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New Jersey Court of Errors and Appeals

NEW JERSEY COURT OF ERRORS AND APPEALS

NEW JERSEY, SS.:

The State of New Jersey to Luther A. Campbell, Esquire, one of the Justices of the Supreme Court of the State of New Jersey and the President Judges of the Court of Common Pleas of Hudson County, constituting the Court of Oyer and Terminer Holden at Jersey City, in the County of Hudson.

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City, in the County of Hudson and State of New Jersey aforesaid:

For that the said Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City, in the said County of Hudson, on the Twelfth day of December, in the year of our Lord, one thousand nine hundred and thirty, with force and arms, in the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Edward Ruark in the peace of God and of this State then and there

being did wilfully, feloniously and of his malice aforethought kill and murder, contrary to the form of the statute in such case made and provided and against the peace of this State and the government and dignity of the same.

Pro ut the said indictment and the several counts therein, whereof before you they hath been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Raymond George, as it is said, manifest error has intervened to the great damage of the said Raymond George, as from his complaint we have received information; we being willing, in this behalf, to correct the error in due manner if any there shall be, and that speedy justice be done to him, the said Raymond George, command you, that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings had upon the trial, to our Court of Errors and Appeals in the last resort in all cases, to be held at Trenton on the day of October next and this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right and according to law ought to be done.

WITNESS, EDWIN ROBERT WALKER, Esquire, our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this 12, day of May, 1931.

JOSEPH F. S. FITZPATRICK,
Clerk.

JAMES P. DOLAN,
THOMAS TUMULTY,
Attorneys.

Certificate of Chancellor

IN CHANCERY OF NEW JERSEY

STATE OF NEW JERSEY, *Defendant-in-Error,* vs. RAYMOND GEORGE, JOSEPH MITCHELL, JAMES WILLIAMS, *Plaintiffs-in-Error.*	Sur Indictment for Murder

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 Hudson County Court of Oyer and Terminer in this State, convicting the said Raymond George, of the crime of murder in the first degree without recommendation of life imprisonment, 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 May 12, 1931.

E. R. WALKER,
Chancellor.

Return

The answer of Robert V. Kinkead, one of the Judges of the Court of Common Pleas, constituting the Court of Oyer and Terminer, in the absence of Luther A. Campbell, one of the Justices of the Supreme Court of the State of New Jersey, holden in and for the County of Hudson and within named record and proceedings of plaint whereof mention is within made, with all things touching the same, I send to the Justices of our Court of Errors and Appeals in said last resort of all causes at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within I am commanded.

ROBERT V. KINKEAD,
Judge.

Attest:
GUSTAV BACH,
County Clerk.

(SEAL)

Record

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT:

Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the third Tuesday of December in the year of our Lord one thousand nine hundred and thirty before Honorable Luther A. Campbell, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Charles M. Egan, Honorable Robert V. Kinkead and Honorable Daniel T. O'Regan and Honorable Thomas H. Brown, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of

1. Christian H. Ziegler, Foreman and

2. James D. Beatty	13. Robert J. Porter
3. Joseph Begendorf	14. Caleb Ringle
4. Charles L. Blair	15. Eleanor J. Ritchie
5. Ralph I. Ford	16. Jacob Rohde
6. Irving C. Johnson	17. Ernest F. Rohn
7. Duncan MacDonald	18. William Schmeiser
8. Harry J. Mason	19. Mabel A. Sexsmith
9. John J. McMullen	20. Joseph E. Vincent, Jr
10. Edward C. Muecke	21. Daniel Wallace
11. Alfred Nann	22. Edward C. White
12. John J. Nugent	23. Abraham Zeperstin

good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true Bills.

CHRISTIAN H. ZIEGLER,
Foreman.

And the foregoing being presented to the said Court on the Twentieth day of January, in the year of our Lord One Thousand Nine Hundred and Thirty-one with bills of Indictment Nos. 107 to 152 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 107 for Murder, as charged upon Raymond George, Joseph Mitchell and James Williams, remain in this Court of Oyer and Terminer for trial and disposal according to law, and said Bill is in words as follows:

HUDSON OYER AND TERMINER

DECEMBER TERM, A. D. 1930.

HUDSON COUNTY, TO WIT: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, That Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City in the said County of Hudson, on the twelfth day of December in the year of our Lord one thousand nine hundred and thirty, with force and arms, at the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Edward Ruark in the peace of God and of this State, then and there being, did wilfully, feloniously and of their malice aforethought, kill and murder, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Raymond George, Joseph Mitchell and James Williams on the twelfth day of December in the year of our Lord one thousand nine hundred and thirty, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one Edward Ruark, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Raymond George, Joseph Mitchell and James Williams on the twelfth day of December in the year of our Lord one thousand nine hundred and thirty, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Edward Ruark, in the peace of God and of this State, then and there being, an assault did make, and the said Edward Ruark then and there did beat, wound and ill-treat and other wrongs, to the said Edward Ruark then and there did, to the great damage of the said Edward Ruark 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.

JOHN DREWEN,
Prosecutor of the Pleas.

Endorsed Bill No. 107, Hudson Oyer and Terminer, Term of December, 1930, The State vs. Raymond George, Joseph Mitchell, James Williams, for Murder.

JOHN DREWEN,
Prosecutor of the Pleas.

A True Bill.

CHRISTIAN H. ZIEGLER,
Foreman.

PRESENTED

JAN. 20th, 1931 and it is thereupon ordered that this bill of indictment remain in this Court of Oyer and Terminer for trial and disposal according to law.

GUSTAV BACH,
Clerk.

And afterwards, to wit: To wit on the Twenty-second day of January in the year of our Lord One thousand nine hundred and thirty-one at a Session of the Court of Oyer and Terminer of the County of Hudson, aforesaid, being now of the Term of December, One thousand nine hundred and thirty before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Oyer and Terminer, in and for the County of Hudson here cometh the said Raymond George, Joseph Mitchell and James Williams under the custody of the Sheriff of the County of Hudson in whose custody they had before been committed for the cause aforesaid, who being brought herein in their proper person by the Sheriff aforesaid, to whom they had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said in-

dictment above specified and charged upon them, how they will acquit themselves thereof, they say that they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and John Drewen, Esq., Prosecutor of the Pleas of said County, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictment be continued until March 4th, 1931, when striking of jury is ordered and on application of Attorney Louis Hansen, severance is granted defendants Joseph Mitchell and James Williams.

Therefore, let said indictment be continued until April 13th, 1931 and let a jury come before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Oyer and Terminer for said County, being now of the Term of April, 1931, One thousand nine hundred and thirty-one of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said defendant Raymond George, to recognize on their oath whether the said Raymond George be guilty of Murder as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said John Drewen, Esq., Prosecutor of the Pleas of the County of Hudson, aforesaid who prosecutes for the State of New Jersey in this behalf, as in the said indictment have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time that is to say on the 13th day of April in the year of our Lord One thousand nine hundred and thirty-one, at Jersey City, aforesaid, in the County of Hudson aforesaid, before the Honorable Robert V. Kinkead, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said John Drewen, Esq., Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well as the said defendant under the custody of the Sheriff aforesaid, to whose custody he had hitherto been committed and who being brought to the bar in his proper person by the Sheriff, and the jurors of the jury by the Sheriff of the County of Hudson aforesaid, for the purpose chosen, empanelled and returned to wit: Jay Gorman, Charles B. Bentz, Andrew Daly, Joseph H. Crane, Sr., William Thompson, Edward Sawyer, Ernest Schwab, Stephen McDonald, Joseph Kinlon, Harold E. McCansland, Edw. B. G. Graham, Edw. F. C. McLaughlin, being called come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the attorneys were heard thereupon and the said issue after a Charge from the Court was submitted to the said jury in charge of the said Officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit on April 14th, 1931, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep

them in charge and then and there in the presence of the said John Drewen, Esq., Prosecutor of the Pleas as aforesaid and for the said defendant do say that the said defendant is guilty of Murder in the First Degree as in the aforesaid indictment is charged against him, and the jury at the time of rendering said verdict did not recommend imprisonment at hard labor for life.

Whereupon all and singular the premises being seen and by this Court here fully understood the sentence of the law is and it is by the Court here considered and adjudged, that the said Defendant Raymond George be and is hereby sentenced to be taken by the Sheriff of the County of Hudson, hence from the bar of this Court and delivered to the principal Keeper of the State Prison at Trenton, N. J., there to be kept in close custody and confinement until some day during the week beginning the 7th day of June, in the year of our Lord one thousand nine hundred and thirty-one, and that then and there shall by the hands of the Principal Keeper of the said State Prison suffer the punishment and judgment of death, at the time, in the place and in the manner provided by law, for the same.

Judgment entered and signed this sixth day of May, A. D. 1931.

ROBERT V. KINKEAD,
Judge of the Court of Oyer and Terminer, in and for the County of Hudson.

HUDSON COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY vs. RAYMOND GEORGE, JOSEPH MITCHELL, JAMES WILLIAMS.	Sur Indictment for Murder No. 107 December Term, 1930.

PETITION

THOMAS TUMULTY and JAMES P. DOLAN, appearing for RAYMOND GEORGE, defendant herein, respectfully show:

That the petitioners were heretofore duly appointed by the Honorable ROBERT KINKEAD, Judge of the Hudson County Court of Common Pleas, to represent Raymond George, one of the above named defendants, on indictment for murder found by the Hudson County Grand Jury.

That the petitioners by reason of investigation believe that the said Raymond George was insane at the time of the commission of the act alleged and set forth in said indictment and in support thereof the following facts are submitted.

Record

That the defendant himself was at one time the inmate of an insane asylum and that early in his life he showed outward and positive evidences of insanity.

That his family history far back into the past discloses the presence of insanity on his mother's side.

Your petitioners therefore pray that they be permitted and authorized to retain and consult such medical and mental experts or alienists as they may deem necessary subject to the approval of this Honorable Court.

THOMAS TUMULTY,
JAMES P. DOLAN.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, ss.:

THOMAS TUMULTY, one of the petitioners in the foregoing instrument, having read the same, says that the facts therein contained are true.

THOMAS TUMULTY.

Sworn to and subscribed before me
this 25th day of February, 1931.
JAMES C. MCTAGUE, JR.,
Attorney at Law of New Jersey.
Filed Clerk's Office
May 11, 1931
Hudson County, N. J.

HUDSON COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY vs. RAYMOND GEORGE, JOSEPH MITCHELL, JAMES WILLIAMS.	Sur Indictment for Murder No. 107 December Term, 1930.

ORDER

Application hereby having been made by THOMAS TUMULTY and JAMES P. DOLAN, representing RAYMOND GEORGE, one of the defendants herein, indicted by the Hudson County Grand Jury, and it appearing that the said petitioners believe he was insane at the time of the commission of the said act alleged in the said indictment.

IT IS HEREBY ORDERED on this 25th day of February that they be permitted and are hereby authorized to retain such medical or mental experts as they may deem necessary, subject however to the approval of this Court.

ROBERT V. KINKEAD,
Judge.

Filed Clerk's Office
May 11, 1931
Hudson County, N. J.
STATE OF NEW JERSEY,
COUNTY OF HUDSON, ss.:

COURT OF OYER AND TERMINER
HOLDEN IN AND FOR SAID COUNTY.

THE STATE VS. JOSEPH MITCHELL, JAMES WILLIAMS, RAYMOND GEORGE.	Sur Indictment for Murder No. 107 December Term, 1930.

Jan. 22, 1931. The defendants (all) being charged plead Not Guilty and they are remanded for trial.

JUDGE KINKEAD.

Feb. 4, 1931. Application for Struck Jury granted by Court.

JUDGE KINKEAD.

Feb. 20, 1931. Striking of Jury off to Feb. 27, 1931.

Mar. 4, 1931. Striking of Jury ordered and on application of Attorney Louis Hansen severance is granted defendants Mitchell and Williams. Trial set for March 30, 1931.

JUDGE KINKEAD.

Mar. 30, 1931. Jury Struck.

JUDGE KINKEAD.

April 13, 1931. Trial by Jury of Defendant George started and adjourned till April 14, 1931.

April 14, 1931. Defendant George being tried

by Jury he is found Guilty of Murder in the first (1st) degree and he is remanded for sentence.

JUDGE KINKEAD.

April 23, 1931. Sentence off till April 29, 1931.

JUDGE KINKEAD.

April 29, 1931. Sentence off till May 6, 1931.

JUDGE KINKEAD.

May 6, 1931. Raymond George, you have been according to the law of the State of New Jersey, duly convicted by a jury of your peers of the crime of Murder in the First Degree.

Have you, Raymond George, anything to say before sentence of the law is imposed upon you?

The sentence of the law is and it is by the Court here considered and adjudged, that you Raymond George be taken by the Sheriff of the County of Hudson, hence from the bar of this Court, and you Raymond George, be by the said Sheriff delivered to the Principal Keeper of the State Prison at Trenton, there to be kept in close custody and confinement until some day during the week beginning the seventh day of June in the year of our Lord, one thousand nine hundred and thirty-one, and that then and there you Raymond George, shall be by the hands of the Principal Keeper of the said State Prison, suffer the punishment and judgment of death, at the time, in the place and in the manner provided by law for the same.

JUDGE KINKEAD.

NEW JERSEY COURT OF ERROR AND APPEALS.

NEW JERSEY, ss.:

(SEAL)

THE STATE OF NEW JERSEY to Luther A. Campbell, Esquire, one of the Justices of the Supreme Court of the State of New Jersey and the President Judges of the Court of Common Pleas of Hudson County, constituting the Court of Oyer and Terminer Holden at Jersey City, in the County of Hudson.

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City, in the County of Hudson and State of New Jersey aforesaid.

For that the said Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City, in the said County of Hudson, on the Twelfth day of December, in the year of our Lord, one thousand nine hundred and thirty, with force and arms, in the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Edward Ruark in the peace of God and of this State then and there being, did wilfully, feloniously and of his malice afore-

thought kill and murder, contrary to the form of the statute in such case made and provided and against the peace of this State and the government and dignity of the same.

Pro ut the said indictment and the several counts therein, whereof before you they hath been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Raymond George, as it is said, manifest error has intervened to the great damage of the said Raymond George, as from his complaint we have received information; we being willing, in this behalf, to correct the error in due manner if any there shall be, and that speedy justice be done to him, the said Raymond George, command you, that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings had upon the trial, to our Court of Errors and Appeals in the last resort in all cases, to be held at Trenton, on the first day of June next and this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right and according to law ought to be done.

WITNESS, EDWIN ROBERT WALKER, Esquire, our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this 12th day of May, 1931.

JOSEPH F. S. FITZPATRICK,
Clerk.

JAMES P. DOLAN,
THOMAS TUMULTY,
Attorneys.

Presented in open Court this 14th day of May, 1931.

Service of the within Writ of Error is hereby acknowledged this 12th day of May, 1931.

EDW. B. STONE,
Principal Keeper.
By J. O. BLEAN,
Prison Clerk.

Filed Clerk's Office
May 14, 1931
Hudson County, N. J.

The answer of Robert V. Kinkead, one of the Judges of the Court of Common Pleas, constituting the Court of Oyer and Terminer, in the absence of Luther A. Campbell, one of the Justices of the Supreme Court of the State of New Jersey, holden in and for the County of Hudson and within named the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I send to the Justices of our Court of Errors and Appeals in said last resort of all causes at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed, as within I am commanded.

ROBERT V. KINKEAD,
Judge.

Attest:
GUSTAV BACH,
County Clerk.

(SEAL)

STATE OF NEW JERSEY

HUDSON COUNTY, SS.:

I, GUSTAV BACH, Clerk of the County of Hudson aforesaid and also Clerk of the Circuit Court and Court of Common Pleas and Court of Oyer and Terminer holden therein.

DO HEREBY CERTIFY, That the foregoing is a true and correct copy of Pleadings, Proceedings, Conviction and Sentence in the case of the State of New Jersey vs. Raymond George, on Sur Indictment No. 107, Term of December A. D. 1930, for Murder, with all things touching the same as the same is taken from and compared with the original as presented, filed and recorded in my office. This certificate is issued that the said cause may be removed to the Court of Errors and Appeals of the last resort of all causes, at Trenton, N. J., for adjudicature according to law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City this Twenty-seventh day of May, 1931.

GUSTAV BACH,
Clerk.

(SEAL)

Testimony

HUDSON COUNTY OYER AND TERMINER

THE STATE

vs.

RAYMOND GEORGE, JAMES WILLIAMS and JOSEPH MITCHEL.

Before:

Hon. ROBERT V. KINKEAD, *Judge.*

JERSEY CITY, N. J., March 4, 1931.

Appearances:

JOHN DREWEN, Esq., *Prosecutor of the Pleas, Counsel for the State.*

LEWIS G. HANSEN, THOMAS GRIFFEN, THOMAS TUMULTY, and JAMES A. DOLAN, Esqs., *Counsel for the Defendants.*

Mr. Drewen: In the absence of a Supreme Court Justice, will your Honor convene and hold a court of Oyer and Terminer?

The Court: On your motion, Mr. Drewen, the court will convene and hold a court of Oyer and Terminer in the absence of a Supreme Court Justice.

Mr. Hansen: Representing Williams and Mitchell in this case, Mr. Griffin and myself desire at this time to make a motion that Williams and Mitchell be granted a separate trial.

As your Honor knows, and almost everybody that reads the papers in this county knows, the defendants in this case are charged with one of the most heinous and brutal murders that has ever been brought to the attention of any court in this county. The defendant George specifically is charged with having, without any provocation, without any reason, in cold blood and cruelly, shot down a respected police officer of this city. The defendants Williams and Mitchell, who are represented by Mr. Griffin and myself, unfortunately for themselves happened to be in this automobile with the defendant George. One of these defendants is a boy. In fact, they are both boys. One of the defendants claims to be only 15 years of age. We are investigating that phase of the situation at this time, and if we find that to be so of course we will have another motion to make along the lines that he be discharged from the jurisdiction of this court, at the proper time. But at any rate both of these boys are very young, neither one of them being over 16 years of age. They were in this car at the time. They lived in New York, and they came over here and knew nothing, as far as we can ascertain, about the defendant George's ideas or plans. They never knew that he had a gun in a car until they got over to Jersey City. They have never been in any trouble before. As I say, they are both boys innocently in this car.

Now, after they were arrested, statements were taken from all these defendants. The statement, as I understand it, that was taken from the defendant George is practically a confession. The statements of the other boys are a truthful statement of what happened as far as they were concerned. They want to be truthful in this matter, and they have wanted to be truthful since the beginning. The point is this: as I say, the statement that was made by George, as we understand it, was a confession, and will probably, undoubtedly, be used by the state in the trial of this case; and we think that the entire atmosphere of this case—the trial of these boys with the defendant George would practically preclude them from having what they are entitled to, that is a fair trial. We think that the general feeling would be against the defendant George, and would react against these defendants Williams and Mitchell. And for the second reason we think, and we know —and as your Honor knows, this statement that will be offered by the state, while it will not be evidential against the defendant Mitchell and the other man, yet we know from practical experience that sometimes, despite the efforts of everybody, including the trial judge, a statement of that sort very often reacts against the interest of innocent defendants, and while the statement is not evidential against these defendants, yet we are afraid that the jury might possibly consider it in the light of the seriousness and the terrible charge that has been made against these defendants; we doubt very much whether they would be able to get a fair trial if forced to go to trial with the defendant George.

Mr. Tumulty: We just simply wish in behalf of Raymond George to join with Mr. Hansen in requesting the court to grant a severance, and we realize that a fair trial demands a severance. Our defense is going to be entirely distinct from the defense that will be set forth by Mr. Hansen. We are setting forth the defense of insanity. Of course under the circumstances there will be a conflict. In addition to that I want to urge the argument that if you join these two defendants with the defendant George would deprive the defendant George of his constitutional privileges. It would deprive him of his right of twelve challenges, which we claim to have under the laws of 1929, Chapter 386, under which we are entitled to twelve challenges. If we join three defendants we will not get that; but it being in your Honor's discretion to grant a severance, I think in all fairness it should be granted.

Mr. Drewen: I respectfully submit that in the law there is nothing that counsel for the defendants Mitchell and Williams, represented by Mr. Hansen, says concerning atmosphere that should weigh with the court. Of course there is atmosphere in every criminal prosecution. It is a human thing and cannot be avoided, and merely to come into court and speak of so intangible a thing as atmosphere, something that is not in existence and cannot be until the trial gets under way, we submit is nothing on which to raise an application in this court for a severance.

We think too that the matter of challenges is no reason for granting a severance, because if the defendants are rightly joined in a prosecution

and tried together, then these questions of challenges of course must go along with the major circumstance that the three are properly tied together.

But there may be something in what Mr. Tumulty says concerning the inconsistency of these defenses. He urges upon your Honor that the defense of George is one of insanity. That may be a defense separate from a defense based upon the facts in the case, sufficient to justify separate trials. We do not presume to indicate to your Honor, because this matter rests in the sound discretion of the trial court, but if there is a severance here we think the state should not be hampered in any way as to which of the defendants, whether the two or the one, should go to trial first. We think the state ought to be able to determine that question itself.

The Court: I think that is so, without your urging that. I feel this way, Mr. Drewen: I do not want the state to disclose its case, but unless it was going to be the contention of the state that these three defendants were joined together in some common enterprise, such as robbery, burglary, or something like that—some common criminal enterprise—that the mere fact that two of them were with the main culprit should not place them in the position of being tried for murder along with the man who admittedly did the killing, unless the state feels that their conduct in some way contributed to the killing.

Mr. Drewen: We are free to say to your Honor now that the entire theory of the state in the joint prosecution against all three is based upon their having acted in concert in one integral criminal enterprise.

The Court: If I ask you anything that you do not wish to disclose you are perfectly within your rights in feeling I ought not to press the question.

Mr. Drewen: I understand.

The Court: All I know about this case is just what I have gathered from the newspapers, and possibly what perhaps everybody in the county knows, and it would seem to me that perhaps if the state was going to say the three defendants were acting in concert because they were in a stolen car which was stolen in Bayonne, and which they were taking from the jurisdiction, and that that being so, and they all knowing that the car was stolen and all assenting to that proposition, that the two co-defendants would be just as liable as the killer, because they were engaged in a joint enterprise.

Mr. Drewen: Is that a question that your Honor asks me?

The Court: Yes.

Mr. Drewen: No, not entirely so. That, and also the circumstance that at the time of the killing of the policeman the three were bent upon a

second and more criminal enterprise, in which it was their intention to use the stolen automobile, and they had stolen it for the purpose of using it in this second criminal enterprise upon which they were bent at the time of the killing of the officer.

The Court: What have you got to say to that, Mr. Hansen? My first concept of this case was that the two defendants represented by you and Mr. Griffin simply happened to be in this automobile at the time this unfortunate killing occurred.

Mr. Hansen: That is our contention.

The Court: And that they were nothing more than passengers in the car. That being so, it would not be fair to them to be placed on trial for murder along with the man who admittedly was the bad actor in the situation—the killer. But of course you can readily see that if these men were going out together to do a job, so to speak, and one of them committed a murder, they are all liable for the murder.

Mr. Hansen: You have asked the state to say whether that is their contention? That may be their contention, but our defense is absolutely opposed to that. We deny any such conspiracy, or any such knowledge. Realizing of course that it is always within your Honor's discretion, I say that just because the state comes in here and says "that is our contention," and based on that statement by the state your Honor decides that these defendants must go to trial jointly——

The Court: No one will accede any quicker than Mr. Drewen to this proposition, that if he cannot prove that these defendants were all joined together, acting in concert on some criminal mission, that the mere fact that two of them happened to be in the car would not entitle the state to try them for murder, unless he can prove further that there was some overt act on their part.

Mr. Hansen: Suppose we carry that argument a step farther and say there is other evidence in the case that would necessitate the case going to the jury as against our defendants, other evidence, for instance, such as the statement of the defendant George implicating these boys, or any other evidence. I cannot think of any other piece of evidence just now.

The Court: If that was all the evidence the state would have to offer, of course the court would have to rule that any confession made by the defendant George, if admissible at all, was admissible only so far as it affected his interests.

Mr. Hansen: There is a line of cases that says that where that situation exists, where there are several defendants, where the statements are taken from several defendants, and these statements are not evidential against all of the defendants but against one or more of them, it is not error for the trial judge to grant a severance in such a case, because of the very danger attaching to such a situation.

The Court: It would be error if the prosecutor produced nothing else against Mitchell and Williams except the confession of George ——

Mr. Hansen: Might I interrupt one moment? I do not know what the defendant George said, but supposing in his statement he had said something about these other boys—for instance he said they had guilty knowledge, it would become a question of fact which would have to go to the jury, and the jury would have George's confession in toto, the whole confession; and it seems to me unfair in a case of this sort which has attracted so much attention—there is more feeling in this case I believe than in any other case since the Sage case—and it seems to me that just a mere statement, or a sentence in the statement on the part of the defendant George might involve these defendants. You might have to let it go to the jury. Now the jury has the case. Once the jury has the case it is in their hands, and it seems to me to be entirely unfair to have to take that chance. These defendants, these boys, 15 and 16 years of age—to have them take a chance on going to the jury in a case of this kind where the defendant George is charged with such a heinous and brutal crime. It seems to me if there was ever a case where the discretion of the court ought to be exercised in granting a severance, it is this case. And there is no question about the law. There are plenty of cases on this statement proposition. It seems to me this is one case, if there ever was a case, where your Honor ought to exercise his discretion in favor of these two young boys, 15 and 16 years of age.

The Court: You see, Mr. Hansen, you have missed the point. The point that I wanted to demonstrate to you was this, that if Mr. Drewen

in presenting this case to the jury has nothing more on which to urge the conviction of your two defendants, than the statement of George, the court will then have to step in before you go into any defense at all—at the close of the state's case—and direct the jury to find a verdict of not guilty, because this confession is admissible only insofar as it affects George, and even though it implicates these boys in some enterprise that they were acting in concert on, some criminal enterprise, which if the state could prove it by other evidence would entitle the state to have all three go to trial together, it would be a different proposition.

Mr. Hansen: We do not know, we cannot guess, or we cannot appreciate what is actually going to be produced in evidence in this case. This is just a preliminary matter. We never know what is going to develop in a case on a trial. Almost anything can happen, as your Honor of course knows, and we are faced with that proposition, that we do not know what might happen in this case. Something might happen that we would not expect, and then the harm has been done. Then these poor boys are on trial and their case is being considered by the same jury which is considering the case of the man who has committed one of the most heinous crimes ever committed in the history of this county. We are at a disadvantage at this time because we do not know what might develop.

Mr. Drewen: May I say this to your Honor? I do not believe Mr. Hansen seriously contends that merely because the defendant comes into

court and says he does not know what might develop in the case, that therefore he is entitled to a severance. But regardless of that, what we desire to say to the court is that, especially in view of Mr. Tumulty's representation, and especially in view of our case as we know it, it is not of great importance to the state whether your Honor grants a severance or not.

The Court: Mr. Hansen made a statement one time when this motion was up before; he said that after he and Mr Griffin had gone over the case of their defendants, he saw no reason why in the interest of justice their defendants should not take the stand as state's witnesses and should not reveal to the world exactly what they know about this case. I was very much impressed by that statement, and I am also moved by the fact that two boys 16 years of age would probably not have the reasoning power that a hardened criminal would have. In other words, if these men had long records and they were with George on this night, then you could readily conceive that they were not only part and parcel of this situation but perhaps they were even the ringleaders.

Mr. Drewen: I understand.

The Court: So, for many reasons in this case, and particularly for the reason that I think the two defendants Mitchell and Williams want to tell what they know about the case and take the stand as state's witnesses, I will grant your motion.

Mr. Drewen: Will your Honor proceed with the striking at this time?

The Court: Yes. Do you want to go ahead now, Mr. Tumulty?

Mr. Tumulty: Yes, we will go right ahead.

Mr. Besson: May we strike the jury on this list with respect to Raymond George on the understanding that the defendant admits that he was joined in with the other two defendants?

Mr. Tumulty: I want it to appear on the record that the three defendants appear. I want it to appear as subsequent to the severance

The Court: What Mr. Besson means is this: the court returned a list of 60 names in the case of the three defendants, George, Mitchell and Williams. Mr. Besson is now asking you whether you are satisfied to have the jury which will try the defendant George taken from this list of 60 names, or if you wish to have a special list?

Mr. Tumulty: No objection.

Mr. Besson: May it be entered on the record that there is no objection to striking the jury from this list?

Mr. Tumulty: I want to have those motions made previous to the severance renewed on the record subsequent to the severance.

Motions

Mr. Hansen made a motion as to the constitutionality.

The Court: Oh, yes.

(Counsel thereupon proceeded to strike the list.)

HUDSON COUNTY OYER AND TERMINER

THE STATE

vs.

RAYMOND GEORGE.

Before:

Hon. ROBERT V. KINKEAD, *J.*

Jersey City, N. J., January 6, 1931.

IRVING EISENBERG, Esq., *for the State.*

JAMES DOLAN and THOMAS TUMULTY, Esqs., *for the defendant.*

Mr. Eisenberg: In the absence of a Supreme Court Justice, will your Honor convene and hold a court of Oyer and Terminer?

Court Justice the court will convene and hold a court of Oyer and Terminer.

The Court: Yes, in the absence of a Supreme

Mr. Eisenberg: This is a motion of the State of New Jersey against Raymond George. May I say for the record that the prisoner, Raymond George, is in court and represented by his counsel. The Prosecutor feels that this is a proper case for the granting of a struck jury. In this case a police officer in the performance of his duty was slain in cold blood, and the case has sufficient importance to justify the granting of a struck jury. I do not think it requires much argument.

Mr. Dolan: We consent to a struck jury.

Mr. Eisenberg: May I also move that your Honor in granting a struck jury, hand down a list of sixty names from which this jury is to be selected.

The Court: The motion is granted.

Motions

HUDSON COUNTY OYER AND TERMINER

STATE vs. RAYMOND GEORGE, *Defendant.*	Indictment No. 107 Term, 1930.

Before:

Hon. ROBERT V. KINKEAD, *Judge,* and a Struck Jury.

Jersey City, N. J., April 13, 1931.

Appearances:

JOHN DREWEN, Esq., *Prosecutor of the Pleas.*

HARLAN BESSON, Esq., and R. LEWIS KENNEDY, Esq., *Counsel for the State.*

JAMES DOLAN and THOMAS TUMULTY, Esqs., *Counsel for the Defendant.*

Mr. Drewen: May it please your Honor, for the purpose of the trial of indictment for murder in the first degree, in the absence of a Justice of the Supreme Court the state asks that this court

resolve itself into a court of Oyer and Terminer of the County of Hudson.

The Court: In the absence of a Supreme Court Justice the court will resolve itself into a court of Oyer and Terminer.

Mr. Drewen: The State now moves the trial of indictment 107, Hudson Oyer and Terminer, December term, 1930, the State of New Jersey against Raymond George. The indictment having been originally against Raymond George, Joseph Mitchell and James Williams, and a severance having been ordered in this court as to Joseph Mitchell and James Williams, the indictment is moved as to Raymond George alone.

The Court: All right.

Mr. Tumulty: When this jury was struck, in behalf of the defendant Raymond George, we made certain motions which we would like to have it appear on the record that we renew this morning, and if your Honor makes the same ruling as you did at the time of the striking of the jury we ask that the exception be noted on the record.

In addition to that we want to make the additional motions, first, that we object to the drawing of this jury because the jurors have been selected from a list of struck jurors that we claim to be in violation of the law, because the act under which the order for said drawing of the jury was sought denies the defendant due process of law.

Second, it changes the method of regulating peremptory challenges.

Third, it is founded upon an illusory classification, namely, murder cases, which is special and discriminatory legislation.

Fourth, it is attempted to be applied to murder cases because of the severity of the penalty. It does not include within its perview the cases of treason and assault and government execution, which are likewise punishable with death

In addition to that we wish to say that this act abrogates and destroys certain fundamental and lawful rights that this defendant had under the common law before the adoption of the constitution.

The Court: I will deny your motion and allow you an exception.

Mr. Tumulty: I ask for an exception.

(Exception allowed, signed and sealed accordingly.)

ROBERT V. KINKEAD,
Judge.

(SEAL)

Drawing of Jury

The clerk thereupon proceeded to the drawing of the jury.

John F. Will, called as a talesman.

The Court: Gentlemen, it would be satisfactory to the court if both the prosecutor and counsel for the defense would consent that this juror step aside. Mr. Will has served upon the petty panel within the last two months.

Mr. Will: In the early part of February.

Mr. Drewen: The state consents.

Mr. Tumulty: Satisfactory, your Honor.

The Court: You may be drawn, Mr. Will, so that you may step aside for the time being, and if the jury is drawn before we come to your name again, you may be excused.

Jay Gorman, called as a talesman, being not challenged by the defendant and not challenged by the state, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state and Raymond George, the prisoner at the bar, whom you shall have in charge and a true verdict render according to the evidence, so help you God.

The talesman, said Jay Gorman, thereupon took seat number one.

Joseph Schopper, called as a talesman.

The Clerk: The return on this juror is that he is out of town, and the information is received from the superintendent of the building in which he resides.

Charles E. Bentz—listed as Charles Bentz—called as a talesman, being not challenged by the state and not challenged by the defendant, was sworn as follows:

Drawing of Jury

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said Charles E. Bentz, thereupon took seat number two.

Andrew Daly, called as a talesman, being not challenged by the defendant and not challenged by the state, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said Andrew Daly, thereupon took seat number three.

Joseph H. Crane, Sr., called as a talesman, being not challenged by the state and not challenged by the defendant, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said Joseph H. Crane, Sr., thereupon took seat number four.

Peter E. Ward—listed as Peter Ward—called as a talesman.

The Court: Gentlemen, Mr. Ward has requested the court for permission to step aside. It will be particularly inconvenient for him to serve on this jury at this time. Because of his standing in the community the court would be glad to see counsel on both sides consent to have him step aside.

Mr. Drewen: Mr. Ward and I were classmen. For that reason I would prefer to have him step aside.

The Court: You may step aside, Mr. Ward.

William Thompson, called as a talesman, being not challenged by the defendant and not challenged by the state, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said William Thompson, thereupon took seat number five.

Catherine Delahunt, called as a talesman.

The Clerk: Your Honor, we have a doctor's certificate as to the illness of this juror.

Edward Sawyer, called as talesman, being not challenged by the state and not challenged by the defendant, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said Edward Sawyer, thereupon took seat number six.

Drawing of Jury

Samuel C. Darke, called as a talesman.

The Court: I have excused Mr. Dart because he is an undertaker and he had a funeral this morning.

Ernest Schwab, called as a talesman, being not challenged by the defendant, and not challenged by the state, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge and a true verdict render according to the evidence, so help you God.

The talesman, Ernest Schwab, thereupon took seat number seven.

Mrs. Louise M. Stendell, called as a talesman.

Mrs. Stendell: I would like to address the court, your Honor. Your Honor, I know the prisoner's mother for the last 27 years, and I am afraid it would influence me.

The Court: I think it is splendid for you to make that statement, Mrs. Stendell. I think under the circumstances, gentlemen, this lady might step aside.

Mr. Drewen: We consent.

Jack McAlexander, called as a talesman.

The Court Attendant: Your Honor, he wishes to address the court.

Mr. McAlexander: Your Honor, I am from the south and I feel I might be prejudiced in this trial.

The Court: Gentlemen, this prospective juror

has explained to the court that he came to this vicinity from the south and is afraid he might have some prejudice against the defendant because the defendant is a colored person.

Mr. Drewen: The state has no objection to excusing him.

Mr. Tumulty: I have no objection to excusing him.

The Court: Then he will be excused.

Stephen MacDonald, called as a talesman.

The Talesman: I wish to correct the spelling of my name. It is McDonald instead of MacDonald. Being not challenged by the state and not challenged by the defendant, was sworn as follows:

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge and a true verdict render according to the evidence, so help you God.

The talesman, said Stephen McDonald, thereupon took seat number eight.

Joseph Kinlon, called as a talesman, being not challenged by the defendant, and not challenged by the state, was sworn.

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, said Joseph Kinlon, thereupon took seat number nine.

William Aichele, called as a talesman, being

not challenged by the state, was challenged by the defendant.

Bruno T. Danker, called as a talesman, was challenged by the defendant.

Harold C. McCausland, called as a talesman, being not challenged by the state and not challenged by the defendant, was sworn.

You do solemnly swear you will well and truly try and a true deliverance make between the state of New Jersey and Raymond George, the prisoner at the bar, whom you shall have in charge, and a true verdict render according to the evidence, so help you God.

The talesman, Harold E. McCausland thereupon took seat number ten.

STATE'S OPENING TO THE JURY

Mr. Drewen: May it please your Honor, gentlemen of the jury: the defendant at the bar in this prosecution is Raymond George. He is charged in the indictment with the crime of murder. In order that you may be aware of the more formal scope of the charge I will read the indictment.

December Term A. D. 1930

"HUDSON OYER AND TERMINER

Hudson County, to wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath

Present, that Raymond George, Joseph Mitchell and James Williams, late of the City of Jersey City, in the said County of Hudson, on the twelfth day of December, in the year of our Lord one thousand nine hundred and thirty, with force and arms, at the city of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Edward Ruark in the peace of God and of this state, then and there being, did wilfully, feloniously and of their malice aforethought, kill and murder, 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."

The second count charges the lesser grade of homicide commonly known as manslaughter.

Now, gentlemen, this crime is alleged by the state to have occurred on the twelfth of December last, 1930. At that time, Ruark, the decedent in this case, was a police officer in the actual performance of his duty. He was a motorcycle policeman.

On the night in question he in the exercise of his duty had occasion to look for automobiles—be on the alert for an automobile driven by a colored man, and his post was near the intersection of Communipaw and West Side Avenue.

While Ruark was left on the watch there appeared a car bearing a New York license driven by this defendant and having in it two other colored men, younger than he by a number of years; but, nevertheless, the car was driven by this defendant. Seeing the car and also having observed that the car rode right through a red light, Ruark mounted his motorcycle and started after it, and having observed also that it was being driven by a colored man. He got abreast of the car and as he did so the automobile was driven by this defendant in such a way as to crush the police officer on the motorcycle between the automobile and the curb. The police officer, we will show you, then realized that this man had no intention of stopping and he so manipulated as to get around the opposite side of the car that he was pursuing, and there was then an operation of the automobile that indicated to the policeman

that the intention was to cut him off and throw him away some where with his motorcycle.

We will show you that when the policeman gave such constant and unflagging chase that this defendant, this fugitive at the time, realized that policeman meant to keep up with him at all costs, and he said to his companions in the car: "is he still coming?" And they looked at the officer pursuing on his motorcycle and they said: "Yes, he is coming faster than ever"; and he said: "Well, I guess there is only one thing to do with this fellow and that is stick him up." He stopped his car. The policeman brings his motorcycle abreast of the car and he says: "Show me your license."

We will show you that the defendant had no license and that as he leaned down to get what he wanted the policeman to believe was his license, leaned over in the car, he was leaning down to get a .12 automatic repeating revolver.

When the police asked him to step out of the car to show him his license, he came out with the revolver partly concealed in the grip of his right hand and pressed close against the thigh of his right leg, walked toward the policeman. The policeman unsuspecting any turn of events of that character and looking for a license was suddenly confronted by the drawn revolver in the hands of the defendant, and he said to the policeman: "Stick 'em up!" Policeman Ruark, of course, was aghast at that, looked at the gun and looked at the negro who confronted him, and stepped

back a pace or two and quickly made a motion to get his own gun. It was life or death with the policeman then so far as anything he could observe was concerned.

As the policeman stepped back this man fired. The policeman turned and staggered toward a telegraph pole or some erection for the purpose of supporting himself, finally fell and fired at the fleeing automobile as he fell. He died shortly after in the hospital.

Then chase was given by the other policemen, and the incidents of that chase and what was said and what was done and where this defendant was found will be shown to you in full detail in the testimony.

Now, in fine, gentlemen, the state will prove to you in this case that this defendant with deliberation, premeditation and with malice aforethought killed and murdered Edward Ruark while Ruark was in the peaceful and lawful performance of his duty.

The state will show you that there was no reason in the world why the defendant or any of them should apprehend anything except that the policeman was engaged upon a peaceful and proper discharge of his duty, and that out of nothing more than I have indicated to you, the request that this man show him his license—came murder.

When the state has shown that to you we will expect, of course, at your hands, a verdict of murder in the first degree. .

As to what will occur to the other counts in the indictment, that is a problem that will be confronted by all of us, the court at the proper time.

Now you will note in the course of this trial, and you will note eventually when you get the indictment in your own possesion, that there are two other defendants named here in the indictment—Joseph Mitchell and James Williams.

They are the men who are alleged by the state to have been in company with this man and companions in the car at the time of the shooting. Upon a motion made in this court sometime ago the court for purely legal reasons, reasons with which you have nothing to do, ordered separate trials of the other two defendants, hence it is that this defendant Raymond George comes to trial here today alone.

WILLIAM R. HARRISON, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Mr. Harrison, what is your profession? A. Photographer.

Q. And have been a photographer for how long? A. Over 45 years.

Q. Practicing your profession where? A. Jersey City.

Q. I show you a collection of photographs and ask you if those photographs were made by you? A. Those were all made by me, yes, sir.

Mr. Drewen: I ask that they be marked for identification.

(The photographs referred to are marked for identification as exhibits for the state, S1, S2, S3, S4, S5, S6, S7, S8, S9, S10, S11, S12, for identification.)

Q. I show you photographs marked S1 and S2 for identification and ask you where that picture was made by you—it is the nude body of a man? A. That is the body of police officer Edward Ruark, known by me personally. It was taken by me on December 13 in the Jersey City Hospital.

Q. Ruark was dead at the time the photograph was taken? A. Yes.

Q. You say you knew him personally? A. I knew him personally.

Q. Mr. Harrison, I show you photographs marked 4, 5, 6, and 7 for identification and ask you if you will state what locality it is that is shown in those pictures? A. S7 was the north side of Lincoln Avenue near Jacobus Avenue in Kearny.

Q. Jacobus Avenue in Kearny? A. Yes, taken December the 13th of last year.

Q. S6 is a view on the north side of Lincoln Highway looking towards Jacobus Avenue.

Q. In Kearny? A. In Kearny.

Q. How far is that from the Ford plant, can you give us some idea? A. I could not, sir.

Q. All right. A. S5 is a view of Jacobus Avenue looking towards the Lincoln Highway, taken on the 13th of December.

Q. All right. A. S4is a view looking north on Jacobus Avenue near the Lincoln Highway.

Q. Those photographs I notice have marked on them separately the statement of the location; shown in the picture, that you have made in your testimony. A. Yes.

Q. That was marked there by you? A. By me, yes.

Q. I show you photographs S3, S10, 9 and 8, for identification, and ask you if you will kindly state to the court and jury what these streets are shown in those pictures. A. S8 is a view looking west on Rosedale Avenue from Mallory.

Q. In Jersey City? A. Jersey City.

S9 is a view looking south on Mallory Avenue from Communipaw.

S10 is a view on Mallory Avenue looking towards Communipaw.

S3 is a view looking north on Roosevelt Avenue near Mallory.

Q. I show you finally photographs S11 and 12 and ask you if the automobiles shown there were photographed by you? A. This photograph of a Buick car, S11, with a New York License 5498, taken by me at the Montgomery Street station on December 15.

Q. Of the Jersey City Police Department? A. Yes.

Q. Both pictures were taken at the same place? A. Yes.

Mr. Drewen: Is there any objection at this time to offering the photos in evidence?

Mr. Tumulty: No objection.

Mr. Drewen: I ask that they be marked in evidence.

(Admitted and marked Exhibits S1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in evidence.)

Mr. Drewen: Cross examine.

Mr. Tumulty: No cross examination.

(Witness excused.)

FRANK J. O'LERI, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. What is your profession? A. Civil engineer and surveyor.

Q. How long have you been engaged in that profession? A. Sixteen years.

Q. Here in Hudson County? A. Yes, sir.

Q. I show you the blueprint of a map showing state highway number 1 between Jersey City and Kearny, Hudson County, N. J., and ask you if that was made from a survey of your own? A. Yes, sir.

Q. When? A. December the 18th, 1930.

Mr. Drewen: We will put this blueprint on the board.

Q. Kindly explain to the Court and jury what is shown on the map. A. It shows the direction of Communipaw Avenue beginning at Westside Avenue to this point, going along in a westerly direction to a point on Jacobus Avenue along that line I have shown in detail number 1 at Westside Avenue—number 2 Communipaw and Mallory Avenue—number 3 Roosevelt and Marcy—number 4 Jacobus and State Highway number 1. The detail of number 1 is shown on the insert number 1, at that intersection.

Q. In other words, the detail shows—at the bottom of the map you have shown—— A. I have shown the detail here. I have drawn that to a scale of one inch equals ten feet. It shows the

traffic light at the southwest corner and the traffic light at the northwest corner. It shows the location of buildings at corners, the area of the tracks.

Q. Now, as to detail number 2, the location of number 2 you show that in detail number 2? A. I show that in detail number 2.

Q. And the same with respect to detail 3 and detail 4? A. Yes.

Q. As to locations of 3 and 4, shown on the lower part of the map? A. Yes.

Q. This map was prepared by you, was it? A. Yes.

Q. Do the designations, street names, buildings, electric light poles, and gas light poles, trolley tracks, and general characteristics as shown on the map represent accurately the locations of such things and objects as found by you in the course of your survey? A. Yes, sir, they do.

Q. The scales vary? A. Yes, sir.

Q. Does the scale show in every detail? A. The scale shows in every detail.

Q. Detail number 1 is one inch equals ten feet? A. Yes. Detail number 2 is one inch equals twenty feet, detail number 3, one inch equals fifteen feet, detail number 4, one inch equals thirty feet.

Mr. Drewen: Cross examine.

Mr. Tumulty: No questions.

Mr. Drewen: I offer the map in evidence.

(Map marked in evidence Exhibit S-13.)

(Witness excused.)

JOHN J. VARLEY, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a member of the Jersey City Police Department? A. Yes, sir.

Q. What rank do you hold? A. Sergeant.

Q. How long have you been in the Department? A. Fifteen years.

Q. On the night of December 12, 1930, were you doing duty in the neighborhood of Communipaw Avenue, Jersey City? A. Yes, sir.

Q. What duty were you performing that night? A. I was on a police patrol car.

Q. That is, a Ford patrol car? A. Yes, sir.

Q. Were you alone in the car or with another policeman? A. With Patrolman Waldron. He was with me.

Q. What was the post that night, what district were you to cover? A. We covered Westside Avene from Broadway down to the boundary of the Eighth Precinct, down as far as Danforth Avenue, west of Westside Avenue.

Q. West of Westside Avenue? A. Yes.

Q. And over as far west as the city limits, is that right? A. Yes, sir.

Q. When did you and Officer Waldron go on duty in the patrol car that night? A. Four P. M.

Q. Morning or afternoon? A. Afternoon.

Q. When did you come off duty or when were you to come off? How long was your tour? A. Eight hours—four to twelve P. M.

Q. Now, at any time during that tour of duty from four that afternoon, between four and twelve, did you give chase to an automobile? A. Yes, sir.

Q. Where was it that your attention was first called to the automobile you pursued? A. At Communipaw and Marcy Avenues.

Q. And at that time where were you and Officer Waldron in your patrol car—were you standing still or riding? A. Standing still at Communipaw Avenue near the Highway, that is, east of the Highway.

Q. And when your attention was first called to this automobile that you later chased what was it doing, standing still or rolling? A. No, sir, it was coming north on Marcy Avenue into Communipaw.

Q. Coming north on Marcy Avenue into Communipaw? A. Yes, sir.

Q. Had anything up to that time happened that caused you to chase the other car? A. Well, nothing in particular, only there was no lights on the auto and we saw it contained three colored men.

Q. Yes. A. And as soon as they saw us, why, they gave a jump like that, see?

Q. Yes. A. And Patrolman Colgan and McSpirit, of the County Police stationed at that point doing traffic duty came over to ask us about the red lights. We had received a message over the red lights——

Q. Don't tell us about that, but the other policemen told you some signal that had been received? A. Yes, sir.

Q. When you say that these three colored men started when they saw you, how far were they from where you sat in your car? A. Well, I don't know. I could not say the width of Communipaw Avenue at that point. They were only a short distance in on Marcy Avenue because it is only a short little spur of a street. There is a gas station right alongside of it.

Q. Let's get Marcy Avenue here on the map. Is it Marcy or Mallory you are speaking of? A. The street that comes out alongside of the gas station. It is the first street that cuts out at the foot of Roosevelt Avenue.

Q. You mean Mallory Avenue, don't you officer, instead of Marcy Avenue? A. Not Mallory. I don't know if it is a street. It is just a little spur.

Q. But it runs at right angles to Roosevelt Avenue—it crosses Roosevelt Avenue? A. Well, it runs to the foot of Roosevelt Avenue.

Q. Crosses Roosevelt Avenue? A. It does not cross Roosevelt Avenue.

Q. Now, you, you say, were on Marcy Avenue at the time you saw this car first? A. No; we wern't on Marcy Avenue. We were on Communipaw near the Highway.

Q. And facing which direction? A. We were facing west.

Q. And which way do you say they were going? A. North; they had to come out of Roosevelt Avenue, out to Communipaw; therefore, they would have to run north. It was the only way they could get out of there.

Q. I see. Now, after you encountered them and they started as you say did you then chase them? A. I don't get your question.

Q. Did you then pursue them? Did you go after them at any time with your car? A. Right after Patrolman Colgan—there were no lights on this car.

Q. There were no lights on this car with the colored men in it? A. No.

Q. All right. A. So Patrolman Colgan and McSpirit were talking to us and we said: "Look at this"——

Mr. Tumulty: I object.

Q. Never mind what they said. Take your time. A. Patrolman Colgan stepped out to stop them.

Q. Stop who? A. To stop this car, and in order to have them put on their lights.

Mr. Tumulty: I object to that.

Q. All right. Stepped out to stop the car and what happened? A. They sped on; they stepped on the gas and went ahead. So we pursued them.

Q. You say you and Waldron? A. Yes, sir.

Q. Yes? A. And when they saw us in pursuit of them Patrolman Colgan and I——

Mr. Tumulty: I object. I wish the witness would testify as far as the facts, what he himself knows.

Mr. Drewen: That is what he is doing.

Mr. Tumulty: No, he is not. Read the last part.

A. (Repeated by the stenographer) "And when they saw us in pursuit of them Patrolman Colgan and I——"

Mr. Tumulty: He is testifying to what the occupants of that car saw. I object.

The Court: I will permit it.

Mr. Tumulty: I ask for an exception.

(Exception allowed, signed and sealed accordingly.

(SEAL) ROBERT V. KINKEAD, *Judge.*)

Q. When you started after them, you and Waldron were alone; weren't you? A. Yes, sir.

Q. Colgan was standing back here? A. Yes.

Q. He was not with you? A. No, sir; not at the time.

Q. So it was only you and Waldron that were there together in the Ford patrol car? A. Yes, sir.

Q. In what street were you driving when you gave chase to this car with the colored men in it? A. West on Communipaw.

Q. West on Communipaw. Now, how far did you go altogether before you came to a stop? A. Well, a short distance this side of Jacobus Avenue.

Q. This is in Kearney; isn't it? A. In Kearney.

Q. Now, when you got to Jacobus Avenue or a short distance this side of Jacobus Avenue in Kearny, did you get out of your car? A. Yes, sir; yes, sir.

Q. Did Waldron get out of your car? A. No, sir.

Q. Did you see where the other car went to, the car you were chasing, at the time you got out of it a short distance this side of Jacobus Avenue? A. Yes, sir.

Q. Where did it go? A. It went into the vacant ground towards Jacobus Avenue on an angle that way (indicating).

Q. That is all vacant land there; isn't it? A. Yes, sir.

Q. How far then from Communipaw Avenue did this car go? A. For about fifteen or twenty-five feet of Jacobus Avenue.

Q. Then what happened to the car? A. It got stalled.

Mr. Tumulty: Now, I object to that, your Honor.

Q. Did it stop or contiuue?

Mr. Tumulty: Just a moment.

Mr. Drewen: I consent it be stricken out.

Q. When you say it stalled you mean the car stopped? A. Stopped.

Q. All right. Now, when the car stopped, did you see any one get out of the car? A. No, sir, I didn't.

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

Q. When you saw this car stop after going twenty-five feet in towards Jacobus Avenue, what did you do? A. Well, Patrolman Waldron had arrived with the other auto patrol car on Jacobus Avenue right in front of where this car was stopped, and he told me that he saw two——

Mr. Tumulty: I object.

Q. Never mind what he told you.

Mr. Drewen: If you won't disturb this witness I will take care of him.

Mr. Tumulty: I have to disturb the witness.

Q. Tell us not what the policeman said to you or anything of that sort. Tell us what you did.

A. I went through the yard, Lincoln Warehouse Terminal, which is located at that point, to look for one of the men who was supposed to have gone through there.

Q. Now, before you go any further let me show you photographs in evidence, S-7, 6, 5, and 4, and ask you whether or not those photographs represent truly the conditions of Jacobus Avenue and Communipaw at the time you say the automobile that you were chasing turned in there? Is that right or don't you recall? A. Let me see them (photographs shown to and examined by the witness). I don't see——

Q. I show you photograph that has been testified to here as a north view of Lincoln Highway near Jacobus Avenue. You weren't on Lincoln Highway and Jacobus Avenue; you were on Communipaw and Jacobus; is that right? A. No; I was on Jacobus Avenue.

Q. On Jacobus Avenue. Well, can you tell us which of these photographs represent the situation on Jacobus Avenue when you say the automobile that you were chasing turned in, if any of them do? A. Somewhere around here (indicating).

Q. Somewhere around here? Indicating the center of photograph S-5, in evidence where the two men are shown standing off the road? A. Yes, sir.

Q. Is that correct? A. Is this Jacobus Avenue?

Q. That is a view on Jacobus Avenue looking toward Lincoln Highway. A. Yes.

Q. So testified in this case? A. Yes.

Q. Is that right?

Mr. Tumulty: Does the witness recognize the picture as being such?

Mr. Drewen: He says so. He has so testified.

Mr. Tumulty: He asked you if it was.

The Witness: The way I recognize it is by these signboards here, these two signboards. Communipaw Avenue is supposed to be on the outside here.

Q. Yes. A. Well, this is Jacobus Avenue. These are the two signboards. The car come in through here and they stopped about fifteen or twenty-five feet away from Jacobus Avenue.

Q. That is the car you were chasing? A. Yes, sir.

Q. It came from a point, did it not, opposite the signboards shown in the photograph before you, S5? A. Yes, sir.

Q. That is right? A. Yes.

Q. Did it go beyond the signboards, or stop the other side of the signboards? A. It got past the signboards.

Q. It got past the signboards? A. Yes.

Q. That was the position in which the car was when you say it came to a stop? A. It was facing towards Jacobus Avenue.

Q. And had come to a stop? A. Yes.

Q. In the space between Communipaw and Jacobus Avenue? A. Yes.

Q. That is right, is it? A. Yes.

Q. When you first saw this car come to a stop in the position you have just indicated, 25 feet from Communipaw towards Jacobus Avenue—

when you saw the car come to a stop, where were you? A. I was pursuing it on foot through the vacant ground there.

Q. Did you get up to the car finally? Yes.

Q. Was there anyone in it when you got up to it? A. No, sir.

Q. When you got up to the car that was stopping there and found no one in it, did you see Policeman Waldron after that? A. Yes.

Q. Where? A. On Jacobus Avenue.

Q. He was in the car? A. He was not in the car. He was on the street at the time.

Q. He was on foot too? A. Yes.

Q. Do you know where your patrol car was at the time you saw Waldron? A. Almost in front of where this other car was stopped on Jacous Avenue.

Q. Right in the space there between Jacobus and Communipaw? A. Yes,—the Highway.

Q. In other words, he had driven his car up there—Waldon had—and had gotten out? A. Yes, sir.

Q. With you and Waldron together there at that point, and the car that you had been chasing —no one in it—did you and he go any place from that point? A. I went through the yards adjoining the office of the Lincoln Terminal Warehouse, and Waldron went over the other way, north on Jacobus Avenue.

Q. Waldron went north on Jacobus Avenue? A. Yes, with the patrol car.

Q. And you went on foot? A. Yes.

Q. In which direction do you say you went on foot? A. I went west.

Q. You have told us the name of the place, but in what direction from where you saw the car stopped? A. West.

Q. Did you go into the yard of the Terminal Warehouse Company? A. Yes, I looked over the yard—only just around the office where this young man was supposed to have gone in there.

Q. Well, you looked any way in the yard of the terminal warehouse? A. Yes.

Q. Did you find anybody there? A. No one.

Q. Where did you go then? A. I went into the office of the Lincoln Terminal Warehouse and telephoned to headquarters, to the 7th precinct.

Q. After the telephone call what happened? A. I came out of the office and went to the car again to search it, so I found a gun laying in front of the driver—to the right of the driver's seat in the front on the floor of the auto.

Q. That is the new car you say stopped 25 feet from Jacobus Avenue? A. Yes.

Q. Go ahead. A. Then after I got the gun I wrapped it in paper and put it in my pocket.

Q. Yes. A. Then I went out to the highway to stop a car to send word back to the county policemen to tell them where I was. I went out and stopped five cars before one would stop, so finally a car stopped and I sent word back to tell Patrolman McSpirit and Cogan where I was—where we were at the time. So then I——

Q. Wait a minute. Go ahead. A. So when I came back from the highway——

Q. After you had sent word to the county police where you and Waldron were you came back from the highway? A. Yes, to where the office

was located on Jacobus Avenue. Then Patrolman Waldron came down Jacobus Avenue with the auto and he had Joseph Mitchell in the car and he handed him over to me.

Q. Joseph Mitchell is the colored boy? A. Yes, sir.

Q. And he was delivered over to you? A. Yes.

Q. And you took him into custody? A. Yes.

Q. Where did you go with him? A. Into the office of the Lincoln Terminal Warehouse.

Q. How long were you there with Mitchell? A. I was not long. I could not possibly say how long, but Patrolman McSpirit arrived and he took charge of him while I went out to make further search for them.

Q. Was there any other colored boy or colored man taken into custody in that district that night, so far as you know, with the exception of Mitchell, who was turned over to you by the other policeman? A. No, sir—as far as I know.

Q. I show you a model of a United States repeating automatic revolver and ask you if that is the revolver you took from the automobile in Jacobus Avenue? A. Yes, sir.

Q. How could you tell? A. There is the mark that Lieutenant McNamara put on it, and the scratch mark.

Q. Put on there for identification? A. Yes, sir. There is my scratch mark too.

Mr. Drewen: I ask that the gun be marked for identification.

(Marked Exhibit S14 for identification.)

Q. Did you examine this gun after you found it? A. No, sir.

Q. To whom did you deliver it? A. Lieutenant McNamara.

Q. Where? A. At the 7th Precinct station.

Q. That is when you came back to the 7th Precinct, Jersey City? A. Yes, sir.

Q. How long was that after you found the gun in the car? A. Probably two or three hours.

Q. Were you present with Lieutenant McNamara when he examined the gun as to its contents? A. Yes, sir.

Q. Do you know what was shown by an examination of the gun at the time McNamara examined it? A. No, sir.

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

Q. Do you remember the number of the automobile that you chased? A. I got the number right here.

Q. On a memorandum? A. If I may refer to it.

Q. Who made the memorandum? A. I made it.

Q. All right, you may refer to it. A. It was the N. Y. license 5498.

Q. I show you photographs in evidence, Exhibit S11, S12, being a photograph of an automobile having a license number designated N. Y. 5498 and ask you if that is a representation of the car that you say you and Waldron pursued in your patrol car? A. Yes, sir.

Q. At any time before this car came to a stop, officer, on Jacobus Avenue, was there any shots fired by you or Waldron? A. Officer Waldron fired some shots.

Q. How many shots? A. I could not exactly say whether it was four or five.

Q. About how far were you from where you had started to chase them when the shots were fired by Waldron? A. Oh, a short distance west of the highway on Communipaw Avenue when the first shot was fired.

Q. How far were you from the automobile when the first shot was fired? A. I could not exactly say the distance, but we were quite close to it.

Q. Did they stop when the shot was fired? A. No, sir.

Q. Was there any change in the speed of the automobile at the time of firing the shot by Waldron? A. Yes, sir.

Q. What was the change? A. They continued to speed faster.

Q. To go faster? A. Yes, sir.

Mr. Drewen: Cross examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. Can you show us on this map where you first saw this car, coming towards Communipaw? A. I don't know if I will be able to describe that by the map.

Q. Now you say that it came northerly on Marcy Avenue? A. Yes, sir.

Q. Where were you, on Communipaw Avenue? A. Right here on the highway.

Q. Where were you with reference to West Sideand Communipaw? Here is West Side and Communipaw right here. Show it on this bottom part of the map. A. This is the little street that comes out.

Q. What street is that? A. As I know it, it is Marcy Avenue.

Q. Now, this is Communipaw Avenue. A. If this is north, this is the way they came out.

Q. They came southerly on Marcy Avenue as you know it? A. Northerly.

Q. Northerly? A. On Marcy Avenue.

Q. Where were they when you saw them on this map? A. They were right on Communipaw Avenue almost. It is only a short little street, it is not the length of the court room.

Q. And you say they were on that little street, indicating Mallory Avenue as it comes into Communipaw? You say that you were there? A. Yes, sir.

Q. Coming this way? A. Coming to Communipaw, yes, sir.

Q. And you understand that to be northerly direction or southerly direction? A. Northerly direction according to the way the car was faced at the time.

Q. And it came toward Communipaw Avenue, it was going in a northerly direction? A. It came from a southerly street, it has to go north.

Q. All right. With reference to the county park which way was it going, going from the county park or toward the county park? A. That is below the county park.

Q. But was the car going toward the county park or coming from the county park? A. It was going towards the county park.

Q. Then that is a northerly direction? A. Yes, sir.

Q. Was it dark at the time? A. Not around there, it is pretty light there.

Q. Was it nightfall? A. Night time, yes, sir.

Q. Well, when you first saw the car coming, how near had it approached to you? A. Oh, about maybe fifty feet, somewhere around that.

Q. Haven't you any estimate at all? A. I could not judge distance closely.

Q. How near were you to the car—what was the nearest point you were to the car all during the time you have spoken of? A. Well, you mean before we pursued the car?

Q. Yes. A. I could not exactly say what distance it was. Whatever distance Communipaw Avenue is, well about 15 or 20 feet off Communipaw Avenue along this little street.

Q. Well, you were near enough to recognize the occupants of this car as colored men? A. Yes, sir.

Q. Were you near enough to be able to identify any of them? A. Well, not positively at that time.

Q. How were the men with reference to the seats? How were they located? Were there two in the rear or two in the front? A. Two in the rear and one in the front.

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

Q. How was the man in the front dressed, did you notice? A. Well, it was a kind of dark brown clothes; it appeared that way anyhow, and cap.

Q. And cap? A. Yes.

Q. Now, officer, you say you were not able to identify the features and yet you are able to tell the color of their clothes, is that right? A. Well, you can tell the color of a person's clothes when it is dark, as well as skin.

Q. I am asking you now—you say you were unable to identify the features of any of the occupants of the car; yet you are able to tell us the color of their clothes? A. I could identify them as colored men, but not positively— —

Q. Could you tell the color of their clothes? A. I said the clothes looked dark brown.

Q. Did the driver have a hat on or was he without a hat? A. That I couldn't positively swear to at the time.

Q. I want you to step down and show us on that map—you say it was pretty well lighted at this point where this car came toward—now, show us on that map where the lights are. A. I couldn't say where the lights are located; but there are several lights along there.

Q. Well, can you point out on the map where they are?

Mr. Drewen: At which point?

Q. At the point where you first saw that car coming towards you? A. This is supposed to be the place. Now, below there where the Public Service car tracks run in the centre of the street, where no automobiles go, there is a cluster of lights there and there is lights on the corner.

Q. A cluster of lights where? A. At the highway and Communipaw.

Q. Well, that is a block away from where you saw those men; isn't it? A. I know; but there is other lights along the road—Communipaw.

Q. How many lights are there where you saw those men? Is there any indication on the map as to the number of lights? A. I couldn't say.

Q. You cannot say? A. No, sir.

Mr. Tumulty: That is all.

REDIRECT EXAMINATION by Mr. Drewen:

Q. Can you tell us the rate of speed at which you were being driven in the Ford police patrol car at the time you were chasing the other automobile to Jacobus Avenue? A. No, sir, I could not.

Q. Can't you tell us that? A. I know we were going pretty fast.

Q. You can't tell us what rate? A. No, sir.

Q. And at any time while you were out there at Jacobus Avenue can you tell us whether or not the police searchlight system arrived there? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Was that before or after the colored man, Mitchell, was turned over to you by the other policeman? A. After.

Q. After? A. Yes, sir.

Q. How long after? A. Well, maybe about half an hour.

Q. I see. And did other policemen arrive when the searchlight apparatus and the police department was brought there? A. Yes, sir.

Q. Where from did those policemen come, do you know? A. From Jersey City and from Kearny, Hudson County.

Q. From Kearny? A. Yes, sir.

Q. Do you know whether or not it was as a result of information received by the police department that this apparatus was brought there? and the extra policemen came? A. Yes, sir.

Mr. Tumulty: I object to that as being immaterial and certainly not within this witness' knowledge.

Mr. Drewen: I asked the witness if he knew. He said yes.

Mr. Tumulty: I would like to know how he knows.

Mr. Drewen: Well, you ask him. Would you really want to find out how he knows?

Mr. Tumulty: No; I will withdraw that.

Mr. Drewen: That is all, officer.

(Witness excused.)

JOHN A. WALDRON, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Officer, how long have you been a police officer of the Jersey City Police Department? A. It will be eight years in April.

Q. And on the night of the twelfth of December, 1930, you were in company with Sergeant Varley, the last witness, were you not? A. Yes, sir.

Q. And at that time you were doing duty in a police patrol car? A. Yes, sir.

Q. That is a Ford car, is it? A. A Ford roadster.

Q. Will you kindly state whether or not you were in company with the last witness, Sergeant Varley, and gave chase to an automobile bearing a New York license along Communipaw Avenue, towards Jacobus Avenue in Kearney? A. Yes, sir.

Q. About what time, Officer Varley, did that chase start? A. Well, about nine fifteen.

Q. About what time, Officer Waldron, did that chase start? A. Well, about 9:15.

Q. At night? A. At night.

Q. And from what place did it start? A. We were on the south side of Communipaw Avenue opposite Marcy Avenue—we were on the north side of Communipaw and Marcy is on the south side.

Q. And you were standing near your car—you were standing at the time, weren't you? A. Yes.

Q. When you were standing with your Ford patrol car on the north side of Commmunipaw Avenue opposite Marcy, where was the car at that time to which you gave pursuit? A. Coming through Marcy Avenue.

Q. Coming toward you? A. Coming toward us, yes.

Q. And did anything occur as this car approached the car in which you and the Sergeant were sitting? A. Well, the car came through. It had no lights and was coming at a pretty high rate of speed. That road is an uncut road there, it is just bumps—Marcy Avenue—and he bumped into Communipaw, and with that Patrolman Holden stepped out to stop him, and he cut in front of him and just cut in front of our car.

Q. Who is Patrolman Holden? A. A motorcycle policeman—county policeman.

Q. What do you say Patrolman Holden did as this car was coming out of Marcy Avenue toward you? A. They were standing right alongside of their car, asking us about a signal—Colgan and McSpirit.

Q. It was Colgan who stopped this car? A. He stepped out, and as he stepped out the car came right at him as though to cut him down. He stepped back and the car came right at us.

Q. Which direction did the car proceed? A. East on Communipaw. It turned from north to west on Communipaw.

Q.Toward Kearny or toward Communipaw? A. Toward Kearny.

Q. That is west? A. West.

Q. Now, when this car had passed you after Officer Holden had tried to stop it, did you then give it chase in your patrol car? A. Yes.

Q. How far from you had the car gotten that had come out of Marcy Avenue when you started after it in your car? A. Oh, about fifty feet.

Q. You did not pursue it, did you? A. Yes.

Q. To what place? A. To Jacobus Avenue, in Kearny.

Q. Then what did you see happen to the car that you were chasing? A. As we were coming out across the highway, after we had passed over the first stretch, we started shooting at the car and one of the shots went through the back windshield.

Q. The back windshield? A. The back window, and through the front windshield, past the driver's head, and the driver started swaying in his seat, and the car started careening to the right and then to the left, and then went over the curb and over the ditch and through the lots and passed two signboards into Jacobus Avenue.

Q. How long was it before the car got into Jacobus Avenue that you fired the shot that you

say caused the car to careen? A. It was about, I should judge, about 400 feet this side of Jacobus Avenue.

Q. Before you fired the shot that had the effect you have just described, had you fired any other shot? A. Yes.

Q. How many? A. Four besides that one.

Q. Do you know whether or not any of those took effect? A. The first two we fired we were right close to them and they were fired in the air. The last three shots I fired at the car.

Q. When you fired two shots in the car you say you were close to the car? A. Yes.

Q. Was there any change in the speed of the car you were chasing immediately after you fired those two shots in the air? A. Yes.

Q. What was the change? A. They tried to cut us off and run us into the car tracks.

Mr. Tumulty: I object as stating a conclusion.

The Court: Objection sustained .

Q. What was the conduct of the car—never mind telling us what they tried to do; tell us what the car did do. A. The car swerved to the left, cutting me off, and I had to swerve sharply to the right to come around behind it, then they stopped and crossed and started by me again.

Q. That was after you fired the two shots in the air? A. After I fired the two shots in the air.

Q. So that there was an increase in the speed after you fired the two shots? A. Yes.

Q. How far did this car go before you fired another shot? A. Well, about—well, I can show you on the map.

Q. Well, do, please, will you? I show you a sketch in evidence of the length of Communipaw Avenue from Westside Avenue on the east to Jacobus Avenue on the west and ask you if you can show it? A. This represents the bridge?

Q. Yes. A. Here is about where I fired the two shots.

Q. You fired two shots in the air on Communipaw Avenue? A. I did.

Q. At the place where I indicate with a lead pencil with an "X"—right? A. Just as we got to the middle of the bridge I started to shoot at the car.

Q. These two shots were fired in the air? A. Yes, sir.

Q. And when you got to the middle of the bridge you fired another shot at the car? A. Fired the one shot at the car and that hit right in the center of the back of the car but it did not go through.

Q. It did not go through the glass? A. It was in the tin.

Q. All right. A. Then there was another shot fired about here.

Q. Yes? A. And there was a shot fired about here.

Q. I will put a hole in the map where you say the shots were fired. Now you say the last shot was fired at the place about where I have indicated with a hole in the map? A. Yes, sir.

Q. Which of these shots was it that caused the car to careen and swerve from one side of the road to the other?

Mr. Tumulty: I object, calling for a conclusion on the part of the witness.

Mr. Drewen: It is in evidence. The last one. I will withdraw the question.

Q. Which one of these shots was it after which you say that the car swerved from one side to the other? A. The last one.

Q. At what rate of speed were the two cars going, your car and the one that was being chased?

Mr. Tumulty: I object. The witness is not qualified.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

(SEAL) ROBERT V. KINKEAD, *Judge.*)

Q. Along Communipaw Avenue before you got to Jacobus Avenue? A. About sixty-five miles an hour.

Q. When you saw this car, the New York car we will call it, the one you were chasing, when you saw this car turn into Jacobus Avenue did you see when it came to a stop? A. It did not turn into Jacobus Avenue. It turned down to the lots and over the curb and over a ditch. There is a sharp drop in the lot there.

Q. That is near Jacobus Avenue, is it? A. It is about 300 feet this side of Jacobus when it started through.

Q. How far beyond the curb, if you can tell, did the New York car go before it came to a stop? A. Stopped about fifteen feet east of Jacobus Avenue.

Q. Did you see it when it came to a stop? A. Yes, sir.

Q. When it came to a stop fifteen feet east of Jacobus Avenue were you and Sergeant Varley still in the car? A. No, sir.

Q. Where were you and where was he? A. Sergeant Varley was dropped off where the car started through the lots to pursue on foot and I cut around to Jacobus Avenue to head them off.

Q. I see. Now, did you see Varley again? A. Yes, sir.

Q. After you cut around on Jacobus Avenue? A. Yes, sir.

Q. And you also saw the New York car, did you? A. Yes, sir.

Q. Did you examine the New York car? A. No, I didn't.

Q. Do you know whether or not Varley examined the New York car?

Mr. Tumulty: I object to that, your Honor.

Q. Do you know whether or not he examined the New York car?

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
Judge.)

A. Yes, sir, he examined it.

Q. Where were you when he examined it? How far from the car were you? A. Well, he examined the car, he went into the car, he went through the car. I said, "You see what is in there," and I went up to the other end because there was freight cars there.

Q. All right. Now, you tell us what you saw after the New York car came to a stop near Jacobus Avenue, what you saw and what you did? A. When the New York car came to a stop three men ran out of it.

Q. Were they white men or colored men, could you tell? A. Colored men.

Q. They ran out of it? A. Yes, sir, two of them jumped toward the freight cars. There was a line of freight cars there.

Q. On which side of Jacobus Avenue was the line of freight cars? A. The west side

Q. Go ahead. A. Well, one went through the gate of the Shupe Terminal and the big one went through the gate.

Q. The big one? A. The big man.

Q. The taller of the three colored men? A. Yes, sir, the taller of the three.

Q. Did the two men go in one direction and the third man go in another direction, or did all three go in one direction? A. One went north.

Q. Yes. A. And cut around the corner.

Q. Yes. A. And about the third freight car one went under the bumper and one went over the coupling.

Q. So that the three men all went in the same direction toward the freight cars? A. Yes, sir, they all went the same way.

Q. All right, go ahead. A. They crossed the road.

Q. When you saw them what did you do? A. Well, when they went through there, Sergeant Varley had just come through the lots and I told him what happened and I said "I will go on the other end of the cars and you can stay on this end." So I went on the far end of the freight cars. There is a gate at the crossing.

Q. Yes. A. And I started working my way along the cars, and with that one of the fellows went over the fence.

Q. One of which fellows? A. One of the colored men. There was a big wire fence there. He had climbed up to the top of the freight car and jumped over the fence.

Q. Climbed to the top of the freight car and jumped over the fence? A. Jumped over the wire fence.

Q. How many men did you see at that time? A. Just one; just one.

Q. At the time you saw that one going over the fence, how far from him were you? A. Oh, about from here to the end of the room.

Q. I see. Go ahead. A. And then I went over around the fence and pursued him down in around the power house. There is a power house down there.

Q. Yes. A. Then when I got hold of him I asked him what he was doing there.

Mr. Tumulty: Now, except——

Mr. Drewen: I won't press it.

Q. Well, did you arrest the man you found there? A. I arrested him; yes, sir.

Q. White man or colored man? A. Colored man.

Q. Do you know his name? A. Mitchell.

Q. Where did you bring him? A. I brought him back into Shupe Terminal office.

Q. Who was there at the time you got there? A. Sergeant Varley.

Q. Anybody else? A. No; nobody then.

Q. Did you make—where did you go then? A.

Varley? A. I turned the prisoner over to Sergeant Varley.

Q. Did you make—where did you got then? A. I went back in amongst the freight cars.

Q. Did you make any other arrests? A. No, sir.

Q. Did you see any other colored men in amongst the freight cars that night? A. No, sir.

Q. How long after you returned there to make a further search among the freight cars, after you had turned Mitchell over to Sergeant Varley, were you there in this neighborhood of "Waldron Avenue" with the freight cars—— A. How long I was there in the neighborhood altogether?

Q. Yes. A. About two hours.

Q. You were there searching for some other persons? A. Yes, sir. We went over into the Western Electric yard.

Q. And you didn't make any arrest yourself? A. Only Mitchell.

Q. Did you see any other arrests made by any other policeman? A. There was a Kearney policeman got one man under a car.

Q. Well were you present when that happened? A. I was there when he brought him back. I didn't see him get him.

Q. I show you photograph S4 in evidence and ask you if this is a representation of the line of freight cars that you have mentioned in your testimony? A. Yes, sir.

Q. That street running along there in the picture is Lincoln Highway, is it not? A. No, that is Jacobus Avenue.

Q. That is Jacobus Avenue? A. This is where the Tunnel highway, that the new super-highway goes through.

Q. That is Jacobus Avenue looking toward Lincoln Highway? A. Yes, sir.

Q. Jacobus Avenue looking toward Lincoln Highway. Now, I show you Officer, photograph S6 in evidence which has been described as a view on the north side of Lincoln Highway looking east —looking toward Jacobus Avenue, and ask you if you can tell by reference to that picture about where it was that the New York car turned off Communipaw Avenue toward Jacobus? A. These two automobiles block it. It is about 25 foot the other side of this post.

Q. All right. A. I went through these signboards.

Q. In other words, you say the place is shown on the left of the picture about 25 feet beyond the lamppost shown; which is in front of the automobiles? A. Yes, sir.

Q. On Exhibit S6? A. Yes, sir.

Q. Correct? A. Yes, sir.

Q. And in what direction did the New York car go, toward or from the signboard shown in the picture? A. This is two lines of signboards.

Q. Yes. A. It stopped in between these two signboards. There is a space about 12 or 15 foot in between there.

Q. At the point where I mark with an X? A. Yes, sir.

Q. Now, there is no road or driveway, is there, between the point where the car turned off Communipaw Avenue and the space between the two signboards which are shown in the picture? A. No, sir. That is a sort of filled in ground down there.

Q. Filled in ground.

Mr. Drewen: Cross examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. You first saw this car coming in a southerly direction, was it, from Marcy Avenue toward Communipaw? A. North.

Q. Northerly. How near had it arrived to where you were standing? A. It comes within about five feet of us, of where we were.

Q. Five feet? A. At one time, where it cut into——

Q. It came towards you; it came within five feet of you? A. At one time; yes, sir.

Q. At one time. Who was with you then? A. Seargeant Varley.

Q. It wasn't fifty feet away from Sergeant Varley at all, was it? A. Well, Sergeant Varley was sitting on my right hand side. See?

Q. Yes. A. I am sitting on the left hand side and the car come from the left, come and cut in, come in on a sharp cut-in and then sped away.

Q. So that as the car came from Marcy Avenue on to Communipaw Avenue and as it got into Communipaw Avenue in a westerly direction, it came within five feet of your car? A. One place, yes, sir.

Q. At one place. It was coming toward you? A. It just came and cut, and cut away.

Q. As it came within five feet of you it was coming toward you? A. Yes, sir.

Q. And you had a view of the men in the car? A. Yes, sir.

Q. It was dark then, wasn't it? A. Well, it ain't dark there. There is all flood lights from them gasoline stations.

Q. Did you see the features of any of the men? A. Yes, sir.

Q. Were you able to identify them? A. Yes.

Q. And all that while Sergeant Varley was sitting alongside of you? A. Yes.

Q. You heard him testify that the car had not come within 50 feet of him? A. Sergeant Varley was sitting on the right.

Q. I understand he was sitting alongside of you, and my question now is that you heard him testify that the car these men were in had not come within 50 feet of him—you heard him testify that? A. I heard him testify we were 50 feet behind, that is when we were chasing him.

Q. Now, officer, I am asking if you did not hear Sergeant Varley testify that as that car came towards Communipaw Avenue, that it was within 50 feet of him. Now did you hear him testify to that or not?

Mr. Drewen: I do not think it is competent whether this witness heard somebody else say fifty or seventy-five feet or what he heard.

The Court: I think that is a matter of argument.

Mr. Tumulty: I think, your Honor, it is proper cross examination.

The Court: What difference would it make? Suppose he answered that he did, what difference would it make? You can say to him, if you want to contradict him, you can say, "in your judgment then if Sergeant Varley testified that the closest this car came to the car you were in was fifty feet, was he wrong?"

Mr. Tumulty: That is all I want.

Q. Was he correct when he swore this morning that the car came within 50 feet of him, or was it an error?

Mr. Drewen: That is objected to. One witness cannot characterize another witess' testimony.

Mr. Tumulty: I am trying to conform to your Honor's question.

The Court: I think I know what you want to prove.

By the Court:

Q. If Sergeant Varley testified that the closest this car came to your car was 50 feet—if he so testified, in your judgment he was incorrect, is that true? A. Yes.

By Mr. Tumulty:

Q. And all the while that this car was coming towards you and Sergeant Varley, he sat alongside of you? A. Yes.

Q. You say there were flood lights there? A. Yes.

Q. Did you see this gun that night? A. Yes.

Q. Who showed it to you? A. Sergeant Varley.

Q. Did he hand it to you? A. I had it in my hand.

Q. Had he put any identifications on it before he gave it to you, do you know? A. He had it wrapped in a paper.

Q. You did not put any marks on it at that time, did you? A. No, sir.

Q. Did Sergeant Varley tell you he had put identifying marks on it? A. He did not put it then, because it was only about a minute after he had found it. He said he was going to put them on.

Q. Do you know when he did put them on? A. No, sir.

Q. Did you see the gun afterwards that night? A. Yes.

Q. Where? A. At the 7th Precinct station.

Q. Isn't it a fact the identifying marks were put on it at the 7th Precinct station? A. I don't know. I was not there.

Q. Did you put any marks on it at all? A. No, sir.

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

Q. That is all.

REDIRECT EXAMINATION by Mr. Drewen:

Q. When this car coming out Marcy Avenue approached, you say within five feet of where your car was standing, could you see the features of the driver of the New York car that came out of Marcy Avenue? A. Yes.

Q. Do you see the driver in court? A. Yes.

Q. Where? A. Sitting right over there.

Q. Go and point him out.

(The witness puts his hand on the shoulder of the defendant.)

RECROSS EXAMINATION by Mr. Tumulty:

Q. How was this defendant dressed that night? A. He had on just a suit, he did not have on an overcoat; and he had on a light fawn colored cap.

Q. He had a cap on? A. Yes.

Q. What was the color of his suit? A. It was dark, I cannot say just exactly.

Q. Do you know if it was gray or brown or black? A. I know after he was brought in what the color was, but I could not testify to it in the car.

Q. Do you know as you saw it first what color it was? A. It was a dark color.

Q. Were you able to tell the color? A. No, sir.

Q. So that you were within five feet of this defendant and you were unable to tell the color and Sergeant Varley was 50 feet away and he was able to distinguish the color, is that true? A. He was sitting on the left of his car. The front of his car is about five feet more from one end of the car—it is more than five feet. But the two cars approached approximately five feet to one another.

Q. You heard Sergeant Varley say he saw the three men? A. He saw them.

Q. And you heard him say he was able to tell the color of this man's clothing? A. It was dark.

Q. But you heard him say he was able to tell the color. Do you know of any reason why you could not tell the color, and you were only five feet away? A. I was not looking at the color of his clothes.

Q. But you did notice he had a cap? A. A light fawn colored cap.

Q. Did you notice the other men in the car? A. Yes.

Q. Would you be able to identify them? A. Yes, one of them also had a light cap on.

Q. Now, officer, at Marcy Avenue and Communipaw you say there are flood lights there? A. Yes, from the gasoline stations.

Q. How near Marcy Avenue is the gasoline station? A. The standard is right on the corner, and the Texas is right on the corner.

Q. Isn't the Standard in a westerly direction from Marcy Avenue? A. This is on the west side —Marcy Avenue is—it is not a cut street; you come down Roosevelt and come through, and all those lights from the Standard reflect on to there. This man came practically through the Standard station.

Q. And where were you at the time? A. On the north side of the street.

Q. Communipaw Avenue? A. Yes, Communipaw Avenue.

Q. And where were you with reference to Marcy Avenue? A. Directly opposite.

Q. How wide is that street there? A. About 30 or 40 feet, I should judge.

Q. Do you know how wide Communipaw Avenue is? A. About forty feet, I should judge.

Mr. Tumulty: That is all.

(Witness excused.)

WILLIAM JOHN CARDUCCI, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a member of the Jersey City Police Department? A. Yes, sir.

Q. And have been for how long? A. Three years and four months.

Q. Officer, on the night of December 12, 1930, were you doing police duty on the corner of West Side Avenue and Communipaw Avenue, Jersey City? A. Yes, sir.

Q. At that time or during that evening at any time did you see Officer Ruark? A. Yes, sir.

Q. And where were you doing duty, to be exact, on one of the corners or in the center of the street, or patrolling one of the intersecting streets? A. In a traffic booth.

Q. Situated where? A. On the northwest corner of Communipaw and West Side.

Q. And do you recall during the evening of the 12th, the night I have mentioned, seeing an automobile containing three colored men cross that intersection? A. Yes, sir.

Q. About what time was that, officer? A. About nine ten P. M.

Q. Can you tell what license number the car bore? A. Well, it bore a New York license number, but I could not identify it.

Q. You do not know the number? A. No, sir.

Q. What was the traffic light showing when this car crossed? A. At the time the car was going

south on West Side Avenue—at the time the car turned west on Communipaw Avenue it was red.

Q. It was red against a southerly traffic? A. Yes, sir.

Q. Now at the time the car turned as you have just described, do you know where Officer Ruark was? A. Yes, sir.

Q. Where was he? A. He was on the corner, southeast corner of Communipaw Avenue and West Side.

Q. And you were on which corner? A. The northwest corner.

Q. He was on the corner directly opposite you? A. Yes, sir.

Q. Did you see where he went after this car turned west on Communipaw Avenue from West Side? A. Where who went?

Q. Officer Ruark? A. Yes, sir.

Q. Where? A. He jumped on his motorcycle and followed in pursuit after the New York car.

Q. How long after this car had passed or how long after this car had turned from West Side Avenue into Communipaw Avenue was it that you saw Officer Ruark jump on his motorcycle and pursue the car? A. Just a matter of a minute.

Q. You did not see where Ruark came to a stop, did you, once he gave chase? A. No, sir.

Q. When did you next see Ruark after that? A. I didn't see him at all after that.

Q. Did you see him dead or alive after that? A. No, sir.

Q. Now, at any time after you saw Mr. Ruark start out on a chase of this New York, did you

leave your traffic booth and go west on Communipaw Avenue? A. Yes, sir.

Q. How long after? A. About ten minutes after.

Q. Where did you go to? A. I went down to Mallory and Roosevelt Avenue.

Q. What did you see there? A. I noticed a motorcycle standing against the curb and quite a number of police officers.

Q. But you did not see Ruark there? A. No, sir, I did not.

Q. Did any policeman summon you to Mallory Avenue and Communipaw Avenue? A. Yes, sir.

Q. Who was it? A. Patrolman Kelly.

Q. And it was as a result of Patrolman Kelly's summons and what he said to you that you went from the traffic booth to Mallory and Communipaw? A. Well, he didn't exactly summon me. From what he called out.

Q. Well, from what he called out you went down to Mallory and Communipaw? A. Yes, sir.

Q. Mallory and Communipaw is west of West Side Avenue? A. That is right.

Mr. Drewen: Cross examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. Where was the motorcycle standing at Mallory and Roosevelt? A. It was standing on the north side of Roosevelt Avenue, facing west.

Q. Roosevelt Avenue runs in what direction? A. West and east.

Q. And Mallory runs north and south? A. North and south.

Q. And you say the motorcycle was standing where? A. On the north side of Roosevelt Avenue, facing west.

Q. How far from Mallory? A. Oh, I should judge about 50 feet or more.

Q. And you are familiar with that locality there, are you? A. Well I am, yes.

Q. And it was ten minutes after you saw Officer Ruark go after the New York car that you went to Mallory and Roosevelt Avenue? A. I didn't get your question.

Q. I say it was about ten minutes after you saw Officer Ruark following the New York car that you went to Mallory and Roosevelt Avenues? A. Yes, sir.

Q. Now what was the situation at that point with reference to the lighting? Was there a light near Mallory and Roosevelt? A. There is one on the northeast corner, I believe, and there is a gasoline station on the northwest corner.

Q. And it was from those two corners that this motorcycle was back on Roosevelt Avenue from the intersection fifty feet? A. Yes, sir.

Q. It was night time, was it? A. Yes, sir.

Q. Was the motorcycle east or west of Mallory Avenue? A. It was on Roosevelt Avenue.

Q. On Roosevelt Avenue, yes, but was it east or west of Mallory? A. It was west of Mallory.

Q. When you first saw this New York car, it turned on to Communipaw Avenue from West Side? A. Yes, sir.

Q. In which direction was it running on West Side? A. It was going south.

Q. And as it made the turn was it going fast? A. Well, when it made the turn at the corner, of course it was not going so very fast, but just as I stood up to pull my whistle out, the whistle stuck in between the buttons of the coat, Ruark had jumped on his motorcycle at the time and followed the car and I noticed the car was going at a little rate of speed at the time.

Q. Well, Officer Ruark—what was his position as the car came toward Communipaw Avenue? A. He was on the southeast corner facing north on Westside Avenue.

Q. He was on the seoutheast corner? A. Southeast corner facing north.

Q. Did the car have its lights on? A. I just can't recall that.

Q. You didn't identify the men, did you? A. I identified the one that was driving the car.

Q. And where was your booth? A. My booth was on the northwest corner.

Q. And when you went to blow your whistle where were the men on the car? A. Sitting in the car; there were two men sitting in the front and one in the back.

Q. How near did they pass to you? A. Very close to the corner. I should judge about——

Q. Are you sure of your position now, Officer? A. Northwest corner is the booth; yes, sir.

Q. Well, what did you say before with refer-

ence to how many men were in the front seat? A. There were two men.

Q.Do you remember what you testified to, as to whether there were two or one man in the front seat? A. Yes, sir.

Q. What did you say? A. There were two men in the front seat.

Q. Now, you say there were two men on the front seat? A. Yes, sir.

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

Mr. Tumulty: That is all.

REDIRECT EXAMINATION by Mr. Drewen:

Q. You are sure at the time you saw the car there were two men in the front seat? A. Yes, sir.

Q. And one man in the back? A. Yes, sir.

Q. No mistake about that; is there? A. No mistake.

Q. Now, when this car turned from Westside into Communipaw it turned at the same corner at which your booth was erected; correct? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And did you see the driver of the car sufficiently then to be able to identify him? A. Yes, sir.

Q. Can you pick him out? A. Yes, sir.

Q. Will you do so? A. (The witness leaves the witness stand and places his hand upon the shoulder of the defendant, Raymond George.)

RECROSS EXAMINATION by Mr. Tumulty:

Q. How was he dressed? A. He had a cap on; a light cap.

Q. Were you able to distinguish the color of his suit at that time? A. Well, I didn't pay much attention to the color of his suit? I can't say what color it was.

Q. Don't you know whether it was brown, black, or gray? A. It was a dark suit.

Q. It was a dark suit. How close did he pass to you when he turned on to Communipw Avenue? A. Around the corner, he turned about six foot away from the corner.

Q. About six foot? A. Six or seven foot.

The Court: Why were you going to blow your whistle?

The Witness: He passed the light at the corner.

The Court: He passed the red light?

The Witness: Yes, sir.

Q. Now, Officer, you say you identified this man as a passenger in the car? A. The man who was driving the car.

Q. You saw him sufficiently as to be able to identify him this morning? A. Yes, sir.

Q. Now, when did you see him after he passed Communipaw Avenue? A. When did I see him after?

Q. Yes. A. Seventh Street police station.

Q. When? A. Some time in the morning, the next morning, 13th.

Q. Next morning. And was he pointed out to you as the man who had done the shooting? A. No, sir.

Q. Didn't you know that there had been a shooting? A. Of course I did.

Q. And didn't you know that three men—three colored men had been arrested for the shooting? A. I knew someone was picked up at the time, but not at the Highway. I was called out to leave a report on what occurred the night of the 12th and when I left the report at the Seventh Street police station they asked me if I could go in and pick out the man who was driving the car, see if I knew the man who was driving the car. I said yes, I did. I went in and I picked the man out. There were three colored men in there—there were four.

Q. What time of the day did you see them? A. Some time in the morning; I just can't recall.

Q. Give us some idea. Was it around eight or nine o'clock? A. Well, in the morning around five o'clock, I think.

Q. You mean five o'clock in the morning? A. Four or five o'clock.

Q. Are you a member of the Seventh Street police station? A. No, sir.

Q. Why were you making your report there? A. I didn't make it there. They called me there.

Q. Who called you? A. Why, I believe the officer in charge there, the inspector——

Q. Who is the officer in charge? A. Inspector Wilson.

Q. Didn't he tell you that he had the three colored men who were arrested? A. No, sir.

Q. Didn't he tell you that the three men who had fired and been alleged to have shot Officer Ruark were present at the police station? A. No, sir.

Q. And when you went to the police station and they told you to go in and identify one of the men as the man who drove the car didn't you know at that time that those were the three men who had been arrested by the police? A. When I picked them out then I knew they were the men the police wanted.

Q. When you went in to pick them out didn't you know they were the men who had been arrested under this charge? A. No, sir.

Q. Do you mean to tell us that you went to a police station—you were called to a police station—you were sent in to identify one of the three men, and you did not know what they were charged with? A. I was not told to identify, I was to leave a report on what occurred.

Q. Had you made a report before this? A. Yes.

Q. To whom had you made your report? A. To my superior.

Q. Who was that? A. The station, the superior in charge of the precinct.

Q. Who is the superior? A. Captain Cusack.

Q. You made the report, and that report that you made—is the report here? A. I have a copy of it.

Q. Let me have it, please? A. No, I haven't got it.

Q. Where is it? A. It must be in my hat.

Q. Who has the original report? A. I believe Detective Gumbrecht or Marl.

Q. When had you made that report? A. On the morning of the 13th of December.

Q. What time? A. A little after four o'clock, I believe.

Q. Was it before or after you had been called to go to the Seventh Precinct police station? A. After.

Q. So you had not made a report when they called you to go to the Seventh Precinct police station? A. No, sir.

Q. And they did not know that you had seen these three men pass, did they? A. No, sir.

Q. When Captain Cusack called you and told you to go didn't he tell you these three men had been arrested? A. No, sir.

Q. And you did not know it? A. No, sir.

Q. Were you on duty all night? A. Yes—till twelve o'clock.

Q. You were on duty all night, and Officer Ruark was right adjoining you? A. Yes.

Q. You want us to believe you were on duty all night and you did not know these three men had been arrested? A. I was not on duty all night; I was in bed when I was called.

Q. How long were you on duty after this occurrence? A. Twelve o'clock.

Q. And up until twelve o'clock didn't you know these three men had been arrested? A. No, sir.

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

Q. To whom did you report at the Seventh Precinct police station? A. Inspector Wilson.

Q. And where were the three men then? A. They were in the side room there somewhere.

Q. And you knew then, didn't you, that these three men had already made statements? A. No, sir, I did not.

Mr. Drewen: Speak up, Officer.

A. No, sir.

Q. Didn't Wilson tell you that they had been arrested and had already made statements? A. No, sir.

Q. So that when you went in to view these three men and identify the men you saw going past your booth you knew nothing about what they were doing there at all? A. At the time, no, sir.

(Witness excused.)

ARTHUR P. KELLY, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a member of the Jersey City Police Department? A. Yes.

Q. And have been for how long? A. Sixteen years.

Q. On the night of December 12, 1930, were you doing duty in the neighborhood of Mallory and Communipaw Avenues, Jersey City? A. Yes, about two and one-half blocks south.

Q. At any time that night about nine or nine-fourteen did you see Officer Ruark? A. Yes.

Q. You knew Ruark, did you not? A. Yes.

Q. Where did you see him? A. He was in the arms of two boys.

Q. Where, at what place? A. On Roosevelt Avenue, west of Mallory.

Q. From what point had you come to where you saw Officer Ruark in the arms of two boys? A. I came south, two blocks; that is south, near Lexington Avenue.

Q. Along Mallory Avenue? A. Yes.

Q. Had anything happened to attract your attention to the point at which you say you discovered Ruark in the arms of two boys? A. Yes.

Q. What? A. There were eight shots I believe fired.

Q. Eight shots fired? A. Yes.

Q. And you heard them? A. Yes.

Q. Where were you when you heard the eight shots fired? A. Near Lexington Avenue on Mallory.

Q. Were these shots fired in rapid succession or not? A. Two was fired first.

Q. Yes. A. And then six in rapid succession.

Q. How long, can you say, after the two shots were fired were the six shots fired in rapid succession? A. Maybe about two or three seconds.

Q. So you walked directly from Lexington Avenue where you were, to Mallory? A. To Roosevelt.

Q. How long did it take you to get there? A. Maybe half a minute.

Q. Will you step down to this map, Officer? I call your attention to the blueprint map in evidence and to detail sketch number 3, showing Roosevelt Avenue and Mallory Avenue. Roosevelt Avenue runs in which directino? A. East and west.

Q. Mallory Avenue runs north and south? A. Yes, sir.

Q. Now, you say it was on the corner of the street you saw Officer Ruark in the arms of the boys? A. Roosevelt Avenue.

Q. And what other street? A. West of Mallory.

Q. Roosevelt Avenue west of Mallory? A. Yes, sir.

Q. On which side of the street? A. About the center of the street.

Q. About the middle of the street? A. Yes, sir.

Q. Did you see where his motorcycle was at the time? A. No, I didn't notice.

Q. Who else was present when you saw Ruark in the middle of the street? A. The two boys.

Q. Any one else? A. Oh, there were several people around.

Q. The two boys had hold of Ruark? A. Yes, sir.

Q. Now, take the stand. Was Ruark lying down or standing up? A. Why, he was half ways down.

Q. Just indicate to these gentlemen how he was. A. He was lying in the arms of the two boys, young fellows, lying back like that.

Q. The boys stood behind him, did they? A. Yes, sir, each one holding him up.

Q. You did not see where his motorcycle was at the time? A. No, I didn't notice.

Q. Did you speak with Ruark? A. Yes, sir.

Q. Did he speak with you? A. He answered me.

Q. Could you see what his condition was at the time? A. Yes, sir. I didn't know what it was——

Q. I didn't ask you that. Could you see what his condition was? A. Oh, the man was about to pass away.

Q. But could you tell from what cause? A. Well, from hearing the shooting.

Q. Did you see any blood? A. No. There was a hole in his coat.

Q. You saw a hole in his coat? A. Yes, sir.

Q. Whereabouts? A. Under his shield.

Q. How long were you there speaking with Ruark before he was taken away from that place? A. Possibly a half minute.

Q. And was he taken away then? A. Yes, sir, I took him away.

Q. How did you get him away? A. In an automobile there.

Q. You summoned an automobile? A. Yes, sir.

Q. Can you please give us the exact time at which you say you heard the shots fired and you went to Ruark? A. About nine-twelve.

Q. Who was with you in the automobile that took the policeman away from there? A. Two young boys.

Q. Did one of these boys drive the car? A. No.

Q. Who drove the car? A. There was a colored fellow. It was a Federal Ship Company's car. He was bringing it back to the garage.

Q. Where did you bring the policeman? A. To the Medical Center.

Q. Then you left, did you? A. No, I stayed there.

Q. How long did you stay there after Ruark was brought to the hospital? A. Possibly a half hour.

Q. You were not with him when he died, were you? A. No, sir.

Q. Now, after you left the scene where you saw Policeman Ruark in the condition you described

did you then go east again on Communipaw Avenue? A. No, sir.

Q. Did you see Officer Carducci, who was doing traffic duty on the corner? A. No, sir.

Q. Did you call to any one to deliver a message to Carducci? A. Yes, sir.

Q. To whom did you call? A. Leo O'Connell, Patrolman O'Connell.

Q. He is a policeman, isn't he? A. Yes, sir.

Q. Where was Patrolman O'Connell when you gave him the message to deliver to Carducci? A. Standing in the center of the street on Communipaw and West Side.

Q. And where were you at the time you gave that message? A. I was on the side of an automobile. Ruark was in the car.

Q. You were on the running-board of the car in which Ruark was? A. Yes, sir, blowing the whistle so that I could get the right-of-way to the Medical Center.

Q. You say that after you left the place where you had seen Ruark lying in the street, he was placed in an automobile and you stood on the running-board? A. Yes, sir.

Q. And on the running-board you proceeded east on Communipaw Avenue? A. Roosevelt Avenue.

Q. Roosevelt Avenue? A. Yes.

Q. Did you go to Communipaw Avenue? A. Yes, sir.

Q. And then cross to the West Side Avenue? A. West Side, Communipaw, Communipaw to the Boulevard.

Q. As you were crossing West Side Avenue, was it then that you gave this message to Patrolman O'Connell? A. Yes, sir, West Side and Communipaw.

Q. Then you passed right on, you went right on east to the Boulevard? A. I told Patrolman O'Connell——

Mr. Tumulty: I object to what he told Patrolman O'Connell.

Q. Never mind what you told him, you gave a summons to Patrolman O'Connell? A. Yes, sir.

Q. Did you tell Patrolman O'Connell what you had seen and whom you had in the car? A. Yes, sir.

Q. Did you tell him where you were going? A. Yes, sir.

Mr. Drewen: Cross-examine.

Mr. Tumulty: No questions.

(Witness excused.)

KING JARVIS ADAMS, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Where do you live, Mr. Adams? A. 2118 Madison Avenue.

Q. Jersey City? A. New York.

Q. New York. Where are you employed? A. United States Trucking Corporation.

Q. Where were you employed on the 12th of December, 1930? A. United States Trucking Corporation.

Q. Now, during the night of December 12, 1930, or the early morning of December 13th, were you engaged in your employment driving a truck along Lincoln Highway in Jersey City? A. Yes, sir.

Q. Or Kearny, wherever it is? A. Kearny it was.

Q. Kearny it was. Do you know this defendant George, who is being tried here today? A. Beg pardon?

Q. Do you know this defendant Raymond George who is being tried here today? A. Yes, sir, I do.

Q. Where did you first see him? Where did you first see him? A. At the Passaic River Bridge on the highway.

Q. Tell me what date? A. Well, it was eight minutes past twelve according to the officer's watch.

Q. Eight minutes past twelve on the morning— A. When I turned him over to the officer.

Q. Of December 13th? A. Yes, sir.

Q. Were you alone in your truck at that time? A. Well I was not because it is not a truck. It is a tractor and trailer.

Q. Tractor and trailer. Did you have something behind that tractor? A. Had a trailer behind it.

Q. Who else was in the tractor besides you? A. There was no one in the tractor. I had a number in the trailer.

Q. Had a number in the trailer. In which direction were you going? A. Going to Newark.

Q. Going to Newark, going west? A. Yes.

Q. And at which bridge was it that you say you

were when you met this defendant George? A. Passaic.

Q.Passaic River Bridge? A. Now tell us what happened and what the circumstances were that caused you to meet this defendant George. A. First of all, as I passed the Kearny police station in Kearny, I noticed the searchlights working in the meadows. I knew it was something unusual because I am traveling there about four years now; and pulling up to Jacobus Avenue I stopped and inquired what was the trouble because I figured it was a truck or something the matter——

Mr. Tumulty: I object.

Mr. Drewen: All right.

Q. Go ahead.

The Court: You can't tell us what you were told.

Q. Tell us what you saw, and the Judge wants you to know that you can tell us only what you saw and what you did and whom you saw. Don't tell us any conversation nor any thoughts of your own. All right, now, tell us first, Mr. Adams, how far from the Kearny police headquarters on the Lincoln Highway is Jacobus Avenue? A. In the neighborhood of about four blocks, I will say.

Q. Is it east or west of the police station? A. West.

Q. Toward Newark? A. Towards Newark.

Q. And after you had passed the Kearny police station and gotten out to Jacobus Avenue what did you do? A. I stopped to find out what was the trouble.

Q. I see. Upon learning what did you do? A. Upon learning I continued on my way.

Q. When you learned what the trouble was you continued on your way? A. Yes, sir.

Q. Go ahead. Then what happened? A. Well, after continuing I was the first one to get to the bridge as the gates closed.

Q. That is the second bridge? A. That is the second bridge, the Passaic Bridge.

Q. Passaic River Bridge. Go ahead. A. As I stopped there, not thinking, someone got on the seat of the car without asking me anything. So I looked around. He says, "Take me over the bridge." I says, "I am sorry, but the firm doesn't allow it. It means my job." He said, "You can take me and you are going to take me." I said, "It can't be done." Well, I had to take it easy. So he got off, and when he dropped down I gets off as usual and I walked around the trailer. I didn't see him. Well, I says, he must have evaporated. I can't tell which way he went because he didn't have time to be anywheres, and I started back to the front of the car. When I did, he said, —there is two rods extending from the front of the trailer and the truck with two braces in the middle. He crawled on the rod. I noticed his feet sticking out. Well, I said, this is something unusual. So I asked him to come out and he refused. I asked him again, so he dragged out. I says, "Well, I told you I couldn't ride you. What do

you think I mean? Stay on or get off?" He says, "Well, I am going over this bridge and you are going to take me." Well, I says, "It can't be done." He makes a lean with his fist like he was going to strike me. So I hit him, and one blow to another before he could get a chance to hit me. There was no use to stop then; so I shoved him back to the front of the car where the police night stick laid on the seat. I immediately dropped my rubber and I gets the stick.

Q. Dropped what? A. The rubber hose I had, about so long (indicating).

Q. Yes. A. I gets the stick and beats him on his arms a couple of times. So he says, "I give up. I won't get on any more." So I says, "This way it looks, you want to send me to jail with you. I am going to take and turn you over to the officers," and I took him back to the officer.

Q. Which officer did you go to? A. I started back to where the officers were working at Jacobus Avenue, which is about two blocks this side of the Passaic River Bridge.

Q. Now when you first saw this man whom you say insisted upon getting on your tractor, did you see where he came from? A. I did not.

Q. When you first saw him he was on the seat? A. Yes, just getting on the seat.

Q. Or getting on the seat? A. He was on the seat, because I was looking to the left and I felt him get up on the seat.

Q. Is that tractor a right hand drive? A. Left hand drive.

Q. You were looking to your left? A. To the left.

Q. And when you turned back you saw him sitting on the seat? A. Yes, I felt him as he sat down, as he sat down I knew what he was doing.

Q. Can you identify that man? A. Positively.

Q. Who is he? A. Raymond George.

Q. Point him out, please. Step down and indicate him.

Mr. Drewen: (The witness indicates the defendant.)

Q. All right, go back, please.

Q. Now, Mr. Adams, where were the officers to whom you say you turned this man over? A. Well, I did not quite get to Jacobus Avenue because in the meantime an officer came across from the east side of the highway after seeing me pass the light, he came over and wanted to know the trouble. I said: "Here is a man demanding a ride, I do not know if he is a stickup or who."

Mr. Tumulty: I object.

Q. Never mind that. He asked who he was and you told him? A. Yes.

Q. Then did you deliver George to that police officer? A. Upon that he took charge of him.

Q. You were taken to Jersey City too, at the time, you came to Jersey City, too, did you not, with the police? A. Not at the time.

Q. Later? A. Later. I had to go to Newark.

Q. When did you come back to the Jersey City police authorities, that same day? A. That same night after I came back from Newark. I stopped on my way back.

Q. Do you know the name of the officer? A. I do not know the one I turned him over to.

Q. And you say that was about eight or nine minutes after twelve midnight? A. According to the officer it was eight minutes after twelve when he took him.

Q. Where did you notice these searchlights, these flood lights which you say caused you to make some inquiry? A. Right at the Kearny police station in Kearny.

Q. How many did you see? A. There was a number of them. I could not count them.

Q. Where were they posted? A. They seemed to be posted on a fire truck.

Q. Were they all on a fire truck or were there a number of fire trucks—all in one fire truck? A. There was more than one.

Q. Each having searchlights on? A. It would seem so. I won't say they all did.

Q. Were these searchlights played on the road or on the meadows or alongside the road? A. All around, in the meadows and everywhere they could possibly show them.

Q. How far from Jacobus Avenue was it that you say you saw these searchlights posted? A. About four blocks to the Kearny police station.

Q. Were there any at Jacobus Avenue? A. They were all on Jacobus Avenue.

Q. These lights? A. Yes.

Q. In other words you say they were all on Jacobus Avenue, and Jacobus Avenue is four blocks from the Kearny police station? A. That is it.

CROSS EXAMINATION by Mr. Tumulty:

Q. What time in the night was this? A. About twelve eight, as near as I can get it.

Q. How long had you stood at the bridge before this man got on the seat? A. Less than a minute.

Q. Less than a minute. He must have been on the road, then, wasn't it? A. I do not know where he came from. I did not see him when I stopped.

Q. Were there any billboards on the other side of the road? A. There is no billboards there, but there are about three stores, just a short distance away.

Q. When he got up on the seat and you told him to get off, he was very excited, wasn't he? A. He did not seem so excited; he seemed to be angry.

Q. Well, there seemed to be something wrong with him? A. Yes.

Q. And he impressed you as having something wrong with him?

Mr. Drewen: That is objected to as incompetent.

Mr. Tumulty: He answered the question, your Honor.

Mr. Drewen: He did not answer anything about his impressions.

The Court: I will allow him to describe the condition.

Q. Just how did he appear to you? A. Well, it appeared that he was mad, and I did not go if he had a gun. It seemed that he was willing to do anything to keep a-going.

Q. Well, he was highly nervous, wasn't he? A. No, he seemed to be mad; he did not seem to be nervous at all.

Q. But he was insistent upon getting over that bridge? A. That is it.

Q. You would not say that he was calm, would you? A. No, sir.

Q. He was wrought up, is that right? A. Yes.

Q. That is all.

By the Court:

Q. How far is the bridge from Jacobus Avenue? A. About two blocks.

By Mr. Tumulty:

Q. How far was this from the police station when this man stepped up on your truck? A. It was about six blocks.

Q. How far was it from where you saw all these flood lights? A. Two blocks.

Q. What side of the road were the flood lights on? A. The west side.

Q. Your right going out, is that right? A. Yes.

Q. And he got on your truck from that side, didn't he? A. From that side.

Q. How many flood trucks did you see there that night? A. I won't say just how many, but there was a number of them.

Q. And the man did not come from the bridge, did he? A. No, sir.

Q. The bridge was in front of you? A. Yes, sir

Q. So that if he came to your truck he must have come from the direction of the flood lights? A. From the direction of the flood lights or over the fence on the right side.

Q. And how many police did you see there that night? A. Well, I won't say if there was——

Q. Quite a number of them as you were passing along? A. Quite a number, yes, sir.

Q. As you came toward the bridge you say the flood lights were how far from the bridge? A. About two blocks this side of the bridge.

Q. And had the flood lights attracted a number of people? A. Yes, sir, surely.

Q. Automobiles? A. Yes, surely.

Q. There was quite a crowd there? A. Yes, sir.

Q. When he spoke to you and you thought he was angry, how did he speak? A. He said "Take me over the bridge."

Q. Didn't he speak with any—did he speak so that you could understand him? A. Yes, sir.

Q. Did he have an impediment in his speech? A. Not in the least.

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

Q. Didn't he stutter? A. No, sir.

Q. And you had a conversation with him on the truck and then you had a conversation with him on the road? A. Yes, sir.

Q. And he never stuttered once? A. Not a bit.

Q. And you next saw him when? A. I saw him then between half past three and four o'clock.

Q. And you made a statement to the police? A. Yes, sir.

Q. Did you identify him at the time? A. Yes, sir.

Q. In the police station? A. Yes, sir.

Q. Were the other two boys arrested then? A. Yes, sir.

Q. Where was he when you identified him? A. In the 7th Precinct, Jersey City.

Q. And who was it told you to go in and point him out?

Mr. Drewen: Objected to, containing an unwarranted assumption of fact.

The Court: Yes, I think the form of the question is improper.

Q. Well, who was it sent you in to identify him, do you know? A. The inspector there.

Q. What inspector? A. The one here.

Q. The inspector with the uniform? A. Yes, sir.

Q. Did you speak to him before you identified the defendant? A. Speak to who?

Q. The inspector? A. I did.

Q. Did he tell you where the men were? A. Yes, sir.

Q. And where were they? A. In his office.

Q. What conversation did you have with him before you went into the office? A. He just called me in and asked me to identify the men, that is all.

Q. Was he in the office at the time? A. No, sir, he was out in the hall.

Q. Where did he call you in to ? A. Into his office.

Q. Well I asked you when he called you in was he in his office? A. He was out in the hall. He takes me in his office.

Q. He walked into the office with you? A. Yes, sir.

Q. And those three men were there then? A. Yes, sir.

Q. Did he have anything else to say to you? A. Not then, no, sir.

Q. Before you identified this man, this defendant, did he have anything else to say to you? A. No, sir, he was too busy.

Q. Why do you say he was too busy? A. Well, he was talking to somebody else at the time.

Q. Well, he brought you in the room to identify them? A. He just called me in to identify them.

Q. Give us his exact words? A. He said, "Come in here. Is this the fellow you called from under the trailer?" And I said, "Yes."

Q. So he pointed to the fellow you pulled from under the trailer first? A. Yes.

Q. And that was the second time you saw this man in your life? A. Yes, sir.

Q. And before you identified him Chief Casey pointed him out to you? A. Yes, sir.

Mr. Tumulty: That is all.

REDIRECT EXAMINATION by Mr. Drewen:

Q. By pointing him out to you, you mean to say that he said to you "Is this the fellow that you pulled from under the trailer?"

Mr. Tumulty: I object, improper redirect examination.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

A. Yes, sir, he asked, "Is that the one?"

Q. Is there any doubt he is the man you pulled from under the trailer? A. Not in the least.

Q. How long had you worked for this trucking concern before that time? A. I am going into four years now.

Q. When you came to the police station in Jersey City, where was it you came, which station, headquarters or one of the precinct stations, do you know? A. Seventh precinct is all I know.

Q. Do you know on what street that is located? A. Montgomery and Baldwin.

Q. What time did you get there? A. The next morning, as near as I can come to it, between three thirty and four o'clock.

Q. On your way back from Newark? A. Well, I had to stop at the Second Precinct in Kearny to make a statement there.

Q. And it was at the Seventh Precinct station house at Montgomery Street that you saw this inspector whom you have just indicated? A. I beg your pardon? Just a moment. I saw him at the Second Precinct in Kearny.

Q. In Kearny? A. Yes, sir, he gave me two detectives to go to Newark and bring me back to make a report.

Q. In other words he sent two detectives along with you to be sure you would come back? A. Yes, sir.

Q. To give you a chance to do your job and then come back, is that it? A. That is right.

Q. And this inspector, Inspector Casey, for the record, you first saw him at the Kearny station? A. Yes, sir.

Q. And that was at the time that you turned this defendant over to the police officer, was it? A. Shortly after.

Q. And then there were two detectives assigned to accompany you and you went to Newark to do the work with your truck and came back with these men? A. Yes, sir.

Q. And you went to the Montgomery Street station of the Jersey City Police Department? A. We stopped at Kearny first.

Q. Was Inspector Casey still in Kearny when you got there? A. Not when I came back from Newark, no, sir.

Q. Then you went right on to Jersey City, to the Seventh Precinct station? A. Yes, sir.

Q. And there you say it was that the inspector called you into a room and told you to go into a room and asked you if that was the man who got

on your truck. Now, how long before that was it, —before Inspector Casey said that to you, that you had pulled a man from under your truck and had this fight with him that you have described and turned him over to a police officer near the County Police Station? About? A. It was about two and a half to three hours.

Q. Two and a half to three hours. That is all.

RECROSS EXAMINATION by Mr. Tumulty:

Q. So that before you got to Montgomery Street and identified this defendant you had already told the story to Inspector Casey? A. No, sir.

Q. Didn't you meet him in Kearny? A. I met him in Kearny, but I didn't have time to make a statement there.

Q. Well, didn't you tell how you caught this man in Kearny? A. I told how I caught him, yes.

Q. Wasn't Inspector Casey there at the time? A. Inspector Casey was there at the time.

Q. And he heard you telling how you caught him? A. Well, I won't be positive about that because there was a terrible crowd there.

Q. At all events, when you got to the police station in Jersey City he knew that you had pulled this man from under your truck? A. He knew about it.

Q. And he said that to you before he indicated the man to you? A. He did.

Q. And it was after he indicated this man to you that you identified him? A. That I identified him the second time.

Q. Who started this fight? A. I did.

Q. That you had—what? A. I did.

Q. And how did it start? A. Well, he makes a lean——

Q. He made an attempt to hit you? A. He made an attempt but I started the fight. I didn't give him a chance to fight.

Q. He made an attempt, so much so that you defended yourself? A. Yes.

Q. And this was a short distance from where all these policemen were? A. Yes.

By Mr. Drewen:

Q. And it was how far from the river? A. Right at the river; because I was the first to get to the gate before the gates closed.

(Witness excused.)

The Court: Now, gentlemen of the jury, it is hardly necessary for the Court to impress upon you the seriousness of the duty which has been imposed upon you by your service as jurors in this case. You are going along our public highways now and the public may realize that you are jurors sitting in a murder case, and the Court hopes and expects of you that you will conduct yourselves with the decorum that would be expected of a jury of serious-minded citizens. You will be back in your seats at twenty minutes after two and we will proceed with the case at that time.

All witnesses, whether on behalf of the state or the defense, will return to the court at twenty minutes after two, and until that time the Court will have a recess.

(Recess to 2:20 P. M.)

(After recess.)

LOUIS MELONE, called as a witness on behalf of the State, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a member of the Police Department of the Town of Kearny? A. Yes, sir.

Q. How long have you been connected with the Police Department? A. Ten years.

Q. Ten years? Have you any rank? A. No, sir; just a patrolman.

Q. Officer, on the night of December 12 last or the early morning of December 13 were you doing duty on Lincoln Highway in the neighborhood of Jacobus Avenue in Kearny? A. Well, I was touring the precinct, sir.

Q. You were touring the precinct? A. Touring the Second precinct in Kearny in a Ford coach.

Q. In a Ford coach? A. Yes, sir.

Q. And the Second Precinct station house is situated in Kearny on the Lincoln Highway not far from the river bridge? A. Yes, sir.

Q. That is right; isn't it? A. I will say two miles.

Q. At any time that morning did you join with the Jersey City police in a search for any one in the neighborhood of the Lincoln Highway near Jacobus Avenue? A. Yes, sir.

Q. Who was in your company at that time, Officer? A. Officer John Perry of the Kearny Police Department; him and I working together.

Q. Working together? A. Yes, sir.

Q. Did you make an arrest that morning of a negro? A. Yes, I did, sir.

Q. About what time was that that you made the arrest? A. I just don't recall the time, sir.

Q. About when? After midnight, was it, or can't you tell? A. No, sir; it was before midnight, sir.

Q. When did you go on duty? A. Four o'clock in the afternoon.

Q. And you worked until twelve? A. Twelve P. M. midnight.

Q. How long before the midnight hour was this arrest made, if you can tell? A. Probably anywhere from eleven to eleven forty-five and probably twelve.

Q. Where did you make the arrest? A. Why, after searching all around the place I got one of the negro fellows under a freight car. He was——

Q. Was Officer Waldron of the Jersey City Police Department with you or near you when you made your arrest? A. Well, I recall just asking him a question about a hundred feet or so from where I got the colored party.

Q. Where was the negro that you arrested? A. He was stuck under the freight car that was on one of the side tracks of Jacobus Avenue, Kearny, between the two axles.

Q. Did you pull him out? A. Yes, sir.

Q. Do you know his name? A. Williams, sir.

Mr. Drewen: Will you stand up?

Q. Can you tell us whether or not that is the negro you arrested? (Indicating.)

A. Yes.

Q. That is the man you say you pulled out from under the freight car? A. Yes.

The Court: Suppose you have him indicate on the record whom he indicates.

Mr. Drewen: He indicates James Williams.

Q. Now, you took the negro whom you have just identified into custody. Did you turn him over to anyone else? A. I just held on to him, and my partner, Officer Perry, grabbed him with me, and there was a Jersey City policeman there also. There were three of us stuck together in the search.

Q. Do you know whether or not you arrested Williams before or after Officer Waldron of the Jersey City Police Department arrested the other negro named Mitchell? A. I have heard this officer you mentioned had a negro first.

Q. That is Officer Waldron? A. Officer Waldron, I think.

Q. After this man was turned over by you to the Jersey City police officer, you had nothing further to do with any other search there that night, did you? A. No, sir. We just brought him into the Second Precinct and turned him over to my superior. That is all I had to do with the party.

Q. How long after that did you report off duty? A. By the time I got through with my report and talking around, probably it was anywhere from 1:20 to 1:40.

Q. Then you went directly home, did you? A. Yes.

Mr. Drewen: Cross examine.

Mr. Tumulty: No cross examination.

(Witness excused.)

GEORGE A. SCHREIBER, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Where do you live? A. 120 Carteret Avenue.

Q. What Avenue? A. Cartaret.

Q. Jersey City? A. Yes.

Q. On the night of December 12, 1930, at about nine P. M., were you in the neighborhood of Mallory and Communipaw Avenue, Jersey City? A. Yes.

Q. In company with anyone else? A. Quite a few fellows.

Q. Well, was there a man named Hampton with you? A. Yes.

Q. Ralph Hampton and a man named Richard Weiss? A. Yes.

Q. Was your attention at any time that night attracted to a policeman who was on Mallory Avenue near Communipaw? A. On Communipaw.

Q. On Communipaw. Where were you when your attention was first called to him? A. Coming out of the county park.

Q. Coming out of the county park? A. Yes.

Q. And what was it that attracted your attention to the policeman? A. He was following this here car.

Q. What? A. Following the car.

Q. Oh, speak out loud, please. He was doing what? A. He was following the car.

Q. Was he on foot or how? A. On a motorcycle.

Q. On which street was the car going that he was following at the time you first saw him? A. Communipaw Avenue.

Q. Going west or east? A. West.

Q. And did you see it turn off Communipaw Avenue? A. It turned at a building there and hid behind the building.

Q. It turned where? A. It turned right and hid behind a building until the policeman passed.

Q. Until the policeman passed him? A. Yes.

Q. Did you see what happened then? A. As soon as the policeman passed he went over Mallory Avenue.

Q. Who went over Mallory Avenue? A. The fellow that was driving the car.

Q. And that was south of where the man was at the time the policeman passed him? A. Yes.

Q. In other words the policeman followed him west and after the policeman had passed him the man in the automobile drove his car south on Mallory Avenue? A. Yes.

Q. After you saw that did you see in which direction the policeman on the motorcycle went? A. The policeman on the motorcycle turned around and followed the car.

Q. Down Mallory Avenue? A. Down Mallory Avenue.

Q. Did you see how far he went after the car went down Mallory Avenue? A. About half way down the block he told him to pull over to the curb and the car kept right on.

Q. Then the car came to a stop? A. No, it kept going and turned down Roosevelt Avenue.

Q. Tell us what you mean when you say you heard the policeman tell the driver of the car to

pull over to one side and he was half way down Mallory Avenue? A. Well, he pulled up to the car and told him to pull over, and the driver of the car did not pay any attention to him.

Q. You could hear the policeman on the motorcycle say that? A. Yes.

Q. What did you hear him say? A. "Pull over."

Q. "Pull over." Did the automobile continue going when the policeman said that? A. Yes.

Q. Did you see in which direction the automobile went after that happened? A. It turned right at Roosevelt Avenue and went west.

Q. It turned at Roosevelt Avenue and went west? A. Yes.

Q. Where did the policeman go? A. He followed the car and stopped.

Q. What? A. He followed the car and stopped.

Q. And stopped him. Now where was the automobile and the policeman at the time the automobile was brought to a stop? A. The automibile was between 75 and 100 feet from the corner.

Q. From what corner? A. The corner of Roosevelt and Mallory.

Q. Will you step down here, please? I show you sketch in evidence, Exhiibt S-13, which shows Roosevelt Avenue here, Mallory Avenue here—are you familiar with this layout? A. Yes, sir.

Q. Now, calling your attention—you say the car came to a stop on Roosevelt Avenue? A. Yes, sir.

Q. A distance of how much from Mallory Avenue? A. Between seventy-five feet and one hundred feet.

Q. Here is Roosevelt Avenue and here is Mallory Avenue. On which side of Roosevelt Avenue was it, north or south, that the car came to a stop? A. The car stopped right about here, a little to the right.

Q. Is that electric light pole near the point where the car stopped? A. The car stopped about here. I am not familiar with the pole.

Q. The car stopped at the point where I make a round dot on the map, that is correct, is it? A. Yes, sir.

Q. Now, when the car stopped at that point did the policeman talk to the driver of the car? A. The policeman stopped the car, went back and asked the driver for his license.

Q. Just a minute, before we get to that. In which way was the car facing when the policeman stopped it? Toward Mallory Avenue or away from Mallory Avenue? A. Away.

Q. Away from Mallory Avenue? A. Yes, sir.

Q. All right, go back to the stand. Now, when you say that the car stopped in the position you have nidicated on the map you heard the policeman ask the driver of the car for his license, how far from the car were you at the time? A. I was about up to the corner.

Q. What corner? A. In fact, I was just about to cross the street.

Q. On the other side of Roosevelt Avenue? A. I was on the northwest corner.

Q. The northwest corner of Roosevelt and Mallory, that is correct, is it? A. Yes, sir.

Q. Tell this Court and jury exactly what you saw and heard as between the policeman and the

driver or occupant of the automobile at that time. A. The policeman drove up to the car and asked for the license and the driver of the car jumped out and told the cop to stick them up. With that we ran back of the building.

Q. Who ran back of the building? A. The fellows on the football team I was with.

Q. There were some other companions from your football team, you say? A. Yes.

Q. Who were with you at the time? A. Yes, sir.

Q. And you saw a man get out of a car and say to the policeman what? A. Stick them up.

Q. Now, how far was the policeman from the man who said that? A. He was right on top of him when he said that.

Q. They were together, were they? A. Yes.

Q. Did you see the man who got out of the automobile do anything at the time he said to the officer, "Stick them up"? A. Well, it looked like he had a gun in his hand.

Q. Did you see him make any gesture or motion with his arm at the time he said that? A. Just like that, that is all.

Q. Holding something in his hand? A. Yes.

Q. Did you see what he had in his hand? A. Why, it was too far way to see.

Q. Could you see whether he had an object in his hand at the time he held it in that position in front of the policeman? A. No, sir.

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

Q. Why was it you and your companions ducked behind a building, as you say? A. Shots were fired.

Q. What? A. A couple of shots were fired.

Q. Did you see by whom the shots were fired? A. We could see the fellow that said, "Stick them up" shot them.

Q. What could you see that indicated to you it was he who fired the shot? A. Well, the flash came from that direction.

Q. The flash came from what direction? A. From the furthest direction away of the two objects.

Q. Did the flash come from the policeman or did it come from the hand of the man who told the policeman to stick them up? A. The hand of the man who told the policeman to stick them up.

Q. Very good. Now, at the time you saw the man step out in this attitude and heard him say to the policeman, "Stick them up" what was the policeman doing? A. He was standing at the side of the automobile.

Q. What position was he in, what was his attitude? How were his hands or arms placed? A. It looked like he had his hand out looking for his license.

Q. He had his hand out looking for his license? A. Something like that.

Q. How long after this man got out of the car and said to the policeman, "Stick them up" was it that you saw the flashes and heard the shots? A. About ten seconds.

Q. And then it was that you ducked behind the building? A. Yes.

Q. While you were behind the building did you hear any further shots? A. I heard about five or six more.

Q. Could you see by whom they were fired? A. Yes.

Q. Who fired them? A. The policeman.

Q. When the policeman fired the shots that you say you saw him fire, where was he? A. Behind the pole.

Q. The policeman was behind the pole? A. The pole on the left-hand side of Roosevelt Avenue.

Q. The left-hand side toward Mallory? A. On this side, the bottom side.

Q. The policeman was behind that pole here, was he? A. Yes, sir.

Q. Where I mark an "X"? A. Yes, sir.

Q. And where was the automobile at the time that you say the policeman was behind the pole? A. The same place it was before.

Q. How long did it remain there? A. Until they drove off.

Q. How long did it take them to drive off after you heard the first shots fired? A. As soon as the two shots were fired the fellow that was driving the car got out of the car and did the shooting, he ran around the front of the car and got in. I don't know whether he drove it off or someone else.

Q. How long after they got back in the car did the car start away? A. About fifteen or twenty seconds.

Q. And which direction did they go? A. It went west.

Q. That is, toward Mallory Avenue or toward Communipaw Avenue? A. Towards the little street down there.

Q. That is toward Marcy Avenue? A. Towards Marcy.

Q. Right? A. Yes, sir.

Q. Toward Marcy Avenue. Did you see which direction they went after they got into Marcy Avenue? A. No, I did not look.

Q. You didn't look. Where did you go after you saw the automobile pass out of Roosevelt Avenue and the policeman behind the pole? Where did you go? A. I ran down and help pick the cop up.

Q. When you say you saw the policeman firing from behind the pole, what position was the policeman in? Was he standing up as he was shooting or lying down or how? A. Dropping on to his knees.

Q. Slowly going down to his knees? A. Yes.

Q. As he was firing? A. As he was firing.

Q. Now, step up here, please, and indicate what you mean when you say that the police officer was slowly going on his knees as he was firing at the automobile. A. He was dropping down like that (witness indicating by dropping down to his knees).

Q. And firing as he was dropping? A. Yes, sir.

Q. Who was with you when you went over to the policeman after the car disappeared? A. Richard Weiss was with me.

Q. And Ralph Hampton? A. Ralph Hampton stopped a car coming down the street.

Q. He stopped a car. What did you do when you got over to the policeman? A. We picked him up and asked him if he was hurt. He said yes.

Q. You did speak to the man, but you can't tell what he said or what you said. What was his position when you finally got to him? Was he lying down or still clinging to the pole? A. Still on his knees.

Q. Still on his knees? A. Still on his knees.

Q. You and Weiss helped to pick him up? A. It was Ralph Hampton helped to pick him up.

Q. How long were you there before the other policeman who testified this morning arrived? A. We were just carrying him into the car when he arrived.

Q. Who drove the car away, you and Hampton? A. The colored fellow that was stopped.

Q. What is his name, do you know? A. That I don't know.

Q. And the policeman went with you, did he not, driving standing on the running-board? A. Yes, sir.

Mr. Drewen: Cross-examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. Was this automobile going slowly when you first saw it? A. It was not going very fast; I imagine about twenty miles an hour.

Q. And the policeman was how far behind it? A. About a hundred foot.

Q. When he stopped his motorcycle how far was he behind it? A. I don't understand what you mean, when he stopped his motorcycle.

Q. Well, he was on a motorcycle? A. Yes.

Q. When the motorcycle stopped where was he with reference to the automobile? A. You mean at the time of the shooting?

Q. When he stopped and got off his motorcycle —didn't you see him get off the motorcycle? A. Yes.

Q. Where was he then with reference to the automobile? A. He was ten foot behind the automobile.

Q. How far were you away? A. Between seventy-five and a hundred foot.

Q. And you heard all this conversation you speak of? A. Well, you could hear him say, "Stick them up."

Q. Well, you testified you heard him ask for the license; didn't you say that? A. I wouldn't swear that he said it.

Q. Well, now, you are swearing. I want to know now if you heard him ask for the license. A. No.

Q. Why did you say a moment ago that you did? Do you understand that you are under oath? A. Yes, sir.

Q. And that this man's life is at stake?

Mr. Drewen: That is objected to on the ground——

Q. Why did you say that you heard him ask for his license? Why did you say that? A. I imagine that is what any cop would say when he stops you.

Q. You imagine it. Did anybody tell to say it? A. No.

Q. Have you made a statement to anybody else about this case? A. No.

Q. Are you sure? A. Certainly.

Q. So you didn't hear him ask for the license? A. No.

Q. How many men were in the front seat? A. Two.

Q. You are sure of that? A. Quite sure.

Q. And you say you saw the police officer with his hand out. Did you see anything in his hand? A. No.

Q. Do you know whether he had anything in his hand or not? A. His glove on.

Q. Do you know if he had anything in his hand? A. No.

Q. Did you see whether he did or not? A. No.

Q. You wouldn't swear that he didn't? A. No.

Q. Now, did this automobile turn or did it go right directly on after the man got back in the car? A. Well, after it turned the corner of Roosevelt and Mallory it stopped between seventy-five and a hundred foot of the corner.

Q. I mean after the shots were fired and after the man got in the car, it went right away? A. Went right away.

Q. Didn't turn? A. Didn't turn as far as I seen.

Q. Do you know a young man by the name of Slawson? A. Well, I know him now.

Q. Is he in court? A. Yes, sir.

Q. Did you see any shots fired from this automobile as it went away? A. Not from the automobile; no.

Q. You are sure of that? A. Yes.

Q. And you say you saw a flash? A. Yes.

Q. Coming from the gun held by the man? A. Yes.

Q. Was that the first time the shots were fired? A. Yes.

Q. And then you ran behind the building, is that right? A. Yes.

Q. Did you stay behind the building untill all firing had ceased? A. No, I was looking behind the corner of the building.

Q. Now you were 75 feet away when this man first got out of the car, were you? A. Yes.

Q. And was his back towards you? A. No, I was facing him.

Q. You were facing him? A. Well, he was sort of facing us.

Q. Were you looking directly at him? A. Not directly at him, but at the side of him.

Q. Could you see everything he did? A. I seen him jump out of the car.

Q. I did not ask you that. Could you see everything he did? A. Not everything.

Q. You could not see everything he did? A. No.

Q. Then you were not looking at him all the time, were you? A. Surely I was looking at him all the time.

Q. If you were looking at him all the time why didn't you see everything he did? A. You can't look at everything he does.

Q. Did you see everything the officer did? A. No.

Q. You did not? A. No.

Q. That is all.

Mr. Drewen: That is all.

(Witness excused.)

J. RALPH HAMPTON, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Where do you live? A. 246 Boyd Avenue.

Q. On the night of December 12th, last, were you in the company of Schreiber, the last witness in the neighborhood of Roosevelt and Mallory Avenue in Jersey City? A. Yes.

Q. And was your attention at any time that evening called to a police officer pursuing an automobile? A. Yes.

Q. A police officer driving a motorcycle? A. Yes.

Q. Where were you when you first saw the officer chasing the automobile? A. I was coming out of the entrance to the park on Communipaw Avenue.

Q. And where was the police officer at that time? A. He was in back of the—he was following the automobile.

Q. On what street? A. Communipaw Avenue.

Q. Going in which direction? A. Toward Newark.

Q. Did you see what happened in this chase? A. Yes, I did.

Q. What? A. After the automobile had turned around in back of a building he turned over Mallory Avenue.

Q. Who did—the driver of the car? A. The automobile.

Q. Turned over Mallory Avenue, going south? A. Yes.

Q. And what did the motorcycle policeman do?

A. Well, he followed him.

Q. Did you see how far he followed him? A. Yes, sir.

Q. How far? A. Well, he followed him down to where the shooting occurred.

Q. Down to where? A. Down to where the shooting occurred.

Q. Where did the shooting occur? A. On Roosevelt Avenue, below Mallory.

Q. And where were you when you saw the shooting occur? A. On Mallory and Roosevelt Avenue.

Q. At the time of this shooting to which you have referred, tell the court and jury what you saw? A. Well, I was coming across Roosevelt Avenue and I seen this gun—well, it was the image of a gun by this driver's—the fellow that got out of the car's side—and the fellow said, "Stick them up," and you could hear him quite plainly because he shouted.

Q. Who do you mean by the fellow? A. The driver of the car.

Q. Go ahead. A. And the cop stood in amazement—or——

Mr. Tumulty: I object to that.

Q. Just tell us what the policeman did. Never mind his amazement. A. Well, he stepped back and he went to draw for his own revolver. In the meantime the driver of the car had already fired several shots—two shots.

Q. At whom? A. At the motorcycle policeman.

Q. Yes. A. And then we ducked—I ducked behind a building.

Q. Did you hear any more shots after you got behind the building? A. Yes.

Q. How many? A. I should judge about six.

Q. While you heard those six shots being fired,

were you able to see anything? A. No, sir, because I was back too far.

Q. After the six shots were fired, did you come out from behind the building? A. After all the shooting was over I came out.

Q. And what did you see? A. I seen Patrolman Ruark down on his knees.

Q. Yes, and what else? A. Then George Schreiber and myself picked him up, while Richard Weiss held up a passing automobile.

Q. When you came from behind the building after the shooting had ceased, or you thought it had, and you saw the policeman, you saw on his knees, where was the automobile, if you know? A. It was still parked on the right side,—well, a little right in the middle of the street—it was not exactly in the middle, it was over nearer the curb.

Q. How long after you first saw it did it continue to be parked there—I mean to say after the policeman was on his kneees and you came out from behind the building and saw the car still standing there, is that right? A. No, sir, when I came out the car was speeding away.

Q. When you came out from behind the building and you saw the policeman on his knees the car was speeding away? A. Yes.

Q. Where was it when you first noticed it speeding away—on what street? A. It was down on Roosevelt Avenue, down near Marcy Avenue.

Q. Down near Marcy Avenue? A. Yes.

Q. Going towards Communipaw? A. Yes.

Q. Did you see it turn into Marcy Avenue? A. No, I was busy picking up the cop at that time. I did not see anything further.

Q. Now Marcy Avenue—come down here a moment, will you, and clear this thing up—step over here. Referring to the survey map in evidence, I call your attention to the route sketched at the bottom of the map—the route of Communipaw Avenue from West Side to Jacobus Avenue, Kearny, and call your attention to the street marked "avenue" shown as running at right angles south from Communipaw Avenue, and running at right angles south from Communipaw Avenue and corner of Roosevelt Avenue? A. Yes.

Q. And on the opposite end of Roosevelt Avenue, also running at right angles, there is another thoroughfare. Can you tell me whether or not that is Marcy Avenue? A. That is Marcy Avenue.

Q. All right. Were you with the wounded policeman Ruark when the other officer, O'Connell, arrived? A. Yes, sir.

Q. And helped to put him in the car and take him away? A. Yes, sir.

Q. Can you tell, if you know, whether or not the man who got out of the automobile at the time the policeman stopped it on Roosevelt Avenue, was a negro or a white man? A. I could not tell you because there is no light in the vicinity, no street lights or anything. It was dark.

Q. Could you tell how the man was dressed who got out of the automobile? A. Well, I could tell he had a hat on, a cap, I could not tell you kind of a coat or suit he had on.

Mr. Drewen: Cross examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. Did you see this man get out of the car? A. Yes, sir.

Q. What side of the car did he get out of? A. He got out from the driver's seat of the car, the front of the car.

Q. The front of the car? A. Yes, sir.

Q. Was that the side Officer Ruark was on? A. Yes, sir, he was on that side.

Q. You have testified earlier he ran around the car to get back, didn't you? A. No, I didn't testify to that.

Q. Did he run around the car to get back into it? A. No, I didn't say that.

Q. Did you see him get into the car? A. No, sir.

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

Q. So that when the car drove off you do not know whether he was doing the driving or not, do you? A. No, sir.

Q. You have testified it was very dark there—

Mr. Drewen: Objected to, there is no such testimony.

Mr. Tumulty: He said there was no light.

Mr. Drewen: He didn't say it was very dark.

Q. There was no light there, was there? A. No, there is no light on the corner.

Q. And it was so dark that you could not see? A. No, sir, not that dark.

Q. You could not see whether these men were white men or colored men? A. No, sir.

Q. Did you hear the officer speak about the license? A. No, sir, I didn't hear that.

Q. When this man whom you heard say "Stick them up"—did he yell that out very loud? A. Very distinctly. I could hear it at the corner. I don't know whether it was very loud.

Q. And you were how far away? A. 75 or 100 feet.

Q. Well, he must have spoken pretty loud then? A. It probably was loud enough for us to hear it anyway.

Mr. Tumulty: That is all.

(Witness excused.)

RICHARD E. WEISS, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Where do you live? A. 71 Astor Place, Jersey City.

Q. On the night of December 12, 1930, were you in the company of the last two witnesses, Hampton and the other man? A. Yes, sir.

Q. In the neighborhood of Mallory Avenue and Roosevelt? A. Yes, sir.

Q. What time of night was that? A. It was around quarter after nine.

Q. And was your attention called to a policeman on a motorcycle pursuing an automobile westerly along Communipaw Avenue? A. Yes, sir.

Q. Where were you at the time you first noticed that? A. We were just coming out of the park.

Q. And what did you see? A. We noticed this cop following an automobile down the street, down Communipaw Avenue, coming west.

Q. You noticed the policeman following the automobile down Communipaw Avenue? A. Yes, sir.

Q. What course did they take, did you notice? A. They were going west on Communipaw Avenue toward Newark.

Q. How far did they go west on Communipaw? A. Just as they got to the park there, the car turned toward a garage and let the cop on the motorcycle go past.

Q. Yes. The car turned in which direction, north or south? A. It went right.

Q. It went to the right of the driver as he was proceeding west, is that right? A. Yes.

Q. The driver turned the car to his right to let the policeman go past? A. Yes.

Q. Well, when the policeman had passed which way did the driver turn his car? A. He turned left then and went up Mallory Avenue.

Q. Did you see how far he went? A. Yes, sir.

Q. Did you see what the officer did? A. He just turned around and followed them.

Q. Up Mallory Avenue? A. Yes, sir.

Q. How far did he follow them on Mallory Avenue? A. He followed them up to Roosevelt, then the driver turned right and the officer followed him.

Q. Followed him up to Roosevelt Avenue? A. Yes, sir.

Q. And the driver turned to his right? A. His right.

Q. And the officer followed him? A. Right.

Q. The car was then facing towards Marcy Avenue? A. Towards Marcy Avenue.

Q. Now, did you observe the policeman and the automobile he was pursuing when the automobile came to a stop on Roosevelt Avenue? A. Yes, sir.

Q. What happened? A. The car stopped some 75 or 100 feet down from Mallory Avenue on Roosevelt, then it stopped and the cop got off the motorcycle and he walked up to the car.

Q. Yes. A. And just as he got up even with the driver I seen a man step out and say, "Stick them up."

Q. Who stepped out? A. The driver.

Q. Stepped out of where? A. Out of the left side of the car, front.

Q. He said what? A. Stick them up.

Q. Well, did you see what the driver was doing or what his motions were with his hands or what his gestures were at the time he said to the policeman said "Stick them up"? A. He seemed to have a gun in his hand, and he said, "Stick them up" and pointed it right at him.

Q. Pointed it right at the policeman? A. Yes, sir.

Q. How far was the policeman from the driver at the time? A. He was right beside him.

Q. Right beside him or right in front of him, which? A. Right at the side of the car.

Q. Who was, the policeman? A. Yes.

Q. Which direction, from the man who had the revolver, was he? A. He was to the left of him.

Q. But toward whom was the gun in the hands of the driver pointed?

Mr. Tumulty: I object; he has not testified to a gun in the hands of the driver. He said it seemed it was a gun.

Q. Toward whom was what seemed to be a gun in the hands of the driver pointed? A. Toward the cop.

Q. Toward the policeman. Now, when the driver was in that position and you say the policeman was—how far from him at the time? How many feet about was the policeman from this driver? A. I would say about five feet.

Q. About five feet. About the same distance that I am from you now? A. Yes, or a little further back.

Q. Little further back? A. Around there.

Q. About this distance? A. Yes.

Q. Now, when the driver of the car had pointed his hand and whatever was in it at the policeman and said "Stick them up"—what immediately after that happened that you saw? A. The cop drew back a pace or two and made a draw of his own gun and while he was drawing for his own gun the driver shot him.

Q. How many times? A. Twice.

Q. What then happened to the policeman? Did you see or did you also go behind the house? A. I went behind the house then.

Q. So that you don't know what immediately did happen after the two shots were fired? A. No, sir.

Richard E. Weiss—For State—Direct

Q. You went behind the house? A. Yes, sir.

Q. Correct? A. I was right at the corner. I could see what was going on.

Q. You could see what was going on? A. Yes.

Q. After the policeman took a pace or two back and the driver fired shots at him did you then see anything happen so far as the driver and the policeman were concerned?

The Court: Do you understand the question?

The Witness: Yes, sir.

Q. Or was your position behind the house such that you couldn't see what happened? Well, if you didn't see, say so. A. By the time that I looked out again the car was starting away.

Q. Now, how long would you say it was before you looked out again? In other words, how long was your view blocked by the house behind which you say you stood? A. Say, around half a minute.

Q. Half a minute. So that the last thing you saw was the policeman backing away and shots being fired at him by the driver? A. Yes, sir.

Q. When you reappeared from behind the house again you saw the car being driven away? A. Yes, sir.

Q. On what street was the car then? A. It was on Roosevelt Avenue.

Q. Going toward Marcy? A. Toward Marcy Avenue.

Q. Where was the police officer? A. He was down on his knees behind the pole. He was blowing his police whistle.

Q. Was he shooting, do you know? A. There were more shots fired after the first two.

Q. That was while you were behind the house? A. Yes, sir.

Q. And you came from behind the house and saw the policeman on his knees alongside of the pole, did you see him fire any shots—the policeman I mean? A. No, sir, I didn't see him.

Q. But he was blowing his whistle? A. Yes, sir.

Q. Did you go to the policeman? A. Yes, sir.

Q. Who went with you? A. Ralph Hampton and George Schreiber.

Q. What did you do when you got there? A. Well, Schreiber and Hampton started to pick the cop up and I got out and got an automobile that was passing by.

Q. And you helped put him in the car? A. Yes, sir.

Q. Take him away? A. Yes, sir.

Q. And were you there when this other policeman, O'Donnell, arrived? A. Yes, sir—it was Kelly.

Q. Kelly I mean. And he rode on the running-board of the car? A. Blowing his whistle.

Q. Blowing his whistle? A. He did.

Q. To the hospital? A. To the hospital.

Q. With Ruark in the car? A. Right.

Q. And whom do you say drove the car? A. The colored fellow that was driving it when I stopped him.

Q. You were also in the car; were you? A. What is that?

Q. Were you in the car? A. I was.

Q. Can you tell us whether or not there were any lights on the automobile that the policeman was pursuing? A. Which one?

Q. Can you tell us whether or not there were any lights on the automobile that the policeman was pursuing? A. There were not.

Q. There were no lights? A. No lights.

Q. Could you tell how many men there were in the automobile the policeman was following? A. Two in the front seat and one in the rear.

Q. Two in the front seat and one in the rear. Now, Mr. Weiss, up to the time that you ducked behind the building where you remained, you say, for a half minute—— A. Yes, sir.

Q. What did you see the policeman doing with his hands? A. The last thing I saw he was drawing for his gun; then there were two shots fired by the driver of the car.

Q. Now, up to the time that you saw two shots fired by the driver of the car—up to that time what was the policeman doing? A. Making a draw for his gun.

Q. When did the policeman——

Mr. Drewen: Withdraw that.

Q. When the driver said to the policeman, "Stick them up" and the policeman faltered back a pace or two what was he doing with his hands and arms? In other words, what I want to get is this: What had happened? What had you seen and heard before you say you saw the policeman making a draw for his gun? A. He seemed to go up to the driver and ask for something. I wouldn't say I heard him ask.

Q. But you saw him step up to the driver and ask something? A. Yes, sir.

Q. Then what happened? A. The man stepped —the driver stepped out of the car with a gun in his hands and he said, "Stick them up."

Q. "Stick them up"? A. And the policeman stepped back.

Q. Stepped back. Was it then that you first saw the policeman make a move as if to get his own gun? A. Yes.

Q. Not before that? A. Not before that.

Mr. Drewen: Cross examine.

CROSS EXAMINATION by Mr. Tumulty:

Q. Did you see the man with the gun as he got out of the car, the driver? A. I saw him; yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. And were you with these other two boys that have already testified? A. I was, yes, sir.

Q. Was the gun plain to be seen? A. (No answer.)

Q. Show us how he carried the gun, getting out of the car. A. He seemed to have it in his left hand.

Q. You are now testifying that it seems. I want to know just what you saw. A. He stepped out of the car and pointed it at the cop.

Q. Did he have it out pointing as he got out of the car, or alongside of him? A. He had it in his hand.

Q. Anybody could see it? A. Anybody could see it.

Q. Did you see it? A. I saw it.

Q. Then why do you say it seems it was a gun

he had? If you saw it so clearly why do you say it seems that it was a gun? Can you explain that? A. No, sir.

Q. Why didn't you say that it was a gun instead of saying it seems it was a gun? A. I meant it was a gun.

Q. It was a gun. When this man got out of the car and said, "Stick them up," did he say it loudly? A. He said it clearly.

Q. Was it loudly? A. It was loud enough to hear it, the distance I was away at the time.

Q. One hundred feet? A. Yes.

Q. What hand did he have that gun in? Why do you hesitate? Don't you know? A. I am not sure.

Q. You are not sure what hand he had the gun in. Haven't you already said it was the left hand? Haven't you already testified it was the left hand? A. Yes.

Q. Then why did you say it was the left hand and now you say you don't know which hand it was? Do you know at all what hand it was? A. (No answer.)

Q. That is a plain question, isn't it? A. Yes.

Q. Can you tell us what hand it was? Do you realize what you are doing here, under oath? A. Yes.

Q. Can you tell us now what hand it was? We only want the truth from you. What hand was it? A. I still think it was the left hand.

Q. You still think. Don't you know what hand it was? A. I am not sure.

Q. You are not sure. That is all.

Mr. Drewen: That is all.

(Witness excused.)

JAMES L. McNAMARA, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a lieutenant of police of the City of Jersey City? A. I am.

Q. How long have you been in that department? A. Fifteen years.

Q. Will you speak up, Lieutenant? A. Fifteen years.

Q. On the night of December 12 last, or on the early morning of December 13, were you in the neighborhood of Jacobus Avenue and Lincoln Highway in Kearny taking part in the search by the police for three negroes? A. Well, was out there on the scene but I was only there for a short while.

Q. What time did you get there, Lieutenant? A. When I arrived at Mallory Avenue, or Mallory and Roosevelt, the car had gone west.

Q. What time was that? A. About nine twenty-five.

Q. Nine twenty-five. And do you know where Officer Ruark was at that time? A. He was gone.

Q. He was gone, they had taken him to the hospital? A. Yes.

Q. So that when you first arrived at the scene of Mallory and Roosevelt Avenues a car, or the car, had gone west on Communipaw Avenue? A. Yes.

Q. Did you then go to Kearny? A. I went over to Kearny and went as far as Newark.

Q. You went as far as Newark. At any time that morning or that night did Sergeant Varley give you a gun? A. He did.

Q. Turned the gun over to you? A. Yes, sir.

Q. Where was this that the gun was turned over to you, Lieutenant? A. In the Seventh Precinct.

Q. Jersey City? A. Yes, the Deputy Chief's office.

Q. What time was that? A. That was around midnight.

Q. I show you a gun and ask you whether or not you can tell us whether that is the gun that Sergeant Varley turned over to you at the Seventh Precinct? A. It is.

Q. Did you make identifying marks on it? A. Yes, I put my initials on it, J. M. 12/12/30, and that "X" on the handle.

Mr. Drewen: I ask that the stenographer mark that for identification.

(Marked "Iden. N-R.)

Q. At the time that Sergeant Varley turned this gun over to you did you examine it for bullets or shells? A. I did.

Q. Did you remove the chamber slide? A. I did.

Q. What did you take from it, can you tell that, if anything. A. I took six cartridges, and the drum was jammed and it had another one in the chamber that the trigger was cocked back on.

Q. I show you three lead cartridges and ask you whether or not you can tell us if they are the cartridges removed by you from the gun. A. That is one. My initials are on there.

Q. Look them all over and see if they have the identification marks that you put on them. A. That one has. Yes, they were all taken out of the chamber.

Q. What identifying mark did you put on each of these cartridges? A. I put on "X" and my initials on it.

Q. J. M.? A. J. M.

Mr. Drewen: I ask that these be marked for identification.

(Marked S-15 for identification.)

Q. I show you a cartridge chamber for an automatic revolver of the type now marked for identification and ask you if that is the chamber removed by you from the revolver. A. Yes.

Mr. Drewen: I ask that that be marked for identification.

(Marked S-16 for identification.)

Mr. Drewen: Cross examine.

Mr. Tumulty: No cross examination.

(The witness was excused.)

JAMES McNAMARA recalled.

Direct examination by Mr. Drewen:

Q. On the early morning of December 13, were you present when Joseph Mitchell, this negro now standing here in the court room before you, was brought to the presence of the defendant George? A. I was.

Q. Where was that? A. In Deputy Chief's office.

Q. In what station house? A. The 7th Precinct.

Q. What was said or done in the presence of the defendant and in your presence by Mitchell relative to George's identification? A. I brought him into the station from the rear room, the Lieutenant's room.

Q. Brought who into the station? A. Mitchell. A. Mitchell into the Deputy Chief's office where the defendant was at the time and I asked him if the man who was driving the automobile in which he was riding and that had stopped the officer was in the room, and if he was, to place his hand on him. He went over and put his hand on Raymond George and said, "That is the man."

Q. On the defendant? A. Yes, sir.

Q. What did the defendant say then, if anything? A. He didn't say anything.

Q. Now were you also present when this man Williams, the negro who now stands before you in court, was brought into the room in the presence of the defendant George? A. I was present when he was identified—when he identified——

Q. What happened when you brought Williams into the presence of the defendant George? A.

He was asked, I believe, by Inspector Underwood——

Q. Were you there?

Mr. Tumulty: He said he believed. Did he hear it?

The Witness: Yes, sir, I did.

Mr. Tumulty: May I cross examine on this one point?

Mr. Drewen: Certainly.

CROSS EXAMINATION by Mr. Tumulty:

Q. Where was George when the boy was brought in that you speak of? A. George was in the deputy chief's office.

Q. And it was Inspector Underwood you heard ask the question? A. Yes.

Q. George was in the room at the time? A. He was.

Q. How near to Inspector Underwood was he? A. Well, from here to the table there.

Q. And where were you standing? A. I was right alongside of him.

Q. Of George? A. Williams.

Q. And how far was George away from you? A. He was sitting there in a chair by the wall about as far as from here to the prosecutor.

Q. Do you know whether he heard this or not? A. I beg your pardon?

Q. There is no way of your knowing whether he heard it or not? A. Heard what?

Q. What Inspector Underwood said? A. I was present when the identification was made.

Q. You first said you believed the inspector said something. A. Well, I am sure.

Q. You are sure. Did he say it loud enough to be heard by George? A. Sure.

Q. All right.

DIRECT EXAMINATION by Mr. Drewen (continued):

Q. Tell us what you heard the inspector say to Williams. A. He asked him if the man was in the room that was driving the car that he was riding in and that stopped the officer.

Q. What did he say? A. He said yes, put his hand on Raymond George. He said, "That is the man."

Q. That is, the defendant? A. The defendant.

Q. Was that done at the same time that the identification by Mitchell was made or later or earlier? A. Shortly after.

Q. Mitchell was not in the room at the time of the identification of George by Williams, was he? A. No, sir.

Mr. Drewen: That is all.

RECROSS EXAMINIATION by Mr. Tumulty:

Q. He said nothing at all? A. Who?

Q. This defendant? A. No.

Q. What did he do? A. Just sat there.

Q. How did he appear? A. Calm.

Q. Very calm. And no reaction at all from this charge that he had shot the officer? A. No, sir.

Q. As far as you could see? A. As far as I could observe.

Q. Perfectly calm? A. Yes.

Mr. Tumulty: That is all.

(Witness excused.)

HARRY R. ALBERS, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. You are a detective in the Jersey City Police Department? A. Yes, sir.

Q. And you have been for how long? A. About seven years. Seventeen years in the business altogether.

Q. How long in the detective bureau? A. Seven years.

Q. How long in the Police Department? A. Seventeen years.

Q. Did you know Edward Ruark who was killed on duty on the night of December 12th last? A. Yes, sir.

Q. On the night of December 12th or early in the morning of December 13th, were you at the bedside of Ruark? A. Yes, sir.

Q. Were you with him when he died? A. No, sir.

Q. Did you take from him a statement while you he was in bed and before—I withdraw that question.

Q. Did you take from his a statement while you were at the bedside of Ruark relative to the shooting and wounding, as a result of which he was then in bed? A. Yes.

Q. Was it reduced to writing? A. Yes, sir.

Q. By whom? A. In my hand.

Q. In your handwriting? A. Yes, sir.

Q. I show you a paper writing which purports to be an ante-mortem statement and ask you if you will kindly state to the court and jury whether or not that is the statement which you say you reduced to writing? Just answer yes or no. A. Yes, sir.

Q. Will you state whether or not the printed quetsions contained in the paper that you have just identified were read by you to Ruark and asked by you of Ruark at the time the statement was made? A. Yes, sir.

Q. Were those questions answered by Ruark? A. Yes, sir.

Q. Were the answers put down by you as responsive to the questions shown on the paper which you say you asked? A. Yes, sir.

Q. Are they the answers that appear on the paper now in response to those questions? A. Yes, sir.

Q. Will you kindly state from the paper before you what questions were asked of Ruark and what answers were given before you asked him anything concerning the manner of his being shot?

Mr. Tumulty: I object to the witness looking at the paper unless it appears he is not able to testify from memory.

Q. Now will you kindly state to the court what you said, what questions you put to him and what he said to you before you proceeded to take from him any statement concerning the manner of his being shot? A. The first question I asked Officer Ruark was his name and address. I then asked him if he believed that he was about to die from the injuries he had received and his answer was yes. I asked him if he had any hope of recovery from those injuries. He said no.

Q. And after he had made those statements to you did you then proceed to ask him concerning the circumstances under which he was shot? A. Yes, sir.

Q. And are his answers written—are those answers written by you on the paper you now have before you? A. What is there is just written down the way he gave it to me.

Q. I call your attention to the name "Edward Ruark" signed at the end of the statement and ask by whom that was written? A. Edward Ruark.

Q. That was the officer himself? A. Yes, sir.

Mr. Drewen: I offer the paper in evidence.

Mr. Tumulty: May I cross examine first?

CROSS EXAMINATION by Mr. Tumulty (on the offer):

Q. You have testified now, Officer, as to the entire proceeding you took to get this statement;

you have left out no details? A. In reference to what details?

Q. You have testified as to the method that you adopted in getting this statement; or have you told us all that you did? A. The first question that we always ask of anyone, in any of these ante-mortem statements, is getting the name and address of the person who was injured. We then ask him about the statement that we are taking. We are going to ask him—take a statement from him. See? In reference to those injuries.

Q. I am not questioning you as to that, Officer, but you have testified as to the proceeding and the details that you went through to get this statement. Now have you told us all you did? A. Why, just the few questions that were there, asked me in reference to what I asked him there.

Q. This statement as been offered in evidence by the state. Now, I have asked you to tell us—it is rather important for us—I have asked you to tell us if you have given us all the details that you took before you got this statement. A. On that statement, after getting his name and address I went on to let him know that I was taking an ante-mortem statement from him. I asked him if he believed that he was about to die from the injuries he had received, and he said yes. I asked him if he had any hope of recovery from the injuries. He said no. Which is in printed form there. I then asked him to give me the story of just how he got those injuries, and I put it down in writing just the way that he gave it to me. Of course there are a few other questions on that statement on the back there that I have to freshen up on a little.

Q. That is the entire proceeding that you went through before you took this statement? A. Yes, sir.

Q. Nothing more, nothing less? A. There may be something there that I left out. You know, when you have a printed form in front of you that you can turn around and look at it, we don't keep those things in our head.

Q. I am not talking about the statement itself now. I am talking about what you did to get the statement. You have told us everything that you did? A. Yes, sir.

Q. You have left out nothing? A. Not that I know of.

Q. Who was present beside Ruark? A. Detective Cuff.

Q. You haven't told us that you read this statement to him. A. Which is done.

Q. Did you do it? A. He read the statement. I read it to him and he signed it.

Q. You have not said that you read it to him. A. It is the custom for any person before signing a statement to read it to them.

Q. I am trying to get you to understand my slant on this thing. A. I understand it.

Q. It is a rather serious thing. A. That is right.

Q. I am asking you for all the things you did. I asked you four times and you didn't testify that you read that statement. A. That statement was read by me in the presence of Ruark and he signed it.

Q. You have not yet testified to it. Who else was present? A. Detective Cuff.

Mr. Tumulty: I don't want it to appear, your Honor, that I am technical, or that I am in any way trying to be captious, but I have a serious notion of what the business is and I am trying to get full information.

The Court: Well, I am not precluding you, Mr. Tumulty.

Mr. Drewen: Nobody is.

Mr. Tumulty: Some people seem to think rather lightly of it.

Mr. Drewen: Sir?

Mr. Tumulty: I say some people seem to think rather lightly of the situation.

Mr. Drewen: It must be you, Mr. Tumulty.

Mr. Tumulty: Well, I am not laughing about it. I don't want anybody else to laugh about it.

Mr. Drewen: I ask the paper be marked in evidence. There is no objection, I assume.

Mr. Tumulty: No objection.

Mr. Drewen: I will read into the record State's Exhibit S17.

(Paper is marked Exhibit S17 in evidence and is read to the jury as follows:)

Mr. Drewen (reading):

"December 12, 1930.

"The following is the ante-mortem statment of Edward Ruard, residence 1855 Boulevard, Jersey City, made to Detective Harry Albers at the City Hospital in the presence of John Feeney, 121 Wade Street,

Jersey City, and Harvey Maher, Detective, Jersey City Police.

"Question: What is your name?

"Answer: Edward Ruark.

"Question: Where do you live?

"Answer: 1855 Boulevard.

"Question: Do you now believe that you are about to die?

"Answer: Yes.

"Question: Have you any hope of recovery from the injuries you have received?

"Answer: No.

"Question: Are you willing to make a true statement as to how and in what manner you received the injuries from which you are now suffering?

"Answer: Yes.

"Question: How did you receive your present injuries?

"Answer: I was shot by a tall negro who was riding in a sedan auto, and there was two other negroes with him. When I stopped the auto the tall negro jumped out of the auto with a gun and shot me.

"Question: Where did you first see this auto with the three men, and one who shot you?

"Answer: Communipaw and West Side Avenue and I chased them and ordered them to stop, and they turned into—right into the dead end of Mallory Avenue at the Boulevard and they stopped, and when I got off my motorcycle and walked toward them the tall one got out of the auto and told me to stick my hands up and he pointed a

gun at me. I reached for my revolver and he fired a shot at me and I started to shoot at him. I am sure I hit him. I jumped behind a pole and the negro jumped in the auto and drove away.

"Question: Did you know the man who shot you?

"Answer: No.

"Question: What made you stop this auto?

"Answer: I received an alarm to be on the lookout for a tall negro six feet six (here) who was riding in an auto, who was known as Slim and who was wanted in Bayonne for a holdup.

"(Signed) EDWARD RUARK.

"Witness (Signed) FRANK M. CUFF,

"Detective, Jersey City Police."

Mr. Drewen: That is all.

Mr. Tumulty: No cross examination.

(The witness was excused.)

JAMES L. McNAMARA, recalled as a witness on behalf of the state, resumed the stand and testified further as follows:

Direct examination by Mr. Drewen:

Q. Lieutenant, were you at any time on the morning of December 13 at the bedside of Officer Ruark? A. I was.

Q. About what time was that? A. About one o'clock in the morning.

Q. Were you there on more than one occasion that morning? A. Only one.

Q. At the time you were there was the defendant George brought to the bedside of Ruark? A. Yes, I brought him in there.

Q. You brought him in there? A. We brought him from Kearny. The Kearny police turned him over to us.

Q. What occurred in the room and at Ruark's bedside while you were there with this defendant George? A. I brought Raymond George, the defendant, to the operating room, where Ruark was on a cot, and I asked Rurk, who was conscious at the time, if the man who shot him was in the room at the time, and he said yes. I said, "If he is, put your hand on him," and he put his hand out and said, "This is the man here," and touched George; and he says, "You son of a bitch," and he pulled George toward him, and the bed slid over to him and he tried twice to get at George. He reached up out of the bed.

Q. This was in the operating room, you say? A. Yes.

Q. What did George do or say when the wounded policeman tried to get out of the bed after him? A. He did not say anything.

Q. How long were you there with George? A. Just long enough to have him identified. He had been shot through the hand and we took him downstairs.

Q. Who had been shot through the hand? A. George.

Q. And you took him where? A. Downstairs to the admittance room, and he was treated.

Q. In the hospital? A. Yes; and he had a slight abrasion to the forehead.

Q. The wound to the hand was dressed? A. We dressed his wound and brought him back to the Seventh Precinct.

Mr. Drewen: That is all.

CROSS EXAMINATION by Mr. Tumulty:

Q. Who was with you then? A. At the identification?

Q. Yes. A. Captain Cusack and Deputy Chief Casey and three doctors there, Dr. Marsh, Dr. Doran and Dr. Gleason.

Q. Do you know whether or not Officer Ruark had identified anybody else before he identified George? A. I do not know.

Q. Were you present when these other boys were brought in? A. I was not.

Q. How did the defendant act when the officer took hold of him? A. He acted natural. He didn't say anything, that is all.

Q. Did he seem to be very calm? A. Sure.

Mr. Tumulty: That is all.

(Witness excused.)

PETER J. DALY, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct exmination by Mr. Drewen:

Q. Lieutenant, you are a member of the Jersey City Police Department? A. Yes, sir.

Q. And in the early morning of December 13th, 1930, were you on duty at police headquarters, or where? A. On December 12, night tour, 1930, I was assigned from the Bureau of Patrol to the night squad. It was my duty to take statements from prisoners arrested by the night squad detectives.

Q. Did you take a statement, can you tell us, from this defendant George? A. Yes, sir I did.

Q. Relative to the crime for which he is now being tried? A. Yes, sir.

Q. About when was that statement taken? A. That was about five A. M. on December 13, 1930.

Q. And where? A. At the Deputy Chief's office in the 7th Precinct.

Q. Did you put questions to him relative to the crime for which he was charged? A. Yes, sir.

Q. Did he answer those questions? A. Yes, sir.

Q. Were the questions that you put to him and the answers he made to them reduced to writing? A. Yes, sir.

Q. I show you a paper writing purporting to be such a document, and ask you whether or not you can tell us if that is the writing to which the questions and answers referred to were reduced? A. Yes, that is the statement.

Q. I call your attention to the name Raymond

George, written in pen and ink, at the bottom or end of each of the sheets contained in the statement which you have just identified, and ask you if you can tell the court and jury by whom that name, Raymond George, was written? A. That was written by Raymond George himself.

Q. Do you know who he is now? A. Yes, sir.

Q. Who? A. The prisoner at the bar. Over here.

Q. Now at the end of this questioning and the writing of his answers, were the questions and answers read to him? A. Yes, sir.

Q. By whom? A. First I read the statement all over, and after that they were read by Mr. Ransom, the notary public.

Q. After you read them, then he read them? A. Yes, sir.

Q. Before you proceeded to direct any questions whatever to the prisoner, Lieutenant, did you make any statement to him as to his rights? A. Yes, sir. May I read this?

Q. Just answer yes or no? A. Yes, sir.

Q. All right? What statement did you make or read to him? Don't tell us what it was, but was it something you repeated to him orally or something you read to him from a paper? A. I repeated it orally and I read it after.

Q. State what you repeated orally to him and read after to him before you proceeded to question him concerning the charge against him. A. I told him I was Lieutenant Peter J. Daly, of the Jersey City Police Department.

Q. Yes. A. I was in uniform.

Q. Yes. A. I was wearing a summer blouse, a lieutenant's shield, trousers.

Q. Yes. A. That he was charged with murder, that I was sent to take a statement from him with reference to the crime for which he was arrested, that he could answer of his own free will, just as he wished, but it must be voluntary, I would take it down in writing, and it would be used at his trial. After I finished that statement I read the statement to him.

Q. Did he then sign it? A. He signed it in the presence of Detective McNamara and Mr. Ransom, the notary public.

Mr. Drewen: I offer the statement in evidence.

Mr. Tumulty: Just a few questions.

CROSS EXAMINATION (on the offer) by Mr. Tumulty:

Q. Who else was present, Officer, how many other police officers? A. Deputy Chief Casey, Patrolman Joseph Palmer, Detective McNamara, myself and Mr. Ransom.

Q. And you had no trouble getting the statement from this man, did you? A. No, no trouble.

Q. How did he appear while you were taking the statement? A. He appeared all right to me.

Q. When you asked him these first questions warning him of his rights and so forth, did he say anything? A. He seemed to understand what I was talking about.

Q. He never said anything? A. He said all right.

Q. He said all right? A. Yes.

Q. And whose writing is this? A. Mine.

Q. And you got all the information from him? A. Yes.

Q. And what time was this taken? A. It was about five A. M., December 13, 1930.

Q. And when was he arrested, do you know? A. He was arrested the previous evening at Kearny.

Q. Well, what time, do you remember, around twelve, I think. You say that was some time the next evening ?

Mr. Drewen: The next morning.

A. The next morning about five o'clock.

Q. Well, that was after he had been all through the process of being brought to the hospital and so forth? A. Yes, sir.

Q. And all through this questioning he remained very calm and cool? A. Yes.

Mr. Tumulty: That is all.

Mr. Drewen: I ask that the statement be marked in evidence.

(Marked in evidence Exhibit S18.)

Mr. Drewen: With the Court's permission I will read into the record State's Exhibit S-18:

"Jersey City, N. J. Dec. 13th, 1930.

"Statement of Raymond George.

"Residence 132 Spruce Street, Newark, N. J.

"Made to Peter J. Daly:

"I am Lieutenant Peter J. Daly of the Jersey City Police Department. I am going to ask you some questions in refer-

ence to the crime for which you are arrested. You may answer them or not just as you wish, but what you do say must be of your free will, a voluntary statement, as it will be taken down in writing and used at your trial.

"Question: What is your name?

"Answer: Raymond George.

"Question: Where do you live?

"Answer: 132 Spruce Street, Newark, N. J.

"Question: How old are you?

"Answer: Nineteen years.

"Question: What is your occupation?

"Answer: Unemployed.

"Question: You are charged with murder, in that around or about 9:15 P. M., December 12, 1930, you did wilfully and feloniously fire shots from a fully loaded .45 calibre, Model 1911, United States Army automatic revolver into the body of one Edward Ruark, a policeman attached to the Jersey City Police Department, at dead end of street on Mallory Avenue at Lincoln Park, and from which shots resulted in his death at Jersey City Medical Centre, at 4:45 A. M., December 13, 1930. What have you to say to the above charge?

"Answer: I fired one (1) shot at him when he refused to put up his hands. He pulled his gun and shot at me six (6) times.

"Question: When he approached you, you saw he was a policeman in full uniform?

"Answer: Yes, sir.

"Question: You then fired at him after seeing that he was a policeman?

"Answer: Yes. I told him to put up his hands. He jumped behind his motorcycle and I fired the first shot. Then he drew his gun and fired about six shots at me.

"Question: What did this policeman say to you when he ordered you to stop?

"Answer: He said, 'Get out and show me your license.'

"Question: I show you a 1911 Model, Number 520,868 marked on stock, and United States property. 45 Caliber automatic revolver, with 'X' scratched on handle by Detective McNamara. Is this your revolver that you used when you fired shots at Patrolman Edward Ruark at 9:15 P. M., last night, December 12, 1930?

"Answer: Yes, sir.

"Question: Is this the revolver you used when you fired the shots into the body of this policeman, Edward Ruark?

"Answer: Yes.

"Question: How long do you own this revolver?

"Answer: Two months. (2).

"Question: Where did you get this revolver?

"Answer: I bought it from a fellow in a poolroom on Broome Street between Spruce and Montgomery Streets, Newark, N. J.

"Question: What was the name of the person you bought it from?

"Answer: I don't know his name.

"Question: Why did you buy this revolver?

"Answer: I bought it to go with some other guys to do stickups.

"Question: How did you know this party had this gun?

"Answer: My friend told me. His name is Arthur Simpson.

"Question: What did Arthur Simpson say when he told you you could buy this gun?

"Answer: He said I could buy it for ten ($10.00) dollars.

"Question: Where does Arthur Simpson live?

"Answer: I think at 217 West Kinney Street, Newark, N. J.

"Question: Who does he live there with?

"Answer: His mother.

"Question: Do you know where he is employed?

"Answer: No. He hangs around the poolroom at Broome Street near West Kinney Street.

"Question: Where did you intend to go to stick the place up tonight?

"Answer: At Market Street, near Arlington (the Wahlmuth Co.), on Market near Arlington Street, on Saturday morning at about nine o'clock.

"Question: Who was going to accompany you in this stickup of Wahlmuth's store, in Newark, on Saturday morning?

"Answer: James Williams and Joseph Mitchell.

"Question: Did you in company with James Williams and Joseph Mitchell make plans to stick up this Wolmuth store in Newark on Saturday morning?

"Answer: Yes, sir, last week.

"Question: Where did you make these plans?

"Answer: In the house of James Williams, 2548 Eighth Avenue, New York City, N. Y., about last Thursday, about nine o'clock at night, in front room.

"Question: How many places did you hold up when James Williams and Joseph Mitchell accompanied you?

"Answer: None with them guys.

"Question: How many stickups were you in?

"Answer: About five (5) or more, I can't remember.

"Question: Where did you commit those crimes?

"Answer: All in Newark. I don't remember the places.

"Question: How many other men were there in the automobile, at the time of shooting?

"Answer: James Williams and Joseph Mitchell.

"Question: Did you see a gun in possession of either one of those men while they were in auto with you?

"Answer: No, I was the only one that had a gun.

"Question: Did either one of those men fire a shot at this policeman at time of shooting?

"Answer: No, I was the only one that did shooting.

"Question: Did you at any time, while in auto with these two men, show them this revolver from which you fired the shots at officer?

"Answer: Yes, sir.

"Question: Did James Williams and Joseph Mitchell know you had this revolver and what you had it for?

"Answer: Yes, sir.

"Question: Where did you first show them this revolver?

"Answer: I showed it to them first in New York City, in the home of James Williams' family at 2548 Eighth Avenue, New York City, in front room last Thursday when we planed to hold up the Wolmuth store in Newark.

"Question: Who owns the automobile, Lic. No. 5498, Buick Model, in which you were riding in Jersey City at time you fired shots, which struck and killed Patrolman Edward Ruark?

"Answer: I don't know. We stole the auto.

"Question: Where was car standing when you stole it?

"Answer: It was at 145th St. west on other side of 8th Ave., New York City.

"Question: Who was with you when you stole this auto?

"Answer: James Williams and Joseph Mitchell.

"Question: Who acted as chauffeur?

"Answer: I did.

"Question: Did at any time Williams or Mitchell act as chauffeur for car?

"Answer: No.

"Question: After stealing this car where did you go?

"Answer: We headed for Newark, N. J., and came across ferry to Jersey City. Then we came down Communipaw Avenue, then we turned corner and a motorcycle policeman followed us and told us to stop, and we didn't have any license or anything, and being that I was wanted by Newark police, I was afraid to let him arrest me.

"Question: What are you wanted by the Newark police for?

"Answer: Holdup.

"Question: Where was the holdup?

"Answer: They caught some other fellows and they said I was with them. It was a grocery store holdup on Avon Avenue, Newark, N. J.

"Question: Who was the other fellows?

"Answer: Alfred George and Barney Block and John Gilbert.

"Question: Do you know what they got in this stickup?

"Answer: No.

"Question: Have you ever been arrested before?

"Answer: Yes, I was arrested in Newark for stealing autos.

"Question: Have you served time in any prison?

"Answer: Yes, Rahway Reformatory.

"Question: When were you committed there?

"Answer: I was sent there Oct. 16, 1925.

"Question: When were you released from there?

"Answer: I was released Nov. 19, 1926.

"Question: After you fired the shots into the body of this policeman, were you standing on ground and did you then get into auto, Buick make, N. Y. Lic. No. 5498, and try to make your escape?

"Answer: Yes, sir.

"Question: Where did you drive to?

"Answer: I drove down Communipaw Avenue and I was chased by three (3) policemen in a Ford car and they disabled my car by shooting and they tried to cut us into curb and my car was disabled and I steered it into meadows and then we three jumped out and ran, and I ran in back of buildings and then hid under an auto and stayed there a long time, then it was cold, so I decided to come out and get a hitch and I asked a driver to give me a lift but he refused and he got a club from over the seat and grabbed me and called a cop and I was arrested.

"Question: Did you at any time while in Western Electric Co. at Kearny, N. J., get into an auto and attempt to steal it and get out of yard?

"Answer: Yes.

"Question: Why did you abandon this auto in your attempt to get away?

"Answer: Because gate was locked and I couldn't get away in any other way, so I jumped out and left it there.

"(Signed) RAYMOND GEORGE.

"Subscribed and sworn to before me this 13th day of December, 1930.

"(Signed) E. A. RANSOM,

"Commissioner of Deeds of New Jersey.

"Witness (Signed)

"LIEUT. JAS. L. MCNAMARA."

By Mr. Drewen:

Q. In State's Exhibit 18, which has just been read to the jury, there is reference made to a gun as being exhibited to the prisoner. Can you state whether or not the gun before you marked for identification is the gun that was shown to him and which he referred to in this statement? A. Yes.

Mr. Drewen: I offer the gun in evidence together with the bullets and the cartridge chamber which Lieutenant McNamara says he removed from it at the time it was turned over to him.

(Admitted and marked Exhibits S14 and S16 in evidence.)

CROSS EXAMINATION by Mr. Tumulty:

Q. How many of those cartridges were discharged, do you know? A. There was one cartridge jammed in the gun, I understand.

Q. Do you know how many were discharged?

Mr. Drewen: There is no way of telling. They pumped the empty shells out.

Mr. Tumulty: That is all.

Mr. Drewen: That is all.

(Witness excused.

ARTHUR P. HASKING, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Doctor, you are the assistant county physician of Hudson County? A. Assistant county physician of Hudson County.

Q. Doctor, on or about the 12th or 13th day of December, 1930, did you perform an autopsy on the body of Edward Ruark, the policeman whose death is in question in this trial? A. I did.

Q. I show you State's Exhibit S1 and S2, and ask you if those photographs are accurate representations of the body of Ruark upon which you performed the autopsy? A. They are.

Q. Where was the autopsy performed, doctor? A. Jersey City Hospital.

Q. Now will you kindly state to this court and jury the findings resulting from the autopsy? A. The body was that of a well built male approximately five feet seven inches in height, estimated to weigh about 200 pounds, about 42 years of age.

We found in the lower lip, to the left of the mid-line, a vertical incised abraided wound.

Q. The lower lip? A. Yes, the lower lip, slightly to the left of the mid-line, an abraided wound of the skin measuring about half an inch in length and having a vertical direction.

We found in the mid-line of the abdomen or belly, about approximately an inch and a half below the navel, a vertically incised wound of the skin measuring about six and three-quarter inches in length from the upper portion of which protruded two surgical drains. This wound had been brought together by eight points of surgical suture and had evidently been made for the purpose of surgical treatment.

We found in the hollow of the elbow on the left side an incised wound of the skin measuring about a half an inch in length with sharply cut edges and which had been brought together by a surgical clip, and that had evidently been made for the purpose of surgical treatment.

We found, situated approximately two and three-quarters inches to the left of the median line and about thre and a half or three and three-quarter inches below the left nipple, a circular-shaped wound of the skin measuring approximately one-half inch in diameter and having the appearance of a bullet wound of entrance.

We found situated in the midaxilary line on the right side—that is, a line that is drawn through the center of the armpit, which is called the axilla, a line drawn vertically down from the middle of the right armpit is the midaxilary line—we found situated at a point six inches below the right nipple and about nine inches to the right of the

median line, an irregular shaped wound of the skin measuring a little over half inch in diameter, close to three-quarters of an inch, with irregular torn edges, and having the appearance of a bullet wound of exit.

There were no other marks of recent violence on external examination of the body.

On opening the abdominal cavity, we found that the abdomen wall had been perforated at a point corresponding to the external wound which I have previously mentioned at the left side of the abdomen. The stomach, the anterior or front wall of the stomach was perforated at two points, one about six and three-quarter inches from the piloris or outlet of the stomach, which is on the right side of the stomach, and at another point about two and a half inches distant. We found that the right lobe of the liver was perforated, extensively fragmented and torn, with the so-called bursted effect. This fragmented or bursted effect covered an area of about four inches in diameter.

We found that the right abdominal wall had been perforated through the diaphragm and wall at a point corresponding to the external wound previously mentioned, which on the inside of the chest was between the eleventh and twelfth ribs.

There was extensive hemorrhage had taken place throughout the entire abdominal cavity.

The other organs of the body were normal and in such condition as to be consistent with the continuance of life and health. Therefore from all the facts observed I infer that death resulted from hemorrhage following a bullet wound of the abdomen.

The track through the abdomen from the point of entrance on the left side to the right was a continuous track.

Q. So that there was one bullet wound of entrance and a bullet wound of exit? A. Yes, and a continuous track between them.

Q. Doctor, did I understand you to say there were no marks of external violence? A. No other.

Q. You would not describe this condition of the lip to which you first referred as any mark of external violence? A. There was force, violence applied at that point. I don't know how. I simply mentioned it because it was there. It was of no moment.

Q. Will you step down here and by reference to my own person will you state where the bullet wound of entrance was found to be? A. Taking the nipple, about two and three-quarter to two and a half to the left, and taking the nipple on this side, the armpit—the center of the armpit is the midaxilary line, and it was about six inches below and nine inches to the right—was the point of exit. So approximately it was, roughly speaking, as I have indicated. It went through the stomach, his stomach being bulging out, as the stomach was, it simply went in and out the front wall. Then it went through the liver and came out here (indicating).

Q. You didn't find the bullet? A. No.

Q. Was the wound of exit a complete hole through which a bullet could have passed? A Oh, yes. It was much larger than the wound of entrance and torn, irregular and everted. The wound of entrance was circular and of a type that would indicate a wound of exit—of entrance.

Q. (By Mr. Drewen). Doctor, calling your attention again to photograph S-2, will you kindly indicate whether or not on the carcass as shown on that picture there is evidenced the wound of entrance? A. The wound of entrance is shown in this picture here, with all the points and distances I mentioned. That is the nipple (indicating) and that is the wound of entrance; this is the nipple; this is the surgical drain, and these are the sutures, and that is the point of exit.

Q. Around which I mark a circle? A. Yes.

Q. Just as you did in the other photograph? A. Yes.

Q. The other photograph you refer to is S-1? A. Yes.

CROSS EXAMINATION by Mr. Tumulty:

Q. I show you Exhibit 2 and ask you to tell me what is that shown here. A. That is a rubber surgical drain, a surgical gauze, the drain that was in there in the upper portion of the abdominal viscera.

The Court: We will take a short recess.

(A short recess was taken.)

(After a short recess.)

JOHN W. KENNY, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

The Court: The court stenographer calls my attention to the fact that there is a jammed cartridge in that revolver, and anybody handling the revolver should be very careful with it.

Direct examination by Mr. Drewen:

Q. Were you on duty on the night of December 12 and the morning of December 13 in Jersey City? A. I was.

Q. You were a patrol driver or ambulance driver? A. Ambulance driver.

Q. Did you at any time assist in taking Police Officer Ruark to the hospital? A. No, I did not.

Q. You were at the hospital, at the Medical Center, when he arrived there? A. Yes.

Q. Did you take charge of his clothing? A. I helped to undress him.

Q. In removing his coat did you find anything unusual inside his coat? A. No.

Q. Did you at any time find a bullet inside the coat? A. I found it in between his shirt and a windbreaker.

Q. Between his shirt and a windbreaker? A. Yes.

Q. What is a windbreaker? A. It is a sort of semi-sweater and—well, it is a moleskin jacket.

Q. That of course was outside of his shirt? A. That was outside of his shirt.

Q. And you found this bullet resting between the shirt and the windbreaker? A. As I pulled the buttons and everything away from him, to undress him quickly, or help undress him quickly—as I pulled the garment aside under the shirt and

away from him altogether—I went to pull them apart like that—this bullet, as I afterwards found out, just hopped up and I caught it as it hopped up and continued on helping undress him.

Q. Did you preserve the bullet? A. I did.

Q. I show you a bullet tied up in a gauze sack, and having a label attached to it, and ask you if can identify that as the bullet you removed from Officer Ruark's clothing in the manner you have described. A. I put my initial on it.

Q. Open it and see if your initials are on it. A. Yes; there is a K on it there, right there.

Mr. Drewen: I offer the bullet in evidence and ask that it be marked.

Mr. Tumulty: No objection.

(Admitted and marked S-19 in evidence.)

Q. I show you a patrolman's garment—is that a coat? A. An overcoat.

Q. I show you a patrolman's overcoat and ask you whether or not that is the coat you took from Officer Ruark. A. Yes, this here coat was partly open when he came in. He came in staggering in the hospital in the arms of two men.

Q. I call your attention to what appears to be a bullet hole under the third button-hole from the top and ask you whether or not that was there at the time you removed it. A. I did not see it.

Q. But this you say is the coat you removed? A. That is the coat.

Q. I show you a bent and broken button from the coat and ask you if you can tell where that came from. A. I do not know.

Q. I show you a windbreaker and ask you if you can tell if this is the windbreaker you removed from the police officer? A. That is the windbreaker.

Mr. Drewen: I offer both of these garments in evidence.

(Windbreaker marked in evidence Exhibit S20.)

(Overcoat marked in evidence Exhibit S21.)

Q. How are you able to identify those garments? A. This one I was able to identify because of the bullet hole, and this button being off the coat.

Mr. Drewen: Cross examine.
Mr. Tumulty: No questions.

(Witness excused.)

ROBERT HALL, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Q. Where do you live? A. 456 Mott Avenue, Bronx, New York City.

Q. You do not know this defendant, Raymond George, do you? A. No, I do not know none of them.

Q. I show you photographs in evidence, S11 and S12, being photographs of an automobile bearing New York license number N-5498, and ask you to tell the court and jury whether or not that car was ever owned by you? A. It was my car.

Q. When did you last have possession of the car? A. I got out of the car at quarter of eight——

Q. In the evening? A. Quarter of eight in the evening, to get a cup of coffe at 140th Street and Lenox Avenue. Parked it in front of the door of number 62.

Q. 62 what? A. 140th Street, that is near the corner of Lenox Avenue.

Q. And on what date was that eight o'clock in the evening? A. The 12th of December.

Q. And how long were you in getting your coffee? A. I was not any longer than ten minutes.

Q. When you came out did you go to the place where you had parked your car? A. I went to the place and the car was gone.

Q. Did you ever see it again? A. I never see it any more until I came over here to identify it.

Q. You were brought over here by the police? A. No, sir.

Q. Well, how did you know where your car was? A. I reported that the car was lost at the time I came out and found it was gone—I went to the 36th Precinct.

Q. You reported it to the New York police? A. Yes.

Q. Who sent you over to New Jersey to identify the car? A. Detective Nelson.

Q. Of the New York police? A. Yes.

Q. Did you come over? A. I came over.

Q. When? A. I came over here—I was in the 7th Precinct at 3:30 Monday morning, the 13th day of December.
December.

Q. On the morning of the 13th of December? A. Yes, sir.

Q. Did you see your car at the 7th Precinct? A. I did not see the car on that morning.

Q. When did you see it? A. It was a few days afterward.

Q. Where? A. At the Seventh Precinct.

Q. And that is the car that is shown in the photograph? A. That is the car, a Buick car, a coach.

Mr. Drewen: Cross examine.

Mr. Tumulty: No questions.

(Witness excused.)

JAMES EDWARD WILLIAMS, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

The Court: I assume, Mr. Drewen, that this witness is one of the three men who are indicted, one of the two other men who are indicted with the defendant Raymond George, charged with this murder, is that correct?

Mr. Drewen: Yes, your Honor.

The Court: Well, I think it is proper for the court to advise this witness, in view of the fact that he has been indicted for murder himself, that under these conditions he does not have to testify unless he so desires.

Q. Well, are you willing to testify in this case? A. I refuse.

Q. You refuse? A. Yes.

Q. You refuse to testify, is that right? A. Yes.

The Court: I think that the court will have to recognize that refusal as being a proper exercise of this witness' rights.

Mr. Drewen: Yes, your Honor, I recall the witness.

(Witness excused.)

JOSEPH MITCHELL, called as a witness on behalf of the state, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewen:

Mr. Drewen: I think, your Honor, that this is the other defendant named in the indictment for murder that is now on trial before this court. I presume your Honor's admonition goes for this witness as it did for the other?

The Court: Yes.

Q. Mitchell, are you willing or not to testify in this case? A. I refuse.

Mr. Drewen: All right, you may step down.

(Witness excused.)

The Court: I assume the ruling of the court is perfectly clear to the members of the jury, but in order that there may be no misunderstanding, gentlemen, these two last witnesses who have been called have been indicted by the grand jury of this county, also charged with the murder of Patrolman Ruark. Under the law, no defendant can be compelled to testify against himself and even though they are not on trial, if we compel them to testify in this case the testimony which they offer could be used against them in a subsequent trial against each of them.

Mr. Drewen: In order that there may be no doubt about it I now offer in evidence the loaded shells taken from the gun, the gun itself and the magazine. They have already been, I think not marked, but Mr. Victory tells me that is not so certain as to his record.

The Court: All right; they may be received in evidence.

(The exhibits referred to, heretofore

marked for identification S-14, S-15, and S-16, are received in evidence.)

Mr. Drewen: State rests.

STATE RESTS.

DEFENDANT'S CASE.

Defendant's Opening.

Mr. Tumulty: May it please the Court, Mr. Prosecutor, and Gentlemen of the Jury:

I think before the defense starts its opening that it is only fair and proper so that we might give you an insight into our feelings in this matter that we stop, if but for a moment, to pay a brief word of tribute to Officer Ruark. There isn't any one in Jersey City who deplores his tragic passing or who stands more aghast at the horror of his death than the lawyers for the defense. I have a vivid picture of that brave man, shot down in the vigor of life, shot down in the full performance of his duty. I realize fully the situation that must have been brought to his peoplee, just on the eve of Christmas of 1930,—those tender bonds of affection sundered forever. There is no question in my mind that he was a hero. There is no question in my mind from what I note from the evidence in this case and from what I note from other sources that he met his death bravely and

that he gave his life unselfishly, willingly, and as devotedly to the common interests as a soldier on the battlefield. The glory of his death and the example of his sacrifice should inspire us all here now.

From what I know of this case I think you would have but little regard for me if I stood before you gentlemen and tried to tell you that I believe that this man did not commit this act. I believe he did, but in order to explain the anxiety that possessed us during the presentation of the State's case I want you to know this: that most of the information we got came from him, and from what I know of him and from what we are going to show you of him we had no reason to believe anything that he said.

Our defense, after painstaking effort, after all kinds of research, is that this defendant, this boy, is not mentally sufficient to commit such an act and at the time of its commisison be legally responsible.

Now, gentlemen, if we do anything else in this case there is one thing that we want to impress upon your minds, and it is this: of the utter honesty of our efforts. We are not going to hide or try to hide anything. We are going to present to you every fact that we have in our possession and in doing that we want to do it honestly. We want to do it frankly; but above all we want to do it courageously and without fear and without favor.

You must realize that you hold in the palms of your hands a human life, a life created by God Almighty. That makes this case sacred and that makes your duty sacred. I want to remind you before we start that this morning you stood with

one hand on the Bible and the other raised on high to Heaven and you call down into this courtroom God Almighty to witness that you would well and truly try this defendant. That means a lot. That means a great deal and I want you tonight to deliberate upon the full extent of the meaning of that oath. It means that this boy is entitled to and must have a fair trial. God is here to witness, and not only to witness, but to judge as to whether or not he does get a fair trial. We are going to insist upon that and at the very beginning I want you to have the graciousness and the tolerance and the good fellowship to hear from us our feelings; that we will give you without any limitation or without any restriction. I feel this situation keenly and I beg of you to feel the same way. I am going to be honest with you. I am going to be frank with you.

The first thing that we ought to disposeof and dispose of it quickly and like men is this: This morning you heard one juror called. You heard him tell the Judge that because he came from a certain part of this country it would be impossible to give this boy a fair trial if he was on the jury. I admired that man because he had the decency and the courage to speak up.

Now, gentlemen, I want you to understand me. I don't mean to question the honor or the integrity or the courage of any man on this jury; but we are carrying a sacred burden here and I am going to ask you now, is there any man on this jury who has in his mind or in his heart any feeling of prejudice, any feeling of hatred, any feeling of anger against this man that would prevent him from doing justice? If there is, I beg of him

to take heed of his oath and I beg of him to consult with his own Maker, because this is a court of justice.

Is there any man on this jury who feels that there is a hue and cry against this man and that because of it any member of this jury might have his duty affected? If there is, I beg of him by all that is holy and all that is decent to understand this—that fear has no place in the court of justice. I want you to think—and I am not trying to become ultra-effective; I am speaking as I feel —I want you to remember that there is nothing more vile than a miscarriage of justice, and if you have prejudice against this man and if you fear the hue and cry against him and you give way to it, you deny justice; you thwart justice and you make a mockery of your own oaths, and you flaunt justice in the face of God Almighty, and you bring yourselves under the censure of your own conscience; and I beg of you people to remember that as the years go on if those feelings possess you today you will have cause to regret it.

Pontius Pilate sent Jesus to Calvary Hill because he was afraid of the mob. I look at you and I am talking to you right from my heart. All that we want is plain, common justice, and that is what we expect.

Now as to our defense: I know, as long as I have been practising law, it has always been the common effort of a hard-pressed criminal or of a beastly murder to set up a defense of insanity. That seems to be the only haven. But, gentlemen, in this case it happens that we are compelled to do that by the circumstances surrounding this boy's life.

When we were first assigned to this case I had no idea of insanity. I know Judge Dolan did not. And we started our investigation and we were confronted with a situation that was appalling This boy and his people before him on his mother's side, all the way back and into the days of slavery, have a violent strain of insanity all the way through. That is what we are going to show you. And we are going to show you by expert and scientific testimony the effect that that strain and that curse has upon a boy such as this. We are going to show you that a boy, or anyone born under such circumstances, carries in his brain a predisposition and a tendency to insanity. That is just dependent upon the history there. But we are going to go farther than that. We are going to show you that as far back as 1926—this boy is only 21 years of age now—as far back as 1926 in this state in the common pleas court of Middlesex County, before Judge Kirkpatrick, having complete and lawful jurisdiction of the question before him, under the laws of this state, he was determined insane, and from Rahway he was sent to the state hospital for the insane.

Now, gentlemen, if we show you that, along with many other things, certainly it would give any twelve men reason to pause. Oh, I know the horror of the thing. I never felt as I did today, trying this case, trying to do the best I could to defend this man—I realize that he sits there, hopeless, outcast of society, no one to speak for him, the off-shoot of insanity for as far back as seventy-five years, going back to the days of slavery when he and his people were not humans at all, they were chattels. We will show you that

that unfortunate boy is no more to be blamed for the condition of his mind than he is to be blamed for the fact that he is colored.

Under the history that we will give you and the expert testimony that we will have, you could form no other conclusion than to agree, as Judge Kirkpatrick decided as far back as 1926, that that boy is insane; and if he is insane the court will instruct what your duty is.

I have no doubt about his insanity. In our effort to produce before you the testimony of experts, his Honor, Judge Kinkead, exercising the discretionary power of this court, did it, as he does everything else, with the even hand of justice. We were permitted by his order to secure two of the greatest alienists in mental disorders in the State of New Jersey. We have secured Dr. Cotton, whom I consider the outstanding expert in this part of the country. We have secured Dr. Donohue, a man whose experience dates back to the army days. They have with the greatest care, with the greatest diligence, examined into this boy's mind. They will testify, and they will tell you their story.

Now, gentlemen, there will other circumstances that we will prove, that we will show you of this boy's life, of his environment. We will show you that up to a certain point in his life he was a good boy. We will then show you that when the storm of adolescence came on, when he was about to become a man, his condition changed.

We will show you proof that cannot be contradicted that at that time the mind of a man or of a woman or of a boy predisposed to insanity, as this boy was beyond question—we will show you

beyond the possibility of contradiction that that was the time this boy's mind started to go, and from then on it has been a steady progression or a steady vitiation.

Now if we prove this to you—we have got to do our duty. I know how hard it is. I see these officers. I knew Officer Ruark. I know that these men deserve every protection from citizens of the city. They deserve it because they are police officers and because they are such men as they are; and I want to say to you that when you think that on that night these officers captured this man who killed or shot one of their own, that there was not a hand put on him, he was not abused, he was not even—I say that they are worthy officers in a department that can produce such a man as Ruark.

Now, gentlemen, in the morning we are prepared to unfold to you our case. I beg of you to keep your minds open. I beg of you to hold on to your oath and to see that a human being gets a fair deal and is allowed justice in this county.

The Court: You do not want to present any of your testimony tonight?

Mr. Tumulty: I do not think we do now, your Honor.

The Court: Now, gentlemen of the jury, in view of the importance of this case the court is compelled to call upon you to make a sacrifice, to be separated from your homes and your family this evening. That has been the procedure in capital cases and many cases of importance, and other juries have made this sacrifice, and I know that you twelve men are going to deem it your duty to make this sacrifice also. It is an impor-

tant case which you have to decide, gentlemen, and although it is merely a recommendation on my part, I do recommend to you that you refrain tonight from discussing the case amongst yourselves. This case is not finished as yet. When the case is finished and the prosecutor has put in all the testimony he deemed advisable, and when the defense has finished and the court has charged you, you will then retire to the jury room to consider of your verdict, and until that time you should try and keep your minds open so that when you go to the jury room to consider of your verdict, you will go there with minds that are going to try to conscientiously cope with the problem which you will have before you.

You will be provided with every comfort that the court through its officers can provide for you. We have stayed here today purposely late in order to get this trial through as expeditiously as possible. I think you will agree with me that there has not been any lost motion today, either on the part of the prosecutor or on the part of the defense. The case has proceeded very swiftly. The state is all finished and the defense is ready to proceed tomorrow. We are doing that with the idea that because of the fact that you are away from your homes and your families we are going to finish the trial as quickly as we can without sacrificing any principles of justice either so far as the state or the defense is concerned.

Gentlemen of the jury, we will take a recess at this time, and we will start tomorrow morning promptly at ten o'clock.

(The court thereupon adjourned to Tuesday, April 14, 1931, at ten o'clock A. M.)

SECOND DAY.

STATE vs. RAYMOND GEORGE.

Jersey City, N. J., April 14, 1931.

Trial of the case resumed pursuant to adjournment.

MARY GEORGE, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination by Mr. Tumulty:

Q. Are you the mother of the defendant, Mrs. George? A. Yes, sir.

Q. How old is your son? A. Twenty-two.

Q. Where do you live? A. Newark.

Q. What is your business? A. Laundress, domestic work.

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

Q. Is your husband alive? A. Yes, sir.

Q. What was your mother's name? A. Martha Mangram.

Q. Do you know where she died? A. Yes, sir.

Q. Where? A. Raleigh, North Carolina.

Mr. Drewen: Objected to on the ground that it is incompetent, irrelevant and immaterial.

Mr. Tumulty: If your Honor please, we

might save a lot of time. Through this witness I hope to show family history.

The Court: I suppose you may be laying a foundation, I will allow it.

Q. Did you know a party by the name of Sarah Hinton? A. Yes.

Q. Was she related to you? A. She was my sister.

Q. Do you know where she died? A. Yes.

Q. Where? A. Raleigh.

Q. What place in Raleigh? A. Goldsboro.

Q. Did she die at home? A. In an asylum.

Q. What asylum? A. Goldsboro Asylum.

Mr. Drewen: You see, if your Honor please, I don't want to be captious, but this is of no particular significance in itself. This person died in an institution or in a place called an asylum. That means nothing in providing what might be called medical family history.

The Court: I suppose, Mr. Tumulty is going to go a step further and prove by this witness that Mr. Hinton was committed there. Is that your intention?

Mr. Tumulty: Oh, yes.

The Court: Because as the testimony stands at the time she died there she might have been employed there.

Q. Do you know whether or not she was an inmate of that asylum? A. Yes, I do.

Q. And do you know whether or not she was insane? A. She was.

Q. And do you know whether or not she was insane when she died? A. Yes, she was.

Q. How long was she in the asylum, can you tell us? A. I suppose twenty years or more.

Q. Did you know a person by the name of Harry Debman? A. Yes.

Q. Was he related to you? A. He was my uncle.

Q. And do you know where he died? A. Yes, sir.

Q. Where did he die? A. In an asylum.

Q. An asylum where? A. Goldsboro.

Q. Do you know whether or not he was sane or insane? A. He was insane.

Q. You do not know what form of insanity he died of? A. No.

Q. Do you know a person by the name of David Debman? A. Yes, sir.

Q. Was he related to you? A. Yes, he was my cousin.

Q. Do you know whether or not he was confined in an asylum? A. Yes.

Q. Where? A. I forget the name.

Q. What state was it in, do you know? A. North Carolina.

Q. Are you sure of that? A. Well——

Q. David Debman. You say he was your first cousin? A. Yes.

Q. Where did he live? A. In Raleigh.

Q. And do you know whether or not he was confined in an asylum? A. Petersburg.

Q. If you don't remember, just tell us. A. I don't remember.

Q. Petersburg, where? A. North Carolina.

Q. Is Petersburg in North Carolina or is it in

Virginia, do you know. If you don't know don't be afraid to tell us.

Mr. Drewen: If you have the facts, Mr. Tumulty——

Mr. Tumulty: Yes, it is Virginia.

Mr. Drewen: All right Petersburg, Virginia.

Q. Do you know whether or not he was sane or insane? A. Insane.

Q. Do you know if he is alive or dead? A. No, I do not.

Q. Do you know if he is in the asylum or not? A. No.

Q. You do not know that? Did you know a party by the name of Mary Debman? A. Yes, sir.

Q. Was she related to you? A. Yes.

Q. What relation was she? She was my aunt.

Q. And do you know whether or not she was confined in the state asylum at Goldsboro, North Carolina? A. Yes, sir.

Q. Do you know whether or not she was sane or insane? A. Insane, sir.

Q. Now, Mrs. George, is this boy's father alive? A. Yes, sir.

Q. Before this boy was born was or was not your husband an habitual drinker?

Mr. Drewen: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Tumulty: I am going to show that it is perfectly competent, your Honor, from a scientific standpoint, and that it has a part

in the mental disorders as we claim them to exist.

Mr. Drewen: I withdraw my objection, Mr. Tumulty.

Q. Was your husband, before your boy was born, an habitual drinker? A. Yes, he did drink.

Q. Now, do you remember when Raymond first started to school? A. Yes, sir.

Q. Do you remember at that time, say around the time he was 12, 13, 14 or 15 years of age, that there came a change in his conduct? A. Yes, sir.

Q. When did that happen? A. Well, when he was about 15.

Q. And what was the change? A. Well, he used to sit around by himself for days and act queer, funny.

Q. Now, Mrs. George, you say he acted queer? A. Well, he would talk to hisself, sit around and talk to hisself.

Q. Where would he do that—would he be by himself or would there be others around? A. By hisself.

Q. And did he talk in an angry tone or talk calmly? A. Calm talk, just by hisself.

Q. About 15 you say a change came? A. Yes, sir.

Q. From then on what did that change show? A. Well he began to—no—he began to play truant from school, he was like that. He used to complain that some kind of a spell was thrown on him by an old witch and things.

Q. He said what? A. Some kind of a spell was on him and he was—and he was cursed by God.

Q. Did you inquire from him as to why he had these notions? A. Yes, sir, I did.

Q. And what would he tell you? A. He said he was cursed.

Q. What? A. An old witch had thrown some spell on him.

Q. And did he tell you why he was cursed? A. Well, that is what he said, by some old witch, by God; that he was cursed by God; nobody cared nothing for him and all like that, he used to go on.

Q. Now, did he come home to you at any time and complain about something that was happening to him? A. Yes, sir.

Q. What was that? A. He said he had worms.

Q. Worms where? A. He said he had worms, worms were crawling all up his flesh, he said.

Q. Worms were crawling all up his flesh? A. Yes, all up his flesh.

Q. How old was he when he claimed those worms were up his flesh? A. About sixteen.

Q. About sixteen. After these complaints did he go right on with the same kind of conduct that you have described? A. Yes, sir.

Q. Did he ever go out and play with other children? A. Yes, he did.

Q. Now, he was sent to Rahway, wasn't he? A. Yes, sir.

Q. How old was he then? A. Sixteen .

Q. Sixteen? A. Yes, sir.

Q. Was he sent from Rahway to the State Hospital for the Insane, do you know? A. Yes, sir.

Q. Do you know when that was? A. Yes, sir.

Q. Did they get your consent to send him to the State Hospital? A. No, sir; they didn't.

Q. You know he went there? A. Yes, sir.

Q. Did you visit him at the insane hospital at Trenton? A. Yes, sir.

Q. Now, after he came home—how long after he was sent to Trenton did he come home? A. Did he come home?

Q. Did he come home to you? A. Oh, I don't just remember just the exact time when he come home.

Mr. Drewen: If you have the statistics of that, Mr. Tumulty, you may dictate it on the record as to when his man was transferred to the State Hospital from Rahway and when he was released.

Mr. Tumulty: We will do that afterwards.

Mr. Drewen: All right.

Q. You know he did come home? A. Yes, sir.

Q. Well, after he did come home from Trenton and Rahway did you have—what were the indications he showed then? Was he any better than he was before? A. No.

Q. Well, how did he act? A. Well, he acted just the same way, just by himself, you know.

Q. Well, wouldn't you talk and try to find out what was the trouble with him? A. Yes; I would ask him and he would say: "Oh, well,"—you know—he kept telling me this curse was on him.

Q. Did he show any desire to go to work? A. Well, yes, when he wanted to go to work. He would look and try to find some.

Q. Was he able to hold any conversations? A. Well, he said nobody would give him any. He was cursed; nobody didn't want him.

Q. Now, after he came up from Rahway did he ever act in such a way that you went to the authorities about it? A. Well, I told the probation officer one morning he came there—I told him, I said, "Mr. Wells, I don't think that boy is right."

Q. You did complain to the probation officer? A. Yes, sir.

Q. And this was after he came out of Trenton, wasn't it? A. Yes, sir.

Q. Do you know, Mrs. George, whether or not your great grandmother was sane or insane? A. She was, so I heard.

Mr. Drewen: That is objected to. I would like to have some indication—I think we have been liberal about this.

Mr. Tumulty: I think you have been very liberal.

Mr. Drewen: I would like to have some indication as to how this witness could possibly know that.

Mr. Tumulty: Through family history.

The Court: I think that would be manifestly hearsay.

Mr. Tumulty: I think that is one of the exceptions to the hearsay rule.

Mr. Drewen: That is correct, Mr. Tumulty; but that requires the laying down of a great many prerequisite circumstances, the relation, with whom it was discussed and through what channels it passed to this witness.

Mr. Tumulty: Well, we might find that out.

Mr. Drewen: All right, let's do so.

Q. Did you ever discuss following up the family history,—did you ever discuss with any member of your family older than yourself, whether or not your great grandmother or your mother's mother was sane or insane? A. Yes, sir.

Mr. Drewen: Your great grandmother or your mother's mother?

The Witness: My mother's mother; my grandmother.

Mr. Drewen: You said great grandmother.

Mr. Tumulty: I beg your pardon. I will cut that "great" out.

Q. Your grandmother? A. Yes, sir.

Q. What member of the family did you talk with? A. My oldest sister.

Q. What? A. My oldest sister.

Q. Your oldest sister? A. Yes, sir.

Q. And with anybody else? A. No.

Q. How old was your oldest sister? A. She is about sixty-five.

Q. Sixty-five. And did she tell you as a matter of family knowledge that your grandmother was sane or insane? A. Insane.

Q. Insane? A. Yes, sir.

Q. Now, Mrs. George, you support yourself, don't you? A. Yes, sir.

Q. How long have you been doing that?

Mr. Drewen: That is objected to.

Mr. Tumulty: All right. That is all.

CROSS EXAMINATION by Mr. Drewen:

Q. Now, Mrs. George, the grandmother concerning whose insanity you say you were informed by an older sister is the person named Mangram about whom Mr. Tumulty asked you some minutes ago in his examination; is that right? A. Mangram.

Q. Yes; that is your grandmother's name. A. It was not Mangram, my grandmother.

Q. Well, what was her name? A. Price.

Q. Price? A. Yes.

Q. What relation did Mangram bear to you? A. What?

Q. What relation to you was Mrs. Mangram? A. That was my maiden name—Mangram.

Q. But you said that some person had suffered from mental disorder in your family line by the name of Mangram? A. Not that I remember—Mangram.

Q. Yes. A. That is my maiden name, Martha Mangram.

Q. These relatives of yours, your maternal aunt, for example—Hinton—did you visit Hinton in the institution? A. Once.

Q. She died of Bright's disease, didn't she? A. Well I don't know.

Q. How old was your Aunt Hinton at her death if you know? A. I don't know how old she was.

Q. How old was your Aunt Hinton at the time you say she was taken to the institution in North Carolina? A. I could not tell you that either. My oldest sister could.

Q. How old were you when you say you visited

her there? A. I was only a small child but I went down with my sister.

Q. After you visited this Aunt Hinton you told me you never thought any more about it and it was just a very faint memory with you, wasn't it? A. Well, I know she was insane. We often talked about it.

Q. How old was she? You may have already said you don't know. I don't recall. But how old was your Aunt Hinton when you say you visited her in the institution? A. I don't know that. I was a small child.

Q. Now your grand uncle, Mr. Debman, how did you know he was in the institution? A. How did I know it?

Q. Yes. A. Well, they all told me who he was there. He left home to go there.

Q. Left your home? A. No, left his home. We all lived in the same neighborhood.

Q. How old were you when he left? A. I don't know just how old I was then.

Q. Do you remember it? A. I remember it.

Q. Now have you any other children, Mrs. George? A. Yes.

Q. How many? A. Two more.

Q. Boys or girls? A. One girl and one boy.

Q. Older or younger? A. One is older and the other younger.

Q. Is your present husband your first husband? A. Sir?

Q. Is your present husband your first husband? A. Yes, sir.

Q. He is the first and only husband you have ever had? A. Yes.

Q. Right? A. Yes.

Q. And his name is what? A. Alfred George.

Q. When did you marry Alfred George? A. About—let me see——

Mr. Tumulty What was that question?

(The question was repeated.)

A. I can't just remember the date, but he is there, he knows.

Q. What year? A. That is what I can't remember, what year; but my husband, he knows the year.

Q. All right. This boy also went by the name of McLane, did he not?

Mr. Tumulty: I object as improper cross examination, and it has only one purpose.

Mr. Drewen: I will tell the purpose. It is to affect this matter of mental prodigy that Mr. Tumulty has referred to.

A. Yes, sir.

Q. Who was McLane, if you know? A. That is his father; and the same father, Alfred George; but he was——

Mr. Tumulty: I object to this as absolutely outside of the proper purpose of this trial.

Mr. Drewen: I say that objection is vicious for one reason, which seems to be sufficient. He did not object to the question. What he is objecting to is the answer.

Mr. Tumulty: I am perfectly willing for Mr. Drewen to exhaust every possible means that will throw light on this boy, but I do not think we ought to go into the character and career of this boy's father.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

(SEAL) ROBERT V. KINKEAD,
Judge.)

(The question and unfinished answer were repeated.)

Q. Finish your answer, please. A. Why, he went under the name of McLane, you see. They always caled him McLane, so I just let it go like that; but we were married under the name of George.

Q. You were married under the name of George? A. Yes, but everybody called him McLane, but when we used to go around together everybody knew he had the name of McLane, so we were married under the name of George.

Q. How long had you known your husband before you married him?

Mr. Tumulty: I object as immaterial, incompetent and irrelevant.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

A. How long.

Q. Yes. A. A couple of years, I guess.

Q. During that time what did you know his name to be? A. McLane.

Q. When you married him I thought you said you married him as George? A. Yes, I did marry him in the name of George.

Q. And did you continue to carry the name of George? A. No, I just kept the name of McLane because he had always had it. All of my friends knew him by that name, so I did not bother. I let it go like that.

Q. Let me see if I understand you. You say during the time you knew your husband before your mariage to him, that his name was McLane and you understood his name was McLane? A. Yes.

Q. And when you married him the name that went to both of you as you understood was the name of George? A. Yes.

Q. And that after the marriage you went by the name of McLane, and so did he? A. Yes.

Q. Now, why was that? A. I don't know.

Mr. Tumulty: I do not like to insist on the objection, but I am unable to see the purpose of this line of examination.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Q. Why was that? A. Why was it?

Q. Yes. A. Well, he used to say everybody knew him by that name.

Q. By what name? A. Mr. McLane.

Q. Then why were you married by the name of George? A. Well, he married me by the name of George.

Q. And you took the name of George? A. Yes.

Q. This man's name was McLane and you married a man whose name was McLane, why did you marry him by the name of George and take the name of George as your marriage name? A. Why did I take it?

Q. You married him by the name of George, why did you do it if you understood his name to be McLane? A. I thought that was always his name, but when I married him we were married by the name of George, and then I hated to go back and tell my friends what he had done, you know, so I just let it go on that way.

The Court: You mean that at the time you were keeping company with your husand you were under the impression his name was McLane?

The Witness: Yes.

The Court: When it came down to the time of mariage your husband told you his real name was George?

The Witness: Yes, sir.

The Court: And you felt embarrased and didn't want to go back to the people who knew you and confide to them that your husband was going under a wrong name, that his name was really George?

The Witness: Yes, sir.

The Court: Therefore, you continued to be known under the name of McLane, is that correct?

The Witness: Yes, sir.

The Court: And is that why your boy was born under the name of McLane.

The Witness: Yes, sir.

The Court: Your boy was born under the name of McLane, was he?

The Witness: Yes, sir.

The Court: Do the marriage records show a marriage under the name of George?

The Witness: Yes, sir in the City of Newark.

The Court: Newark, New Jersey.

The Witness: Yes, sir.

The Court: Well, this boy also went under the name of George, didn't he?

The Witness: Well, later he went under the name of George because I was talking to the insurance officer and I was telling him about it and he said I should get this straight. He said it should not be like that.

The Court: You say you have been a laundress employed in different homes, have you?

The Witness: Yes, sir.

The Court: Did they know you as Mrs. George, or Mrs. McLane?

The Witness: Well, Mrs. McLane all the time, mostly.

Q. After this defendant came from the Rahway Reformatory, he was given a position, wasn't he, by the probation officer of the Reformatory, given work with a moving man in Newark, a man by the name of Simpson? A. Yes, but he didn't take the work there.

Q. But he worked there for a time, as a matter of fact? A. Not that I know of.

Q. Where did this defendant live after he came out of the Reformatory? He lived at home, didn't he? A. Yes.

Q. And he lived at home during the time he worked for Mr. Simpson on the moving van, that is correct, isn't it? A. I didn't know him to work for Mr. Simpson.

Q. You don't remember that at all? A. No.

The Court: Do you know if he ever did work on a moving van?

The Witness: No.

The Court: Do you ever remember the Rahway authorities getting him a position with a company in Newark?

The Witness: No, sir—oh, they got him a position, they tried to get him a position with Mr. Simpson, this moving man.

The Court: They tried to get him a position?

The Witness: Yes, sir, but he wouldn't take it.

Q. Now you know, don't you, that when this defendant was brought from the Rahway Reforatory to the State Hospital at Trenton, he was in the hospital for some two or three months, wasn't he? A. I don't know just how long he was there.

Q. And when he was sent out of the hospital he came back to the Reformatory some time after he came home? A. Yes, sir.

Q. And he was in the Reformatory for a year? A. Yes, sir.

Q. A year in the Reformatory and the hospital together, that is right, isn't it? A. Yes, sir, as near as I can think, that is right.

Q. And that when he was home for a time he committed a number of roberies in Newark, you know that, don't you?

Mr. Tumulty: I object to that.

A. I don't know anything about it.

Mr. Tumulty: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I don't think the Prosecutor is asking that question with the idea of prejudicing this defendant in the eyes of the jury, but I understand it is on the entire history of this boy.

Mr. Drewen: Yes, but to obviate any question I will withdraw the question. No further questions.

REDIRECT EXAMINATION by Mr. Tumulty:

Q. Your son was more than two months in the

insane asylum at Trenton, wasn't he? A. Yes, sir, I think he was more.

Q. He was there, in fact, six months, wasn't he? A. Well, I don't know just how long, I would not say, because I don't remember.

Q. All right, that is all right. You testified that Mrs. Sarah Hinton, on cross examination, died of Bright's disease?

Mr. Drewen: She said she didn't know.

Q. You do not know? A. No.

Q. But she did die in the insane asylum, didn't she? A. Yes, sir.

The Court: How has your son been. Has he been a good boy growing up?

The Witness: Well, he has been a pretty good boy until he began to be about fifteen or sixteen years old, then he began being bad. He was good before that.

The Court: Well, after he came out of Rahway and you told him to do something, would he obey?

The Witness: Sometimes——

The Court: What?

The Witness: No, sir.

The Court: Well, you never thought it necesary yourself to have him committed to any institution, did you?

The Witness: I often told him that I was going to do that.

The Court: Going to do what?

The Witness: Going to have him committed to some place.

The Court: What kind of a place?

The Witness: An asylum.

The Court: But you never did it?

The Witness: No, I never did it.

The Court: What did he say to you when you told him that?

The Witness: Well, he said, "You had better not have me sent there You have people all around saying I am crazy now."

Q. When you went to the Probation Office and told the probation officer you thought the boy was wrong, wasn't he with you? A. The probation officer was at my house. He came to my house, and so I said to him——

Mr. Drewen: If your Honor please——

Mr. Tumulty: We will withdraw the question. That is all.

Mr. Drewen: That is all.

(Witness excused.)

HELEN TYLER, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination by Mr. Tumulty:

Q. What is your name? A. Helen Tyler.

Q. Are you related to Mrs. George? A. I am.

Q. What is the relationship? A. Sister.

Q. How old are you? A. I am a woman 67.

Q. 67? A. Yes, sir.

Q. Where do you live? A. I live in Newark.

Q. How long have you lived in Newark? A. I have been living in Newark for the last 25 years.

Q. Where did you come from? A. From Raleigh, North Carolina.

Q. Did you ever know a party by the name of Sarah Hinton? A. I do.

Q. Was she related to you? A. She was my sister.

Q. Do you know where she died? A. I do.

Q. Where? A. In Goldsboro Asylum, Raleigh, North Carolina.

Q. Did you ever visit the asylum while she was there? A. I did, indeed.

Q. Did she die there? A. She died there.

Q. Did you know a party by the name of Harry Debman? A. I do.

Q. Was he related to you? A. He is my uncle.

Q. On your mother's side was he your uncle? A. Yes, sir.

Q. Where did he die? A. He died in Goldsboro Asylum, North Carolina.

Q. Did you know a man named David Debman? A. I do.

Q. Is he related to you? A. Yes.

Q. What was the relationship? A. First cousin.

Q. Where did he die? A. He died in Petersburg, Virginia.

Q. Did he die in an institution? A. Yes, sir.

Q. What kind of an institution? A. Insane.

Q. Did you know a woman by the name of Mary Debman? A. I do.

Q. Was she related to you? A. She was my auntie.

Q. Your what? A. My auntie.

Q. Was she ever committed to an institution? A. She was.

Q. Where? A. In Goldsboro, North Carolina.

Q. Was she sane or insane? A. She was insane.

Q. What was your grandmother's name? A. Caroline Debman.

Mr. Drewen: Caroline what?

The Witness: Debman.

Q. Do you know whether or not she was sane or insane? A. Insane.

Q. Do you know whether or not she was committed to an institution? A. They didn't commit her, but they sent her to jail, because they didn't commit them in those days.

Q. How long ago was that? A. It has been about 39 or 40 years.

Q. And in North Carolina they didn't—— A. (Interrupting) No; my mother took care of her.

Q. Do you know Mrs. George's husband? A. Yes, sir.

Q. Did you know him before the boy Raymond was born? A. Yes, sir.

Q. Was he a drinking man? A. Well, if I must say, he drank. I am bound to tell the truth.

Q. Did you have an opportunity of observing Raymond during his youth? A. Yes, sir.

Q. Say from ten years on? A. Yes, sir.

Q. Tell us what you know about him. A. Well, what I know about Raymond, I always thought he was pretty bad; he had ways of saying somebody had witched him and everybody was again him and he didn't have no friend however, and there was something crawling in him, and when he was a little fellow he had something the matter with his head, so the doctor said; he gave it some high class name; I can't call it; but, anyway, he

has been always acting odd, ever since a car knocked him down.

Q. What knocked him down? A. A car.

Q. A car? A. Yes.

Q. Now how old was he when that happened? A. I reckon he was about eight or nine years old.

Q. Do you remember when he was about 7 years of age doing anything? A. Well, yes; but I don't need to go to work to tell that.

Q. I want you to tell it. A. When he was about seven years old he soaked a bed afire with a little baby in the bed.

Q. He was seven years of age then? A. Yes.

Q. When he was around 12 or 13 do you remember doing anything unusual? A. No; because you see, I wasn't with him so particular; but he always acted that odd strange way, about things working in him.

Q. Did you ever talk with him? A. Yes, sir.

Q. Did he ever tell you he was cursed? A. Yes, sir; he told me he was cursed by God.

Q. By whom? A. By God. He said an old woman throwed a witchcraft on him.

Q. Now, from your observation of other children and your observation of this boy, was he similar or dissimilar?

Mr. Drewen: That is objected to on the ground it is a wide and almost irresponsible scope.

Mr. Tumulty: I know it is wide. I will withdraw the question.

Q. Well, now, Mrs. Tyler, having in mind your observations of this boy and his conduct from ten

years on, and your recognition of the conduct of other boys, would you say from his actions and from what he told you and from your observations whether he was sane or insane?

Mr. Drewen: That is objected to, first, on the ground it is leading; on the second ground that sane or insane is incompetent, immaterial and irrelevant when applied to no standard of insanity, since the standard of criminal responsibility is definite and fixed. This proposition of insanity and sanity used by Mr. Tumulty is not fixed at all and there is nothing specific about it.

Mr. Tumulty: Well, if your Honor please, I believe it is a rule of law that a lay witness has a right to give his opinion where that opinion is based upon certain facts the witness testified to. Now, there are two methods of proving insanity or mental insufficiency by experts, learned and scientific; or by lay witnesses. Now, I think for what it is worth this witness is entitled to give her opinion. I don't think there is any lay witness who is not able to tell when a person is normal or insane.

The Court: I will allow it.

Q. (Question repeated by the stenographer.) Now, from your observation of other children and your observation of this boy, was he similar or dissimilar? A. Well, I believe the boy was really insane at times, and I have asked my sister to have him put away before this happened, and she is here to testify to the fact.

Mr. Tumulty: That is all.
Mr. Drewen: No questions.

(Witness excused.)

HENRY A. COTTON, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination by Mr. Tumulty:

Q. Doctor, are you familiar with the family history of this defendant? A. Only as it is testified to in court.

Q. Now, what is your business? A. Physician.

Q. Have you specialized in any branch of your profession? A. Nervous and mental diseases for the last thirty-one years.

Q. Have you held any position in the State of New Jersey? A. Medical Director of the State Hospital at Trenton.

Q. For how long? A. From 1907 to 1930.

Q. You say you are familiar with the family history of this defendant as it was testified to here? A. Yes.

Q. Did you examine this boy? A. I did.

Q. Where? A. At the Hudson County Jail.

Q. And for how long a time, for how long did you examine him, Doctor? A. I examined him twice.

Q. Please give the dates. A. March the 14th, 1931. Then a few days later—a week or so later.

Q. Were you alone when you examined him? A. At the first examination I was.

Q. And were you alone at the second? A. At the second examination Dr. Donohue was with me.

Q. How long a period of time did those examinations take? A. From an hour to an hour and a half.

Q. And when you examined him did you have this family history in mind? A. I had a record of his family history.

Q. As correspondingly testified to here this morning? A. Yes.

Q. And with that in mind you made your examination? A. Yes.

Q. What did you find, Doctor? A. At the examination at the prison on March 14th I found him quiet, orderly; some difficulty in speech due to his stammering, which is not as bad as it used to be. He answered questions promptly, pertinently. He did not seem to be apprehensive or worried over his present predicament. He claims that he ate and slept well. His stream of thought was normal—somewhat shallow. He gives a spontaneous account of his troubles and answers questions promptly and pertinently. He denied hearing any voices, but he said sometimes he saw something like visions. He stated that somebody put a curse on him—a woman, who said that he would die in jail—as long as he lived he would be in jail. He complained also of crawling of worms under his skin, which was not as bad as it was formerly. His personal identification is good, no change of personality. He is well oriented for time and place; gives the correct date; says he is in the Hudson County Jail. He did not recognize the examiner, who had seen him at the State Hospital on previous occasions, but when

his attention was called to the fact he then recognized him. His grasp on surroundings was good. His knowledge of current events was good. He knew that Hoover was President, and that Coolidge was President before him, also that Coolidge was Vice-President and became President when Harding died. He knows the Governor of the State. His grasp of school knowledge is good, in keeping with his opportunities. His calculating ability was good. He knew some history. He knew the difference between the government of this country and England. He said we have a president here and in England they have a king. He had some information about the World War—the Germans fighting on one side and England and France on the other; the United States took part. He recognizes the fact that the river flows toward the ocean, because the water flows down hill. His memory is good for remote and recent events. No amnesia. No defects. He gives the dates of his admission to various institutions and the dates of his previous trouble with the police. Emotional reaction is not particularly exhilarated or depressed. Somewhat apathetic and indifferent. He does not express any anxiety over his present predicament. No catatonic symptoms. Insight and judgment is fair. He realized he has committed a crime; he justifies himself because he was frightened. He says he would never have been able to shoot any one if he had not been excited. He does not think his mind is affected or he has ever been out of his mind. The physical examination showed him to be 145 pounds, height six feet. He has weighed as much as 180 pounds. The pupils were normal. His eyes were normal.

Vision was good. Hearing good. Tongue shows slight tremor. The mouth examination showed a few teeth missing—some infected teeth in his mouth. He had tremor of the hands. The heart sounds were normal, and the blood pressure 110 systolic, and 70 diastolic. Pulse 90—irregular.

Q. Doctor, from your examination did you come to any conclusion as to just what his mental status was at the time you examined him—would you be able to classify it? A. I did not find that he was insane or suffered from a classifiable type of insanity. I did consider him a defective—a sub-normal.

Q. What do you mean by a defective? A. That his mentality was not up to normal.

Q. And considering his family history and that fact, what is your judgment as to his mental condition? A. I think he has a bad family history, a bad background.

Q. Just what effect does history, as the lay people call it, have upon the mental condition of anyone ?

Mr. Drewen: When it has any, I presume.

A. In some cases it does not have any effect; in other cases it has a marked effect.

Q. A marked effect? A. Yes.

Q. Now, assume that a man has a family history as showing marked strains of insanity and he in his life shows no symptoms of it, would you say then that heredity has no effect upon his mental condition? A. It would not.

Q. Suppose a man with the family history of

this defendant during his life did show outward manifestations, what would you say? A. I would say it had some bearing.

Q. Would it be your opinion that it had an effect upon this boy's mind? A. A predisposition.

Q. And what is a predisposition? A. More susceptible, perhaps, to some factors than a person who did not have very marked family history.

Q. Would a man whose mind had a predisposition to insanity, in your opinion, be able to sustain a severe shock or confront a condition which would promote fear in his mind, as a normal person would?

Mr. Drewen: Objected to on the ground that it contains an unwarranted assumption of facts.

The Court: Sustain the objection.

Q. Assume, Doctor, that a psychological test of this defendant had been made when he was seventeen years of age and that that showed the mental age to be eleven years, what would you say that would indicate?

Mr. Drewen: Well, now, we are coming into psychology now. I presume that question is objectionable, and I do object to it on the ground that it is incompetent, irrelevant and immaterial and in every way impertinent because it is asking this doctor, whose testimony and whose sole significance in this case is bound up with psychiatry on a proposition in what Mr. Tu-

multy says is psychology. I do not see that there is any relation to it.

The Court: I suppose the answer to the question would be, Mr. Drewen, that the mental test of the boy at the time showed that he had a mental age of eleven years.

Mr. Drewen: I asume that is so, that it would show what it showed.

The Court: I cannot see what other answer the doctor could give.

Mr. Tumulty: I am simply asking a simple question.

The Court: You are asking what it would show.

Q. Would that be a symptom of mental disorder? A. It would not be a symptom of insanity in that sense of the word. It would be a symptom of a sub-normal mental condition.

Q. Would that symptom show a defective mentality? A. It would.

Q. Now, Doctor, while you were head of the State Hospital for the Insane, this boy was an inmate there, wasn't he? A. He was.

Q. Did you meet him while there? A. I did.

Q. Did you prescribe certain treatment for him? A. I did.

Q. Did he get that treatment? A. He got part of it.

Q. Why didn't he get the rest of it? A. His mother objected to any further treatment.

Q. Do you remember when the boy left the institution? A. I remember his case. It was brought up for a rehearing. He was confined in

the Vroom Building, the Criminal Insane Department.

Q. As an expert could you say whether or not when he left the State Hospital for the Insane he was cured? A. Well, we considered he had recovered from that attack.

Q. Well, had the cause of his trouble been removed? A. Not all the causes had been removed. The examination made at the time showed that there was evidence of mere infection, but further treatment was refused.

Q. So that when he left the institution the causes had not been removed? A. Not all.

Q. What was the likelihood, under the circumstances, when he left of a re-occurrence of the attack? A. Well, it is problematical. He might go on for years pretty well, or he might begin to show symptoms soon after he left the hospital, due to the fact that he had the symptoms when he came in and improved somewhat when part of the infection was removed.

Q. What would be your opinion as an expert whether or not in his mental condition when he left the institution, that he would be able to confront life and sustain great shock or confront any situation that would put him in great fear?

Mr. Drewen: Objected to as incompetent, irrelevant and immaterial. The question has no application to this case.

The Court: Sustain the objection.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
Judge.)

(SEAL)

Q. After you made your examination at the jail, Doctor, of this boy on two distinct occasions you made a memorandum did you not? A. Yes.

Q. Or, as you call it, a brief? A. Yes.

Q. And then from that did you state your conclusions? A. I did.

Q. Are you able to remember what those conclusions were? A. I don't know as I can give them in detail.

Q. Well, will you read the conclusions that you then wrote?

Mr. Drewen: I object to that. I submit it is nothing more or less than an effort to contradict his own witness and there is no testimony here that Dr. Cotton does not perfectly remember the conclusions he came to. On the contrary, he was asked definitely: "What was your opinion after your examination?" and Dr. Cotton as fully and freely stated his opinion. Now he is asked to refer to a paper and read something. I object to it.

Mr. Tumulty: The witness has testified that he is not able to remember in detail what he filed in his brief at the time he made the examination. I don't want to put anything in this case that should not be in it, but I want the best opinion that the doctor has.

Mr. Drewen: There is no evidence that you haven't got here.

Mr. Tumulty: Well, I am going to get it if I possibly can.

Mr. Drewen: I think you have it.

The Court: Well, Doctor, let me ask you this: You have testified as to the mental status of this boy at the time of your examination—mental, haven't you?

The Witness: Yes.

The Court: Is there anything that you have left out?

The Witness: Only in giving a summary —I will give more detail of the history of the case perhaps, as the basis for that opinion. That is the only difference.

The Court: The brief you made at the time of your examination, would that help refresh your recollection this morning?

The Witness: It will..

The Court: I will allow it.

Q. Read from your brief conclusions that you carefully noted therein. A. Well, that he is an individual of very marked heredity as shown by the family history. He got along fairly well until the age of sixteen when he began to show changes in disposition and character; played truant; unable to progress in school; further he is unable to retain steady employment because of instability and insufficiency. He soon joined a gang of boys, evidently was easily led into their various escapades; on three occasions he was in conflict with the law; finally being sent to Rahway for grand larceny for stealing a car. At Rahway the examination showed him to be unstable, unable to adjust himself or to retain employment. At the State Hospital he was found to be suffering from a chronic systematic toxemia which affected his tonsils. Five teeth were extrated and the tonsils

removed. His laboratory examination at the time he was returned to Rahway showed that there was still evidence of infection. This was indicated by the blood count which showed a marked decrease in the white cells, only four thousand, and normally there is seven thousand five hundred. Further treatment was indicated but mother refused to allow anything further. He also had a gastro-intestinal condition which was treated with irrigations; but his mother refused to allow any further treatment or any surgical procedures to correct the intestinal condition which he still suffers.

Mental examination made at the Hudson County Jail discloses no marked evidence of insanity at the present time. He seems to understand the nature of his act and the predicament in which he finds himself at present. There is very little emotional reaction to the same. He is apathetic about it; does not worry about what is to become of him, although he knows the penalty for such a crime is death. In view of these facts the undersigned is of the opinion that the defendant, Raymond George, while not suffering from any type of insanity that can be classified at the present time, is by reason of his physical disturbances mentally unstable, unreliable, and irresponsible; and, further, because of these facts it is improbable that he was in a mental state at the time of the murder to discriminate normally between right and wrong, to know the nature and quality of his act at that time. It is a question whether at the present time he has a full realization of the seriousness of the crime of which he is charged.

Q. Now, Doctor, if this boy came to you as a patient, disregarding all of the criminal character of this charge, knowing what you do know about him from your examinations, would you say that he is fit to associate in society?

Mr. Drewen: That is objected to. That is not the test.

The Court: Sustain the objection.

Mr. Tumulty: I ask an exception.

(Exception allowed, signed and sealed accordingly.

Judge.)

Q. I show you a paper, Doctor, and ask you to tell me, if you are able to,—tell us what that is. A. Yes.

Q. What is that? A. Judge's order—Judge John P. Kirkpatrick, Middlesex County, committing him to the State Hospital.

Q. That is a commitment? A. That is a judge's order, yes.

Q. It was upon that order that he was committed to your hospital. A. State Hospital at Trenton.

Mr. Tumulty: I offer that in evidence.

Mr. Drewen: That is objected to.

The Court: I sustain the objection.

Mr. Tumulty: I ask an exception.

(Exception allowed, signed and sealed accordingly.

Judge.)

Mr. Drewen: The ground of the objection being that the paper is not authenticated. It is incompetent, irrelevant and immaterial.

The Court: There is no dispute about the fact that the boy was in the asylum.

Mr. Drewen: No; there is none, that he went there; and formalities and papers I say have no competence.

Mr. Tumulty: I say the papers may show a legal adjudication that might have some bearing here. However, I have now a certified copy of the commitment from the County Clerk of Middlesex County and I formally offer it in evidence.

Mr. Drewen: This is objected to on the ground that the adjudication is of no degree or type of insanity which would establish or dis-establish the question of criminal responsibility of this child. We cannot tell what was before the court or what the real situation was upon which the commitment was made.

Mr. Tumulty: I now offer the entire record which the court had before it, showing the certificates of two doctors who provided the data required by law for the court to sustain this order of commitment.

Mr. Drewen: There is no proof here that the court had anything before it. Mr. Tumulty has a hand full of papers.

Mr. Tumulty: We have a certified copy of the records and a certified copy of the commitment. I offer them in evidence.

Mr. Drewen: I object.

The Court: I sustain the objection.
Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

Judge.)

Q. You are aware of the fact, Doctor, that before this boy could be committed to your institution, that it had to be an order of a court of competent jurisdiction, is that true? A. True, yes, sir.

Q. Do you know when that law was passed—well, the court will take judicial notice of that.

Mr. Drewen: We do not know when it was passed.

Mr. Tumulty: The laws of 1928 which provides the requirement for the commission of any individual to the State Hospital for the Insane. On the basis of that law I offer the commitment, and the affidavits or the certificates as required by the act as proper proof of the adjudication of this man's mental condition.

Mr. Drewen: I object to it.
The Court: I sustain the objection.
Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT *V.* KINKEAD,
(SEAL) *Judge.*)

Q. Now, Doctor, I am going to ask you a question which calls upon you for an expert opinion concerning the mental status of this defendant, Raymond George, on the 12th day of December 1930, at tbout 9:15 P. M., the time alleged in the indictment as the time when he is charged with having killed Edward J. Ruark, a police officer, of Jersey City. I will state in detail to you certain facts of this defendants' life, giving data showing portions of his family history, his home environment and certain circumstances of his own life, including his school days as a boy and his growth and conduct during his later years. All of which facts we for the present purpose ask you to assume and regard as true, and as having actually happened.

We ask you to assume that the defendant's maternal Aunt Sarah Hinton was admitted as a patient to the State Hospital at Goldsboro, N. C., on May 19th, 1897. And that she was thirty years old at the time of her admission, and that diagnoses was acute mania. She died on May 22, 1909, of Bright's disease.

That maternal great uncle, Harry Debman, was admitted to the State Hospital at Goldsboro, N. C., on August 1, 1899, and died of exhaustion, from mania, on January 16, 1903.

Assume that David Debman, first cousin of Mary George (mother of Raymond) and son of Harry Debman, was admitted to the Central State Hospital of Petersburg, Va., on June 10th, 1916. He escaped from the institution on April 25, 1930. His diagnoses was manic depressive insanity.

We ask you to assume that maternal Great Aunt Mary Debman was confined to the State

Hospital at Goldsboro, N. C., for three years.

That defendant's great grandmother was insane and confined to the State Hospital at Goldsboro, N. C.

That the father of the defendant was a chronic alcoholic, for the most of his life and particularly before the birth of this defendant.

Assume that the defendant is twenty-two years of age, that he is single, was born in Newark on November 10, 1908. That he reached the 6th grade at the age of sixteen. That he was considered a delinquent. That he played truant frequently. Assume that he felt that other children in his class had despised and were against him. That he hated to go to school and associate with other children. That it was noticed during his last year in school there was a change in his conduct and disposition. That he became very stubborn and impertinent.

Assume that one day he passed a man on the street, who was demonstrating worm medicine, that this man displayed a bottle containing worms, that thereupon this defendant went home and told his mother that he had worms crawling under his skin and in his stomach. That from then on he became nervous, stubborn and sullen, sitting alone and constantly talking to himself in angry tones.

Assume that when he was seven years of age, he tried to set fire to a bed with his little brother in it. That at another time when he was twelve years of age, he tried to set fire to the house in which he lived.

Assume that the delusion concerning the worms

crawling under his skin and in his stomach persisted with him.

Assume that on Oct. 16th, 1925, he was sent to Rahway, New Jersey, and thereafter he became more depressed and continued to have the delusions while in the reformatory. That due to his abnormal conduct and because of his delusions application was made by Frank Moore, Chief Executive Officer of the New Jersey Reformatory, Rahway, New Jersey, on June 25, 1926, to have this defendant committed to the State Hospital for the Insane, that upon the sworn statements of two doctors, Alfred L. Ellis and William E. Ramsay, physicians, that the defendant was insane. Consider that John Kirkpatrick, Judge of the Court of Comomn Pleas, found him insane and committed the defendant Raymond George, as insane, to the New Jersey State Hospital at Trenton.

Assume that on October 11, 1926, his condition being improved, he was discharged and returned to Rahway.

Assume that he believes that he has been cursed and punished by Almighty God, and he believes that his stammering and his knock knees came to him from God, because of this curse, that he sometimes feels and says he has been cursed by a witch.

I ask you now, Doctor, to consider and keep in mind all these facts that I have called to your attention, and whatever other facts you might have learned from your own examination of this defendant's mental condition, and of his family history, and having them in mind, I ask you to assume that this defendant on the 12th day of

December, 1930, at about 9:15 P. M., in the company of two other boys, were driving the said car in the vicinity of Roosevelt and Mallory Avenue, Jersey City, that George was driving the car, and that they were followed by Officer Ruark, that Officer Ruark ordered and signalled for them to stop.

We ask you to consider it appears that thereupon this defendant jumped from this automobile, and that he had in his hand a gun. That he ordered Officer Ruark to put up his hands. That he repeated this demand, and that Officer Ruark then reached for his own gun, when, it also appears this defendant discharged his gun and shot Officer Ruark. Then he ran back into the automobile and fled. He reached the Lincoln Highway and turned in a westerly direction, where a patrol car of the Jersey City Police started in pursuit. The police officers fired their guns at the car in which the defendant and two others were at the time. That when their car came near Jacobus Avenue, Kearny, it turned off the Lincoln Highway, where it was abandoned by the three men, and they thereupon separated and hid themselves. That thereafter, about twelve thirty, a man was driving a tractor with a trailer across said highway, toward the Passaic Bridge, which was open at the time, that then the defendant got on his car and asked to be taken over the bridge; this man declares that the defendant spoke as if he was very angry at the time and that he appeared wrought up. The man told the defendant that he was not allowed to ride anyone, and that the defendant answered, that "I got to go over", and he said, "you are going to take me over. The

man walked around his load, and was looking for an officer. That then the defendant disappeared but upon investigation the man saw the two feet of the defendant under the trailer; that the driver ordered the defendant from under the trailer. That then the defendant jumped up and demanded that he be taken over the bridge. That at this point the defendant draws back his arm to strike the driver and that an altercation ensued. The driver subdued the defendant and handed him over to the police, who were then on the Lincoln Highway two blocks away. We want you to consider that when this defendant brought on this altercation the police were then searching the meadows nearby with searchlights and that at this time many policeman were along the highway in pursuit of this defendant.

We want you to consider that this defendant, according to the testimony, was brought to the bedside of Officer Ruark to be identified. That Officer Ruark said, "That's the son-of-a-bitch that done it" and attempted to grab and grapple with the defendant. And during this the witness remained very calm, as he was during the making of a very lengthy statement. From all the facts that I have narrated and from your own examination, are you able to form an opinion as to the mental condition of the defendant at the time and place of the shooting?

Mr. Drewen: That is objected to on the ground that it contains many statements of facts that are unwarranted assumption. For example, there is no testimony that the

father of this boy was an habitual drinker for most of his life.

Mr. Tumulty: I will strike that out.

Mr. Drewen: There is no testimony that the boy played truant frequently.

Mr. Tumulty: I will strike that out.

Mr. Drewen: There is no testimony that he hated to associate with other people.

Mr. Tumulty: I will strike that out.

Mr. Drewen: There is no testimony that he ever passed a man on the street who was selling or demonstrating a worm medicine.

Mr. Tumulty: I will strike that out.

Mr. Drewen: There is no testimony that when this boy at the Rahway reformatory he became more depressed and had delusions while at the reformatory, and there is no testimony that this boy ever attributed any stammering or knocking of the knees to any supernatural curse of any kind.

The Court: One more point—I think you were talking to Mr. Besson at the time—I don't think there is any proof in the case that when he was 14 or 16 years of age he set fire to his house.

Mr. Drewen: To his bed. That is in the case.

The Court: There is proof that he set fire to a mattress.

Mr. Tumulty: I will withdraw that.

The Court: But that was when he was seven or eight years of age, but I don't think there is any proof that when he was

twelve years of age he set fire to a house.

Mr. Tumulty: All right, that is withdrawn.

Q. Now, Doctor, considering the question that I have asked you——

The Court: With the unwarranted assumptions of fact withdrawn, you are satisfied to have the question remain?

Mr. Drewen: Yes, your Honor, if Dr. Cotton will consider that the question is put to him with those things taken away from him.

Q. Considering those things apart from the question, Doctor, are you able to give an opinion as a mental expert on those state of facts? A. I am.

Q. I now ask you is it your opinion, as an expert, having in mind all of the things I have called to your attention, that this defendant was at that particular time capable of distinguishing between right and wrong with respect to the shooting of Edward D. Ruark? A. I don't think he was.

Q. I now ask you, from all the facts I have given you, and from your examination, are you of the opinion that he had sufficient mentality to form in his mind an intent to take life or to deliberate, to determine, to execute that intent by a premeditated act? A. I don't think he could.

Q. Was he at the time conscious that the act which he was doing was morally wrong and that he was responsible for the commission thereof? A. I don't think I can answer that correctly that in a normal way he was able to distinguish those facts.

Q. And you make that answer in connection with the other answers you have already made? A. Yes.

Mr. Tumulty: That is all.

CROSS EXAMINATION by Mr. Drewen:

Q. Now, Doctor, what did you say to this defendant when you first met him in the jail? What was your introduction. A. I asked him did he remember me.

Q. Yes. A. As I had seen him at the state hospital, and he didn't know my name.

Q. Yes. A. And when I called his attention to the fact he apparently remembered me. That is what he said.

Q. Did you tell him what you were there for? A. I don't know as I told him specifically. I said I wanted to ask him some questions.

Q. Did you or he make any reference to his counsel in this case? A. I don't think so, I don't recall.

Q. Did you make any reference to having arranged with his counsel for your coming there to see him in the jail? A. I don't recall making that statement. I may have made it, but I don't remember it. I don't usually.

Q. Now, Dr. Cotton, in the classifications of your science, every mind that is not regarded as normal is classified as defective in one degree or another, isn't it? A. Yes.

Q. So that a slight abnormality would be regarded as a defect? A. Yes.

Q. And the person manifesting that slight abnormality would be called a defective, that is correct, isn't it? A. Yes.

Q. Now, there is no standard of sanity, is there? A. I think so.

Q. What? A. I think there is a definite standard of sane or insane.

Q. Well, what is a sane man? A. A man who is not insane.

Q. Right. A. Performing a normal act under normal circumstances and gets along in his environment, and so forth.

Q. All right. What is normal for one man is not normal for another, is it? A. Well, that is true, yes.

Q. It might be perfectly normal for Mozart at the age of 12 to write an opera in one night, and be perfectly normal for another man to go out and get drunk, isn't that right? A. Yes.

Q. All right. So that the very concept of normality is a thing of the widest possible scope? A. Yes.

Q. So that when you speak of things being normal or abnormal in the case of the given individual, it is a matter of approximation at best? A. Yes, sir.

Q. Now, Doctor, having those things in mind, what do you mean, please, when you qualify your statement that this man did not distinguish between right and wrong at the time of the killing of the policeman;—that he did not normally distinguish between right and wrong? A. Well, I think taking a person—taking into consideration his mental development, the situation in which he found himself and his—the observation that I made of him previously; that I didn't think he was

in a condition to judge the matter in a normal manner, to weigh the consequences, and it was more or less of an impulsive thing.

Q. Well, why do you apply the word "normally" to the distinction between right and wrong —he couldn't normally distinguish between right and wrong? Why do you not just say he could not distinguish between right and wrong? A. Well I think there is a question there whether a person can distinguish between right and wrong, whether he can distinguish normally between between right and wrong. I mean to say at the time he may have known he was doing something he should not do but didn't realize that what he was doing was a crime, and the consequences of that crime; in other words, he couldn't judge; he didn't have the ethical judgment to determine for himself whether he should do a certain thing or should not. That is what I mean. He did it on implse, and in the frightened condition, on the impulse of the moment.

Q. Well, do you mean to say what he did was an impulsive thing? A. If he was normal he would not have done it. That is my point. If a policeman stops a normal individual——

Q. Well, Doctor, do you distinguish between this case of homicide and any other case where a criminal with a gun shoots a police officer or shoots a merchant or shoots a victim of a holdup? Would you say in that case that the person if he were normal would not have done it? A. Of course, in that case there is a question whether any criminal is really normal.

Q. Exactly right, certainly. Now, Doctor, normal people don't commmit homicide ruthlessly in this fashion; do they? A. Well, I wouldn't say all normal people—I mean all homicides—were committed by people who aren't normal; but I think a great many are.

Q. You think what? A. A great many are; homicides are committed by people who are not normal. I wouldn't say all. There are exceptions, of course.

Q. Now, then, you therefore, as I understand it,—you are not putting yourself on record as saying that this defendant at the time he shot the policeman did absolutely not distinguish between right and wrong; but you say that he failed to normally distinguish between right and wrong? A. Yes, sir.

Q. That is right; isn't it? A. Yes, sir.

Q. Have you there, Doctor, the memorandum from which you read during your direct examination, please? A. (Witness produces the paper refered to.)

Q. Now, you found this man's stream of thought normal, didn't you? A. Except it was a little shallow.

Q. Well, by shallow, you mean that he was not especially intellectual? A. Yes.

Q. That is right; isn't it? A. Yes.

Q. Couldn't you understand Einstein or things of that sort? A. I am afraid I am shallow then, too.

Q. Yes, and I would be shallow too; exactly, Doctor. Now, as to hallucinations, he denied hearing voices but he told you he sometimes saw something like a vision, as stated here; is that right? A. Yes. I don't think he had real hallucinations.

Q. You don't think he has really hallucinations? A. Of sight or hearing.

Q. Now, orientation, Doctor—I would like to have you explain to the court and jury just what is meant by orientation? A. Well, orientation means a person's appreciation of their environment, the relationship between time, place and persons; they know the exact date; they know the place they are; they know the people about them.

Q. And they know who they are? A. Yes.

Q. And they know their relationship to those people? A. Yes.

Q. And they know why they are there? A. Yes.

Q. And they know where they are going to? A. Yes.

Q. And what for? A. Yes.

Q. And where they are coming from? A. Yes.

Q. Now, there is a notation here that grasp upon surroundings is good. Now, that comes within the normal notion of orientation; doesn't it? A. Yes.

Q. His knowledge of current events is good? A. Yes.

Q. His grasp of school knowledge is good? A. Yes.

Q. Memory is good for remote and recent events; that is so, isn't it? A. Yes.

Q. Now what are catatonic symptoms? A. Catatonic symptoms are characterized by refusal to talk; refusal of food and more or less persistiveness.

Q. You found this man responsive? A. Yes, sir.

Q. Did he in any instance say to you "I refuse to answer"? A. No.

Q. Not in any one instance? A. No.

Q. And in no case said to you that he refused to answer on the advice of his attorney or anything of that sort? A. No.

Q. Now, Doctor, we come to the item of insight and judgment which you say here in your memomandum is fair. You say that he realizes that he committed a crime of shooting a policeman. Now, what do you define insight and judgment to be as distinguished from the other mental functions that usually go into orientation? A. Well, insight and judgment we usually use in a specific sense. If a person is insane and does not realize, says that they are perfectly normal, that they are not insane, that their ideas are not delusions, we say they have no insight; they have a lack of insight and their judgment is wrong because they could not appreciate the fact that these things were delusions, and so forth; or that they are insane. Now, when a patient who is not insane and has what we say is fair insight then we would say that he appreciated the fact that he was in the jail; that he had committed a crime; had not very much reaction to it, not very emotional; more or less apathetic.

Q. Perfectly calm, in other words? A. Yes, unapprehensive.

Q. Sometimes described by the term "cold"? A. No; I would hardly say that. It is more apathy.

Q. Now then, excluding from any consideration of this man's case the question of heredity, the question of the story that is told by his mother, would that change your opinion as to this man's present state? A. No, it would not.

Q. It would not. Then leaving out of it, Doctor, the heredity feature, and keeping in it those things which you say are in it, the slow thought stream, or the good thought stream, and the orientation, and fair insight and fair judgment—leaving those things in it—and the heredity you say does not make any difference to you anyway—why do you say this man did not sufficiently distinguish between right and wrong to know what he was doing when he killed the policeman? A. Well, I observed this man in the state hospital for a period of time. At that time he was a mental case that we treated, and he improved; but I did not consider that he had fully recovered, because we could not carry out the treatment far enough on account of the objection of his mother, and the fact that he had not—we had not completed our treatment—I consider the factors which caused him to go to the hospital were still present, and his conduct following that it seems to me would bear that out, that he was not a normal individual in the sense of the word.

Q. What conduct? A. His conduct after he left Rahway and after he left home.

Q. What conduct was that? A. His mother testified that he was more or less depressed, stayed alone. She complained to the probation officer that he was not well. Of course we had no contacts with him after he left Rahway, but I think the fact that he was a defective would answer that question.

Q. All right. Now that is your entire answer, is it, Doctor? A. Yes.

Q. So that there is nothing—nothing whatever in the experience that you had in talking with this defendant in the jail, in getting his responses

to your questions and in studying and observing his side of the conversation between two men—that is yourself and himself—there is nothing in that experience that in any way justifies you in saying that when he shot and killed the policeman he did not know perfectly well what he was doing? A. I do not think he knew perfectly well, no.

Q. We will leave out the word "perfectly". What is your answer then?

Mr. Tumulty: I object to that as improper cross examination. I do not think Mr. Drewen has a right to proceed by the process of elimination and exclusion.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Q. Considering entirely your experience, Doctor, and your observation of what occurred in the conversations that you had with this man in the jail, when you went there to get, and to study, his mental reactions—considering those things alone, apart from the hospital experience which you know about, is it your opinion that at the time of the kiling of the policeman he knew or did not know what he was doing and the nature and consequences of his act? A. I could not form an opinion unless I knew all the facts in the case.

Just an examination of an hour would not be sufficient to form a definite conclusion.

Q. So that there was nothing—if I am wrong about this you say so—so that there was nothing that occurred as between you and this man in the jali, which of itself justifies you in saying that he was criminally irresponsible in shooting the policeman. A. No, not from just the examination of him.

Q. So that in order to justify yourself in stating that this man in your opinion did not normally distinguish between right and wrong, you go back to the experiences that his mother talks about, for example—correct? A. No, that does not have any bearing.

Q. It does not? A. No. It was my examination in the state hospital.

Q. And didn't you also say that his mother said that he was depressed and—— A. Oh yes, after he left the hospital.

Q. That enters into it, too, does it? A. Yes.

Q. Now what was this other treatment which you say you were not permitted to give? A. Well, he still had some infected teeth, which should have come out. He had a very bad colon condition, which should have been attended to, which was not.

Q. That required a real good lot of old-fashioned physic, didn't it? A. No, it required surgery, probably.

Q. What else, Doctor? A. Those were the principal things.

Q. There were some teeth removed? A. There were some.

Q. How many, do you remember? A. I think the record states two, I think it was.

Q. And there were still some defective teeth there? A. Yes, and that was shown by his blood count—an examination of his blood just before he left the hospital.

Q. And the other thing was the colonic condition? A. Yes.

Q. He had been given quite a number of colonic irrigations? A. Yes.

Q. And had shown marked improvement as the result of this treatment? A. Yes.

Q. And you say that if that condition of the intestines could have been cleared up and the other teeth removed, which you say should have been removed, he would have been cured? A. As soon as you stop the irritation in those cases is when the thing goes back again. As long as you continue them it goes well.

Q. Did you hear my question? A. I am trying to answer it, yes.

Q. All right. You can answer it, I think. I asked you if it is not your judgment and your opinion now that if you could have kept this patient there longer and could have cleared up the intestinal condition and have removed the other teeth which you say were enfected, that he would have been a cure? A. We hoped he would be cured. We have other cases on which to base our experience. I would not be positive he would be cured, but I base it on my experience in other cases.

Q. But that hope he would be a cure you regard as a rational hope? A. I do, yes.

REDIRECT EXAMINATIOIN by Mr. Tumulty:

Q. Doctor, you wrote a book on mental disorders, did you not?

Mr. Drewen: He wrote a number of books.

Q. And you regard them as standard works, do you not? A. Well, I don't know.

The Court: Doctor, I notice here in your brief that you say that the insight and judgment of the defendant is fair; he realizes that he committed a crime in shooting the policeman. How do you reconcile that with your statement that he could not distinguish between right and wrong at the time he shot the policeman?

The Witness: Well, this is a statement as of the present time, not as of the time when it was committed, because we cannot assume that his judgment then was good. I mean, this is a statement now as of his present condition, his insight at the present time. What his condition was at the time of the crime no one can say unless we take into consideration his previous examination, his previous condition and his mental make-up.

The Court: As I understand your testimony, then, Doctor, you are now testifying that at the time you examined him he could distinguish between right and wrong but at the time he shot the policeman he could not distinguish between right and wrong, is that correct?

The Witness: I think so.

The Court: In other words if he shot you while you were examining him he would know he was doing wrong?

The Witness: Well, I don't know, I would not say that. I say with regard to his actions——

The Court: You say that at the time you examined him that he could distinguish between right and wrong?

The Witness: Yes.

The Court: Well then, if he shot you he would know he was doing wrong?

The Witness: Well, I say that if he shot me then I would not think that he could distinguish between right and wrong, if he shot me without cause, with no motive to shoot me.

The Court: Well, he would know he was doing wrong then, would he, Doctor?

The Witness: I am assuming another situation then. If you assume he would shoot me, that would change the whole hypothesis.

The Court: No. Now you say here in your brief he realizes that he committed a crime in shooting a policeman.

The Witness: Yes.

The Court: And you said in answer to my question as to how you could reconcile that statement with the statement that he could not distinguish between right and wrong, at the time that he did the shooting, that he had a realization at the time you examined him and could distinguish be-

tween right and wrong, but that he could not distinguish between right and wrong when he did the shooting—isn't that what you said?

The Witness: Absolutely.

The Court: And then I asked you to go a point further and I say if he could distinguish between right and wrong when you were examining him and he shot you at the time, that he would know then he was doing something wrong, isn't that correct?

The Witness: No, unless you had the circumstances of the shooting—I cannot say if he just shot me——

The Court: Doctor, you told me he could distinguish between right and wrong when you were examining him.

The Witness: With regard to his act, yes, he realized that he had committed a crime.

The Court: And if he could distinguish between right and wrong when you were examining him and he shot you when you were examining him, he would certainly know he was doing wrong?

The Witness: Certainly if he shot me, but——

The Court: That calls for a yes or no answer. Isn't that so?

The Witness: I cannot answer that question. That brings in another change of the whole thing.

The Court: I cannot understand you, Doctor. I am simply asking you this from

a common-sense standpoint?

The Witness: I say at the time he knew the difference between right and wrong with regard to his act that he had performed. Now, if he turned around and shot me without any motive, I would say then that he didn't know. I might not say it, but somebody else would say that he didn't know the difference between right and wrong. That changes your whole basis of your argument. He didn't shoot me. He had no reason to shoot me.

The Court: But you told me, Doctor, that when you examined him in the jail that he was able to distinguish between right and wrong.

The Witness: I said, yes, in regard to this crime. He discussed the crime. He realized he didn't know why he did it. He said he never had done such a thing.

The Court: And you think it would change the situation if he was able to get possession of a revolver and shot you—in other words you would quibble, Doctor—I withdraw the word quibble—you would distinguish as to whether or not he knew what he was doing if he shot you?

The Witness: I cannot answer that question. I say that does not come into the facts as they existed at the time of the examination. That is a hypothesis that did not exist and I could not say what would be my opinion. If he shot somebody else without a motive and without any reason

I should certainly think that he could not distinguish between right and wrong. But the man's conversation in regard to the crime itself——

The Court: Do I understand you then to be testifying that if a person shoots another without any justification or excuse, you are inclined to believe that that person could not distinguish between right and wrong?

The Witness: I would not say all cases. You have to know the facts. That is a broad statement to say you could not distinguish. You would have to depend upon the examination, the condition of the patient or the prisoner, and so forth. I don't think that is a statement you would be fair in saying one thing or another so broadly. There may be other things you do not know about.

The Court: There is no doubt in your mind when you examined the prisoner in the jail in March that he knew that in shooting Patrolman Ruark he had committed a serious crime?

The Witness: He did. I don't think he had full realization. He knew he had committed a crime, he knew the consequences of his act, but he was apathetic and indifferent.

The Court: In other words he knew it was wrong?

The Witness: He knew it was wrong, yes.

The Court: And you would say that if he was in the frame of mind at the time of

the shooting that he was in when you examined him in the jail that he would be legally responsible for his act?

The Witness: Yes, but I doubt whether he would have committed the act in the same frame of mind.

The Court: In other words, if he was in the frame of mind when he shot Ruark that he was in when you examined him in the county jail, you would say he was legally responsible for the shooting?

The Witness: Absolutely.

By Mr. Tumulty:

Q. Well, under all the circumstances, Doctor, is it your opinion that he was in the same state of mind at the time he shot Officer Ruark? A. He was not.

Mr. Tumulty: That is all.

Mr. Drewen: No questions.

(Witness excused.)

WILLIAM J. DONAHUE, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination by Mr. Tumulty:

Q. What is your business or profession? A. Physicion.

Q. Physician. Have you specialized in mental disorders? A. Yes.

Q. State your experience, Doctor. A. I have been engaged in the practice of medicine for over twenty years and over fifteen years in nervous and mental diseases.

Q. What has been your experience in the contact with mental diseases? A. I have had a varied experience in military service as well as in civilian life. I am in charge of the Observation Ward of the Newark City Hospital. I am associate neurologist and psychiatrist in St. Michael's Hospital; associate neurologist and psychiatrist in Newark Eye and Ear Infirmary.

Q. Did you examine this defendant, Raymond George? A. Yes.

Q. How often? A. Several times.

Q. I would like to know the exact number, Doctor, if you can give it to us. A. I can tell you in a moment (referring to papers). Excuse me a minute, please. It is filed too well. I examined him first on the 8th of January, 1931, and again on the 10th of January, 1931; then on the 10th of March, 1931, and again on the 4th of April, 1931, with Dr. Cotton on the last occasion.

Q. Have you consulted and conferred with Dr. Cotton about this boy's mental condition? A. Subsequent to that examination, on the 4th of April, yes.

Q. Are you familiar with the history of this defendant? A. Yes.

Q. His family history? A. Yes.

Q. Are you familiar with his own history? A. With whom?

Q. With his own history? A. Yes.

Q. Have you formed an opinion as to the mental condition of this boy at the time he was charged with shooting Officer Ruark? A. Yes.

Mr. Tumulty: If your Honor please, Mr. Ransom took the hypothetical question away.

The Court: I was thinking perhaps you could proceed with your examination until you came to the point.

Q. Well, now, Doctor, it appears—or, assuming that the boy was a normal boy up to the point of arriving at the age of fourteen or fifteen——

The Court: Are you asking the hypothetical question now?

Mr. Tumulty: I am just asking another.

Q. (Continuing) And it appears that his disposition and conduct changed, could you give us any opinion as to the reason for that? A. I don't think that I share that assumption.

Q. Well, having in mind this boy's family history, what effect would it have, if any, upon his mental condition? A. Why it would tend to result in a retardation or weakening or some degree of defectiveness in his mind.

Q. To what extent? A. Well, that would vary entirely with his years and the situation in which he found himself, plus whatever treatment he had received for whatever was noticeable as a defect in his condition.

Q. Are you able to classify his condition at the present time? A. I personally have satisfied myself as to his classification.

Q. What is it? A. I think he is a dementia praecox.

Q. What is that? A. Well, that is an evidence of an early dementia which occurs in youth; very similar in reference to brain state as of that dementia which occurs in the aged.

Q. And would heredity have anything to do with that? A. Yes, sir.

Q. And what effect does dementia praecox have upon the conduct and actions of the victim? A. It is responsible for many conduct disorders in the youth of today.

Q. Well, what does it make them do if anything? A. The conduct is anti-social.

Q. Does it make them responsible or irresponsible? A. Dependent upon the degree of aberration present.

Q. And dependent also upon the facts and circumstances in each particular case? A. Well, the responsibility depends more particularly upon the degree of aberration, rather than the situation.

Q. What do you mean by that, Doctor? A. There are various degrees of mental disorder.

Q. Well, you used the word aberration. What does that mean with reference to this defendant? A. Disorder of the mind.

Q. And just what will you say disorder of the mind is—how is that shown in the person whose mind is disordered? A. By the external evidences of anti-social conduct. This boy showed certain manifestations that you have heard testified to.

Q. Do you think that that shows symptoms of anything? You have listened to the narration of his mother as to his conduct? A. Yes. Well, I would be more interested in my examinations of the boy than I would in the history of the boy as outlined.

Q. Tell us what your examinations showed. A. When I first saw him in January of this year he was in a rather confused state, at that time. He was able to give some of the details but he couldn't give any of his statements with any definiteness. He said "The police say I am charged with murder; I fired a shot and it struck a policeman. They say he died," and when pressed as to what—as to whether he knew that to be a fact he said, "That is what they told me." And I went into the circumstances of this incident and asked him to describe what he remembered about it. I went into the circumstances of his arrest and asked him to tell me what happened at that time. He had no recollection at all that he had been arrested, identified, or that he had signed a statement. He stated to me that he was suffering from syphillis and that he had a four-plus blood Wasserman for which he received twenty injections, and subsequent to that time he told me he had a blood Wasserman test taken which was negative; and his reasoning as exercised as to how that blood Wasserman could change from four-plus to negative was inadequate, was juvenile. I said to him something of his family history. He told me that his mother had been separated from his father for several years because his father drank all the time, and that he had an older sister living in Newark who was married, and a younger

brother. Now,at a succeeding interview, which was two days later, on the 10th of January, he recollected my previous visit but his speech was somewhat more coherent and he was less confused.

Q. Proceed, Doctor.? A. In trying to find out something of his past history I interrogated him and secured the following statements: "From the time I was fourteen, on account of my big head and knock-knees, my feet defect and my size, I felt I was cursed—that God cursed me. I used to keep by myself and I used to think strange things, burn houses, build tunnels, and bury people in them because they would not respect me; and because they would not respect me I decided that I would make them hate me. I was bashful with girls, and I used to go out with them very rarely. I practiced self-abuse for three years, and then I read Man's Mission on Earth. When I got out of jail I would be ashamed when asking for a job, and I would walk along at night, keeping to myself, not going out in the daytime. In real life I am good and kind to everybody; I would not kill a chicken. That is the reason I would do crooked things. I never let my people know, and I kept by myself. I dreaded that jail so much, because I suffered there."

Now, this is a spontaneous expression of his thoughts at the time, resulting from the simple question of how he came to do the things he did. At that time I did a psychometric test on him, and I found out that his age was about eleven and five-twelfths; that means that his mental age, measured up according to the tests, showed that he was about eleven years and five months old. He gave me his age at that time as twenty-two.

Now, on a succeeding examination on the 10th of March, 1931, he was able to tell me the day he was arrested, and he recalled my first visit as well as my second. He could not recall my name, but he did recall that I was a physician. At that time I subjected him to the test of some work problems for the purpose of seeing if I could get a different figure about his mental age. It resulted in eleven and three-twelfths—two months difference in two independent tests, so it is an insignificant difference. I then entered into his hospitalization at the Trenton State Hospital, and he stated that that was due to the fact that "worms were crawling inside of my skin." I asked him some particulars of the institution. Being conversant with it myself I thought I could check up on his knowledge of his hospitalization there, and they were very vague and rather inaccurate, and the only name he did remember was the doctor in charge of his building; and Dr. Cotton being the man out there, the Superintendent, the Medical Director, I asked him if he remembered his name. He said no. Subsequent to that visit I had been told that he had been visited by Dr. Cotton, and on the afternoon of the 4th of April, 1931, I visited the Hudson County Jail with Dr. Cotton and we both conducted a neuro-psychiatric examination, and his spontaneous remarks—"Sometimes I hear whispering as if someone was near me. I hear things and have to turn to my side to hear." Then the examination resolved itself into an interrogation—question and answer—and during that examination his recital varied from the examination of the second visit. He stated, "The policeman shot first. I asked him to hold his hands up. I thought he would be the same as anybody else;

but he called my bluff. I thought if he put his hands up I would take his gun away. He got me all scared. He started backing up, and he really forced me to shoot or be shot at. I could not turn or run. I just blew up. Some power made me do it against my will, I was so scared, I don't know anything. I couldn't control myself. It was just me or him. I lost my head, and I was panic-stricken. The other two kept telling me to stick them up. I did not think of nothing. It was all blowed up. If I did not do it I would have been dead now. I was just lucky, it wasn't my time to die that night. He surprised me by jumping back. I didn't carry or use the gun to kill any one. I often used it without any bullets. I never shot a person. Sometimes I would use even a cigarette gun."

These various details and the lack of adequate insight into his mental condition or into his present plight, his judgment defects, the fact that he was able to go as far as these boys usually go, in the sixth or eighth grade in public school and then suddenly they drop back—their mentality has been commensurate with the work of the primary grade, but they undergo a physical change—boys from eight to thirteen are regarded as being in the awkward stage, and this youngster showed all the awkwardness, he has the lob ears, the egg-head, the yellow skin, the long legs, the long arms, rather simian like in type. His mentality did not put him in the class with those of his size. He could not keep up with the grade, and naturally he developed ideas of inadequacy. Now, the dream state is very easily superseded. They keep apart to themselves; their thoughts are sufficient

for themselves, and the first thing you know they develop delusions, as this boy did in this particular case.

The theory in present-day mental hygiene is to discover the motivation of human actions—not that an individual did a thing, but why he did it.

His mentality is such that he could not keep up in school. He expresses it to himself in this way: Here, I cannot get them to respect me, so that I will make them hate me. And he gathers around himself a group of kindred souls who perpetuate anti-social acts against society on every occasion possible.

Those are the evidences of mental instability, mental aberration. The inadequacy of their mental constitution does not permit them to keep up with the pace of life which we ordinarily have to face, so they pick out devious paths to fit their plight.

Q. Now, did you form any opinion as to the mental condition of this boy as the result of your examination? A. Yes.

Q. Can you state it? A. Well, I don't believe that he has ever been of sound mind since he was admitted to the hospital. That was the first time the case was properly adjudicated, and he was sent to the Trenton State Hospital.

Q. Doctor, you have heard me read to Dr. Cotton the hypothetical question? A. Yes, I think so.

Q. And you were familiar with the details of the question before him, weren't you? A. Yes.

Q. I ask you to consider all the facts contained in that question, with the exclusions suggested by Mr. Drewen, and I ask you from all the facts that are therein narrated are you, from your own ex-

amination, able to form an opinion as to the mental condition of the defendant at the time and place of the shooting?

Mr. Drewen: I object to that question on the ground that I would like to cross-examine the doctor before he answers it to find out whether he knows just what was excluded from the question.

Mr. Tumulty: All right.

CROSS EXAMINATION by Mr. Drewen:

Q. Doctor, what was excluded from the hypothetical question he read to Dr. Cotton. A. A great deal. I don't remember it all.

Q. Do you want the question read again? A. Read the exclusions, maybe.

Mr. Tumulty: Well, do you want to state your exclusions again?

Mr. Drewen: No.

Mr. Tumulty: Then why the objection?

Mr. Drewen: I just want the jury to know whether the doctor knows what he is answering.

Mr. Tumulty: I am asking now that you tell him.

Mr. Drewen: I have my job, that is yours.

Mr. Tumulty: I certainly cannot understand what your objections are.

Mr. Drewen: I think they are perfectly plain.

Mr. Tumulty: This is not a vaudeville show.

Mr. Drewen: No, but I think we have a perfect right, if the Court please, to have the jury understand that the doctor on the witness stand does not know what he is answering. He has demonstrated that beyond peradventure when he says he does not know what is excluded from the question.

Mr. Tumulty: Well, do you want to have read from the record what your exclusions were?

Mr. Drewen: No, I have gone far enough.

The Court: I think in all fairness to Dr. Donahue, if you wish an intelligent answer to the question which you have asked him, you should state to Dr. Donahue what was excluded from the hypothetical question with which he was familiar before he went on the stand. Certain things were eliminated from that question on objection of the prosecutor. Mr. Drewen asked for the right to cross examine the doctor after you finished your question. He asked the doctor if the doctor knew what portions of that question had been eliminated. Dr. Donahoe said no. Mr. Drewen stopped.

Mr. Tumulty: Well, I don't know what was eliminated now. The only way you can find out is to have Mr. Drewen go through the painful proceeding again. If he knows I will be perfectly willing to have him state it.

The Court: The stenographer will read the exclusions.

(After a short recess.)

The Court: The stenographer will now read the items which Mr. Tumulty agreed to have eliminated from the hypothetical question.

The Stenographer (reading): "There is no testimony that the father of this boy was an habitual drinker for most of his life."

The Witness: If I knew that to be so, should I include that in my thought about the matter or exclude it?

The Court: Exclude it, Doctor. In other words, I think Mr. Tumulty in his hypothetical question referred to the father of this boy as a chronic drinker, and upon agreement between Mr. Drewen and Mr. Tumulty that has been omitted, to state that the father was an habitual drinker.

(The stenographer then continued reading as follows:)

"There is no testimony that the boy played truant frequently. There is no testimony that he hated to associate with other children. There is no testimony that he ever passed a man on the street who was selling or demonstrating worm medicine.

"There is no testimony that when this boy was in the Rahway Reformatory he became more depressed and had delusions while at the reformatory.

"There is no testimony that this boy ever attributed any stammering or knocking of the knees to any supernatural cause or curse of any kind.

"The Court: I do not think there is any proof in the case that when he was 14 or 15 years of age he ever set fire to his house."

By Mr. Tumulty:

Q. Now, Doctor, considering the hypothetical question as you listened to it, and having in mind the exclusions as suggested by Mr. Drewen, are you able to give an opinion, considering your examinations and your conclusions therefrom—I ask you now from all the facts that I have narrated, considering the exclusions and from your examination, are you able to form an opinion as to the mental condition of the defendant at the time and place of the shooting? A. Well, of course the mental condition is so broad.

Q. Are you able to form any conclusion as to his mental state at that time? A. Well, he was in a state of excitement.

Q. Considering that, is it your opinion as an expert, having in mind all I have called to your attention, that this defendant was at that particular time capable of distinguishing between right and wrong with respect to the shooting of Edward Ruark? A. What is the first part of that question?

(The question was repeated.)

A. I do not believe that he was.

Q. From all the facts that I have given to you and from your examination are you of the opinion that he had sufficient mentality to have in his mind an attempt to take life or to deliberate and deter-

mine or to execute that attempt by a premeditated act? A. No ,he did not.

Q. Was he at the time conscious in your opinion that the act which he was then doing was morally wrong and that he was responsible for the commission thereof? A. No, he was not.

CROSS EXAMINATIION by Mr. Drewen:

Q. Doctor, the first three occasions upon which you saw this man you were there alone, weren't you? A. Yes.

Q. You were there four times in all, and upon the fourth occasion you were there with Dr. Cotton, is that right? A. Yes.

Q. You said something early in your direct examination about dementia praecox being responsible for much of the conduct in the youth of today, and you characterized that conduct as being anti-social in its nature. By anti-social conduct you mean the murders, hold-ups, and anything that contravenes the law of organized and civilized society? A. But many less serious things are also included in anti-social conduct.

Q. I understand that. All sex crime, frauds, cheats, anything that is a betrayal or violation of the laws of organized civil society are included? A. Or any disturbance of the relations between parent and child.

Q. Running away from home, playing truant from school? A. Yes.

Q. Which is a part of the regulations of organized civilized society? A. Yes.

Q. So that I say that any breach of that code you regard as anti-social; and are we to understand that it is ascribed, as you say, in modern

youth of today, to dementia praecox? A. In all cases, no.

Q. To what extent? A. It depends upon the individual case.

Q. But why do you use the expression that it is responsible for much of the conduct of modern youth, if it depends on the individual case? A. It might be that I was sharing a very narrow view. I have had great contact with these young boys.

Q. I did not ask you that; I asked you if it depends on the individual case and requires individual study and investigation, why do you say it is responsible for much of the conduct of modern youth, manifested by anti-social wrongdoing? A. We notice more of those outbreaks in that condition in the youths of today than we did some years ago.

Q. That is exactly the point. So because we notice the great difference you are prepared to ascribe it to dementia praecox? A. Not in all cases.

Q. Well, then, to what extent, I ask you again? A. Well, I am perfectly satisfied to ascribe it in this case because I have made a study of this case.

Q. Now, Doctor, we will come to that later; but I am meeting you on your own ground because it is you and not I that said that dementia praecox is responsible for much of the conduct of the modern youth of today, manifested in anti-social wrongdoing. Now, if it requires a study of individual cases, I want to know why you ascribe it to dementia praecox? A. Well, in my contact with the juvenile court of my own county and the common pleas court, many of these youthful offenders are submitted to me for study prior to

sentence, and it is becoming all the more frequent that a state of praecox exists in these youthful offenders, much more noticeable now or possibly more readily diagnosed now than previously.

Q. So that you don't have any reference then to any cases except those that came under your personal notice? A. Yes, sir; that is all.

Q. That is all? A. Yes, sir.

Q. All right. Now, the cases that came under your personal notice are the merest, tiniest detail of the general manifestatin of anti-social conduct in modern youth; aren't they? A. I don't know. This case is numbered 18,696.

Q. Which case? A. The case of Raymond George.

Q. How long a time have you examined and studied 18,000 cases? A. 15 or 16 years.

Q. For 15 or 16 years? A. Yes.

Q. 18,000 cases and every one of which you say was dementia praecox, and every one—— A. Oh, no; I didn't say anything of the kind. The possibilities are that dementia praecox today——

Q. Now, Doctor, I didn't ask you that. A. Yes. Well,——

Q. I ask you how many cases that you investigated did you conclude that the wrongdoing was attributable to dementia praecox? A. Probably forty per cent.

Q. Probably forty per cent? All right. Now in your first examination of this defendant did you observe anything in him that indicated to you that he was not responsible for the crime of killing the policeman—not mentally responsible? A. Well, in eliciting the history in answer to my questions he was rather confused——

Q. Well, will you please answer my question yes or no? Either you did or did not observe anything in the experience of that first examination of him that gave you an opinion that he was not responsible for the crime of killing the policeman —mentally responsible. Now, yes or no, which is it? A. I don't believe I can answer that yes or not without an explanation.

Q. Why not? A. He told me "The police say I am charged with murder."

Q. Regardless of what he told you, and having in mind yourself all that he told you and all that you observed, did anything in that experience indicate to you that this man was not responsible mentally for shooting and killing the policeman? A. Yes. He said, "I am charged with murder. They say I shot a policeman," and if he was able to accept the responsibility for that he should have said to me: "Yes, I shot a policeman."

Q. That is the thing in the first examination that indicated to you that he was not mentally responsible? A. That is an element of evasion.

Q. "They say I killed a policeman" is what he told you; isn't it? A. No; "the police say I am charged with murder. I fired a shot and it struck a policeman."

Q. So he told you that "they tell me that he died"? A. "They say he died."

Q. Don't you know as a matter of fact that this man only had the word of others that the policeman had died and didn't know it himself? A. He quoted them. He said, "They say he died."

Q. Precinsely. What is wrong about that? A. Nothing.

Q. Exactly. So that what is there there, in and about that, which you say goes to make up your opinion that he was not mentally responsible for killing the policeman? A. "I am charged with murder."

Q. Will you please answer the question? A. I am trying to pick it out.

Q. If there is nothing peculiar or wrong about that answer—that you have just stated—what is there in it which you say you consider as an element in arriving at your opinion that he is not mentally responsible? A. Well, it was indicative of evasiveness, and secretiveness, and seclusiveness.

Q. Was it indicative of those things to you that this man should tell you the truth; that he did not know the policeman died and that they simply say that he died, and that is all that he knows about it? A. He quoted that. He said, "They say he died."

Q. And that was true, wasn't it? A. But it is not a direct statement.

Q. Oh, no? What would you regard as a direct statement? A. In answer to my question what happened to him? "He died."

Q. Well, he didn't know that he died, except that they say he died. That is the truth, isn't it? A. Yes.

Q. And he told you that truth? A. Yes.

Q. With perfect accuracy. All right. Now you mention something in your direct examination about a change in the reactions of a Wasserman test from four plus to negative? A. Yes.

Q. And you said that his explanation of that change was juvenile or infantile; I don't know which word you used. A. Inadequate.

Q. You used the word juvenile; didn't you? A. Yes.

Q. What was there about his explanation of that change in the Wasserman reaction that was juvenile? A. Why, he couldn't explain any reason for it at all, even though he had stated he had been under treatment and had received twenty injections.

Q. Well, what would you expect him to say as an adequate reason for it? A. That the injections I received helped me.

Q. Oh! That is what you expected him to say? A. Yes.

Q. What did he as a matter of fact say? A. That he didn't know why the Wasserman was four plus while at Rahway and negative while at Cauldwell.

Q. He could not tell why? A. No.

Q. What did you say to him? What was the form of your question that you put to him when you asked him to tell you why? Use your words as best you can recall. A. "What do you suppose made the change from four-plus to negative?"

Q. That was your question? A. Yes.

Q. And because he said "I don't know what made the change" instead of saying "It was because of the injections that I got" you say that that was an indication of sub-normal mentality? A. Yes, sir.

Q. And that was also a factor entering into your opinion that he was mentally irresponsible when he shot the officer? A. Well, he could not argue from an effect towards its cause.

Q. Is that one of the things, I asked you, Doctor, that entered into your opinion that this man was not mentally responsible when he shot and killed the policeman? A. That, in combination with others, yes.

Q. All the others I am taking, I am taking from what you have stated yourself? A. Yes.

Q. Now, then, you say that you determined that he had a mental age of about eleven years and some months, is that correct? A. Yes.

Q. What did you do to determine that? A. I put him through the terminer vision of the Binet test.

Q. What is that? A. A psychological test.

Q. Suppose you wanted to find out how old I am mentally, what test would you give me? A. Take you in a quiet room and submit you to various questions and submit the various problems to you.

Q. Suppose you submit them now. A. It would take probably, Mr. Drewen, with a man of your mentality, three hours.

Q. Don't assume too much about my mentality. A. That is not an assumption, that is a fact.

Q. Give us some of the questions, so that this jury may know just what it was that you used to find his mental age eleven years. A. I have not memorized the Standard form, Mr. Drewen, nor have I a copy of it with me. I will say it is rather large and takes up about twenty pages of this size.

Q. You have been using this test in some eighteen thousand cases, haven't you? A. No, I did not use this test until——

Q. How long have you been using this test? A. I have been using some mental age test for about eighteen years.

Q. Cannot you give us out of your recollection, born of that long practice—can't you tell us some of the questions, some of the tests, some of the problems you put to this defendant? A. Well, we asked the boy to identify certain objects with which he is in contact daily.

Q. For example, what? A. Objects about the room.

Q. You ask him to identify certain objects about the room? A. Yes.

Q. What did you ask him to identify? A. A table, a chair.

Q. And what did he say it was? A table and a chair? A. Yes.

Q. Tell us where he fell down. Tell us where he indicated to you his mental delinquency that caused you to reduce his years from what they actually were to eleven. A. Well, there would be nothing in that test that would indicate his mental delinquency. It would indicate his mental retardation.

Q. All right, what was the end result of your tests? A. For instance, in some of the problems presented to him which required considerably more judgment than the problems of the lower years, he erred.

Q. Can you tell us what the problems were? Tell us some of the problems, please. A. For instance, in drawing an irregular double parallelogram, he failed.

Q. All right, what would you do? Let's have the blackboard. A. I don't think you need the

blackboard, Mr. Drewen. A double parallelogram is shown to him and he is asked to copy it.

Q. Will you draw a double parallelogram such as you showed the defendant at the time? A. I would rather not.

Q. Why not? A. I am not good at drawing.

Q. Neither was the defendant. A. But the defendant had before him a printed form of that parallelogram which he was allowed to study.

Q. Have you no recollection of what the paralleogram was? A. Yes.

Q. So that you can draw it from your recollection? A. I would rather not.

Q. Why? A. Because I am not good at drawing.

Q. Well, that does not make you eleven years old, does it? A. Hardly.

Q. Well, I don't ask you to draw a perfect parallelogram, I don't ask you to draw on the board what would be put there by a teacher; I ask you to give us some idea of the complexity, contour, general delineation of a parallelogram. Won't you do it, Doctor, please? A. I would rather not.

Q. Why? A. Because I present to the subject of our investigation a perfectly proper double parellelogram on a white piece of blank paper and he is permitted to study that for a while and is then requested to turn it face down and then copy it.

Q. Well, you have studied it many times, haven't you? A. Well, I just handed it to him.

Q. How often have you handed it to patients or defendants or men charged with murder? A. As

many times as it was necessary for me to make such a mental test.

Q. How often has that been, in your experience? A. Roughly I could not give you only——

Q. One thousand times? A. Probably more.

Q. All right, now having seen this thing a thousand times or more, and having submitted it to the subjects of these tests one thousand times or more, won't you please give us some idea of what it is? A. But I would rather not.

Mr. Tumulty: Why don't you do it, Doctor, if you can?

Mr. Drewen: I don't know, Mr. Tumulty, the doctor states he would rather not.

The Witness: But I would rather not, that is all. Do you insist, your Honor?

The Court: I don't insist, Doctor.

Mr. Drewen: All right, Doctor.

Q. Now, is there anything else that you can tell us that this man showed as a result of the tests you put to them which brought about your opinion that he was eleven years old mentally? A. Well, there are various absurdities presented to him, stories which he is expected to recognize or not recognize.

Q. As absurdities? A. Yes.

Q. For example, name us one absurdity that was put to them. A. Well, the fact that the boy went from his home to school every day; he rode down hill to go to school and he rode down hill coming back from school.

Q. What did you ask him to tell you about that, Doctor? A. "What is there about that story."

Q. What did he say? A. He said "It is not true."

Q. Well, it wasn't, was it? A. No.

Q. No. What else was there about those tests which you put to him which indicated that he was eleven years of age? A. I asked him to identify some of the coins of this realm, and he was able to do that.

Q. I am trying to find out what he was not able to do. A. I haven't the form sheet with me and I cannot give you that exactly.

Q. Can you give it to us inexactly? Can you give it to us substantially? A. I gave you the result of the entire test as computed by myself.

Q. Can you give us a part of the test that entered into your computation? A. I have been giving you parts of the test.

Q. You have only given us parts of the test where this man showed no mental retardation. I want to know those wherein he did show a retardation. A. I haven't that form sheet with me, and I could not supply with that. It is too complicated and too long.

Q. There is nothing that you can recall either, without the form sheet—no instance you can recall without the form sheet where this man did not answer the test? A. There weren't many of them. The test just struck me as being of some importance in view of the fact I made two examinations of him. One of them resulted in a mental age of eleven years and five months and the other resulted in a mental age of eleven years and three months, and the difference was inconsequential and therefore I did not regard it.

Q. We know that. We hear you say that, that this man was in your judgment of the mental age of eleven years; but we are curious to know what it was that brought you to that conclusion. A. It is not so possible to outline that to one who is not skilled in psychology or psychological practices. It requires years of experience to determine it.

Q. Aside from the fact that neither the Court nor the jury nor myself know anything about psychology, can't you put these things to us as you put them to him? A. I could if I had my form sheet with me.

Q. Oh! And independently of your form sheet you have no recollection of these tests? A. Yes, I have; but I would not even attempt to delineate them.

Q. Why not? A. We might be inaccurate.

Q. They might be inaccurate? A. Yes.

Q. In other words, you might not correctly state them from your memory? A. Yes.

Q. You could get down to the absurdities correctly, couldn't you, but you might not correctly state the absurdities? A. Well, I would not be so sure of them.

Q. When this man told you that he got out of his automobile and pointed this revolver, which turned out to be loaded, at a police officer in the effort to scare him and then instead of being scared the police officer conducted himself with courage and went to draw his own gun, and then in that posture of affairs there was nothing left for this defendant to do except to kill—that it was either the policeman or himself, there was nothing abnormal about that, was there, Doctor? A. I think

that was the impulsive act of the individual who was, as he thought, cornered.

Q. When anybody is cornered in a situation that they create themselves—and having created a situation that puts them in a position that the defendant was when he killed the officer do you call that an impulsive act? A. I do.

Q. And therefore one of mental irresponsibility? A. Yes.

Q. You do not mean that, do you, Doctor? A. Yes.

Q. You mean to say then, that anyone who is on the way to the commission of a crime and is stopped by a police officer and has to get away from the police officer or the court, and in order to do so tries to work upon the cowardice of a police officer by showing a gun and aiming it at him, and finds that the man that he has tried to scare is not a coward but a courageous man, and in that situation he shoots and kills the hero, do you say that that act is one of impulse and one of mental and criminal irresponsibility? A. I did not say criminal irresponsibility.

Q. Isn't it a fact what you have just said? A. No; I said it was an impulsive act.

Q. And then did I not ask you whether or not you meant by that that it was one of mental and criminal irresponsibility, and didn't you say you did mean that? A. Humans are usually obligated to exact responsibility for acts of impulsion or compulsion.

Q. Doctor, that is an abstraction? A. That is not.

Q. Let us get down to the concrete. Here we have a case we can deal with, because we know these facts and we can make this court room, so far as you are concerned here in this testimony, an ideal laboratory for this present inquiry, and that being so, I ask you, Doctor, if under the circumstances as I have stated them you say that the act in killing the officer under those circumstances is one of impulse—do you? A. Yes.

Q. All right, and being one of impulse do you say it is one of criminal responsibility or criminal irresponsibility? A. Take away the adjective "criminal." '

Q. Yes—and what did you leave—irresponsibility? A. Irresponsibility.

Q. Oh, you say it is an act of irresponsibility. Do you say it is an act of mental irresponsibility? A. Yes.

Q. Why? A. Because there has not been the proper judgment exercised.

Q. What part—when—in what? A. At the moment of the impulse.

Q. Don't you suppose that it is pretty good judgment to say that it is either he or I, and I made it "he"? A. But who did he say that to and when?

Q. That is what he did in this case. A. He said that to me on the 4th of April, 1931, one hundred and twenty days later.

Q. Didn't you say in your testimony this morning that at the time of your fourth visit—— A. Yes, fourth of April, 1931.

Q. Wait a minute. No matter when he said it—that at the time of your fourth visit he said to you: "I tried to bluff him but he called my bluff

and it was either he or I?'' Didn't you say that? A. Yes, on the fourth of April, 1931; but that is different than the 8th of December.

Q. No matter when he said it; didn't you? A. But the act occurred on the 8th of December—or, pardon me, the 12th of December.

Q. On the 4th of April then he did evince to you in a statement of what occurred—he did evince to you in his own statement of what occurred a perfectly normal human calculation by which he selected the officer for death rather than himself; didn't he? A. No.

Q. Why not? A. No.

Q. Why not? A. In this particular type of praecox that is a rationalization and at attempt toward a justification of something that occurred sometime previously. He has had three months to mull this out for himself.

Q. And to prepare his defense? A. I don't know about that.

Q. What do you mean by irrationalization? A. Why, it appears to him to be a perfectly sensible reason for the act.

Q. Right. Now, let me ask you, doesn't that appear to you to be a perfectly sensible reason for the act? A. No.

Mr. Tumulty: I object to that.

Q. Why not?

The Court: It is cross examination.

Mr. Tumulty: I ask an exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Q. Why not? A. Because his act was one of impulse.

Q. Why was it one of impulse? A. Well, in my psychological work it is not so much what is done as what motivates the impulse that counts.

Q. What motivated this impulse? A. Probably the primal instinct of nature.

Q. Self-preservation? A. Most likely.

Q. That is normal? A. But a mouse has that.

Q. Certainly; every being and every animal that lives has that. A. A mouse has that, and certainly that does not imply intelligence or reasoning power.

Mr. Drewen: That is all; that is all.

REDIRECT EXAMINATION by Mr. Tumulty:

Q. So that when you talked to him on April 4th you say that what he told you then was a justification of what he did on the day of the shooting? A. Yes.

Q. From the explanation of the justification of his acts on April 4th, can you say that there was the same reasoning that prompted him to commit the action the date charged in this indictment? A. Why, no.

Q. Explain that? A. The act of December 12th was an act of impulse and the conversation on

"December" 4, was simply a justification. That was largely a result of his mulling while he was incarcerated in the Hudson County Jail.

Mr. Tumulty: That is all.

Mr. Drewen: I haven't any further questions.

The Witness: I haven't, either.

The Court: What have you to say as to his present mental status? What have you to say as to the present mental status of this defendant?

The Witness: Just upon observation of him in the court room here does not indicate to me that he is in possession of any of the faculties which he should have, charged with such a heinous, enormous crime as he is. His reactions are not those of an individual who is psychologically normal. He has heard himself belabored with epithets here and terms and should create some psychological response in him. The ordinary visitor here——

The Court: What is your conclusion, Doctor, as to his present mental status?

The Witness: I think he is much retarded. I think he is defective and I think he is a dementia praecox who in the past has shown delusions and in the future will show more.

The Court: Do you say that today he is sane or insane?

The Witness: I would not say he is sane. I have not gone into it very closely today,

your Honor; but his reactions here in court have not been those of a sane man.

The Court: I don't mean just how you judge him by his actions in court; but I mean taking into consideration his actions in court in conjunction with the examinations that you have made of him in the county jail—if you were asked to decide today whether this defendant was sane or insane today, what would your answer to that be?

The Witness: If I may just say this: if this boy was submitted to me in my ward in the Newark City Hospital today, I would complete the medical certificate and have the judicial order made to send him to the Trenton State Hospital.

The Court: Well, in other words your opinion is today that he is insane?

The Witness: Yes, sir.

The Court: As of the present time?

The Witness: Submitted to me—I can only tell you what I would do in the situation as they are presented to me daily. With the history, with his psychological reactions today, I would be satisfied to complete the medical ceritficate to send him to Trenton State Hospital for life.

The Court: In other words, Doctor—I am trying to reduce your testimony to something concrete—in other words, you are testifying that in your best judgment the defendant today is insane?

The Witness: Yes.

The Court: Do you think that he was insane when you examined him at the county jail when he gave you the history of the case that he gave and the answers that he gave?

The Witness: There were lucid moments in that which I might be able to unravel for your Honor if you so cared.

The Court: No; I mean when you examined at various times in the county jail——

The Witness: Yes.

The Court: In your opinion when you examined him was he insane or sane?

The Witness: There were times when he showed evidence of sanity. As a result of those four examinations, your Honor, I would be satisfied to sign a medical certificate that he was insane.

The Court: Will you say that there were times when you examined him in the county jail when he was legally responsible?

The Witness: I don't like the introduction of the adjective. It rather complicates my point.

The Court: Well, by legally responsible I mean that he could distinguish between right and wrong.

The Witness: There were such times, your Honor; there were such times.

The Court: Well, then Doctor, do I understand that you now are testifying that there are times when this man is sane and times when he is insane?

The Witness: In my testimony I say——

The Court: No, answer that yes or no,

if you can, Doctor. That is what you seem to be testifying. I want to find out if that is a fact,—that you testify now that there are times when in your opinion this defendant is sane and there are times when he is insane?

The Witness: I would rather not say in answer to that, for the reason that some of the answers he gave were perfectly lucid answers, where as a general picture, the evasiveness, the secretiveness, the suspiciousness, the lack of cooperation, the lack of appreciation of his present plight, the lack of emotional reaction to his present plight, indicate to me that in general he is mentally defective, and I have chosen to regard that particular type of defection which he shows as the incipiency of dementia praecox.

The Court: Well you have testified, Doctor, have you not, that there were times when you examined this man in the county jail when in your opinion he was sane?

The Witness: I may have used that word; yes, sir.

The Court: Well, it is your opinion that at times the defendant is sane and at times he is insane?

The Witness: I then would possibly have to ask you to assume various degrees of sanity and competency.

The Court: I am only using your testimony as a basis for my question. I asked you if there weren't times in the county jail when you examined this defendant

when in your best judgment he was sane, and you answered that yes.

The Witness: I answered that yes.

The Court: I asked you then what his mental status was today, and you say he is insane; is that right?

The Witness: But an opinion——

The Court: Is that so, Doctor—that your best opinion as to his mental status as of today is that he is insane? A. After consideration of the history and my examination and his present actions, yes, sir.

The Court: That he is insane today. Therefore, that reduces itself to this situation: that you are testifying that in your best judgment there are times when the defendant is sane and times when the defendant is insane.

The Witness: I will have to say yes to you, although it does not really express to you my idea of the mental condition, and I don't want to hedge on it. It is not really my concept of his state.

The Court: Would you consider the act of the defendant in attempting to escape from the scene of the shooting, the act of a man who realized that he had done something wrong or the act of a man who did not realize that he had done something wrong?

The Witness: The act of a man who realizes that he had done wrong.

The Court: Well then, Doctor, you have testified that in your judgment the defendant at the time of the shooting had no con-

cept of what he was doing; in other words that he had no realization of his act, isn't that true?

The Witness: Yes.

The Court: Well when did he get that realization?

The Witness: Possibly a few moments afterward, I don't know.

The Court: In other words when he shot Ruark he didn't know what he was doing?

The Witness: That was an implusive act.

The Court: He could not distinguish between right and wrong when he shot Ruark, but as soon as he shot him then he realized right from wrong and realized he had done something wrong and tried to escape?

The Witness: I cannot say how soon, but from his action I say he realized that he had done wrong, because he attempted to get away.

The Court: Well assuming the testimony in this case to be, Doctor, that the defendant after the shooting jumped into an automobile and started up the car and attempted to escape from the scene, how soon would you say that he became conscious of the fact that he had done something wrong?

The Witness: I could not give you an answer to that.

The Court: Well, wouldn't you say as soon as he tried to escape that he conceived some idea of the fact that he had done something wrong?

The Witness: Yes, it would have to be at that time, anyhow.

The Court: If he had not done anything wrong, Doctor, wouldn't you say it would be very likely that he would stand there and hand the gun over to somebody instead of attempting to escape?

The Witness: That would be likely very shortly thereafter, apparently, without considering his plight or his act or its consequences.

The Court: Now get down to what happened, Doctor, from the testimony in this case; before the shooting there is testimony in this case that the defendant was riding in an automobile along West Side Avenue, Jersey City, in conjunction with two others and that he came to the intersection of Communipaw Avenue, and that he passed a red light and that the dead police officer Ruark came after him on a motorcycle and the defendant pulled over to one side of the road to let the police officer pass him, and then turned around and went down a side street, and when the officer followed him down the side street and told him to pull over to one side, that the defendant stopped his car and got out of the automobile with a revolver in his hand and said to the police officer "Stick them up;" would those actions indicate to you that he could distinguish right from wrong at that time?

The Witness: Well, it was an unusual act. It certainly was not the act of a normal individual. Ordinarily an officer could stop any person along a street and they would

not get out of the car with a gun in their hand.

The Court: Can't you answer the question?

The Witness: It shows rather an irresponsibility than a responsibility.

The Court: Why do you say that?

The Witness: Why, if an officer asked you to stop your car, one who realized directly the situation he was in, he would stop the car and speak to the officer instead of getting out of the car with a gun in his hand. The officer made a mere request of him to pull up alongside the road.

The Court: Well, what do the words of the defendant, if they are true, saying to the officer, "Stick them up," indicate to you? Would they indicate to your mind that the defendant was under the impression that the officer was going to arrest him?

The Witness: He probably anticipated his arrest. Whether that prompted him or not—how he explained to me in the early part of April the reason why the officer called his bluff would indicate that he was just using the gun as a bluff.

The Court: Doctor, assuming that the police officer stepped back and reached for his own gun and the defendant then shot the police officer, do you now testify that at the time he fired that shot that the defendant could not distinguish right and wrong? A. I would.

The Court: Is that your testimony?

The Witness: Yes, I believe that was an impulsive act which was unpremeditated and which was without deliberation, without any exercise of his will.

The Court: Doctor, under the same circumstances then, any defendant would have the excuse that it was an impulsive act?

The Witness: I would think not, for the reason that many acts are with premeditation and deliberation.

The Court: Would it change your opinion of the mental status of the defendant at the time if you knew that the defendant was riding in a car which had been stolen in New York City only a short time before?

The Witness: No, it would not, your Honor.

The Court: Would it bring you to the conclusion that the defendant in pulling out the gun and pointing it at the police officer had in mind the fact that he didn't want to be arrested charged with stealing a car or being in a stolen car?

The Witness: I cannot answer that question for this reason, that the thing he dreaded was jail, so that I doubt very much if a stolen car entered into the question. The stolen car itself was just incidental.

By the Court:

Q. Well, wouldn't it indicate to your mind, Doctor, some thought on the part of this defend-

ant of escaping arrest? A. Yes, by bluffing the officer.

Q. In other words, if this defendant had not done anything which would lay him open to arrest—if he was simply riding along in an automobile along the street and an officer told him to pull over, and he shot the officer without any justification or excuse, you would say under those circumstances that that was more an irresponsible act than the act of the defendant who possibly might be wanting to escape arrest on the charge of stealing a car? A. Yes.

Mr. Drewen: Nothing further.

The Court: We will take a recess at this time, gentlemen, until half past two.

AFTERNOON SESSION.

Defense rests.

STATE'S REBUTTAL.

LAWRENCE M. COLLINS, called as a witness on behalf of the state, in rebuttal, being sworn, was examined and testified as follows:

Direct examination (in rebuttal) by Mr. Drewen:

Q. Dr. Collins, you are a licensed physician and surgeon of the State of New Jersey? A. I am.

Q. How long have you practised your profession? A. Nineteen years.

Q. During that period have you specialized in any particular branch of medical work? A. I have; in mental and nervous diseases.

Q. Are you connected with any institution for the care and treatment of the insane? A. I am, the New Jersey State Hospital at Greystone Park.

Q. How long have you been connected with the New Jersey State Hospital at Greystone Park? A. Going on 14 years.

Q. How many inmates are there in the Greystone Hospital now, Doctor? A. Around 4,000.

Q. You have daily contact with the inmates and patients? A. I have during that time had daily contact with the newly admitted patients.

Q. Did you say how long you have been identified with the institution? A. Around 14 years.

Q. 14 years. Doctor, did you make an examination of this defendant for the purpose of ascertaining according to your experience and your science his mental state? A. I did.

Q. When was that examination made? A. March 30, 1931, at the Hudson County Jail.

Q. Doctor, were you in company with any other physician at the time? A. Dr. King.

Q. And over what period of time did your examination extend? A. It extended over a period of two hours.

Q. As a result of that examination did you form an opinion as to the mental state of the defendant at the time? A. I did.

Q. Will you state your opinion? A. I found him sane.

Q. Doctor, were there any questions concerning the shooting of Policeman Ruark which you put to him which he declined to answer? A. He did.

Q. Did he give his reasons for his refusal to answer those questions? A. He did.

Q. What was the reason he gave? A. He refused to answer on the advice of counsel.

Q. When you put questions to him not associated with the shooting of the policeman did he refuse to answer? A. He did not.

Q. Doctor, as a result of your examination of the defendant did you form any opinion as to whether or not he had been sane for an indefinite period prior to your examination? A. I did.

Q. What is your opinion? A. That he was sane.

Mr. Drewen: Cross examine.

CROSS EXAMINATIION by Mr. Tumulty:

Q. Now, Doctor, when you conducted this examination did you have any facts before you of this boy's history? A. I did not.

Q. That would have helped you, wouldn't it? A. Not necessarily.

Q. Well, it might have? A. Oh, we always take it into consideration.

Q. If there was a pronounced strain of insanity in his history that might have helped you? A. Not at all.

Q. Why not? A. At the present date psychiatrists don't look upon heredity as they did in the old days; because there isn't any definite laws of

inheritance that can be applied to any form of mental and nervous disease.

Q. You mean there are no definite laws that can be applied, but you don't shut your eyes to a man's family history; do you? A. Not at all; that is always taken into consideration.

Q. You didn't have it before you when you made this examination? A. No.

Q. If you had it you would have taken it into consideration? A. Yes; I would have considered it.

Q. How long did you examine this boy? A. In the neighborhood of two hours.

Q. You spoke of questions that you asked him that he refused to answer on the advice of counsel? A. That is what he said.

Q. That is what he said? A. Yes.

Q. Do you know whether or not his counsel had advised him not to answer any such questions? A. I didn't know that; no, sir.

Q. You might have determined that by asking me; mightn't you? A. I might have, I suppose.

Q. If you knew that to be untrue it might have affected your judgment? A. Not at all.

Q. It would not? You knew that he had been committed to the asylum for the insane; didn't you? A. I found that out later.

Q. Would that have changed your judgment at all? A. Not at all.

Q. If he had been in the asylum for five years before you made your examination that might changed your judgment?

Mr. Drewen: That is objected to on the ground there is no testimony that he was.

Mr. Tumulty: I have a right to test this expert witness as to his knowledge.

Mr. Drewen: I know, but not on hypotheses that are not in the case.

Mr. Tumulty: It is proper cross examination, I submit, your Honor.

The Court: I will allow it.

A. It would not.

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

Q. If he were there for ten years would that have affected it? A. Not at the time of my examination. There wasn't any taint.

Q. You mean at the time you examined? A. At the time I examined.

Q. He showed no signs at all? A. No.

Q. Of mental defectiveness? A. That is true.

Q. And how could you extend back to December and apply your judgment? A. From the knowledge of the case; anything that depended on the nature of the act he absolutely refused to tell me and I examined his mental understanding over a period of two hours. There were no definite delusions. By that I mean that his ideas, his ideas as to delusions, mental control, hallucinations, were all gone into, and he admitted none of them.

Q. Well, you mean he didn't tell you of any? A. He didn't. We asked him and he denied them.

Q. Who else was with you besides Dr. King? A. There were a couple of detectives from the prosecutor's office.

Q. You have had occasion to examine defendant's quite often, haven't you, charged with serious crime? A. I do.

Q. And you know it is always the custom to

notify the defense and have somebody present, don't you?

Mr. Drewen: I object as immaterial, irrelevant and incompetent. It has nothing to do with the accuracy of the doctor's examination.

The Court: I will sustain the objection.

Mr. Tumulty: I ask an exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Q. So the fact that he would not discuss delusions with you convinced you he had none? A. My examination convinced me that he had no delusions.

Q. And that he had none back in December? A. That he had none.

Q. And you want this jury to understand that his family history, if it did show a strong and pronounced strain of insanity, would mean nothing to you? A. Not a thing in the world to me.

Q. And the fact that he might have been committed to an insane asylum for any length of time would not have affected your judgment? A. Not at the time of my examination.

Q. Why do you qualify the time of your examination—would it affect your judgment now? A. Not at all.

Q. Why, then, did you qualify it as to the time of your examination? A. It is a factor always taken into consideration.

Q. And you did not take it into consideration when you made your determination? A. I did.

Q. Your answer to that last question was that at the time you made your last examination you did not know that he had ever been confined to an asylum? A. Yes—he told me so, and I accepted his word.

Q. And the fact that two doctors acting in accordance with the law had determined that this man was insane back in 1926 and the fact that a competent court of jurisdiction determined that this man was insane—that would not affect your judgment? A. Not at all at the time of my examination; no, sir.

Q. Well, when might it affect your judgment? A. If I found him insane at the time of my examination.

Q. Well, can you tell us how far back by any process of definite scientific methods you could say this man has been sane?

Mr. Drewen: I do not understand the question. I object to it as unintelligible.

Q. Do you understand the question? A. I do not understand it.

Q. Is there any method known to your science that can extend back into a man's life and tell how long he has been sane? A. Only from history.

Q. And that depends on your judgment? A. Yes, on knowledge of the history.

Q. And doctors and experts very often disagree? A. They do.

Q. And they very often disagree as to whether a man is sane or insane? A. They do.

Mr. Tumulty: That is all.

REDIRECT EXAMINATIOIN by Mr. Drewen:

Q. Doctor, specifically considering the condition known as dementia praecox, did you find any sign or trace of dementia praecox in this defendant? A. I did not.

Q. Was there anything in the defendant revealed to you in the course of your examination which would indicate that there had been at any time any state of dementia praecox in him? A. No, sir.

Q. Now, Doctor, assuming that this defendant, whom you said that you have examined on the evening of December 12, 1930, stole in the City of New York an automobile in company with two others, and assuming that at that time he was armed with a loaded revolver and that so armed he drove the automobile with his two companions into Jersey City from the City of New York, that he was pursued by a traffic policeman on a motorcycle until the policeman brought him to a stop at or near a dead end street; assuming that at the time the policeman brought him to the stop the defendant had in his possession a loaded revolver, a stolen automobile, and had no license to drive the automobile, and assuming that being stopped and halted by the policeman he alighted from the automobile and pointing his loaded revolver at the police officer said to him, "Stick them up," and that when the police officer, instead of sticking them up or lifting his arms or showing signs of surrender, made a motion as though to get his own gun, the defendant shot and

killed the police officer, and immediately after shooting the police officer he re-entered his automobile and he and his two companions then at a speed of some sixty or sixty-five miles an hour drove away from the scene of the shooting and did not halt the automobile in spite of the fact that two other policemen were firing at them in pursuit, and assuming also that the defendant drove the car, being thus pursued, into a swampy or out-of-the-way place off the highway, and that he concealed himself beneath another automobile, a motor-truck, and told the driver of the motor-truck that he wanted him, the driver, to take him, the defendant, across the river and into the City of Newark, and that upon the driver's refusal thus to convey the defendant the defendant fought with the driver and was thereupon taken into custody by the driver and turned over to the police,—would you say, considering the conduct of the defendant as thus stated and as thus described, that in shooting the police officer he was committing an act which at the time he knew to be wrong?

Mr. Tumulty: I object to that question on the ground that there is no evidence in this case that the defendant had a loaded revolver when he stole the automobile. I will ask Mr. Drewen to amend his hypothetical question.

Mr. Drewen: I did not say he had a loaded revolver when he stole the automobile, but I say when he came to New Jersey and encountered the police he had the loaded revolver.

(The hypothetical question was repeated

in as far as it related to the loaded revolver.)

Mr. Drewen: It is in his confession. He admits that at the time he left New York to come to New Jersey he had the loaded revolver in his possession.

The Court: Is it in the confession?

Mr. Drewen: Yes, your Honor.

The Court: I will allow it.

Mr. Tumulty: Exception.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,

(SEAL) *Judge.*)

A. It is my opinion he knew it was wrong.

Q. And what do you say as to whether or not at the time, having acquitted himself of the conduct described in the question he was able to distinguish right from wrong? A. Yes, sir, he was.

Mr. Drewen: That is all.

RECROSS EXAMINATION by Mr. Tumulty:

Q. I ask you to assume, Doctor, if this defendant was suffering from a mental defect which might render his mind subject to prostration under intensive excitement, would he then be able to distinguish between right and wrong?

Mr. Drewen: I object on the ground there is no evidence in the case that the defendant is suffering from any defect which

would subject his mind to mental prostration.

Mr. Tumulty: The purpose of the question is to test the expert knowledge of this witness. For that purpose I submit it it is entirely evidential.

The Court: I think you should reframe the question. I think the question in its present form is objectionable.

Q. You have of course assumed, in answer to Mr. Drewen's question, that this man was in the same mental state as when you made your examination in the jail? A. That is true.

Q. Are you prepared to state from that examination positively under oath as to just what state of mind he was subjected to in December? A. From my knowledge of the case I am.

Q. And you only had one examination of this man? A. That is true.

Q. And from that examination what do you assert gives you the right to say that you are able now to swear as to his mental status back in December? A. I have no evidence at any time that there was any evidence of any mental defect.

Q. If he had a lucid interval at the time you spoke to him, then he surely knew of these manifestations you speak of? A. Surely he would.

Q. If he was lucid and perfectly sane at the time you conducted your examination? A. He was. If he had delusions he would have expressed them in his lucid interval.

Q. But if he had a lucid period and had no delusions he would have appeared sane to you? A. Surely.

Q. And still at the same time he might have been at that moment lucid? A. He was lucid all the while I examined him.

Q. As a matter of fact, Doctor, you cannot be sure of his condition in December, is that right? A. I am sure.

Q. Now you have testified that if this defendant had a lucid interval at the time you conducted your examination, his answers to you would have indicated a sane mind, is that true? A. Yes.

Q. And if you met him the next day and his lucid interval had passed his answers to your questions would indicate an insane mind, wouldn't they? A. Yes.

Mr. Tumulty: That is all.

REDIRECT EXAMINATION by Mr. Drewen:

Q. That is assuming—— A. Assuming there was a mental disease.

Q. Assuming he was insane on the next day? A. Yes, sir.

The Court: I suppose, Doctor, it comes right down to this, that all you can do as an expert is make an examination of the defendant and then get a history of the actions of the defendant on the day of the alleged crime and conclude from your examination and from your knowledge of his actions on the day of the alleged crime as to whether or not his act was the act of a man who knew right from wrong?

The Witness: That is true, your Honor, that is the way we do.

RECROSS EXAMINATION by Mr. Tumulty:

Q. And that simply is a pure matter of judgment? A. A matter of judgment.

The Court: In other words, Doctor, there was nothing in the outline of the defendant's actions given you by Prosecutor wherein the Prosecutor asked you the question about the defendant taking the car in New York and coming over to New Jersey and leading up to the events of the shooting, there was nothing in that outline given to you that would indicate that the defendant was insane on that day?

The Witness: No, sir, there was not.

Mr. Tumulty: That is all.

(Witness excused.)

GEORGE W. KING, called as a witness on behalf of the state in rebuttal, being sworn, was examined and testified as follows:

Direct examination in rebuttal by Mr. Drewin:

Q. Dr. King, are you a physician and surgeon?

Mr. Tumulty: We will admit the qualifications of the doctor.

Mr. Drewen: But I would like to show them.

Q. Dr. King, are you a physician and surgeon specializing in nervous and mental diseases? A. I am.

Q. And you have so specialized for how many years? A. Within a few weeks of a half century. To be precise on the first of June next I will have completed 50 years as being medical superintendent of the Hudson County Hospital for the Insane.

Q. Doctor, in that period of fifty years will you kindly give us some statement of the number of cases suffering with various types and kinds of mental diseases whom you have examined? A. Oh, I have examined, to be accurate, to be sure, to be certain, I would say I have examined more than fifty thousand insane persons during that time.

Q. Doctor, did you make an examination of this defendant, Raymond George? A. I did.

Q. For the purpose of ascertaining his mental state? A. I did.

Q. Where was that examination made? A. It was made in the Hudson County Jail on the 30th of March, 1931.

Q. And in your company at the time there was Dr. Collins, was there not? A. Dr. Collins.

Q. Doctor, as a result of your examination of the defendant in the county jail, did you form any opinion out of your experience, from what you observed, as to whether or not he was sane or insane? A. I did.

Q. What is that opinion? A. My opinion was that he was sane.

Q. Did you find any indication of what is known as dementia praecox? A. Not the slightest.

CROSS EXAMINATION by Mr. Tumulty:

Q. Is it your opinion, Doctor, that this man is perfectly normal? A. That is my opinion.

Q. There is nothing wrong with him? A. Not at all.

Q. Do you think he had anything wrong with him? A. I didn't get you.

Q. Do you think he ever had anything wrong with him? A. Why, I have reason to believe from his own admissions and other information that I found out that he was sent to the State Hospital for the Insane in Trenton some five years ago and that he was discharged from that institution as cured, with no psychosis.

Q. You heard Dr. Cotton testify this morning that when he was discharged he was not cured? A. I didn't understand Dr. Collins to say that. I understood him to say that he was well but he advised her the treatment and that was discontinued because his mother objected to it.

Q. You heard Dr. Cotton say that when he was discharged the causes of this trouble—the causes which produced this trouble had not been entirely eliminated; didn't you? A. I think Dr. Cotton said something like that which I remember distinctly.

Q. And Dr. Cotton is one of our recognized alienists in this state; isn't he? A. He is.

Q. And you regard him as such? A. I do.

Q. Do you know him to be a man eminent in his profession?

Mr. Drewen: That is objected to. I

think we have permitted that to go far enough.

The Court: I will allow it.

A. I regard Dr. Cotton as a good friend and good psychiatrist.

Q. And authority on mental disorders of some repute? A. I do.

Q. And you just beg to differ with him on this occasion? A. Doctors don't always agree; neither do lawyers for that matter.

Mr. Tumulty: That is all, Doctor.

The Court: Doctor, did you hear the question which Prosecutor Drewen asked the preceding doctor, Dr. Collins, who was on the stand?

The Witness: I did.

The Court: In which he gave Dr. Collins an outline of the acts of the defendant on the 12th day of December, 1930?

The Witness: I did.

The Court: Would you consider the acts of the defendant as outlined by the Prosecutor in that question to reveal when he shot Officer Ruark that he could distinguish right from wrong?

The Witness: I haven't any doubt in my mind, and I answer that question in the affirmative—I believe he knew the difference between right and wrong and I believe that he was able to differentiate between right and wrong and he knew when he done that that he done wrong.

George W. King—For State—Cross

By Mr. Tumulty:

Q. Now, you determined that from your examinations? A. Well, I did. I found the man normal. I found him evasive. I found that he would not enlighten me on certain things that I would like to find out from him and other incidents that happened. I put that into consideration. I also put into consideration the time he was arrested, as he told me of the examination that I made of him,—he tried to outspeed the policeman. All that was the product of a normal mind, after committing a crime he wanted to get away; he wanted to beat it. In cases of that kind we all know that when these gunmen do perform an act of that kind they get away with it more than they are caught, and he took every chance of getting away as a normal individual, particularly of that criminal type would do.

Q. Is there any known scientific method that can with certainty determine definitely whether a man is sane or insane? A. Well, I have lived in the midst of insane persons more than two-thirds of my life and I have sufficient conceit to say that I think I can tell an insane man when I see him.

Mr. Tumulty: That is all, Doctor,

Mr. Drewen: That is all. Thank you, Doctor.

(Witness excused.)

ROBERT G. STONE, called as a witness on behalf of the state, in rebuttal, being sworn, was examined and testified as follows:

Direct examination by Mr. Drewer:

Q. Doctor, you are acting medical director of the New Jersey State Hospital at Trenton? A. Yes.

Q. How long have you been connected with the official staff of the hospital, Doctor? A. Since 1919.

Q. And have you produced with you here the records of the hospital, the records of the treatment of the defendant George? A. I have, yes.

Q. These records were produced by you today; were they not? A. Yes, sir.

Q. Doctor, will you kindly state the date on which the defendant was admitted to the hospital? A. (Referrenig to the hospital records) June 29, 1926.

Q. Will you kindly state from the records when he was dicharged from the hospital? A. The tenth month, eleventh day, 1926.

Q. That was October 11, 1926? Correct? A. Yes.

Q. Now, will you kindly state from your records what is shown as to the condition of the defendant, when he was discharged?

Mr. Tumulty: I would like to cross examine the witness for a moment, your Honor.

CROSS EXAMINATION as to qualifications by Mr. Tumulty:

Q. Did you have any official position at the hospital at this time? A. Yes, sir.

Q. What was your position? A. Clinical director.

Q. Did you have anything to do with the records? A. Yes, sir.

Q. You did? A. Yes.

Q. And what did you have to do with the patients? A. The clinical director at this special hospital carries out the orders of the medical director, and especially is the clinical director concerned with this hospital——

Q. Who was the director at that time? A. Dr. Henry Cotton.

Q. The witness who testified here this morning? A. Yes.

Mr. Tumulty: I object to this witness testifying from the record.

The Court: But he says the records were under his control, in answer to first question.

Q. Did you make the records? A. No, no.

Q. Who did make them? A. Dr. P. B. Means.

Q. Is he still in the State Hospital? A. He is connected with social service; that is clinical service; extra-mural work in the hospital at this time.

Mr. Tumulty: I would like to know the purpose of introducing the records.

Mr. Drewen: I am not going to introduce the records. I want to simply show what the records show as to this defendant's condition when he was discharged from the hospital.

Q. Have you the question, Doctor?

(The question was repeated.)

A. On the day of his discharge the hospital records show—shall I read it?

Q. If you please.

Mr. Tumulty: I do not want to appear captious, but you did not make these records?

The Witness: No.

Mr. Tumulty: You do not know whether they are correct or not?

The Witness: No.

Mr. Tumulty: I object to the question.

Mr. Drewen: Let me ask a few more questions of the doctor, then I will reframe my question.

Q. Doctor, the records you have before you are produced here by whom—by you? A. By me.

Q. And you got them from the archives, the records of the institution at Trenton, from which they come? A. Yes.

Q. These are records, are they not, which are relied upon by you and all the other officials of the institution for the purpose of ascertaining fact and data in the records of all cases treated at the institution? A. Yes.

Q. And if for any purpose in the administration of the institution or any other purpose you wish to have recourse to the record of this case, would you go to these records for it? A. I would.

Q. And so far as your knowledge is concerned, would each and every other person connected with the institution who had occasion to use such records? A. They would.

Mr. Tumulty: I renew my objection, your Honor.

The Court: On what ground?

Mr. Tumulty: On the ground that whether or not these records are used for institutional purposes that does not certify to their correctness. This witness has admitted that he does not know whether the records are correct or incorrect, and we are in the position of confronting records that we have no possible means of contradicting. I think it is objectionable.

The Court: I think there is something to that.

Mr. Drewen: If your Honor please—I will not insist unduly because the matter is not of sufficiently great importance to warrant it—but here is the foremost institution of its kind, perhaps, in the State of New Jersey. Here is the acting medical director who brings with him to this court the records of that institution on which he in his official conduct of that institution would rely. He brings them from the official archives. Now I submit that that his-

tory, that character, establishes the authenticity of the record.

The Court: I think there is quite a gap, Mr. Drewen. If this witness was the one that prepared the records, and the records at the time the defendant was permitted to leave the institution were made and then turned over to this witness and they were in his custody and control since that time, I think he could produce them for what they were worth.

Mr. Drewen: Your Honor will appreciate that in this day and age records of this character are not made by one person, but perhaps by fifty or more, so that it becomes an impractical thing to produce every nurse and every doctor who had to do with the preparation of these records.

The Court: I appreciate that and realize the difficulty in doing that, but I also appreciate the fact that this witness is not in a position to certify to the correctness of these records.

Mr. Drewen: I submit one more thought to your Honor's consideration. It may be that in matters of this sort the record——

The Court: I think you might confront Dr. Cotton with the record and ask the doctor whether they would refresh his recollection, and use the records for that purpose; but I do not think this witness can come here and bring records with him about which he has no personal knowledge and state into the record what they show.

Mr. Drewen: There is only one thought

more I wish to urge. In considering official records of this sort, if your Honor please, we must realize that these records may have a value, even when all persons who may have had a part in creating them have passed out. They are records of an institution of a character whose work is pre-eminently of importance. However I will withdraw the offer.

Q. However, Doctor, this patient was there for something short of four months—I do not know where you got that record from—— A. August to October.

Q. August 25 to October 11th. Less than four months—June. A. Yes.

The Court: You do not know anything concerning the defendant himself, do you, Doctor?

A. Yes, all patients at the hospital come under my supervision. I do not see them every day, but as often as I can see them. We make rounds.

The Court: Maybe you can testify from your own knowledge as to the mental condition of the defendant at this time of his discharge from the hospital in October, 1926?

A. I can.

By the Court:

Q. Suppose you tell us that. A. Of course a

great number of cases are handled, but I recall this case as being of special interest. I saw him at Rahway Reformatory before he was brought to the Trenton State Hospital, and having had some interest in him before he came in I naturally followed the case through the months that he was there in the hospital.

Q. What was his mental condition at the time he left the institution in October, 1926? A. He was freed of any delusions—in a state of recovery.

Q. In what? A. In a state of recovery.

CROSS EXAMINATION by Mr. Tumulty:

Q. Are you a physician? A. Yes.

Q. Now you heard Dr. Cotton testify this morning that there were certain treatments and medical attention, surgical attention, that this boy needed, you heard that? A. Yes.

Q. Did you know anything about that? A. I knew before Dr. Cotton mentioned that fact that the man had been at the hospital; he had been sufficiently treated while there to reach what I considered a state of recovery. Probably I had the man directly in charge of this case to bring the matter to staff.

Q. You heard Dr. Cotton say that when he left the hospital he was not cured insofar as the causes that produced his trouble were concerned? A. I heard the doctor say that. My interpretation of that was——

Mr. Tumulty: I object to the interpretation.

The Court: Do you agree with Dr. Cotton says about him, Doctor, as to his condition at that time?

A. The case at the time of leaving the hospital was in a recovered state.

Mr. Tumulty: In what?
The Witness: In a recovered state.

By Mr. Tumulty:

Q. Did he have delusions while he was there, do you know? A. The first three or four weeks he continued in a superficial delusion.
Q. That is all.

Mr. Drewen: That is all.
Mr. Drewen: The state rests.
Mr. Tumulty: The defense rests.

STATE'S SUMMATION.

Mr. Drewen: May it please your Honor and Gentlemen of the Jury: First let me say a word of appreciation to the two gentlemen who appear in this case on behalf of the defendant. They have done a difficult task with a very becoming degree of dignity and have done it as well as any man or men could do it. They have borne the temptations of their task with a fine restraint. There is much that my adversary has said to you in his summation that requires correction, and very, very drastic correction from me. Nevertheless, to a great degree he has avoided the exaggeration to which he might well have gone under the temptation to do so, considering the temptation to which his task has subjected him.

In the first place his plea to you is utterly and entirely pointless, because there is not a man on this jury, with the reason that God gave him can tell what it is he is asking you now to do. What is it that counsel for the defendant is asking this body of men to do? I don't know and you don't know. I mean by that simply this: that in a vague and impassioned and eloquent utterance full of sentiment and pleas for sympathy, he has asked you to do something rather than find this man guilty. Well, what does he mean?

There was a proceeding in which the sanity of this defendant might properly have been determined, as a result of which, if the court found him to be insane he might have been committed to an institution for the care and treatment of the insane so long as his condition required that

restraint. But you cannot do that. There is no power or sanction on your part in this present responsibility to do that. If you say that this man is not guilty it means that he walks out of this court exactly as he walked out of the state hospital and exactly as he walked out of the state reformatory and went to New York and prepared himself for the murder of Ruark. Is he asking you to do that? I don't think so, because if he did he was afraid to couch it in words that meant just that.

Then he vaguely passes on from that vague proposition to another one just as vague, and he talks about the power which the law places in the hands of this body of men to say whether the penalty shall be death or life imprisonment. Counsel for the defendant says that this man is not responsible. He says he didn't know what he was doing. Does he mean that if this man did not know what he was doing at the time he murdered the policeman and thus is innocent, that nevertheless you must by some kind of base and cowardly compromise say that he shall be imprisoned for the rest of his life? But he didn't put it just that bluntly, because he did not dare do it. The logic and the sense of the situation rendered it impossible and it would put him out of countenance with you; and so his whole appeal is left to be one vague and sentimental aspiration toward the old standard of confused sentiment.

Now, let's get down to earth in this matter. The only consequence that the deliverance of my good friend and adversary could possibly have on you is one of utter and hopeless confusion.

When Theodore Roosevelt was returning from the African jungle he passed through a country that was under a European mandate and he observed that the law was laxly administered. Crime was rampant. Women were unprotected. Children were outraged. Homicide went unpunished, and commercial fraud was a stigma upon the country. On his way across Europe coming back to the States, he addressed a Congress of University Professors in that country and he undertook to tell the men who taught the youth of their nation who were responsible for the situation. He told them something about the fundamental concepts and precepts of government and he said it was perfectly obvious to him that the responsibility of a mandate and the responsibility of a government meant that their nation either should govern in the country through which he had passed or promptly get out and let some other nation in there that would govern.

Now, we are here to govern. That is what we are here to do, and if we don't govern we ought to quit and say: we cannot govern and we have no moral capacity with which to deal with crime; that we are all confused morally, fundamentally upset; that we have no stern standards of rectitude, and we have lost the strength of man wherewith to apply the law—in a word that we are weak and unfit and ought to give over.

Now, gentlemen, we are fond of saying that ours is a government of law and not of men. Let me show you that that is not true. And we have been relying upon that so implicitly that a very sorry state of things has come to pass. It is the

man who graces this bench that makes this court. All the precepts, all the history, all the wars that have been fought have resulted, insofar as this present issue is concerned, in the inalienable right of trial by jury. But trial by jury, as so many words printed upon a white piece of paper means absolutely nothing without the jury. So that the responsibility becomes personal. All the law and all the struggle toward constitutional guarantees toward those things which make up the elements and securities of justice are vested in these twelve men in this case. As Carlyle said: "In the present there is all of the past and all of the future"; and in this case, insofar as the law of homicide in New Jersey is concerned, there is all the past, its countless ages, and all of the future, its numberless aeons. So that trial by jury means nothing unless you men are equal to it, because if, for example, you are swayed and borne in by these vague allusions to slavery and to a black skin and antecedents, and asylums, and institutions of one sort or another, so that you come weakly to the point of saying: there is no guilt here; and send this man out to shoot more policemen, then I say to you that trial by jury is a mockery and a snare.

The effort here today has been to make you afraid. "The cold gray dawn", and "the electric chair and the suit the state provides." Our blessing, my friends, is that we have had as forefathers men who were great enough to cope with great issues. What do you suppose that a man of the gentle sensibilities of Abraham Lincoln thought of sentiment when he suspended the writ of habeas corpus during the crisis of the Ameri-

can Civil War? Was he seeking to disregard any man's liberty? Was the gentle Lincoln thirsting for any man's blood when he made it no longer possible for men taken into custody, stolen away from their families, made it no longer possible for them to have immediate recourse to the writ of habeas corpus to test the validity of their confinement? No. It was in the higher interest of the peace and security of his countrymen. A great issue with which he was strong enough and great enough to cope for the greater good that lay beyond.

Let's be clear-headed about this. Let's be strong about this, and let us be equal to the task that jury duty imposes.

Now in the first place, gentlemen of the jury, every burden, with one or two minor exceptions, is upon the state, which the state in this case has more than completely discharged. There is, as my adversary says, the presumption of innocence. That goes with one accused of crime until the jury by its verdict of guilty divests him of that presumption. Very well. The presumption of innocence also carries with it certain implications. It means that the jury and the court and the state can never know what it is that the defense is relying upon as a defense until the last word in the state's case has been spoken. So that we witnessed what we witnessed in this prosecution. The state in its opening delineated to you the course of its proof, telling you what it will prove, what it will undertake to show in sufficient detail to have you know the full import of the state's case; and during all of that the defendant

remains silent and is called upon to say not a word. As a consequence, in the early stages of the state's case we find the defendant asking questions like this: Well, what kind of a cap did he have on, and were there two men in the front seat or two men in the back seat? Are you sure you would recognize the defendant now if you saw him? Are you sure you could tell now who the man was that drove the car? What was the condition of the light there? Was it light enough for you to tell his features? Witness after witness was subjected to that kind of investigation. Steadily and steadily the state's case was mounting higher and higher until it reached its summit with the confession of the defendant given freely and voluntarily. He tells every detail of the crime committed by him, which is corroborated from disinterested sources taken from every quarter of the globe. Then it is what we see that it no longer makes any difference what the light was, that it no longer makes any difference whether a witness can tell whether it was a dark or a light suit he wore, that it no longer makes any difference whether Sergeant Varley saw this car wore a cap or a hat, that it no longer makes any difference whether Sergeant Varley say this man fifty feet or five feet from him. We have his counsel standing up and saying to you in open court, but only after the state has produced all its proof—saying to you gentlemen: "I am going to be perfectly candid with you, it is my opinion that he did it." Do you suppose that things would have run the course that they did in this case if one or the other of the state's earlier witnesses had fallen down in their answers and said:

"I could not tell whether or not this defendant was the man who drove the car?" What do you suppose would have happened if when this man was brought to the bedside of the still brave and fighting Ruark, Ruark had been so far gone as to be no longer in possession of his discerning faculties and had said mistakenly "No, that is not the man?" Wouldn't that have been seized upon with gluttony, with avidity, in order to show that after all the state did not have in this court the right man? Well, you can gamble everything you have or everything you ever expect to have, that they would. But here he is and all that there is left, all that there is left under the great canons of reason or commonsense is the one thing that is always resorted to in a situation like this—he didn't know what he was doing, he was crazy.

Now, let's see if he was crazy. Now, gentlemen of the jury, another of the guarantees that goes against the state and in favor the defendant is the great constitutional guarantee that no man can be compelled to give evidence against himself. And because that is so the state had no power to call this defendant as a witness to the stand to find out what his version of this killing was. There was only one power that could have called him to the stand, and that was the defendant himself. But since his trial is in the hands of designated and skilled counsel we can only assume that they so ran and regulated things that they did not wish him to take the stand. Now, why? If there is, in the personality of this defendant, the slightest symptom, the slightest feature from which you could infer that he is mentally irresponsible, he would have been put on the stand. It might well

be that you would say concerning his counsel: well, his counsel will tell us that there is no use of putting a crazy man on the stand, there is no sense in that. Well, on April 4th was he so crazy when he talked to Dr. Cotton and Dr. Donahoe? Dr. Donahoe says that on April 4th he got his story of how this thing happened and the impulse under which he shot, and that his story was that he was trying to bluff the policeman and failed because he could not be bluffed. That was on April 4th. April 4th was two weeks ago. What was the matter with having this defendant tell us something about it today? Was he able to talk rationally about this thing on April 4th when Dr. Cotton says there was no impediment in his flow of talk, that his orientation was perfect, that his judgment and sense of his surroundings was fair? Why isn't he put on the stand to tell us, to tell you, what he told these two medical men when they spoke to him on April 4th?

Now, gentlemen, I am going to say to you what may startle you and then I am going to substantiate it. I believe fully, and I believe that eventually it will be further substantiated by the charge which this honorable court will give to you: there is not a word of testimony or proof in this case to show that this man was not mentally responsible for the crime of killing Ruark, not a word, not a word or a suggestion of proof that this defendant was not totally mentally responsible for the killing of Ruark. Now, let me try to demonstrate to you that that is absolutely true. You can all understand that the criminal law must have different statutes on criminal mental respon-

sibility. You can all clearly understand that every kink in the human brain that makes a man a highway robber instead of making him a dentist or a surgeon cannot be recognized by law. You can thoroughly understand that every kink that makes a man a sexual pervert instead of a cabinet maker or a sculptor cannot be recognized by law, because if that were true then you might as well cancel the criminal code entirely, dismiss our courts and quit pretending that we have in our civilization anything like criminal jurisprudence.

Now, what is the standard that the law sets up. The law sets up a perfectly philosophical, merciful and rational standard. The law says that that degree of mental incapability divests one of responsibility for criminal offenses which makes it impossible for him to know what he is doing, or if he did know what he was doing he did not know that it was wrong. Further than that the law does, cannot, and never will go. He did not know what he was doing, or if he did know, did not know that it was wrong. You have heard or you have read of many cases of insane delusions, where a saint has appeared from Heaven to tell the poor wretch to go out and kill a certain person for the salvation of his own soul; where a mother has had a visitation from the upper regions telling her that in order to bring her children to quick and rapid salvation she must kill them before nightfall—and she does. No criminal responsibility there because that is the region into which the law cannot enter.

But here in this case there is nothing of the sort. And now I am going to discuss the effort, the desperate effort to drive into this case some

degree of confused and mixed-up proof which will make it possible for somebody to tell you that it is in the case, even though it is not here. Dr. Donahoe,—I don't know what to say about him. I want to be kind to the man, but I really am at a loss to deal with him except to say that his testimony here is unquestionable and is such that you must totally and entirely reject it. Equally with the responsibility that he has on behalf of this defendant, he has a responsibility as a citizen on behalf of the state, and for one to say that he arrived at the conclusion that this man had a mental age of eleven years by means and methods which he did not care to exhibit, is reprehensible in the last degree. What is this if not a factual and scientific inquiry into this issue so that justice may be done? It is as unjust to wrongly turn this man out as it would be wrongly to convict him. In the testimony of the other expert for the defendant, Dr. Henry Cotton—and oh, there is a skillful one for you—Dr. Cotton positively would not say that this man did not distinguish between right and wrong. He got out through a mouse hole by saying that in his opinion on December the twelfth this man could not normally distinguish between right and wrong, and then you may recall that he was asked what was the standard of normality and he said that it was a thing of wide and indefinite scope, ranging from a Mozart, who wrote immortal music at night, to another person who did nothing else but go out and get drunk. That is normality for you. And yet all that he leaves with us is that this man could not normally distinguish between right and wrong. Well, when he puts that word normally

there he destroyed the import of his testimony, but he left himself a way out. It was like something that had nothing to hang on with except its tail—and in this case the tail was this little word normally.

Now, gentlemen, I want to say this to you—and it is my hope and my belief that no success will attend the effort to frighten you away from your plain duty here today—whether or not it happened to be a policeman who was murdered in the manner Ruark was murdered may be a matter of no great or paramount consequence, but this you must remember: these are trying times in the administration of the public, or as it is sometimes called, the criminal law. We trust these men. They are the thin blue line that holds back the rising tide of lawlessness and keeps it out of the lives of the peace-loving, law abiding tax paying citizen. We cannot visit any treachery on them. We cannot be guilty of any betrayal from behind. I trust we shall hold true to them because you are confronted in this case with paroles and paroles and paroles. The man who goes to the reformatory and is paroled and goes to the state hospital for the insane and is discharged as cured, and then goes back to the reformatory and is paroled, and out on parole and out on parole when he slaughters Policeman Ruark. Mr. Tumulty never heard of such a thing. He never heard of such an irrational thing as a man trying to hold up a policeman. Never heard of it. Where was he three weeks ago when right up here on the boulevard a few blocks from this building——

Mr. Tumulty: I object to that, your Honor. It is not in the evidence.

The Court: I will pass on it. Mr. Drewen has not said anything objectionable so far.

Mr. Drewen: (Continuing) Where was he a few weeks ago when an escaped convict from Sing Sing jumped out of an automobile a few blocks from here and said to Policeman McGlone, "Stick them up?"

Mr. Tumulty: I want an exception noted on those remarks, on the record. It is done for no other purpose than to have an unfair effect upon this jury.

Mr. Drewen: It is an answer to counsel's statement.

Mr. Tumulty: It is not in this record.

(Exception allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Mr. Drewen: (Continuing) Now, gentlemen, you have heard enough of the witnesses, of the experts on the one question in this case that is left. Let us consider for just a few brief minutes what it was that occurred on the night of December the twelfth.

It was a cold night. Just try to hold at arm's

length this coat and windbreaker. This was the garb of Ruark on the night of December the 12th. It must have been a bitter cold night. With great detail counsel for the defendant tried to make you believe that it was an irrational thing, a toally crazy thing for this defendant to get up on the seat of the truck that was halted this side of the river bridge on the way to Newark and demand that the driver take him on his way. Let's see whether it was an irrational thing, or a perfectly normal, sensible and sane thing to have done. The driver of the truck did not know that for quite some time before he saw this defendant seated beside him on the seat that the defendant had been riding in the rear under the trailer. The defendant stays there until it got too cold for him in the draft under the truck, and when it got too cold for him, after being pursued for some three hours over the meadows and along the road, when it got too cold for him hanging on the iron rods under that truck, then he came up to the little cab and insisted upon being taken to Newark. And he is angry and he insisted upon being taken to Newark. Like the outlaw that he was, hunted for murder, he insisted, cold and weakened as he was, he insisted upon being taken to Newark.

Now, you read this statement, Exhibit S18, in this case, and he will tell you why it was that he got on the seat of this truck. "It was too cold," he says, "riding under the truck." So he climbed up on the seat and insisted that the driver take him the rest of the way to Newark. Now, that is just as crazy and just as irrational as every other single circumstance in this whole set of facts.

Why didn't he stop? It was perfectly crazy and insane, says counsel for the defendant, that he didn't stop. All that the policeman wanted was to find out whether he had a license. Why didn't he stop? Only a crazy man would have done what he did. If he were not crazy he would have stopped. Let's see what he says about it; he says at the time of the stealing of the automobile in New York, he was hiding from the police. He was then out on parole from the Rahway Reformatory. He says so right here in his own statement. He was wanted in Newark for one or more robberies committed by him after he got out of Rahway. And he steals the automobile for the purpose of coming back to Newark on the night of the twelfth or the early morning of the thirteenth and picking off, as he says, a place that he had planned to take some two or weeks before. And for that purpose he says he had provided himself with this gun, for which he had paid ten dollars.

So that we have a fugitive from justice, wanted for robbery, having in his possession a stolen automobile, driving it without a license, and having on his person a concealed weapon. He is pursued by a policeman. Why didn't he stop when Ruark first gave chase? He tells you why he didn't stop. He gives every sane rational reason for his not stopping. He could not afford the risk. He said: I will have to make this guy stick his hands up—and the guy didn't stick his hands up. And this man would have you believe and understand very craftily in his statement that he fired only one shot. Well, the one reason that Edward Ruark's body was not riddled with every

bullet in this infernal machine is the fact that the second bullet jammed. This man would not take the stand to have me ask him: "The gun jammed, didn't it?" No, no. He stayed right here. He would not have the state get from him an explanation as to why it was that only one shot was fired. It was only the jamming of that gun that prevented this policeman from carrying with him to the hospital in his body—indeed if he did not die right on the spot so that there would be no substantiation as far as any identification by Ruark is concerned who it was that shot him down when he had no more than asked to see this negro's license. There is the gun jammed. There is another little messenger of death tucked away in the chamber of this revolver, and that is why every bullet in it was not discharged and the shells pumped from it.

Gentlemen, very naturally I am loathe to leave this case, but I am going to do so in just a brief time. You were told at the outset by counsel for the defendant how dreadful and how unfair it was to permit passion to have a place in your councils. What counsel meant perhaps was the passion of hatred—hatred of this defendant by reason of his color. But there are other passions. There are passions of fear, passions of sympathy which I trust and pray you will not permit to have part in your councils in this case. I have heard quite enough about doing justice or being prejudiced against this man because he is colored. In this august tribunal you have seen every safeguard that the law guarantees thrown around him. There are three men from this county now

in Trenton on a conviction of murder in the first degree, and every one is a white man.

Now, don't you let any other kind of passion run away with the clear-headed performance of your duty in this case. True, it is the state's burden to prove guilt beyond a reasonable doubt, but it is the defendant's burden to show by extenuation or excuse—in this case by reason of his alleged insanity—that he is not guilty of the crime established by the state's proof. But while the law requires that the state must prove his guilt beyond a reasonable doubt, that is all that it requires. It is a reasonable doubt. It is not a capricious doubt, not a fanciful doubt, but a reasonable doubt, such a doubt as might be rationally entertained in the mind of a reasonable man.

Now, you trace the course of this man's conduct. From the time he left New York, bent upon robbery in Newark, his flight, his motives, and you will find not one scintilla of evidence to show that this man was not possesed of a mind perfectly and firmly capable of realizing fully what he did.

Finally, remember this, that if your verdict of not guilty in this case is to be pronounced, it does not mean that this man is to be adjudged a proper subject for commitment in an institution for the care of the insane. It means acquittal. It means he goes out a free and an acquitted man. That responsibility is yours.

In closing, let me say this to you. The state has no hesitancy in asking for the protection of life, or the protection of the police, that the full and extreme penalty be administered, for the reason that we owe a duty to ourselves and to society—for the reason lastly that you are confronted

in this case with paroles and paroles and paroles, until finally while on parole Ruark is shot down in the manner described. The court will charge you that a verdict of guilty of murder in the first degree with life imprisonment as part of the verdict still leaves it for other courts and other tribunals to pardon or parole. If in that distant day or remote day, as it may be, this man is again paroled by those sympathetic gentlemen who profess to deal with the uncertain quantities of psychistry and psychology, it will be you and not the state that will be responsible for the slaughter of others.

The Court: I am not going to charge you at this time, gentlemen of the jury, but while it is fresh in my mind, and fresh in your minds, I am going to say to you that counsel for the defendant was right in objecting to the prosecutor commenting on any other case than this one. I had to first listen to what the prosecutor was going to say before I was in a position to rule upon it, and the prosecutor immediately abandoned this line of argument and took up another phase of the case entirely. But the court instructs you now, gentlemen of the jury, that you are to disregard what the prosecutor in his summation said about the facts in any other case other than the one on trial before you. If he had persisted in that line of argument, the court would have interrupted him and stopped him from continuing.

Now, gentlemen of the jury, the court is going to prepare its charge and it feels that the time the court will be engaged can be used by you in having dinner. Therefore the court will take a

recess at this time until seven o'clock, which will enable you to go to a restaurant and have your dinner.

(Recess.)

AFTER RECESS, 8 P. M.

The Court charged the jury as follows:

The Court: Gentlemen of the jury, the defendant Raymond George is on trial before you charged by the State of New Jersey with the crime of murder. On examining the indictment which has been returned against this defendant by the Grand Jury of our county you will find therein specified as co-defendants Joseph Mitchell and James Williams. The Prosecutor in his opening statement to the jury stated correctly that the court has granted a severance of the indictment so far as it pertains to Joseph Mitchell and James Williams, and these men will have a separate trial. Therefore you are concerned in your deliberations with the innocence or guilt of the defendant Raymond George.

The first count of the indictment substantially alleges that the defendant in the City of Jersey City on the twelfth day of December, 1930, did wilfully, feloniously and with malice aforethought, kill and murder one Edward Ruark 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.

I shall read to you so much of the statute of this state which defines murder as is necessary for you to know in considering this case:

> "Any person who in committing or attempting to commit any unlawful act against the peace of this state of which the probable consequence may be bloodshed shall kill another, or if any person or persons shall kill any officer of justice, either civil or criminal, of this state, in the execution of his office or duty, then such person or persons so killing as aforesaid shall be guilty of murder."

Murder in this state is divided into two degrees, murder in the first degree and murder in the second degree. That part of our statute defining the degrees of murder applicable to this case is as follows:

> "Murder which shall be perpetrated by means of poison or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree."

As to the two degrees of murder you will bear in mind that in the definition of murder in the first degree the law of our state prescribes as necessary elements to that degree of murder the wilfulness, the deliberateness and the premeditatedness of the killing. It is said in one of the decisions of our highest court in dealing with this

subject that an unlawful killing does not amount to murder in the first degree unless it be found by the jury that the accused contemplated the killing —that is premeditated it; then determined upon the killing—that is intended it; then weighed such intent before carrying it into effect—that is deliberated on it.

While these terms, "wilful, deliberate and premeditated," signify three separate and distinct functions of the human mind engaged in the perpetration of a killing, I also charge you that the taking place of these functions of the human mind does not necessarily require any prescribed period of time, but that the mental acts to which I have referred are capable of being performed with that degree of speed with which the human mind is proverbially capable of acting.

In this case it is the contention of the state that the defendant stole an automobile in the City of New York on the 12th of December, 1930, and came to New Jersey with two companions, Joseph Mitchell and James Williams, for the purpose of committing a robery in Newark, and that the defendant while operating this automobile came to the intersection of West Side Avenue and Communipaw Avenue in Jersey City, and there passed a red traffic light. The state contends that Officer Edward Ruark of the Jersey City Police Department, who was on duty on a motorcycle in the vicinity, gave chase to the defendant, and after following him some distance down Communipaw Avenue, that the defendant pulled to the right side of the street, and after Officer Ruark had passed him that the defendant then turned and drove the car down Mallory Avenue; that Officer

Ruark turned and followed the defendant and ordered the defendant to pull over to the curb; that the defendant's car came to Roosevelt Avenue, and turning into Roosevelt Avenue that the defendant got out of his automobile with a gun in his hand and told Officer Ruark to stick them up, or words to that effect. That Officer Ruark then stepped back a pace or two and attempted to reach for his own revolver, and the defendant fired a shot which inflicted a wound on Officer Ruark from which Officer Ruark subsequently died.

It is the state's contention that the defendant fired at Officer Ruark to escape arrest, and that the killing of the police officer by the defendant was done wilfully, deliberately and premeditatedly. If the state has convinced you of this contention beyond a reasonable doubt, then the state would have proven a case of murder in the first degree against this defendant and it would be your duty under the law to find the defendant guilty of murder in the first degree.

As to murder in the second degree, the law is that any person who in committing or attempting to commit any unlawful act against the peace of this state of which the probable consequences may be bloodshed, shall kill another, shall be guilty of murder. If the state has convinced you beyond a reasonable doubt that the defendant killed Officer Ruark by shooting him without justification or excuse, I charge you that such act on the part of the defendant constituted an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing under such circumstances is presumed to be mali-

cious and is therefore murder, unless and until the defendant produces facts and circumstances from which justification, excuse or extenuation may arise.

If in this case you find the defendant to be guiltyof murder because the killing was the result of an unlaw act of the defendant, and because you find no evidence in this case to justify, excuse or extenuate the act, you can only find that the degree of murder established is that of murder in the second degree.

The burden is upon the state to raise the degree of murder from the second degree to the first degree by proving to you that the killing was not only the result of the intentional doing of the unlawful act, but in addition that the killing was wilful, deliberate and premeditated.

Upon examining the indictment in this matter you will find therein a second count and a third count. The second count charges the defendant with manslaughter, and the third count charges the defendant with assault and battery. You are to disregard each of these counts, because under the facts presented in this case the defendant is either guilty of murder in the first degree or the second degree as charged by the first count of the indictment, or he is not guilty of any offense whatsoever.

The defendant in this case is presumed by our law to be innocent. The burden of proving his innocence is not upon him; the burden of proving the guilt of the defendant rests upon the state. The nature of that burden is to prove the defendant guilty beyond a reasonable doube. A reasonable doubt is that state of the case which, after the

entire comparison and consideration of all the evidence, leaves the minds of the jurors in that state that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge. If after considering all the evidence in this case you have such a reasonable doubt as to the guilt of the defendant, you are bound under the law to resolve that doubt in favor of the defendant and find him not guilty; but you are not bound to, nor should you, give the defendant the benefit of any other kind of doubt except such a reasonable doubt as the court has defined for you.

The defense in this case does not dispute the truth of the charge that the defendant shot and killed Officer Ruark on December twelfth, 1930. The defense contends that you must find the defendant not guilty because at the time of the shooting the defendant was insane and not able to distinguish between right and wrong.

The defense has produced two medical experts, Dr. Cotton and Dr. Donahoe, each of whom have testified that in their judgment on December twelfth, 1930, when the defendant shot and killed Officer Ruark he was not able to distinguish between right and wrong. Dr. Cotton qualified this line of testimony somewhat by stating that in his opinion the defendant was not able to normally distinguish between right and wrong.

It has been held by our Court of Errors and Appeals in the case of Graves *vs.* the State, which is reported in volume 45 of the New Jersey Law Reports, at page 347, that "The defense of insanity is not disfavored by the law; yet, in view of its peculiar character and in order that it may not

serve as a screen for guilt, it is regarded with jealousy, and in the interest of public policy and in accordance with the sound dictates of a wise and necessary public policy, it is subjected to a close and careful scrutiny.

> "The defense must be proved to the satisfaction of the jury, and it may be established by the preponderance of proof. In other words it must be sustained by the evidence."

The burden of proving insanity 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.

Therefore, so far as the defense of insanity in the present case is concerned, the burden of proving that defense is on the accused and he is not entitled to an acquittal on the ground that he was insane at the time of the shooting, unless he has established that fact to your satisfaction by a preponderance of the evidence.

If the defendant has not succeeded in convincing you by the preponderance of the evidence that he was not legally responsible at the time of the shooting, but has merely succeeded in casting some doubt on the matter, he is not entitled to an acquittal on the ground that he could not distin-

guish between right and wrong at the time of the shooting.

The state disputes the contention of the defendant that he was unable to distinguish between right and wrong at the time of the shooting and the state has also produced several experts who have taken the stand and given testimony. Dr. Collins and Dr. King both state that in their opinion the defendant is sane and that he was fully capable of distinguishing between right and wrong at the time he shot Officer Ruark on December twelfth, 1930.

Dr. Donahoe, one of the experts of the defense, said something about the shooting by the defendant being an impulse on the part of the defendant and the court deems it advisable to once again quote from the law of this state as laid down by the case of Graves *vs.* The State, which I have mentioned heretofore. The case at page 351 goes on to state the law of this state: "To establish a defense on the ground of insanity it must be clearly found 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 such ordinary circumstances, he cannot discharge himself from responsibility by saying that he did the act under the influence of an irresponsible impulse."

There is testimony in the case that the defendant was confined in the New Jersey State Hos-

pital for the Insane for a period of approximately four months in the year of 1926, being discharged from this hospital on October eleventh of that year. There is a dispute between Dr. Cotton for the defense and Dr. Stone for the state as to the mental status of the defendant at the time of his discharge. Dr. Cotton testified that in the time that the defendant was receiving treatment at the hospital he had greatly improved but that all of the causes which led to his condition had not been cleared up. Dr. Stone, on the other hand, testified that when the defendant was discharged on October eleventh, 1926, he was in a recovered state.

At another point in his testimony Dr. Cotton was asked whether or not he could say that when the defendant left the hospital for the insane he was cured and Dr. Cotton answered: "Well, we considered he had recovered from the attack."

You will have to decide the issue raised by the medical testimony in this case as you will have to decide each and every other issue presented to you by the case. It simply comes down to a question of this: which set of doctors do you believe?

It is perfectly proper that in deciding the sanity of the defendant at the time of the shooting you consider the acts of the defendant which led up directly to the shooting and the acts of the defendant immediately after the shooting.

Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the defendant could distinguish between right and wrong and must be held legally responsible for this killing.

If you believe that the defendant was incapable of distinguishing between right and wrong at the time he shot Officer Ruark, then, of course, he was not responsible for this killing and you must find him not guilty.

In connection with the defendant's commitment to the New Jersey State Hospital for the Insane in 1926, the court deems it proper to read to you from the case of the State *vs.* Noel, which is reported in 133 Atlantic Reporter, page 274:

> "The fact that a person has been adjudicated a lunatic does not mean that he is exempt for prosecution for the commission of a crime. Insane persons may be adjudicated insane and be committed for the protection of the public against violence or for the care and cure of the person committed, or for the conservation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than that it is necessary to confine the patient for the good of the public or for himself, or both. The fact that a person has been committed as insane has no necessary relation to the question whether such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons."

Therefore keep in mind that the hard and fast rule of the State of New Jersey is, not whether the defendant has a completely normal mind, but the test is, was the defendant at the time of committing the crime capable of distinguishing between right and wrong? If he was so able to distinguish, then he is legally responsible for his acts. If he was not capable of so distinguishing, then he is not guilty.

In this case the defendant has not taken the stand on his own behalf. If you believe that the defendant possesses sufficient mental capacity to go on the stand and testify in his own behalf, you may take into consideration the fact that in New Jersey the law is that the defendant is competent but not compellable to be a witness in his own behalf. His failure to take the stand raises no presumption of his guilt, but where the evidence tends to establish facts conclusive of the defendant's guilt, which he can disprove by his own oath as a witness that they are not true, his silence justifies a strong inference that he cannot deny the charge. Of course if you feel that the defendant does not possess sufficient mental capacity to take the stand on his own behalf in this trial, you will disregard entirely his failure to do so.

The defendant in this case is a negro. It hardly seems necessary for the court to instruct you that, of course, you must not be swayed even in the slightest degree by any passion or prejudice against the defendant because of the fact that he is a negro and because he is charged with killing a white man. Neither will you be swayed by any passion or prejudice against this defend-

ant because of the fact that the person he is charged with killing is a police officer.

I have been handed a number of requests to charge by counsel for the defendant, which I will now take up. Requests numbers 1, 2, 3 and 4, the court refuses to charge except as otherwise covered in the course of the court's main charge.

The fifth request is as follows:

> "I charge you that when the character and extent of a crime is made by law to depend upon the state and condition of the defendant's mind at the time, and with reference to the act done, circumstances affecting such state and condition of the mind, is a proper subject for inquiry and consideration by the jury. If, by law, deliberation and premeditation are essential elements of the crime, and it appears that the prisoner's mental state is such that he is incapable of such deliberation and premeditation, then the crime has not been committed."

The court so charges you.

Requests numbers 6, 7, 8 and 9, the court refuses to charge except as otherwise charged by the court.

Request No. 10 the court refuses to charge.

In determining the innocence or guilt of the defendant, you can either bring in a verdict of murder in the first degree, murder in the second degree, or a verdict of not guilty. If after the conclusion of your determination you should find the defendant guilty, it will be necessary for you

to specify by your verdict whether you find the defendant guilty of murder in the first degree or guilty of murder in the second degree.

In the event that your verdict will be that you find the defendant guilty of murder in the first degree it will be necessary for you to have in mind a statute of this state which I shall now read to you.

This statute gives you as the jury in this case, should you find the defendant guilty of murder in the first degree, the power to make a recommendation to the court relative to the punishment which shall be inflicted upon the defendant. The statute reads as follows:

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

So that if upon rendering a verdict of murder in the first degree you make no recommendation the punishment meted out to this defendant shall be death, and if in the event of your returning a verdict of murder in the first degree, you shall determine that the penalty to be imposed shall be imprisonment at hard labor for life it will be necessary for you in your verdict and as a part thereof to recommend imprisonment at hard labor for life, in which case that will be the punishment

imposed; in other words your verdict in such event shall be: "We find the defendant guilty of murder in the first degree and recommend imprisonment at hard labor for life."

Now, gentlemen of the jury, the court hopes you are going to be honest and conscientious in the discharge of the solemn duty which rests upon each one of you. The court hopes you are going to give all the evidence in this case the most careful scrutiny and the most honest and conscientious deliberation that you can give to it. Search through the facts until you are satisfied you have reached the true version of this unfortunate affair. Keep in mind that a human life has been taken and that the defendant is charged with the taking of that life, and that you are to fix his responsibility or lack of responsibility for the killing.

Each one of you took an oath at the outset of this case to administer justice in accordance with the light that Almighty God gave you to view the testimony in this case. Your oath as jurors is just as sacred and just as binding as the oath which the prosecutor of this county took, and it is just as binding and just as sacred as the oath which this court took. Keep that fact in mind while you are in the jury room deliberating on your verdict.

Try to feel when you return to this court room with your verdict that you have discharged your obligation as jurors in this case in accordance with the sacred oath. If you do so your verdict will be an honest one and a conscientious one. And that is all that the State of New Jersey can

ask or expect of you; and that is all that the defendant is entitled to .

Gentlemen of the jury, I presume you heard the discourse in regard to the condition of the pistol which is an exhibit in this case and which will be taken by you to the jury room, but in order to make sure that you understand the condition of the gun, it is perhaps safer for the court to explain to you that there is a cartridge jammed in that gun which apparently it has been impossible to remove. The court wants you to keep that fact in mind so that if you deem it necessary to handle the pistol in the jury room you will do so in such a manner that none of you will be injured.

(The jury thereupon retired.)

Mr. Tumulty: We respectfully request your Honor for a general exception to the charge of the court.

We request a special exception to the refusal of the court to charge as requested.

We ask an exception to that part of the court's charge wherein your Honor said:

> "Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the defendant could distinguish between right and wrong and must be held legally responsible for this killing."

ROBERT V. KINKEAD,

(SEAL) *Judge.*

DEFENDANT'S REQUESTS TO CHARGE

1. The burden of proving the defendant guilty beyond a reasonable doubt never shifts from the shoulders of the State, notwithstanding the nature of the charge or of the defense.

2. Insanity need not be proven beyond a reasonable doubt if you are satisfied that the accused has been proven insane by a preponderance of the evidence, and the burden of proving insanity is upon the accused, but, if by a fair preponderance of the evidence, the accused is proven insane, he must be acquitted.

3. Murder can only be committed by a person of sound mind and discretion.

4. The test of responsibility is the capacity of the defendant at the time of the doing of the act complained of to distinguish between right and wrong with respect to that act, and if the defendant was so insane that he could not distinguish between right and wrong as to the particular act in question, he would be acquitted.

5. I charge you that when the character and extent of a crime is made by law to depend upon the state and condition of the defendant's mind at the time, and with reference to the act done, circumstances affecting such state and condition of the mind, is a proper subject for inquiry and consideration by the jury. If, by law, deliberation and premeditation are essential elements of the crime, and it appears that the prisoner's men-

tal state is such that he is incapable of such deliberation and premeditation, then the crime has not been committed.

6. There has been testimony in this case that the defendant at the time of the commission of the crime was insane, and where insanity is set up as a defense in a criminal case the test of responsibility is the capacity of the defendant, at the time of the doing of the act complained of, to distinguish between right and wrong with respect to that act.

7. That if the jury find a verdict of guilty of murder in the first degree, the defendant shall suffer death unless the jury by their verdict, and as a part thereof, recommend imprisonment for life at hard labor, in which case, this and no greater punishment can be imposed, and if the jury makes no recommendation and the verdict is one of murder in the first degree, the penalty meted out to the defendant shall be death.

8. The burden is upon the state to raise the degree from second degree to first degree by proving to you that the killing was not only the result of the intentional doing of the unlawful act, but in addition that the killing of the decedent was wilful, deliberate and premeditated. The burden of proving the defendant guilty beyond reasonable doubt always remains with the state throughout the trial.

9. I charge that under our statute (Comp. Stat. 1779, page 106) declares that if any person shall

kill an officer of justice in the execution of his duty such person shall be guilty of murder, and in the succeeding section it provides, *inter alia*, that if the killing be not wilful, deliberate and premeditated, it shall be murder in the second degree. If you find that this defendant was unable by reason of a mental deficiency to wilfully, deliberately and premeditatedly commit the act charged in the indictment, you should find him guilty of murder in the second degree.

10. The law presumes this defendant to be sane, but, there is evidence that this defendant was declared insane by a court of competent jurisdiction. The presumption thereby arises of the continuance of insanity unless proof to the contrary is shown. This is for the jury to determine.

Further Charge by Court

10 P. M.

Upon request for further instructions, the jury was returned to the jury box. There was present in court the defendant, Mr. Drewen and Mr. Besson, representing the state, and Mr. Tumulty and Mr. Dolan, representing the defendant.

The Court: Gentlemen of the jury, the court understands that you desire some further instructions.

The Foreman: Yes, your Honor. This body is a bit confused as to your charge in connection with the law on first degree murder and second degree murder and desires to be further enlightened.

The Court: The court can understand that, gentlemen, and can appreciate the fact that in explaining it to you the court endeavored to be thorough, but nevertheless the court goes over each proposition practically once and at the end of a rather long charge it is quite easy for your minds to be confused. I will be glad to go over the different degrees of murder, the law covering each of them again, and if there is any further instructions that you want, the court will be glad to cover them. Don't be afraid to send for me as often as you want because the court appreciates your position, the fact that you are trying to be conscientious, and can appreciate also the fact that to a lay mind it is quite often hard to grasp immediately the distinction between different degrees of crime. I think the best and most satisfactory way would be simply to read again that part of the charge covering the different degrees of murder.

"I shall read to you so much of the statute of the state which defines murder as is necessary for you to know in considering this case:

"Any person who in committing or attempting to commit any unlawful act against the peace of this state of which the probable consequence may be bloodshed shall kill another, or if any person or persons shall kill any officer of justice, either civil or criminal, of this state, in the execution of his office or duty, then such person or persons so killing as aforesaid shall be guilty of murder."

Murder in this state is divided into two degrees, murder in the first degree and murder in the second degree. That part of our statute defining the degrees of murder applicable to this case is as follows:

"Murder which shall be perpetrated by means of poison or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree."

As to the two degrees of murder you will bear in mind that in the definition of murder in the first degree of the law of our state prescribes as necessary elements to that degree of murder the wilfulness, the deliberateness and the premeditatedness of the killing. It is said in one of the decisions of our highest court in dealing with this subject that an unlawful killing does not amount

to murder in the first degree unless it be found by the jury that the accused contemplated the killing —that is premeditated it; then determined upon the killing—that is intended it; then weighed such intent before carrying it into effect—that is deliberated on it.

While these terms, "wilful, deliberate and premeditated," signify three separate and distinct functions of the human mind engaged in the perpetration of a killing, I also charge you that the taking place of these functions of the human mind does not necessarily require any prescribed period of time, but that the mental acts to which I have referred are capable of being performed with that degree of speed with which the human mind is proverbially capable of acting.

In this case it is the contention of the state that the defendant stole an automobile in the City of New York on the twelfth of December, 1930, and came to New Jersey with two companions, Joseph Mitchell and James Williams, for the purpose of committing a robbery in Newark, and that the defendant while operating this automobile came to the intersection of West Side Avenue and Communipaw Avenue in Jersey City, and there passed a red traffic light. The state contends that Officer Edward Ruark of the Jersey City Police Department, who was on duty on a motorcycle in the vicinity gave chase to the defendant, and after following him some distance down Communipaw Avenue, that the defendant pulled to the right side of the street, and after Officer Ruark had passed him that the defendant then turned and drove the car down Mallory Avenue; that Officer Ruark turned and followed the defendant and

ordered the defendant to pull over to the curb; that the defendant's car came to Roosevelt Avenue, and turning into Roosevelt Avenue that the defendant got out of his automobile with a gun in his hand and told Officer Ruark to stick them up, or words to that effect. That Officer Ruark then stepped back a pace or two and attempted to reach for his own revolver, and the defendant fired a shot which inflicted a wound on Officer Ruark from which Officer Ruark subsequently died.

It is the state's contention that the defendant fired at Officer Ruark to escape arrest, and that the killing of the police officer by the defendant was done wilfully, deliberately and premeditatedly. If the state has convinced you of this contention beyond a reasonable doubt, then the state would have proven a case of murder in the first degree against this defendant and it would be your duty under the law to find the defendant guilty of murder in the first degree.

As to murder in the second degree, the law is that any person who in committing or attempting to commit any unlawful act against the peace of this state of which the probable consequence may be bloodshed, shall kill another, shall be guilty of murder. If the state has convinced you beyond a reasonable doubt that the defendant killed Officer Ruark by shooting him without justification or excuse, I charge you that such act on the part of the defendant constituted an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing under such circumstances is presumed to be malicious and is therefore murder, unless and until

the defendant produces facts and circumstances from which justification, excuse or extenuation may arise.

If in this case you find the defendant to be guilty of murder because the killing was the result of an unlawful act of the defendant, and because you find no evidence in this case to justify, excuse or extenuate the act, you can only find that the degree of murder established is that of murder in the second degree.

The burden is upon the state to raise the degree of murder from the second degree to the first degree by proving to you that the killing was not only the result of the intentional doing of the unlawful act, but in addition that the killing was wilful, deliberate and premeditated.

Now, gentlemen, I have covered the portion of the charge in regard to the two degrees of murder. If that is not clear to you I am perfectly satisfied to read it once again if you want it.

The Foreman: It is apparent that the body is satisfied now.

The Court: Is there any other thing that you you would like instructions upon, gentlemen?

The Foreman: I believe there is no further information required.

The Court: All right, gentlemen, you may retire.

(The jury thereupon retired.)

Verdict

The jury returned at 12:45. There was present the defendant, counsel for the defendant and Mr. Harlan Besson, first assistant prosecutor.

The Clerk: Gentlemen of the jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: How say you, Mr. Foreman, do you find the prisoner at the bar, Raymond George, guilty or not guilty as he stands charged, and for what?

The Foreman: Your Honor, we find the prisoner at the bar guilty of murder in the first degree.

Mr. Tumulty: I ask that the jury be polled.

The Clerk: Do you want an individual poll?

Mr. Tumulty: I want an individual poll.

The Clerk: Mr. Jay Torman?

Juror Jay Torman: Guilty of murder in the first degree.

The Clerk: Charles E. Bentz?

Juror Charles E. Bentz: Guilty of murder in the first degree.

The Clerk: Andrew Daly?

Verdict

Juror Andrew Daly: Guilty of murder in the first degree.

The Clerk: Joseph H. Crane, Sr.

Juror Joseph H. Crane, Sr.: Guilty of murder in the first degree.

The Clerk: William Thompson?

Juror William Thompson: Guilty of murder in the first degree.

The Clerk: Edward Sawyer?

Juror Edward Sawyer: Guilty of murder in the first degree.

The Clerk: Ernest Schwab?

Juror Ernest Schwab: Guilty of murder in the first degree.

The Clerk: Stephen McDonald?

Juror Stephen McDonald: Guilty of murder in the first degree.

The Clerk: Joseph Kinlon?

Juror Joseph Kinlon: Guilty of murder in the first degree.

The Clerk: Harold E. McCausland?

Juror Harold E. McCausland: Guilty of murder in the first degree.

Verdict

The Clerk: Edward B. Graham?

Juror Edward B. Graham: Guilty of murder in the first degree.

The Clerk: Edward F. C. McLoughlin?

Juror Edward F. C. McLoughlin: Guilty of murder in the first degree.

The Clerk: The poll shows the jury answering guilty of murder in the first degree.

The Court: Gentlemen of the jury, the court wishes to thank you for the care and conscientious consideration with which you have listened to the evidence in this case for the better part of two days, and for the sacrifice that you have made, for the service you have rendered in leaving your homes and being taken away therefrom for two days and two nights.

The court feels that under the evidence in this case your verdict is entirely justified and the court coincides with your verdict.

You are discharged with the thanks of the court and the thanks of this community.

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE vs. RAYMOND GEORGE.	Indictment No. 7

Before:
Hon. ROBERT V. KINKEAD, *Judge.*

Jersey City, N. J., April 23, 1931.

Appearances:
R. LEWIS WENNEDY, Esq., *Assistant Prosecutor.*

THOMAS TUMULTY and JAMES DOLAN, Esqs.,
Counsel for Defendant.

Mr. Kennedy: In the absence of a Supreme Court Justice, will your Honor convene and hold a Court of Oyer and Terminer?

The Court: That will be done.

Mr. Tumulty: If your Honor please, I wish to make a motion in arrest of judgment.

The defendant having been convicted of murder, I now, in his behalf, move for the arrest of judgment so that this honorable Court may consider and determine certain lawful rights which we now claim belong to this defendant, and which we also claim are peculiarly applicable to him in his present serious and unusual predicament. I want this record to show that we want judgment stayed because during the trial of this defendant, the record discloses, this Honorable Court had called to its attention certain facts which raised a doubt as to the condition of the defendant's state of mind during the said trial. Testimony which substantially indicated that this defendant was, by reason of insanity, unable to properly comprehend his position and properly assist in making his defense. The law has always been jealous in the protection of one who has lost his reason. So that the law is well settled that where a court either from its own observation or upon the suggestion of counsel, has facts brought to its attention which raises a doubt of the sufficiency of the defendant's mentality. It is respectfully submitted that the Court of its own motion and by reason of its own observation should have adopted such inquiry as provided by law to determine the mental capacity of the defendant to adequately comprehend his position and assist in his defense. The fact of the insanity of this defendant at the trial was clearly indicated by the uncontradicted testimony of Dr. Cotton and Dr. Donahoe.

In the language of State *vs.* Peacock, 50 N. J. Law, 34, 36, we find this rule: "If the Court, either before or during the progress of the trial, either from observation, or upon the suggestion

of counsel, have facts brought to it, which raises a doubt of the condition of defendant's mind in this respect, the question should be settled before another step is taken. It is respectfully submitted now that this learned and honorable court had its attention directed to the abnormal condition of defendant's mind, that he signed an order before trial approving the selection and retention of alienists for the defense to examine and determine the mental condition of this defendant. That during the trial he listened to these alienists testify to the mental disorders as shown by their sworn testimony. That he had called to his attention the family history of this defendant along with the defendant's life record, all of which was permeated with the evidences of insanity and which was also supported by an adjudication of the Court of Common Pleas of Middlesex County, having competent jurisdiction and pronouncing him insane and confining him to the State Hospital at Trenton, New Jersey. It is urged that there was at least reasonable grounds which inevitably led to the conclusion of this defendant's insanity and which should have been tested by a proper and appropriate inquiry as provided by law. It is contended that this defendant under all the circumstances and disclosures at his trial was entitled to such an inquiry as a matter of law, and the method of settling this question where it is not regulated by statute is within the discretion of the trial court. The court itself could have embarked upon the inquiry, or submit the questions to another jury impaneled for that purpose.

An objection or motion in this regard in behalf of the defendant was not necessary.

In the case of the State *vs.* Noel, 102 Law, at page 687, Justice Minturn said, "In such a status where the question involved is the life or death of a defendant, technical procedural refinements should not supervene to stay the corrective hand of all prevading remedial justice, and if there be one function of appellate jurisdiction which courts of final review have vindicated by the protecting arm of public policy, and the humanizing safeguards of the constitution, regardless of its disclosures by the record it is the public policy in '*favorem vitae*' underlying the body of the law, as well as the fundamentals of jury trial arising from a consideration of the constitutional provisions safeguarding human life, whether pleaded or not.

It is again moved that judgment upon this defendant be arrested and stayed because although a verdict has been rendered that it is still a prerequisite for the purpose of imposing sentence upon him to determine by a proper inquiry conducted either by this court or by a jury impaneled for that purpose, to determine whether he is so far insane as to be without sufficient reason to be responsible for his crime, so as not to be conscious of having committed the crime he has been convicted of, so as not to be aware he is amenable to punishment, and so as not to be appreciative of his situation as one about to be condemned to death, and so as now to be unable to advise with and assist counsel in availing himself of whatever rights and remedies the law may provide for his relief in his present extremity. It is now submitted that the imposing of sentence upon the de-

fendant is in fact the rendering of judgment, against him. That judgment to become effective must be entered. This we contend may not be done while this defendant is in fact "noncompos" and for the purpose of this record to remove all doubt we now suggest and call the court's attention to this fact and now respectfully ask that an inquiry be made to determine whether the defendant be sane, comprehensive of his plight and able to assist in the assertion and protection of his legal rights. It is submitted that this is as far as statute law is concerned the last time this defendant has the right through counsel to make such an application. After this court imposes sentence it is our belief the status of the defendant changes and rights which he may now avail himself of are *ipso facto* abolished.

In other words, your Honor, under the statute, if he is sent to State's' Prison, he cannot of his own motion ask that this inquiry be set in order. This is the only time before the imposition of sentence, as we claim under the statute, he is permitted to ask for this inquiry.

The laws of 1922, page 186, simply establishes the conditions under which persons sentenced to death may be transferred to the State Hospital. Its help can only be invoked by the Trial Justice on his own motion, or upon application of the Principal Keeper of the State Prison, the Attorney General or the Prosecutor. This law sets a mental test that we believe recognizes a standard whereby to test the defendant's' mental capacity, that defendant "has been or shall be found to be insane, so as to be without sufficient degree of

reason to be responsible for his crime until the contrary be proved, so as not to have been or be conscious or having committed the crime of which he has been, or may be convicted, nor aware that he is amenable to punishment and is unappreciative of his situation, as one condemned to death."

We most respectfully submit that an insane man is immune by law of paying judgment upon the penalty. "If, after trial the defendant becomes insane, execution is stayed. To execute one bereft of reason would afford no example to others. It would be cruel and inhuman."

I now wish to simply urge that under the common law a man may not be tried if he is insane. Under the law a man may not be compelled to plead, if he is insane. Certainly the most important part of this trial is the imposing of sentence, which carries with it the forfeiting of this man's life, which in itself, changes his status.

I therefore urge that under the law, this man, insane as we claim him to be, be granted this request.

Mr. Kennedy: If your Honor please, the State contends that this man has been represented by competent counsel, and that his counsel made application to the court for the engaging of alienists to examine this man. At the trial of the cause four doctors testified, and the jury by its verdict declared this man to be sane, capable of knowing the difference between right and wrong at the time he committed the act. That must be accepted by the court.

Now, if counsel in urging that this man is now insane, brings before your Honor any reasonable representation that anything has occurred since

the crime was committed, and until the day of passing sentence, your Honor should, exercising his discretion, pay attention to that; but counsel, in all of his argument this morning, has not brought forth one thing, not one statement, to indicate that this man has, since his trial or since the commission of the crime, become insane, and the matter is *res adjudicata,* and the state therefore urges that sentence be passed.

Mr. Tumulty: Your Honor, there is in the record in this case statements as to this man's mental condition. I ask your Honor to bring his mind back to the trial; Dr. Collins, representing the state, simply testified to this man's sanity as of the time he examined him, which was on April 4th. He said on cross examination: "If I examined him at a time when he had a lucid interval and showed intelligence or a grasp of things, of course that would have no bearing upon his mental state back in December when he committed this act if he was in fact insane." Dr. King simply made certain conclusions that had no basis in fact, but we have in the record dozens of times Dr. Cotton saying he would commit this man today, he is unfit for society.

The Court: I think that is Dr. Donahoe.

Mr. Tumulty: I asked Dr. Cotton the question, I have a distinct memory of it, if this man appeared before you now, disregarding all you had heard about the crime, would you commit him or would you permit him to go into society, and he said he is unfitted for society.

The Court: Dr. Donahoe said he would sign a commitment for that man that morning.

Mr. Tumulty: I also asked Dr. Cotton that one question. But at any rate, this man's mental status now is hinted at and suggested by these two experts. Dr. Donahoe says he was suffering from dementia praecox. I am going to be perfectly honest with the court. Alone from the testimony we only have suggestions or hints as to this man's present condition, or his condition during the trial, but considering everything else, considering his family history, considering the fact that he was committed when only a boy to the State Hospital, I believe all those facts, on behalf of justice and on behalf of humanity would require an inquiry into whether or not this man is presently capable of understanding that he is about to be sentenced to death.

Mr. Kennedy: Another thing I might urge to the court; in the very case of the State *vs.* Noel, city by counsel, it was held there that evidence of former incarceration for insanity is not relevant to the case at hand. It is whether he was insane or not at the time the crime is alleged to have been committed and the jury by its verdict has shown that he was sane at that time, and as there is a presumption of the continuance of sanity unless something is shown to your Honor to make your Honor feel differently about it, the man is still sane legally.

Mr. Tumulty: Of course, if your Honor please, the verdict of the jury was confined to the very date of the act, and at the time of the act; it has no reference and no force applicable to any other time.

Now, I don't think it is the state's contention that we must appear before your Honor this

morning, and I don't think it is a proposition of law, that we must appear before your Honor with hard and fast evidence. I don't believe the law contemplates that and I don't believe the decisions contemplate that. It says: "A suggestion from counsel". Not even a motion. A suggestion of counsel that the man is not *compos mentis,* and I want it to appear on the record that I think that rule covers this man who has not yet been sentenced, and that if we are able to suggest at this moment that he is not mentally sufficient, the court must bow to the comon law rule and make an inquiry either by your Honor or by a jury impaneled for that purpose, which I think is the proper way of doing it.

The Court: I do not want to criticise counsel. I realize you have done the best for the defendant and that you are doing your best for him now, but counsel is in a rather unenviable position this morning. Counsel came to the court and asked the court for permission to engage alienists for the purpose of determining the mental status of the defendant, and because of the fact that the defendant was in a penniless condition and it was necessary to secure permission of the court to secure your alienists, and the court readily granted that permission. Alienists were engaged by the defense. They examined the defendant. They conferred with counsel for the defendant. If counsel for the defense felt at that time that the defendant was now mentally incapacitated, counsel had a perfect right to come before the court and urge upon the court that there should be a trial, not as to the innocence or guilt of the de-

fendant, but a trial which would determine the mental status of the defendant. That was done here recently in the case of the State *vs.* Bonaldi, the man who killed Counsellor Kavanagh, the Hoboken lawyer, and at that inquiry it was determined by the court, upon presentation of the evidence of the experts, that the mental status of the defendant at the present time was such that he should be commited to an asylum; but counsel proceeded, after the alienists were engaged, not to come in and urge that the defendant could not be properly represented because of his mental condition, but came in and defended the defendant and urged that he should be found not guilty because he was insane at the time of the killing on December 12, 1930.

At the trial that took place before the court, the experts for the state testified and the experts for the defense testified. The experts for the defense were concerned mainly with establishing the mental condition of the defendant at the time of the shooting. They were in agreement that at the time of the shooting the man was out of his mind. One of the doctors was asked the question by the court: If the attempt on the part of the defendant to escape from the scene of the crime had been successful, would that be the act of a man who did not realize he had done wrong and could not distinguish right from wrong, or was it rather the act of a man who realized he had done something wrong and was attempting to escape from the consequence of it. The doctor said that he was rather inclined to the view that it was the act of a man who had done something wrong and who knew it. I asked him when sanity returned to the

defendant, and he said probably as soon as the shot was fired; that he was insane when the shot was fired but recovered his sanity after the shot was fired and attempted to escape from the scene of the crime.

Now, as I view it offhand, the jury in this case has passed upon the mental status of the defendant. Dr. King and Dr. Collins both say that the man is sane now, or rather he was sane at the time they examined him, and was sane at the time the shooting took place. The jury heard the experts for the state and heard the experts for the defense and decided, by their verdict, that the man was sane at the time that the shooting took place. There is no doubt about that. And in viewing the testimony of Dr. King and Dr. Collins, that he is sane now, it would seem to the court offhand that they have also passed on the question of his present mental status.

I am rather inclined to the view of the prosecutor that counsel this morning should come in, not merely with an argument, but that counsel should present something substantial to the court which would lead the court to conclude or assume that this man is not of proper mental status this morning. Counsel has come in and has only urged everything that has been heard before and determined and passed upon. Now he goes back again to the testimony of the two experts for the defense. The answer to that is that a jury has heard that testimony and has decided despite that testimony that the man is guilty and should be sentenced to the electric chair.

However, Mr. Tumulty, in view of the fact that

this man's life is at stake and the jury has practically sentenced him to the chair, I think it would be well for the court, even though the court thinks your position is untenable in that you have taken a position that you cannot justify,—the court feels that in justice to the seriousness of the situation the court should take the matter under advisement instead of merely adopting an arbitrary attitude of refusing to consider the situation with an open mind, and therefore I will lay this sentence over until next Wednesday. That will be the 29th of April.

Mr. Tumulty: In regard to your Honor's suggestion that we should have come into court immediately upon knowing whether or not this man was mentally capable I just want on our own behalf to say this: The doctor's briefs that they made they did not cover all of the things that were testified to in court, and it was on the strength of those briefs that we planned our defense.

The Court: In justice to you, let me say this, that from the testimony of the experts for the defense I can readily see that you could feel that your only chance, so far as their testimony was concerned, was to establish the fact that in December, at the time of the shooting, the man was out of his mind, because Dr. Cotton testified that in his opinion the man was sane at times and was insane at times. He testified that at the time of his examination, in his opinion the man was sane. Dr. Donahoe also testified that the man had rational, lucid intervals, and I pinned him down to it, although the doctor tried to avoid taking that

stand; I pinned him down until he answered it one way or another, that in his best judgment there were times when this defendant was sane and times when the defendant was insane. So that I can appreciate the position of counsel. But I do say that it would seem as if counsel wanted two bites of the cherry. In other words you come in and defend the man and then after he is found guilty you put the cart in front of the horse and say: we now ask for an inquiry into this man's present sanity. You are urging, practically, that the jury simply found he was guilty when this deed was done; now you are urging he is insane now and that the sentence should not be carried out.

However, Mr. Tumulty, I will look into the matter. I feel, at first blush, that your position is wrong and that you cannot maintain it. But in view of the seriousness of the situation, I will defer sentence until Wednesday, April 29th, and will look into whatever authorities you may be able to submit to me in the meantime.

Mr. Kennedy: May they also be submitted to the Prosecutor, as well?

Mr. Tumulty: All right.

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE vs. RAYMOND GEORGE.		Motion in Arrest of Judgment. Indictment No. 107

Before:

Hon. ROBERT V. KINKEAD, *Judge.*

Jersey City, N. J., April 29, 1931.

Appearances:

R. LEWIS KENNEDY, *Assistant Prosecutor.*

THOMAS TUMULTY and JAMES DOLAN, Esqs.,
Counsel for Defendant.

Mr. Kennedy: Will your Honor, in the absence of a Justice of the Supreme Court, convene and hold a Court of Oyer and Terminer?

The Court: That will be done.

Mr. Kennedy: I move sentence, if the court please, on indictment No. 107 of the December Term, 1930, against this defendant Raymond George, convicted of murder in the first degree.

Mr. Tumulty: I wish, your Honor, to renew the motion I made at the last hearing.

The Court: Have you anything further to offer?

Mr. Tumulty: We have this case here, to which I respectfully call your attention, the case of the State *vs.* Battles, 1 Misc., page 238.

The Court: I can find nothing in this decision very helpful to you, Mr. Tumulty. Judge Stickel, in this case, points out the fact that there is nothing in the statutes, nothing in the laws of 1922 that enables him to make such an inquiry, such as you ask for; then he proceeds to make the inquiry under the rules of the common law.

Your motion is now, Mr. Tumulty, that irrespective of the verdict of the jury, which verdict found that the defendant at the time of the shooting, in December, 1930, was sane and could distinguish right from wrong and was therefore guilty of murder as charged, that the defendant is now insane and not capable of comprehending the position that he is in.

Mr. Tumulty: Yes.

The Court: You therefore ask an inquiry on the part of the court?

Mr. Tumulty: I do.

The Court: I think there is enough in the motion, Mr. Kennedy, to take it under advisement, You may be heard.

Mr. Kennedy: It seems to me, if the court please, we are in exactly the same position as we were last week. At the time of the trial this man was declared to have been sane at the time of the commission of the crime. The verdict of the jury so established that.

Now, having been sane at that time, has there anything been shown to your Honor other than just statements of counsel in the form of argument that makes your Honor feel that this man has since become insane? There is a presumption that a man once sane continues to be sane. He has not been adjudicated insane by any inquiry by any court of competent jurisdiction since the commission of this crime in December, 1930.

The Court: Did you read this decision of Judge Stickel? I refer to the decision of Judge Stickel in Essex County in the case of the State *vs.* William E. Battles. I have read that decision over very carefully and it does not seem to me that counsel there asked the Judge for an inquiry into the sanity of the defendant or that there was anything set forth before the Judge other than the written request of counsel.

Mr. Kennedy: Well then, if that is all that case means, and if that is good law——

The Court: I am not saying it is good law. I am saying I think there is enough in the situation

to warrant us looking into it and seeing where we are at. Have you read this case?

Mr. Kennedy: I don't recall that particular one. I think I have read pretty nearly every murder case so far in New Jersey. I have made a special study of that since I have been in the office. I don't recall that one by name. That was in the lower courts, wasn't it?

Your Honor expressed the opinion last week, that having gone to trial after the retention of the alienists, the question then being solely confined to whether the defendant was sane or insane at the time of the commission of the crime, that there should be some strong proof advanced to your Honor to hold up this passing of sentence; and in fact you directed counsel to submit anything that they might have, and that you would consider the matter in the meantime.

The Court: No question about that. That is just what I point out in this case here. Judge Stickel seems to have gone into this inquiry simply upon the written request of counsel. There does not appear to have been any affidavits or any proof of any sort set forth before him other than the fact that counsel stated that his client was unaware of the circumstances surrounding him and that he was in no condition of mind to be executed.

Mr. Kennedy: I do not mean to insist, if the court please, that you have not the right to order such an inquiry.

The Court: I don't say that I have either. I don't say I have the right.

Mr. Kennedy: I do think you have the right if you feel so, but what is there that has been proved before your Honor that would change your opinion and would change the verdict of the jury in the case? Every case could be opened up in this way, from the lowest crime to the highest.

The Court: I am going to lay it over, Mr. Kennedy. This is the most important function I have been called upon to perform since I have been on the bench, and I am going to be sure I am right before I go ahead.

Mr. Tumulty: Does your Honor wish us to prepare a memorandum?

The Court: Yes. I will defer this sentence for another week.

Mr. Kennedy: One week from today?

The Court: Yes.

Mr. Kennedy: And a copy of this memorandum will be furnished the Prosecutor?

The Court: Yes, I think the Prosecutor also should be furnished with a copy, so that they will have an opportunity of meeting it.

(Adjourned to May 7, 1931, at 10 A. M.)

HUDSON COUNTY OYER AND TERMINER.

STATE vs. RAYMOND GEORGE, *Defendant.*	Sentence of the Defendant.

Before:

Hon. ROBERT V. KINKEAD, *Judge.*

Jersey City, N. J.

Appearances:

JOHN DREWEN, Esq., *Prosecutor of the Pleas.*

THOMAS TUMULTY, Esq., *Counsel for the Defendant.*

Mr. Drewen: May it please your Honor, the State moves at this time that the Court declare the holding of a session of the Oyer and Terminer for the purpose of disposing and imposing sentence on a conviction of murder in the first degree.

The Court: In the absence of the Supreme Court Justice the Court will convene and hold the Court of Oyer and Terminer.

Mr. Drewen: The state asks that the defendant Raymond George be called to the bar.

(The defendant, Raymond George, is brought to the bar of the court.)

Mr. Drewen: May it please your Honor, this defendant at the bar has been convicted by a jury in this court of the crime of murder in the first degree without recommendation of mercy. The state moves the imposition of sentence.

Mr. Tumulty: If your Honor please, before the court moves to impose sentence, I would like to have noted on the record a motion to set aside the verdict on the ground that it was contrary to the weight of the evidence.

The Court: That may be noted upon the record, and before proceeding any further it becomes necessary for the court to dispose of and decide a motion made by counsel for the defense two weeks ago when the defendant was first brought before the court for sentence.

At that time counsel moved to arrest judgment and the imposition of sentence in this case on the ground that the defendant was now of such a mental capacity that he could not appreciate his condition and the circumstances surrounding his case; that he was in no mental state to be sentenced by the court.

To support the contention raised by the defense, counsel again urged that the court consider the testimony of the two experts who testified for the defense; namely, Doctors Cotton and Donohoe. Counsel went to some length into the testimony

offered by these two physicians at the time of the defendant's trial; but the court this morning points out that the meat of the testimony offered by these two experts was that the defendant was insane at the time of the killing of Officer Ruark last December and could not distinguish at that time between right and wrong.

The court points out that that question was submitted to a jury and the jury after hearing the testimony of experts for the state, Dr. King and Dr. Collins, who testified that in their opinion the defendant was sane at the time they examined him at the county jail, which was some time before the trial took place, some weeks, and that in their opinion also the defendant was sane at the time of the killing last December,—and the question of the defendant's mental status at the time of the killing last September was submitted to the jury and the jury by their verdict found that the defendant was sane and could distinguish between right and wrong at the time he killed Officer Ruark.

Now that that point has been adjudicated. The jury had to decide that problem because the defense was that the defendant was not guilty because at the time of the killing he was not legally sane and could not distinguish between right and wrong. The jury has decided that he was legally sane and could distinguish between right and wrong.

Counsel have submitted a case decided in Essex County, wherein on the mere representation of counsel for the defense that in their opinion a defendant who had been convicted of murder in the first degree was insane the court ordered an

inquiry into the mental status of the defendant.

Counsel for the defense in the present case urged that on the strength of the Battles' case it is not incumbent upon them to submit any authority to the court other than their own representation that they in good faith believe that the court should not impose sentence upon the defendant because the defendant is incapable of appreciating his surroundings and his circumstances and is not in a mental state to be sentenced by the court.

The court points out that in its opinion such a proceeding is entirely irregular. Dr. King and Dr. Collins testified, getting back to their testimony once more, that when they examined the defendant in the county jail in their opinion he was sane.

The court points out that Dr. Cotton and Dr. Donohoe did not testify that at the time of the trial, the defendant was insane, but specifically said that at the time of the shooting he could not distinguish between right and wrong.

Dr. Donohoe testified that in his opinion there were times when the defendant was sane when he examined him at the county jail and other times he appeared to be irrational.

Dr. Cotton testified that the act of the defendant in fleeing from the scene of the shooting immediately after the shooting took place was rather the act of a sane man than the act of a man who could not distinguish between right and wrong.

The court called Dr. Cotton and asked him whether in his opinion if the defendant was insane at the time of firing the bullet and then immediately fled, at what moment sanity returned to him

and he said that in his opinion, as the court recalls his testimony, the shooting may have brought about a return of sanity to the defendant so that he suddenly appreciated the fact that he had done something wrong and fled from the scene of the crime.

So that the testimony, taking the argument of counsel at its best,—the testimony offered by the two experts for the defendant is rather confusing, rather than a definite statement as to the defendant's mental status; and I think that, taking their testimony at its face value, going over it and examining it, there is nothing in the testimony of Dr. Donohoe or Dr. Cotton which would justify the court in finding that the defendant was now in an insufficient mental capacity to be sentenced. But, aside from that, it does not seem proper to the court that on a motion of this kind the court on the mere representation of counsel that they believe the defendant to be incapacitated mentally to such an extent that he should not be sentenced by the court, without supplementing that statement by affidavits or statements of any physicians who could have examined this defendant, any experts that the court would have been glad to provide counsel with if the representation were made to the court that a change had come into the mental condition of the defendant between the time of the trial and the time of sentence—I do not think that such a procedure is regular and I can readily conceive that if the court adopted the precedent of permitting a defendant to raise the defense of insanity at the time of his trial and have that defense weighed by a jury, and overthrown by the jury, and then for the court on the

mere representation of counsel to again order an inquiry into the mental status of the defendant, the procedure would be somewhat ridiculous and overdrawn.

I am satisfied that the defendant possesses sufficient mental capacity to appreciate his circumstances, appreciate his condition. I am satisfied that there has been no change in his mental status between the time that Dr. King and Dr. Collins examined him and the present time. I am satisfied that he should be sentenced by the court in punishment for the crime of killing Officer Ruark.

Raymond George, you have been convicted——

Mr. Tumulty: You have not disposed of the motion? I want an exception on the record.

The Court: Yes; I deny your motion and enter an exception on the record.

(Exception duly allowed, signed and sealed accordingly.

ROBERT V. KINKEAD,
(SEAL) *Judge.*)

Raymond George, you have been according to the law of the State of New Jersey duly convicted by a jury of your peers of the crime of murder in the first degree.

Have you anything to say before sentence of the law is imposed upon you?

The Defendant: Yes; I have something to say.

My conscience is clear and I would sooner take that punishment than be in jail, so it is all right with me. But I did not do the crime intentionally that I am accused of. My conscience is clear and it will be all right, and I did not get a fair trial because I think it was a prejudiced jury against me and it was all the odds was against me all the way through. That is all I have to say.

Mr. Tumulty: May I add something, your Honor?

The Court: Yes.

Mr. Tumulty: On behalf of this defendant I can simply speak as honestly as a man might. This young man got a fair trial. I might disagree in a measure with the jury, but the jury was attentive and I believe conscientious. I knew four or five men on that jury for whom I have a height of respect and the best regard, and I know how this unfortunate boy may feel the jury was prejudiced against him; but I believe that is not true. I believe a white boy in the same circumstances would have met with the same fate and I simply want to add, your Honor, that it is a comfort to know that we stand in a court of justice. Your Honor was here present all during the trial, presided with the finest sense of justice that any defendant might desire; and, as I say, it is for any citizen of this country, looking at that flag, a sense of comfort to know that we stand in a court of strict and complete justice.

The Court: The court thanks you for your

statement, Mr. Tumulty, and feels that it is very candid for counsel for the defense under the circumstances to make such a statement upon the record.

George, the sentence of the law is, and it is by the court here considered and adjudged, that you, Raymond George, be taken by the sheriff of the County of Hudson hence from the bar of this court and you, Raymond George, be by the said sheriff delivered to the principal keeper of the State Prison at Trenton, there to be kept in close custody and confinement until some day during the week beginning the seventh day of June in the year of our Lord one thousand nine hundred and thirty-one, and that then and there you, Raymond George, shall by the hands of the principal keeper of the said State Prison suffer the punishment and judgment of death at the time, in the place and in the manner provided by law for the same.

(The defendant prisoner was removed.)

Memorandum of Argument

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE VS. RAYMOND GEORGE.	Memoranda.

We hereby offer a brief meorandum of argument in behalf of the defendant, Raymond George, to support the motion in arrest of judgment now under consideration; and in addition to the motion itself, to offer more and further grounds for granting the relief sought.

We respectfully maintain that although a verdict of guilty for murder has been rendered, nevertheless we submit it is still a fundamental prerequisite grounded in the common law of this State, upon a proper "suggestion of counsel" made under the circumstances to arrest judgment and proceed by proper inquiry to determine whether he is now so far insane as to be without sufficient reason to be responsible for his crime; so as not to be conscious of having committed the crime he has been convicted of; so as not to be aware he is amenable to punishment; and so as not to appreciate his situation as one about to be condemned to death, and again so far as to be

unable to advise with and assist counsel in availing himself of those remedies and rights the law still provides.

We respectfully submit that before judgment of death is rendered against him there are certain distinct remedies at hand which he could if sane assist in availing himself of.

At page 490, in the record, Mr. Kennedy says:

> "I do think you have the right, if you feel so."
>
> "I do not mean to insist, if the court please, that you have not the right to order such an inquiry."

If the State concedes the right of this court to conduct an inquiry the only question, therefore, now open is, must the defendant at this time come forward with positive proof of his present mental deficiency? We claim under the law as interpreted by other courts of New Jersey, that it is not the duty of the defendant.

In addition this defendant has, as the record shows, appealed to this court because of his poverty for assignment of counsel and they in turn for the right to employ alienists to examine the defendant's sanity and assist at the trial. We submit the facts set forth in motion already are sufficient and that the law justifies our contention. The very purpose of the inquiry requested is to prevent a sentence that might work a wrong and bring the execution of one insane. We point

out the reason at common law for deferring such a sentence is that the defendant is incapable of saying anything in bar of such sentence. We are prompted in this motion by what we conceive our duty to be and not by contentious caprice or a desire to thwart the orderly process of justice.

We submit the decision of the State of New Jersey *vs.* William E. Battles, 1 N. J. Misc. Reports 238, as controlling, and as properly stating the law applicable to the motion now under advisement. In that learned disposition Judge Stickel, Jr., says:

> "There being no direct stautory conference of power to make the inquiry in question, we turn to the common law and there we find that the judge in the trial was bound to grant a reprieve, where after sentence the prisoner became insane. The reason was 'Not that a man, who has become insane is not a fit subject of example, but that he is incapable of saying anything in bar of execution or assigning any error in the judgment.' "

We respectfully invite the court's attention to the citations of authorities in this opinion, page 241:

> "4 B. L. Com. 395; 1 Chit. Crem. L 761; 1 Hale P. C. 84, 85; 1 Hawk P. C. 1, 4 and see Freeman *v.* People, R. Den. (N. Y.) 9; 47 Am. Dec. 215 and Nobles *v.* Georgia 168 V. S. Sup. Ct. 398."

This decision holds that though this common-law power of trial may be questioned, yet in view of the action of Mr. Justice Lippincott, in *In Re* Edward Clifford, 22 N. J. L. J. 176, in proceeding to make a similar inquiry under corresponding circumstances, in this case the Judge proceeded under the rules of inquiry of the common law.

The Court, although noting the doubts of its jurisdiction, proceeded to make the inquiry and gave counsel for the defense the widest latitude in the presentation of evidence and in the examining and cross examining of witnesses.

In the Battles case the inquiry was instituted after sentence, and before execution. The court also in this case proceeded under the rules of inquiry of the common law. If in this case the court upon the mere application of counsel for the defendant saw fit to institute an inquiry what more force and effect does his reasoning have when applied to this defendant who has not yet been sentenced and whose situation is not provided for by the Statute Laws of 1922.

It is respectfully submitted to ask this Honorable Court to adopt the common law method of inquiring into the defendant's present mental condition. To do otherwise would be to have this court to deny the motion to arrest judgment of this defendant and to have the court of its own motion simply relying upon the presumption that may be urged in behalf of the finding of the verdict to adjudge that this defendant is in fact now

sane and fully conscious of his present plight, and to deny that there now exists facts in the record or which have since come under the court's own observation which raise a doubt as to the defendant's power of mind to properly comprehend his position and assist even now in the protection of his rights.

It is submitted that counsel has suggested the fact to the court that they feel an abiding doubt of the defendant's present capacity to safeguard or assist them further in his defense.

This motion is no attack upon the verdict. It is simply a notice and an appeal to this court to pause before he exercises his lawful functions to carry out the finding of the jury.

Counsel for Defendant.

Certificate

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, vs. RAYMOND GEORGE, *Defendant.*	On Indictment

I, Emmett J. Victory, stenographer of the Hudson County Court of Oyer and Terminer, do certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey *vs.* Raymond George, on indictment number 107, for murder, which said trial was held before the Honorable Robert V. Kinkead, presiding Judge of the Hudson County Court of Oyer and Terminer and Hudson County Court of General Quarter Sessions, and a jury drawn from a special panel, on April 13, 1931 and April 14, 1931, at Jersey City, New Jersey.

EMMET J. VICTORY.

Certificate

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, vs. RAYMOND GEORGE, *Defendant.*	On Indictment

I, Robert V. Kinkead, presiding Judge of the Hudson County Court of General Quarter Sessions, and the Judge who presided over the aforesaid cause, certify that the foregoing 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 together with the writ of error bringing up the bill of exceptions, signed and sealed in this cause.

ROBERT V. KINKEAD,
Judge, Hudson County Court of Oyer and Terminer.

Dated: September , 1931.

Assignment of Errors

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* vs. RAYMOND GEORGE, *Plaintiff-in-Error.*	On Appeal. ASSIGNMENTS OF ERROR.

Afterwards, to wit, on the return day of said writ of error before our Judges of our Court of Errors and Appeals in the last resort at Trenton comes the said Raymond George. plaintiff-in-error, by James P. Dolan and Thomas Tumulty, his attorneys, and prays the reversal of the judgment of the court below and says that in the record and proceedings aforesaid and also in the giving of judgment as aforesaid, there is manifest error and herein assigns error in the record therein as follows:

1. Because the trial court denied the motion of the plaintiff-in-error objecting to the legality of the drawing and selecting of the jurors.

2. Because the trial court allowed the witness, John J. Varley, to testify on direct examination over the objection of the defendant's counsel, as follows:

"Q. Yes? A. And when they saw us in pursuit of them Patrolman Colgan and I——.

Mr. Tumulty: I object. I wish the witness would testify as far as the facts, which he himself knows.

Mr. Drewen: That is what he is doing.

Mr. Tumulty: No, he is not. Read the last part. A. (Repeated by the senographer) 'And when they saw us in pursuit of them Patrolman Colgan and I——.'

Mr. Tumulty: He is testifying to what the occupants of the car saw. Object.

The Court: I will permit it."

3. Because the trial court allowed the witness John A. Waldron to testify on direct examination over the objection of the defendant's attorneys as follows:

"Q. At what rate of speed were the two cars going, your car and the one that was being chased?

Mr. Tumulty: I object. The witness is not qualified.

The Court: I will allow it."

4. Because the trial court allowed the witness John A. Waldron to testify on direct examination, over objection, as follows:

"Q. Do you know whether or not Varley examined the New York car?

Mr. Tumulty: I object to that, your Honor.

Q. Do you know whether or not he examined the New York car?

The Court: I will allow it."

5. Because the court allowed King Jarvis Adams to testify on redirect examination, as follows:

"*REDIRECT EXAMINATION by Mr. Drewen:*

Q. By pointing him out to you, you mean to say that he said to you, 'Is this the fellow that you pulled from under the trailer?'

Mr. Tumulty: I object, improper redirect examination.

The Court: I will allow it."

6. Because the trial court sustained the objections made by the Prosecutor to the questions propounded by attorney of defendant to witness Dr. Henry H. Cotton, on direct examination:

"Mr. Tumulty: What would be your opinion as an expert whether or not in his mental condition when he left the institution, that he would be able to confront life and sustain great shock or confront any situation that would put him in great fear?

Mr. Drewen: Object to as incompetent, irrelevant and immaterial. The question has no application to this case.

The Court: Sustain the objection."

7. Because the trial court sustained the objection made by the Prosecutor to the question directed to the witness Dr. Cotton:

"Mr. Tumulty: Q. What is that? A. Judge's order—Judge John P. Kirkpatrick, Middlesex County, committing him to State Hospital.

Q. That is a commitment? A. That is a Judge's order? Yes.

Q. It was upon that order that he was committed to your hospital? A. State Hospital at Trenton.

Mr. Tumulty: I offer that in evidence.

Mr. Drewen: That is objected to.

The Court: I sustain the objection made by the Prosecutor to the question asked of witness Dr. Henry H. Cotton by defendant's attorney, as follows:

Mr. Tumulty: The laws of 1928 which provide the requirement for the commission of an individual to the State Hospital for the Insane. On the basis of that law I offer the commitment, and the affidavits or the certificates as required by the Act as proper proof of the adjudication of this man's mental condition.

Mr. Drewen: I object to it.

The Court: I sustain the ojection."

8. Because of the Prosecutor's remarks in summation to the jury as follows:

"Mr. Drewen: (Where was he a few weeks ago when an escaped convict from Sing Sing jumped out of an automobile a few blocks from here and said to Policeman McGlone, 'Stick them up'?"

9. Because the trial court charged the jury as follows:

> "He must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."

10. Because the trial court charged the jury as follows:

> "You will have to decide the issue raised by the medical testimony in this case as you will have to decide each and every other issue presented to you by the case. It simply comes down to a question of this: Which set of doctors do you believe?"

11. Because the trial court charged the jury as follows:

> "Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the defendant could distinguish between right and wrong, and must be held legally responsible for this killing."

12. Because the trial court charged the jury as follows:

> "If you believe that the defendant was incapable of distinguishing between right and wrong at the time he shot Officer

Ruark, then, of course, he was not responsible for this killing and you must find him not guilty."

13. Because the trial court charged the jury as follows:

"The fact that a person has been adjudicated a lunatic does not mean that he is exempt from prosecution for the conviction of a crime. Insane persons may be adjudicated insane and be committed, for the protection of the public against violence or for the care and cure of the person committed, or for the consenation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than it is necessary to confine the patient for the good of the public, or for himself or both. The fact that a person has been committed as insane has no necessary relation to the question, such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons."

14. Because the trial court refused to charge the jury as follows:

"The burden of proving the defendant guilty beyond a reasonable doubt never shifts from the shoulders of the State, notwithstanding the nature of the charge or of the defense."

15. Because the trial court refused to charge the jury as follows:

"Insanity need not be proven beyond a reasonable doubt if you are satisfied that the accused has been proven insane by a preponderance of the evidence, but, if by a fair preponderance of the evidence, the accused is proven insane, he must be acquitted." '

16. Because the trial court refused to charge the jury as follows:

"Murder can only be committed by a person of sound mind and discretion."

17. Because the trial court refused to charge the jury as follows:

"The test of responsibility is the capacity of the defendant at the time of the doing of the act complained of to distinguish between right and wrong with respect to that act, and if the defendant is so insane that he could not distinguish between right and wrong as to the particular act in question, he should be acquitted."

18. Because the trial court refused to charge the jury as follows:

"There has been testimony in this case that the defendant at the time of the commission of the crime was insane, and where insanity is set up as a defense in a criminal case the test of responsibility is the capacity of the defendant, at the time of the doing of the act complained of, to distinguish between right and wrong with respect to that act."

19. Because the trial court refused to charge the jury as follows:

"That if the jury find a verdict of guilty of murder in the first degree, the defendant shall suffer death unless the jury by their verdict, and as part thereof, recommend imprisonment for life at hard labor, in which case this and no greater punishment can be imposed, and if the jury makes no recommendation, and the verdict is one of murder in the first degree, the penalty meted out to the defendant, shall be death."

20. Because the trial court refused to charge the jury as follows:

"The burden is upon the State to raise the degree from second degree to first degree by proving to you that the killing was not only the result of the intentional doing of the unlawful act, but in addition that the killing of the defendant was wilful, deliberate and premeditated. The burden of prov-

ing the defendant guilty beyond a reasonable doubt always remains with the State throughout the trial."

21. Because the trial court refused to charge the jury as follows:

"I charge that under our statute (Comp. Stat. 1779, page 106) declares that if any person shall kill an officer of justice in the execution of his duty such person shall be guilty of murder. And in the succeeding section it provides, *inte alia,* that if the killing be not wilful, deliberate and premeditated, it shall be murder in the second degree. If you find that this defendant was unable by reason of a mental deficiency to wilfully and premeditatedly commit the act charged in this indictment, you should find him guilty of murder in the second degree."

22. Because the trial court refused to charge the jury as follows:

"The law presumes this defendant to be sane, there is evidence that this defendant was declared insane by a court of competent jurisdiction. The presumption thereby arises of the continuance of insanity unless proof to the contrary is shown. This is for the jury to determine."

23. Because the trial court denied the motion for an arrest of judgment, made on the grounds

that the trial court had before it facts which raised a doubt of the mental capacity of the defendant to properly comprehend his position or adequately assist in making his defense. And that the trial court should, thereupon, have ordered an inquiry to have properly determined whether the defendant was under the law mentally capable to stand trial.

24. Because the trial court denied the motion for an arrest of judgment, made on the grounds that the defendant was without sufficient reason to be responsible for his crime, so as not to be conscious of having committed the crime for which he has been convicted, so as not to be aware he is amenable to punishment, and so as not to be appreciative of his situation as one about to be condemned to death, and so as not to be unable to advise with and assist counsel in availing himself of his lawful rights.

25. Because the trial court denied the motion for an arrest of judgment, made on the grounds that judgment should not be entered against the defendant because he was in fact *non compos* and that before such judgment be entered that an inquiry be had to determine whether the defendant was sane, comprehensive of his plight and able to assist in the protection of his legal rights.

26. Because the trial court denied the motion to set aside the verdict because it was contrary to the weight of the evidence.

Plaintiff-in-error prays that the judgment of his conviction may be reversed for the aforesaid reasons.

JAMES P. DOLAN,

THOMAS TUMULTY,

Attorneys for Plaintiff-in-Error.

Specification of Causes of Reversal

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* VS. RAYMOND GEORGE, *Plaintiff-in-Error.*	SPECIFICATION OF CAUSES FOR REVERSAL.

The plaintiff-in-error, by his attorneys, James P. Dolan and Thomas Tumulty, come and say that in the record and proceedings aforesaid and also in the giving of the judgment aforesaid, there is manifest error and that the said judgment should be reversed and they hereby specify the causes in the record relied upon for relief or reversal:

1. Because the trial court denied the motion of the plaintiff-in-error objecting to the legality of the drawing and selecting of the jurors.

2. Because the trial court allowed the witness, John J. Varley, to testify on direct examination over the objection of the defendant's counsel, as follows:

> "Q. Yes? A. And when they saw us in pursuit of them Patrolman Colgan and I——."

"Mr. Tumulty: I object. I wish the witness would testify as far as the facts, which he himself knows.

Mr. Drewen: That is what he is doing.

Mr. Tumulty: No, he is not. Read the last part. A. (Repeated by the stenographer) 'And when they saw us in pursuit of them Patrolman Colgan and I——.'

Mr. Tumulty: He is testifying to what the occupants of the car saw. Object.

The Court: I will permit it."

3. Because the trial court allowed the witness John A. Waldron to testify on direct examination over the objection of the defendant's attorneys as follows:

"Q. At what rate of speed were the two cars going, your car and the one that was being chased?

"Mr. Tumulty: I object. The witness is not qualified.

The Court: I will allow it."

4. Because the trial court allowed the witness John A. Waldron to testify on direct examination, over objection as follows:

"Q. Do you know whether or not Varley examined the New York car?"

"Mr. Tumulty: I object to that, your Honor."

"Q. Do you know whether or not he examined the New York car?"

"The Court: I will allow it."

5. Because the Court allowed King Jarvis Adams to testify on redirect examination as follows:

> *"REDIRECT EXAMINATIION by Mr. Drewen:*
>
> Q. By pointing him out to you, you mean to say that he said to you, "Is this the fellow that you pulled from under the trailer?"
>
> "Mr. Tumulty: I object, improper redirect examination."
>
> "The Court: I will allow it."

6. Because the trial court sustained the objections made by the Prosecutor to the questions propounded by attorney of defendant to witness Dr. Henry H. Cotton, on direct examination:

> "Mr. Tumulty: Q. What would be your opinion as an expert whether or not in his mental condition when he left the institution, that he would be able to confront life and sustain great shock or confront any situation that would put him in great fear?
>
> Mr. Drewen: Object to as incompetent, irrelevant and immaterial. The question has no application to this case.
>
> The Court: Sustain the objection.

7. Because the trial court sustained the objection made by the Prosecutor to the question directed to the witness Dr. Cotton:

"Mr. Tumulty: Q. What is that? A. Judges order—Judge John P. Kirkpatrick, Middlesex County, committing him to State Hospital.

Q. That is a commitment? A. That is a Judge's order? Yes.

Q. It was upon that order that he was committed to your hospital? A. State Hospital at Trenton.

Mr. Tumulty: I offer that in evidence.

Mr. Drewen: That is objected to .

The Court: I sustain the objection made by the Prosecutor to the question asked of witness Dr. Henry H. Cotton by defendant's attorney, as follows:

Mr. Tumulty: The laws of 1928 which provide the requirement for the commission of an individual to the State Hospital for the Insane. On the basis of that law I offer the commitment, and the affidavits or the certificates as required by the Act as proper proof of the adjudication of this man's mental condition.

Mr. Drewen: I object to it.

The Court: I sustain the objection."

8. Because of the Prosecutor's remarks in summation to the jury as follows:

"Mr. Drewen: Where was he a few weeks ago when an escaped convict from Sing Sing jumped out of an automobile a few blocks from here and said to Policeman McGlone, "Stick them up?"

Specifications of Causes for Reversal

9. Because the trial court charged the jury as follows:

> "He must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."

10. Because the trial court charged the jury as follows:

> "You will have to decide the issue raised by the medical testimony in this case as you will have to decide each and every other issue presented to you by the case. It simply comes down to a question of this: Which set of doctors do you believe?"

11. Because the trial court charged the jury as follows:

> "Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the defendant could distinguish between right and wrong, and must be held legally responsible for this killing."

12. Because the trial court charged the jury as follows:

> "If you believe that the defendant was incapable of distinguishing between right

and wrong at the time he shot Officer Ruark, then, of course, he was not responsible for this killing and you must find him not guilty.'"

13. Because the trial court charged the jury as follows:

"The fact that a person has been adjudicated a lunatic does not mean that he is exempt from prosecution for the conviction of a crime. Insane persons may be adjudicated insane and be committed for the protection of the public against violence or for the care and cure of the person committed, or for the consenation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than that it is necessary to confine the patient for the good of the public, or for himself or both. The fact that a person has been committed as insane has no necessary relation to the question, such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons."

Specifications of Causes for Reversal

14. Because the trial court refused to charge the jury as follows:

> "The burden of proving the defendant guilty beyond a reasonable doubt never never shifts from the shoulders of the State, notwithstanding the nature of the charge or of the defense."

15. Because the trial court refused to charge the jury as follows:

> "Insanity need not be proven beyond a reasonable doubt if you are satisfied that the accused has been proven insane by a preponderance of the evidence, but, if by a fair preponderance of the evidence, the accused is proven insane, he must be acquitted."

16. Because the trial court refused to charge the jury as follows:

> "Murder can only be committed by a person of sound mind and discretion."

17. Because the trial court refused to charge the jury as follows:

> "The test of responsibility is the capacity of the defendant at the time of the doing of the act complained of to distinguish between right and wrong with respect to that act, and if the defendant was so insane that he could not distinguish between right and wrong as to the particular act in question, he should be acquitted."

Specifications of Causes for Reversal

18. Because the trial court refused to charge the jury as follows:

> "There has been testimony in this case that the defendant at the time of the commission of the crime was insane, and where insanity is set up as a defense in a criminal case the test of responsibility is the capacity of the defendant, at the time of the doing of the act complained of, to distinguish between right and wrong with respect to that act."

19. Because the trial court refused to charge the jury as follows:

> "That if the jury find a verdict of guilty of murder in the first degree, the defendant shall suffer death unless the jury by their verdict, and as part thereof, recommend imprisonment for life at hard labor, in which case this and no greater punishment can be imposed, and if the jury makes no recommendation and the verdict is one of murder in the first degree, the penalty meted out to the defendant shall be death."

20. Because the trial court refused to charge the jury as follows:

> "The burden is upon the State to raise the degree from second degree to first degree by proving to you that the killing was not only the result of the intentional doing of the unlawful act, but in addition that the

killing of the defendant was wilful, deliberate and premeditated. The burden of proving the defendant guilty beyond a resonable doubt always remains with the State throughout the trial."

21. Because the trial court refused to charge the jury as follows:

"I charge that under our statute (Comp. Stat. 1779, page 106) declares that if any person shall kill an officer of justice in the execution of his duty such person shall be guilty of murder. And in the succeeding section it provides, *inte alia,* that if the killing be not wilful, deliberate and premeditated, it shall be murder in the second degree. If you find that this defendant was unable by reason of a mental deficiency to wilfully and premeditatedly commit the act charged in this indictment, you should find him guilty of murder in the second degree."

22. Because the trial court refused to charge the jury as follows:

"The law presumes this defendant to be sane, there is evidence that this defendant was declared insane by a court of competent jurisdiction. The presumption thereby arises of the continuance of insanity unless proof to the contrary is shown. This is for the jury to determine."

23. Because the trial court denied the motion for an arrest of judgment, made on the grounds that the trial court had before it facts which raised a doubt of the mental capacity of the defendant to properly comprehend his position or adequately assist in making his defense. And that the trial court should, thereupon, have ordered an inquiry to have properly determined whether the defendant was under the law mentally capable to stand trial.

24. Because the trial court denied the motion for an arrest of judgment, made on the grounds that the defendant was without sufficient reason to be responsible for his crime, so as not to be conscious of having committed the crime for which he has been convicted, so as not to be aware he is amenable to punishment, and so as not to be appreciative of his situation as one about to be condemned to death, and so as not to be unable to advise with and assist counsel in availing himself of his lawful rights.

25. Because the trial court denied the motion for an arrest of judgment, made on the grounds that judgment should not be entered against the defendant because he was in fact *non compos* and that before such judgment be entered that an inquiry be had to determine whether the defendant was sane, comprehensive of his plight and able to assist in the protection of his legal rights.

26. Because the trial court permitted the jury to consider whether the plaintiff in error was guilty of murder in the first degree when the

proofs would not warrant nor support such a verdict.

27. Because there was no proof in the case that the killing of Edward Ruark was wilful.

28. Because there was no proof in the case that the killing of Edward Ruark was deliberate.

29. Because there was no proof in the case that the killing of Edward Ruark was premeditated.

30. Because the verdict was against the weight of the evidence.

31. Because the proofs could not satisfy a considerate mind beyond a reasonable doubt that the plaintiff is guilty of murder in the first degree.

32. Because the verdict was the result of mistake, passion, prejudice or partiality.

33. Because the trial court denied the motion to set aside the verdict because it was contrary to the weight of the evidence.

JAMES P. DOLAN,
THOMAS TUMULTY,
Attorneys for Plaintiff-in-Error.

Joinder in Error

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, *Defendant-in-Error,* vs. RAYMOND GEORGE, *Plaintiff-in-Error,*	On Appeal JOINDER IN ERROR

And thereupon the State of New Jersey, defendant-in-error, by John Drewen, its attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid or in the giving of judgment aforesaid, and it 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 the judgment aforesaid, in the manner aforesaid given, may in all things be affirmed, etc.

JOHN DREWEN,
Attorney for Defendant-in-Error.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant-in-Error,* vs. RAYMOND GEORGE, *Plaintiff-in-Error.*	On Indictment for Murder.

BRIEF FOR PLAINTIFF-IN-ERROR

This case comes up on writ of error to the Hudson County Court of Oyer and Terminer, to review the conviction of Raymond George, the plaintiff-in-error, defendant below, of the crime of murder in the first degree.

Facts

On December 12, 1930 Edward Ruark, a police officer of the Jersey City Police Department was shot in the City of Jersey City, County of Hudson, and at the time of the shooting he was in the actual performance of his duty. The shooting occurred at about 9.10 P. M. The person who shot Edward Ruark was subsequently identified as Raymond George, the plaintiff-in-error, defendant below. The plaintiff-in-error was arrested on the same night at about midnight, or the early

part of the following morning. He was questioned by various police officers and made a statement admitting he shot Edward Ruark.

The indictment against him was for the murder of Edward Ruark and named with him in said indictment were co-defendants Joseph Mitchell and James Williams. This indictment was returned during the December Term, A.D. 1930, by the Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson. On the fourth day of March, 1931, a severance was granted the defendants Joseph Mitchell and James Williams, so that on April 13, 1931, trial by jury of the defendant Raymond George was started and adjourned until April 14, 1931, when the defendant, Raymond George was found guilty of murder in the first degree. The defendant at the time of the shooting was twenty-one years of age.

The defendant, on June 25, 1926 was committed to the State Hospital for the Insane, because of a certain mental disease.

The defendant was on May 6, 1931 according to law, sentenced to death.

POINT ONE.

Because the trial court allowed the witness, John J. Varley, to testify on direct examination over the objection of the defendant's counsel, as follows:

> "Q. Yes? A. And when they saw us in pursuit of them Patrolman Colgan and I—
>
> Mr. Tumulty: I object. I wish the witness would testify as far as the facts, which he himself knows.
>
> Mr. Drewen: That is what he is doing.
>
> Mr. Tumulty: No, he is not. Read the last part. A. (Repeated by the stenographer) 'And when they saw us in pursuit of them Patrolman Colgan and I—.'
>
> Mr. Tumulty: He is testifying to what the occupants of the car saw. Object.
>
> The Court: I will permit it."
>
> (Assignment 2, Specification 2, S.C. pp. 392-403).

It is submitted that the trial court permitted the witness in this instance to testify as to certain conclusions of facts which were not of his own knowledge, and this testimony was material and prejudicial to the defendant.

POINT TWO.

Because the trial court allowed the witness John A. Waldron to testify on direct examination over the objection of the defendant's attorneys as follows:

> "Q. At what rate of speed were the two cars going, your car and the one that was being chased?
>
> Mr. Tumulty: I object. The witness is not qualified.
>
> The Court: I will allow it."
>
> (Assignment 3, Specification 3, S. C. pp. 393-404).

It is submited that the witness was not properly qualified in order to give an expert opinion as to the rate of speed of the two cars referred to in the question and that this testimony was material and prejudicial to the defendant.

POINT THREE.

Because the trial court sustained the objection made by the Prosecutor to the question directed to the witness Doctor Cotton:

> "Mr. Tumulty: Q. What is that? A. Judge's order—Judge John P. Kirkpatrick, Middlesex County, committing him to State Hospital.
>
> Q. That is a commitment? A. That is a Judges' order? A. Yes.

Q. It was upon that order that he was committed to your hospital? A. State Hospital at Trenton.

Mr. Tumulty: I offer that in evidence.

Mr. Drewen: That is objected to.

The Court: I sustain the objection. (Case p. 230).

Mr. Tumulty: The laws of 1928 which provide the requirement for the commission of an individual to the State Hospital for the Insane. On the basis of that law I offer the commitment, and the affidavits or the certificates as required by the Act as proper proof of the adjudication of this man's mental condition.

Mr. Drewen: I object to it.

The Court: I sustain the objection."

(Assignment 7, Specification 7, S. C. pp. 394-405). (Case, p. 232.)

In *State* v. *Spencer,* 21 N. J. L., the court on page 210 says:

> "It is undoubtedly law, that when a man is proved to have been once insane, the presumption is, that he continues so until the contrary is shown. So, in the case in hand, if the prisoner has proven that he was once insane, the presumption arises that he is still insane at this moment, unless the contrary be shown."

In the case at bar proof was offered of a commitment of a court of competent jurisdiction adjudicating that the defendant was insane, it being contended in behalf of the defendant that such

proof is proper in order to establish a legal presumption of insanity, not only because of the abundant proof of the defendant's insanity years prior to the occurrence of the crime, but by reason of the fact that the record of commitment so offered adjudged the defendant to be insane and committed the defendant to the State Hospital.

There are numerous cases in which the defendant was not adjudged insane prior to the crime charged against him in which the burden of proof was upon the defendant because there was a presumption of sanity.

Sherlock v. *State,* 60 N. J. L. page 31, the court on page 32 said:

> "In the case of insanity as a defense, the burden is shifted to the defendant upon the express ground that the presumption of sanity exists throughout the trial until overcome by proof from which the jury are satisfied to the contrary."

It is submitted that the fact the defendant had been adjudged insane by a court of competent jurisdiction, proof of such an adjudication was relevant to form the basis of expert testimony and to act as corroboration of such testimony. To prove insanity, it is essential to prove defendant's history, and as such an adjudication by a legal tribunal is competent, material, and relevant.

Again in *Graves* v. *State,* 45 N. J. L. 347, Chancellor Runyon on page 359 said:

> "They had charged that the burden of proof of the alleged insanity was on the accused; that the law presumes that every man is sane until the contrary be proved, and that therefore, when an accused sets up a defense of insanity, the burden of proof is upon him, and that to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory, and that the accused must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."

If the burden is "shifted to the defendant" upon the expressed ground that the presumption of sanity exists (as stated in *Sherlock* v. *State, supra*) then it must be of necessity true, but if there was a presumption as there was in this case of insanity rather than sanity, then the burden of proof to overcome that presumption was upon the State. In *State* v. *Spencer, supra,* in speaking of a situation in which the burden of proof was upon the defendant to prove insanity, the court said on page 202:

> "What I mean is, that when the evidence of sanity on the one side, and of insanity on the other, leaves the scale in equal balance or so nearly poised that the jury have a reasonable doubt of his insanity, there a man is to be considered sane and responsible for what he does."

POINT FOUR

Because the trial court charged the jury as follows:

> "He must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."
>
> (Assignment 9, Specification 9, S. C. pp. 398-409).

It is submitted that the trial court in this portion of its charge was in error and did not properly state proof required to overcome the legal presumption of sanity.

In the case of *State* v. *Spencer, supra*, at page 205 the court held:

> "And the whole matter may be summed up in this: If the evidence makes it clear to your minds, beyond a reasonable doubt, that the prisoner at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not."

It is submited that the words "most satisfactory" are confusing and indefinite in meaning and their use prejudicial to the defendant.

POINT FIVE.

Because the trial court charged the jury as follows:

> "You will have to decide the issue raised by the medical testimony in this case as you will have to decide each and every other issue presented to you by this case. It simply comes down to a question of this: Which set of doctors do you believe?"
>
> (Assignment 10, Specification 10, S. C. pp. 398, 409.)

It is submitted that the only question raised by the medical testimony in this case and the main question at issue before the jury, was the defendant insane at the time of the commission of the crime charged in the indictment? In other words, was he guilty or should he be acquitted of the charge. It is submitted that this portion of the charge is too narrow and excludes much of the testimony adduced before the jury, and which they should have in mind in deciding the issue raised by the medical testimony in this case. It excluded from the consideration of the jury, the long strain of insanity proven to have existed in this defendant's family. It excluded the testimony and opinion given by lay witnesses in behalf of the defendant, and it excluded questions of fact testified to by Doctor Cotton outside of expert testimony, as to the defendant's condition when he left the State Hospital for the Insane. It is respectfully submitted that this portion of the charge was prejudicial to the defendant.

POINT SIX.

Because the trial court charged the jury as follows:

> "Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the deefendant could distinguish between right and wrong, and must be held legally responsible for this killing."
>
> (Assignment 11, Specification 11, S. C. pp. 398-409.)

It is respectfully submitted that the language of the trial court in this portion of his charge was not only in error as a matter of law, but it sets up a false method before the jury, whereby the jury should test the mental responsibility of this defendant to distinguish between right and wrong, at the time of the specific act charged in the indictment. It is to be assumed that the jury followed the instructions of the trial court.

It might have been proper for the jury in deciding and determining the sanity of the defendant, at the time of the shooting, to go into the facts which led up to the shooting and after the shooting, but it is respectfully submitted that it was improper for the trial court to charge the jury that:

> "If you believe this contention then manifestly the defendant could distinguish between right and wrong, and must be held legally responsible for this killing."

This was improper comment on facts proven before the jury and most prejudicial to the defendant at the trial. By it the court practically usurped the function of the jury. He substantially charged them just what conclusions they should arrive at upon a given set of circumstances and excluded the jury from a proper consideration of all of the testimony and evidence within their knowledge. In the case of the *State* v. *Fabriola,* it was held a jury may not be required by the court to restrict its considerations to a single point in the evidence, nor to acquit, upon a reasonable doubt as to the credit to be given certain witnesses. The jury are to judge upon the whole case, and if they find, in taking into consideration as a whole, evidence convincing their judgment beyond a reasonable doubt, they must acquit. *State* v. *Fabriola,* 75 N. J. L. 483.

In *State* v. *Spencer, supra,* which still maintains as the law of New Jersey, it is held that the test of insanity in criminal cases is, whether the accused, at time of the commission of the crime, was conscious that he was doing what he ought not to do. Without this instruction the jury might as a matter of fact have determined that the defendant knew he was being chased by a police officer, that he was in fear of being arrested by this police officer and that he shot the police officer to escape arrest, and yet they might have very properly concluded as a matter of fact, having in mind all the evidence before them, that the accused was

not conscious at the time, that it was an act that he ought not to do and have found the defendant not guilty.

The record discloses an abundance of testimony showing that the defendant was not legally responsible at the time of the shooting.

Doctor Henry A. Cotton (S. C. p. 229) swore:

> "In view of these facts the undersigned is of the opinion that the defendant Raymond George while not suffering from any type of insanity that can be classified at the present time is by reason of his physical disturbances mentally unstable, unreliable and irresponsible, and, further, because of these facts it is improbable that he was in a mental state at the time of the murder to discriminate normally between right and wrong."

On page 239 of the State of the Case the same witness swore:

> "Q. I now ask you is it your opinion as an expert, having in mind all of the things I have called to your attention, that this defendant was at that particular time capable of distinguishing between right and wrong with respect to the shooting of Edward D. Ruark? A. I don't think he was."

On page 255 of the State of the Case the same witness testified:

> "What his condition was at the time of the crime no one can say unless we take

into consideration his previous examination, his previous condition and his mental make up.

The Court: As I understand your testimony then, doctor, you are testifying that at the time you examined him he could distinguish between right and wrong, but at the time he shot the policeman he could not distinguish between right and wrong, is that correct?

The Witness: I think so."

On page 267 of State of Case Doctor William J. Donohue testified that defendant did not have sufficient mentality to have in his mind an intent to take life, or to deliberate and determine, or to execute that intent by a premeditated act; that defendant was not conscious of what he was doing and that it was morally wrong.

On page 288 of State of Case the same witness in answering a question by the trial court, testified though, the fact that defendant tried to make his escape indicated that the defendant must have realized he had done wrong; that this sense of wrong doing must have come after the commission of the act itself.

It is again respectfully urged that the jury had a right to consider all of the facts and proofs and opinions of both professional and lay witnesses, the demeanor of the defendant, his appearance in court, his family history, the effect of his former insanity as a symptom of his mental disorder; his conduct before and after the shooting, all considered together in order to properly solve his power to determine and distinguish between right

and wrong at the time of the shooting and at no other time.

The trial court by restricting the jury as herein indicated was in error, and by his charge gave to the jury a method of ascertaining whether the defendant was able to distinguish between right and wrong at the time of the shooting, which has no basis in the law of this State. This, it is submitted is more than improper comment upon facts, it is a setting up of a rule or method of determining the question at issue which rule takes into account only a few facts of proof and excludes from consideration all others. *State* v. *Labriola, supra.*

POINT SEVEN.

Because the trial court charged the jury as follows:

> "If you believe that the defendant was incapable of distinguishing between right and wrong at the time he shot Officer Ruark, then, of course, he was not responsible for this killing and you must find him not guilty."
>
> (Assignment 12, Specification 12, S. C. pp. 398-409).

It is submitted that this portion of the charge would be proper standing by itself, but it must be read and understood in connection with the previous paragraph and referred to assignment number 11. It is respectfully pointed out that it in no

way cures the error therein made. It is the statement of a negative proposition and is limited and controlled for the extent of its meaning upon the positive statements in the previous paragraph.

POINT EIGHT.

Because the trial court charged the jury as follows:

> "The fact that a person has been adjudicated a lunatic does not mean that he is exempt from prosecution for the conviction of a crime. Insane persons may be adjudicated insane and be committed, for the protection of the public against violence or for the care and cure of the person committed, or for the conservation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than it is necessary to confine the patient for the good of the public, or for himself or both. The fact that a person has been committed as insane has no necessary relation to the question, such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons."

(Assignment 13, Specification 13, S. C. pp. 399-410).

It was not contended that the adjudication of insanity and the commitment to the State Hospital for the Insane was conclusive of the defendant's insanity, but it was probative of that fact. It was not contended that by such adjudication defendant was exempt from prosecution for the conviction of a crime. It was error, however, for the trial court to charge:

> "The fact that a person has been committed as insane has no necessary relation to the question, such a person can intelligently go to trial for a crime."

No objection was made to the defendant standing trial, and it appearing that the adjudication of defendant's insanity and the order of commitment thereon being offered solely as a matter of proof of defendant's history and in order to establish a presumption in favor of insanity. It is submited that the trial court's comment that such proof had "no necessary relation to the question" was error and prejudicial to the defendant. It is submitted that such offer of proof was improperly denied because an adjudication by a court of competent jurisdiction at least raises a presumption. This presumption in favor of insanity shifts the burden of proof to the State, to overcome the fact of insanity.

In Ex Parte Brown (Washington) reported in 1 L. R. A. New Series, page 540, the court on page 547, said:

"The presumption being that general insanity, once shown to exist, still continues, unless of a temporary sort, like the delirium of drunkenness or a fever, the burden of proof to establish a lucid interval of mental restoration rests upon the party who asserts it." Schouler Wils, 3d ed. Par. 189, and cases cited. In the chapter on the subject of "Insanity" in Volume 16 Am. Eng. Enc. Law, 2d ed. under the discussion of the continuance of insanity of a permanent nature, at page 604 of said volume, the following statement of the rule as to presumption is made: "When habitual insanity in the mind of the person whose act is in question is once established, then the party who would take advantage of the fact of restoration to a sane condition, or of an interval of reason, must prove it, for insanity of that character is presumed to continue until the contrary is shown." Decisions from 26 of the American States are cited in support of the above text, as well as a long list of English decisions. With such an array of citations, it would seem that the rule is well established, and that a review of the decisions is unnecessary. We have examined a number of the authorities cited, and find that they fully sustain the rule announced by the text writer—that, when insanity of a permanent character is once established, it is presumed to continue, and the presumption prevails until the contrary is shown; the burden of showing which is upon him who asserts sanity."

There were facts in this case from which might have concluded that the defendant suffered from general insanity of a permanent character and thereby requiring the State to ovrcome the presumption of insanity at the time of the shooting arising thereby.

POINT NINE.

Because the trial court improperly refused to charge that:

> "The test of responsibility is the capacity of the defendant at the time of the act complained of to distinguish between right and wrong with respect to that act, and if the defendant is so insane that he could not distinguish between right and wrong as to the particular act in question, he should be acquitted."
>
> (Assignment 22, Specification 22, S. C. pp. 402-413.)

It is submitted that in view of the error referred to in assignment 11 case, page 398, it was error for the trial court not to have charged as requested in this particular. In view of the fact that no where in his charge does the court warn the jury to disregard any misstatements of facts made by the court and to depend solely upon their own memories. It is respectfully urged that this request to charge was proper. It properly stated the test as required by law and which the jury should have applied in this case.

POINT TEN.

Because the trial court improperly refused to charge the jury as follows:

> "The law presumes this defendant to be sane, there is evidence that this defendant was declared insane by a court of competent jurisdiction. The presumption thereby arises of the continuance of insanity unless proof to the contrary is shown. This is for the jury to determine."
>
> (Assignment 17, Specification 17, S. C. pp. 400-411.)

In the case of *State* v. *Spencer,* p. 262, the court charged the jury as follows:

> "Proof that a man has at some former period of his life been afflicted with such insanity as would render him an unaccountable being and exonerate him from punishment is not sufficient, if it also be proven, or comes out in the evidence that he has at any time since been so far restored to his right mind as to be capable of moral action and of discerning between right and wrong. But it often occurs that men have turns or 'spells' of insanity and then enjoy intervals of entire soundness of mind. Now although they would be excusable for what they did in a paroxysm of madness they are by no means excusable for what they do when they have their senses."

> "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."
>
> "His having been insane once, or several times before may render it more probable that he was insane at the time of the homicide if there is any direct proof that he was insane at that time."

In the Spencer case all of these facts were made questions for the jury. In the case now under consideration there was proof upon which the jury might well conclude that the defendant was insane long before the shooting of Officer Ruark, and, that the facts warranted them in fixing a presumption in their minds that the defendant was so insane. That the defendant was actually insane since he left the State Hospital for the Insane and that he was insane at the time he shot the deceased. It is submitted that it was purely a jury question.

POINT ELEVEN

Because the trial court denied the motion for an arrest of judgment, made on grounds set forth in assignments 23, 24 and 25.

The motions in question (case, page 362) were made for the following reasons:

That a doubt was established as to the defendants mental status during the trial.

That at time of sentence defendant was insane.

That before and at the time of sentence defendant was unable to assist and advise with counsel.

That judgment entered against an insane defendant is improper and contrary to law.

It is respectfully submited that the trial court erred in denying the motion to arrest judgment. The purpose of the motion was to withhold judgment and proceed by proper inquiry to determine whether the defendant was capable of having the sentence of death actually pronounced against him and of having the sentence of death actually entered against him. The motion made in open court asked the trial judge to invoke the common law and make inquiry to determine the then mental state of the defendant; To inquire to determine whether the defendant was then so far insane as to be without sufficient reason to be responsible for his crime, so as not to be conscious of having committed the crime he has been convicted of; so as not to be aware he is amenable to punishment; and so not to appreciate his situation as one about to be condemned to death; and again so far as to be unable to advise with and assist counsel in availing himself of those remedies and rights the law provides. It was contended in support of the motion that at the trial developed testimony which pronounced the defendant then insane.

Case page 286; see testimony of Doctor Donahue:

> "The Court: In other words, doctor, I am trying to reduce your testimony to

> something concrete. * * * In other words you are testifying that in your best judgment this defendant today is insane?
> The Witness: Yes."

On page 288 of the state of the case, see testimony of the same witness:

> "The Court: Is that so, doctor, that your best opinion as to his medical status as of today is that he is insane? A. After consideration of the history and his present actions, yes, sir."

In support of the motions attorney for the plaintiff-in-error stated that the defendant at the bar was unable to consult or assist in protecting his legal rights.

In re Edward Clifford, 22 N. J. L. J. 176, Judge Lippincott held in the Hudson County Court of Oyer and Terminer:

> "When he was placed at the bar of the court, in order to have a day fixed for the execution of the judgment theretofore pronounced and entered against him, and when he was asked if he had ought to say why a day should not be fixed for the execution of the judgment, his counsel, in his behalf, interposed the plea or reason for not fixing a day, as a reason for the non-execution of the judgment, that he was now insane, and for that reason was not able to say anything, and for that reason no day should be fixed for execution."

> "When the question of his sanity was first presented upon the petition and brief of his counsel with the accompanying *ex parte* affidavits, the court concluded that the matter was not of the character to require a jury and announced its conclusion to that effecct, and decided that the inquiry, whatever it might be or to what ever extent it might go would be heard and determined by the court. That, as the court understands it, is entirely within the discretion of the court in the administration of justice, as well as the humanity of the law and the court in favor of the defendant accused or convicted of crime, and who falls into insanity after indictment or conviction."

In this case the court concluded notwithstanding some doubts expressed by high judicial authority as to the jurisdiction of the court, to take cognizance under the constitution and laws of this state, it would make the inquiry.

The questions arising are fully discussed and the law established in the case of *Nobles* vs. *Georgia,* 168 U. S. Sup. Ct. 398.

The decision of the *State of New Jersey* vs. *William E. Battles,* 1 N. J. Misc. Reports, 238, is respectfully submitted as controlling, and as properly stating the law applicable to the motion now under advisement. In that learned disposition Judge Stickel, Jr., says:

> "There being no direct statutory conference of power to make the inquiry in question, we turn to the common law and there

> we find that the judge in the trial was bound to grant a reprieve, where after sentence the prisoner became insane. The reason was 'Not that a man, who has become insane is not a fit subject of example, but that he is incapable of saying anything in bar of execution or assigning any error in the judgment.' ''

We respectfully invite the court's attention to the citations of authorities in this opinion, page 241:

> '''4 *B. L. Com.* 395; 1 *Chit. Crim. L.* 761; 1 *Hale P. C.* 84, 85; 1 *Hawk. P. C.* 1, 4 and see *Freeman* 1. *People,* R. Den. (N. Y.) 9; 47 Am. Dec. 215, and *Nobles* v. *Georgia,* 168 V. S. Sup. Ct. 398.''

That at common law there was an imperative duty, on the suggestion of the insanity of a convict, totry the issue by judge and jury. See 4 *Bl. Com.* 24-25:

> "If, after he be tried and found guilty, he lose his senses before judgment, judgment shall not be pronounced, and if, after judgment, he becomes of more sane memory, execution shall be stayed. For peradventure, say the humanity of the English law, had the prisoner been of sound memory he might have alleged something in stay of judgment or execution."

1 *Hale P. C.* is to the same effect.

See 4 *Blackstone,* book 4, p. 395:

> "If the defendant becomes '*non compos*' between the judgment and the award of execution, for regularly, as was formerly observed, though a man be '*non compos*' when he commits a capital crime, yet he becomes '*non compos*' after he shall not be indicted; if after indictment, he shall not be convicted, if after conviction he shall not receive judgment."

In *Bonds* vs. *Tennessee* (1827), *Martin & Yerger* 142, the accused was convicted of the crime of murder, and upon being led to the bar to be sentenced, though his counsel alleged that he was at the time a lunatic, and demanded of the court that a jury be called to try the issue of fact arising upon the plea, the court upon inspection of the prisoner and upon consideration of the case, because nothing was shown to render it probable that the defendant was a lunatic, or to make that matter doubtful, refused to allow the defendant his plea.

From a reasonable construction given the decision of *Nobles* vs. *Georgia,* vol. 168, page 398, it is clear that at common law after conviction a prisoner becomes insane and this fact is set up as a plea, while the defendant is not entitled to a jury trial as a matter of right, but the court should take such action as sound discretion dictates.

See *Faros* vs. *Commonwealth,* 84 Penn. St. 200. In this case a jury trial was demanded and the court held, that "No right by jury is involved in the question". "There must be a sound discretion to be exercised by the court. If a real doubt arise

a just judge will not fail to relieve his own conscience by submitting the fact to the jury."

There is no doubt, it is submitted that where it is doubtful whether a defendant is *non compos* at or before sentence by common law he is entitled to an inquiry, if not by a jury, certainly by the court.

The rule in this state is laid down in *State* vs. *Peacock,* 50 N. J. L. 34:

> "If the court either before or during the progress of such a trial, either from observation or upon suggestion of counsel, have facts brought to its attention which raises a doubt of the condition of the defendant's mind in this respect, the question should be settled before another step is taken. The method of settling this preliminary, where it is not the subject of statutory regulation, the question is within the discretion of the trial judge. The court can itself enter upon the inquiry, or submit the question to another jury impaneled for that purpose."

It is clear from this decision that the defendant who has become *non compos* before sentence is entitled to have the fact determined by an inquiry. The method of such inquiry being in the discretion of the trial judge, either by the court or by another jury.

See *State* vs. *Noel,* 102 N. J. L. 671:

> "We are next asked to review the testimony taken by the court upon the subject of the preliminary investigation as to the mental condition of the defendant, and hold that the weight of the evidence is contrary to the decision reached by the trial judge. * * * The question was one peculiarly within the purview of the trial judge to determine. It was the trial of an issue of fact similar to the determination of the question as to whether a witness is competent to testify when his competency * * * is challenged. * * * The rule which applies to a finding of fact of this character by the trial court is that such a finding is not reviewable upon appeal if there is any legal evidence to support the finding of the court."

This question was raised before the trial court upon a motion in arrest of judgment. Testimony was called to the court's notice which proclaimed the defendant insane the very day the defendant was found guilty. Attention was called in this testimony of defendant's conduct in court and an expert gave his opinion of such conduct. Counsel for the defendant, officers of the court gave notice that they were unable to consult with defendant because of his disordered mind. These sworn statements of fact and expert testimony were not contradicted. In denying the motion the trial court did so gratuitously and in the absence of any evidence to support his finding, and, therefore, his conduct is reviewable.

State vs. *Noll, supra.*

POINT TWELVE.

The verdict was against the weight of the evidence.

The defendant, through counsel, raised no question as to the shooting, so that it is not necessary to discuss the guilt or innocence of the defendant, other than as that question is raised by the pleas of insanity. It is contended as a matter of law the defendant was by the preponderance of the evidence shown to have been insane when he shot the deceased. Raymond George, the defendant, was an individual of a very marked heredity as shown by his famliy history (case pp. 271-273). The lay witnesses, Mary George (case p. 196) and Helen Tyler (case p. 215) mother and aunt, testified to facts in the early life of defendant which indicated insanity, and they gave their opinion that he was insane then and continued so until the shooting. His mother told the court that her son was insane. She testified that he believed that a spell was thrown on him and that he was cursed by God, that he had delusions that worms were crawling under his flesh (case pp. 200, 201, 202), that she always believed he was insane.

This witness was strongly corroborated by the witness, Helen Tyler, who testified that at about the age of sixteen he began to show changes of disposition and character, he became more unstable and insufficient. He became antisocial, he got into conflict with the law and was sent to the Rahway Reformatory on October 16, 1925; that thereafter he became more depressed and at Rah-

way continued to have delusions. Application was made by the Chief Executive Officer of the reformatory to have the defendant committed to the State Hospital for the Insane, and after a proper proceeding he was adjudged insane by the Court of Common Pleas of Middlesex County, where he was an inmate until October 11, 1926 (case p. 235).

There is testimony that from then on he was eccentric, morose and no better than when he went to Rahway. His mother did not think the boy was right (case, p. 203), and called his condition to the attention of the probation officer. These lay witnesses were telling the truth for they are amply sustained by the facts of the subsequent adjudication by the Middlesex County Court. Mary George is the defendant's mother. Helen Tyler is his aunt. Both had every opportunity to observe the defendant from birth. They fortified their opinions by facts and circumstances. Their testimony was worthy of belief and their opinions entitled to great weight. Their testimony was uncontradicted.

In *State* v. *Spencer* (*supra*), the Court said:

> "The evidence of insanity upon which a jury should rest, will vary with every case, but generally speaking, the evidence of those who saw the person accused every day immediately previous to the commission of the act, who were intimate with him, talked with him, ate and drank with him, and who testify to his acts, his work, his conversation, his looks, his whole deportment, is that upon which a jury ought to place the greatest reliance."

In behalf of the defendant, Dr. Henry A. Cotton was offered as a witness. This witness was the medical director of the State Hospital for the Insane. He personally had the defendant under his supervision and care when he was confined at the hospital at Trenton. He testified as follows:

> "Q. Now, Doctor, while you were head of the State Hospital for the Insane, this boy was an inmate there, wasn't he? A. He was.
>
> Q. Did you meet him while there? A. I did.
>
> Q. Did you prescribe certain treatment for him? A. I did.
>
> Q. Did he get that treatment? A. He got part of it.
>
> Q. Why didn't he get the rest of it? A. His mother objected to any further treatment." (case, p. 225.)
>
> "Q. As an expert could you say whether or not when he left the State Hospital for the Insane he was cured? A. Well, we considered he had recovered from that attack.
>
> Q. Well, had the cause of his trouble been removed? A.Not all the causes had been removed."

The doctor did not find at his examination before trial that the defendant suffered from any classified type of insanity, but considered him a defective, a sub-normal (case,p. 223). Had a bad family history, a bad background, Doctor Cotton's conclusion after examining defendant was testified to (case, p. 229).

In view of these facts the undersigned is of the opinion that the defendant Raymond George while not suffering from any type of insanity that can be classified at the present time is by reason of his physical disturbances mentally unstable, unreliable and irresponsible, and, further, because of these facts, it is improbable that he was in a mental state at the time of the murder to discriminate normally between right and wrong. At page 239 of the state of the case Doctor Cotton in answer to a hypothetical question taking into consideration all the family history of the defendant, his life, the shooting, said that the defendant was incapable of distinguishing between right and wrong with respect to the shooting, and that he did not have sufficient mentality to form in his mind an intent to take life or to deliberate, to determine and to execute that intent by a premeditated act.

See case, p. 250, same witness:

> "What his condition was at the time of the crime no one can say unless we take into consideration his previous examination, his previous condition and his mental make up."

Dr. William Donahue (case, p. 255) qualified as an expert on mental diseases, and examined the defendant at five distinct times and he pronounced the defendant as a dementia precox (case p. 256); that when he examined the defendant on one occasion he had no recollection of the shooting, that he had been arrested, identified, or that he had ever signed a statement. This witness gave the defendant a psychometric test

and found his age was about eleven and five-twelfths; which means that his mental age, measured according to tests was about eleven years and five months, when in fact he was twenty-two. The doctor testified (case, p. 267) that defendant was not capable of distinguishing between right and wrong at the time of the shooting; that he was not sufficient mentally to have in his mind an intent to take life, or to determine and deliberate or to execute that intent by a premeditated act, and was, at the time of the shooting not conscious that what he was doing was morally wrong.

Contrast the weight of the evidence offered in behalf of the defendant with the proof offered by the state. The former is clear and satisfactory and has a preponderance of weight, the character of proof recognized by the decisions of the courts of this state as worthy of credence. The state offers the perfunctory opinions of two doctors who simply examined the defendant once and then solely for the purpose of the trial. They knew nothing of his history, never treated him, never saw him before. On page 295 of the State of the case, Dr. Lawrence Collins testified:

> "Q. Now, Doctor, when you conducted this examination did you have any facts before you of this boy's history? A. I did not."

He simply testified that his opinion was that the defendant was sane when he examined him. That there was no scientific method by which he could go back into a man's life and say how long he had been sane, except from the individual his-

tory. He knew nothing of the defendant's history, yet he gave his opinion that the defendant was in the same mental state at the time of the shooting as he was when he made his examination. The weight that medical expert testimony is entitled is laid down in the Spencer case:

> "The evidence of competent medical men, who have had frequent opportunities of observing him about the time in question, especially if they have been in attendance upon, or have visited him with a view to probe the state of his mind, is entitled to very great consideration. It has always been held that medical men may give their opinions in evidence. But, if they have not been in the habit of seeing him, if they are not familiar with his habits and symptoms, at or about the time in question, their opinions are of no weight, and in my judgment, of not so much weight as those of unprofessional persons of good sense."

For these reasons the plaintiff-in-error respectfully prays for the reversal of the judgment of the Hudson County Court of Oyer and Terminer.

Respectfully submitted,

THOMAS TUMULTY,
JAMES P. DOLAN,
Attorneys for and of Counsel with Plaintiff-in-Error.

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New Jersey Court of Errors and Appeals

October Term, 1931.

State of New Jersey, Defendant-in-Error, *vs.* Raymond George, Plaintiff-in-Error.	On Error to Hudson Oyer and Terminer.

BRIEF FOR THE STATE.

This writ of error brings up for review the record and proceedings of the trial, conviction and sentence of Raymond George for first degree murder, under an indictment against him for the murder of Edward Ruark, a Jersey City policeman. The trial was held before Judge Kinkead and a jury in the Hudson Oyer and Terminer, beginning April 13, 1931. The jury made no recommendation of life imprisonment; consequently the death sentence was imposed.

In addition to suing out the ordinary writ of error the defendant below has availed himself of the provisions of Section 136 of the Criminal Procedure Act, and secured a certification by the Trial Court of the entire record and proceedings below.

Facts.

On December 12, 1930, about 9:10 P. M., on Roosevelt Avenue, in Jersey City, the defendant, a negro, aged nineteen, shot and killed Edward Ruark, a Jersey City policeman, with a .45 calibre

U. S. Army automatic pistol. The circumstances leading to and surrounding the killing were that defendant, with two other negroes, James Williams and Joseph Mitchell, earlier in the evening had stolen an automobile on 145th Street, near Eighth Avenue, in New York City, and set out in it for Newark, New Jersey, to commit a robbery at Wahlmuth's store, located at the corner of Arlington and Market Streets, in that City (p. 170, ll. 30, &c.). It so happened that while defendant and his companions were passing through Jersey City on their way to the scene of the proposed robbery, a police alarm had been sent out in Jersey City for the apprehension of a tall negro, known as "Slim", wanted in Bayonne, New Jersey, for a hold-up and who was said to be riding about in an automobile somewhere in the County (p. 161, l. 15). Because of this alarm, Ruark, a motorcycle officer, when he saw the negro, George (who was tall and thin), and his companions driving along Communipaw Avenue at West Side Avenue in Jersey City, he set out in pursuit. George had no automobile license; he could give no satisfactory explanation of his possession of the stolen car; he was unlawfully armed with a .45 calibre loaded pistol; he already had a criminal record, having been released on parole from Rahway Reformatory; and in his effort to elude Ruark's pursuit, undertook to turn sharply into a side street. The street had a dead end and defendant was trapped by Ruark on Roosevelt Avenue about 100 feet from Mallory Avenue. Having halted the car, Ruark stepped toward it and asked defendant to "Get out and show me your license". Immediately thereafter defendant leaped from the car, with drawn pistol, and commanded Ruark to "Stick them up", at the same time pointing the pistol at Ruark. At

this time defendant was about five feet from Ruark (p. 142, l. 20). The killing of Ruark, which immediately followed, is briefly described in the language of the witness Weiss, at page 142, line 30:

> "The cop drew back a pace or two and made a draw of his own gun and while he was drawing for his own gun the driver shot him."

Defendant and his companions then fled, leaving the wounded Ruark on his knees blowing a police whistle (p. 152, l. 27). They were pursued by Sergeant Varley and Patrolman Waldron while travelling on Communipaw Avenue toward Newark at the rate of 65 miles an hour (p. 76, l. 24). The stolen car was fired upon by the pursuing police, and was turned off about 300 feet east of Jacobus Avenue, over the curb into some lots and over a ditch (p. 76, l. 36). When the car was halted the occupants fled. Mitchell and Williams were soon captured, but defendant George, the killer, climbed the top of a freight car, leaped from the car-top over a wire fence and disappeared (p. 79, ll. 10, &c.). He was caught by the witness Adams, another colored man. At the time of his capture he was trying to escape over the second Passaic Bridge leading to Newark. The Bridge was closed at the time for a passing boat. Adams' description of the capture is as follows (p. 106, l. 18, to p. 107, l. 22):

> "Passaic River Bridge. Go ahead. A. As I stopped there, not thinking, someone got on the seat of the car without asking me anything. So I looked around. He says, 'Take me over the bridge.' I says, 'I am sorry, but the firm doesn't allow it. It means my job.' He said, 'You can take me and you are going to take me.' I said, 'It can't be done.' Well, I had to take it easy. So he

got off, and when he dropped down I gets off as usual and I walked around the trailer. I didn't see him. Well, I says, he must have evaporated. I can't tell which way he went because he didn't have time to be anywheres, and I started back to the front of the car. When I did, he said,—there is two rods extending from the front of the trailer and the truck with two braces in the middle. He crawled on the rod. I noticed his feet sticking out. Well, I said, this is something unusual. So I asked him to come out and he refused. I asked him again, so he dragged out. I says, 'Well, I told you I couldn't ride you? What do you think I mean? Stay on or get off?' He says, 'Well, I am going over this bridge and you are going to take me.' Well, I says, 'It can't be done.' He makes a lean with his fist like he was going to strike me. So I hit him, and one blow to another before he could get a chance to hit me. There was no use to stop then; so I shoved him back to the front of the car where the police night stick laid on the seat. I immediately dropped my rubber and I gets the stick.

Q. Dropped what? A. The rubber hose I had, about so long (indicating).

Q. Yes. A. I gets the stick and beats him on his arms a couple of times. So he says, 'I give up. I won't get on any more.' So I says, 'This way it looks, you want to send me to jail with you. I am going to take and turn you over to the officers,' and I took him back to the officer." * * * (p. 108, ll. 17 to 25).

"Q. Now, Mr. Adams, where were the officers to whom you say you turned this man over? A. Well, I did not quite get to Jacobus Avenue because in the meantime an officer came across from the east side of the highway after seeing me pass the light, he came over and wanted to know the trouble. I said: 'Here is a man demanding a ride, I do not know if he is a stickup or who.' "

Officer Ruark in a dying declaration described the shooting. George, after his arrest, signed a

confession describing the crime and the circumstances leading up to it.

The defense interposed was insanity. Drs. Cotton and Donahue testified as experts for the defense and Drs. King and Collins testified for the State.

The questions involved will be discussed in the order followed in the brief for the plaintiff in error.

POINT I.

No prejudicial error was committed as urged under Points One and Two of plaintiff in error's brief.

A mere examination of the questions objected to by counsel for plaintiff in error and discussed under Points One and Two of his brief will indicate that there is no reversible error disclosed therein. The facts of the flight and killing are not in dispute. The only defense in the case is insanity. Without conceding that the questions propounded to Varley and Waldron were in any way improper, it is obvious, under the statute as well as the rulings of this Court laid down in *State* vs. *Johnson,* 26 N. J. L. 313; *State* vs. *Hunter,* 40 N. J. L. 495, that a judgment in a criminal cause will not be reversed for any error except such as may have prejudiced the defendant in maintaining his defense upon the merits. Defendant below could not have been prejudiced in any way by the answers to these questions.

POINT II.

The Trial Court did not err in excluding Judge Kirkpatrick's order.

The Court's attention is respectfully directed to Assignment 7, Specification 7 (pp. 394 and 405), also to the testimony of Dr. Cotton at page 237. It will appear therefrom that the Court excluded upon objection by the Prosecutor certain documents offered on behalf of the defense. The record shows that the objection was first made upon the ground that these documents were not properly authenticated, and later upon the further ground that they were incompetent, immaterial and irrelevant. There is in fact nothing in the record to show that the documents, which purported to be the record of a commitment by Judge Kirkpatrick, of Middlesex County, of the defendant to the New Jersey State Hospital for the Insane, were in any way authenticated. But even if they had been properly authenticated, it is respectfully submitted that the opinion of this Court in the case of *State* v. *Noel,* 102 N. J. L. 659, at page 671, required their exclusion. Mr. Justice Katzenbach speaking for this Court said, *inter alia:*

> "With reference to the placing of the defendant upon trial, it is also contended that at the time the defendant was called upon to plead he was legally in the custody of the Essex County Hospital for the Insane, and not legally before the Court of Oyer and Terminer. We see no merit in this contention. The fact that a person has been adjudicated a lunatic does not mean that he is exempt from prosecution for the commission of a crime. Insane persons may be adjudicated insane and be committed for the protection of the public against violence, or for the care

> and cure of the person committed, or for the conservation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement, where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than that it is necessary to confine the patient for the good of the public or himself, or both. The fact that a person has been committed as insane has no necessary relation to the question whether such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons. It was not error to put the defendant to a trial merely because he had been committed to a hospital for the insane."

It is obvious that such a record would not be in any way controlling upon the Court because it would not indicate anything further than that the defendant had for a time been in an insane asylum. This fact was admitted by the prosecutor during the argument involving the admission of the documents offered. The following is an excerpt from this colloquy (p. 231, ll. 8 to 12):

> "The Court: There is no dispute about the fact that the boy was in the asylum.
>
> Mr. Drewen: No; there is none, that he went there; and formalities and papers I say have no competence."

After these remarks, the prosecutor interposed the further objection to the admission of the documents, which was couched in the following language (p. 231, ll. 20 to 28, inc.):

> "Mr. Drewen: This is objected to on the ground that the adjudication is of no degree or type of insanity which would establish or

> disestablish the question of criminal responsibility on this trial. We cannot tell what was before the court or what the real situation was upon which the commitment was made."

It is evident from the foregoing that the papers were properly excluded; and even assuming, but not conceding, that there was error in excluding them, nevertheless it was admitted by the Prosecutor that the defendant had been confined in an insane asylum. Moreover, Dr. Cotton, who was directly concerned in the care and treatment of the defendant while he was in this asylum, appeared and testified concerning such confinement as an expert witness on defendant's behalf.

It is therefore urged that the ruling of the Trial Court in this matter affords no basis for reversal.

POINT III.

The Trial Court did not err in charging the jury as follows:

> **"He must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."**
>
> (Assignment 9, Specification 9, pp. 398-409.)

The foregoing language received the approval of this Court in the case of *State* v. *Graves,* 45 N. J. L. 347 at page 359. The Chancellor in delivering the opinion of the Court said, *inter alia:*

> "Nor was there any error in the refusal of the court to charge as requested by the prisoner's counsel on the subject of insanity. They had charged that the burden of proof of the alleged insanity was on the accused; that the law presumes that every man is sane until the contrary be proved, and that therefore,

> when an accused sets up the defence of insanity, the burden of proof is upon him, and that to make effectual such a defence, the proof of the prisoner's insanity must be satisfactory, and that the accused *must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence.*" (Italics by Counsel.)

An examination of that portion of the Court's charge set forth in the printed record at pages 340-341 will show that the Trial Court not only charged the language to which objection is made, but other language from the opinion in the case of *State* v. *Graves,* which it is contended correctly states the law of New Jersey on the subject of insanity in so far as it concerns the case on trial.

Assignment 9, Specification 9, afford no basis for reversal.

POINT IV.

The Trial Court did not err in charging the jury as follows:

> **"You will have to decide the issue raised by the medical testimony in this case as you will have to decide each and every other issue presented to you by this case. It simply comes down to a question of this: Which set of doctors do you believe?"**
>
> (Assignment 10, Specification 10, pp. 398, 409.)

In considering any portion of the Court's charge it is necessary to read it in connection with the balance of the charge. In other words, the charge must be considered in its entirety. The rule adopted by this Court on that point is succinctly stated in the case of *State* v. *Sage,* 99 N. J. L., page 229, where it was held:

> "But in determining upon the legal accuracy of a charge it is not permitted to extract a single sentence, and construe it without regard to the context in which it appears. The instruction is to be construed as a whole, and the legal rule which is declared thus extracted."

An examination of the remainder of the Court's charge will indicate that the law on insanity and reasonable doubt and other questions was correctly stated by the Court. The rule with relation to the defense of insanity does in fact require the defendant to overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence. Even if the jury had considered this excerpt from the opinion independently of the remaining instructions, it was inherently beneficial to the defendant because of itself it did not put the burden upon the defendant of overcoming the legal presumption of sanity by a clear preponderance of proof. However, it is quite evident from examining the foregoing statement by the Court that the Court merely separated the medical testimony as an issue in the case from other issues in the case, which had to be of necessity decided by the jury because there had been some conflict of opinion by the alienists with respect to the sanity of the defendant.

It is quite evident from an examination of the entire charge that the Court discussed at considerable length the law with respect to insanity, and in fact immediately after making the utterance which forms the basis for Assignment 10 and Specification 10 the Court said (p. 343, ll. 28 to 32):

> "It is perfectly proper that in deciding the sanity of the defendant at the time of the shooting you consider the acts of the defendant which led up directly to the shooting and

the acts of the defendant immediately after the shooting."

When the entire charge of the Court is considered it is quite obvious that there was no error in the portion of the charge which has been challenged in Point V of the brief for plaintiff-in-error and that the judgment below should not be reversed on that account.

POINT V.

The Trial Court did not err in charging the jury as follows:

> **"Did the defendant know that he was being chased by a police officer? Was he in fear of being arrested by this police officer? Did he shoot the police officer to escape arrest? If you believe this contention then manifestly the defendant could distinguish between right and wrong, and must be held legally responsible for this killing."**
>
> (Assignment 11, Specification 11, S. C., pp. 398-409.)

Attention is again invited to the language of this Court in the case of *State* v. *Sage,* 99 N. J. L., page 229, where it was held:

> "But in determining upon the legal accuracy of a charge it is not permitted to extract a single sentence, and construe it without regard to the context in which it appears. The instruction is to be construed as a whole, and the legal rule which is declared thus extracted."

It is obvious from an examination of the Court's charge at page 343, line 34, and referring back to page 340, lines 34 *et seq.,* that the explanation

used here must be considered in connection with the language used by the Court in the preceding portion of the charge on the question of insanity and what followed in the charge at pages 344-345. It is urged that the jury could not have been misled by this language when it is considered in connection with the clear and cogent manner of setting forth the rules governing this case upon the question of insanity. All that the Trial Court did in this connection was to direct the attention of the jury to the state of mind of the defendant at the time of the killing, which is a proper and necessary subject for consideration. The case of *State* v. *Fabriola,* 75 N. J. L. 483, cited by Counsel for the plaintiff in error has no relation to the case at bar because that dealt with the credit to be given certain witnesses, whereas in this case the Court was merely directing the attention of the jury to the state of defendant's mind to be inferred from all the evidence in the case.

POINT VI.

The Trial Court did not err in charging the jury as follows:

> **"If you believe that the defendant was incapable of distinguishing between right and wrong at the time he shot Officer Ruark, then, of course, he was not responsible for this killing and you must find him not guilty."**

This portion of the charge must be read in connection with the remainder of the charge. The statement is free from error, and is entirely in harmony with the law as enunciated by this Court. In fact the Trial Court did nothing more than to state in virtually the same language what

was said by the late Chief Justice Depue as reported in *Graves* v. *State,* 45 N. J. L. 351, *inter alia*:

> "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 the English courts as early as 1843. McNaughton's case, 10 Cl. & F. 200. It was adopted by Chief Justice Hornblower, in 1846, in the Spencer case (1 Zab. 196), and ever since the ruling in that case has been regarded as the settled law of this state."

It is difficult to see how the Trial Court could have better expressed under the circumstances the law of this State on the subject discussed, more particularly when this statement is considered in connection with the balance of the charge.

The argument urged under Point VII of the brief for plaintiff-in-error is without merit.

POINT VII.

The Trial Court did not err in charging the jury as follows:

> **"The fact that a person has been adjudicated a lunatic does not mean that he is exempt from prosecution for the conviction of a crime. Insane persons may be adjudicated insane and be committed, for the protection of the public against violence or for the care and cure of the person committed, or for the conservation and management of the lunatic's property. A regular inquisition is not conclusive. In cases of confinement where the confinement is made for the protection of the public or for the care of the individual, the commitment is evidential of nothing more than a condition justifying the confinement. A commitment adjudges no more than it is**

necessary to confine the patient for the good of the public, or for himself or both. The fact that a person has been committed as insane has no necessary relation to the question whether such a person can intelligently go to trial for a crime. Persons having some forms of insanity are as responsible for crimes committed by them as normal persons."

(Assignment 13, Specification 13, pp. 399-410.)

The Court's attention is respectfully invited to page 344 of the record at which it appears that the Trial Court adopted the language of the New Jersey Court of Errors and Appeals in the case of *State* v. *Noel,* 102 N. J. L. 659, at page 671, 133 Atl. Rep., page 274. Counsel for plaintiff-in-error attempts to challenge the propriety of this language. It is respectfully submitted that the mere reference to the opinion of the Court is sufficient to indicate that this contention has no force, since the language of the Court used in the Noel case enunciates the law of this State on the subject there discussed.

Point VIII of the brief of the plaintiff-in-error sets forth no basis for reversal.

POINT VIII.

The Trial Court did not err in refusing to charge that:

"The test of responsibility is the capacity of the defendant at the time of the act complained of to distinguish between right and wrong with respect to that act, and if the defendant is so insane that he could not distinguish between right and wrong as to the particular act in question, he should be acquitted."

(Assignment 22, Specification 22, pp. 402-413.)

An examination of the Trial Court's charge, at page 345, lines 1 to 14 inclusive, indicates that the Court did in effect charge as requested by counsel for the plaintiff-in-error. The language used by the Court was as follows:

> "Therefore keep in mind that the hard and fast rule of the State of New Jersey is, not whether the defendant has a completely normal mind, but the test is, was the defendant at the time of committing the crime capable of distinguishing between right and wrong? If he was so able to distinguish, then he is legally responsible for his acts. If he was not capable of so distinguishing, then he is not guilty."

Allusion was made to the same rule in the first ten lines at page 344, where the Trial Court said:

> "If you believe that the defendant was incapable of distinguishing between right and wrong at the time he shot Officer Ruark, then, of course, he was not responsible for this killing and you must find him not guilty."

It is fundamental that where the Trial Court has already charged the substance of a request, it is not necessary that the precise language of the request submitted by counsel be adopted by the Court.

In addition to the foregoing statements made by the Trial Court, the following, taken from the opinion in *State* v. *Graves,* 45 N. J. L., page 351, was charged (See p. 342, ll. 24 to 38 inc.):

> "To establish a defense on the ground of insanity it must be clearly found 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 be-

tween right and wrong with respect to the act he is doing and to control his conduct under such ordinary circumstances, he cannot discharge himself from responsibility by saying that he did the act under the influence of an irresponsible impulse.''

Nothing alleged in Assignment 22 and Specification 22 justifies reversal.

POINT IX.

The Trial Court did not err in refusing to charge the Jury as follows:

> **"The law presumes this defendant to be sane, there is evidence that this defendant was declared insane by a Court of competent jurisdiction. The presumption thereby arises of the continuance of insanity unless proof to the contrary is shown. This is for the jury to determine."**
>
> (Assignment 17, Specification 17, pp. 400-411.)

Reference has already been made to the rule adopted by this Court in the case of *State* v. *Noel,* 102 N. J. L. 659, at page 671. This rule was set forth at length by the Trial Court in his charge at page 344, line 18. It is not repeated here; it has already been set forth at length under Point II. This portion of the opinion in *State* v. *Noel, supra,* is sufficient of itself to demonstrate that the request to charge submitted by counsel for plaintiff-in-error as mentioned above was unsound and not in harmony with the established law of this State; the failure to so instruct the jury, therefore, could constitute no reason for reversal.

POINT X.

The Trial Court properly denied the motion for an arrest of judgment.

Counsel for plaintiff-in-error declared that judgment should have been arrested for the following reasons:

> That a doubt was established as to the defendant's mental status during the trial.
>
> That at time of sentence defendant was insane.
>
> That before and at the time of sentence defendant was unable to assist and advise with counsel.
>
> That judgment entered against an insane defendant is improper and contrary to law.

Technically a motion in arrest of judgment was not a proper method of bringing this matter to the attention of the Court. A motion in arrest of judgment is directed to matters appearing of record rather than to questions such as have been raised by counsel for plaintiff-in-error.

The rule stated by the text writer in Wharton's Criminal Procedure, Vol. 3, Section 1692, page 2127, Tenth Edition, is as follows:

> "At common law, and until 7 Geo. IV, ch. 64, secs. 20, 21, and the corresponding statutes in this country, any objection which would have been fatal in demurrer was (with exceptions to be presently noticed) equally fatal on motion in arrest of judgment. Judgment, however, can only be arrested for matter appearing on the record; though the motion is not confined to the indictment alone, as it obtains if any part of the record is imperfect, repugnant, or vicious. Thus judgment will be arrested where no indictable

> offense is set forth; where the statute creating the offense has been intermediately repealed; where the case has been tried by more or less than twelve jurors; where no issue was averred to have been joined; and where the verdict is insensible; though as the court possesses the power of amending its own records at any time during the term in which they are entered, it seems that clerical errors, such as the false entering of a plea on an impossible day, may be corrected."

The late Judge Newman in his work on New Jersey Criminal Procedure, at page 736, makes the following statement, with citations in support of it, in relation to the scope of a motion in arrest of judgment:

> "After one has been convicted of a crime, prior to the imposition of sentence, he may move for the arrest of judgment, but such motion must be determined solely on the record, and the term 'record' imports the history of only those proceedings which take place in the ordinary progress of a cause, and which the law requires to be perpetuated. State *v.* Crusius, 57 L. 280; State *v.* Landecker, 126 A. 408.
>
> The motion cannot be based on the ground that the evidence was insufficient to support the conviction (State *v.* Powe, 48 L. 34; State *v.* Kelly, 84 L. 1; Af., 86 L. 704; State *v.* Metzler, 110 A. 922; State *v.* Hop., 90 L. 390; nor for errors not apparent on the face of the record, State *v.* Bove, 98 L. 350; Af., 98 L. 576); nor that a defendant, being a public official, had not been impeached for the offense charged, and could not be legally indicted and tried until after impeachment proceedings. State *v.* Jefferson, 88 L. 447; Af., 90 L. 507."

But, assuming that the Court does consider these questions they are nevertheless without sub-

stance. Defendant below interposed the defense of insanity, and this defense was thoroughly presented to the jury both by lay and expert testimony. The jury had the fullest opportunity to consider the conduct of the defendant during all the time surrounding the commission of the crime. There was nothing irrational about the manner in which the crime was consummated, the killer being fully aware of his plight and exerting every means to effect an escape. The facts connected with this transaction have been summarized at the outset in this brief and they manifest possession of a considerable degree of daring and cunning on the part of the murderer. Under the circumstances it is submitted that the Trial Court's ruling both as a matter of law and of fact in this connection was sound and will not support a reversal.

Finally, it is of the greatest importance to observe that whatever was said by counsel in urging upon the Court his motion in arrest of judgment, he was careful to make no representation that he was brought to the making of that motion by any sign of mental disorder in the defendant then claimed to exist, nor by any fact or circumstance concerning the defendant's mental state that had not been thoroughly dealt with in the evidence submitted at the trial. In a word, no new situation was presented; no condition was claimed to exist that had not been fully covered by the testimony in the case.

If, therefore, upon such showing—or rather, the want of it—the Trial Court's denial of the motion was error, it is startling to consider how convenient it must be in all cases of the kind to accomplish indefinite and wrongful delay in the pronouncing of judgment.

POINT XI.

The verdict was not against the weight of evidence.

There was nothing whatever in the conduct of the defendant to suggest that he was criminally insane. His motive for the murder arose from the consciousness that he was caught redhanded in the theft of an automobile. He had a criminal record. His statement which is set forth at pages 167 to 175, inclusive, contains nothing to indicate that he was in any way irrational. He was manifestly conscious of his wrongdoing in the course which he followed after the shooting, which in his own language was as follows (p. 174, ll. 19 to 32, incl.):

> "I drove down Communipaw Avenue and I was chased by three (3) policemen in a Ford car and they disabled my car by shooting and they tried to cut us into curb and my car was disabled and I steered it into meadows and then we three jumped out and ran, and I ran in back of buildings and then hid under an auto and stayed there a long time, then it was cold, so I decided to come out and get a hitch and I asked a driver to give me a lift but he refused and he got a club from over the seat and grabbed me and called a cop and I was arrested."

The summary of the testimony given in the preliminary statement of facts in this brief indicates that all of his acts were consonant with the consciousness of his wrongdoing. He was abundantly able to distinguish between right and wrong, but seemed to be a cold-blooded, heartless villain determined to accomplish the mission upon which he originally set out regardless of conse-

quences. He was evidently determined not to permit himself to be captured by the police, having full knowledge that he could give no explanation of the possession of a stolen car, and particularly in view of the fact that he had a criminal record. To conjure up some notion that would permit a criminal of this character to escape punishment on the theory of mental irresponsibility would be to mock justice.

The testimony offered against the defendant below presented a case of unusual strength. There is nothing in the contention that the verdict was against the weight of the evidence.

It is respectfully submitted that the judgment below should be affirmed.

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