anything in the record. Identify it in some way.

Mr. Rauffenbart: I think maybe he could ask the witness if he identifies those papers, that batch, as coming from the trunk, and then I may have an objection to the whole thing.

Mr. Hinkle: I want to save as much as I can, of course.

The Court: All right.

Mr. Hinkle: These papers, I will say to the Court, are in the same condition in which they were taken from the trunk and the suitcases, except that they all bear a number in blue pencil with a circle around it. That I put there myself for identification purposes, to use later on in another feature of this proof. They were not on at the time. That blue pencil mark. For instance, here is one "16." It has nothing to do with this case, except for our file so they would not become confused with other papers.

Q. Here is a deed made from Kaplowitz to Samuel Lunchas bearing blue pencil circle mark 19. Where did you get that?

A. Got that out of the trunk.

The Court: What trunk?

A. The trunk I got at 117 South New Jersey Avenue.

Mr. Hinkle: I offer it in evidence.

Mr. Rauffenbart: I object because it is not shown that these papers were put into that trunk by the defendant, nor has it been shown that this trunk had been in his custody, nor has it been shown that

access was not had to that trunk by other people through a long period of time.

The Court: Mrs. Gerber testified that it was the trunk of the defendant. I do not recall that she testified upon the question of whether or not the trunk was locked or what condition it was.

Mr. Hinkle: She said it was tied with a rope.

The Court: You might recall her. She might be able to supply that.

Mr. Hinkle: Well, it would not matter much. I will say to the Court that I propose to show that each of these papers contains writing which will show that this defendant wrote certain things, that I propose to put in tomorrow morning in proof.

The Court: You are going to use them for the purpose of comparison?

Mr. Hinke: Precisely so. Purpose of expert comparison.

Mr. Rauffenbart: Could not that be done tomorrow by comparing them?

The Court: I presume they should go in evidence first. I shall permit it.

Mr. Rauffenbart: I am willing they shall be admitted, subject to a motion being made tomorrow.

Mr. Hinkle: We have no objection to that.

The Court: Let them go in.

Mr. Rauffenbart: Then you will not have to go to any further trouble examining the witness.

The Court: Then these papers will be admitted as papers that were secured either from the trunk which was in Mrs. McBride's house, the property of the defendant, or, as I recall, from his room at 31 South Connecticut Avenue, and were obtained from one or the other source, either from his trunk left at Mrs. McBride's or from his room at the South Connecticut Avenue house.

Mr. Hinkle: Yes.

The Court: They will be admitted. Mark them as one exhibit, if you desire.

Mr. Rauffenbart: I have no objection to all of those being admitted.

(The papers in question were marked Exhibit S33.)

(No cross-examination.)

(A recess was taken until 9:30 A. M. Wednesday, June 8, 1932.)

Mays Landing, N. J., June 8, 1932.

TRIAL OF THE CAUSE RESUMED AT 9:30 A. M.

HARRY V. BOSSLER, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Bossler, what is your employment?
A. Teller in a bank.
Q. Which bank?
A. Marine Trust Company.
Q. How long have you been in the Marine Trust Company?
A. Twenty-eight years.
Q. I show you a card and ask you please to tell us what it is?
A. Signature card, Louis F. Fine, account opened on the 28th of April, 1925.
Q. 1925?
A. Yes.
Q. Was that portion of the card under the name, the writing and all this, is that in the handwriting of someone in your bank?
A. No, it is not.
Q. The signature was written by Louis Fine?
A. Yes, sir.

The Court: Did you say Louis F. Fine?

A. Louis F. Fine.

Mr. Hinkle: It may be and it may not.

A. You can hardly tell.
Q. That whole thing was written at that time?
A. Yes.

Mr. Hinkle: I offer it in evidence.

(The card was marked Exhibit S34.)

Q. Since the merger of the banks have you control of the Seaside Trust Company files and papers?
A. We have.
Q. I show you a paper and ask you what that is?
A. That is a signature card, account opened in the Seaside Trust Company on the 18th of June, 1927.
Q. Whose signature is there?
A. That is the same signature, Louis F. Fine.

Mr. Hinkle: I offer it.

(The card was marked Exhibit S35.)

Q. I show you a package of 16 checks and notes bearing the signature of someone. Whose signature is at the bottom?
A. That is the same signature, Louis F. Fine.

Mr. Hinkle: I offer them in evidence.

(The package was marked Exhibit S36.)

(No cross-examination.)

FLORENCE K. HALE, sworn.

Direct examination.

By Mr. Hinkle:

Q. Miss Hale, are you employed in some bank?
A. Second National.
Q. In Atlantic City?
A. Yes.
Q. How long have you been there?
A. About ten years.
Q. I show you a card and ask you what that is?
A. That is a signature card that we used to open the account, Louis B. Fine, and they are my figures at the bottom, and the date.
Q. Do you recall whether he signed that in your presence?
A. I can't recall it. I open most all of the accounts. Sometimes another teller may open an account and when I get a card I very often put it at the bottom.
Q. That is the signature card?
A. That is our signature card, yes.

Mr. Hinkle: I offer it.

(The card was marked Exhibit S37.)

Q. I show you two checks, one dated November 17, 1930, and one December 22, 1930, bearing a signature. Whose signature is at the bottom?

A. Louis B. Fine in both cases.

Mr. Hinkle: I offer the check.

(The checks were marked Exhibit S38.)

(No cross-examination.)

ALBERT S. OSBORN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Osborn, where do you live?

A. Montclair in this State, near New York.

Q. What is your occupation?

A. I am an examiner of questioned documents, disputed handwriting and typewriting and other questions relating to documents.

Q. How long have you given study to such work?

A. Upwards of thirty years.

Q. And testified, have you, from your investigations?

A. I have.

Q. In how many courts?

A. Well, I have been engaged on cases from thirty-nine States of the United States and in various parts of Canada.

Q. Have you written upon the subject? Have you written books upon the subject?

A. Yes. Your Honor, may I say that I don't hear very well, and if there are any objections to be made or anything I will try to hear them, but I am not always successful.

The Court: Very well.

Q. Some weeks ago did you receive a package of papers from the Prosecutor's office in Atlantic City?

A. Yes.

Q. Have you examined them and made a special study of them?

A. I have.

Q. And are you prepared to testify concerning the handwriting on those papers?

A. Yes.

Q. I show you a note taken from the package marked Exhibit S33, and you find at the bottom there the signature, "Samuel Miller"?

A. Yes, and "Paula Miller."

Q. From the same exhibit we have a check, signed Louis B. Fine"?

A. Yes.

Q. From the same exhibit a check made payable to Louis B. Fox, signed "Louis B. Fine"?

A. No; "Louis B. Fox."

Q. And from the same exhibit a check, Louis B. Fox, and signed "Louis B. Fox." From the same exhibit a check to the order of Louis B. Fox and signed "Louis B. Fox." From the same exhibit a check to the order of Louis B. Fine, signed "Louis Fine." From the same exhibit a check to the order of—it looks like Picnic, and signed "Louis Fine." From the same exhibit a check to the order of Samuel Miller, signed "Louis"——

A. Mischler.

Q. Mischler, signed "Louis Fine." From the same exhibit a check to the order of Berman or some such name and signed "Louis B. Fine." From the same exhibit a check to the order of S. Miller, signed "Louis Fine." From the same exhibit a check to the order of S. Miller, signed "Louis Fine." From the same exhibit a check, S. Miller, signed "Louis Fine." From the same exhibit a check, S. Miller, signed "Louis Fine." From the same exhibit a check to the order of Louis B. Fox, signed "Louis B. Fox." From the same exhibit a check to S. Miller, signed "Louis Fine." From the same exhibit a check to the order of S. Miller, signed "Louis Fine." From the same exhibit a check to S. Miller and signed "Louis B. Fine." From the same exhibit another check, S. Miller, signed "Louis B. Fine." From the same exhibit a check to S. Miller, signed "Louis Fine." A slip of paper containing the name of Charles Cardenick, with an address on Susquehanna Avenue. From the same exhibit a

mortgage purporting to be between Nathan Kaplowitz and a blank, signed "Nathan Kaplowitz," and acknowledged before some official. Then from the same exhibit a deed purporting to be from Samuel Miller to Harry Kustuli and signed, "Samuel Miller," witnessed by one Humphry and Louis Fine. Also a deed purporting to be from Louis Miller to Louis B. Fox, signed by Louis Miller and by Jennie Miller. Also an agreement between the Girard Trust Company, trustee of John A. Stevenson, deceased, and Samuel Miller, and executed by some official of the Girard Trust Company and Samuel Miller, the name Samuel Miller being witnessed by Louis Fine. Also an agreement marked "An agreement of an exchange of real estate between Samuel Miller and Paula Miller, his wife, and Benjamin Finkelstein and Jennie Finkelstein," and signed by Samuel Miller and Paula Miller. From the same exhibit a bond and warrant from Nathan Kaplowitz to blank, party of the second part, signed "Nathan Kaplowitz." Also an agreement of exchange between Samuel Miller and Paula Miller and Benjamin Finkelstein and Jennie Finkelstein, and signed by Samuel Miller and Paula Miller. Also a deed from Nathan Kaplowitz, single, to Samuel Gunquish, and signed by Nathan Kaplowitz and witnessed "Louis Fine." From the same exhibit an irrevocable stock power of attorney, partly printed, and the blank parts not filled out at all, in other words, signed in blank by Louis B. Fox and witnessed by Louis Fine. Also from the same exhibit an agreement between Louis Miller and Louis B. Fox, signed "Louis Miller" and "Louis B. Fox." Also an envelope con-

taining papers addressed to L. Fine, 718 Spring Garden Street, Philadelphia, Pa. Did you examine all of those papers, Mr. Osborn?

A. I did.

Q. You find among them there the signatures, I think, of Samuel Miller?

A. I do.

Q. Louis Miller?

A. Yes.

Q. Nathan Kaplowitz?

A. Yes.

Q. Louis Fine?

A. Yes.

Q. Louis Fox?

A. Yes.

Q. S. Miller?

A. Yes.

Q. I think I did say Samuel Miller and Louis Miller?

A. Yes.

Q. Who wrote all of those signatures?

A. And Jennie Miller.

Q. Who wrote the signatures?

A. In my opinion, they were all written by the writer whose writing I have examined that appears upon certain bank signature cards.

Q. Is this one of the bank signature cards?

A. Yes.

Q. Showing you Exhibit S34.

A. Yes. In my opinion, the signatures, all the Miller signatures, with the various differences in names, and the Fox signature and the Louis Fine

signatures, were all written by the writer that wrote the signature card, S34, with the address.

The Court: How about Kaplowitz?

Q. How about the name Kaplowitz?

A. In my opinion, my best judgment is that "Kaplowitz" is in the same handwriting, although I do not have standard signatures of that name, but I think the handwriting is the same. I also had some other bank cards.

Q. Yes. I haven't been able to put that in evidence because the witness has not appeared here this morning to prove it.

A. And I also examined an express receipt.

Q. I am going to show you that now.

A. Or express order. I don't know what you call it.

Q. I show you Exhibit S14, which is a shipping receipt by the railway express, and I call attention to the "S. Miller" written there. Who signed "S. Miller"?

A. In my opinion, that signature was written by the same writer that wrote the writing signed "Louis Fine" on the bank cards that I examined, and also the other checks and papers which were signed "S. Miller" and "Samuel Miller" and "Paula Miller" and "Jennie Miller" and "Louis Miller."

Q. Then do I understand, Mr. Osborn, that there was no other writer on any of these instruments who wrote the names we have mentioned except the one person?

A. In my opinion, they all are written by the same

person. There are a few endorsements here of other names that in my opinion are not the same handwriting.

Q. But all that you have been asked about were written by the same hand?

A. Yes.

Q. And that hand, you say, is the hand that has written on this signature card "Louis Fine"?

A. Yes.

Q. And the same with this slip, S14?

A. Yes. Are these——

Q. They are duplicates, written at the same time.

A. Are they all marked S14?

Q. Yes.

A. My photographs, do you want?

Q. Yes.

A. They are back there, although the other bank cards are illustrated there and you haven't proved those.

Q. I show you a card, Exhibit S32, which I think. I showed you last evening. Was that written by the same hand?

A. Yes, in my opinion, it is. That is, the name and the address.

Q. I also show you Exhibit 37, a card which you examined last evening. Was that written by the same hand?

A. Yes, the name and address.

HARDENBROOK T. STOKES, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Stokes, what is your employment?
A. Assistant cashier, Chelsea-Second National Bank.
Q. How long have you held that position?
A. I have been assistant cashier——
Q. How long have you been in that bank?
A. Thirteen years.
Q. I show you a card and ask you what it is.
A. Signature card of L. Fine Realty Company, signed by Louis Fine.
Q. Signed by Fine when the account was opened?
A. Yes, sir.
Q. You know that is his signature?
A. Yes, sir.

Mr. Hinkle: I offer it in evidence.

(The card was marked Exhibit S39.)

(No cross-examination.)

ALBERT S. OSBORN, recalled.

Direct examination.

By Mr. Hinkle:

Q. Some of your testimony was predicated upon the Exhibit S39, which I now show you. That is the card which you examined some time ago——

A. Yes.

Q. —and made photographs of?

A. Yes.

Q. Now, Mr. Osborn, did you make some enlargements of those signatures?

A. I did.

Q. Have you some maps or charts showing the enlargements?

A. Yes.

Q. And the similarity of the signatures? Will you please explain to the jury why you say these papers were written by one and the same hand?

A. Do you want to mark this photograph in any way?

Q. Did you make that photograph?

A. Yes.

Mr. Hinkle: I offer it in evidence.

Mr. Rauffenbart: Did I understand the witness to say that he was predicating his testimony on his examination of those bank cards? You are predi-

cating your testimony on the comparison with the bank cards, the signatures?

A. Certainly. I am basing my opinion on the originals. They are simply illustrations of the originals.

Mr. Rauffenbart: I want to object to any further testimony along this line, because there is no testimony here to show that the defendant is the Fine who signed the bank cards. They simply testified that those bank cards were signed by Louis F. or Louis B. Fine, just as the signature might appear, but there has been no identification of this defendant as the man who signed them.

Mr. Hinkle: I understand these people say he signed them. I understood Mr. Bossler to say that he signed that in his presence.

Mr. Rauffenbart: If he did, I did not catch it.

The Court: Whether the Louis Fine or Louis F. Fine was the same as the defendant I think was not the subject of the inquiry.

Mr. Hinkle: I am not relying upon these signature cards as a basis for anything. What I am trying to show and have shown is that these papers that were found, were found in Fine's presence, and I am showing that so far as this witness knows, this witness says they were all written by the same person.

The Court: I have no doubt if these witnesses were returned, they might be able to identify the Fine who had the account as the defendant.

Mr. Hinkle: Perhaps I will ask to do that.

The Court: It might be well to do it, to have no question about it.

HARRY V. BOSSLER, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Bossler, showing you again Exhibit S34, do you know Louis Fine?

A. No, I couldn't positively identify him.

Q. But do you know whether or not that card was written by the Louis Fine that was there?

A. It was, yes.

Q. At the time of the writing?

A. At the time of the writing.

Q. And was the rest of the writing that is on that card written by that same Louis Fine?

A. Well, that I couldn't say. I think it was, but I couldn't say positive.

Q. You wouldn't know the Louis Fine now if you saw him?

A. No, I couldn't identify him.

(No cross-examination.)

HARDENBROOK T. STOKES, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Stokes, showing you Exhibit S39, do you know the Louis Fine whose name is attached here?

A. No, sir.

Q. Wouldn't know him if you saw him?

A. No, sir.

Q. When that card was written, do you know by whom it was written, that signature placed there? Do you know who placed it there?

A. Well, the man representing himself to be Louis Fine.

Q. Whoever he may have been?

A. Whoever he may have been.

(No cross-examination.)

Mr. Hinkle: That is as far as I can go. The man said that he was Louis Fine and he signed the paper.

FLORENCE K. HALE, recalled.

Direct examination.

By Mr. Hinkle:

Q. Miss Hale, do you know Louis Fine?

A. No.

Q. Wouldn't know him if you saw him, would you?

A. I don't think I would.

Q. The signature card which you have been shown, S37, which you have offered from your bank, is that the one?

A. Yes, that is it.

Q. Do you know who wrote that?

A. The man that represented himself as Louis B. Fine.

(No cross-examination.)

ALBERT S. OSBORN, recalled.

Direct examination.

By Mr. Hinkle:

Mr. Rauffenbart: I renew my objection.

The Court: Well, we are in this situation: A man under the testimony representing himself as Louis Fine or Louis F. Fine or Louis B. Fine, as the case may be, signed certain cards. Those cards, in the opinion of this witness, were signed, the name and address were signed by the same hand which signed certain papers which, so far as the case now shows, admittedly, or at least, it has been testified came from the possession of the defendant, Louis Fine; so that we have tied up signature cards which have not been identified with the defendant, but corresponding, in the opinion of this witness, with signatures of papers taken from the custody of the defendant, some of which have upon them the name Fine; so that it seems to me that in that situation the illustration, for the purpose of comparison only, of course, and for illustration, would be admissible.

Mr. Rauffenbart: May I say, if the Court please, that there is nothing in the testimony to show that any of these papers taken—not from the custody, I don't understand, of the defendant, but from his room, were in his handwriting.

The Court: Some of them from his room, some of them from his trunk in a room which was occupied by him, which was testified to as having been his trunk.

Mr. Rauffenbart: That is correct, but there is no testimony here to show that any of those papers are in the handwriting of the defendant; simply that they were taken from his trunk or from his room.

The Court: There is a pretty strong presumption, I should say, that if in my home or in a room occupied by me there were papers with my name used repeatedly, that I had some connection with the use of that name, and where you have coupled signature cards in a bank with my name, even though I might not be identified as the person who actually did it, corresponding with signature cards in my name in my own possession, a very strong presumption would be raised, I think, that it was my signature.

Mr. Rauffenbart: Well, I simply want to get my objection on the record, and I ask for an exception. I do not desire to hold this proceeding up.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

The Court: The objection, I understand, is solely on the question of identity of the signer?

Mr. Rauffenbart: Yes, on the ground that the papers which were offered,—that is, that there is no evidence to prove that those papers which were found in his trunk or in his room were actually signed by him, nor was Fine identified as the man who signed the cards.

The Court: I understood that to be your objection.

Mr. Hinkle: This express receipt has been positively identified, and the witness says is written by the same man.

The Court: Yes, and in the testimony so far it appears that the defendant said to the public authorities that he had written that.

Mr. Rauffenbart: This is simply on the question I asked him, if he predicated his testimony on those cards, and he said "Certainly."

(The photograph referred to was marked Exhibit S40.)

Q. Mr. Osborn, suppose we offer all of these at the same time. Were these all made by you?

A. Yes.

Mr. Hinkle: I will offer all of them.

The Court: All made from these several papers and documents submitted to you?

A. Yes. The original documents were photographed, the plates made by me, and then these enlargements were made from those negatives.

Mr. Hinkle: I offer them all as one exhibit, S40.

Q. Now, Mr. Osborn, from the Exhibit S40, which you say you made, will you show to the jury, please, the characteristics of the handwriting which causes you to say they were written by one and the same person?

A. In my opinion, this handwriting is very distinctive and individual handwriting. It has many peculiar things in it, as is illustrated by, for example, the illustration, S40, which you see. These are the names written on the faces of the checks from Exhibit S33, the name S. Miller, and the name S. Miller appears upon this express receipt, Exhibit S14, and in my opinion they are the same handwriting. This writer has a peculiar habit of taking his pen up between the letters. You will notice, if you look at it closely, that the pen is taken up very frequently, sometimes after—sometimes between all of the letters in the writing. Then also the peculiar habit of writing the "S" down through the line, and also the "M" down through the line frequently. For instance, in this express receipt, the "M," in relation to the ruled line, is about like the first one on this illustration. That is a peculiar—in my opinion,

that is a peculiar individuality in this writing, the disregard of the base line, and we have that in numerous other of the illustrations. For example, in many of these illustrations, in these different names the characteristics of the writing are undoubtedly identical. For instance, if you look at the two lower names upon this exhibit, "Louis B. Fox," and "Louis B. Fine," of course, the style of writing, the relation of the writing to the base line, and the peculiar finish of the "s" in Louis, this writer made a small "s" similar to the capital "S" when he made the small "s" at the end of a word, and then this extraordinary capital "F," peculiar capital "F," and you will notice this lower signature here, as I have said, is written disregarding the base line, and in these names, "Miller," you will see the same characteristic of taking the pen up, and the peculiar "S" made below the line. These are the endorsements upon some of those checks in Exhibit 33. For instance, this is the endorsement of the check of December 21st. The next one is the endorsement of the check of February 16th. The next endorsement of the check of January 29, 1927.

The Court: Which is the signature and which is the endorsement?

A. The check is payable to S. Miller, and endorsed "S. Miller," and then the name "Louis Fine" also appears on this same check.

The Court: As the drawer of the check?

A. Yes. Following the name "S. Miller." In my opinion, this handwriting is highly individual. It isn't disguised at all. That is, these two handwritings are just written freely and rapidly, without any attempt, in my opinion, to disguise them at all. Now, for instance, in this, this shows the—this exhibit shows the beginning of the signature card in the Marine Trust Company, and the "Samuel Miller" signed on one of the deeds, the deed of April 29, 1926, and then the name "Louis Miller"—you see the name "Louis" as compared with "Louis Fine" is unmistakably the same, so that the "Louis Miller," in my opinion, and the word "Miller," of course, is just like the other words, "Miller," that the "Louis Miller" is also written by this same writer. And then the "S. Miller" below, and this particular check, you will see the endorsement is endorsed "S. Miller," and then the name following the endorsement is "Louis B. Fox," which, in my opinion, is unmistakably the same handwriting as the "Louis B. Fine" which appears below every check of December 5, 1930. These are additional endorsements of "S. Miller" and "Louis Fine" on other checks in this Exhibit 33. For example, this is an illustration of this habit I speak of. You see, between "M" and "i" the pen is taken up; between "i" and "l"; between the two "l's"; between "l" and "e", and between "e" and "r," and then the "S" is made out of line, below the line of the other letters, and this peculiar "F" in Fine and the peculiar "F" in "Fox" and the peculiar alignment. Then we have—do I understand that this writing is

all in evidence for comparison on the face of the—this is the Marine Trust Company registration card. I couldn't understand.

Q. That card is in evidence, yes, sir.

A. The name and the address, 149 South South Carolina Avenue, and then below, "718 Spring Garden Street, Philadelphia, Pa.," the extraordinary capital "P" in "Phila." Below we have a new name, "Miller," "Paula Miller," on these two, and you will notice, for instance the "P" in "Paula." This letter here, that is supposed to be a "P," and this one is supposed to be a "P," and in my opinion they are unmistakably in the handwriting of the writer of the "Louis Fine" on this Marine Trust Company bank card and the "L. Fine Realty Company." Here is another one of these words, you see, the word "Realty." The pen is taken off between all of the letters all the way through. The characteristics in this writing, in my opinion, are so pronounced and unmistakable that the identity of the writing is very positively shown. This "Nathan"—what is that name? Lickowitz?

Q. Kaplowitz.

A. That we have no standards for, either for the word "Nathan" or "Kaplowitz," but in my opinion it is the same style handwriting. For instance, in some of those signatures, in the word "Nathan," some of the letters go way down, half-way the length of the letter below the line, the same characteristic we have here in some of these—in numerous of these handwritings. The same general style. In my opinion, it is unmistakable that the handwriting of "Louis Fine" as appears upon these bank cards is

the same as all of the "Miller" signatures, three or four; there is "Louis," "Samuel," "F," "S," "Paula" and "Jennie." In my opinion, they are all written by this writer, and the "Louis Fox," in my opinion, is also unmistakably the same. And the same also as to the signature "S. Miller" upon the express receipt.

Q. Then, in order that there be no misunderstanding, let me ask you this question: There was no other writer on any of these signatures except the one writer; is that right?

A. That is my opinion.

Q. Only one writer? And that one writer was the man that we know as Fine?

Mr. Rauffenbart: I object.

A. I know as having written the bank signature.

Q. The signature "Fine"? No other writer but him?

A. No.

Q. He wrote the "Miller" signatures and all these other signatures?

A. Yes, excepting there is one or two endorsements on this Exhibit 33 of other names that I don't know anything about.

Q. We don't care about them.

A. No.

By the Court:

Q. These names that are now being interrogated about——

A. Are in my opinion all written by the writer who wrote the "Louis Fine" bank cards, yes.

Cross-examination.

By Mr. Rauffenbart:

Q. Are you just sure of the Kaplowitz signature as you are of those other signatures?

A. No, because I haven't, as I said, standards; excepting the general style of writing is the same.

Q. Well, the general style usually follows down through a family, doesn't it?

A. How?

Q. Suppose they are brothers, does the general style usually follow through the family?

A. Well, sometimes sons follow their fathers' style. I don't think they inherit it in their blood and bones, but they imitate it.

Q. You have noticed a similarity?

A. Yes. That is, sometimes there is a similarity, yes.

Mr. Rauffenbart: I want to move to strike out all of the testimony of Mr. Osborn, on the ground that there was no testimony to show that the defendant wrote any of the writings which were used by Mr. Osborn in his comparisons.

The Court: Upon what ground?

Mr. Rauffenbart: That there is no proof that any of the papers or signatures used by Mr. Osborn in

his comparisons were in the handwriting of Mr. Fine, with the exception of the one paper, the express receipt.

The Court: Well, of course, that would, in itself, I take it, afford a basis of comparison. The motion is denied.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

ELBRIDGE W. STEIN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Stein, where do you live?
A. I live in Montclair, New Jersey.
Q. What is your business?
A. I am an examiner of disputed documents, including questions of handwriting, typewriting, inks, paper and those things that enter into the physical makeup of the document.
Q. You have made a special study of that subject?
A. I have.

Q. For the purpose of testifying in court?

A. Yes.

Q. And have testified in court?

A. Yes.

Q. Were you recently shown a package of questioned papers coming from the Prosecutor's office in Atlantic City and which is now Exhibit 33?

A. I was.

Q. Did you examine each of those papers?

A. I did.

Q. Taking from that Exhibit S33 a check to the order of Louis B. Fox and signed "Louis B. Fox," did you see that?

A. Yes.

Q. Also a check to Louis B. Fox, signed by "Louis B. Fox"?

A. I saw this.

Q. And that latter check was endorsed——

A. Both of them.

Q. Both of them were endorsed by Fox? Also a check, Louis B. Fox, signed, "Louis B. Fox," endorsed, "Louis B. Fox"?

A. I saw this one.

Q. And a check, Louis B. Fox, signed, "Louis B. Fox," and endorsed, "Louis B. Fox"?

A. I saw that one.

Q. And a check to Louis Fine, signed, "Louis Fine," and endorsed, "Louis Fine." Did you see that one?

A. Yes.

Q. Also a check to the order of Mr. Picnic, "Louis Fine," and endorsed by some other person not connected with the case?

A. I examined this.

Q. And a check to Samuel Mischler signed, "Louis Fine," and endorsed by persons outside of the case?

A. I examined this.

Q. And a check to Mr. F. Berman, signed, "Louis B. Fine," and endorsed by outside parties. Did you examine that?

A. Yes.

Q. And a check to the order of S. Miller, signed, "Louis Fine," and endorsed, "S. Miller," and endorsed, "Louis Fine"?

A. I examined this.

Q. And a check to the order of S. Miller, signed, "Louis Fine," endorsed, "S. Miller," endorsed, "Louis Fine"?

A. I examined this one.

Q. A check to the order of S. Miller, signed, "Louis Fine," endorsed, "S. Miller," and, "Louis Fine"?

A. I examined this.

Q. A check to S. Miller, signed, "Louis Fine," endorsed, "S. Miller," and, "Louis Fine"?

A. I examined this one.

Q. A check to Louis B. Fox, signed, "Louis B. Fox," and endorsed, "Louis B. Fox"?

A. I examined that one.

Q. A check to S. Miller, signed, "Louis Fine," endorsed, "S. Miller," and "Louis Fine"?

A. I examined this.

Q. A check to S. Miller, signed, "Louis Fine," endorsed, "S. Miller"?

A. I examined this one.

Q. A check to S. Miller, signed, "Louis B. Fine," endorsed, "S. Miller," and "Louis B. Fine"?

A. I examined this.

Q. A check to S. Miller, signed, "Louis Fine," endorsed, "S. Miller," endorsed, "Louis Fine"?

A. I examined this.

Q. A check to S. Miller, signed, "Louis Fine," endorsed, "S. Miller," and a man outside, not involved?

A. I examined this.

Q. A note signed, "Samuel Miller, Paula Miller." Did you examine that?

A. I did.

Q. Now, Mr. Stein, are you prepared to say, after examining those several checks, whether there was more than one person who wrote the names, "Miller," "Fox," and "Fine" as they variously appear on those instruments?

A. I am.

Q. Who wrote them?

A. One writer, in my opinion, wrote all the names "Miller," "Fox," and "Fine" appearing on these checks which I have just been shown.

Q. I show you a mortgage from Nathan Kaplowitz, party of the second part blank, and signed, "Nathan Kaplowitz." Did you examine that?

A. Yes.

Q. And an agreement—all of these papers came out of S33. An agreement between Louis Miller and Louis B. Fox, signed, "Louis Miller" and "Louis B. Fox"?

A. I examined this paper.

Q. And a blank stock power of attorney, signed

in blank by Louis B. Fox and witnessed by Louis Fine?

A. I examined this.

Q. A deed by Nathan Kaplowitz, signed by Nathan Kaplowitz and witnessed "Louis Fine"?

A. I examined this paper.

Q. Agreement of exchange between Samuel Miller and Paula Miller and Benjamin Finkelstein, signed, "Samuel Miller" and "Paula Miller"?

A. I examined this agreement.

Q. Also a bond and warrant between Nathan Kaplowitz and an unnamed person and signed, "Nathan Kaplowitz"?

A. I examined this paper.

Q. An agreement of exchange between Samuel Miller and Paula Miller and Benjamin Finkelstein, and signed, "Samuel Miller" and "Paula Miller"?

A. I examined this.

Q. An agreement of sale between the Girard Trust Company, trustee, and Samuel Miller, and signed by the Girard Trust Company official and Samuel Miller, and the signature of Miller witnessed by Louis Fine?

A. I examined this.

Mr. Rauffenbart: Would you mind giving us the dates of those? Are they all about the same time?

Mr. Hinkle: I have not bothered to put the dates in. This last one is dated December, 1921.

Q. Here is a deed said to be between Louis Miller and Louis Fox, dated the 1st of August, 1917, signed

"Louis Miller" and "Jennie Miller." Did you examine that?

A. I did.

Q. Also a deed from Samuel Miller, a single man, to Harry Custooly, dated April 19, 1926, and signed by Samuel Miller and witnessed by Louis Fine?

A. I examined this paper.

Q. Also a signature card from the Chelsea National Bank, being Exhibit S39?

A. I examined 39.

Q. And a signature card from the Marine Trust Company, being Exhibit S34, bearing the signature "Louis Fine"?

A. I examined S34, also.

Q. One from the Second National Bank of Atlantic City, bearing the name "Louis Fine," being Exhibit S37?

A. I examined S37.

Q. Are you prepared to say whether more than one person wrote the signatures to the several papers taken from Exhibit S33 and just shown you?

A. Yes.

Q. More than——

A. I am prepared.

Q. How many persons wrote those several signatures?

A. In my opinion, one person wrote all of them, with the exception of the possibility of Nathan Kaplowitz. That Nathan Kaplowitz I am not so certain about.

Q. I show you Exhibit S14, being a railway receipt, and call your attention to the "S. Miller" there. Who wrote the "S. Miller" on that paper?

A. In my opinion, the "S. Miller" on S14 was written by the same writer who wrote the "Miller," the "Fox" and the "Fine" names on all of those papers in S33.

Q. I show you also an envelope bearing the name "L. Fine" with an address. Who do you say wrote that?

A. In my opinion, this is the same writer that wrote S33, that is, the "Fine" and the "Miller" and the various writings on there, as well as on S34 and S39.

Q. Did you examine this piece of paper that came from Exhibit S33, having some writing on it?

A. I did.

Q. That slip of paper was written by whom?

A. In my opinion, by the same writer who wrote the other writings in S33 of "Miller," "Fine" and "Fox."

Q. Now, Mr. Stein, have you made some photographs?

A. I have.

Q. Did you make them yourself?

A. Yes.

Q. Showing the characteristics of this work?

A. Yes.

Q. How many have you of this?

A. I have ten sets.

Mr. Hinkle: I offer the ten, all that are here, and I suggest——

The Court: They are of just one paper in each set?

A. No, your Honor.

By the Court:

Q. I mean your illustration is all on one piece of paper?

A. Yes, that is right.

Q. And there are ten duplications of the same thing?

A. Yes.

Mr. Hinkle: I was going to suggest we might distribute probably one to each two jurors as he testifies.

The Court: Very well. If there is no objection they will be admitted.

(The photograph was marked Exhibit S41.)

By Mr. Hinkle:

Q. Now, Mr. Stein, will you tell the jury and point out to them, please, the characteristics of this one person who wrote all of these several signatures, particularly the signatures of "Miller," "Fox" and "Fine"?

A. May I have S14, please?

Q. Yes.

(The exhibit asked for was handed to the witness.)

A. My opinion is that the writer who wrote the

extreme right-hand side of this photograph which is marked "D" in red ink also wrote all of the "Samuel Miller," "Louis Miller," "S. Miller," "Paula Miller," "Louis B. Fox" signatures on the other pages, and, in conjunction with that, the signature S14 on the express receipt which is not photographed. This S14 is an especially valuable standard, on account of its containing exactly the same name, "S. Miller," as appears on the plates marked "B" and "C." Unfortunately, this was not photographed. Some of the characteristics which appear here in this writing and which, in my judgment, are very distinctive and individual, I will refer to in detail and somewhat briefly. First is the capital "S." I refer over here to Exhibit "B," and in the second line at the top there is, "149 S. South Carolina." That capital "S" is made in a peculiar way, coming down below the line. It is shaded, if you will observe, on the compound curve of the downward stroke. That is true here in S14, as well. It is made in the same way as regards form; it comes down below the line; the beginning point is the same; and the pressure of the pencil is in the same location in S14 as it is over here in "S. South Carolina Avenue." Now, coming over here to page "C" and "B," where the names, "Samuel Miller" and "S. Miller" appear, the capital "S" there is similar to the design and to the way it is made over here on the right-hand side in that it begins above the line, it has the shading in exactly the proper location on the compound curve. The shading is high. That is the peculiar part about it. The shading is generally lower on the capital than it is in this particular

capital "S," and the letter comes below the line. That is true, as I have said, here in S14, on the express receipt. Another peculiarity of this writing is the use of really what is a small letter for a capital, and I refer now to the capital "M." Taking the "M" in the word "Mr." on the extreme right side, "Mr. Goldman," I think you will observe that this writer used a small "m." It isn't an enlarged small "m." That same thing is true in that same line where he wrote the word "New," which I assume was intended to be "New Hampshire," and, of course, should have been a capital. There is a small "n." Coming over here to page "B" on the photographs, which contains "S. Miller" as an endorsement on some of the checks from the Exhiibit S43, and particularly—you will see that these are numbered in small red ink numbers. Particularly number 3, there is a very pronounced small "m" for "Miller." Number 5 the same thing. Number 7 another small "m," and number 9 the same thing. On S14, the express receipt, there is the form of a small "m," but a large small "m"—that is, it is made just like a small "m," except it is tall. That same thing is true over here in the "Samuel Millers." In the "Samuel Millers" on page "C" of the photograph, and also number 1 on "B," there is a large small "m" used for the capital. It is not only large, but it is written through the line, slanting upwards, just as it is on S14, and the last part of the "M" is sharp instead of a turn. Then there is another peculiarity about this "M," and that is if you drew a straight line under the "M" the beginning part would be slightly above that line in

nearly all of those "M's" that are made as a large small "m." There has been referred to the raising of the pen and raising of the pencil between different letters in the writing of the word "Miller." That is true in S14. Not so easy to see, because it is written with a pencil, but there was a pencil raising between the "M" and the "i," and between the second "l" and the "e" that are very distinct, and also between the "i" and "l" in S14. That is true here in these "S. Millers," and "Samuel Millers" wherever they appear, that is, that they are frequent pen raisings of a somewhat peculiar character. The pen is raised after it starts upwards, and then a kind of an attempt, at least partly successful, to set the pen down where the pen was raised. There is another peculiarity about the "r" in the word "Miller." The small "r" in the word "Miller" on S14, the express receipt, and all of the "Millers" and the "r's" over here on the bank cards, and there is an "r" in "Carolina" and in "Spring Garden," two of them. A peculiarity about that "r" is that the letter is made sharp on both parts of the top, that is, the left top and the right top, and the right top is in many instances higher than the left, that is, the top of the letter slants upward in many instances. Here is an illustration of that in the "S. Miller" on page "C," number 5. There the top points upward, and that is true here on S14. Then there is the pen emphasis on the very last stroke of the "r." That is true on S14. A pencil was used to write S14, but nevertheless it shows that the pressure was put upon the pencil on the last downward stroke of the "r," and that is true here in all of these words "Mil-

ler." Again, the "Louis B. Fox"—if you will just hold this photograph over like that, it throws the "Louis B. Fox" and the "Louis Fine" on the right side a little closer together. In the word "Louis" there is a rather peculiar beginning of the capital "L." It doesn't start in any of the recognized copy book forms. It begins with a simple upward stroke on the right side. That is true of every one of these "Louis" on page "A," and on page "A" of these photographs, the first four represent the signatures to checks from Exhibit 33, and the last four are the endorsements on the same checks; arranged in that order; that is, number 5 is the endorsement of check —of the one that is marked number 1, and number 6 is the endorsement of the check, the signature of which is number 2. There is a peculiar pen raising at the top of the small "o" in the word "Louis." It is partly the result of learning to write in a foreign country, the way the pen is raised at the top of the "o," but this writer didn't always raise the pen at the top of the "o" in that way. Now, it will be observed that the pen was not raised in the word "Fox" at all. There it is written in the regular Spencerian joining, and that is the way this writer here on the bank cards wrote it. When he wrote the word "Louis," he raised the pen; that is, he raised the pen on the left side of the letter. When he wrote the abbreviation for "Company" down at the bottom on the left side, you will observe he didn't raise the pen at all, and that is true also in "Co." here following, "Trust Company," and in "Carolina," in the middle of the word there, the pen was not raised in this way; so that the lack of pen raising

and the raising of the pen both connect the writing —the "Louis Fine" writing on the bank cards with the "Louis B. Fox" on the checks. Then there is, in addition to those peculiarities, the very unique formation, principally of capital "F's." It is quite an intricate design, and the details are carried out in these "F's" in the word "Fox" as they are in the word "Fine." Another thing which I considered in arriving at my opinion was the long period of time covered by these signatures. Here are some of these Miller signatures beginning in 1917 and some of them have the dates under them. I call your attention to page "C" in the photographs. The second one is 1917. The fourth one is 1918. Then the third is 1928 and the seventh 1922 and the eighth 1927, and the fact that these signatures cover that wide period of time and still retain all of the characteristics which are found in the "Fine" writing makes these characteristics more significant than if they all occurred at one time. These things in combination, one supporting the other and the third supporting the two, is the basis for my opinion that all of these "Fox" "Fine" and "Miller" signatures on Exhibit S33 were written by one writer, and that the writing on the bank cards, Exhibit S34 and 39 and S14 was that writer, that is, that is my opinion, that the writer who wrote the bank cards and S14 also wrote the "S. Miller," the "Samuel Miller," the "Louis Miller," the "Louis B. Fox" signatures on papers to Exhibit S33, and I say again that the signature on S14 is of especial value and importance in the comparison.

The Court: How about the signature "Paula Miller"?

A. Your Honor, I forgot to call attention to that. The signature "Paula Miller," as it is found here on number 3 of page "C" of the photograph there, in my judgment, is the same writer again, and I refer to the capital "P" in "Philadelphia, Pennsylvania," here on "D," the third line. A very peculiar and in fact almost unique capital "P" which appears over here in "P" in "Paula Miller" photographed here under number 3 in page "C," and the word "Miller" contains all the characteristics to which I have referred. There is the small "m"; there is the pen raising; and there is that peculiar "r" with both parts sharp at the top and the pen emphasis on the downward stroke. There are one or two other "Paula Millers" in Exhibit S33 which are not photographed, but which, in my judgment, were written by the same writer.

Q. Now, will you please, while you are there, if you can, look at these signature cards, S34, S39, S32 and S37, also at the paper that I now show you bearing a signature at the bottom, and tell me whether all of those signatures were written by the same person?

A. Yes, in my judgment the word "Louis Fine" on the paper just shown me was written by the same writer who wrote the four bank cards.

Mr. Hinkle: I offer this paper for identification.

(The paper was marked S42 for identification.)

Mr. Hinkle: Cross-examine.

Mr. Rauffenbart: On the testimony as it now stands, if the Court please, I want to move to strike this on the ground that it has not been shown by the testimony of the witness or any other proof that the comparisons, the handwriting on the papers used in the comparisons was in the handwriting of this defendant.

The Court: Well, of course, we have the express receipt. The express receipt is testified to be, by the admission of the defendant, in the handwriting of the defendant. The motion is denied.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

(No cross-examination.)

ALBERT S. OSBORN, recalled.

Direct examination.

By Mr. Hinkle:

Q. Mr. Osborn, will you look, please, at Exhibits S34 and S39, S32 and S37, being the signature cards, and then look at this paper, at the signature, the signature at the bottom, and tell me whether you are able to say that the signatures on the five pieces of paper were written by one and the same person?

A. In my opinion, they were.

(No cross-examination.)

MORTON GLICK, sworn.

Direct examination.

By Mr. Hinkle:

Q. What is your business?

A. Connected with the sheriff's office of this county.

Q. Do you know Louis Fine, this defendant?

A. I do.

Q. I show you a paper marked S42 for identification and ask you who signed that paper?

A. Louis Fine.
Q. This defendant?
A. This defendant.
Q. In your presence?
A. In my presence, on the 14th day of March.

Mr. Hinkle: I offer it in evidence.

(The paper was marked Exhibit S42.)

JOSEPH BLAUSTEIN, sworn.

Direct examination.

By Mr. Hinkle:

Q. Where are you employed?
A. Motor Vehicle Department.
Q. In Trenton?
A. Trenton, New Jersey.
Q. Did you recently receive a request from the Prosecutor's office of Atlantic County?
A. We did.
Q. To search for the drivers of Paige cars bearing a New Jersey license?
A. We did.
Q. And who registered under the name of "S. Miller?"
A. We did.
Q. Did you make a search through your records?

A. I did.

Q. How many S. Millers driving a Paige car carrying a 1932 Jersey license did you find in your records?

A. One S. Miller.

Q. Who is he?

A. Stanley A. Miller.

Q. Did you find any other S. Miller driving a Paige car with a 1932 Jersey license, except Stanley A. Miller?

A. No, sir.

The Court: From what county was that car registered?

A. Essex County.

(No cross-examination.)

Stanley A. Miller, sworn.

Direct examination.

By Mr. Hinkle:

Q. Mr. Miller, where do you live?

A. Irvington.

Q. In Essex County, New Jersey?

A. Essex County.

Q. Do you drive an automobile?

A. Yes, sir.
Q. What make?
A. Paige sedan.
Q. Does it carry a New Jersey license?
A. Yes.
Q. What number?
A. I will have to get it.

(The witness took a card from his pocket.)

A. Number 29559.
Q. For the year 1932?
A. 1932.

The Court: That is E?

A. E.
Q. Mr. Miller, have you ever been in Atlantic City?
A. Yes, I have.
Q. Were you there at any time during the 29th day of February, 1st day of March?
A. No.
Q. Second day of March or third day of March?
A. No.
Q. Were you in Atlantic City at any time within a week prior to or after the first day of March ——
A. No.
Q. —1932? Do you know anything about the premises 31 South Connecticut Avenue in Atlantic City?
A. I do not.
Q. Have you ever been there, to your knowledge?

A. No, sir.

Q. Do you know or did you know a woman by the name of Mattie Schaaf?

A. I did not.

Q. Do you know this defendant, Louis Fine, seated there with glasses on?

A. I do not.

Q. Did you ever see him before this moment?

A. I don't think I ever have.

Q. Did you ever give him a trunk to carry anywhere?

A. I did not.

Cross-examination.

By Mr. Rauffenbart:

Q. Where were you on the first day of March?

A. I was in Irvington, New Jersey.

By Mr. Hinkle:

Q. Did you wear a mustache on or about the first of March?

A. I did not.

STATE RESTS.

MOTION TO DIRECT VERDICT FOR DEFENDANT.

Mr. Rauffenbart: If your Honor please, I desire to make a motion at this time for the direction of a verdict of not guilty, on the ground that the State has failed to prove the time of the killing, if there was a killing, that Fine was present at the place of the killing; they have failed to prove the place of the killing, they have failed to show that there was any reason for the killing, if there was a killing by the defendant; they have failed to show, and the proof is that he did not leave the City of Atlantic City except to return; he did not flee. As the case stands now, there is no direct proof that he participated in any way in the killing, the admitted fact being only that he had, at the suggestion of someone by the name of Miller, caused to be moved a trunk which it afterwards developed contained the body of this lady, to the City of Philadelphia, where he rented a room.

The Court: The motion is denied.

(Mr. Feinberg opened the defendant's case to the jury.)

DEFENDANT'S TESTIMONY.

DR. HENRY B. SHMOOKLER, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Dr. Shmookler, you are a practicing physician?
A. Yes, sir.
Q. In the City of Philadelphia?
A. In the City of Philadelphia.
Q. How long have you been in the practice of medicine?
A. Since 1897.
Q. With what institutions are you connected in the City of Philadelphia?
A. At present, Mt. Sinai Hospital.
Q. You are the medical director?
A. Medical director of Mt. Sinai Hospital and visiting physician.
Q. How long have you been the medical director of Mt. Sinai?
A. Since 1906.
Q. Do you know this defendant, Louis Fine?
A. Yes.
Q. In the course of your practice, did you have occasion to attend Mr. Fine?

A. Yes, I found him in the hospital on October 9, 1922. He was unconscious at that time when I found him in the hospital.

Q. Had he been unconscious previous to his admission?

A. The story that we got from the people that brought him to the hospital was that he was found in a room unconscious, and that he wasn't seen for a couple of days previous to his finding. We couldn't tell in the beginning exactly what ailed him. It looked like he was a very, very sick man.

The Court: What date was that?

A. October 9, 1922.

Q. Have you hospital records and the history of the case with you?

A. These are the hospital records.

Q. Will you state for the benefit of the Court and jury just what your findings were? Did you diagnose his case?

A. After he was there for a couple of days, we finally recognized that the man was given an injection of a certain drug for the cure of a certain disease, syphilis, and the injection went through him, it had a bad reaction on him and he became unconscious from that. He got an injection of neosalvarsan, 606. From that he became unconscious. Then after we concluded from what he was ailing, we began to inquire, and found that he was suffering from chronic syphilis. His nasal septum was destroyed, which is a characteristic of syphilis, and we inquired and finally were able to get one phy-

sician who ordered the injection and the physician who gave the injection, and the man went home, and an hour or two later after the injection he was taken sick. He didn't tell anybody, and he was all alone, and he became unconscious, and that is the way he was for a couple of days. After that we continued treatment along those lines, treating him for syphilis. When he came in he was running quite a temperature and had suffered from rapid heart, all that goes with—it looked first like he was suffering from uremia, but after that we were able to clear the matter up. It was due to the injection of a drug called 606 or salvarsan, and he had a bad reaction from it. That was his second injection, we found out.

Q. How long did you continue to treat him? Over what period?

A. Over the best part of a year. He was in the hospital for about two weeks the first time, and then I continued treating him at the office. This required intravenous injections, and he was doing frequently bad, and his veins got so bad we couldn't enter his veins, so I had him admitted every time to the hospital for one day and gave him the injection there, where the facilities were better than in the office, and he would be discharged the next day, and he has here five admissions, and he continued a little while longer to come to the office, and since then I haven't seen him professionally.

Q. You haven't seen him, then, professionally since about what date?

A. I guess it is—I think he came to see me after that, asking me if I wouldn't help him in a court

case. He wanted to show his condition, about paying alimony or something of that kind, but nothing came of it; I was never called to court.

Q. When did you last see his professionally?

A. 1923, April, 1923, as far as I have a record.

Q. Do you have the history here of the primary sore?

A. No. When we got him he was already suffering with what is called tertiary syphilis, the third stage of syphilis. He must have had it for years. He blamed it on his first wife.

Q. How many stages of syphilis are there?

A. Primary, secondary and tertiary.

Q. What stage was he in at that time?

A. He was in the tertiary. He was already a chronic case.

Q. He was a chronic case?

A. At that time. Cure at that time was impossible.

Q. Can you say whether or not there was anything in his nervous system at that time, the time of your treatment?

A. At that time?

Q. Yes.

A. Except that he had that violent nervous brain reaction. It went to his brain. He probably had minute hemorrhages in his brain, causing the unconsciousness.

Q. Was there an ulceration of the nose?

A. Just a perforation. The whole septum, the partition in his nose, was destroyed, and on account of that he went to a nose and throat doctor, who ordered the injections.

Q. Could there have been an extension then into the brain?

A. You mean extension direct or indirect?

Q. Either direct or indirect?

A. Well, direct, not. Indirect, there positively was, at that stage.

Q. Through the blood stream?

A. Through the blood stream, affecting the circulation in the brain.

Cross-examination.

By Mr. Hinkle:

Q. When did you first see Fine?

A. I saw him on October 9, 1922.

Q. October 9, 1922?

A. Yes.

Q. And when did you last see him?

A. Well, the last record that I have is in April, 1923, but my recollection is that he came to the office—this is hospital record—that he came to my office several times after that for treatment, but he then disappeared, because the injections were giving him a great deal of trouble, it was so difficult to get in his veins, and he disappeared. At that time we made the diagnosis of cerebrospinal lues, in 1922.

Q. Then he was in Mt. Sinai Hospital from October, 1922, until April of 1923; is that right?

A. No. He was in and out. In and out all the time.

Q. In and out?

A. Yes.

Q. Wasn't there continuously?

A. He was discharged on the 24th of October. Then he came to the office, and then as his injections ——

Q. When did he enter the hospital?

A. The 9th of October.

Q. And he left on the 24th?

A. The 24th.

Q. What does your record show as to his condition when he left?

A. Improved.

Q. When did he come back?

A. He came back to the hospital again in March of 1923.

Q. How long was he there then?

A. One day. Just to give him the injection and then if nothing happened, the next day he was let go home.

Q. When did he next come in?

A. He came in twice a month.

Q. For how long?

A. For four times, and then he didn't come any more.

Q. Then you treated him at your office?

A. My recollection is that he came several times after.

Q. About how long, Doctor?

A. Well, I wouldn't say more than a couple of months, maybe.

Q. And you would give him something?

A. Well, I would give him the injection in the vein, and watch him for a while to see that he doesn't

have as bad a reaction as when he first got it, and then let him go home.

Q. When do you think you last treated him?

A. Not later than the end of 1923.

Q. Have you seen him since that time?

A. I have seen him once. As I said, he came to talk to me about his first wife. He had some court case and he wanted me to testify, and he blamed his ——

Q. Testify as to what?

A. As to his condition, the disease he suffered, and that he said he had court records to show that she was the one to cause—give him the infection—but nothing came of it. I was never summoned to go to court. I saw him once more. I met him in a private house where he came to see a sick child.

Q. Where was that?

A. That was somewhere on the boulevard, Northeast Boulevard, a woman by the name of—the child's name was Horuvitz.

Q. Did you treat him there?

A. Not him, no. I was treating the child.

Q. That was just a visit, and he happened to be there?

A. I imagine that his second wife was related to that child, because the name was the same. Her former name and the child's name were the same.

Q. Have you got a report in your record of any of the blood tests or any other test of any character made in Mt. Sinai at that time?

A. Yes, we have.

Q. Let us see what you have in the nature of a report there.

A. A laboratory report. Here is his record when he came in with the high temperature and high pulse.

Q. What do your reports say concerning the blood tests and other tests?

A. I am just getting to it. I will have to find the page. First do you want the blood?

Q. Yes.

A. Wassermann, 4-plus. Strongly positive.

Q. Positive what?

A. It means—that is the technical name for indicating positive for syphilis. It is universally recognized as meaning that way.

Q. Just so the jury understands.

A. We have a test here—we thought maybe he had typhoid fever when he came in, on account of his temperature. That showed it was negative. We have a blood examination here on the 10th and on the 11th, showing the blood condition was hemoglobin, 90, red cells nearly four million, white cells 12,700, polys 76, and small cells 21. More details; eosin cells, two, and mast cells, one. We had another examination the next day, which showed white blood cells 12,000, polynuclear 84, small mononuclear 10, large mononuclear 10, eosin cells 2, mast cells 1. That was done with the idea of seeing if he had typhoid fever or not. In typhoid fever the leucocyte count is low.

Q. Give us the test on the spinal fluid.

A. It wasn't done at that time.

Q. It wasn't done?

A. No.

Q. When was it done?

A. Not at Mt. Sinai.

Q. He was in Mt. Sinai all that time, treated for some syphilitic infection, and yet the spinal fluid test wasn't made?

A. At least, as far as the record goes.

Q. It is usual to make it, isn't it?

A. It is usual to make it, but he was so sick he didn't look like he would survive, anyhow, for the first few days.

Q. How do you make that test? That doesn't kill anybody, does it?

A. Well, how you make it? The idea is if you do make it, you give an injection of that same arsenical preparation, 606, you inject in the spinal canal, and this would be a hazardous injection, in view of what happened to him just a little while before. We weren't going to take any chances.

Q. Is that the only known method of test?

A. The only method for what? For cerebrospinal syphilis?

Q. Yes.

A. We were interested in treating his acute condition. He came in in a condition looking like uremia with convulsions and things of that kind. We were just interested in getting him on his feet. He wasn't there exactly for being treated for syphilis. He was brought in as an emergency.

Q. Then all of the time that he was there, there was considerable doubt as to just what did ail him?

A. In the beginning there was. After that there was no question.

Q. When was that doubt dispelled?

A. After the fourth day.

Q. What did you do at the end of the fourth day

that led you to believe to a certainty that he was syphilitic?

A. His spinal—his blood Wassermann.

Q. Any other test?

A. And his destruction of the nasal septum.

Q. Is that reliable?

A. Absolutely.

Q. Never fails?

A. Never fails.

Q. What other test did you subject him to to ascertain his condition, syphilitically?

A. You mean what other test?

Q. Yes, any test you submitted him to?

A. Well, that was sufficient as far as we were concerned. We were sure that he had syphilis, and after he recovered consciousness he was able to tell a coherent story of syphilis, of a primary infection and all the other things, and there was no doubt at all in anybody's mind that this man was suffering from syphilis.

Q. When he was in this state of—what do you call it? Coma?

A. Semi-conscious, yes.

Q. What would he do?

A. Why, he was continuously vomiting. Wasn't able to retain any fluids. He didn't recognize anybody. Once in a while he just moaned and groaned, and continuously vomiting.

Q. Would he lie on a cot?

A. He was lying in a bed.

Q. Well, when he would get up, what would he do?

A. He didn't get up when he was unconscious.

Q. No, he didn't get up when he was unconscious. When he was conscious, did he get up?

A. After he recovered, gradual—like from any other severe illness, he gradually got on his feet again, and he was a semi-private patient, and he refused to stay any longer.

Q. Didn't have any trouble with him, did you?

A. In what way?

Q. Any way?

A. Except that he had bad kidneys at that time, and we were at that time not sure when he came in whether we are dealing with a uremic case, a case of bad kidneys, or dealing with a case of poisoning.

Q. Did he show any tendency to violence?

A. At that time when he was semi-conscious he was violent.

Q. Semi-conscious he was violent? What would he do?

A. Well, he was very hard—he had to be restrained.

Q. What else would he do? What do you mean, restrained?

A. Well, you know what restrained is. They put clips on the arms and legs and tie them to the bed, have to sit over him at times.

Q. He couldn't do anything but be strapped down in a bed?

A. Yes.

Q. Couldn't walk out and walk around, could he?

A. No, he didn't do anything of that kind.

Q. How many treatments did you give this man?

A. Just one second. There is more laboratory work, if you want to go on with it.

Q. I would rather direct my question now to how many treatments did you give him.

A. How many treatments of record? I must have given him about ten or twelve injections all told.

Q. What did you give him?

A. Neosalvarsan.

Q. That is 606?

A. The old name was 606, but that is a new preparation.

Q. How many times did you give him 606?

A. About a dozen times.

Q. How much each dose?

A. Nine-tenths after a while. At first we gave him only six, because he had that bad reaction, but after that we gave him nine-tenths.

Q. What does your record when he last left the hospital?

A. All the record shows—you mean the last visit?

Q. Yes.

A. Just "Improved." That is all it would show. It just says, "Admitted for intravenous injection of calcium and nine-tenths of a grain of neosalvarsan."

Q. When did he get that?

A. Every time he was readmitted, and he also got it in the beginning in the office after he left the hospital. These injections proved to be very difficult, on account of him having very poor veins, and you know if you inject that in the skin it gives a very terrible reaction locally, and of course you can't continue, and then there was always the danger of the drug going bad.

Q. When did you make your last blood test?

A. I don't think it was done again, because there was no essential—nothing to be gained by it. We didn't expect to cure him in six months or six years. He was in the final stages of syphilis, and as I said before, a cure isn't to be expected. All you gain by it is keep on treating him and keep the disease in check by giving him the course of treatment. If I had him all the time, I would give him a course of treatment maybe once a year of three or four or five injections, and then let him go for a year, and then again and again and again. Curing is an impossibility.

Q. What did you say about his kidneys a while ago?

A. His kidneys were in a very bad condition when he came in originally. His urine had albumen; his urine was full of hyalin and granular casts, and his urine was examined daily, and it always contained these casts, showing that his kidneys were badly affected. Whether his kidneys were affected from the arsenic that he got in the injection or whether he had bad kidneys from before we were not able to determine at the time being.

Q. Did you ever try to find out?

A. We certainly did, but how can you? You can't tell what the man had before. You couldn't get any record about his kidneys before. We had to treat him for the condition he was in.

Q. Was his coma due to the kidney trouble, the uremic kidney trouble?

A. When he came in, we thought he had that, uremic convulsions, but after a while we looked

around and we asked for a nose and throat examination, with the idea that the man who did the nose and throat work also did a certain test for brain syphilis, for brain tumor, and we asked him to examine this man, with the idea whether he has a mass lesion in his brain, a tumor or a gumma, either a new growth or syphilitic growth, and as the man opened the door to look at the patient he says, "How did you get this man? That is my patient." I say, "How did you get to him?" He said, "This man has syphilis of his nose, he has a destruction of the septum of the nose," and that is how we began to clear up what happened to the man, otherwise we would never have known exactly what happened to him unless he chose to tell.

Q. Doctor, will you now answer my question? Do you think that the coma might have been uremic?

A. In view of the fact of what happened to him, I am positive his coma was due to an injury to the brain. I have seen many a patient die from an injection, and I know exactly how it looks.

Q. Will you again answer my question more directly? Do you think the coma was due to the kidney trouble and the uremic condition?

A. I think that the coma was due to the injection that he had, but certainly that he had bad kidneys didn't do him any good.

Q. If he hadn't received that injection he wouldn't have been an unconscious man; is that the idea?

A. He wouldn't have been that ill.

Q. What other form of treatment did you give him when you found that the treatment that you were giving him had a reacting bad effect?

A. Understand, I didn't give him the treatment that gave him that bad reaction.

Q. No. What other treatments did you give him?

A. Gave him exactly the same injection, but took precautions, and they were successful in not producing any bad effects. I gave him an injection of calcium and urea preceding the injection of arsenic, and then gave him the arsenic, and then he succeeded in avoiding a reaction.

Q. Are you prepared to tell us whether or not at any time you found this man in a coma that it was due to the kidney trouble or uremic trouble?

A. Let me explain. He only had it once.

Mr. Rauffenbart: I object to that question. The only testimony on the direct examination is that he was admitted to the hospital in this semi-conscious condition on one occasion. The doctor has testified at least three times what diagnosis he made of that, and this question is not predicated on any testimony that went before.

The Court: He may answer the question.

A. That one particular time that we found him unconscious, we came to the conclusion it was due to the injection that he received for syphilis.

Q. How did he get to your hospital at that time?

A. He was brought. I suppose by ambulance. Somebody called up that they have an unconscious man, a dying man, and they sent an ambulance and we got him there and he happened to be put in my service. I never knew the man before.

Q. Now, you say he was probably picked up somewhere and sent in with an ambulance?

A. He was found in the room where he lived, and people that—his friends that found him called up and said that they have a dying man, we should send an ambulance, and we sent the ambulance, and we got him to the hospital.

Q. Well, he was made unconscious by some injection, then?

A. Absolutely.

Q. Who gave it to him?

A. Dr. Rubenstein.

Q. Where is Dr. Rubenstein?

A. In Philadelphia. He is now at 1906 Spruce Street.

Q. Did you talk with Dr. Rubenstein?

A. At that time he occupied the same office, 1208.

Q. You did?

A. Yes, he and I.

Q. He gave it?

A. He gave it, but we were in partners. He happened to give him the injection.

Q. In other words, you don't want any of the blame for it?

A. No, I didn't know anything about it.

Q. Do you know how long Dr. Rubenstein treated him?

A. He only gave him the two injections. This was the second one. He wasn't treating him. He was giving it to him at the request of the nose and throat man who did treat him.

Re-direct examination.

By Mr. Rauffenbart:

Q. Doctor, Dr. Rubenstein was a member of the staff of the hospital?

A. Yes. At that time he was director of laboratory. He is now visiting physician.

Q. Isn't it true that in the beginning of the treatment of this neosalvarsan that there are many accidents resulting from the injection?

A. I have seen several deaths and I still see them die. I still have two patients in the hospital now that were given injections. One came in in a dying condition, a young woman, and one young man came in a day or two later in a very bad condition, and they are still dying from that injection.

Re-cross examination.

By Mr. Hinkle:

Q. In other words, doctors kill lots of people, don't they?

A. Drugs do. Very poisonous drugs do. It isn't the doctors that do it.

Re-direct examination.

By Mr. Rauffenbart:

Q. Was there a syphilitic invasion of the kidneys in this case?

A. That we couldn't tell without further—more minute examination of that kind, but he had bad kidneys. As the record shows, there was about twelve or fourteen examinations, and each one shows hyalin and granular casts and albumen.

Q. Would the probabilities be that there was a syphilitic invasion of the kidneys, from your examination?

A. I would say he had bad kidneys, and giving him that injection at that time, the bad kidneys didn't help him along very much.

Q. 606 is arsenic, isn't it?

A. It is primarily an arsenical preparation. It is made so that the poisonous amount of arsenic becomes innocuous when it enters into the body, by certain combinations, benzol and other things.

Q. And that is rather hard on the kidneys, isn't it?

A. Well, it is sometimes luck and sometimes care, so many things enter into the injection. If you inject it slowly, it is all right, and if you inject it sometimes too fast, or the preparation was standing for a little while, and at that time we used more—the original preparation was called salvarsan, 606, and now the new preparation is called neosalvarsan, the new salvarsan. It was decidedly a more poison-

ous drug, and must be handled with a great deal more care.

Q. But, Doctor, when you say that he was improved, you don't mean to say that he was cured of this syphilitic condition?

A. I am not referring to the syphilis at all. Referring to the emergency that brought him to the hospital.

Q. Not refering to the syphilis at all?

A. Not referring to the syphilis at all. As I said before, I didn't expect to cure him in one year or three years or five years.

(A recess was taken until 1:15 P. M.)

AFTERNOON SESSION, 1:15 P. M.

JOHN M. ARLETH, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Mr. Arleth, where do you reside?

A. 819 Pacific Avenue; formerly 23 South Maryland.

Q. Atlantic City, New Jersey?

A. Atlantic City, New Jersey.

Q. How long have you lived in Atlantic City?

A. Fifteen years.

Q. Previous to that where did you live?

A. Philadelphia; Presbyterian Hospital.

Q. Where?

A. Presbyterian Hospital, Philadelphia.

Q. What is your profession?

A. Chemist and bacteriologist.

Q. Were you associated with a hospital in Philadelphia?

A. Yes.

Q. And in Atlantic City?

A. Yes.

Q. As part of this work, have you made blood tests?

A. Yes; various laboratory tests.

Q. Spinal fluid tests?

A. Yes.

Q. Were you called on to make such tests of the blood and spinal fluid of the defendant?

A. Mr. Fine? Yes, I was.

Q. Where was he at the time you took the samples?

A. In the county jail.

Q. When was that?

A. That was on the 15th of May.

The Court: This past month?

A. Yes.

Q. Will you state for the benefit of the Court and jury the tests that you made and the result of your tests?

A. Yes. At the direction of Dr. John J. Reilly, this work was done. I made a blood count. In the

blood count we found a rise in the lymphocytes, the particular cells of blood which would indicate that there was some trouble along various lines which should be investigated. This would be indicative, perhaps, of some spinal trouble. So on the strength of that we tapped his spine and took some of his spinal fluid, which we tested. The first tests done were for increased globulin. Increased globulin denotes there is some form of meningitis, inflammation of the covering of the brain and of the spinal cord. The first test was Noguchi. That showed a strong positive reaction. Then the Pandy test, which showed a strong positive reaction. Then we had the Ross-Jones test, which was strongly positive. Then I did an albumen, which was strongly positive, denoting further increase in the globulin test. Then we did a Wassermann reaction of the spinal fluid, which was strongly positive. They are all the tests which are known at the present time.

Q. They are all the tests known at the present time?

A. That is, for that which I did. That is, I did the Wassermann by all the present accepted methods.

Q. And it is a generally accepted test?

A. That is the test that is accepted, yes. All the accepted tests were used to bring about such—to determine whether such thing was present.

Q. These tests are accepted for the purpose of aiding in a diagnosis?

A. That is right.

Cross-examination.

By Mr. Hinkle:

Q. Did you determine the paretic curve in examining the spinal fluid?

A. The doctor didn't want me to do it, on account of the expense connected with it to the patient. He just had me do the Wassermann reaction.

Q. The doctor directed that?

A. That is right.

Q. Dr. Reilly?

A. Dr. Reilly.

Q. What was the blood cell count?

A. The cell count of spinal fluid was 1060 per cubic millimeter of fluid.

Dr. Henry A. Cotten, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Dr. Cotten, you are a practicing physician?

A. I am.

Q. Do you specialize?

A. I do.

Q. In what?

A. Nervous and mental diseases.

Q. Are you associated with any institution?

A. For twenty-three years I was medical director of the State Hospital at Trenton, and since 1930 I have been medical director emeritus and director of research.

Q. Have you made examinations for the State authorities during this period at any time?

A. A great many times ——

Q. —of New Jersey? Many times?

A. Yes, sir.

Q. Were you called in on occasions by members of the court for the purpose of examining?

A. I have been.

Q. Members of the Supreme Court? Were you a pioneer in this process of the lumbar puncture?

A. I think I was. I did the first lumbar puncture in state institutions in 1906 for diagnostic purposes.

Q. Doctor, you have published some books?

A. Quite a few.

Q. You have written and published some books on mental diseases?

A. I have.

Q. Have you under your care, observation and attention the criminal insane?

A. We have—since 1918 we have at the State Hospital all the criminal insane of the State. They are taken there in a separate building.

Q. And you are the medical director of that institution?

A. I was, yes, until 1930.

Q. Doctor, have you observed this defendant at any time since his incarceration?

A. I have, on two occasions; on May 14, 1932, and May 24, 1932.

Q. Where was the observation made?

A. At the county jail, Mays Landing.

Q. Did you make an examination of him?

A. I did.

Q. To determine his mental condition?

A. I did.

Q. And his physical condition?

A. I did.

Q. And in this examination did you take a history of his case?

A. I took his statement as to his previous history, yes.

Q. Now, Doctor, if this man committed—I will withdraw that. Did you put him through any tests there in the jail?

A. I did. Mental and physical tests, yes. Physical examination.

Q. What did you determine from your examination of the defendant as to his mental condition?

Mr. Hinkle: Objected to. I care not what his condition is now. I don't want it.

The Court: I do not suppose we are concerned with the present mental condition.

Q. Did you determine from your examinations of him and your tests whether or not this man was sane on or about the first day of March, 1932?

A. I did.

Q. What was the determination?

A. My determination was that he was insane at that time.

Q. Doctor, would you say that this man, if he committed the crime charged in the indictment, that of killing the deceased, Mattie Schaaf, by strangulation with a rope tied around her neck, the result being death by asphyxia, that this having been done on or about March 1, 1932, at the residence in Atlantic City where she owned or conducted a rooming house, and in which rooming house this man occupied a room; that he was conscious that the act he was doing was wrong, taking into consideration the fact, as has been testified here, that this man in 1921 or 1922, between October 1922 and 1923, was suffering from an acute case of syphilis, for which he received about twelve injections of what is commonly known as 606; that a Wassermann test of the spinal fluid showed strongly positive, that Wassermann test having been made within the past few weeks; and that it having been testified, or proven, or evidence having been adduced in court that he had lived in Atlantic City for about fifteen years, gave his recent residence as 31 South Connecticut Avenue, the home of this deceased; that he lived there in a room; that he roomed there since the October previous; that he had previously, years before, been engaged in the real estate business, he was not doing anything at this time, he was out of a job; he had formerly been a tailor; he was without funds and looking for work; that the evidence shows that this landlady had been kind to him, when he was without the funds to pay his rent she let it run on; that there is no evidence of any intimacy, no

evidence of any quarrel, no evidence that this man would benefit by the death of the deceased, and that subsequent to her death by asphyxiation, her body was placed in trunks in evidence here, padlocks were gotten, one placed on the trunk, ropes in the nature of sash cord wrapped around the trunk, an express-
10 man was procured—this was the following day after the alleged murder—the defendant went to the express office, shipped the trunk to a man by the name of Lichow, a man with whom he had formerly done business and was very well acquainted, who lived in the neighborhood in which he had previously lived in the City of Philadelphia, around 8th & Parrish; shipped the trunk in the name of S. Miller, insured it for $500.00, stated to the express man who moved the trunk for him that it contained patent medicine,
20 not to stand it on end, and after the shipping of the trunk went to the City of Philadelphia, went to the office of Lichow the following day, Thursday, awaited the arrival of the trunk; when it did not arrive made inquiries at the express office, found that the trunk was on the wagon of the express company; that it had been refused by Lichow, to whom it had been sent; inquired of Lichow for a room to rent; went from Lichow's office down the street, where there was a sign in the window, went into
30 this rooming house, talked to the man in charge of the rooming house, said he wanted to rent a room or apartment and asked the price; the man said the price would be three and a half or five dollars: inspected the room; said, "I will have to consult my friend about this, to see if the price is all right;" left and came back in a half hour and took the

room; paid three dollars and a half and fifteen cents deposit for a key; he then procured an expressman in the neighborhood; had the expressman bring the trunk to the house; had it carried in and placed in the room; paid the expressman; left that evening, locked the door, pulled the window down, and returned to Atlantic City, the scene of the alleged crime. Then the next day went back to the City of Philadelphia, or I may be mistaken about that. The testimony is that he stayed in Philadelphia Thursday night. Went back to the house where the truck was; visited the trunk in the room; left again, came to Atlantic City, returned to his home, 31, where the crime is alleged to have been committed; left again the afternoon about one o'clock, reached Philadelphia about three o'clock, and again visited the room where the body was, and at that time met the landlord and said that he was going down to Lakewood or Blackwood or somewhere in the car of his friend. He then returned to Atlantic City, where he remained; met the maid who had previously worked there and who had called at the house on the Wednesday previous, who had been told by the defendant that the landlady, Mrs. Schaaf, the dead woman, had left for a visit and wouldn't be back for about a week, to come in on Saturday. The maid came in on Saturday and he had her prepare for him eggs and breakfast. He remained around the house, and when a man by the name of Weiss left the house, he handed to Fine the key, who accepted it. He caused a padlock to be placed on the door of the room where the detectives entered, the bedroom of the deceased, and from that

time on he remained there until his arrest. When he was arrested he stated to the detectives that he had come right in the night previous, that is, the night of Monday previous to the death, the night she was last seen, he had come to the front of the house, he said rang the bell, was admitted by Mrs. Schaaf, went to his room, because he had forgotten his key, he told her, and at that time he saw a man standing in the doorway. He went out again, came back, admitted himself, met Mrs. Schaaf; Mrs. Schaaf told him she was going away for about a week with her friend in his automobile, or with a friend and some woman, and to tell the maid not to come in for a week. The next morning, according to the testimony, he says he met this man Miller again, this man Miller he described as a man about the size of Mr. Hinkle, very well dressed, and about in his early forties, blond hair, and I think with a mustache. He said that Miller told him the next morning—he met him at the foot of the steps—that he had some business to attend to and that he knew that Fine was out of work and needed a little money, and asked Fine to attend to shipping a parcel for him, and Fine said that he would; that he gave Fine five five dollar notes, and in the conversation he mentioned that the trunk should be shipped to a man by the name of Lichow on North 5th Street. Fine said to him, "Well, that's a friend of mine, too." Well, that was very nice, he said, "Ship it to Lichow," and to go to Philadelphia with it and he would meet him in Philadelphia; that he did as a result of that ship the trunk, and while he was coming from the express office, without any previous

appointment, he met this S. Miller sitting in his car at the corner near the bank, and gave him the bill of lading, that on his going to Philadelphia to receive the trunk he met this same fellow again at the corner near Lichow's office, and he met him a third time after going in to find out about the price of the room, he met him again without any appointment, and I believe met him again at the service station or somewhere on Arch Street on Saturday. It also appears in the testimony that this same man had previously, during a period of years, but possibly from the twenties, or maybe before the twenties, down to 1928 or 1929, had used this same name, "S. Miller," which was the name that was used in the shipping of the trunk and the name that he says this stranger gave him, he never having seen that man before. With those facts before you as given in evidence, and the apparent lack of motive and the peculiar circumstances regarding the crime, the return of the prisoner to the house with no attempt to escape and his admissions by him to the prosecuting authorities of his connection with the shipping of the trunk, and his apparent belief in his statement to Mr. Hinkle, he having been before Mr. Hinkle and made all these statements covering the transactions I have related voluntarily, and his utter or apparent surprise at the fact that Mr. Hinkle would not believe in his innocence, would you say that that man was or not normal on that day of the shipping of the trunk or the day previous or since?

A. He was not and is not normal today.

Q. Would you say that he was conscious of this act of homicide, if he did commit it?

A. He was not.

Q. Was he at the time of the alleged homicide able to distinguish between right and wrong?

A. He was not.

Q. Did he know, if he did it, the nature and quality of that act?

A. He did not.

Q. What would you recommend be done with him now?

(The question was objected to.)

(The objection was sustained.)

Q. What would your diagnosis be on this date, Doctor, after having ——

The Court: What date?

Mr. Rauffenbart: Today.

Mr. Hinkle: That is objected to.

The Court: We are not concerned with the conditions today. The test is whether or not the person who committed the homicidal act knew the moral quality of the act when committed, knew that that act when committed was wrong. That is the sole test.

Q. What was your diagnosis, after procuring the facts concerning his previous treatment and the result of these tests, what would be your diagnosis of

his condition at the time you examined him and at the time of the commission of the alleged act?

Mr. Hinkle: Objected to. The question calls for a dual time.

Mr. Rauffenbart: Yes, I think it does.

The Court: Probably what Mr. Rauffenbart had in mind was in view of his examination at the given time, what was his opinion as to the mental condition in respect to the date of March 1st or thereabouts?

A. He was suffering from paresis or syphilis of the brain at that time.

Q. What is brain syphilis, Doctor?

A. It is the result of previous infection by syphilis some years prior, which germs of syphilis enter the nervous system and destroy the brain, and with it the mentality of the individual.

Q. Was this Wasserman test of the spinal fluid necessary to your diagnosis?

A. Absolutely.

Q. Is there any doubt at all in your mind that this man at the date the alleged crime was committed, if he did commit it, was conscious that the act he did was wrong?

A. No doubt in my mind at all. He did not know.

Q. He did not know?

A. Because of his mental condition.

Cross-examination.

By Mr. Hinkle:

Q. Do I understand, Doctor, that you now say that everything done by this defendant on and about the 2nd of March of this year was done by him without knowledge of his act?

A. Yes, without normal knowledge of his act, without conscious knowledge.

Q. Without knowledge?

A. Without conscious knowledge of his act.

Q. What do you mean by conscious knowledge?

A. That is, didn't know that he had done right or wrong or that he had committed a crime.

Q. He would not know that?

A. He would not know that today.

Q. Would not know that what?

A. Wouldn't know it then and doesn't know it today.

Q. You are able at this time, are you, to testify positively upon your oath that this man on the 2nd day of March was not conscious of any act he was then performing?

Mr. Rauffenbart: That is not—I object.

A. What acts did he do on the 2nd of March? I don't remember the incidents.

Q. Never mind what act he did.

Mr. Rauffenbart: I object to the question. I think it should be directed to the offense charged.

The Court: I think the witness has said that in his opinion the defendant did not have conscious knowledge, was his expression, of a succession of acts or events performed about that time. Go ahead. You may answer the question.

(The question was repeated.)

A. I wouldn't say he wasn't conscious, because he gave a statement of his acts that he committed, about the trunk. He knows that perfectly well. I am talking about the day of the crime. He gave me a statement as to his actions about the trunk, the same statement he gave the Prosecutor and the same statement he has given on two different occasions, which goes into great tediousness of detail, a condition which hardly any normal man could remember to tell a story that he has told if it wasn't an automatic or delusional state. He couldn't remember to tell accurately every detail as he has told in the statement on numerous occasions, and I think that is a delusional statement for that reason, absolutely.

Q. Does he have a good memory?

A. He does.

Q. He told you the same story twice, didn't he?

A. Told me twice, and the same story I heard read in the court room, absolutely.

Q. Practically no deviation between the story he told you on May 14th, May 25th and yesterday?

A. No.

Q. That is, as it was related yesterday?

A. Yes, as it was related in the court yesterday.

Q. He seems, then, to remember a great deal with great accuracy?

A. He does. Abnormal accuracy, I might say.

Q. Abnormal?

A. Yes.

Q. That is, above the usual?

A. Well, it is abnormal. It isn't normal.

Q. Well, what does ab mean?

A. That means abnormal, yes.

Q. What would you call him? Give him some other term besides abnormal.

A. You might call it a great many things, unusual, abnormal. It is a delusional statement all the way through, a delusional statement.

Q. Better than the average person?

A. No, because a delusional statement isn't a question of memory. A delusional statement is automatic. You don't have to remember anything. I have had delusional patients tell me insane delusions for ten years and never vary.

Q. Were his statements delusional statements?

A. Absolutely.

Q. They were delusional?

A. Absolutely.

Q. By delusional you mean dreams?

A. I mean, yes, dreams.

Q. Didn't occur? Untrue?

A. Didn't occur.

Q. Well, it was true that he shipped a trunk, wasn't it?

A. Yes.

Q. What?

A. Yes, by his own statement. I don't know any different than that.

Q. You don't know whether that was true or not?

A. I assume that was true from the facts in the case.

Q. There wasn't any delusion about that, was there?

A. No.

Q. And he shipped that trunk as a man by the name of Miller?

A. Yes.

Q. No delusion about there, was there?

A. No, there wasn't any delusion about that.

Q. Fact and delusion meet again; is that right? And he shipped it, having first sent for an expressman who refused to handle it because of its great weight?

A. Yes, sir.

Q. Again delusion and fact meet?

A. Yes.

Q. And again he called a local expressman and a helper, and told you about that?

A. Yes.

Q. And that was the proven fact. Still there is no delusion, is there?

A. Not on the acts he committed, no. Delusions on the explanation.

Q. Explanation?

A. On his explanation of it, yes.

Q. Tell me any explanation that is delusionary. Then we find that after having shipped it, he went on to Philadelphia with the trunk. Still there is no delusion, is there?

A. No, not that part, no.

Q. That is all right? Then after going to Philadelphia and finding the trunk had not been received at its destination, because no pre-arrangement had been made, he got an expressman. Still we have no delusion; is that right?

A. Right.

Q. And then he took the expressman and helped locate the trunk. That is the proven fact in the case. So again we are free of delusion?

A. Right.

Q. And after doing that he found a room in which he placed that trunk, did he not?

A. He did by his own statement. That is all ——

Q. Well, that is the fact. So that still he was not delusionary, and after placing the trunk there he went out, came back, back and forth several times. No delusion about that, is there?

A. No.

Q. Then he returned to Atlantic City and went into the very house where this woman was killed. Still there is no delusion, is there?

A. Not in the statement.

Q. What part of his story do you say is delusionary?

A. His statement in regard to S. Miller.

Q. All right. Then his only statement that you find is delusionary is his reference to S. Miller?

A. The circumstances regarding the trunk, circumstances that he—the explanation regarding the whole matter.

Q. Well, now, let us see about that for a minute. Would you say that such patients afflicted as you

described this man to be afflicted were truthful or were they not, as a rule?

A. That would be both answers. They might be truthful and they might be not truthful.

Q. Does the fact that he is afflicted in the way you say make him any more truthful or untruthful than the average person?

A. I don't think it would have any bearing on it, one way or the other.

Q. Entirely foreign to the subject?

A. He might be untruthful. A delusion is an untruth, as a matter of fact. It isn't true.

Q. Precisely.

A. The fact that he used the name "S. Miller," a name that he had used previously, showed the abnormal condition of the man's mind.

Q. Did you ever know criminals to have used an assumed name?

A. We know aliases, yes, that is true.

Q. Would you say they were crazy because they did it?

A. No.

Q. Would you say they were delusionary?

A. No.

Q. Suppose they had used that name on more than one occasion, would you say they were crazy?

A. No.

Q. Would you say they were delusionary?

A. No.

Q. Would you say they didn't know what they were doing?

A. No.

Q. Now, what did this man do on or about the

2nd day of March that he did not know he was doing?

A. I don't think as far as the statement is concerned—he gives a statement on several occasions that is accurate of what he did.

Q. Will you answer my question?

A. I say there is nothing abnormal about his statement that he gave. You say he didn't know what he was doing. I didn't say he didn't know what he was doing on March 2nd.

Q. What is that?

A. I don't say he didn't know what he was doing on March 2nd. He recounted his doings on that day. It is in evidence.

Q. Then he probably did know what he was doing?

A. Doing that day. I shall have to assume from his statement that he did, the statement that he gave me, the statement he gave the Prosecutor.

Q. Then you think he did know what he was doing on that day?

A. I do.

Q. Have you any doubt about it?

A. No, I haven't any doubt about his statement. I have a doubt about his explanation of it.

Q. Will you answer my question? Have you any doubt about the fact that he knew what he was doing?

A. I can't. I have his statement to that effect and it corresponds with the statement ——

Q. How about paresis? Would that affect him any?

A. What do you mean, on that date?

Q. Yes.

A. Well, he would still have his paresis just the same.

Q. But he would still know what he was doing?

A. Yes, he might know what he was doing on that day.

Q. What did he do on that day that he did not know was right or wrong to do?

A. Well, I think he didn't do anything that day which was right or wrong. I mean as far as his concept of it. His going back to the house after committing a crime was to my mind an abnormal condition.

Q. You have heard of criminals returning to the scene of their crimes many times, haven't you?

A. I don't think they return right away and put themselves in the hands of the police. I have never heard of that.

Q. You never did?

A. No, not a criminal.

Q. You have heard of their returning, of course?

A. Sometimes, and it isn't unusual, but I think this was unusual, very unusual.

Q. Let us separate this question for a minute. You say that he was crazy or not mentally responsible on the first or second day of March of this year?

A. I say he was not—no, he hasn't been responsible since the development of his paresis.

Q. When was that?

A. I don't know how long ago.

Q. Well, what do you think?

A. Well, the evidence is in 1922. He had undoubtedly some evidence of syphilis of the brain at that time, according to the doctor's statement. He

was treated for syphilis, and they assumed that he had evidence that the nervous system was already infected. Nobody knows just when the nervous system becomes infected following syphilis.

Q. Did this defendant tell you he had been in the Mt. Sinai and under doctor—the name I forget—in the hospital in 1922?

A. He didn't give it voluntarily. We got that information. He admitted it after we confronted him with it.

Q. He admitted that?

A. He didn't give it voluntarily.

Q. Do you know whether he had any reason for that?

A. No.

Q. Did he tell you that after that time he was divorced from his wife?

A. He didn't tell me about being—he may have said he was divorced. It was a long statement. He said something about his wife.

Q. Did he tell you that he was divorced and had married again?

A. I think he told that statement. I have it here.

Q. Will you please look?

A. Yes. Said he had had two daughters he hadn't seen for six or seven years. He was married the second time February 20, 1930.

Q. Do you suppose he knew what he was doing when he married the second time in 1930?

A. I don't know.

Q. Well, are you not ——

A. He might have known. No evidence that he didn't know.

Q. Are you not free to form an opinion as to whether he knew what he was doing when he married the second time in 1930, upon the picture that you have before you?

A. I can say that he had syphilis at that time, and probably brain syphilis.

Q. What was your answer?

A. I say I can assume from the history and from the condition that he had syphilis at that time, and probably brain syphilis.

Q. Still he might know what he was doing?

A. He might be married, yes.

Q. And still might know what he was doing?

A. He might, yes.

Q. And on the 2nd day of March he might have married, if he was free again, and still would know what he was doing?

A. Probably.

Q. And then because he killed a person you say he doesn't know what he was doing?

A. I say he doesn't know he committed a crime. He wasn't conscious that any crime had been committed.

Q. Suppose there had been a policeman present, would he have stopped or would he have gone on?

A. I don't know that. I can't assume that.

Q. You mean to say you can't tell whether or not this man would have gone on and murdered Mrs. Schaaf if there had been a policeman present?

A. No, I can't tell you.

Q. What is your judgment?

A. I haven't any judgment on it, because it is an impossible situation.

Q. You don't want to venture an opinion?

A. No. It isn't the evidence in the case. I could assume a hundred different things, if necessary.

Q. Well, assume that for a premise and argue from it.

A. I won't assume that, because I have no evidence before me to form an opinion.

Q. You are not sufficiently conversant, then, with the subject to tell this jury that if a policeman had been present when that woman was murdered by this man, whether he would have known he was doing wrong and would have stopped because of the presence of the officer?

A. I can't say that, no. That is an assumption without any premise, without any evidence.

Q. I am not talking about evidence. I am talking about the premise laid in the imagination.

A. You can imagine a whole string of circumstances from now until doomsday, but it wouldn't have any bearing on the case.

Q. Precisely. You know that a policeman might have happened along?

A. He might have killed the policeman.

Q. He might have?

A. Yes.

Q. And still wouldn't know what he was doing?

A. Yes.

Q. Or might he have stopped because of the presence of the policeman?

A. I don't know that.

Q. Now, Doctor, when did you first conclude that this man did not know what he was doing on the day that this woman was killed?

A. When I made the diagnosis that he had syphilis of the brain.

Q. When you made that diagnosis?

A. Yes, but I suspected it, and when the diagnosis was corroborated by the lumbar puncture, I was certain.

Q. So the history of the case had nothing to do with it, then?

A. I won't say the history of the case had nothing to do with it, because the evidence in the case is history, surely. The man had previous syphilis. That had something to do with it.

Q. The history of this crime, then?

A. The history of the crime is evidence of his insanity more than anything else. The bizarre type of crime is one committed by an insane person, in my mind.

Q. Will you repeat that, please?

A. The bizarre type. This case falls under the bizarre type. No motive, no reason, nothing to benefit himself. The crime committed in that way is evidence to my mind of insanity, if we didn't have the lumbar puncture, but with the lumbar puncture, to my mind it corroborates my opinion that he was insane at the time.

Q. If there had been a motive, you would have had a different idea?

A. Well, I might have had my suspicions if there had been a motive and the lumbar puncture had been negative.

Q. So before you heard of the details of this woman's death and the moving of the trunk and shipping it to Philadelphia and locating it there, be-

fore you heard of that you concluded he did not know what he was doing?

A. I heard of that at the very first. That wasn't something I heard of afterwards.

Q. You heard of that first?

A. Heard of that before my examination, yes.

Q. Did that have any influence upon your judgment and opinion in the matter?

A. It gave me a suspicion that it was the act of an insane man.

By the Court:

Q. Let me ask you, Doctor, in your judgment what was the quality of the act of the defendant, assuming that he committed it, in putting this body in a trunk and shipping it?

A. I don't know.

Q. Concealment of an act?

A. Well, it might have been concealment of an act.

Q. Wouldn't that indicate a consciousness of an act that was wrong?

A. I don't think so.

Q. You don't think that the shipping of a body away with the idea of concealment would be related to a consciousness of wrongdoing?

A. No, because he didn't protect himself in any way that I consider protection. If he had gone on, nobody would ever have suspected him. It is the act of coming right back and telling the police exactly what he did, it seems to me the lack of judgment which is shown in a paretic of doing just such a thing as that, and his egotism, his feeling that

everybody ought to believe him, nothing to it. He has no consciousness, he has no feeling of doing anything wrong. I talked with him quite extensively on that line ——

Q. Well, you have answered my question.

By Mr. Hinkle:

Q. What is the percentage of people who have syphilis who develop paresis?

A. Well, it varies in different countries and different cities. The Germans, I think, figure it about 10 per cent. There they have their records in the army.

Q. How about the State of New Jersey?

A. I couldn't tell you that, because they all—all paretics have syphilis, but all syphilitics don't develop paresis. So there you are. We have no accurate count records, the way they have in Germany. The man in the army has his health card, which goes throughout his life, and the Germans were the first to show that 75 per cent of these cases had syphilis before they had paresis, and this country wouldn't believe it for a good many years afterwards, and to tell how many in the population, I think the only thing we have to go by is about 10 per cent of syphilitics develop paresis. That is about as near as we can come.

Q. What is the usual spinal fluid cell count in paresis?

A. It may be anywhere from twelve up to a hundred.

Q. Did you ever know it to be as much as a thousand?

A. Yes.

Q. When?

A. You may have an acute stage, have an acute syphilitic meningitis, which sometimes precedes the brain syphilis. I have had it up to a thousand.

Q. Often?

A. I have had quite a number of syphilitic meningitis, we call it. That often precedes, and the Wassermann test and the globul, the albumen.

Q. Don't you usually determine the paretic curve in examining the spinal fluid for paresis?

A. It is a supplemental examination. Where you have a positive Wassermann, positive cell count and positive globulin, you don't need it, but if that had been absent and the gold chloride had been present, that would have been important, but it is a very elaborate examination.

Q. How elaborate?

A. Well, it takes quite a time to do it. You have about ten tubes, and you put your gold chloride in one, in different dilutions and you put your spinal fluid in and wait twenty-four hours. In doubtful cases it is important. In cases that aren't doubtful, it isn't important. You have enough evidence with your positive Wassermann and your globulin test and your cell count. We made diagnoses of paresis long before the gold chloride came into use.

Q. An especially expensive investigation?

A. The gold chloride costs quite a lot.

Q. What would you say? How expensive?

A. I don't know. Gold chloride costs something and you have to use quite a lot of it.

Q. You will have to give us some figure.

A. Well, I can't tell you how much it would cost. Do you mean cost to make it, cost of the man charging to make it, or cost of the stuff you use?

Q. What would you charge in your laboratory?

A. My laboratory is a state laboratory and we don't charge anything.

Q. So this man could have been treated there, could he not?

A. What man?

Q. This man, Fine?

A. Treated when?

Q. Whenever it was necessary to get this particular examination that is so expensive.

A. I don't know. It could have been done, I suppose. I am talking about the patients in the hospital. Patients in the state hospital we don't charge anything. I have a laboratory of my own in Trenton where I could have done and charged for it, I suppose, if I had wanted to.

Q. Does a positive spinal fluid always indicate paresis?

A. Absolutely. I have been working on it now since 1905 and 1906 and done autopsies on my work that I published, and I don't think anybody would doubt. We had a similar case in the case of Gallagher, who shot Mayor Gaynor away back in 1906. I made a diagnosis of paresis on the lumbar puncture for the Prosecutor. He didn't accept my diagnosis and called in some New York men who disagreed with me. He was sent to the State Hospital

and died and an autopsy proved he had paresis. Those were the days when lumbar puncture wasn't thought as much of as it is now.

Q. You often find people disagreeing with you?

A. Quite a few.

Q. Do all people who have paresis become insane?

A. That is the only end. Paresis is insanity.

Q. I mean syphilis.

A. No.

Q. Do all people who have syphilis?

A. No. I say only 10 per cent develop brain syphilis. A spinal examination never lies.

Q. Beg pardon?

A. The spinal examination is accurate. It never lies. You can't affect that. It is one of the things that is as true as anything I know of in medicine.

Q. Well, is loss of memory a frequent symptom of paresis?

A. It is in the last stages, yes.

Q. What would you say this man was in?

A. For ordinary things you have no loss of memory.

Q. Is this man in the last stages?

A. No, I say he isn't in the last stages.

Q. He hasn't any loss of memory?

A. For ordinary things. About the crime I can't tell you, whether he knows anything about that or not. From his own statement I would assume he doesn't know anything about it.

Q. And that is what you rely upon?

A. No, I don't. I rely upon the examination and the lumbar puncture that the man has paresis, out-

side of any mental examination today. His memory is good on some things.

Q. Doesn't a positive spinal fluid sometimes appear where people aren't insane?

A. Not unless they have paresis. I have never seen it. Not the picture we have here. I have had thirty years' experience, doing that since 1906, and I have never seen a case where we didn't rely on it. Before that we had to guess at it until the man died, and then we could tell.

Re-direct examination.

By Mr. Rauffenbart:

Q. Doctor, would the fact that the evidence shows that this trunk was shipped in the name of this S. Miller to a man by the name of Lichow, a friend of long standing, living in the neighborhood where he previously lived for a long time and was well known, and the fact that he rented a room and visited that trunk in that room on several occasions over a period of two or three days, and then returned to his home where he had previously lived, and these people with whom he came in contact during all of this transaction, who had known him previously, said that he acted cool and collected and not any different from what he had ever acted in their presence, indicate to you concerning his mental condition which existed at the time of the alleged commission of the offense?

A. I think that is in harmony with the diagnosis,

his lack of concern, his lack of knowledge of anything wrong he had done.

Q. Wouldn't that be evidence of really an automatic delusional act?

A. I would say it was automatic. It is very hard to describe it. It is a question of judgment, a man's judgment. If he has got an affected judgment, he would do just that thing. He might have been totally unconscious the day before, like he was before. He might have had an unconscious attack, something which he doesn't remember anything about.

Q. May a man, from the history of this disease, commit a sudden, unexpected and unplanned act, even with weapons, entirely without motive, a truly impulsive and unconsidered act, and show no remorse after it?

A. Yes.

Q. Could that be such a case as this?

A. True.

Q. There is no question about that, is there?

A. No question in my mind.

Q. And might such a man at other times appear to be apparently normal ——

A. Yes.

Q. —in all respects?

A. Yes.

Q. His acts and behaviour?

A. He certainly could.

Q. And this condition really comes in cycles? Intermittent, isn't it?

A. Well, there may be times. They have various symptoms. There may be times when they have con-

vulsions, they have periods in which they don't know what they are doing, or until they get in the last stages, when they get actually demented. They go on. It is a progressive mental disease with many variations.

Q. Have you in your experience with the criminal insane treated in your institutions just such cases as this?

Mr. Hinkle: Objected to as irrelevant.

The Court: I do not suppose it is re-direct examination.

Mr. Rauffenbart: I suppose it is not.

Re-cross examination.

By Mr. Hinkle:

Q. Did I understand you to say that he had cerebral paresis eight years ago?

A. No, I didn't say he had paresis eight years ago. I said he had probably beginning of involvement of the nervous system which hadn't gone to cerebral syphilis. That was the diagnosis made at that time, that he had an involvement of the nervous system at that time, syphilis.

Q. That he did have?

A. Yes.

Q. Did I understand you correctly and will you say positively that he did have cerebral syphilis eight years ago?

A. No, I don't know positively. I can only take the doctor's statement who examined him at that time and treated him. I didn't say he had cerebral syphilis. I said he had some involvement, the syphilis had already involved—it might have been in the spinal fluid then, it might have been in the nerve sheath, it may not have been in the brain, but from the symptoms shown, it was in the nervous system.

Q. Did he have paresis ten years ago?

A. He did not.

Q. How do you know that?

A. Only from the doctor's statement of what his condition was at that time. He had tertiary syphilis.

BARNETT GARSON, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Mr. Garson, do you know the defendant, Fine?

A. Yes, sir.

Q. Where do you live?

A. 3009 Atlantic Avenue.

Q. Atlantic City, New Jersey?

A. Yes.

Q. And you are a tailor?

A. Yes, sir.

Q. How long have you known Mr. Fine?

A. About nineteen years.

Q. Have you seen him and been in his company frequently during that period?

A. Yes.

Q. Do you recall the week of March 2nd?

A. Yes, sir.

Q. Do you recall hearing or learning of this alleged murder of Mrs. Schaaf?

A. Yes, when I see in the paper.

Q. Between the 2nd of March and the arrest of Mr. Fine the following Monday, about a week later, did you see him?

A. Yes, he was in my place on Friday. The Friday before he was arrested.

Q. Did he remain in your company some time?

A. A few hours.

Q. Was he in your company any other day during that week?

A. Yes, on Sunday.

Q. The following Sunday?

A. Yes.

Q. Was he with you some time?

A. Yes, a few hours on the Boardwalk.

Q. Did he have something to eat with you?

A. Yes, sir.

Q. Take a walk with you?

A. Yes.

Q. Did he by his manner ——

A. Positively.

Q. Beg pardon?

A. He was all right, the same as usual.

Q. Did he act any different from any other time?

A. No.

Q. Did he indicate from anything he said or did that he was laboring under any strain or stress?

A. No, he never told me anything.

Q. Did he indicate by his actions that he was worried?

A. No, he was as usual.

Q. Just as usual?

A. Yes.

Q. And that was the Friday and Sunday before his arrest?

A. Yes.

Q. Where did you go on Friday with him?

A. After supper I went for a walk with him on the Boardwalk, and we were walking until after six, and then I went to the Steel Pier and he went home.

Q. Where was his home?

A. Well, as far as I understood, it was exactly where he was living a long time ago, but I wasn't in his home.

Q. Connecticut Avenue?

A. Yes.

Q. Did you send him to anyone? Was he inquiring for work, do you know?

A. He was trying to get work, yes, to make a living.

Q. Did you send him to anyone on the Friday that he stopped at your place?

A. I didn't send him exactly. He went himself to look for a job. He was trying to get a job of me, but there wasn't much work. I did give him once in a while a little job to do.

Q. And he came around to you as usual to get those little jobs? Is that what it was?

A. Yes, sir.

Cross-examination.

By Mr. Hinkle:

Q. What time did you see him on Friday?
A. It was between five and half-past eight.
Q. Friday between five and half-past eight?
A. Yes.
Q. In the evening?
A. Yes.
Q. Did he come to your place?
A. Yes, sir.
Q. Did you stay in your place all evening?
A. No, sir. Until seven o'clock.
Q. Until seven o'clock?
A. Yes.
Q. And then where did you go?
A. We had a little to eat in my place and then we went on the Boardwalk until half-past eight.
Q. Did you walk on the Boardwalk?
A. Yes.
Q. Much?
A. We was walking until the Steel Pier.
Q. To the Steel Pier?
A. Yes.
Q. Did you go on the Steel Pier?
A. I went on the Steel Pier and he went home.
Q. Many people out?
A. It wasn't too many.
Q. Not too many?
A. No.
Q. Well, how about Sunday?
A. Sunday was plenty of people on the walk.

Q. What time did you meet him on Sunday?
A. It was between three o'clock until about seven.
Q. Where were you between three and seven?
A. On the walk.
Q. On the Boardwalk?
A. Yes.
Q. Walking all the time?
A. All of the time, yes.
Q. You found it pleasant, did you?
A. Yes.
Q. Don't you know it rained like the mischief all day Sunday?
A. No, it wasn't raining when I was walking with him.
Q. Don't you know that it rained and rained hard all day Sunday?
A. It was raining a little, yes.
Q. It was raining a little?
A. Yes.
Q. What else did it do besides rain?
A. We were sitting for a little while in a pavilion, and then we walked again.
Q. I am going to read you the report of the weather from the Weather Department of the United States located in Atlantic City, of March 6, 1932.
A. Yes.
Q. "Rain began at eight five A. M., and continued all day, and changed to snow at 10:30 P. M., and continued after midnight and ended during the hours between three and four A. M., on March 7th. At about eight P. M., on March 7th there was one-fifth of an inch of snow on the ground." What do you say now?

A. I have nothing to say.

Q. I will read you from the same institution a report of the weather on Friday, March 4th: "Rain began at ten-forty-eight A. M. and ended at twelve fifty-eight P. M. At three-thirty P. M. and continued until three fifty-six P. M., when it changed back to rain again, and rain ended at five-fifteen. Snow began at five-fifteen P. M. and ended at eight-thirty-five P. M. Rain and snow began at five-thirty-five P. M. and ended at seven-thirty-five P. M. Rain again began at nine-fifteen P. M. and ended sometime before midnight. The total precipitation of the day was sixteen hundredths of an inch." What do you say about that for a weather report?

A. Well, I wouldn't say. I was still walking.

Q. Yet on account of [illegible] that condition of weather, you were walking the Boardwalk?

A. Yes.

Q. Three and four hours at a time with this man?

A. No, we was under the pavilion a little while.

Q. I think somebody has got paresis. I will agree with you.

Mr. Rauffenbart: I ask that be stricken from the record.

The Court: Counsel ought not to make any comments.

Mr. Hinkle: I apologize for it.

Re-direct examination.

By Mr. Rauffenbart:

Q. Between the time of March 2nd and the time of Mr. Fine's arrest you were with Fine, were you?

A. You mean on Monday?

Q. Any time. Any day between the 2nd of March, which was Tuesday and the following Monday, were you with Fine?

A. I was on Friday and Sunday, yes, sir.

Q. And that is the truth, is it?

A. Positively the truth.

NORMAN ANDREWS, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Mr. Andrews, where do you live?

A. 44 North Rhode Island.

Q. You are in business on North North Carolina?

A. I work at blacksmithing and horseshoeing at 118 North North Carolina Avenue.

Q. How long have you been in business?

A. Almost four years.

Q. You were living there on Saturday the 5th day of March last?

A. I have been living there going on four years.

Q. Do you remember having seen this man Fine on that day, Mr. Andrews?

A. I talked with him in Horovitz's tailor shop between twelve-fifteen and twelve-thirty on Saturday, and the conversation wasn't much. We were starting a new organization in the First Ward and I asked him what he thought about belonging to it, and he said if he could get a job he would join us, because he was wearing his shoe soles out looking for work. I told him there was no jobs in view, and that ended the conversation.

Q. Did he ask for a job there in the tailor shop?

A. He asked Mr. Horovitz. He told me he had [illegible] him for work and there was nothing for him to do.

Q. Was there anything about his demeanor [illegible] dicate he was under any nervous strain?

A. He talked just the same as anybody else, only he said he was hungry and had to have a job.

(No cross-examination.)

Dr. John J. Reilly, sworn.

Direct examination.

By Mr. Rauffenbart:

Q. Dr. Reilly, you are a practicing physician?

A. I am.

Q. Where?

A. Atlantic City, New Jersey.

Q. How long have you been practicing in Atlantic City?

A. Since 1916.

Q. Where did you practice before then?

A. New York, Philadelphia.

Q. Did you have any connection with any institution in New York?

A. Yes, sir.

Q. What institution?

A. The New York City Asylum for the Insane before it was turned over to the State. Now it is the State Hospital for the Insane.

Q. How long were you connected with th[illegible] tal?

A. About two years; interneship.

Q. Did you attend mental cases?

A. Yes, sir.

Q. Criminal insane?

A. Some.

Q. Have you had some experience in mental cases?

A. Yes, sir.

Q. Have you testified in court in mental cases?

A. Yes, sir, a number.

Q. Did you with Dr. Cotten examine the defendant in the past month?

A. Yes, sir.

Q. When?

A. On May 14th and May 22nd.

Q. Where?

A. At the county jail. In the hospital of the county jail. May 24th. 14th and 24th.

Q. Did you make any tests to determine what his mental condition was?

A. I made a physical examination and a mental examination.

Q. Could you from your physical and mental examination say whether or not this defendant, if he committed the crime charged in the indictment, the murder of Mattie Schaaf, on March 2nd, whether or not he was conscious of that act?

A. I believe he was not.

Q. Were you in the room and did you hear the question propounded to Dr. Cotten covering the testimony adduced in this court relative to the acts of the defendant in the case surrounding the shipping of the trunk, his conduct surrounding that?

A. Yes, sir.

Q. Were you in the court?

A. I heard it.

Mr. Rauffenbart: Is there any objection to my asking his conclusion based on that?

Mr. Hinkle: I have none.

The Court: Go ahead.

Q. Based on that question which you heard propounded to Dr. Cotten, would you say that this defendant was conscious of the act charged in the indictment, if he did commit it, at the time charged?

A. I would say he was not conscious. He was mentally abnormal, insane.

Q. What was your diagnosis of the case?

A. My diagnosis after considering the physical and mental examination and the result of the study of the spinal fluid, all tests being absolutely positive, plus-4, especially the Wassermann, to begin with, I would say that this man was a neurosyphilitic, that he was suffering from chronic brain syphilis, cerebral syphilis.

Q. Would a man suffering from this brain syphilis commit such an act as charged, unexpectedly and unplanned, and apparently without motive, an impulsive and unconsidered act, and go on afterwards apparently without remorse?

A. Yes, sir.

Mr. Hinkle: Wait a minute. There is a word in that hypothesis that is not supported by any evidence. He says "Unplanned." If he will strike that out and reframe his question, I may have no objection.

A. I understand this to be a hypothetical ——

The Court: What testimony is there to support it?

Mr. Rauffenbart: There isn't any testimony either way, if the Court please, planned or unplanned. There is no evidence of the commission of the direct act.

The Court: Does it follow it was not planned, if committed?

Mr. Rauffenbart: I will connect it up with evidence later. There is no positive testimony that this rope on the neck was even applied prior to death.

The Court: Because of death, from the undisputed testimony.

Mr. Rauffenbart: Strangulation.

The Court: The only cause of death that has been given.

Mr. Rauffenbart: I will withdraw the question.

Mr. Hinkle: I ask that any answer be stricken from the record, then, because it was given before I could get my objection in.

The Court: Strike it out.

Q. Doctor, if a rope was placed around the neck of this woman during her life and drawn tight with great pressure, what effect would that have on the trachea and the larynx?

Mr. Hinkle: I object to the question as irrelevant, incompetent and immaterial.

Mr. Rauffenbart: I suppose it is not in direct line with the idea of calling the witness to the stand at the beginning.

The Court: I do not know that you are limited in your examination to anything that may be material and the witness is competent to testify about. What is the objection?

Mr. Hinkle: The objection is that it is incompetent. He says what would be the effect of a rope? I do not understand that under the opening that is a material matter at all. The manner of the killing of the woman and the cause of the death is not in dispute. The claim is, "We don't know that we did it." It does not matter what effect a rope or chain or anything else would have.

The Court: That was the only opening. Is it intended to show that strangulation was not the cause of death?

Mr. Rauffenbart: I will withdraw the question.

(The former question was repeated as follows: "Would a man suffering from this brain syphilis commit such an act as charged, unexpectedly and unplanned, and apparently without motive, an impulsive and unconsidered act, and go on afterwards apparently without remorse?")

Mr. Rauffenbart: I want to repeat that question and say, "Planned or unplanned."

The Court: Very well.

Q. And not be conscious of the act?

A. Yes, sir.

By the Court:

Q. When you say conscious, just what do you mean by the term?

A. Well, he begins with a fixed idea and he goes through with the plan from beginning to end. He isn't conscious. It is a delusionary—and he goes through with it.

Q. You mean that he determines to commit the act and then commits it?

A. Without knowing, yes, without knowing it. Impulsive.

Q. Without knowing that he was committing it?

A. Yes, sir.

Q. Would he thereafter know that he had committed it?

A. He might be able to relate part of it or he might not know.

Q. Then there would be a subsequent conscious knowledge, to use the phrase that has been used here, that such an act had been committed by him?

A. He might be able to recite the act and not be conscious of whether ——

Q. No. You said that he would commit it unconsciously. I take it you mean by that without being aware that he was committing such an act?

A. Yes, sir.

Q. I ask you then whether, committing an act without being aware that he was doing it, would he thereafter have a consciousness of the commission of that act?

A. No, sir, he would not have.

Q. He wouldn't know, then, for example, if a homicide had been committed and life taken, he wouldn't thereafter have any recollection of the commission of that act?

A. No, sir.

Q. Wouldn't know that his own act had any relation to the death?

A. No, sir.

By Mr. Rauffenbart:

Q. Based on the history of the case, if this man did commit the offense charged in the indictment, did he know the nature and quality of that act?

A. I believe he did not at that time.

The Court: You mean the moral quality?

Mr. Rauffenbart: The moral quality.

Q. And could he at that time, at the time the act was committed, know the difference between ——

A. Yes, sir.

Q. —between right and wrong?

A. I believe he could not.

The Court: That is with respect to that act?

A. That act, that particular act.

Cross-examination.

By Mr. Hinkle:

Q. Doctor, you tell us this man did not know what he was doing?

A. That is my opinion.

Q. Well, what did he do that he did not know he was doing?

A. Well, he did what he did automatically, under an impulse.

Q. That isn't my question.

(The question was repeated.)

A. If he committed this act ——

Q. I am not talking about an "If." You gave us a positive statement. Now, we will deal with it positively.

(The question was again repeated as follows: "Well, what did he do that he did not know he was doing?")

A. The commission of this crime alleged, the entire plan, the entire thing from the beginning to the end.

Q. Do you mean that he didn't know he tied the rope around the woman's neck?

A. That was an automatic act, under that impulse.

Q. And he did not know that he put her body in a trunk?

A. No, sir.

Q. And that he did not know that it was right or wrong to do it?

A. No, sir.

Q. Did he know that he shipped her trunk out of the house?

A. That is along with the other circumstances, a part of the act.

Q. Did he know he did it?

A. I don't believe he did.

Q. Don't believe he knew that he shipped her body out of the house?

A. No, I don't believe that.

Q. Did he know that he went to the express office with her body?

A. I don't think so, normally.

Q. Did he know that he was sending the body to Philadelphia?

A. The same condition.

Q. Yes. You heard the whole story of what happened?

A. Yes, sir.

Q. And you mean to say that he did not know what he was doing at the time?

A. No.

Q. How did he come to tell you about it?

A. Well, he was laboring under that condition known as egomania, and he had that impulse, and he tells it and tells it and keeps telling it.

Q. But he is telling what is an actual occurrence?

A. Maybe.

Q. Yes. So that while he did all these things and while they actually occurred and he remembers and

tells about them, you mean to say that he doesn't remember them?

A. He doesn't remember them only under that impulse.

Q. And he didn't know what he was doing when he did it?

A. I don't believe so. Abnormal act, I might add.

Q. Beg pardon?

A. Abnormal act; he didn't know.

Q. Would you think that a man who had killed a woman and tried to dispose of her body knew what he was doing?

A. He may not know.

Q. He may not know?

A. I have had that experience with them.

Q. And the fact that this man had killed a woman, you say he didn't know what he was doing?

A. Didn't know the nature or character or quality of the act.

Q. And yet he shipped her body out in a trunk?

A. Yes, sir. Yes, sir.

Q. And that act to your mind doesn't mean a thing, does it?

A. I believe he would do it again. Do it any time.

Q. You believe he would?

A. Yes, sir. Apt to do anything at the moment, impulsively.

Q. When did you first see Fine?

A. May 14th. Oh, I saw Fine at the hospital, just passing through. I had nothing to do with his case.

Q. I mean when did you first examine him?

A. I examined him officially in the county jail, in the hospital.

Q. On the 14th and the 24th?

A. Yes.

Q. Upon both of which occasions Dr. Cotten was present?

A. Yes.

Q. You examined him together?

A. Yes, in the presence of his counsel.

Q. Did Dr. Cotten's opinion have any influence upon you?

A. None whatever. I made a separate study and based my opinion on my experience with a great many cases.

Q. Well, having heard the history of this crime, you concluded that because he did this thing and shipped this trunk in this way, that he did not know what he was doing?

A. From the story, from the history, from the lack of motive, the curious and unusual and bizarre condition, the fact that he returned in the same state of mind and that he did not protect himself, and that he came back and went into his ordinary surroundings and lived the same life, showing that there was that much blank or that much lapse of normality in his mind which is characteristic of a paretic.

Q. You have heard of an actor, haven't you?

A. Heard of an actor?

Q. Yes.

A. Yes, sir.

Q. Could this man be an actor?

A. Well, he could be anything. A paretic can be almost anything. They can assume—the form—syphilitic insanity can assume any form. It is de-

mentia basically, and they can assume without originating. They are the same as a great syphilographer said about the skin lesion they can assume all forms and originate none.

Q. And you have heard of a bluffer, too, haven't you?

A. Very many, yes, sir.

Q. And you have heard of men with tremendous nerve bluffing their way through, haven't you?

A. Yes, sir.

Q. Fooled lawyers?

A. Yes, sir.

Q. Fooled judges?

A. Yes, sir.

Q. Fooled juries?

A. Yes, sir.

Q. And even fooled medical experts?

A. Yes, sir, many.

Q. Fooled everybody?

A. Yes, sir.

Q. And this man might be one of them?

A. He might.

Q. What percentage of the people who have syphilis develop paresis? What percentage of the people?

A. That is an impossibility. I can cite you—I conduct a clinic at 1520 Arctic Avenue, 24 people examined last week, 18 syphilitic, without any external evidence, so all the statistics are worth nothing.

Q. They came there for the purpose of being examined?

A. Not for that purpose. They came there ailing

with slight indispositions and very often found suffering from syphilis. The statistics have no value.

Q. Do you know the usual spinal fluid cell count in paresis?

A. It might be anywhere from 1 to 20, from 1 to 2500. It depends upon the meningeal involvement.

Q. What would you say was the average?

A. 1 to 12, 1 to 16, 1 to 18, 1 to 20. They vary. It depends upon the virulence of the infection and the amount of the infection and the extension of the infection.

Q. Did you advise against the test to determine the paretic curve in examining the spinal fluid?

A. Well, that is an additional aid, but it isn't as important as the Wassermann and the other globulin tests and the count.

Q. It wouldn't be any help to you?

A. And the pressure. If the others were absent, that might be inquired into, but basically it is common practice and accepted by all authorities and by syphilographers to depend upon the other four. The presence of globulin in anybody's test is indicative of some syphilitic infection.

Q. Suppose this man had been examined for syphilis within the last year or two, would you say that he was still syphilitic?

A. Yes, I believe he will always be. It is incurable.

Q. Suppose the tests at that time developed negative; what would you say?

A. In his spinal column?

Q. Yes.

A. If they developed negative, I would have to take the other symptoms.

Q. What?

A. I would have to take his other conditions before I would negative it. His mental study and his physical study, his reflexes.

Q. Suppose I show you a test in this case, what would you say then?

A. I would have to know the date and the conditions.

Q. March 10, 1932.

A. March 10th?

Q. Yes.

A. Well, I was personally there and checked them. I saw the fluid. I will take my own results on that. I wouldn't believe that test.

Q. You still adhere to your belief ——

A. Yes, sir.

Q. —notwithstanding that a test was made as late as ——

A. I conclude on my own test that I worked with my own tools, sir.

Q. Would you say this man is suffering from paresis?

A. Yes, sir, very insidious, progressive type.

Q. Do you know how long he has had it?

A. He has had it in my opinion, from the date of the first Wassermann as reported—as in the testimony here.

Q. When was that?

A. Seven or eight years ago, as testified by Dr. Shmookler.

Q. What kind of paresis do you call that?

A. He didn't testify to paresis. He testified to tertiary syphilis, which showed a chronic type, possible infection of the spine and nervous system.

Q. What is cerebral syphilis?

A. Syphilis affecting the brain or membrane.

Q. Does that appear in this case?

A. Does it appear? It was present then and is present now, in my opinion.

Q. How long ago has he had that?

A. Well, from eight years on, approximately, I presume from the statement of Dr. Shmookler. I base that on history.

Q. You based your opinion, you said, among other things upon physical signs. What do you mean?

A. Well, that is a consideration generally of all of the physical signs, the reflexes, pupillary, his equilibrium.

Q. What were they? Give us the details.

A. What do you mean, what we found present?

Q. Yes.

A. Well, we didn't find much in his reflexes, except that they were exaggerated, which led us to examine further into his spinal cord.

Q. You didn't find much in the reflexes?

A. No, because he hadn't given us ——

Q. What other physical signs were you attracted by?

A. We examined his heart and we examined his

——

Q. What about his heart?

A. Nothing abnormal about his heart; nothing abnormal about his lungs.

Q. Perfect?

A. Normal, yes, sir.

Q. What other physical signs did you note that

——

A. I noted nothing in his abdomen and nothing about his extremities. He was a well nourished man to look at. Apparently normal physically.

Q. Physically he is a good fellow, isn't he?

A. Yes.

Q. In every way?

A. Well, he has lost weight, according to the history.

Q. That loss of weight doesn't matter? That is a little fashionable?

A. No, that is sometimes the beginning of the end of paresis.

Q. What physical signs do you say led you to believe this man ——

A. His increased reflexes, his patella or knee reflex.

Q. The increased reflexes and that is all?

A. And the eye. Sluggish pupillary reaction.

Q. Anything else?

A. I didn't find anything abnormal.

Dr. Henry B. Shmookler, recalled.

Direct examination.

By Mr. Rauffenbart:

Q. Referring to your report in this case on the first admission, was it not, of Mr. Fine to the hospital?

A. Yes, the first admission.

Q. Will you say what the diagnosis was at that time?

A. Diagnosis was at that time arsenical poisoning and cerebrospinal lues.

Q. What does cerebrospinal lues mean?

A. That is another name for syphilis.

Cross-examination.

By Mr. Hinkle:

Q. You didn't keep that report, did you, Doctor?

A. That was the final diagnosis as made by the physician who attends the patient.

Q. I say you didn't keep it, did you?

A. This is taken when the patient is leaving ——

The Court: You are asked whether you personally made and kept this record.

A. No. That is the hospital record.

Q. You didn't make any part of it, did you?

A. No.

Q. I don't question the record at all. I just want to know whether you kept it or made it?

A. No. It is dated.

Q. It is the hospital record of this case?

A. It is the record of this patient.

Q. And you brought it down here today for the purpose of using it at this time?

A. I was subpoenaed to bring the record down.

Re-direct examination.

By Mr. Rauffenbart:

Q. These records and the treatments are under your direction as medical director, aren't they?

A. That is right.

Q. And you supervise all that?

A. Yes.

Q. Did you make the diagnosis yourself?

A. Yes, sir.

JOHN ARLETH, recalled.

Direct examination.

By Mr. Rauffenbart:

Q. Before making the tests which you testified to, was there an attempt by you to make a price with me?

A. Yes, there was.

Q. What happened?

A. Well, we had a disagreement, which I finally called to your attention and it was settled. You told me to go ahead and do it.

Q. Did I object to the price you asked?

A. You did, very obstreperously.

Q. Did you cut it down some few dollars?

A. I did, yes.

Q. Did I tell you that my instructions were to hold down the cost?

A. The instructions were that it was a State case and the State was going to pay for it and I should be as lenient as I possibly could, and I went along and discussed with the doctor exactly what was happening, and he told me when to stop to keep the expense down.

Mr. Hinkle: I have no questions on cross-examination, but I think the matter should be stricken out as wholly irrelevant and incompetent. It has nothing at all to do with it.

The Court: It can do no harm. I will let it stand.

(No cross-examination.)

DEFENDANT RESTS.

STATE'S TESTIMONY IN REBUTTAL.

DR. WILLIAM COLE DAVIS, sworn.

Direct examination.

By Mr. Hinkle:

Q. Dr. Davis, where do you live?
A. 109 South Portland Avenue, Atlantic City.
Q. How long have you been living in Atlantic City?
A. Three and a half years.
Q. What is your business or profession?
A. Physician.
Q. Have you made a specialty of a certain line of work?
A. Yes, nervous and mental diseases.
Q. Will you state, if you don't mind—don't be too modest about it—tell us the nature of your work and qualifications in that line of work.
A. I was in the medical corps in the United States Army before the War, at West Point and in Manila, and saw quite a number of men with nervous cases, but no more than you would in general practice. After the War I specialized in nervous and mental with the Bellevue Hospital in New York in 1922, and after that medical director of the Philadelphia Hospital for Mental Diseases, about 3500 in the hospital, and from 1925 to 1928 clinical director of the

Norristown State Hospital, Norristown, Pennsylvania. Then I entered private practice here in 1929.

Q. You have frequently testified, have you, in court concerning the mental troubles of persons?

A. Yes.

Q. Did you receive instructions from the Prosecutor to examine this defendant, Fine ——

A. Yes.

Q. —after his arrest?

A. Yes.

Q. Did you examine him?

A. Yes.

Q. When?

A. On May 15th and May 29th.

Q. May 15th and May 29th? Was that the last time?

A. Yes.

Q. What was the purpose of your examination?

A. To determine his mental condition, to determine whether he was insane at the time he was accused of committing this crime.

Q. From the examination you made are you able now to give us an opinion as to whether or not he knew what he was doing at the time this crime was committed?

A. In my opinion, he did.

Q. He did know?

A. Yes.

Q. Following the commission of the crime did he know what he was doing as he performed several acts in connection with the shipping of this trunk?

A. I believe he did.

Q. Have you any doubt about it, Doctor?

A. No.

Q. When you examined him again on the 29th of May, did you examine him for the same purpose?

A. Yes.

Q. And your investigation then led you to believe what?

A. Led me to believe the same thing that I had in the first place, that he was not insane.

Q. He was sane, you say?

A. Yes.

Q. And did know what he was doing at the time of the commission of this crime?

A. Yes.

Q. And has known it ever since?

A. Yes.

Q. Is it your opinion, Doctor, that this man was sane from the 2nd of March and has been sane ever since?

A. Yes.

Q. Had you any indication that he was insane prior to that time?

A. No.

Q. Did you find any evidence of paresis?

A. No.

By the Court:

Q. When you say sane, Doctor, do I understand you to mean that he knew the moral quality of any act that he would commit?

A. Yes, sir.

Q. That he would know that the taking of human life was wrong?

A. Yes, sir.

By Mr. Hinkle:

Q. Could a man who showed no signs of paresis in May have paresis in March?

A. No.

Q. Why?

A. Because paresis is a disease of the nervous system and brain which results in a certain destruction of tissue of the brain, and, therefore, an interference with the function of the brain, and although we may have remissions in the disease, a paretic might have very marked mental symptoms at one time and there might be periods of improvement in which he behaved apparently normally, but the original destruction of the brain tissue will result in certain physical and mental signs and symptoms that can be discovered. In other words, although the disease may be arrested, it isn't cured. There is something left open that you will find in a careful examination.

Q. Well, would a paretic who had committed a violent act probably get better or worse after committing it?

A. It is quite probable that in committing any act it would cause a decided emotional disturbance —of course, he would be emotionally disturbed at the time he committed such an act, but the nature of the act would probably make him worse. It isn't at all probable that he would have a remission and appear

perfectly normal immediately after committing an act of that kind.

Q. That is, the symptoms would continue? Is that right?

A. They would probably be exaggerated.

Q. They would continue in increased and exaggerated form?

A. Yes.

Q. Have you any reason from the testimony that you have heard here to believe that Fine had brain syphilis in 1922 or 1923?

Mr. Rauffenbart: I object. I do not know what testimony he has heard here.

Mr. Hinkle: I will withdraw the question.

Q. Have you been in court and within the hearing of all the witnesses since the defense opened their side of the case?

A. Yes.

Q. Did you hear the testimony of Dr. Schmookler?

A. Yes.

Q. And the quotation from the records of the Mt. Sinai Hospital?

A. Yes.

Q. And such other records as he presented?

A. Yes.

Q. Did you hear the testimony of Dr. Cotten?

A. Yes.

Q. Did you hear the testimony of Dr. Reilly?

A. Yes.

Q. Having heard all of that, have you any reason,

after having heard that testimony, to believe that Fine had brain syphilis in 1922 or 1923?

A. I have no reason to believe so, for this reason. The only thing they brought forth was that he had a positive blood, and we know there are a great many people who have positive bloods who have no mental symptoms and no evidence of syphilis of the nervous system or brain. The doctor himself attributed the unconsciousness, the state of coma in which the patient was brought into the hospital to the large dose or the dose of neosalvarsan which had been injected into his veins. It is very well known that tertiary syphilitic cases are frequently knocked out by neosalvarsan. It affects the kidneys. He said that he had kidney disease, that he had kidney trouble with a great deal of albumen, so it seems to me this case was certainly an acute condition, caused by the neosalvarsan, and was not in any way a sign of brain syphilis.

Cross-examination.

By Mr. Rauffenbart:

Q. Did you understand Dr. Shmookler to say that the man was suffering from brain syphilis?

A. I certainly got the impression from Dr. Cotten and from Dr. Reilly—I will answer that question no.

Q. And it was only on cross-examination by Mr. Hinkle that he tried to fix the time at which the brain was invaded by the germs of the disease; isn't that right?

A. Yes.

Q. There was no direct testimony by either Dr. Cotten or Dr. Reilly, was there, that this brain syphilis was there when he was admitted to the hospital at Mt. Sinai?

A. I am not positive.

Q. You testified here and rendered your opinion in the beginning on simply an examination, a physical and mental examination of the defendant while he was confined in the county jail, didn't you?

A. Yes.

Q. You didn't cause a blood test to be made, did you?

A. No.

Q. You didn't cause a spinal test to be made, did you?

A. No.

Q. Did you have some history which would indicate that he had previously in his life been treated for syphilis?

A. Yes, he told me that he had been treated by injections of a yellow fluid in his vein in the arm which, of course, would lead me to believe that he had had syphilis.

Q. Didn't you also learn, then or later, that he had been treated for syphilis in the Mt. Sinai Hospital?

A. He didn't tell me where.

Q. He didn't tell you, but didn't someone tell you?

A. Not until I was on the stand this morning. I mean in the room.

Q. Well, isn't it usual for a man who specializes, as you specialize, if he is careful and wants to be fair and positive about the case, to use the modern

methods and have a spinal test made, especially where a man is on trial for his life?

A. This man presented no signs nor symptoms of paresis. There was no reason for me to believe that he had paresis, and, therefore, there was no reason for me to have a serological test made, especially when one had been made in the Atlantic City Hospital very recently.

Q. How are you going to eliminate it without the actual test?

A. If you don't suspect it at all and have no reason to think that he has syphilis, why should you do the test? You are not going to test everyone whom you examine.

Q. Then your whole conclusion was a guess, wasn't it?

A. No, not at all. I am not guessing at the signs and symptoms of paresis. I know them.

Q. Did you ever treat any criminal paretics, Doctor?

A. The criminal cases go to special hospitals, so I don't believe I have. I have treated a great number, and some of them might have been criminal, but I am not aware that they were.

Q. Did you ever hear of the famous Gaynor case, which Dr. Cotten referred to while on the stand?

A. No.

Q. You never read that?

A. No.

Q. Did you examine his nose in jail for syphilitic scars?

A. No.

Q. From what you have heard today, if you had

examined him, do you believe now you would have discovered something there?

A. It is quite possible for a man to have had the septum perforated from other things than syphilis. I have seen many following an operation.

Q. Excluding trauma what would you say was the cause of it if you found that there?

A. I should say it is usually syphilis.

Q. Then you would have gone further, wouldn't you, if you had found that in his nose?

A. I am not going to suspect paresis because a man had syphilis. Dr. Reilly just said eighteen out of twenty of his patients had syphilis. He doesn't suspect paresis in all of them.

Q. Don't you know that in the State hospitals for the insane, especially for the criminal insane, that in order to determine whether or not they are affected with brain syphilis, this puncture of the spine is invariably made?

A. If you get a positive Wassermann it is, yes. I mean blood.

Q. Well, how do you get a positive Wassermann without that?

A. I say if you get a positive blood, of course, you do a spinal.

Q. Did you know whether or not he had a positive blood?

A. I know that he had a positive blood at the Atlantic City Hospital, but I didn't do any test myself.

Q. You know that he had, you say?

A. Yes.

Q. Didn't you think, then, it was your duty as an

alienist, and especially in view of the fact you were going to go on the stand where a man was on trial for his life, to determine by this puncture whether or not the spirochetes had invaded the nervous system and gone on into the brain?

A. I wouldn't make a diagnosis of paresis simply because a man had positive blood or positive spinal. If he has no mental symptoms of paresis and no physical signs of paresis, I wouldn't make a diagnosis.

Q. Doesn't brain syphilis assume all types?

A. Oh, yes. It depends on the area of the brain chiefly involved.

Q. Could this whole act have been a parenoid episode?

A. No.

Q. Why not?

A. Well, a paranoid episode would not be forgotten. A paranoid episode is something that is based on false premises.

Q. Are you positive a paranoid episode is not forgotten?

A. If he had an amnesia or contusion at the time, of course, it wouldn't be a paranoid episode, because he wouldn't have any reasoning or logic.

Q. How do you know he didn't have it? You have already said it might assume any type.

A. I said brain syphilis might simulate a number of other conditions.

Q. No.

A. It depends on the area of the brain that is involved, whether it causes merely physical signs or whether there are mental symptoms.

Q. Point out any authority which holds that a paranoid episode, where a murder has been committed, isn't forgotten, complete loss of memory subsequent to the commisison of it.

A. Just what do you mean by a paranoid episode?

Q. You know what a paranoid episode is, don't you?

A. I know what paranoid reasoning is and paranoid conditions.

Q. Well, that all goes to make up the episode.

A. By the word "Episode" I understand you to mean a thing that just happened once and that is all there is to it. Now, you don't have that with a person who has a paranoid trend of reasoning. They are always paranoiacs.

Q. Can a paranoid episode be repeated?

A. The term—if you will define what you mean more distinctly, more definitely, possibly we can get together.

Q. You know. Don't you know all the classifications?

A. Yes, I know what a paranoid act is and paranoid state, paranoid condition, paranoid trend, and so forth.

Q. You know what a paranoid act is?

A. When you want to talk of paranoia and paresis, you are getting into quite different fields, because they are dissimilar conditions.

Q. Yes, but, Doctor, I am basing it on your answer to my question. You said that it could assume all types. That was your answer to the question.

A. If you mean all types of insanity, it may simulate it, but it isn't going to assume—it isn't a differ-

ent type of insanity. That is, you may have some mental symptoms in a case of paresis that seem like a case of idiophrenic or manic-depressive insanity or other types of mental disease, if that is what you mean, you may have a simulation of some of the signs or mental symptoms of other types of mental diseases in paresis, then I would say yes.

Q. Then the only way you can definitely tell is by a lumbar puncture, isn't it?

A. A positive lumbar puncture wouldn't make a diagnosis of paresis in a man who showed no physical and mental signs of paresis.

Q. What would it mean to you?

A. What would ——

Q. The lumbar puncture, if it shows a strongly positive Wassermann?

A. It would mean that he had syphilis of the central nervous system, but it wouldn't mean paresis, because people have syphilis of the central nervous system without having paresis.

Q. That is of the brain, too, isn't it?

A. Tabes isn't paresis unless there are mental signs of paresis. There aren't mental signs of it in this case; neither are there physical.

(The answer was repeated at Mr. Rauffenbart's request.)

A. I didn't say "Tabes."

Q. Yes, you did.

The Court: What did you say?

A. I don't know.

Q. What is tabes?

A. Tabes is a syphilitic diesease that affects chiefly the spinal cord.

Q. When it hits the spinal cord it is tabes and when it hits the brain it is paresis, isn't it?

A. If it is certain areas of the brain that have to do with thinking, reason and mental area of the brain, producing mental symptoms, we would call it paresis.

Q. You still have to tap that spine to find out, whether it is tabes or paresis, don't you, to find out whether the spirochetes are present?

A. We merely consider the serology as contributing to the diagnosis. Many people would diagnose paresis and tabes long before the Wassermann or spinal tap were ever discovered. Some forty years ago there was a very definite description of paresis, but nobody did the spinal tap then.

Q. You, then, aren't following the modern method of determining the presence or non-presence of paresis, but you are using a method used back during probably the Civil War or sometime back that far or farther?

A. I saw no reason to do a tap on a man who shows neither physical signs nor mental symptoms of the disease. You would like to have a tap on everybody that comes in, no matter what is the matter with them, would you?

Q. Don't you believe that might be a good thing? Isn't the tapping now a regular routine of hospitals on the admission of patients to the hospital?

A. Not unless they have positive blood. It would

be very, very bad technique to do a tap on a man who hadn't syphilis, because it usually gives him terrible headaches, makes him very sick.

Q. Because it affects his nervous system to such an extent?

A. Yes. Very uncomfortable. Why put him to that unpleasant treatment?

Q. They take a blood test of a woman going into the hospital for the birth of a baby, don't they?

A. Very frequently. Some hospitals do. Some don't.

Q. Some hospitals, modern hospitals all do it, don't they?

A. I am not connected with any maternity hospital and am not very familiar with it. I presume they do. I don't know that they do.

Q. If they get a positive blood, then they make the spinal puncture, don't they?

A. They should.

Q. You had a positive blood, you said, here in the City Hospital. Why didn't you make a spinal puncture?

Mr. Hinkle: He did say "Positive," and I want to show to this witness the report of the hospital to see whether or not his memory is correct or whether the report is wrong.

A. Did I say positive?

Mr. Hinkle: Yes, you said "Positive."

A. I got balled up, then. That is very unusual on the stand.

The Court: You intended to say "Negative?"

A. Yes, I did. That was a very serious error.

The Court: You intended to say "Negative?"

A. I certainly did. I regret that very much. I don't know how that ever occurred. I never had an accident like that before that I know of.

Q. Doctor, with the modern methods that you say persist now in hospitals in cases such as I have mentioned, maternity, of taking tests, then you say if it develops a positive Wassermann blood test, then they should make the spinal puncture?

A. Yes.

Q. Here you had a history showing that this man had been treated for syphilis, and still you didn't even take or cause to be made a Wassermann blood test, did you?

A. There had been one done in the Atlantic City Hospital so recently it would be entirely inappropriate to do another one in a few weeks. This one was done on the 10th of March.

Q. And knowing that he had this history of syphilis which had persisted over a long period of time, you didn't make this modern and complete test by puncturing the spinal cord, to eliminate at least that question of brain syphilis?

A. The very fact—of course, I didn't know how long ago his infection was. He told me years ago.

He didn't give me the exact date, such as you have today, but the very fact that he had been a syphilitic for a number of years without showing advanced physical or mental signs of syphilis would indicate that you couldn't take the thing very seriously. There are a great many syphilitics, you know, who are not paretics. There was no reason to even think of paresis in this case.

Q. Do you mean to say that he could sterilize himself without treatment?

A. Certainly not, but without treatments he would have gone all to pieces by this time if he were a paretic in 1922.

Q. If you had the knowledge of what had occurred at the Mt. Sinai Hospital, and the fact that he had only received about twelve injections of 606, an incomplete amount, and there was no history of any further treatment, would you have had or caused to have had this spinal?

A. Not with the negative blood, with no signs. He had no signs. There was no reason in the world to take a spinal on this man.

Q. Do you get any directions from the State Board concerning a case of this nature?

A. No, they don't mail me anything direct.

Q. The management of syphilis?

A. I may get some pamphlets occasionally. I don't recall now.

Q. Don't you know they send out definite instructions and demand that this spinal test be taken?

A. They can't demand that a spinal test be taken in a man that I don't even suspect of having syphilis, can they?

Q. Didn't you suspect it when he told you he had been treated for it?

A. I didn't suspect he had it now. We found it was negative.

Q. Do you say it isn't possible to have these spirochetes in the spine if the blood test is negative?

A. Yes, it is possible.

Q. Isn't it also true that before the complete tests and after about maybe a dozen shots, that where previously there was a positive, isn't it possible that after those probably dozen shots, another test will show negative?

A. Blood?

Q. Yes.

A. Yes.

Q. And then will you say that that infection is out of the blood?

A. I wouldn't say that a man is cured because his blood is negative. Neither would I say he was cured if his spinal fluid were negative, and neither would I do a severe test like a lumbar puncture on a man whom I have no special reason to feel has syphilis. He tells me that years ago he was treatd for syphilis. He knows nothing about Wassermann, knows nothing about diagnosis. Many a man is told he has syphilis when he hasn't. Many a laboratory has put out Wassermanns that were positive and they weren't, and have proceeded on a false premise, and have treated people who didn't have syphilis. We don't know even now that he had syphilis ten years ago. If he had and got only that small amount of treatment, it seems very improbable to me that he would be in the physical condition that he is today.

Q. Isn't it a fact that a man will go along, where he is infected with this disease of syphilis, year in and year out without showing any apparent symptoms?

A. Yes.

Q. Yes. And it will go so far as to work into the nervous system up into the brain without anything showing, won't it?

A. Yes.

Q. And he may then impulsively, suddenly, without planning, commit some unusual, overt act?

A. Yes.

Q. Not be conscious of doing wrong?

A. Yes, and after the act is over he will show signs and symptoms upon which diagnosis can be made.

By Mr. Hinkle:

Q. Doctor, does a positive spinal fluid always indicate paresis?

A. No.

Q. Do all people who have syphilis become insane?

A. No, fortunately.

By Mr. Rauffenbart:

Q. Who is your authority for the statement that a positive spinal Wassermann on all tests isn't indicative of brain syphilis?

A. Why, you can find it in books on syphilis.

Q. Mention one, please.

A. It isn't usually accepted in hospitals. If you

have a curve have a nerve curve, 1-1-1, and have signs of brain syphilis, it depends on the mental symptoms as well as the physical.

Q. Will you kindly mention an authority?

A. I can't mention any particular person who has written on this subject ——

Q. That is all.

A. —but it is true.

Dr. Edward I. Guion, sworn.

Direct examination.

By Mr. Hinkle:

Q. Dr. Guion, where do you live?

A. Northfield, New Jersey.

Q. What is your business or profession?

A. Medical Director Atlantic County Hospital for Mental Diseases.

Q. How long have you been at the head of the Atlantic County Hospital for Mental Diseases?

A. Over nine years.

Q. And still hold that position?

A. And still hold that position.

Q. Did you examine this defendant, Fine, at the request of the Prosecutor?

A. I did.

Q. When did you examine him?

A. May 8, 1932.

Q. Any other time?

A. That is all.

Q. That one time? Your examination was made for the purpose of ascertaining what?

A. Whether he was insane or sane, in my opinion.

Q. At any particular time, or at that particular time?

A. At that particular time, I presume.

Q. Did you examine the man?

A. I did.

Q. Have any trouble with your examination?

A. No trouble whatsoever.

Q. And from the examination thus made, what did you find him to be?

A. In my opinion, he was sane.

Q. Was there anything to indicate to you that he had ever been insane?

A. There was not.

Q. So that from your examination, is it your opinion now that he was sane on or about the 1st or 2nd of March?

A. Yes.

Q. And if he performed or did any act, he then was conscious of what he was doing and whether doing right or doing wrong?

A. In my opinion, yes, he was.

Q. Did you find any evidence of paresis in this man?

A. No.

Q. If he showed no paresis to you in May when you examined him, could he have had paresis in March?

A. In my opinion, no.

Q. Why?

A. Because the time was so short he couldn't have gotten over the symptoms so soon.

Q. If he was paretic and committed some violent act, would he have probably gotten better or worse afterwards?

A. Well, he probably would have gotten worse.

Q. If he was paretic about the first or second day of March, then would he have shown it when you examined him?

A. He would have shown some symptoms of it, yes, in my opinion.

Q. Have you heard the testimony in this case since the defense opened?

A. I have.

Q. Did you hear the testimony of Dr. Shmookler?

A. I did.

Q. And the testimony of Dr. Cotten?

A. I did.

Q. And the testimony of Dr. Reilly?

A. I did.

Q. From the testimony that you heard, have you any reason now to believe that Fine had brain syphilis in 1922 or 1923?

A. 1923? No.

Q. Do all people who have syphilis become insane?

A. No.

Q. And does a positive spinal fluid always indicate paresis?

A. No, it does not.

Q. Does the loss of memory—is that an indication of paresis?

A. Some paretics have loss of memory; some do not. It isn't absolutely necessary. They have exalted ideas, as a rule, and other symptoms.

Q. Could a man who had no knowledge of the commission of a murder on the first or second day of March be able to tell how and in what manner he endeavored during the next five or six days to dispose of the body, be able to remember his efforts to dispose of the body, and yet not know anything about the commission of the murder?

A. If he was an advanced paretic, I should say no.

Q. If he was what?

A. An advanced paretic.

Q. That is, he would have remembered the murder, wouldn't he?

A. He might and might not. It all depends on the condition, how far advanced.

Q. Is this man an advanced paretic?

A. He is not a paretic at all, in my opinion.

Cross-examination.

By Mr. Rauffenbart:

Q. Well, if he is an advanced paretic, he is about ready for the undertaker, isn't he?

A. I should think so.

Q. You spend some time in the State Hospital?

A. Yes, I go there frequently and spend two or three weeks.

Q. Isn't it a fact that the rules of the hospital require in all syphilitic infections, in all cases of admission there, to have this spinal test made?

A. I don't think so.

Q. You don't think so?

A. No.

Q. Haven't you ever seen it done there during the time you were in attendance?

A. No.

Q. You never did?

A. I didn't attend the laboratory section.

Q. Then you simply have no knowledge of what they do require down there?

A. I just answered the question no, I didn' tknow.

Q. How about your own institution, Doctor?

A. We take a blood Wassermann on every patient that comes in. If it is negative, so much the better. If it is positive, we don't take any spinal fluid. If we do, we use chloride of gold, a paretic curve. If they have no symptoms of syphilis, we don't bother with that, but we do take a blood Wassermann in every case that comes in.

Q. Suppose you have a previous history of—is that tertiary syphilis?

A. Yes.

Q. What does that mean?

A. That is advanced stage, third stage syphilis.

Q. There are three stages, and that is the third stage, isn't it?

A. Yes.

Q. And that patient only had a very few treatments, wouldn't you take a spinal?

A. I would.

Q. Well, didn't you have that in this case?

A. In the case of Fine?

Q. Yes.

A. No.

Q. Didn't you have advance knowledge from Dr. Shmookler of his condition?

A. I did.

Q. Do you know Dr. Shmookler?

A. Not until today.

Q. Not until today?

A. I didn't know him until today.

Q. You knew of him?

A. Yes.

Q. Very active in the practice, isn't he, Doctor?

A. It would appear so to me.

Q. Very large hospital?

A. Yes.

Q. Treats a lot of people?

A. I understand that.

Q. And you would have confidence in what he said, wouldn't you?

A. Yes.

Q. If he communicated the fact to you that this man had been treated in his hospital for this third stage of syphilis, and that, outlining it, he was there many years ago, found in a room unconscious, brought to the hospital in that condition, apparently suffering from uremia, and after a few days a member of the staff recognized him as a patient he had under treatment for a nasal condition and for whom he ordered an injection of salvarsan, and then disappeared; he remained in the hospital many weeks or months, receiving anti-syphilitic treatment; he was improved and discharged and lost sight of him. Having that in mind, wouldn't you have naturally, to determine whether or not this man's

nervous system had been affected by this syphilitic germ, to eliminate that from consideration, made a lumbar puncture?

A. He hadn't any signs of paresis when I saw him, and what you have referred to there doesn't say anything about cerebral syphilis. It just says he had syphilis.

Q. I say, having that in mind, wouldn't it be well to check it up?

A. Are you asking me this question from what I hear on the stand today, the account of what Dr. Shmookler said?

Q. If this history, this notice, came to you previously?

A. Yes, but that notice doesn't contain all that stuff you are giving me now.

Q. I will hand it to you. Read it.

A. I saw this before.

Q. You point out something I said that isn't in that letter.

A. You said he was taking salvarsan, and it says here he was taking neosalvarsan, and then you said he had cerebral syphilis. It doesn't say here cerebral syphilis.

Q. I didn't say cerebral at all. You are mistaken.

A. Then I apologize.

Q. Read the letter.

A. "Mr. Louis Fine was under my care at the Mt. Sinai Hospital many years ago. He was suffering from tertiary syphilis. He was found in his room unconscious, was brought to the hospital in that condition, apparently suffering from uremia.

After a few days a member of the staff recognized him as a patient he had under treatment for a nasal condition and for whom he had ordered an injection of neosalvarsan, and who disappeared after that. He remained in the hospital many weeks or months, receiving anti-syphilitic treatment. He was very much improved and discharged. I gradually lost sight of him. Very truly yours, Henry B. Shmookler, M. D., Medical Director, Mt. Sinai Hospital."

Q. Now, Doctor, having that in mind, when you examined this man physically and mentally did you look to see if there was any scar there, any nasal scar?

A. No. Lots of people have nasal conditions that don't require any special attention after they are treated.

Q. Especially football or hockey players?

A. Yes.

Q. But where you have a previous history of syphilis in the third stages, and a letter before you that he had a nasal ulcer or something to that effect, wouldn't you consider it as your duty in determining whether or not this man's nervous system, his brain, had been affected by the spirochetes circulating into there?

A. I would have done so had I seen any symptoms of paresis, but Dr. Shmookler says here the man was apparently suffering from uremia.

Q. How are you going to eliminate it without a specific test, Doctor?

A. You have to have symptoms of paresis.

Q. Isn't it a fact that if you do not in these cases make one of these lumbar punctures, that you

haven't made a complete examination on which to base a diagnosis, and there is 50% error?

A. No, I don't think so. I don't agree with you on that.

Q. What do you say about that?

A. I say that if a person has signs of paresis, you want to make a lumbar puncture, and if he don't have it, it isn't necessary to do it, especially so if the blood Wassermann is negative.

Q. And you didn't think it was necessary, even in view of the fact that you had notice that he had suffered in the third stages of syphilis, he had left and hadn't been back for further treatment, that there was a nasal ulcer, a sore, and that this man is to go on trial for his life, and it was in the interest of justice that we wanted to determine whether or not he was a sane man, and in order to do that definitely you could have determined it by taking this lumbar puncture, did you think you were doing your duty when you didn't do that?

A. Yes, I do.

Mr. Hinkle: I object to that. I think there is an error in the premise. The question is quite lengthy and involved, but I think he says there that the doctor knew that this man was in the third stages of syphilis. I don't think there is any proof that the doctor had any such information.

(The question was repeated.)

A. I think so, yes. I made a mental examination of the man.

Q. Doctor, just how long did you stay in that jail when you made this examination you speak of?

A. An hour and a half.

Q. What is that?

A. An hour and a half.

Q. What time did you arrive there?

A. I left home at 11 o'clock and came direct here and I don't drive slowly, and it was pretty nearly three o'clock when I got back.

Q. That is four hours, isn't it, and you live how far from here?

A. Northfield. About eighteen miles.

Q. You don't drive slowly, you say?

A. No, I don't.

Q. It would take you about twenty-five minutes, I suppose?

A. I had a new car that day and I had to drive a little slower, unfortunately. I hated to do it, but I had to.

Q. It would take you an hour, then? What did you do with the other three hours?

A. I don't know.

Q. What does this indicate, Doctor, on a patient: "4-plus Wassermann; increased cell count; positive globulin in the spinal cord"?

A. If it is correctly interpreted, I would say it indicates paresis.

Q. You had a case at your hospital by the name of Weiss?

A. Yes.

Q. What was his ailment?

Mr. Hinkle: Objected to.

The Court: How is that material?

Mr. Rauffenbart: He was a witness in this case, and it might be—may I take it up at side bar?

The Court: Yes.

(The following occurred at side bar.)

Mr. Rauffenbart: This man, Weiss, who was a witness called by the State, was a patient at the hospital of which the witness is the superintendent, Dr. Guion. My information is that he was confined there as a paretic; that he since leaving has threatened the life of Dr. Guion, for no apparent reason or motive, and that he was on the stand here apparently a sane man, and I think it would be a comparison which the jury would be entitled to have before it.

The Court: I think not. I think it is not competent.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

RALPH W. E. DONGES (Seal),
Judge.

DR. ISAAC LEONARD, sworn.

Direct examination.

By Mr. Hinkle:

Q. Dr. Leonard, what position do you hold in this County?

A. Acting county physician.

Q. How long have you been practicing medicine?

A. Since 1889. About thirty-three years. 1899, I should say. Pardon me.

Q. How long have you been acting as county physician?

A. Oh, twenty-eight years, off and on. That is, more recently I have been acting altogether for Dr. Souders, the last three years, two years and a half.

Q. You have a general practice?

A. I have, yes, sir.

Q. In addition to that have you made some special study of mental troubles and mental diseases?

A. I have examined quite a few mental cases.

Q. Did you, at the request of the Prosecutor, examine this defendant, Fine?

A. I did.

Q. When?

A. I examined Mr. Fine on May 15th and May 29th.

Q. At the time that Dr. Davis examined him?

A. Yes.

Q. The purpose of your examination was to ascer-

tain his mental condition as referring to about the forepart of March; is that right?

A. That is right.

Q. What conclusion did you come to and what is your opinion as to his mental condition on the first or second day f March?

A. My opinion was that the man was mentally sane.

Q. Sane? Did you find any indication of paresis?

A. No, I did not.

The Court: Would he, in your opinion, recognize the moral quality of an act committed by him on the first or second or thereabouts of March?

A. Yes.

Q. He would recognize?

A. Yes.

Q. Then he would know if he was doing right or doing wrong?

A. Yes, sir.

Q. And if he showed no paresis in May, could he have had had paresis in March?

A. No.

Q. If he was a paretic at that time and committed a violent act, would he have gotten worse or better after the commission of the crime?

A. He would have gotten worse.

Q. But your opinion is that he was not a paretic at that time?

A. Yes, sir.

Q. Is it your opinion that he was ever a paretic?

A. I don't think he ever was.

Cross-examination.

By Mr. Rauffenbart:

Q. Doctor, you are not a psychiatrist, are you?
A. Only part of one.
Q. Beg pardon?
A. No, not a specialist.
Q. You have never been connected with any institutions where they treated mental diseases?
A. No, sir.
Q. And you have never been connected with any hospital where they treated the criminal insane?
A. No.
Q. What would you say if the spinal Wassermann showed 4-plus, increased cell count and positive globulin?

Mr. Hinkle: Why ask that, when that is not in this case?

Mr. Rauffenbart: It is in the case.

Mr. Hinkle: From whom?

The Court: The witness, Arleth, I think, testified with respect to the count.

Q. What would you say that would indicate, Doctor?
A. I would say that indicated a brain lesion, an acute condition.

Mr. Hinkle: That was not Dr. Arleth's testimony.

(Dr. Arleth's testimony was read by the stenographer.)

Mr. Hinkle: That still is not proof on which to base this question.

Mr. Rauffenbart: It is in the case.

(The question was repeated.)

Mr. Hinkle: That is objected to because it is not upon a premise from the testimony.

The Court: In what respect?

Mr. Hinkle: As to the——

The Court: I take it when the word "Positive" is used in this connection, it means "Plus-4"?

The Witness: Yes.

The Court: So the "Positive" is the equivalent of "Plus-4."

A. That indicated an acute active inflammation of the brain, and meninges, due to infection.

Q. What would chronic be? What test would you give in a chronic case?

A. In a chronic case it keeps on burrowing along

and eating its way along, and scar tissue will form in the brain. The patient will be dead before it becomes chronic, a condition like that.

Q. It can't become chronic?

A. No. A man will go out of his head and die; die in delirium. Paresis goes on and gets gradually worse.

Q. How many examinations did you make, physical and mental, of this defendant?

A. I made two.

Q. When?

A. On the 15th of May and the 29th of May.

Q. Did you accompany Dr. Davis each time?

A. I did.

Q. Both times?

A. Both times. I think we came over together the last time.

Q. Did you also have some history of a syphilitic condition having existed in this man several years ago?

A. I had no history of that whatsoever until the 29th of May, and I didn't have that until I dug it out of the defendant myself. None whatsoever.

Q. Dr. Davis said he had it. Did he mention it to you?

A. I don't know whether he had it or not, but I didn't have it until a week ago last Sunday.

Q. Didn't Fine tell him the first time that Dr. Davis talked to him?

A. That I don't know.

Q. You were present all the time?

A. I didn't hear that. I didn't know anything——

Q. You didn't hear that?

A. No, sir, I didn't hear it until the 29th day of May, when I was over here, and I had to get that, by asking questions, out of Fine, and the first thing I asked him was as to if he had ever had any serious illness, and I found that out a week ago last Sunday. That is the first information I had of it.

Q. Wasn't it your business to find it out the first time, when Dr. Davis found it out?

Mr. Hinkle: May I suggest this: If we are going to quote previous witnesses, I think they should be quoted correctly.

The Court: I think it is very bad practice and improper to quote previous witnesses in any case.

Mr. Rauffenbart: I apologize to the Court and will refrain from it.

Mr. Hinkle: To quote Dr. Davis as havnig said something the first time when it was the second time is not correct.

The Court: I think one witness' testimony ought not to be used as a basis of comparison.

Mr. Rauffenbart: I will refrain from it.

Q. Doctor, wouldn't you think if a careful—a careful man in this examination of the defendant in a case which is so serious to him, where you have a history of previous syphilitic infection, should eliminate all possibility of such a loathsome disease as

that, which affects the nervous system, wrecks the brain, sends him to the asylum, especially in view of the history of the case which you had, which showed no motive, the fact that this man returned immediately to the place where the crime was supposed to have been committed, would make this lumbar test so he could eliminate any possibility of that?

Mr. Hinkle: Objected to. He seems to criticize what the doctor did as to something that ought to have been done for some other purpose. The doctor was there to ascertain what this man's condition was at a certain time, and he didn't have to do anything when he arrived at a conclusion as to the condition.

The Court: The witness says he prefers to answer.

Mr. Hinkle: I don't think it belongs in the case, even.

The Court: I think the question as framed is probably objectionable.

A. May I answer?

The Court: No, I think not.

Q. Doctor, how did you and from what did you arrive at your conclusion that the man was mentally sane or sound?

A. By my conversation, by my examination. I was with him for at least an hour and thirty-five minutes. I couldn't find anything that I found at that time showed any mental derangement whatsoever. In days gone by we used to take those patients we thought there was any possibility of paresis—I may add this—and a possibility of syphilis before we had the Wassermann, before we had the 606, we used to give the patient the benefit of the doubt. We would put them on anti-syphilitic treatment and if they got better, all right, and if they didn't, they went from bad to worse and died. The reason I didn't go on and make any further examination by Wassermann or lumbar puncture, order it, was simply because on the 10th day of March we had a negative Wassermann from the hospital records of Atlantic City where Mr. Fine was located. That is the reason I didn't make it. I didn't think it was necessary, and I didn't have anything to indicate anything of that character.

Q. Could you determine—having this previous history of syphilis, could you determine and would it be your professional judgment that he was free from the syphilitic germ?

A. Well, I wouldn't say he was free from it, but with a negative Wassermann I could be absolutely assured.

Q. That is only the blood, isn't it?

A. That is in the blood, yes, but that gets in the tissues, gets in the central nervous system. That gets in there. It travels.

Q. Did you talk to him about the crime itself?

A. No, I didn't talk to him about the crime.

Q. Didn't you ask him about the shipping of the trunk and so forth?

A. No, I didn't ask him that.

Q. Well, did you have a history of the case?

A. I had a history of the case.

Q. And that trunk had been shipped by him in the name of L. Miller?

A. Yes.

Q. That it had been shipped to the office of a friend of his in the neighborhood in which he had lived?

A. Yes.

Q. And where he was well-known?

A. Yes, sir.

Q. That he had rented a room and put it in that room and visited it a couple of times, and that he came back to Atlantic City on a couple of occasions and returned right to the home of Mrs. Schaaf, where he remained until he was arrested. You had that, didn't you?

A. Yes, sir.

Q. And from the history you found no motive, did you?

Mr. Hinkle: I object.

Mr. Rauffenbart: I am asking him if from the history he found any motive.

Mr. Hinkle: He is hardly in a position to express an opinion as to whether he found a motive or not.

Q. Assuming that there was no motive and you

had this history of previous syphilis, wouldn't you then naturally search to see if there was any insanity?

A. I think I found that out when I examined him. I didn't bring out anything from his history.

Q. You followed, then, the test—you said before you had these modern tests, where you could take this spinal, you told us about a test years and years ago where you hadn't these modern tests; where you couldn't tell positively whether a man was suffering from such a disease or how far it had gone. You used that method you used back twenty-five or thirty years ago?

A. That wasn't for diagnosis. There was no such evidence here as to on the border line between syphilis and paresis.

Q. No what?

A. No evidence, in my estimation, when I found that I had the hospital record of a negative Wassermann.

Q. Doctor, if you had taken a spinal test and it was negative, then you would have been positive in your searches, wouldn't you?

A. I think I was positive enough with my Wassermann negative.

Q. Then this Wassermann spinal test means nothing?

A. No, I wouldn't say that.

Q. What do you say?

A. Why, it is confirmatory, of course. Any one of these tests is liable to error. Any test is liable to an error and liable to be mistaken. If I were in doubt,

then I would have a lumbar puncture, if I had other symptoms to follow up. I didn't have any.

Q. How are you going to eliminate it if you don't make this lumbar test?

A. Well, I had no symptoms indicating that the man had had it, other than they had made that positive—made that test at the Atlantic City Hospital. That was negative. Then I didn't get this until the 29th. That Wassermann negative was sufficient for me. I was perfectly satisfied.

Q. Didn't you see Dr. Shmookler's letter?

A. Yes, I saw that. No, I didn't see it. I heard it read.

Q. That was back on May 4th?

A. Well, there are a lot of people who have those in years gone by and they are still living and walking the streets of Atlantic City today.

Q. Having seen that, you knew this nasal infection was there?

A. I never saw that letter until today. I didn't even read it.

Q. I thought you said you had seen it.

A. This afternoon, about twenty minutes ago, was the first I saw that letter or heard it read.

Q. I thought you said you had seen it.

A. No.

Q. How many paretics have you treated?

A. Well, I think every one I treated I was called in at the last stage of the game and they died. When destruction of the brain becomes so great and it is well advanced, there is no chance for them, and that has been confirmed by the autopsies that I have made. That is the only positive test, the autopsy.

Q. You mean they were in a paralytic stage, don't you?

A. That's what it means.

Q. The brain was all gone then?

A. Can't help it. Get a paralysis.

Q. Why do you suppose they called you in when the man was about to die?

A. Well, these people are going around. Some people don't have a physician, you know. You know a lot of people in Atlantic City I have been called in at the last minute. Some of them were Christian Scientists and kept it covered up.

Q. Doctor, you say these tests aren't always true, conclusive. What is the percentage of conclusive Wassermanns on the spine?

A. Well, that I couldn't tell you exactly.

Q. Is it great or small?

A. Well, that just depends on who makes the test.

Q. Did you ever make one yourself?

A. No. I have been in the laboratory when they were made, but I have never made one.

STATE RESTS.

(A recess was taken until 9:30 A. M., Thursday, June 9, 1932.)

Mays Landing, N. J., June 9, 1932.

TRIAL OF THE CAUSE RESUMED AT 9:30 A. M.

Mr. Rauffenbart: We rest, if your Honor please.

Mr. Hinkle: The State rests.

TESTIMONY CLOSED.

Mr. Hinkle opened the argument to the jury. Mr. Rauffenbart summed up for the defendant, Mr. Hinkle closed for the State.)

COURT'S CHARGE TO JURY.

DONGES, J.:

Gentlemen: The defendant at the bar is charged with the willful, deliberate and premeditated killing of one Mattie Schaaf on the second day of March of this present year in the City of Atlantic City.

The case has been conducted with marked ability by counsel upon both sides, who have consistently endeavored to present the matter expeditiously, fully

and carefully. The matter will now be submitted to you to determine questions of fact that are involved and to render your verdict in accordance with the law, in view of the sworn facts under the law, as I say, as I shall give it to you.

You are the sole judges of the facts, and if in the discussion of the facts I should err, in your view, in such statement, your own recollection, your own opinion as to the testimony will prevail above any statement that I may make. Your own view of the facts must control, and not any view that I may express.

Upon the law you must be guided by what I tell you. You must not put your judgment of the law above my declarations to you now as to what the law of this State is. Under our system of jurisprudence jurors are to determine questions of fact and are the sole judges, when the testimony is committed to them, of such fact; but the law of the case must be the law which the Judge presiding gives to you. If there be any error in a statement of the law by the Judge, there is a power and a forum for the correction of it, and you are not to assume to pass upon the correctness either as to the adopted law of the State as declared by the Courts or as to the policy of our law as declared by constituted authority; but in the performance of your duty you will obey the law as it is given to you and you will determine the facts and reach a conclusion in view of the law as given to you upon the facts.

The indictment charges willful, deliberate and premeditated killing. The legislature has declared the policy of this State by providing: "Any person

who, in committing or attempting to commit larson, burglary, rape, robbery, sodomy, or any unlawful act against the peace of this State, of which the probable consequence may be bloodshed, shall kill another, then such person or persons so killing as aforesaid shall be guilty of murder."

The legislature has further declared the law of this State to be: "Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree."

You will observe that murder is defined to be the unlawful killing of another person, and under our law the presumption goes with an unlawful killing that, unless explained, that killing is murder of the second degree. If, however, it be shown and the jury be satisfied beyond a reasonable doubt that the killing was willful—that is, there was a design to kill—deliberate—intention to take life—and premeditated—that is, that at the time of the commission of the act there was a design to take life,—then such killing, such murder, is murder of the first degree.

Our Courts have said, and it is the established law of this State, that to constitute murder in the

first degree there must be an intention to take life. No particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premeditation should continue for an hour or a minute. It is enough that the design to kill be fully conceived and purposely executed. That is the law as laid down by the highest Court in this State generations ago, without change, and is now the law.

I said to you that upon this phase of the case, namely, whether this defendant is guilty of the slaying, the killing of this decedent, Mattie Schaaf, the defendant is entitled under our law to have both the act of killing and the wilfulness and premeditation and design of that killing established beyond a reasonable doubt.

Reasonable doubt has been defined by our courts in this language—the term is familiar to laymen, a term that is difficult to interpret, because it rests, after all, in the conscience of each individual as to what is a reasonable doubt; misconceived very largely as to just what is a reasonable doubt, but our courts, the court of last resort, more than seventy-five years ago adopted this as the controlling definition of reasonable doubt—"It is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they

feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution," on this phase of the case. "If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether." Under our system of laws, circumstantial evidence is to be received and given the same consideration as if from the lips of witnesses there was testimony as to the concrete act itself. Under our system of laws, where circumstances testified to piecemeal by divers persons are so pieced together, that, when taken together, the fabric is complete, when the conclusion to be drawn is so irresistible of guilt that it can be said that the mind of the juror is persuaded to a moral certainty—not to an absolute certainty, but to a moral certainty—that kind of judgment, that abiding conviction upon which human beings would act in human affairs to say, "I am persuaded, I am satisfied of the truth of this from the evidence," then the mind is persuaded beyond a reasonable doubt. A reasonable doubt sometimes is thought to be a doubt which may be reasoned into a case; a doubt that may be reasoned somehow into a situation. But, as I have tried to point out to you, a

reasonable doubt is one that does not leave the mind, after consideration of all of the facts and testimany in the case, with an abiding conviction to a moral certainty of the commission of the act.

I said that upon the phase which involves the establishment beyond a reasonable doubt of the killing of Mattie Schaaf and of its being done by the defendant, being done wilfully, deliberately and premeditatedly, the burden is upon the State.

Coming to the major defense, as I take it, namely, that, without admitting the truth of the accusation of the killing, the defendant, if he committed the act, is not legally responsible for the act, again our courts have laid down and there have been imbedded in our law very fixed principles, principles of law designed to give to a defendant every consideration to which one who has committed such an act is entitled, and yet one designed to protect society at the same time.

As early as 1846 a very distinguished jurist of New Jersey charged a jury in this language that I shall read to you, which language has been adopted, passed upon repeatedly by the Court of Errors and Appeals of this State with approval, and it is taken and must be taken as the law on the question of insanity as a defense in the State of New Jersey: "I now come to that part of the cause which constitutes the main ground of defense in this case, namely, insanity. This question, in the nature of things, is the first one for you to consider. For it is of no consequence what circumstances attended the homicide, or in what manner the crime is varied in the eyes of the law by those circumstances, if the pris-

oner was insane at the time of committing the deed." "Was, then, the prisoner at the bar insane at the time of committing the homicide? It is difficult to define in set terms what insanity is. We all have a notion of what it is and there is a great variety of phrases by which we are used to designate it. We say of a man who is insane and has committed some atrocious act while in that state, 'he was out of his head.' 'he had not his senses at the time,' 'his mind was disordered,' 'he was crazy when he did it,' 'he did not know at the time what he was about,' and other language of similar import. The simple question for you to decide, gentlemen, is 'whether the accused at the time of doing the act was conscious that it was an act which he ought not to do?' If he was conscious of this, he cannot be excused on the score of insanity, he is then amenable to the law and in that case, if such is your opinion from the evidence of this case, you will have to go on to the consideration of the circumstances attending the act, in order to distinguish to what kind of homicide it belongs according to the law of the land. But if it is your opinion that at the time of committing the act he was unconscious, that he ought not to do it, or, in other words, incapable of distinguishing right from wrong in a moral point of view, then you have nothing further to do but to render a verdict of acquittal on the score of insanity."

I wonder sometimes whether any further discussion will be helpful to a jury, but I deem it necessary that I should tell you what our courts have said, and it may be helpful to you. "In the first place, the law presumes a man sane until the con-

trary is proven. Hence, it has repeatedly been said that the evidence of the prisoner's insanity at the time of the act ought to be clear and satisfactory. If the evidence leaves it only a doubtful question, the presumption of the law turns the scale in favor of the sanity of the prisoner. In such case, the law holds the prisoner responsible for his actions." And we are dealing in this case, gentlemen, only with the mental state of this defendant at the time this act was committed by him, if it was committed by him, and what his condition was theretofore or his condition has been since, what it may be hereafter, is a matter in which you are not now presently concerned. The law of this State provides for every exigency. If this man was insane and unable to go to trial, the law provides for his protection in that event. If he be rendered insane, subsequent to the commission of a crime, the law provides for that event. And if, even after conviction, a man be adjudged insane, it is neither the policy of the law nor the practice of this State to condemn insane persons. The duty is placed squarely, by the policy as established by the Legislature, upon the Court to see that no insane person shall be put to death.

So that I repeat your duty is to see whether this act was committed by this defendant at the bar, whether it is established beyond a reasonable doubt. If it was, was he then in a legal sense responsible for that act? Your duty relates to the time of the commission of the act and not to any other time.

Chief Justice Hornblower further says: "If it were doubtful whether the prisoner committed the act, then the jury ought to find in his favor; for

where the jury find a reasonable ground for doubt whether the accused committed the homicide, they ought to acquit. There, the presumption of law is in favor of the innocence of the party; every man is presumed to be innocent until he is proved guilty. But where it is admitted"—it is not in this case—"or clearly proved that he committed the act, but it is insisted that he was insane at the time; and the evidence leaves the question of insanity in doubt, there the jury ought to find against him. For there, the other presumption arises, namely, that every man is presumed sane until the contrary is clearly proved."

Another very distinguished jurist, following the very clear, explicit, correct exposition of the law by Chief Justice Hornblower in the case from which I have just read, namely, the late Chief Justice Depue, said this, which has been adopted into our law. "The defense is insanity. Against such a defense the law entertains no prejudice. On the contrary, if a defense of this character be properly proved and sufficiently established, the law accords the accused the full benefit of it by an acquittal of all criminal responsibility. But with regard to the methods by which such a defense may be made successful, the law, from considerations of public policy—the welfare of society and the safety of human life—proceeds with the greatest circumspection, exacting, in the proof of such a defense, strict compliance with the standard adopted by the law for determining where criminal responsibility ends and criminal irresponsibility begins. In the first place, the burden of proof rests upon the accused. The law presumes that

every man is sane until the contrary is proved. Hence, when an accused sets up the defense of insanity the burden of proof is upon him, and, to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory. He must overcome the legal presumption of sanity by a clear preponderance of proof, and by the most satisfactory evidence." "To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know that what he was doing was wrong. If an accused has sufficient mind to know the difference between right and wrong with respect to the act he is doing, and to control his conduct under ordinary circumstances, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistible impulse. Capacity and reason sufficient to enable the accused to distinguish between right and wrong was adopted as the test of insanity in criminal cases" by our courts as early as 1846.

So that is the test. Not whether in some respect a person may be moved by irresistible impulse. Irresistible impulse, as a defense to crime, has been repudiated in this State as an ample defense. One cannot say, "I don't know why I did it, but I just could not restrain myself." Society, the protection of an individual's life and property, requires that all persons shall restrain themselves from improper conduct. But the test is whether or not—not, as I

said, whether a person may be partly sane or partly insane, whether they may have delusions upon some subjects, whether they may be insane upon some subjects—but when the given act is committed, did that person have sufficient mind to know the moral quality of that act and to know that that act was wrong? That is the test and it does not go beyond that.

Something has been said in this case about motive. The law of the State does not require that a motive for a killing shall be established. It is not necessary to a conviction that a motive appear. Where there be doubt about the killing, where there be doubt about who committed the act, the presence of a motive is frequently an aid in determining whether murder took place and who committed the murder, where there be doubt upon those questions. But the essential, the necessary things in this State are, first, that there shall be a murder, a killing, unlawful killing. I take it in this case that there is no question that there was a murder; that this woman lost her life, from the uncontradicted testimony; that she died from strangulation in consequence of a rope being drawn about her neck by some person other than herself. In the view of the Court, all of the facts negative any idea of any cause for death except murder.

If it be contended that the murder falls within that classification known as murder of the first degree, then, as I said to you, it must appear to your satisfaction, beyond a reasonable doubt, that the killing was willful, deliberate and premeditated. That constitutes murder of the first degree.

I think there is nothing else that I want to charge you about, except to say to you that in the event you find that the defendant is shown by the testimony, beyond a reasonable doubt, to be guilty of murder of the first degree, it becomes your duty under a somewhat recent Act of the Legislature to determine a further question, which you may either return or not, as you see fit.

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

If you find a verdict of murder in the first degree, it is within your province, if you choose, to recommend life imprisonment, in which case that and no other sentence may be imposed by the Court.

If you find the defendant guilty of murder in the first degree without any such recommendation, it is then a matter with which you have no further duty, but it becomes the duty of the Court to impose sentence.

I now commit the case to your consideration, confident that you, who have listened attentively and considerately, will deliberate upon this case and return a verdict.

If you find the defendant did not commit the act, your verdict will be not guilty.

If you say that he did commit the act but was not within the legal sense responsible for such act when

committed, your verdict will be not guilty on the ground of insanity.

If you find the defendant guilty, you will then declare by your verdict in what degree he is guilty.

If you find him not guilty, of course, that will be the end.

If you find him guilty, you will then leave him to the execution of the law, in which, as I have said, you have no part. You do not fix the penalty except in the one case. The law does that. The responsibility is not upon you. Your duty is confined to determining the facts upon the law as laid down to you.

You may retire.

State of New Jersey, }
County of Atlantic, } ss.

I, Ralph W. E. Donges, Presiding Judge of the Atlantic County Court of Oyer & Terminer and the Judge who presided over the trial of 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 bills of exceptions signed and sealed in this cause.

Ralph W. E. Donges,
Presiding Judge of the Atlantic County Court of Oyer & Terminer.

I, CLAUDE W. MYROSE, the official stenographer of the Atlantic County Court of Oyer & Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the cause of the State of New Jersey v. Louis Fine, which trial was held before Honorable Ralph W. E. Donges, Presiding Judge of the Atlantic County Court of Oyer & Terminer, and a jury, on June 6, 1932, at Mays Landing, New Jersey.

CLAUDE W. MYROSE.

ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. LOUIS FINE, *Plaintiff-in-Error.*	On Error to Atlantic Oyer and Terminer. Assignment of Errors.

Afterwards, to wit, on the return of the writ of error issued in this cause, come the above-named

plaintiff-in-error, by John Rauffenbart and Edward I. Feinberg, his attorneys, and says that in the record and proceedings, and also in the matters recited and contained in the bills of exception, and also in the giving of the verdict and judgment aforesaid, there is manifest error, in this respect, to wit:

1. The Court overruled the motion to direct a verdict of acquittal of the defendant on the evidence presented when the State had rested its case.

2. The Court, over objection, permitted Marguerite Gall, a witness for the State, to be examined and answer as follows:

"Q. When did you next hear from Mrs. Schaaf?

A. She called me up that night, Tuesday night.

Q. Called you up on the phone?

A. On the telephone.

Q. What did she say?

A. Asked me to come over."

3. The Court, over objection, permitted Samuel Dermaner, a witness for the State, to be interrogated concerning statements previously made by him to a county detective in the absence of defendant.

4. The Court, over objection, permitted the said

witness, Samuel Dermaner, to be examined and answer as follows:

"Q. Do you remember being asked this question by the officer: 'What did he say about the murder trial?'

A. That is what I answered.

Q. What did you answer?"

5. The Court, over objection, permitted the said witness, Samuel Dermaner, to be asked by counsel for the State and answer the following question:

"Q. You were asked this question: 'What did you say about the murder?' "

6. The Court, over objection, permitted counsel for the State to offer in evidence and mark as Exhibit S16, a photograph of the deceased.

7. The Court, over objection, permitted counsel for the State to offer in evidence and mark as Exhibit S17, a photograph of the deceased.

8. The Court, over objection, permitted counsel for the State to offer in evidence and mark as Exhibit S18, a photograph of the deceased.

9. The Court, over objection, permitted counsel for the State to offer in evidence and mark as Exhibit S19, a photograph of the deceased.

10. The Court refused to permit counsel for the defendant to cross-examine Frank Juliano, a county

detective and a witness for the State, before permitting him to testify to alleged statements made by the defendant to the witness, after he, the said defendant, had been identified as the person who had shipped the trunk containing the body of the deceased, to ascertain whether or not the alleged statement of the defendant was a voluntary statement.

11. The Court, over objection, permitted Cecelia Heenan, secretary to the Assistant Prosecutor of the County of Atlantic, and a witness for the State, to answer the following question:

> "Q. Using that to refresh your memory, would you tell the jury, please, what was said generally between Mr. Hinkle and the defendant?"

12. The Court, over objection, permitted counsel for the State to offer in evidence, and mark as Exhibit S29, letter to S. Miller, dated July 10, 1930.

13. The Court, over objection, permitted counsel for the State to offer in evidence, and marked as Exhibit S40, photographs of papers alleged to have been written by defendant.

14. The Court refused to strike out the testimony of Albert S. Osborn, a handwriting expert and a witness for the State, concerning writings alleged to have been made by the defendant.

15. The Court refused to strike out the testimony of Elbridge W. Stein, a handwriting expert and a witness for the State, concerning comparisons in the handwriting of the defendant.

16. The Court overruled the following question asked on cross-examination of Dr. Edward I. Guion, a witness for the State:

"Q. What was his ailment?"

17. The trial Court erred in his charge to the jury, in effect, taking from its consideration the question of whether or not the defendant was insane at the time it was alleged the offense was committed.

18. The trial Court erred in his charge to the jury taking from its consideration the question of the lack of motive in determining the innocence or guilt of the defendant.

Wherefore, the said plaintiff-in-error prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and upon the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing, and that he may be restored to all things by him lost on occasion thereof.

JOHN RAUFFENBART,
Attorney of Plaintiff-in-Error.

[ENDORSED]

Service acknowledged this 2nd day of Sept., A. D. 1932.

Louis A. Repetto,
Prosecutor.

SPECIFICATION OF CAUSES FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. LOUIS FINE, *Plaintiff-in-Error.*	On Error to Atlantic Oyer & Terminer. Specification of Causes for Reversal.

The plaintiff-in-error specifies the following causes and reasons for reversal of the verdict and judgment of conviction in the above-stated cause, upon the entire record:

Specification of Causes for Reversal

1. The trial Judge, at the close of the testimony on the part of the State, overruled the defendant's motion to direct a verdict of acquittal, whereas the motion should have been granted.

2. The Court admitted the following testimony to be given by Marguerite Gall, a witness for the State:

"Q. When did you next hear from Mrs. Schaaf?

A. She called me up that night, Tuesday night.

Q. Called you up on the phone?

A. On the telephone.

Q. What did she say?

A. Asked me to come over."

3. The Court admitted the testimony given by Samuel Dermaner, a witness for the State, concerning statements previously made by him to a county detective in the absence of defendant.

4. The Court admitted the following testimony to be given by the said witness, Samuel Dermaner:

"Q. Do you remember being asked this question by the officer: 'What did he say about the murder trial?'

A. That is what I answered.

Q. What did you answer?"

5. The Court admitted the following question to be asked of the said witness, Samuel Dermaner:

"Q. You were asked this queston: 'What did you say about the murder?' "

6. The Court permitted to be marked in evidence as Exhibit S16, a photograph of the deceased.

7. The Court permitted to be marked in evidence as Exhibit S17, a photograph of the deceased.

8. The Court permitted to be marked in evidence as Exhibit S18, a photograph of the deceased.

9. The Court permitted to be marked in evidence as Exhibit S19, a photograph of the deceased.

10. The Court refused to permit counsel for the defendant to cross-examine Frank Juliano, a county detective and a witness for the State, before permitting him to testify to alleged statements made by the defendant to the witness, after he, the said defendant, had been identified as the person who had shipped the trunk containing the body of the deceased, to ascertain whether or not the alleged statement of the defendant was a voluntary statement.

11. The Court permitted the State's witness, Cecelia Heenan, to answer the following question:

"Q. Using that to refresh your memory, would you tell the jury, please, what was said generally between Mr. Hinkle and the defendant?"

12. The Court permitted to be marked in evidence as Exhibit S29, letter to S. Miller, dated July 10, 1930.

13. The Court permitted to be marked in evidence as Exhibit S40, photographs of papers alleged to have been written by defendant.

14. The Court overruled the motion to strike out the testimony of the State's witness, Albert S. Osborn, concerning writings alleged to have been made by the defendant.

15. The Court overruled the motion to strike out the testimony of the State's witness, Elbridge W. Stein, concerning comparisons in the handwriting of the defendant.

16. The Court overruled the following question asked on cross-examination of the witness, Dr. Edward I. Guion, a witness for the State:

"Q. What was his ailment?"

17. The trial Judge by his charge, in effect took from the consideration of the jury the question of whether or not the defendant was insane at the time it was alleged the offense was committed.

18. The trial Court by its charge, in effect took from the jury the consideration of the lack of motive in determining the innocence or guilt of the defendant.

19. The verdict was against the weight of the evidence.

20. The verdict is contrary to the evidence.

21. The whole evidence did not warrant the verdict of guilty.

Wherefore, the plaintiff-in-error says that he has suffered manifest wrong and injury in the respect aforesaid, and for the causes aforesaid, in addition to the assignments of error, prays that the judgment aforesaid may be reversed.

JOHN RAUFFENBART,
Attorney of Plaintiff-in-Error.

[ENDORSED]

Service acknowledged this 2nd day of Sept., A. D. 1932.

Louis A. Repetto,
Prosecutor.

JOINDER-IN-ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* v. LOUIS FINE, *Plaintiff-in-Error.*	In Error. Joinder-in-Error.

And, hereupon, afterwards, to wit, on the third Tuesday of October, in the year of our Lord one thousand nine hundred and thirty-two, the said State of New Jersey, by its attorney, Louis A. Repetto, the Prosecutor of the Pleas in and for the County of Atlantic, in said State, comes into court and says that there is no error either in the record and proceeding aforesaid, or in giving judgment aforesaid, and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

LOUIS A. REPETTO,
Attorney for the Defendant-in-Error, and Prosecutor of the Pleas of Atlantic County.

LIST OF EXHIBITS.

Exhibits

S. No. 1—Is a floor plan of the first floor of 31 South Connecticut Avenue, Atlantic City, N. J., showing the bedroom of Mrs. Schaaf, the deceased.

S. No. 2—Is a photograph of the front hall and stairway of Mrs. Schaaf's (the deceased) home, and showing the padlock placed on the outside of her bedroom door.

S. No. 3—Is the padlock which appears in the photograph S. No. 2, and the keys belonging to that lock.

S. No. 4—Is a finger ring of small value and on the finger of the deceased when her body was found.

S. No. 5—Is a wrist watch with bracelet attached, and which was on the arm of the deceased when her body was found.

S. No. 6—Is a flat-topped trunk, 35 inches long, 20 inches wide and 25 inches deep.

S. No. 7—Are the pieces of new white sash cord with which Exhibit S. No. 6 was tied.

S. No. 8—Is the padlock and hasp which were pried off of the larger and outer trunk when opened by the police.

S. No. 9—Is a photograph showing the hallway and main entrance of 824 North Fifth Street, Philadelphia, Pa., in which Exhibit S. No. 6 and its contents were taken by the accused and there found by the police.

S. No. 10—Is a photograph of the interior of the room in the premises 824 North Fifth Street, Philadelphia, Pa., and in which room the trunk was placed by the accused and found by the police.

S. No. 11—Is another photograph of the same room named and shown in Exhibit S. No. 10.

S. No. 12—Is the round-topped trunk in which the body was found, and is 31 inches long, 17 inches wide and 18 inches deep, and which was found inside of Exhibit S. No. 6. Also included in this exhibit was the piece of black oil-cloth and which was used as a lining between the trunks.

S. No. 13—Are the pieces of new white sash cord with which Exhibit S. No. 12 was tied.

S. No. 14—Is the express shipping receipt (and two carbon copies), signed by accused in the

name of S. Miller when he shipped the trunk.

S. No. 15—Is a photograph of Exhibit S. No. 6 when first opened and showing Exhibit S. No. 12 contained therein and tied with the white rope.

S. No. 16—Is a photograph showing Exhibit S. No. 6 and S. No. 12, after S. No. 12 had been taken out of S. No. 6, and also showing the body of the deceased in Exhibit S. No. 12.

S. No. 17—Is a photograph of the deceased lying upon a slab in the morgue.

S. No. 18—Is another photograph of the deceased lying on a slab in the morgue.

S. No. 19—Is a "close-up" of the face of the deceased while lying on the slab in the morgue.

S. No. 20—Is a large portion of a hank of new white rope found in the kitchen of the deceased's home and which corresponds with the rope used to bind the trunks. This hank of rope had been kept in the basement.

S. No. 21—Is a photograph of the inside of the bed-

room of the deceased, showing blood stains on the rug, and from which room the expressmen removed the trunk when the accused shipped it.

S. No. 22—Are two screw-eyes of like size and character of the ones used in fastening deceased's bedroom door with the padlock, Exhibit S. No. 3. These were found in the deceased's bedroom.

S. No. 23—Is the rope taken from about the neck of the deceased when her body was recovered.

S. No. 24—Is the tray belonging to the large trunk, Exhibit S. No. 6, and found in the basement of the deceased's home in Atlantic City.

S. No. 25—Are the pieces of material which had formerly made a compartment in the lid of the round-topped trunk, Exhibit S. No. 12, and which had been removed to permit more room. These pieces were also found in the basement of the deceased's home.

S. No. 26—Is the hatchet.

S. No. 27—Is a small piece of rope about two and one-half yards in length, found coiled up

in the top of a derby hat found in a closet in defendant's room.

S. No. 28—Is a white piece of paper bearing the name and address of some relatives of the deceased and sent to her by such relatives in September of 1931, and found in the accused's room after his arrest.

S. No. 29—Is an envelope addressed to S. Miller and containing a letter addressed to S. Miller and found in the room of the accused after his arrest.

S. No. 30—Are two staples found in the overcoat pockets of the accused at the time of arrest.

S. No. 31—Are a lot of keys, some fastened together and some separate, and found in the pockets of the accused at the time of his arrest.

S. No. 32—Is the signature card signed when an account was opened with the Banker's Trust Company of Atlantic City, in the name of Louis Fine.

S. No. 33—Is a package of checks and papers bearing the signature and writing of the accused. The exhibit contained the following:

An envelope bearing the name "L. Fine," and the address "718 Spring Garden St., Phila. Pa."

A small piece of white paper bearing the following: "Charles Cardanick 508 W. Susquehanna Ave. Phila., Pa. Dimond 7828M. Market 4958 Market 4958."

A check dated June 21, 1918, payable to S. Miller, for $100, signed Louis B. Fine. Endorsements: S. Miller, Louis B. Fox.

A check dated April 19, 1921, payable to S. Miller, for $15.00, signed Louis Fine. Endorsements: S. Miller, Mitchell J. Lichow.

A check dated December 4, 1921, payable to S. Miller, for $200.00, signed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated March 13, 1922, payable to S. Miller, for $200.00, singed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated June 22, 1922, payable to S. Miller, for $200.00, signed Louis Fine. Endorsements: S. Miller.

A check dated March 18, 1924, payable to S. Miller, for $150.00, signed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated Nov. 19, 1926, payable

to S. Miller, for $200.00, signed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated Jan. 29, 1927, payable to S. Miller, for $100.00, signed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated Feb. 16, 1927, payable to S. Miller, for $100.00, signed Louis Fine. Endorsements: S. Miller, Louis Fine.

A check dated June 30, 1919, payable to Louis B. Fox, for $150.00, signed Louis B. Fox. Endorsement: Louis B. Fox.

A check dated October 20, 1919, payable to Louis B. Fox, for $50.00, signed Louis B. Fox. Endorsement: Louis B. Fox.

A check dated Nov. 12, 1919, payable to Louis B. Fox, for $25.00, signed Louis B. Fox. Endorsement: Louis B. Fox.

A check dated Nov. 19, 1919, payable to Louis B. Fox, for $50.00, signed Louis B. Fox. Endorsement: Louis B. Fox.

A check dated Dec. 6, 1919, payable to Louis B. Fox, for $25.00, signed Louis B. Fox. Endorsement: Louis B. Fox.

A check dated Aug. 15, 1930, payable to Louis Fine, for $10.00, signed Louis

Fine. Endorsement: Louis Fine.

A check dated August, 1930, payable to Mr. Prince, for $10.00, signed Louis Fine. Endorsements: Mr. Prince, Sylvia Pine.

A check dated Aug. 15, 1930, payable to Samuel Mishler, for $73.00, signed Louis Fine. Endorsements: Samuel Mishler, Mishler & Bolvich.

A check dated Dec. 5, 1930, payable to Mr. S. Berman, for $4.00, signed Louis Fine. Endorsements: Mr. S. Berman, Sol J. Salus.

A note dated April 4, 1928, payable to Benjamin Finkelstein and Jennie Finkelstein, his wife, for $1500.00, signed Samuel Miller and Paula Miller.

An agreement dated June 18, 1917, between Louis Miller and Lewis B. Fox, for the sale of land in Philadelphia, Pa., and signed Louie Miller, Louis B. Fox.

A blank power of attorney signed Louis B. Fox. Witnesses: Louis Fine, Harry Stein.

An agreement dated April 4, 1928, between Samuel Miller, and Paula Miller, his wife, and Benjamin Finkelstein and Jennie Finkelstein, his wife, for the exchange of land in Philadelphia, Pa., and signed Samuel Miller, Paula Miller.

An agreement dated April 4, 1928, between Samuel Miller, and Paula Miller, his wife, and Benjamin Finkelstein and Jennie Finkelstein, his wife, for the exchange of land in Philadelphia, Pa., and signed Samuel Miller, Paula Miller.

An agreement dated December, 1921, between Girard Trust Co., Trustee, and Samuel Miller, for the sale of land in Phila. Girard Trust Company, Trustee; Samuel Miller. Witnesses: R. J. McCarthy, Louis Fine.

A deed dated August 1, 1917, between Louis Miller and Jennie, his wife, and Louis B. Fox, for land in Phila. Signed Louis Miller, Jennie Miller.

A deed dated April 19, 1926, between Samuel Miller and Harry Custooly, for land in Phila., Pa. Signed Samuel Miller.

A bond and warrant dated ..... day of ....., 1925, and signed Nathan Kaplowitz.

A mortgage dated ..... day of ....., 1925, and signed Nathan Kaplowitz.

A deed dated February 25, 1927, for land in Phila. between Nathan Kaplowitz and Samuel Gunchis, and signed Nathan Kaplowitz.

S. No. 34—Is the signature card signed by the accused when he opened an account with the Marine Trust Company, of Atlantic City, in the name of Louis Fine.

S. No. 35—Is the signature card of the Seaside Trust Company, of Atlantic City, signed when an account was opened in the name of Louis Fine.

S. No. 36—Seaside Trust Company, of Atlantic City, checks signed by Louis Fine.

S. No. 37—Is the signature card signed when an account was opened with the Second National Bank of Atlantic City, in the name of Louis Fine.

S. No. 38—Are two checks of the Second National Bank of Atlantic City signed Louis Fine, and used by the handwriting experts as standards.

S. No. 39—Is the signature card signed Louis Fine, when an account was opened with the Chelsea National Bank of Atlantic City, in the name of Louis Fine.

S. No. 40—Are the charts showing the enlargements made by the handwriting expert Osborn and used to show that the accused had signed the checks and other papers in

Exhibit S. No. 33 and also the express receipt, Exhibit S. No. 14.

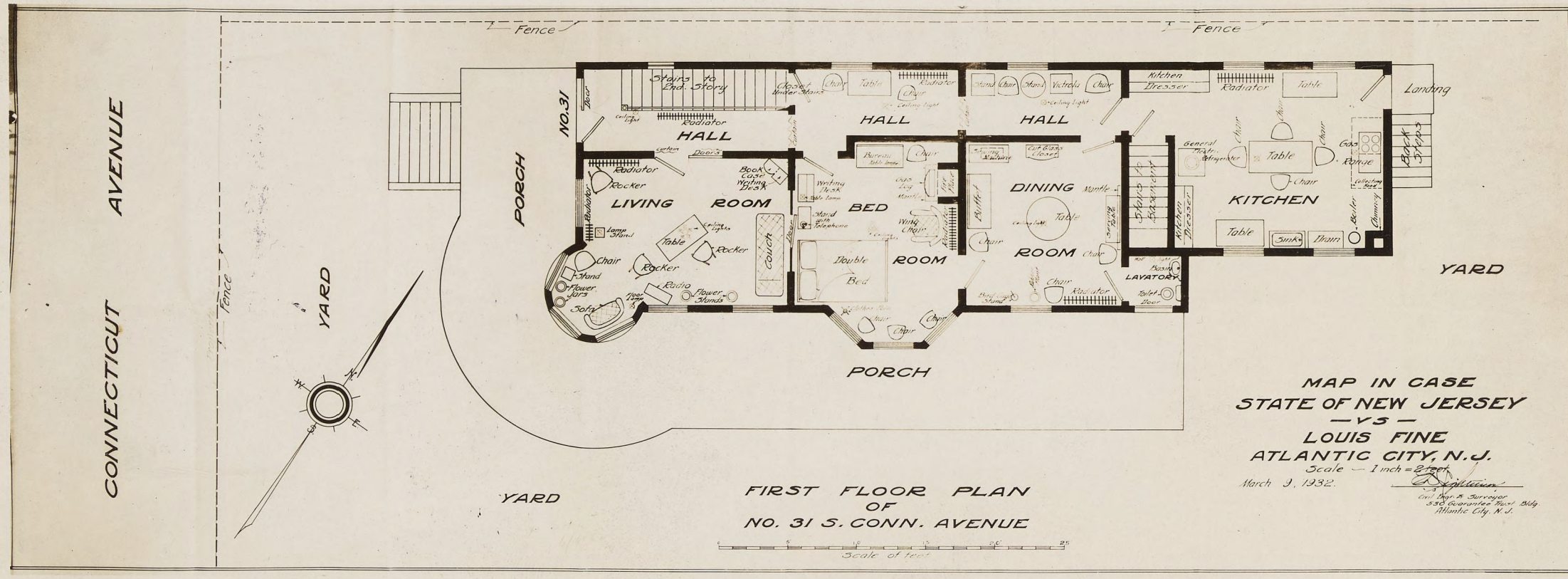
S. No. 41—Are the charts showing the enlargements made by the handwriting expert Stein and used to show that the accused had signed the checks and papers in Exhibit S. No. 33 and also the express receipt, Exhibit S. No. 14.

S. No. 42—Shows the signature of the accused as Louis Fine when he signed upon entering the County Jail at Mays Landing, and used by the experts, Osborn and Stein, as a standard.

The manner of placing these exhibits before the Court, and as herein followed, was deemed by counsel, both for the plaintiff-in-error and counsel for the State, as the best possible way to do under the circumstances, and the foregoing list is therefore approved by counsel for the plaintiff-in-error and for the State.

(Signed) Louis A. Repetto,
Prosecutor of the Pleas of Atlantic County, and Counsel for the State.

(Signed) John A. Rauffenbart,
Attorney for Plaintiff-in-Error.



FIRST FLOOR PLAN
OF
NO. 31 S. CONN. AVENUE

Scale of feet

MAP IN CASE
STATE OF NEW JERSEY
—VS—
LOUIS FINE
ATLANTIC CITY, N.J.

Scale — 1 inch = 2 feet

March 3, 1932.

Civil Engr. & Surveyor
538 Guarantee Trust Bldg
Atlantic City, N.J.

535

Exhibit S. 2 536

S-2
6/6/32 m



LOUIS FINE CASE
MARCH 9 - 1932
825 F 3
CENTRAL STUDIOS

Exhibit S-9 537

S-9
6/6/32

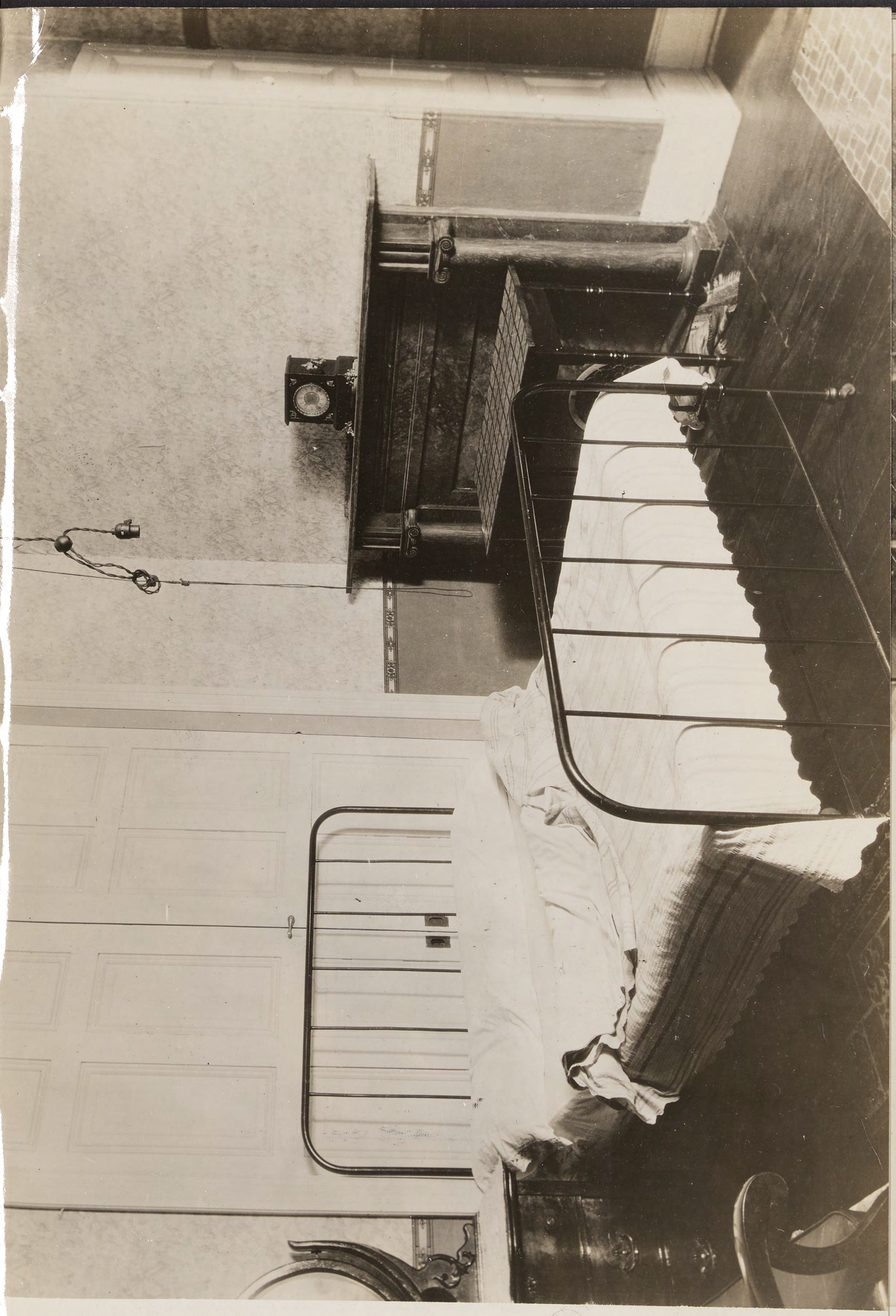


Exhibit S. 10

538

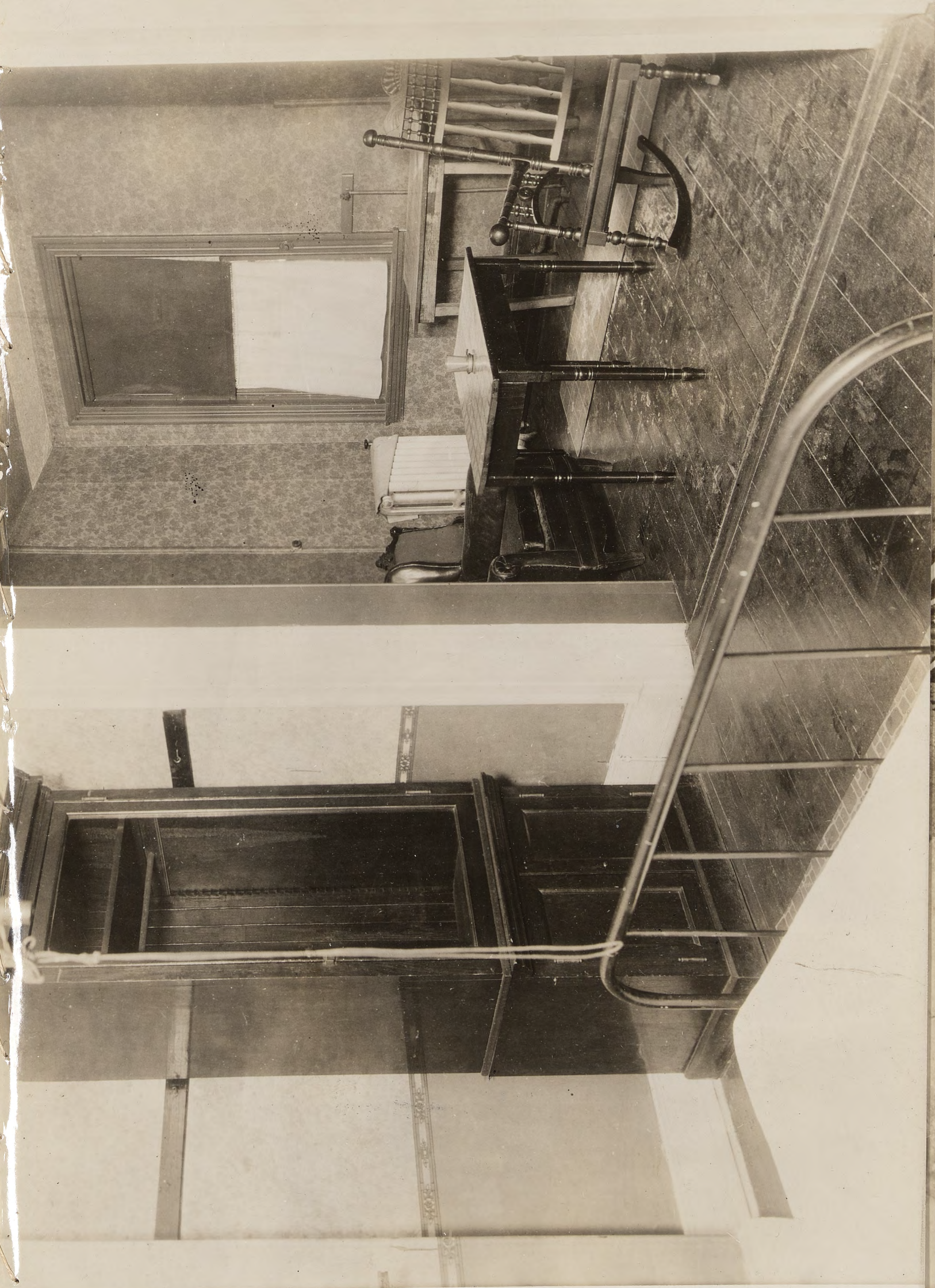


Exhibit S. 11

539



Exhibit A/15

540



Exhibited 21 545

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

LOUIS FINE,

Plaintiff-in-Error.

On Error to Atlantic Oyer and Terminer.

Sur Indictment for Murder.

BRIEF OF DEFENDANT-IN-ERROR.

The deceased, Mrs. Mattie Schaaf, killed in Atlantic City, March 2, 1932; Louis Fine arrested, March 7th, 1932, charged with her murder; indicted March 15, 1932; entered a plea of not guilty April 4, 1932; trial started June 6, 1932, and ended June 9, 1932; found guilty of murder in the first degree, and death sentence imposed.

Writ of Error sued out July 7, 1932.

STORY OF THE CRIME.

THE DECEASED, a Mrs. Mattie Schaaf, close to sixty years of age, and a divorced woman, lived for several years at 31 South Connecticut Avenue, a good section in Atlantic City. She conducted a rooming house there.

THE DEFENDANT, Louis Fine, a married man living separate from his wife, roomed at Mrs. Schaaf's home for several months before her death. He was a tailor by trade, but for some years past abandoned that and was interested in the real estate operations in Philadelphia, and to some extent in Atlantic City. He claimed to have been wealthy at one time, but at the time of his trial said he was penniless. He said he had agreed to pay Mrs. Schaaf $3.00 per week, and so far as the testimony showed he was not engaged in any business at the time of Mrs. Schaaf's death, and in his first statement to Prosecutor admitted that he did not have one cent. He owed Mrs. Schaaf for several weeks room rent.

Mrs. Schaaf was known to be alive and talked with a friend of hers, a Miss Gall, over the telephone (State of Case, page 30), between nine and ten o'clock on Tuesday evening, March 1st (State

of Case, page 35 and 36). Mrs. Schaaf invited Miss Gall to come stay with her that night and made no mention of going away the next day. Fine admits talking with Mrs. Schaaf about nine o'clock that same night (page 257, l. 30 etc.). Mrs. Schaaf was not known to be alive after that telephone conversation.

On Monday morning, March 7th, a man named Hoffman, and running a rooming house in Philadelphia, discovered an odor coming from a trunk in a room that he had rented out to a man who gave his name as Miller, on the Thursday previous, and called the police. The trunk was a large one and locked with a new hasp and padlock. It was also tied, both cross-wise and length-wise, with a white rope, or sash cord. When opened this trunk was found to contain a smaller trunk, likewise bound with the same kind of rope and tied in the same manner. When this small trunk was opened a woman's body, much then decomposed, was found. She had been strangled to death, and the rope used for the purpose was still about her neck. She was fully dressed, except for shoes. She was a large woman and it was evident that her body was forced into this trunk with difficulty.

The police investigation disclosed that the trunk had been delivered by a private expressman, named Weinstein, who had picked it up at one of the railroad baggage rooms under the direction of a man who said his name was Miller. It was also ascertained that the trunk had previously been delivered by the expressman representing the American Railway Express to the real estate office of a man named Lichow, and that acceptance was refused because there was $3.85 charges. The defendant had talked with Lichow's sister, and she it was that gave information to the police that the man who was interested in the trunk, was the defendant, Louis Fine (page 180). Further investigation showed that the trunk had been shipped the day previous from Atlantic City, by a man who signed the shipping receipt "S. Miller." (page 148 l. 20 etc.).

It was shown that the trunk had been taken to the Express office, in Atlantic City, by a private expressman, who removed it from Mrs. Schaaf's home to the express office, and was accompanied at the time by defendant, Fine.

The Prosecutor in Atlantic City set detectives at work a few hours after the trunk had been opened in Philadelphia, and Fine was quickly picked up

by the officers at Mrs. Schaaf's house in Atlantic City.

Fine, when first spoken to, said Mrs. Schaaf had gone away and left him in charge; and when asked if he knew anything about the trunk or that a trunk had been sent out of the house, he first seemed surprised and feigned ignorance (p. 193, 1. 10 etc.), and then admitted he had shipped a trunk at the request of one S. Miller, who had given him $25.00 for his trouble (page 198, 1. 30 etc.).

A colored maid, who had been working for Mrs. Schaaf for sometime, was there when the officers arrived, and upon questioning her they found that on Wednesday morning, (following the night when Mrs. Schaaf was last known to have been alive), she met the defendant, Fine, outside of the house when she came to work and he told her that Mrs. Schaaf had gone away and had left him in charge, and that she need not come to work again before Saturday (page 44, 1. 11). At that time two other persons had rooms in the house. The colored maid informed Fine of her surprise, saying that Mrs. Schaaf had not spoken of going away when she left her the night before. But Fine sent her from the premises, and she did not return until Saturday.

When taken to the Prosecutor's Office for questioning, Fine told much the same story he had told the detectives, with, of course, some elaboration. His story was to the effect: That Mrs. Schaaf told him on Tuesday night (about nine o'clock) that she was going away for a few days and asked him to take charge; that the next day about one o'clock (having been out of the house for a while), he returned and found a man, a stranger to him, but to whom he had been introduced the night before by Mrs. Schaaf, and whom he said was S. Miller (p. 259, 1. 8); that Miller said he had a trunk containing some patent medicines that he desired shipped to Philadelphia and was too busy to attend to it, and therefore, gave him, Fine, $25.00 for his trouble (the money, Fine said, was given to him in five—$5.00 bills—page 260, 1. 28); that this man Miller directed him to send the trunk to M. Lichow (page 263, 1. 25), a man well known to Fine, and who had long been a friend of Fine; that Miller left and Fine called the express company asking that a wagon be sent for a trunk; the expressman arrived after five o'clock and finding the trunk too heavy to handle alone, said he would leave it until the next day, or that he could get a private expressman; Fine says

Miller then returned and directed him to get a private expressman (p. 261, l. 30).

Fine then sought an expressman by the name of McDevitt and asked that he and a helper get the trunk. They did so and while taking the trunk from the room of Mrs. Schaaf, Fine accompanied them to the express office (p. 261, l. 1). Fine then paid McDevitt $1.00 with a one dollar bill (Fine was never able to explain where he got the one dollar bill, for he admitted that he had no money when Miller gave him the five—$5.00 bills. He had not till then changed any of these bills (p. 104, l. 4).

When the express agent received the trunk on the platform, Fine cautioned him against rough handling, and said the trunk should not be stood on end and should stand flat; and when the man asked what it contained, Fine said "patent medicine", and he valued it at $500.00 (p. 109, l. 10) (p. 111, l. 15). Fine signed the shipping receipt (in presence of express agent Steelman) as "S. Miller," claiming that Miller told him to do so, and he shipped the trunk to Lichow "collect", notwithstanding that Miller had given him $25.00 (pages 109 and 148).

Fine said he then met Miller, within less than a block of the express office. He says the meeting

was accidental and that Miller had his automobile, a Paige, and bearing a New Jersey license, the number of which he did not know. Miller told him then, that as he was very busy, he, Fine, would have to go to Philadelphia the next day and get the trunk, and see that it was properly placed in a room, either at Lichow's or at some other place within the vicinity. He told Fine to go by bus (yet Miller had a car).

Miller left no address with Fine, and the next day Fine met Miller on the street near Lichow's in Philadelphia, and Miller gave him some directions about getting a room and hurriedly left, again in his car.

When the trunk was delivered at Lichow's, Miss Lichow refused to accept it because of the express charges, and the expressman took it away. Fine then appeared at Lichow's and learning what had happened, picked up a private expressman, Weinstein, and a colored helper and started to look for the trunk. He was very anxious about it and it was finally located. While the expressman and his helper went for the trunk, Fine rented a room in a rooming house near Lichow's from a man named Hoffman, and when the expressman returned, Fine was waiting for him and the trunk was placed in

the room in Hoffman's house, (and remained in this room until removed by the police).

Fine then went out on the street to look for Miller. He did not find him and says he then decided to stay in Philadelphia for the night. The room he had rented from Hoffman was a bedroom and cleanly furnished. The bed was made up, ready for occupancy, but Fine did not sleep there (page 271, l. 22). The next day he returned to the vicinity where the room was and within a block of the premises met Miller with his automobile. He told Miller what he had done and gave him the keys to the Hoffman house and room, whereupon Miller said he would see him again in Atlantic City, and hurriedly left, as he was very busy.

Fine said he never saw Miller afterward and denied he returned to the room. Fine was never able to give the State any information about S. Miller. Said he did not know him; where he lived; or how he had come in contact with Mrs. Schaaf.

Upon completing this story to Prosecutor, Fine was detained in the Prosecutor's office for a little while, and then, placed under arrest.

Fine had previously told the maid, Annie Middle-

ton, that Mrs. Schaaf had left with a lady and gentleman that he did not know (p. 47, 1. 28). Fine first told officers Mrs. Schaaf went to Philadelphia (p. 195, 1. 8). Fine told in his statement to Prosecutor that Mrs. Schaaf had gone to Bayonne (p. 260, 1. 15), and to a witness, one Odenwelder, that Mrs. Schaaf had gone to New York (p. 65, 1. 20).

The testimony showed that both trunks were Mrs. Schaaf's property, and had for sometime been stored in the basement of her home. The small trunk had contained some divisions in the top which had been knocked out and left lying upon the basement floor. The rope which bound the trunks matched Exhibit S-20, which was part of a new hank of rope found after Mrs. Schaaf's death in the kitchen, and purchased shortly before by Mrs. Schaaf and had, Annie Middleton, says, been kept in the basement.

The lock on the trunk was of the exact size, quality and make as that found upon the door of Mrs. Schaaf's room. That lock had never been on Mrs. Schaaf's door until after her disappearance.

The only Paige automobiles, owned by any S. Miller, and bearing a New Jersey license, were accounted for and the owners produced in Court,

and who proved not to be the S. Miller in question.

Neither the colored maid or the other roomers in the house ever knew of an S. Miller rooming there, and no one, but Fine, saw him there; and no room had been occupied by anyone, except those accounted for. Mrs. Schaaf's room was on the first floor; all other persons roomed on the second floor. None of Mrs. Schaaf's friends or acquaintances had ever seen or heard of S. Miller.

Her nearest friends and her servant, had not been advised by her of an intention to go away. She had made business engagements to see people during the two or three days after her disappearance. One of these engagements had been made the day before her disappearance.

Mrs. Schaaf had a canary bird in her room. She made no provision for it during her absence, and Fine claimed that her door was locked (p. 43, l. 25; p. 46, l. 1).

Lichow who was Fine's friend, and to whom he said Miller told him to ship the trunk, did not know of S. Miller. Miss Lichow did not know of S. Miller. Both of these people had known Fine for years.

One Jean Hauser called on Mrs. Schaaf on Tues-

day night, about two hours after Miss Gall talked with her over the telephone. Mrs. Hauser rang the bell several times, but got no answer. On three prior occasions she heard Mrs. Schaaf ask Fine for his room rent, and each time he would put her off.

The day the trunk was placed in the room in Philadelphia, Fine visited a restaurateur, one he knew in that neighborhood, and did not eat much and was very nervous. They talked about murder.

A piece of rope, which, however, did not correspond with that on the trunk, or about the deceased's neck, although of the sash cord quality, was found coiled in the crown of one of Fine's hats found in Fine's room.

After placing the trunk in the room in Philadelphia, Fine visited that room daily up to and including Saturday, although he claimed to have given the keys to Miller on Friday morning (page 271, l. 3). Sunday was a very stormy day, and Monday the trunk was discovered.

A search of some papers **found in Fine's room** disclosed a memorandum on white paper and written in lead pencil, which had been mailed to Mrs. Schaaf some months prior, by her niece, and which

gave directions to Mrs. Schaaf on how to reach their home in Bayonne, N. J.

A letter dated 7/10/30 and addressed to S. Miller was also found in Fine's room. This letter acknowledges the receipt of a letter from S. Miller.

The shipping receipt, bearing the signature S. Miller, was proven to have been written by Fine, and a number of papers found among Fine's effects were offered in evidence. Some were deeds, some agreements and some checks, many of them bearing the name S. Miller and Louis Fine. And the testimony showed that the same person wrote S. Miller on the shipping receipt who wrote S. Miller on these various other exhibits; and the testimony further showed that the S. Miller was written by the same hand that had written Louis Fine on all of these papers.

Fine refers to the work in the house as being too hard for him to do, yet he dismissed the maid whom Mrs. Schaaf had employed for the purpose.

Dr. Wadsworth, coroner's physician for many years in Philadelphia, removed the rope from the neck of deceased. He gave strangulation as the cause of her death. (Page 208, l. 3 to 10).

Fine said Miller told him to insure the trunk for $500.00, and for that reason he went with the men to the express office, yet he shipped without insuring.

Fine was identified as the man who posed as S. Miller to all of the witnesses who gave testimony concerning the shipping of the trunk in Atlantic City. He was likewise identified by all of the witnesses in Philadelphia who testified concerning his receipt of the trunk, the renting of the room and the placing of the trunk in that room, and who visited that room daily, except one day thereafter. To all of these people he posed as S. Miller, except Lichow who knew him both as S. Miller and as Louis Fine.

The deceased was identified with great certainty as Mattie Schaaf, and the occupant of the house from which the trunk was taken.

Fine did not take the witness stand, nor did he in any way attempt to contradict the statements produced by the State. He did, however, produce some medical experts who claimed that he at one time had been afflicted with a venereal disease, and they said, that in their opinion Fine was not sane when the act was committed. The State met this proof

by three doctors who testified. One a specialist in such matters, one the Superintendent of an Insane Asylum, and one a County Physician of long years experience. They all said that Fine was sane when the act was committed.

One witness for the defense, however, did attempt to show that Fine was cool and collected at a time when this body was laying in the trunk in Philadelphia; and that on two occasions (Friday night and Sunday afternoon) he had a very pleasant walk with Fine on the Boardwalk. But the latter proof was to the effect that when these pleasant walks were supposed to have been taken, it was quite stormy. On Friday night it rained heavily, and on Sunday afternoon, it rained and snowed.

ON OBJECTION TO ADMISSION OF PHOTOGRAPHS.

The first objection set out in brief of plaintiff-in-error, is to the admission in evidence of Exhibits S-16, S-17, S-18 and S-19, and in the State of the Case they appear respectively on pages 541, 542, 543 and 544.

Objection is made that these photographs are not the best evidence. It is hard to understand what is

meant by that. The State contends that they are the best evidence and show what could not be shown in any other way. They are precisely on the same footing as is Exhibit S-15, which shows the outer trunk opened and containing the smaller trunk before it was opened. If S-16, S-17 and S-18 are objectionable, for the reasons claimed by plaintiff-in-error, it would seem that so is Exihibit S-15, and yet no objection was made to its admission. State of Case, page 170).

Objection was made to Exhibit S-19, which shows the upper part of the body of deceased with the rope still about her neck. This Exhibit like the others is on the same footing with Exhibit S-15, and in addition, it is valuable, for the reason that it shows the rope still about the woman's neck.

Objection is also made that these Exhibits were gruesome, and had a tendency to excite, embitter and inflame the Jury against the defendant. The defendant denied the killing, and these exhibits could not have such an effect upon the Jury until the Jury found him guilty, when they might assist the Jury in determining the willfulness and deliberation of the defendant, and assist them in establishing the degree. No matter to what extent these

pictures might excite, if excite they did, the Jury, they would not help in determining the guilt or innocence of the accused, but they would assist in establishing the degree of that guilt.

It must be borne in mind that the defendant created the condition which the photographs depicted. The horror and gruesomeness, to whatever degree it might exist, could not arise any higher than the condition created by the killer, and the Jury was entitled to know the character of that killing and the horror connected therewith.

In State vs. Aeschback, 107 N. J. L., p. 435, which was a homicide case, objection was made to the admission in evidence of certain photographs taken of the body of the deceased as she lay upon the ground where she fell when shot, and it was there contended that the admission of such photographs injected an element of horror in the case, which would naturally excite, embitter and inflame the Jury against the defendant; and Chief Justice Gummere in writing the opinion of this Court, says: "Assuming this to be true, it does not render the admission of the photographs illegal." And continuing his discussion of that subject, the Chief Justice, says, in effect, "That if we carry such a con-

tention to its logical conclusion, the court of first instance—that is, the trial court—on an indictment for murder, would be barred from admitting proof of any material fact which would tend to inject an element of horror into the case." And suggests also, "That without such proof the State many times might be unable to support the charge laid in the indictment".

Pursuing the subject a little further, we are obliged to ask: If the contention of the defendant is to prevail, where could we draw the line on that which is admissible or inadmissible, if we are to measure the legality of the testimony by its horror, or consider the effect that such an horrible admission might have upon the Jury.

The case under consideration was a horrible murder, it is true, and the Jury were entitled to know the whole case with all of its attendant horrors.

AS TO THE COURT'S CHARGE

Complaint is to the effect that the Court charged the Jury in such manner as to take from the Jury the question as to whether or not the defendant was insane at the time the offence was committed.

On page 505 of the State of the Case, on line 12

and thereafter throughout pages 506, 507, 508, 509 and on 510 to line 10, the Court said concerning the mental condition of the defendant, as follows:

"Coming to the major defense, as I take it, namely, that, without admitting the truth of the accusation of the killing, the defendant, if he committed the act, is not legally responsible for the act, again our courts have laid down and there have been imbedded in our law very fixed principles, principles of law designed to give to a defendant every consideration to which one who has committed such an act is entitled, and yet one designed to protect society at the same time.

As early as 1846 a very distinguished jurist of New Jersey charged a jury in this language that I shall read to you, which language has been adopted, passed upon repeatedly by the Court of Errors and Appeals of this State with approval, and it is taken and must be taken as the law on the question of insanity as a defense in the State of New Jersey: 'I now come to that part of the cause which constitutes the main ground of defense in this case, namely, insanity. This question,

in the nature of things, is the first one for you to consider. For it is of no consequence what circumstances attended the homicide, or in what manner the crime is varied in the eyes of the law by those circumstances, if the prisoner was insane at the time of committing the deed'. 'Was, then, the prisoner at the bar insane at the time of committing the homicide? It is difficult to define in set terms what insanity is. We all have a notion of what it is and there is a great variety of phrases by which we are used to designate it. We say of a man who is insane and has committed some atrocious act while in that state, 'he was out of his head,' 'he had not his senses at the time', 'his mind was disordered', 'he was crazy when he did it', 'he did not know at the time what he was about', and other language of similar import. The simple question for you to decide, gentlemen, is 'whether the accused at the time of doing the act was conscious that it was an act which he ought not to do?' If he was conscious of this, he cannot be excused on the score of insanity, he is then ameanable to the law and in that case, if such is your opinion from the evidence of this case, you will have to go on to

the consideration of the circumstances attending the act, in order to distinguish to what kind of homicide it belongs according to the law of the land. But if it is your opinion that at the time of committing the act he was unconscious, that he ought not to do it, or, in other words, incapable of distinguishing right from wrong in a moral point of view, then you have nothing further to do but to render a verdict of acquittal on the score of insanity.'

I wonder sometimes whether any further discussion will be helpful to a jury, but I deem it necessary that I should tell you what our courts have said, and it may be helpful to you. 'In the first place, the law presumes a man sane until the contrary is proven. Hence, it has repeatedly been said that the evidence of the prisoner's insanity at the time of the act ought to be clear and satisfactory. If the evidence leave it only a doubtful question, the presumption of the law turns the scale in favor of the sanity of the prisoner. In such case, the law holds the prisoner responsible for his actions.'

And we are dealing in this case, gentlemen, only with the mental state of this defendant at

the time this act was committed by him, if it was committed by him, and what his condition was theretofore or his condition has been since, what it may be hereafter, is a matter in which you are not now presently concerned. The law of this State provides for every exigency. If this man was insane and unable to go to trial, the law provides for his protection in that event. If he be rendered insane, subsequent to the commission of a crime, the law provides for that event. And if, even after conviction, a man be adjudged insane, it is neither the policy of the law nor the practice of this State to condemn insane persons. The duty is placed squarely, by the policy as established by the Legislature, upon the Court to see that no insane person shall be put to death.

So that I repeat your duty is to see whether this act was committed by this defendant at the bar, whether it is established beyond a reasonable doubt. If it was, was he then in a legal sense responsible for that act? Your duty relates to the time of the commission of the act and not to any other time.

Chief Justice Hornblower further says: 'If

it were doubtful whether the prisoner committed the act, then the jury ought to find in his favor; for where the jury find a reasonable ground for doubt whether the accused committed the homicide, they ought to acquit. There, the presumption of law is in favor of the innocence of the party; every man is presumed to be innocent until he is proved guilty. But where it is admitted'—it is not in this case—'or clearly proved that he committed the act, but it is insisted that he was insane at the time; and the evidence leaves the question of insanity in doubt, there the jury ought to find against him. For there, the other presumption arises, namely, that every man is presumed sane until the contrary is clearly proved.'

Another very distinguished jurist, following the very clear, explicit, correct exposition of the law by Chief Justice Hornblower in the case from which I have just read, namely, the late Chief Justice Depue, said this, which has been adopted into our law. 'The defense is insanity. Against such a defense the law entertains no prejudice. On the contrary, if a defense of this character be properly proved and sufficiently established, the law accords

the accused the full benefit of it by an acquittal of all criminal responsibility. But with regard to the methods by which such a defense may be made successful, the law, from considerations of public policy—the welfare of society and the safety of human life—proceeds with the greatest circumspection, exacting, in the proof of such a defense, strict compliance with the standard adopted by the law for determining where criminal responsibility ends and criminal irresponsibility begins. In the first place, the burden of proof rests upon the ascused. The law presumes that every man is sane until the contrary is proved. Hence, when an accused sets up the defense of insanity, the burden of proof is upon him, and, to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory. He must overcome the legal presumption of sanity by a clear preponderance of proof, and by the most satisfactory evidence.' 'To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he

was doing, or, if he did know it, that he did not know that what he was doing was wrong. If an accused has sufficient mind to know the difference between right and wrong with respect to the act he is doing, and to control his conduct under ordinary circumstances, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistible impulse. Capacity and reason sufficient to enable the accused to distinguish between right and wrong was adopted as the test of insanity in criminal cases' by our courts as early as 1846.

So that is the test. Not whether in some respect a person may be moved by irresistible impulse. Irresistible impulse, as a defense to crime, has been repudiated in this State as an ample defense. One cannot say, 'I don't know why I did it, but I just could not restrain myself.' Society, the protection of an individual's life and property, requires that all persons shall restrain themselves from improper conduct. But the test is whether or not—not, as I said, whether a person may be partly sane or partly insane, whether they may have delusions upon some subjects, whether they may be insane

upon some subjects—but when the given act is committed, did that person have sufficient mind to know the moral quality of that act and to know that that act was wrong? That is the test and it does not go beyond that."

The charge of the Court must be considered as a whole. State vs. Martin, 102 N. J. L., p. 388.

Complaint is made that the trial Court took away from the consideration of the Jury, the question as to whether or not the defendant was insane at the time it was alleged the offence was committed.

It is hard to understand such criticism. The excerpts from the Judge's charge above set out, we think contradicts any such statement. The trial Judge said, (See State of Case, page 507, lines 10 etc.) **"We are dealing in this case, gentlemen, only with the mental state of this defendant at the time this act was committed by him, if it was committed by him, and what his condition was theretofore or his condition has been since, what it may be hereafter, is a matter in which you are not now presently concerned."** And further down on that same page, line 30, the Court said: **"So that I repeat your duty is to see whether this act was committed by this defendant at the bar, whether it is estab-**

lished beyond a reasonable doubt. If it was, was he then in a legal sense responsible for that act? Your duty relates to the time of the commission of the act and not to any other time."

And again in the same charge, the Court said, (see State of Case, page 509, line 35, and the top of page 510), **"But the test is whether or not—not, as I said, whether a person may be partly sane or partly insane, whether they may have delusions upon some subjects, whether they may be insane upon some subjects—but when the given act is committed, did that person have sufficient mind to know the moral quality of that act and to know that that act was wrong? That is the test and it does not go beyond that."**

The defence of insanity, while not disfavored by law, is regarded with jealousy, and in the interest of public justice is subjected to a very close scrutiny. It must be proved to the satisfaction of the Jury, it must be sustained by the evidence. State vs. Graves, 45 N. J. L., p. 347.

The test of insanity is whether the defendant is incapable, at the time of the offence, of distinguishing between right and wrong. State vs. George, N. J. Adv. Rep., Vol. 10, No. 8, page 34.

The test of responsibility is the capacity of the defendant, at the time of doing the act complained of, to distinguish between right and wrong. State vs. Mackin, 59 N. J. L., p. 495.

In State vs. Spencer 21 N. J. L., p. 196, it is clearly set out throughout the entire opinion, and in numerous places, that the question for the Jury to determine, is whether he was sane at the time the act was committed. And in that same case, at the bottom of page 202, we find, quoting from this opinion, "The question for you to determine is, not whether the prisoner was ever insane in the former part of his life, but whether he was insane at the time he committed the deed for which he is now on trial."

Again in Spencer case, at the bottom of page 201, "if the evidence leaves the question of insanity in doubt, there ought to be a verdict against him."

And on page 202 of the same case, it was pointed out, "that when the evidence of sanity on one side, and the evidence of insanity on the other, leaves the scale in a balance, or so nearly poised that the jury have a reasonable doubt of his insanity, the man should be considered sane."

And further down it is again pointed out, "that the proof must be clear and satisfactory."

And on page 211, of the same case, it was pointed out, "that the insanity must not be inferred, but must be proved."

This case was reaffirmed by this court, in State vs. Noel 102 N. J. L., p. 660.

In State vs. Noel, 102 N. J. L., p. 659, it was held: "The adjudication that a person is insane is no bar to the prosecution of the insane person for a crime, and in this case the test of insanity, laid down in the Spencer case, is reaffirmed."

The burden of proving the insanity to the entire satisfaction of the Jury is upon the defendant. And this is so well known that it needs no citations.

The law seems to have been well settled in this State that a defense on the ground of mental derangement from worry, the taking of drugs, or bodily disease, must be clearly proven that at the time of the committing of the act the accused was laboring under such a defect of reason, from the cause mentioned, as to not know the nature and quality of the act he was doing, or, if he did know it, he did not know that he was doing what was wrong. Such is the reason set out in State vs. Close, 106 N. J. L., p. 321 etc.

In State vs. Treficanto, 106 N. J. L., p. 345, the court held: "That so long as the mind of a criminal is capable of conceiving the purpose to kill, he must be held to the responsibility to one who is sober."

Deficiency of intellect is a species of insanity, and when that is set up as a defense for crime, the burden is on the accused to prove it, the presumption being that he is sane. State vs. Schilling, 95 N. J., p. 145.

WAS THE ACCUSED INSANE

At the time defendant went to trial the question of his insanity had not been raised.

The defendant did not take the witness stand.

One Doctor Shmookler, of Mt. Sinai Hospital, testified that he treated the accused in 1922. He had been taken to Mt. Sinai in an unconscious condition, due to some medicine injected by a physician, and the reaction was too much for the patient. After some treatment, however, he seems to have disappeared from the hospital.

One Arleth, a Chemist, visited Fine in the County Jail on the 15th of May, at the direction of a Dr. Reilly, and says he took some fluid and blood from

the vicinity of the accused's spine. From the report of this chemist, Dr. Cotton and Dr. Reilly say the accused was not sane at the time the crime was committed.

The testimony of Dr. Cotton begins on page 402, line 25. In the direct testimony he speaks of the insanity of the accused, but under cross-examination (State of Case, page 412, especially line 15), Dr. Cotton speaks of "Conscious knowledge of his act"; and on page 413, line 11, witness says: "I wouldn't say he wasn't conscious, because he gave a statement of his acts that he committed, about the trunk"; and then goes on to say, on page 413, line 23, "That the accused was able to remember and tell accurately every detail of his acts"; and then, on page 414, about line 20, the witness makes reference to what he calls delusional statements, and because of these, he concluded that the accused was insane when the act was committed.

To pursue this testimony just at the point mentioned, we find the witness making a clear statement, **that a man who tells a story in detail without any variations, is of unsound mind.** Continuing this logic to a conclusion, we would be forced to believe that every man who told the truth two or three times, was insane.

Again, this witness, on page 414, line 30, describes these delusional statements as "dreams that were untrue and that did not occur." And yet, in the next several questions and answers admits, that everything the accused did tell him did occur, and therefore, they were not untrue.

Let us quote from the cross-examination of Dr. Cotton, as it appears on page 417, line 36, etc.

"Q. Now, what did this man do on or about the 2nd day of March that he did not know he was doing?

A. I don't think as far as the statement is concerned—he gives a statement on several occasions that is accurate of what he did.

Q. Will you answer my question?

A. I say there is nothing abnormal about his statement that he gave. You say he didn't know what he was doing. I didn't say he didn't know what he was doing on March 2nd.

Q. What is that?

A. I don't say he didn't know what he was doing on March 2nd. He recounted his doings on that day. It is in evidence.

Q. Then he probably did know what he was doing?

A. Doing that day. I shall have to assume from his statement that he did, the statement that he gave me, the statement he gave the Prosecutor.

Q. Then you think he did know what he was doing on that day?

A. I do.

Q. Have you any doubt about it?

A. No, I haven't any doubt about his statement. I have a doubt about his explanation of it.

Q. Will you answer my question? Have you any doubt about the fact that he knew what he was doing?

A. I can't. I have his statement to that effect and it corresponds with the statement—

Q. How about paresis? Would that affect him any?

A. What do you mean, on that date?

Q. Yes.

A. Well, he would still have his paresis just the same.

Q. But he would still know what he was doing?

A. Yes, he might know what he was doing on that day."

And again, quoting from the cross-examination of Dr. Cotton, on page 421, we find:

"Q. Are you not free to form an opinion as to whether he knew what he was doing when he married the second time in 1930, upon the picture that you have before you?

A. I can say that he had syphilis at that time, and probably brain syphilis.

Q. What was your answer?

A. I say I can assume from the history and from the condition that he had syphilis at that time, and probably brain syphilis.

Q. Still he might know what he was doing?

A. He might be married, yes.

Q. And still might know what he was doing?

A. He might, yes.

Q. And on the 2nd day of March he might have married, if he was free again, and still would know what he was doing?

A. Probably.

Q. And then because he killed a person you say he doesn't' know what he was doing?

A. I say he doesn't know he committed a crime. He wasn't conscious that any crime had been committed.

Q. Suppose there had been a policeman present, would he have stopped or would he have gone on?

A. I don't know that. I can't assume that.

Q. You mean to say you can't tell whether or not this man would have gone on and murdered Mrs. Schaaf if there had been a policeman present?

A. No, I can't tell you.

Q. What is your judgment?

A. I haven't any judgment on it, because it is an impossible situation.

Q. You don't want to venture an opinion?

A. No. It isn't the evidence in the case. I could assume a hundred different things, if necessary.

Q. Well, assume that for a premise and argue from it.

A. I won't assume that, because I have no evidence before me to form an opinion.

Q. You are not sufficiently conversant, then, with the subject to tell this jury that if a policeman had been present when that woman was murdered by this man, whether he would have known he was doing wrong and would have stopped because of the presence of the officer?

A. I can't say that, no. That is an assumption without any premise, without any evidence."

A Dr. Reilly gave testimony very much on the same line. (State of Case, page 439 etc.)

The State met the testimony of Dr. Cotton and Dr. Reilly by three witnesses. One Dr. Edward I. Guion, who for nine years past had continuously been the Chief Medical Director of the Atlantic

County Hospital for Insane and Mental Diseases, examined the accused, and says, positively, that the accused was sane when the act was committed, and he further says, on page 479, State of Case, line 25, that from the hypothesis presented by the accused's experts, he does not believe that Fine had brain syphilis in 1922 or 1923.

And Dr. Guion says further, quoting from his testimony appearing on page 479, line 25, etc.

"Q. Do all people who have syphilis become insane?

A. No.

Q. And does a positive spinal fluid always indicate paresis?

A. No, it does not?

Q. Does the loss of memory—is that an indication of paresis?

A. Some paretics have loss of memory; some do not. It isn't absolutely necessary. They have exalted ideas, as a rule and other symptoms.

Q. Could a man who had no knowledge of the commission of a murder on the first or sec-

ond day of March be able to tell how and in what manner he endeavored during the next five or six days to dispose of the body, be able to remember his efforts to dispose of the body, and yet not know anything about the commission of the murder?

A. If he was an advanced paretic, I should say no.

Q. If he was what?

A. An advanced paretic.

Q. That is, he would have remembered the murder, wouldn't he?

A. He might and might not. It all depends on the condition, how far advanced.

Q. Is this man an advanced paretic?

A. He is not a paretic at all, in my opinion."

It will be noted that Dr. Guion says, **positively, that the accused is not a paretic at all.**

Dr. Isaac E. Leonard, who is an Acting County Physician, and who has been practicing since 1899, and has had a large experience, says that the defendant was sane. His examination of the accused, on two occasions, led him to the definite conclusion

that the accused was sane. And any criticism directed to his failure to use the Wasserman test, or procure a lumbar puncture, is answered by his statement on page 495 of the State of the Case, line 15 etc., **that he had learned that on March 10th, this defendant, who was then in the Atlantic City Hospital, had been subjected to a Wasserman test, and the test proved negative. This test was taken just eight days after the murder.** The crime had been discovered on March 7th and the accused was taken in custody a few hours later and brought into the Prosecutor's Office for questioning. After that questioning the man was ordered held on the charge of murder, and Fine then collapsed, and it was necessary to send him to the hospital. It was while there on the 10th of March, that the test was made, which Dr. Leonard speaks about, and which, as he says, **proved negative.** This was taken eight days after the murder. The Arleth test was taken May 15, or two months and five days after the hospital test.

Dr. William Cole Davis, who is a specialist in nervous and mental diseases, and a man of wide experience, and connected with the United States Army before the War, at West Point and Manila; and after the War connected with Bellevue Hospi-

tal in New York; and a medical director of the Philadelphia Hospital for Mental Diseases; and clinical director of the Norristown State Hospital, Norristown, Pa., examined Fine on two occasions—that is, about the same time that Dr. Cotton examined him, and he says, positively, (see page 460, line 25 etc.), that the accused was sane and knew what he was doing and has known it ever since. We quote from Dr. Davis' testimony on page 460, line 25 etc.

"Q. From the examination you made are you able now to give us an opinion as to whether or not he knew what he was doing at the time this crime was committed?

A. In my opinion, he did.

Q. He did know?

A. Yes.

Q. Following the commission of the crime did he know what he was doing as he performed several acts in connection with the shipping of this trunk?

A. I believe he did.

Q. Have you any doubt about it, Doctor?

A. No.

Q. When you examined him again on the 29th of May, did you examine him for the same purpose?

A. Yes.

Q. And your investigation then led you to believe what?

A. Led me to believe the same thing that I had in the first place, that he was not insane.

Q. He was sane, you say?

A. Yes.

Q. And did know what he was doing at the time of the commission of this crime?

A. Yes.

Q. And has known it ever since?

A. Yes.

Q. Is it your opinion, Doctor, that this man was sane from the 2nd of March and has been sane ever since?

A. Yes.

Q. Had you any indication that he was insane prior to that time?

A. No.

Q. Did you find any evidence of paresis?

A. No.

By the Court:

Q. When you say sane, Doctor, do I understand you to mean that he knew the moral quality of any act that he would commit?

A. Yes, sir.

Q. That he would know that the taking of human life was wrong?

A. Yes, sir.

By Mr. Hinkle:

Q. Could a man who showed no signs of paresis in May have paresis in March?

A. No.

Let us recall briefly the accused's conduct, and see whether they are the acts of a man who knew what he was doing, or a man who did not know.

He procured a rope and strangled his victim.

He dismissed the colored maid when she reported for work in the morning, telling her to return on Saturday.

He told this maid that deceased had gone

away for a few days and left him in charge.

He took a trunk from the basement and removed a portion of the inside partitions and placed the body in that trunk.

He tied it securely with a rope which he cut from a hank that had been left in the basement.

He then took a large trunk also from the basement, and lined this larger trunk with oil cloth, so that the blood would not come through, and placed the smaller trunk inside, and then tied it with a piece of the same kind of rope, which he had procured in the basement.

He purchased a new hasp and a new lock and placed them on the outside of that trunk.

He returned the hank of rope to the kitchen and the room was placed in order.

He then sent for an expressman, and when that man could not take the trunk away, promptly he went out and got an expressman and shipped the trunk under an assumed name, or a name that he had previously used in business.

He told people who called for the deceased, while she was in this trunk, that she had gone

away for a few days.

All of these things the man did. Does all this indicate that the man knew, or did not know what he was doing?

MOTIVE

Some reference has been made to the fact that no motive is shown. This court well knows that a motive is not needed. No citations would be helpful on this subject.

THE WEIGHT OF THE EVIDENCE

The weight of the evidence clearly established a fact that the woman was killed, and that the accused killed her. There was no denial of this fact.

The defense was insanity and depended upon the witnesses already mentioned. No motion for a direction for any reason was made at the close of the case.

The defendant did not take the stand.

In State vs. Treficanto, 106 N. J. L., p. 344, it was said: "That to justify setting aside a verdict as against the weight of evidence, that fact must be so clear as to give rise to an inference that the verdict was the result of mistake, passion, prejudice or

partiality; and that the evidence should be weighed as it was presented to the Jury in its totality."

Respectfully submitted,

LOUIS A. REPETTO,
Prosecutor of the
Pleas of Atlantic County,
and attorney for Defendant-in-
Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

LOUIS FINE,
Plaintiff-in-Error.

ON WRIT OF ERROR.

SUR INDICTMENT FOR MURDER.

BRIEF FOR PLAINTIFF-IN-ERROR

The plaintiff-in-error was tried in the Atlantic County Court of Oyer & Terminer on the 9th day of June, 1932, and convicted upon a certain indictment charging "that on the second day of March, in the year of our Lord one thousand nine hundred and thirty-two, at the City of Atlantic City, in the County of Atlantic aforesaid, did wilfully and feloniously and of malice aforethought, kill and

murder Mattie Schaaf, 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," whereupon he was sentenced to death.

The legality of this judicial action is before this Court for review upon writ of error and bills of exception and also upon the entire record of the proceedings had upon the trial certified pursuant to the provisions of Sections 136-137 of the Criminal Procedure Act.

Errors have been assigned on the record, and causes for reversal specified upon the entire record under the provisions of the Criminal Procedure Act referred to.

See Judgment Record, pages 1-26.

Assignments of Error, pages 513-517.

Causes for Reversal, pages 518-522.

I.

The offer of the photographs, Exhibits S16, S17, S18 and S19, and the objections made to their admission in evidence, are found in the State of Case, at pages 172, 173, 174 and 175, and are here fully set out.

Jacob J. Williams, a witness for the State, testified as follows:

> "Q. When you opened the small trunk, found it open, you found what inside?
>
> A. The body of a white woman.
>
> Q. Were photographs of that made there?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. Is that one of the photographs?

A. That was the smaller trunk as soon as it was opened up.

Q. As soon as it was opened up, and that shows the woman?

A. Yes, sir.

Mr. Hinkle: I offer it.

Mr. Rauffenbart: I object. I cannot see the purpose. The testimony is that there was a white woman in there, and they have testimony, I suppose, to identify her. This is simply a gruesome picture that will answer no purpose.

The Court: It may be part of the corpus delicti. It will be admitted.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Ralph W. E. Donges, (Seal)
Judge.

(The photograph referred to was marked Exhibit S16.)

Q. Was that body later taken out and placed upon a slab?

A. It was.

Q. And photographed in your presence?

A. Yes, sir.

Q. Is that one of the pictures?

A. Yes.

The sixth, seventh, eighth and ninth assignments of error and specifications of causes for reversal relate to the admission in evidence of certain photographs offered in behalf of the State, marked Exhibits S16, S17, S18 and S19, over objection of counsel for the plaintiff-in-error, and will be argued together. The admission of these photographs in evidence over objection was manifest error, prejudicial to the defendant and cause for reversal of the judgment below.

Mr. Hinkle: I offer the picture in evidence.

Mr. Rauffenbart: I make the same objection, and irrelevant and immaterial.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Ralph W. E. Donges, (Seal)
Judge.

(The photograph was marked Exhibit S17.)

Q. I show you another position of the body on the slab. Is that a correct photograph?

A. Yes, sir.

Mr. Hinkle: I offer the photograph in evidence.

Mr. Rauffenbart: I make the same objection.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Ralph W. E. Donges, (Seal)
Judge.

(The photograph was marked Exhibit S18.)

Q. And then a close-up picture of the face and head. Is that a picture of the same body?

A. Yes, sir.

Mr. Hinkle: I offer the photograph in evidence.

Mr. Rauffenbart: I make the same objection.

(The photograph was admitted in evidence.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Ralph W. E. Donges, (Seal)
Judge.

(The photograph was marked Exhibit S19.)''

Stated more briefly, the objections to the admission of the photographs are:

a. They were not the best evidence.

b. They were irrelevant.

c. They could serve no useful purpose, they being merely gruesome exhibits, which would naturally tend to inject an element of horror into the case, and excite, embitter and inflame the jury against the defendant.

When objection was made to the offer of the photographs, no reason was advanced by the State to justify their admission in evidence. The Court suggested "IT MAY BE PART OF THE *CORPUS DELICTI.*"

We contend that the Court's ruling was erroneous, manifest error, and prejudicial to the defendant.

"*Corpus Delicti*" is defined in *Bouvier's Law Dictionary,* at page 686, as follows:

> "In cases of felonious homicide, the *corpus delicti* consists of two fundamental and necessary facts: first, the death; and secondly, the existence of criminal agency as its cause."

This definition of *corpus delicti* is similar to that which seems to have been adopted by our courts.

> "THE IDENTITY OF THE DECEASED IS NO PART OF THE *CORPUS DELICTI* IN A PROSECUTION OF HOMICIDE."
>
> *Wharton's Criminal Law,* Vol. 1, at page 629.

We shall here take up each objection or ground advanced for the rejection of the photographs in evidence separately.

A.

The photographs marked Exhibits S16, S17, S18 and S19 offered in evidence and admitted over the objections of counsel for the defendant, were inadmissible because they were not the best evidence of the fact sought to be proved, namely, the *corpus delicti.*

In *Goldsboro v. The Central Railroad Co.,* 60 N. J. Law 49, the Court held:

> "As evidence, photographs have been held as admissible upon the question of identity and comparison of handwriting, and as secondary evidence when the primary and better evidence could not be obtained. IT MAY BE GENER-

ALLY REGARDED AS A RULE THAT THEY ARE NEVER ADMITTED BUT AS SECONDARY EVIDENCE."

And in *Wharton's Criminal Law,* Vol. 1, Par. 351, at page 442:

"In the establishment of all or any of the elements of *corpus delicti,* DIRECT or POSITIVE proof of the facts constituting the various elements, or any of them, is, of course, the best evidence."

The rule is too well established to require the citation of authorities, that where the best evidence is available and can be produced, secondary evidence is inadmissible.

The State had and did produce direct evidence to prove the death. The witness, Middleton, testified as follows:

"Q. You were sent later to Philadelphia?

A. Yes.

Q. To see the body of a woman that had been taken from a trunk?

A. Yes.

Q. Did you see her?

A. Yes, I seen her.

Q. Who was it?

A. It was Mrs. Schaaf."

(Case, p. 184.)

And the witness, Milone, testified as follows:

"Q. Did you go to Philadelphia?

A. I did.

Q. For the purpose of examining a body that was shown you there?

A. I did.

Q. Whose body was that?

A. My aunt, Mrs. Schaaf."

(Case, p. 188.)

The testimony of these witnesses was the best evidence of the fact of death and of the identity of the deceased. The photographs were merely secondary evidence and not admissible to prove the facts testified to by these witnesses.

The photographs were not the best evidence of the criminal agency that caused death. Dr. Wadsworth, a witness produced by the State, gave direct testimony as to the cause of death (Case, p. 212, ll. 10-11). His testimony was based upon an examination of the body of the deceased. That testimony was clearly the best evidence as to the criminal agency causing death. An examination of the photographs could not aid the jury in determining the cause of death. The photographs, for these reasons, were clearly inadmissible and their admission in evidence was manifest error prejudicial to the defendant.

B.

The photographs, Exhibits S16, S17, S18 and S19, offered in evidence and admitted over the objections

of counsel for the defendant, were inadmissible because they were not relevant to prove the fact sought to be proved, namely, *corpus delicti.*

In the case of *State v. Fiore,* 94 N. J. Law 477, the Court held:

> "A photograph of the body of a man alleged to have been murederd is not 'too remote' because made at or after an autopsy to determine the cause of death, SO LONG AS IT PURPORTS TO SHOW ASPECTS OF THE BODY THAT ARE RELEVANT TO THE CASE."

In the above cited case "the photograph was admitted only after the county physician, who made the autopsy on the body, had testified that he recognized the picture as a photograph of the body examined by him, and which was concededly that of the slain man." The picture also showed the injuries to the head which caused death.

In the instant case, the correctness of the photographs were not testified to by a competent witness, who could testify therefrom as to the cause of the death. The photographs, and particularly Exhibits S16, S17 and S18, did not show any injuries from which the cause of death could be determined. The photographs were taken after the body had reached an advanced state of decomposition (Case, p. 212). Because of this fact, it was difficult for the physician, even after an examination of the body, to determine the cause of death. If it was difficult for the physician to determine the cause of death from

an examination of the body, it would seem that the photographs could have no probative value as they disclose no marks of physical violence. The alleged death occurred in Atlantic City, N. J., on March 2, 1932; the photographs admitted in evidence were taken in the City of Philadelphia, Pa., on March 7, 1932, after the body, as previously stated, had reached an advanced state of decomposition. The admission of the photographs was erroneous and highly prejudicial to the defendant.

C.

The photographs, Exhibits S16, S17, S18 and S19, offered in evidence and admitted over the objections of counsel for the defendant, were inadmissible because, as previously stated, they were not the best evidence, irrelevant to the issue, and for the further reason that they were merely a gruesome exhibit, offered for the purpose of exciting, embittering and inflaming the jury against the defendant.

In the case of *State v. Aeschbach,* 107 N. J. Law 433, at page 435, the Court said:

> "The first contention submitted to us as a basis for reversing the conviction is that the Court erroneously admitted in evidence certain photographs taken of the body of the deceased as she lay on the ground near the rear door of the Byrnes house, where she fell when she was shot. The argument in support of this contention is that their admission injected an element

> of horror in the case, which would naturally excite, embitter and inflame the jury against the defendant. Assuming this to be true, it does not render the admission of the photographs illegal. Carrying the contention to its logical conclusion, a court of first instance, on the trial of an indictment for murder, is barred from admitting proof of any material fact which would tend to inject an element of horror into the case, and so embitter and inflame the jury against the defendant, ALTHOUGH WITHOUT SUCH PROOF THE STATE WOULD BE UNABLE TO SUPPORT THE CHARGE LAID IN THE INDICTMENT."

This case decides that photographs are admissible in evidence, even though their admission injects an element of horror into the case, which would naturally excite, embitter and inflame the jury against the defendant, where said photographs are proof of a material fact necessary to support the charge laid in the indictment, and where without such proof, the State would not be able to support the charge laid in the indictment.

It follows, therefore, that where photographs are not the best evidence and are irrelevant, but are merely offered for the purpose of injecting an element of horror in the case, which would naturally tend to excite, embitter and inflame the jury against the defendant, they are inadmissible.

The photographs offered and admitted in evidence in this case, as previously argued, are not the best

evidence, they are irrelevant, and were not offered to support the proof of the *corpus delicti,* the theory on which they were received, but were offered by the prosecution for the prejudicial effect which they would have upon the jury.

In the case of *State v. Aeschbach* above cited, "the photographs of the body of the deceased were taken as she lay on the ground near the rear door of the Byrnes house where she fell when she was shot." From the above recital as to what the photographs depicted, it is apparent that they were evidential of the scene of the crime, and they might have a tendency to show the criminal agency which was the cause of death. In the case at bar, the photographs do not, as heretofore argued, support the fact which was the basis of the offer, namely, *corpus delicti.*

Then the only reason and purpose of the offer on the part of the State was, as here contended, for the effect which the photographs would have on the jury, prejudicial to the defendant. This contention is borne out by the testimony of Dr. Wadsworth, who testified from the photographs, after their admission over objection of counsel for the defendant, in the following manner:

> "Q. Will you just turn, please, to the photograph, for instance, S18, the hands dropping down there, that fringe around the fingers, is that the flesh?
>
> A. The skin of the hands separated like a glove after a period of time in which the outer skin and the nails and the palm all are like a

glove, separated. * * * That is the body as it was laid on the slab."

(Case, p. 213.)

WHAT EVIDENTIAL VALUE COULD THIS TESTIMONY HAVE? And if the testimony could have no evidential value, how then could the photographs be admissible? The photographs, and particularly Exhibits S16, S17 and S18, do not depict the condition of the body at the time of the alleged death. THEY MERELY SHOW A BODY IN A CONDITION OF ADVANCED DECOMPOSITION, FROM WHICH THE SKIN OF THE HANDS SEPARATED, WHOSE FACE WAS SO FAR DECOMPOSED AS TO PRECLUDE IDENTITY, AND AN UNNATURAL SWELLING BROUGHT ABOUT BY THE NATURAL PROCESSES OF DISINTEGRATION AS THE RESULT OF DEATH.

The jury could not look upon said photographs, Exhibits S16, S17, S18 and S19, without arousing in them mingled feelings of resentment and horror. They would naturally prejudice the jury against the defendant. Their effect would be to excite, embitter and inflame the jury against the defendant.

The admission of the photographs in evidence was manifest error prejudicial to the defendant.

II.

The 17th assignment of error and specification of cause for reversal relates to the charge of the trial

Court, which in effect, took away from the consideration of the jury, the question as to whether or not the defendant was insane at the time it was alleged the offense was committed. This action of the trial Court was prejudicial to the defendant and cause for the reversal of the judgment below.

The trial Court charged the jury as follows:

> "And we are dealing in this case, gentlemen, only with the mental state of this defendant at the time this act was committed by him, if it was committed by him, AND WHAT HIS CONDITION WAS THERETOFORE OR HIS CONDITION HAS BEEN SINCE, WHAT IT MAY BE HEREAFTER, IS A MATTER IN WHICH YOU ARE NOT NOW PRESENTLY CONCERNED. The law of this State provides for every exigency. IF THIS MAN WAS INSANE AND UNABLE TO GO TO TRIAL, THE LAW PROVIDES FOR HIS PROTECTION IN THAT EVENT. IF HE BE RENDERED INSANE SUBSEQUENT TO THE COMMISSION OF A CRIME, THE LAW PROVIDES FOR THAT EVENT. And if, even after conviction, a man be adjudged insane, it is neither the policy of the law nor the practice of this State to condemn insane persons. THE DUTY IS PLACED SQUARELY, BY THE POLICY AS ESTABLISHED BY THE LEGISLATURE, UPON THE COURT TO SEE THAT NO INSANE PERSON SHALL BE PUT TO DEATH."
>
> (Case, p. 507.)

In the case of *State v. Noel,* 102 N. J. Law 659, the Court, in reversing a conviction of first degree murder, based its opinion, after reviewing the testimony, on the theory that the weight of the evidence was against the verdict, AND THE EVIDENCE THAT WAS CONSIDERED BY THE COURT AS A BASIS FOR THE REVERSAL RELATED TO THE MENTAL CONDITION OF THE DEFENDANT PRIOR TO THE COMMISSION OF THE CRIME, as well as the mental condition of the defendant at the time of the commission of the crime and thereafter. It was considered important by the Court that the defendant had been suffering from a mental condition, prior to the commission of the crime, which tended to show that his faculties of reasoning had been impaired. In the case at bar, there was testimony on behalf of the defendant to the effect that he was suffering from a diseased mind prior to the commission of the act (Case, p. 419, ll. 34-36 to p. 420, p. 421, ll. 12-13 & p. 384, ll. 28-30), and that that condition was likely to continue up to the time of the commission of the alleged crime, and thereafter, so that when the trial Court, in its charge, said, "and what his condition was, theretofore, * * * is a matter in which you are not now presently concerned," it took from the consideration of the jury all of the evidence as to his mental condition prior to the commission of the crime from which the jury could, and had a right to infer, that he was insane at the time of the commission of the act. There was testimony in this case, which tended to prove that the actions of the defendant after the commis-

sion of the crime were not the actions of a normal person (Case, p. 429, l. 19 to to p. 430, ll. 1-2), so that when the trial Court, in its charge to the jury, said, "or his condition has been since * * * is a matter in which you are not now presently concerned," it took from the consideration of the jury the evidence, on the part of the defendant, as to his actions after the commission of the alleged offense, from which the jury could and had a right to infer that the defendant was insane at the time of the commission of the alleged act. The State's case was based entirely on circumstantial evidence. The defense was insanity. The defendant had a right to have all of the evidence submitted in his behalf together with all the reasonable inferences that could be drawn from the evidence.

> "When insanity of a permanent type is shown to have existed prior to the commission of an act, it will be inferred to have continued unless the contrary be proved, down to the time of the act." *Wharton's Criminal Law,* Vol. 1, par. 81, at page 115. Citing *State v. Spencer,* 21 N. J. Law 196.

The statement of the Court in the above portion of the charge, namely: "IF THIS MAN WAS INSANE AND UNABLE TO GO TO TRIAL, THE LAW PROVIDES FOR HIS PROTECTION IN THAT EVENT," was clearly prejudicial to the defendant. The trial Court could just as well have said to the jury, this defendant is sane otherwise he would not now be standing trial. This was un-

doubtedly the impression which this statement by the Court was likely to and did create in the minds of the jury.

And when the trial Court, in its charge, said, "THE DUTY IS PLACED SQUARELY, by the policy as established by the legislature, UPON THE COURT to see that no insane person shall be put to death," it, in effect, deprived the jury of its function of determining questions of fact which are inherently within its province. The Court might just as well have said to the jury, you are not to consider whether this defendant is insane or not, that is the province of the Court.

The Court's charge was manifestly erroneous, prejudicial to the defendant, a cause for reversal of the judgment below.

In the case of *State v. Lang,* 87 N. J. Law 508, the Court held:

> "When part of a charge is unsound and no proper qualification of it is to be found in the context or in the entire charge, there is error; and this is so when the erroneous part is in and of itself a paticular qualification and limitation of language which, without such qualification and limitation, is unobjectionable."

III.

The 18th assignment of error and specification of cause for reversal relates to the charge of the trial

Court which, in effect, took away from the jury the question of lack of motive in determining the guilt or innocence of the defendant.

This action of the trial Court was prejudicial to the defendant and cause for reversal of the judgment below.

In *State v. Spencer,* 21 N. J. Law 196, Chief Justice Hornblower, in a very lucid opinion, defines the law of insanity, and *inter alia,* at page 209, says:

> "One strong circumstance generally attending the commission of acts of violence by persons who are REALLY insane is, the absence of any apparent MOTIVE. It is not unfrequently their best friends, those who are most kind and attentive to them, who are the victims of their unconscious and destructive violence. I do not say that this absence of apparent motive INVARIABLY exists in cases of homicide and other atrocious acts committed by insane persons; but I say that it is GENERALLY the case. Hence, if we witness the perpetration of such an act without any apparent motive or object, but against every motive which would appear to be naturally influential with the person committing it, we are at once awake to the inquiry whether he was in his sound mind, AND IF WE CAN LAY HOLD OF ANY SUFFICIENT EVIDENCE THAT HE WAS NOT SO, THIS ABSENCE OF APPARENT MOTIVE, CONFIRMS US IN THE BELIEF THAT HE WAS INSANE."

In the instant case, the trial Court, in its charge to the jury, after following the definition of insanity, as given by Justice Hornblower in the case above cited, failed to include in his charge the portion of the law above quoted, but went on to say:

> "Something has been said in this case about motive. The law of the State does not require that a motive for a killing shall be established. It is not necessary to a conviction that a motive appear. Where there be doubt about the killing, where there be doubt about who committed the act, the presence of motive is frequently an aid in determining whether murder took place and who committed the murder, WHERE THERE BE DOUBT UPON THOSE QUESTIONS. But the essential, the necessary things in this State are, first, that there shall be a murder, a killing, unlawful killing. I take it in this case that there is no question that there was a murder; that this woman lost her life, from the uncontradicted testimony; that she died from strangulation in consequence of a rope being drawn about her neck by some person other than herself. IN VIEW OF THE COURT, ALL OF THE FACTS NEGATIVE ANY IDEA OF ANY CAUSE FOR DEATH EXCEPT MURDER."

There was no apparent motive disclosed for the commission of the offense charged, nor did the State contend one was shown. Lack of apparent motive was stressed by the expert witnesses produced by the defendant in arriving at the conclusion that the

defendant was insane. (See Testimony, Dr. Cotton, Case, 423, l. 23; Dr. Reilly, Case, p. 450, l. 21.)

Chief Justice Hornblower, in the case of *State v. Spencer,* said: "hence, if we witness the perpetration of such an act without any apparent motive or object, but against every motive which would appear to be naturally influential with the person committing it, WE ARE AT ONCE AWAKE TO THE INQUIRY WHETHER HE WAS IN HIS SOUND MIND. * * *"

The Court erred, therefore, in its charge to the jury as above quoted, because it took from it the question of motive as it related to the effect which an apparent lack of motive would have on the question of the defendant's sanity. The jury was not permitted to consider what effect the lack of motive had in its determination of the question, and could not, therefore, arrive at a proper conclusion, the defendant being thereby deprived of the benefit of all of the testimony which was relevant and necessary to be considered by the jury in arriving at its conclusion as to his guilt or innocence.

IV.

The 19th, 20th and 21st specifications of causes for reversal set out that the verdict was against the weight of the evidence; that the verdict was contrary to the evidence and that the whole evidence did not warrant the verdict of guilty. The verdict of the jury was manifestly erroneous, prejudicial to

the defendant and cause for reversal of the judgment below.

The 19th, 20th and 21st specifications of causes for reversal are here argued together.

The defense in this case was insanity. To support this defense, testimony was adduced on the part of the defendant which proved, conclusively, that at the time of the commission of the alleged act, he was insane, did not know the nature or quality of the act which he was alleged to have committed, and that he was unable to determine that the act which he was alleged to have committed was wrong.

Reviewing the testimony submitted on behalf of the defendant, we find that the history of the defendant's condition prior to the alleged commission of the offense charged was given by Dr. Henry B. Shmookler, who testified that he was Medical Director of Mt. Sinai Hospital, Philadelphia, Pa., since 1906 (Case, p. 381); that the defendant, Fine, was admitted to said hospital on October 9, 1922. At the time of his admission, he was unconscious and after being in the hospital for two days, it was found that his condition was caused by the injection of neosalvarsan, 606, given him for syphilis (Case, p. 382). It was later determined that he was suffering from chronic syphilis and that his nasal septum was destroyed, one of the signs of syphilis (Case, p. 382). He was treated at the hospital for his disease, receiving five injections of neosalvarsan after which he was discharged from the hospital and treated at the private office of Dr. Shmookler (Case, p. 383); that the last professional visit made by the defen-

dant to Dr. Shmookler was in April, 1923 (Case, p. 384). Dr. Shmookler testified that when the defendant was admitted to the hospital, he was already suffering with what is called tertiary syphilis, that is a third stage of syphilis and that it was an illness of long standing, THAT CURE WAS IMPOSSIBLE and treatment was simply to keep disease in check; that his nervous system had been affected by the disease; that he had violent nervous brain reactions; that there was an indirect extension of the disease to his brain, through the blood stream, affecting the circulation in the brain (Case, pp. 384, 385); that the defendant was given ten or twelve treatments of neosalvarsan to keep the disease in check, cure being impossible (Case, p. 393). This testimony that Dr. Shmookler gave remains unimpeached.

John M. Arleth, a chemist and bacteriologist, testified that at the request of Dr. John J. Reilly, he made a blood count and tests of the spinal fluid of the defendant (Case, p. 400). The result of the blood count and tests of the spinal fluid is here given as as appears in the witness' testimony at page 401 (Case):

> "At the direction of Dr. John J. Reilly, this work was done. I made a blood count. In the blood count we found a rise in the lymphocytes, the particular cells of blood which would indicate that there was some trouble along various lines which should be investigated. This would be indicative, perhaps, of some spinal trouble. So, on the strength of that, we tapped his spine

and took some of his spinal fluid, which we tested. The firsts tests done were for increased globulin. Increased globulin denotes there is some form of meningitis, inflammation of the covering of the brain and of the spinal cord. The first test was Noguchi. That showed a strong positive reaction. Then the Pandy test, which showed a strong positive reaction. Then we had the Ross-Jones test, which was strongly positive. Then I did an albumen, which was strongly positive, denoting further increase in the globulin test. Then we did a Wassermann reaction of the spinal fluid, which was strongly positive. They are all the tests which are known at the present time.''

He further testified that he did the Wassermann test by all the present accepted methods (Case, p. 401).

Dr. Henry A. Cotton, a witness for the defendant, stated that he had specialized in mental and nervous diseases for 23 years; that he was medical director of the State Hospital at Trenton, which housed all the criminal insane since 1918; that he made many examinations of the persons for State authorities during this period for the purpose of diagnosing their mental ailments; that he was a pioneer in the process of the lumbar puncture; that he had written and published books on mental diseases; that he made mental and physical tests of the defendant in the County jail at Mays Landing on the 14th and 24th days of May, 1932, for the purpose of deter-

mining what the defendant's mental condition was on or about March 1, 1932 (Case, pp. 402, 403, 404). As a result of the physical and mental examination of the defendant and after taking into consideration the history of the defendant as given by Dr. Shmookler; and the history of the case which is found on pages 405, 406, 407, 408 and 409 (State of Case); AND THE SCIENTIFIC TESTS MADE BY DR. JOHN M. ARLETH, he arrived at the conclusion that the defendant was suffering from paresis or syphilis of the brain (Case, p. 411), as a result of prior infection; that syphilis germs enter the nervous system, destroy the brain and with it the mentality of the individual; that he was not, at the time of the commission of the alleged act, normal; that he was not conscious of having committed the act of homicide, if he did commit it; that he could not, at that time, distinguish between right and wrong and that he did not know the nature and quality of the act.

An illustration of the nature and quality of the testimony given by Dr. Cotton is here inserted, as found on pages 422, 423 and 424 (State of Case), AS BROUGHT OUT ON CROSS-EXAMINATION BY THE PROSECUTOR:

> "Now, Doctor, when did you first conclude that this man did not know what he was doing on the day that this woman was killed?
>
> A. When I made the diagnosis that he had syphilis of the brain.
>
> Q. When you made that diagnosis?
>
> A. Yes, but I suspected it, and when the diag-

nosis was corroborated by the LUMBAR PUNCTURE, I was certain.

Q. So the history of the case had nothing to do with it, then?

A. I won't say the history of the case had nothing to do with it, because the evidence in the case is history, surely. The man had previous syphilis. That had something to do with it.

Q. The history of this crime, then?

A. The history of the crime is evidence of his insanity more than anything else. The bizarre type of crime is one committed by an insane person, in my mind.

Q. Will you repeat that, please?

A. The bizarre type. This case falls under the bizarre type. NO MOTIVE, NO REASON, NOTHING TO BENEFIT HIMSELF. The crime committed in that way is evidence, to my mind, of insanity, if we didn't have the lumbar puncture, but with the lumbar puncture, to my mind, it corroborates my opinion that he was insane at that time.

Q. If there had been a motive, you would have had a different idea?

A. Well, I might have had my suspicions if there has been a motive and the lumbar puncture had been negative.

Q. So, before you heard of the details of this woman's death and the moving of the trunk and shipping it to Philadelphia and locating it there, before you heard of that you concluded he did not know what he was doing?

A. I heard of that at the very first. That wasn't something I heard of afterwards.

Q. You heard of that first?

A. Heard of that before my examination, yes.

Q. Did that have any influence upon your judgment and opinion in that matter?

A. It gave me a suspicion that it was the act of an insane man."

(Case, pp. 422, 423, 424.)

and further:

"Q. Does a positive spinal fluid always indicate paresis?

A. ABSOLUTELY. * * *"

(Case, p. 427.)

"Q. Do all people who have paresis become insane?

A. That is the only end. Paresis is insanity."

(Case, p. 428, ll. 9-10.)

"Q. The spinal examination is accurate. It never lies. You can't affect that. It is one of the things that is as true as anything I know of in medicine."

(Case, p. 428, l. 17.)

"Q. Doesn't a positive spinal fluid sometimes appear where people aren't insane?

A. Not unless they have paresis. I have never seen it. Not the picture we have here. * * *"

(Case, p. 428.)

Dr. John J. Reilly testified that he examined the defendant on May 14 and May 22, 1932, at the Atlantic County Jail in Mays Landing, N. J., and made a physical and mental examination of the defendant, the result of which is as follows:

"Q. Could you, from your physical and mental examination, say whether or not this defendant, if he committed the crime charged in the indictment, the murder of Mattie Schaaf, on March 2nd, whether or not he was conscious of that act?

A. I believe he was not."

(Case, p. 441.)

"A. I would say he was not conscious. He was mentally abnormal, insane."

(Case, p. 441, l. 34.)

"Q. What was your diagnosis of the case?

A. My diagnosis after considering the physical and mental examination AND THE RESULT OF THE STUDY OF THE SPINAL FLUID, ALL TESTS BEING ABSOLUTELY POSITIVE, PLUS-4, ESPECIALLY THE WASSERMANN, to begin with, I would say that this man was a neurosyphilitic, that he was suffering from chronic brain syphilis, cerebral syphilis."

(Case, pp. 441,442.)

"Q. Would a man suffering from this brain syphilis commit such an act as charged, unex-

pectedly planned or unplanned, and apparently WITHOUT MOTIVE, an impulsive and unconsidered act, and go on afterwards apparently without remorse?

Q. And not be conscious of the act?

A. Yes, sir."

(Case, pp. 444, 445.)

It must be born in mind that throughout the case there is no evidence of any apparent motive which would induce the defendant to commit the crime alleged to have been committed by him. Our Court held, in the case of *State v. Spencer,* 21 N. J. Law 196, at page 208:

> "The evidence of insanity upon which a jury should rest, will vary with every case; but generally speaking, * * * the evidence of competent medical men, * * * who 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." * * *

and further, the Court said, at page 210:

> "You ought to inquire, therefore, gentlemen, whether in the case before you, the prisoner at the bar committed the act charged upon him as a crime, IN THE ABSENCE OF ANY SUCH MOTIVE AS WOULD NATURALLY INFLAME THE MIND OF A DEPRAVED MAN TO THE COMMISSION OF ACTS OF VIOLENCE. IF NO SUCH MOTIVE EXISTED,

THAT CIRCUMSTANCE WILL ADD GREAT STRENGTH TO THE PROOF OF HIS INSANITY. * * *''

The State attempted to offset the defendant's evidence of insanity by other expert testimony. An analysis of the testimony on the part of the State discloses the fact that but for the incomplete examinations made of the defendant by the witnesses, the same conclusion as to the defendant's insanity would have been reached by them.

The witnesses offered by the State on this phase of the case were Drs. William Cole Davis, Isaac Leonard and Edward Guion, all of whom testified that they visited the defendant at the County jail; that Drs. Davis and Leonard visited the defendant on May 15th and 29th, 1932 (Case, p. 460 (Davis); p. 488 (Leonard)), and Dr. Guion visited the defendant on May 8, 1932 (Case, 477); that the purpose of the examination was to determine the physical and mental condition of the accused at the time that he was alleged to have committed the offense. Each of these experts state that it was his opinion that the defendant was sane at the time of the commission of the alleged offense and that there was no indication of paresis (Case, Davis, p. 461; Leonard, p. 489; Guion, p. 478).

Let us now consider the testimony of those experts in order to determine whether or not the opinion expressed by them could be given full credence and weight.

Apparently none of these experts considered or

thought it important to have any previous history of the defendant. In discussing this phase of their testimony, it will be well to bear in mind the unimpeached testimony of Dr. Henry B. Shmookler, who testified that in 1922 the defendant was treated for and was suffering from tertiary syphilis (Case, p. 384), and that it was incurable, which was brought to the attention of Drs. Davis and Leonard by the defendant, and of Dr. Guion by Dr. Shmookler's letter (Case, p. 483, l. 32), prior to the examination of the defendant, but in spite of this previous history, they failed to make a Wassermann test of the spinal fluid of the defendant to eliminate the question of brain syphilis or paresis.

Dr. William Cole Davis, on cross-examination, attempted to justify his failure to make the lumbar puncture for a test of the defendant's spinal fluid, to determine whether or not he was suffering from brain syphilis or paresis because (a) the defendant showed no signs or symptoms of paresis; (b) he had no reason to suspect that the defendant was suffering from syphilis; (c) and that a blood Wassermann, taken of the defendant, was negative. The testimony of Dr. Davis on these points appears in the State of Case, as is here given:

> "A. This man presented no signs nor symptoms of paresis. There was no reason for me to believe that he had paresis, and, therefore, there was no reason for me to have a serological test made, especially when one had been made in the Atlantic City Hospital very recently.

Q. How are you going to eliminate it without the actual test?

A. If you don't suspect it at all and have no reason to think that he has syphilis, why should you do the test? You are not going to test everyone whom you examine."

(Case, p. 466, lines 3-17.)

"A. Not with the negative blood, with no signs. * * *"

(Case, p. 474, l. 23.)

This testimony on the part of Dr. Davis attempting to justify his failure to make the lumbar puncture for a test of the defendant's spinal fluid was nullified, and its credibility destroyed by other testimony given by him on cross-examination, which testimony was; THAT A PERSON MAY NOT SHOW ANY SIGNS OR SYMPTOMS OF SYPHILIS YEAR IN AND YEAR OUT AND STILL BE INFECTED WITH THE DISEASE, AND THEN COMMIT, WITHOUT PLANNING, SOME UNUSUAL, OVERT ACT; THAT HE HAD PREVIOUS KNOWLEDGE THAT THE DEFENDANT WAS SUFFERING FROM SYPHILIS; THAT A NEGATIVE BLOOD TEST DOES NOT MEAN THAT A PERSON IS CURED OF SYPHILIS. THIS TESTIMONY APPEARS IN THE STATE OF CASE AS FOLLOWS:

"Q. Isn't it a fact that a man will go along, where he is infected with this disease of syphilis, year in and year out without showing any apparent symptoms?

A. Yes.

Q. Yes. And it will go so far as to work into the nervous system up into the brain without anything showing, won't it?

A. Yes.

Q. And he may then impulsively, suddenly, without planning, commit some unusual, overt act?

A. Yes.

Q. Not be conscious of doing wrong?

A. Yes, and after the act is over he will show signs and symptoms upon which diagnosis can be made."

(Case, p. 476, lines 1-19.)

"Q. Did you have some history which would indicate that he had previously in his life been treated for syphilis?

A. Yes, he told me that he had been treated by injections of a yellow fluid in his vein in the arm which, of course, would lead me to believe that he had had syphilis."

(Case, p. 465, lines 20-26.)

"And then will you say that that infection is out of the blood?

A. I wouldn't say that a man is cured because his blood is negative. Neither would I say he was cured if his spinal fluid were negative. * * *"

(Case, p. 475, lines 19-23.)

The last quoted testimony is in line with the defense experts' testimony and is corroborative thereof, and nullifies completely any effect that would otherwise have been given to his attempted justification.

Dr. Shmookler's testimony (Case, p. 384), that the defendant was suffering from tertiary syphilis, which cannot be cured, stands unimpeached, so Dr. Davis was bound to know, or should have known, that the defendant was, at the time of his examination, still suffering from syphilis in some form—calling for a spinal Wassermann or a Paretic Curve.

Dr. Edward I. Guion, a witness called by the State, testified that he was the Medical Director of the Atlantic County Hospital for Mental Diseases; that at the request of the State, he made an examination on May 8, 1932, of the defendant (Case, p. 447); that his examination was made for the purpose of ascertaining whether, in the witness' opinion, the defendant was insane or sane, testifying as follows:

"Q. Did you examine the man?

A. I did.

Q. Have any trouble with your examination?

A. No trouble whatsoever.

Q. And from the examination thus made, what did you find him to be?

A. In my opinion, he was sane."

(Case, p. 478, lines 12-18.)

and that further (Case, p. 478), in the opinion of the witness, the defendant knew whether he was doing right or wrong and he showed no evidence of paresis.

There was nothing further in the direct testimony of the witness from which it would be ascertained what tests were made to asssist him in arriving at his opinion as to the mental condition of the defendant, nor is there any testimony from which it could be ascertained whether or not he took into consideration the history of the crime or the history of the case in arriving at his conclusion.

On cross-examination (Case, p. 481, lines 23-33), the witness testified that in such an examination, if he had a previous history of tertiary syphilis with the added fact that the patient had only had a few treatments, THAT HE WOULD MAKE A SPINAL TEST TO DETERMINE THE PRESENCE OR ABSENCE OF BRAIN SYPHILIS OR PARESIS; and when asked whether or not he had advance knowledge from Dr. Shmookler of his condition, he answered that he had (Case, p. 482, lines 2-4). The witness was handed the letter received by him from Dr. Shmookler and asked to read it (Case, p. 483, line 31), the first paragraph of which read:

> "MR. LOUIS FINE WAS UNDER MY CARE AT THE MT. SINAI HOSPITAL MANY YEARS AGO. HE WAS SUFFERING FROM TERTIARY SYPHILIS. He was found in his room unconscious, was brought to the hospital in that condition, apparently suffering from uremia. * * *"
>
> (Case, p. 483, lines 32-36.)

He was then asked the following:

> "Q. But where you have a previous history

of syphilis in the third stages, and a letter before you that he had a nasal ulcer or something to that effect, wouldn't you consider it as your duty in determining whether or not this man's nervous system, his brain, had been affected by the spirochetes circulating into there?

A. I would have done so had I seen any symptoms of paresis, but Dr. Shmookler says here the man was apparently suffering from uremia.

Q. How are you going to eliminate it without a specific test, Doctor?

A. You have to have symptoms of paresis."

(Case, p. 484, lines 22-34.)

The witness was asked on cross-examination, the following:

"Q. What does this indicate, Doctor, on a patient: '4-plus Wassermann; increased cell count; positive globulin in the spinal cord?'

A. IF IT IS CORRECTLY INTERPRETED, I WOULD SAY IT INDICATES PARESIS."

(Case, p. 486, lines 26-30.)

The direct testimony of Dr. Guion showed a very cursory examination of the defendant on one occasion and his conclusion was apparently based on the non-presence of signs or symptoms of paresis and on the negative blood Wassermann, without apparent consideration of the defendant's history or a history of the alleged crime. His opinion cannot be

justified upon this basis in view of the testimony of Dr. Davis that the signs or symptoms may not appear in a syphilitic or paretic even down to the commission of some violent overt act, hereinbefore adverted to; and in view of the fact that the witness knew from a letter received from Dr. Shmookler that the defendant had previously suffered with tertiary syphilis which was incurable; and especially in view of the testimony of all of the experts that a negative blood Wassermann did not mean that the patient was cured or free from the disease germs.

THE WITNESS TESTIFIED THAT IN TREATING A PATIENT WITH PREVIOUS TERTIARY SYPHILIS WITH INCOMPLETE TREATMENTS, THAT HE WOULD DETERMINE THE PRESENCE OR NON-PRESENCE OF BRAIN SYPHILIS OR PARESIS BY CAUSING A TEST TO BE MADE OF THE SPINAL FLUID. HE ALSO TESTIFIED THAT IF SUCH A TEST WERE MADE AND SHOWED INCREASED CELL COUNT, POSITIVE GLOBULIN AND POSITIVE WASSERMANN, THAT HE WOULD DIAGNOSE THE DISEASE AS PARESIS.

This stestimony corroborates the defense experts on their diagnosis that the defendant was a paretic, an insane man, and must be accepted as a proven fact because the testimony of Dr. Shmookler stands on the record unimpeached that the defendant had tertiary syphilis, which was incurable, and the testimony of Arleth, bacteriologist, appears on the rec-

ord unimpeached that a test of the spinal fluid showed 4 plus Wassermann, increased cell count, positive globulin.

Dr. Isaac Leonard, a witness for the State, testified that he had been a general practitioner since 1899; that he examined the defendant on the 14th and 29th day of May, 1932 (Case, pp. 488, 489) for the purpose of ascertaining the defendant's mental condition, and that in his opinion, the defendant was mentally sane on or about March 1, 1932, and was not a paretic (Case, p. 489). On cross-examination, he testified that he was not a psychiatrist, not a specialist and had not been connected with any institutions treating mental diseases or the criminal insane (Case, p. 490, ll. 7-17). He further testified that he arrived at his conclusion that the defendant was mentally sane by his conversation with and examination of the defendant.

> "Q. Doctor, how did you and from what did you arrive at your conclusion that the man was mentally sane or sound?
>
> A. By my conversation, by my examination. I was with him for at least an hour and thirty-five minutes. I couldn't find anything that I found at that time showed any mental derangement whatsoever." * * *
>
> (Case, p. 494, lines 34-36; p. 495, lines 1-4.)

That he did not talk to the defendant about the crime:

> "Q. Did you talk to him about the crime itself?

A. No, I didn't talk to him about the crime."
(Case, p. 495, lines 35-36.)

That he did not know the history of defendant's syphilis until May 29, 1932:

"Q. Did you also have some history of a syphilitic condition having existed in this man several years ago?

A. I had no history of that whatsoever until the 29th of May, and I didn't have that until I dug it out of the defendant myself. None whatsoever."

(Case, p. 492, lines 20-27.)

And stated that the reason he did not make a lumbar puncture of the defendant to test the spinal fluid, to determine if he was suffering from brain syphilis or paresis, was because he had a negative blood test from the Atlantic City Hospital in March (Case, p. 495, ll. 16-20), but when questioned further on this point testified THAT WITH EVEN A NEGATIVE BLOOD TEST HE COULD NOT BE ASSURED THAT THE DEFENDANT WAS NOT SUFFERING FROM SYPHILIS BECAUSE THE GERM GETS IN THE BLOOD AND TRAVELS:

"Q. That is only the blood, isn't it?

A. That is in the blood, yes, but that gets in the tissues, gets in the central nervous system. That gets in there. It travels."

(Case, p. 495, lines 31-34.)

And when asked the following question:

> "Q. What would you say if the spinal Wassermann showed 4-plus, increased cell count and positive globulin?"
> (Case, p. 490, lines 18-20.)

Which question was objected to by the prosecutor, but permission was given by the Court to the witness to answer:

> "A. THAT INDICATED AN ACUTE ACTIVE INFLAMMATION OF THE BRAIN, AND MENINGES, DUE TO INFECTION."
> (Case, p. 491, lines 32-33.)

The opinion of Dr. Leonard that the defendant was sane should be given very little weight because it was based on an incomplete examination, no test of the spinal fluid of the defendant was made by him and he did not take into consideration the history of the crime or the disease of syphilis.

The last quoted testimony is in line with the defense experts' testimony and corroborates it. The testimony of Dr. Leeonard above quoted, nullifies completely the testimony previously given by him and destroys the value of his opinion as to the defendant's sanity, in view of the fact that a test of spinal fluid of the defendant was made, as testified to by the witness, Arleth, which testimony was unimpeached, the result of the test made by the said witness, Arleth, was contained in the hypothetical question propounded to the witness:

"Q. What would you say if the spinal Wassermann showed 4-plus, increased cell count and positive globulin?"

And the answer of the witness to the question was:

"A. That indicated an acute active inflammation of the brain, and meninges, due to infection."

V.

The verdict was not only against the evidence, but was against the totality of it.

It is submitted that the errors heretofore pointed out require the reversal of the conviction.

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