

## INDEX

	PAGE
Certificate of Chancellor .....	1
Information .....	2
Bill of Indictment .....	3
Sur Indictment .....	9
Writ .....	11
Testimony .....	13
Charge to the Jury .....	210
Defendant's Requests to Charge .....	224
Verdict .....	227
Defendant's Requests to Charge .....	228
Imposition of Sentence .....	230
Sentence .....	232
Exhibits .....	233
Writ of Error .....	254
Specifications of Cause for Reversal of Judgment .....	261

### TESTIMONY.

#### *State's Witnesses:*

William R. Harrison,	Direct .....	23
	Cross .....	31
Frank J. O'Leri,	Direct .....	32
Cosmo Storelli,	Direct .....	36
Rose Caliandro,	Direct .....	39
	Cross .....	41
Inspector John J. Underwood,	Direct .....	42
	Recalled, cross .....	84

	PAGE
Captain William Hogue,	
Direct .....	48
Cross .....	55
Fred W. Frahm,	
Direct .....	55
Claude E. Bergen,	
Direct .....	66
Cross .....	67
Re-direct .....	68
Re-cross .....	68
Leo Doyle,	
Direct .....	68
Cross .....	70
Edward Francis Bayer,	
Direct .....	71
Cross .....	75
Mrs. Luigia Storelli,	
Direct .....	77
John Balbovsky,	
Direct .....	77
Cross .....	79
Dr. Arthur P. Hasking,	
Direct .....	80
Recalled, direct .....	198
Recalled, cross .....	203
<i>Rebuttal:</i>	
Dr. Henry A. Cotton,	
Direct .....	163
Cross .....	171
Dr. Harry J. Perlberg,	
Direct .....	186
Cross .....	187
Dr. George W. King,	
Direct .....	189
Cross .....	193
Re-direct .....	197
Re-cross .....	197

*Defendant's Witnesses:*

	PAGE
Alexander K. Moering,	
Direct .....	97
Cross .....	104
Recalled, direct .....	161
Recalled, cross .....	161
Dr. James H. Trainor,	
Direct .....	105
Cross .....	107
Re-direct .....	110
Recalled, direct .....	162
Recalled, cross .....	162
Julian Kudzinowski,	
Direct .....	110
Dr. Jack Blumberg,	
Direct .....	111
Cross .....	114
Re-direct .....	118, 119
Re-cross .....	118
Dr. William J. Donahue,	
Direct .....	120
Cross .....	121
Re-direct .....	131, 140
Re-cross .....	133
Dr. David H. Orgel,	
Direct .....	140
Cross .....	144
Re-direct .....	156, 158
Re-cross .....	157, 158
Capt. Harry W. Walsh,	
Direct .....	159
Cross .....	160

## EXHIBITS.

*State's Exhibits:*

	Off. Page	Ptd. Page
S- 1—Photograph taken 200 feet north of County Road . . . . .	52	233
S- 2—Photograph of R. R. camp ..	78	234
S- 5—Photograph of R. R. camp showing two cars . . . . .	52	235
S- 8—Photograph taken on County Road looking South, about 300 ft. from bridge . . . . .	54	236
S- 9—Photograph looking east from Jersey City, across County Road, showing Susquehanna bridge . . . . .	51	237
S-10—Photograph looking west from County Road, looking in op- posite direction from S-9 . . . .	53	238
S-11—Photograph taken about 300 ft. north of County Road, look- ing south towards County Road . . . . .	53	239
S-13—Photograph of part of Joseph Storelli, taken at Blacker's Morgue . . . . .	82	240
S-14—Photograph of Joseph Storelli taken at Blacker's Morgue . . .	37	241
S-15—Photograph of Joseph Storelli taken at Blacker's Morgue . . .	38	242
S-17—Copy of telegram from John J. Underwood to Edw. H. Fox..	44	243
S-18—Telegram from Edw. H. Fox to John J. Underwood . . . . .	45	243
S-20—Statement of Peter Kudzinow- ski given to Detroit Police ..	63	244

**Certificate of Chancellor.**

**IN CHANCERY OF NEW JERSEY.**

THE STATE OF NEW JERSEY,  
Defendant-in-Error,

v.

PETER KUDZINOWSKI,  
Plaintiff-in-Error.

10

Sur Indictment  
for Murder.

This is to certify that application has been made 20  
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 Termine in this State, convict-  
ing the said Peter Kudinowski of the crime of  
murder in the first degree, without exhibiting to  
me the record of the proceedings in the cause or  
any part thereof, and without showing any error  
in those proceedings, and that I have refused to  
order a writ of error for the review of said judg- 30  
ment, solely because no cause, arguable or other-  
wise, is shown for the granting of such writ of  
error to the Supreme Court.

Dated, January 17th, 1929.

E. R. WALKER,  
Chancellor.

40

**Information.**

State of New Jersey, } to wit.:  
 Hudson County, }

10 Be it remembered, that a Court of Oyer and  
 Terminer holden at Jersey City, in and for the  
 said County of Hudson, on the Third Tuesday of  
 September in the year of our Lord one thousand  
 nine hundred and twenty-eight before Honorable  
 James F. Minturn Justice of Supreme Court one  
 of the Justices of the Supreme Court of Judicature  
 of the State of New Jersey, and Honorable Charles  
 M. Egan and Honorable Robert V. Kinkead, Hon.  
 Daniel O'Regan Judges of the Court of Common  
 Pleas in and for the said County of Hudson, ac-  
 20 cording to the form of the Statute in such case  
 made and provided, by the oaths of:

- |    |                          |                        |
|----|--------------------------|------------------------|
|    | 1. William J. Blacker    | Foreman and            |
|    | 2. Joseph P. Corcoran    | 13. Vincent Mulvaney   |
|    | 3. Frank J. Doris        | 14. Henry Muzzi        |
|    | 4. Max H. Doyne          | 15. Michael L. O'Brien |
|    | 5. James J. Fitzgibbons  | 16. Bernard A. O'Conor |
|    | 6. James J. Gallagher    | 17. Max Linkas         |
|    | 7. William A. Grady      | 18. James F. Reilly    |
|    | 8. George Harper, Jr.    | 19. Clarence J. Rieman |
|    | 9. Stephen Karczewski    | 20. Maurice Shapiro    |
|    | 10. George L. Kenny      | 21. Arthur Venneri     |
| 30 | 11. A. Lowell Miller     | 22. Harry S. Winn      |
|    | 12. Daniel A. Mills, Sr. | 23. Antony E. Zuccaro  |

good and lawful men of said County, duly em-  
 panelled, 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 fol-  
 lowing, that is to say, that the Bills following are  
 true Bills.

WILLIAM J. BLACKER,  
 Foreman.

*Bill of Indictment.*

And the foregoing being presented to the said court on the Tenth day of December, in the year of our Lord One Thousand nine Hundred and twenty-eight with Bills of Indictment Nos. 229 to 248 inclusive, it is ordered by said court that the said Bill of Indictment so as aforesaid included as Bill Number 229 for Murder as charged upon Peter Zudzinowski, Alias Roy Lambert, Alias Roy Rogers, remain in said Court of Oyer and Terminer for trial and disposal according to law, and said Bill is in words as follows:

10

## HUDSON OYER AND TERMINER

September Term, A. D. 1928.

HUDSON COUNTY, To WIT:

20

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 Peter Zudzinowski, Alias Roy Lambert, Alias Roy Rogers late of the City of Jersey City in the said County of Hudson, on the Seventeenth day of November in the year of our Lord one thousand nine hundred and twenty-eight with force and arms at the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this court, one Joseph Storelli 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, the government and dignity of the same.

30

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT That the said Peter Zudzinowski, Alias Roy Lambert, Alias Roy Rogers

40

*Bill of Indictment.*

on the Seventeenth day of November in the year of our Lord one thousand nine hundred and twenty-eight 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 Joseph Storelli contrary to the form of the

10 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 Peter Zudzinowski, Alias Roy Lambert, Alias Roy Rogers on the Seventeenth day of November in the year of our Lord one thousand nine hundred and twenty-eight at the City of Jersey City aforesaid, in the

20 County of Hudson aforesaid, and within the jurisdiction of this court, in and upon one Joseph Storelli in the peace of God and of this State, then and there being, an Assault did make, and him, the said Joseph Storelli then and there did beat, wound and ill-treat and other wrongs, to the said Joseph Storelli then and there did, to the great damage of the said Joseph Storelli, 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.

30

Aloysius McMahon  
Acting Prosecutor of the Pleas and  
Deputy Attorney General,  
State of New Jersey.

EDWARD L. KATZENBACH,  
Attorney General,  
State of New Jersey.

40

*Bill of Indictment.*

---

Endorsed Bill No. 229 Hudson Oyer and Terminer,  
Term of September, 1928, The State v. Peter  
Zudzinowski, Alias Roy Lambert, Alias Roy Rogers  
for Murder.

Aloysius McMahon  
Acting Prosecutor of the Pleas and 10  
Deputy Attorney General,  
State of New Jersey.

EDWARD L. KATZENBACH,  
Attorney General,  
State of New Jersey.

A TRUE BILL

WILLIAM J. BLACKER,  
Foreman. 20

PRESENTED

Dec. 10, 1928

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.

JOHN J. McGOVERN, 30  
Clerk.

---

And afterwards to wit: to wit on the twentieth  
day of December in the year of our Lord One Thou-  
sand Nine Hundred and twenty-eight 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 twenty- 40

*Bill of Indictment.*

---

eight in the said year 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 Peter Zudzinowski, Alias Roy Lambert, Alias Roy Rogers under the custody of the Sheriff in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the Sheriff aforesaid, to whom he had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he says he is not guilty thereof, and therefore for good and evil he puts himself upon the country, and Aloysius McMahon, Acting Prosecutor of the Pleas and Deputy Attorney General of the State of New Jersey, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictment be continued until January 9th, 1929, when application was made by Acting Prosecutor and Deputy Attorney General Aloysius McMahon to change the name on the Indictment to read Kudzinowski instead of Zudzinowski and said request is granted by Judge Charles M. Egan.

Therefore, let said Indictment be continued until January 11th, 1929, and let a jury come before the Honorable Charles M. Egan, 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 December, 1928, One thousand nine hundred and twenty-eight of twelve good and lawful men of this State and residents in the County of Hudson, over

*Bill of Indictment.*

the age of twenty-one years and under the age of sixty-five years, by whom the truth in the matter may be better known, and who are not of kin to the said Peter Kudzinowski, Alias Roy Lambert, Alias Roy Rogers, defendant, to recognize on their oath whether the said Peter Kudzinowski, Alias Roy Lambert, Alias Roy Rogers be guilty of murder as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said Aloysius McMahan, Acting Prosecutor of the Pleas of the County of Hudson and Deputy Attorney General of the State of New Jersey, 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 the Eleventh day of January in the year of our Lord One Thousand Nine Hundred and Twenty-nine, at Jersey City aforesaid in the County of Hudson aforesaid, before the Honorable Charles M. Egan, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said Aloysius McMahan, Acting Prosecutor of the Pleas and Deputy Attorney General aforesaid, who prosecutes as aforesaid and as well the said defendant under the custody of the Sheriff aforesaid, and who being brought to the bar in his proper person by said 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: Charles Libby, James H. Cargill, James L. Webster, Milton Van Tine, Harvey V. Finch, Charles W. Oterson, Ernest Dahm, Alfred A. Gribel, Thomas Snowden, Walter E. Simmons, Karl Keuffel, Henry Arce, being called, come, who being chosen, tried and sworn to speak the truth

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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 hereupon and the said issue after a charge from the court was submitted to the said jury in charge  
10 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 January 11th, 1929, 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 Aloysius McMahan, Acting Prosecutor of the Pleas and Deputy Attorney General of the State of New Jersey as aforesaid  
20 and for the said defendant do say that the said defendant is guilty of murder in the 1st degree.

Whereupon all and singular the premises being seen and by the court here fully understood the sentence of the law is and is by the court here considered and adjudged, that the said defendant Peter Kudzinowski, Alias Roy Lambert, Alias Roy Rogers be and is hereby sentenced to be taken by the Sheriff of this County of Hudson, thence from the bar of this court and you Peter Kudzinowski,  
30 Alias Roy Lambert, Alias Roy Rogers, be by the said Sheriff 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 twenty-fourth day of February Nineteen Hundred and Twenty-nine, and that then and there you, Peter Kudzinowski, Alias Roy Lambert, Alias Roy Rogers shall by the hands of the Principal Keeper of the said State Prison suffer the punishment and judgment of  
40

*Sur Indictment.*

death at the time, in the place, and the manner prescribed by law for the same.

Judgment entered and signed this Sixteenth day of January, 1929.

CHARLES M. EGAN,  
Judge of the Court of Oyer and Terminer, in and for the County of Hudson. 10

Attest:

**Sur Indictment.**

COURT OF OYER AND TERMINER  
HOLDEN IN AND FOR SAID COUNTY. 20

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">v.</p> <p>PETER ZUDZINOWSKI, alias ROY LAMBERT, alias ROY ROGERS.</p>	}	<p>Sur Indictment No. 229, Term of September A. D. 1928, for Murder</p>
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State of New Jersey, } ss.: 30  
County of Hudson, }

Dec. 20/28. The defendant being charged plead not guilty and is remanded for trial.

Judge Kinkead

Jan. 9/29. Trial commences, Application made by Prosecutor McMahon to change name in indictment to Kudzinowski. Granted by Judge Egan.

Jan. 10/29. Continued. 40

Jan. 11/29. The defendant being tried is found Guilty of Murder in the 1st degree and is remanded for sentence.

Judge Egan

10 Jan. 16/29. Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers you have been according to the laws of the State of New Jersey duly convicted by a jury of your Peers of the crime of Murder in the 1st degree. Have you anything to say before sentence of the law is imposed upon you?

20 The sentence of the law is and it is by the court here considered and adjudged that you Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers be taken by the Sheriff of this County of Hudson, hence from the bar of this court and you Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers be by the said Sheriff delivered to the Principal Keeper of the State Prison at Trenton, N. J. there to be kept in close custody and confinement until

30 some day during the week beginning the 24th day of February, Nineteen hundred and twenty-nine, and that then and there you Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, shall by the hand 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.

40

Judge Egan.

**Writ.**

New Jersey, ss. :

(Seal) The State of New Jersey to James P. Minturn, Esq., one of the Justices of the Supreme Court of the State of New Jersey and to the Judges of the Court of Common Pleas of the County of Hudson constituting the Court of Oyer and Terminer, holden at Jersey City, in and for the County of Hudson, of the term of December, 1928. 10

Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, late of the City of Jersey City, County of Hudson aforesaid: 20

“For that the said Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, on the 17th day of November, in the year of Our Lord, One thousand nine hundred and twenty-eight at the City of Jersey, County of Hudson aforesaid, and within the jurisdiction of this court, did feloniously kill and slay one Joseph Storelli, 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.” 30

Pro ut the said indictment and the several accounts therein, whereof, before you, he the said Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, has been indicted and is thereof convicted by a certain jury of the County of Hudson, taken between the State of New Jersey and the said Peter Kudzinowski, alias Roy Lambert, alias Roy 40

Rogers, as it is said, manifest error hath intervened to the great damage of the said Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, as from his complaint we have received information, we being willing in his behalf, to correct the error in due manner if any there shall be, and that speedy  
 10 justice be done to him, the said Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, commands you that if judgment be thereon given then that you distinctly and openly send under your seal, the record and proceedings aforesaid with all things touching the same and the entire record of the proceedings had upon the trial to our Court of Errors and Appeals and the last resort in all causes of law to be held at Trenton on the 11th day of February next, and this writ, that the record and pro-  
 20 ceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS, Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, N. J. this twenty-third day of January, 1928.

JOSEPH P. S. FITZPATRICK,  
 Clerk.

30 ALEX. SIMPSON,  
 Attorney of Plaintiff-in-Error.

The answer of Charles M. Egan, Judge of the Court of Oyer and Terminer, 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  
 40 send to the Justices of our Court of Errors and

*Testimony.*

Appeals in the last resort of all causes at Trenton, N. J. at the day and year within contained in a certain schedule to this appeal annexed as within I am commanded.

CHARLES M. EGAN,  
Judge. 10

Attest:

JOHN J. MCGOVERN,  
(Seal) County Clerk.

Filed Clerk's Office Jaunary 24, 1929,  
Hudson County, N. J.

**Testimony.**

20

HUDSON COUNTY COURT OF OYER AND  
TERMINER.

THE STATE  v.  PETER KUDZINOWSKY, alias ROY LAMBERT, alias ROY ROGERS, Defendant.	}	Indictment 229, September Term, 1928.  Murder.
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30

Before Hon. CHARLES M. EGAN, Judge, and a Jury.  
Jersey City, N. J., January 9, 1929.

## APPEARANCES:

For the State: ALOYSIOUS McMAHON, Esq., Deputy  
Attorney General.  
For the Defendant: ALEXANDER SIMPSON, Esq.,  
WILLIAM L. GRIFFIN, Esq.

40

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

The Court: In the absence of a Supreme Court Justice I will convene and hold a Court of Oyer and Terminer.

10 Mr. McMahon: If your Honor pleases, my attention has been called to the fact that the indictment returned against Peter Kudzinowski has the last name spelt Z-u-d-z-i-n-o-w-s-k-i instead of K-u-d-z-i-n-o-w-s-k-i. I make a motion now to correct the indictment so that the defendant's name will appear as Peter K-u-d-z-i-n-o-w-s-k-i.

The Court: The motion will be granted.

20 Mr. McMahon: If the court pleases, the State now moves the trial of indictment number 229, September Term, 1928, the State against Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, on a charge of murder, and asks that a jury be empanelled.

Mr. Simpson: I suggest that when the jury is being drawn that they be drawn according to numbers.

The Court: Yes, that is a good suggestion; that will be done.

30 The Clerk: Your Honor, I have a Special Panel here of forty-eight names numbered according to the venire in the case of the State of New Jersey versus Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, the prisoner at the bar.

WILLIAM WEIDNER, called as a talesman, was challenged by the Defendant.

ARTHUR NEUGEBAUER, called as a talesman, being satisfactory to the State was challenged by the Defendant.

CHARLES LIBBY, called as a talesman being satisfactory to the Defendant and satisfactory to the State was sworn as Juror number one.

WILLIAM A. MILLER, called as a talesman, the Clerk announced that he was engaged in a trial in the Circuit Court.

10

CHARLES TOWNSEND, called as a talesman, being satisfactory to the State was challenged by the Defendant.

WARD EBERSOLE, called as a talesman, was challenged by the Defendant.

RICHARD TULLY, called as a talesman, was challenged by the State.

ALBIN STENDEL, called as a talesman, was challenged by the Defendant.

20

SIDNEY HEINREICH, called as a talesman, was challenged by the State.

ALEXANDER HEMPEL, called as a talesman, the Clerk announced that he was engaged in a trial in the Circuit Court.

GEORGE SCHMOLZE, called as a talesman, was challenged by the Defendant.

JOHN L. BEATTY, called as a talesman, the Clerk announced he had been excused.

30

JOSEPH A. SOMMERS, called as a talesman, the Clerk announced that he was engaged in a trial in the Circuit Court.

JAMES H. CARGILL, called as a talesman, being satisfactory to the State and satisfactory to the Defendant was sworn as Juror number two.

ALVIN H. WALLEN, called as a talesman, the Clerk announced that he was engaged in a trial in the Supreme Court.

40

CHARLES BLADE, called as a talesman, the clerk announced that he was engaged in a trial in the Supreme Court.

CHARLES PLUMP, called as a talesman, was challenged by the Defendant.

10 ABRAHAM AGMAN, called as a talesman, was challenged by the State.

PHILLIP LEBLEIN, called as a talesman, was challenged by the Defendant.

EDWARD VAN WYCK, called as a talesman, being satisfactory to the State was challenged by the Defendant.

20 WILLIAM N. MELKLE, called as a talesman, the Clerk announced that he was engaged in a trial in the Circuit Court.

WILLIAM MAWSON, called as a talesman, was challenged by the Defendant.

JAMES L. WEBSTER, called as a talesman, being satisfactory to the State and satisfactory to the Defendant was sworn as Juror number three.

FRANK B. DILTS, called as a talesman, was challenged by the Defendant.

30 GEORGE WILBECK, called as a talesman, the Clerk announced that he was engaged in a trial in the Supreme Court.

EDWARD COOMBS, called as a talesman, was challenged by the State.

FELIX WAGNER, JR., called as a talesman, was challenged by the Defendant.

40 FREDERICK FREESE, called as a talesman, being satisfactory to the State was challenged by the Defendant.

ADOLPH KLARMAN, called as a talesman, was challenged by the Defendant.

CHARLES DINGWALL, called as a talesman, was challenged by the State.

MILTON VAN TINE, called as a talesman, being satisfactory to the Defendant and satisfactory to the State was sworn as juror number four. 10

HARVEY F. FINCH, called as a talesman, being satisfactory to the State and satisfactory to the Defendant was sworn as juror number five.

GEORGE W. KREHER, called as a talesman, the Clerk announced that he was engaged in the trial of the case in the Circuit Court.

OSCAR WYVILLE, called as a talesman, the Clerk announced that he was engaged in a trial in the Supreme Court. 20

CHARLES CALVIN, called as a talesman, was challenged by the Defendant.

CHARLES W. OTTERSON, called as a talesman, being satisfactory to the State and satisfactory to the Defendant was sworn as juror number six.

HENRY LONGSTOFF, called as a talesman, was challenged by the Defendant.

JOHN B. FICKER, called as a talesman, the Clerk announced that he had been excused. 30

HOWARD KIMBALL, called as a talesman, the Clerk announced that he was engaged in a trial in the Circuit Court.

ALBERT WRIGHT, called as a talesman, the Clerk announced that he was engaged in a trial in the Supreme Court.

FREDERICK A. ROLFE, called as a talesman, being satisfactory to the State was challenged by the Defendant. 40

*Testimony.*

FREDERICK HEISE, called as a talesman, was challenged by the Defendant.

PERCY T. KRAFT, called as a talesman, being satisfactory to the State was challenged by the Defendant.

- 10 SAMUEL H. PEINE, called as a talesman, being satisfactory to the Defendant was challenged by the State.

EDWARD CARLTON, called as a talesman, the Clerk announced that he was engaged in a trial in the Supreme Court.

JOSEPH A. FUNK, called as a talesman, the Clerk announced that he was engaged in trial in the Circuit Court.

- 20 WILLIAM CROOKS, called as a talesman, being satisfactory to the State was challenged by the Defendant.

Mr. McMahon: If your Honor please, may I inquire how many peremptory challenges the Defendant has had?

The Court: The defendant has had twenty peremptory challenges and the state six.

ERNEST DAHMS, called as a talesman.

- 30 The Clerk: Has the Defendant any challenge for cause?

Mr. Simpson: No.

The talesman being satisfactory to the State was sworn as juror number seven.

The Clerk: Your Honor, that has exhausted the Special Panel. The balance of the jurors are upstairs.

The Court: Suppose you call them.

- 40 The Clerk: Your Honor, I have the balance of the panel that are available.

The Court: Very well, proceed.

PAUL NIGRE, called as a talesman, was challenged by the State.

ALFRED A. GEIBEL, called as a talesman.

The Clerk: Has the Defendant any challenge for cause?

Mr. Simpson: No.

10

The talesman being satisfactory to the State was sworn as juror number eight.

JOHN E. WILLIAMS, called as a talesman, was challenged by the State.

THOMAS SNOWDEN, called as a talesman.

The Clerk: Has the defendant any challenge for cause?

Mr. Simpson: No.

20

The talesman being satisfactory to the State was sworn as juror number nine.

PHILLIP LEBLEIN, called as a talesman, the Clerk announced, "He does not appear."

FREDERICK FRUSE, called as a talesman, the Clerk announced that he had already been called.

CHARLES CALVIN, called as a talesman, the Clerk announced that he had already been called.

WALTER E. SIMONS, called as a talesman, being satisfactory to the State and there being no challenge by the Defendant for cause, was sworn as juror number ten.

30

CARL KDUFFEL, called as a talesman.

The Clerk: Has the defendant any challenge for cause?

Mr. Simpson: No.

The talesman being satisfactory to the State was sworn as juror number eleven.

40

FREDERICK HEISE, called as a talesman, the Clerk announced, "He does not appear."

HENRY ARCE, called as a talesman, was satisfactory to the State.

10 The Clerk: Has the defendant any challenges for cause?

Mr. Simpson: No.

The talesman was sworn as juror number twelve. (The jury was thereupon sworn).

Mr. McMahon: May it please the Court and gentlemen of the jury:

20 As you have perhaps learned by this time, you have been empanelled to try Peter Kudzinowski, a young man formerly living in Scranto, Pennsylvania, on the charge of murder. We are going to contend with you throughout the trial of this case and after the evidence is closed we are going to ask you to convict this man of murder in the first degree without any recommendation of any kind. The facts which we will unfold to you in support of the charge that is made against him for murder are these:

30 On November 17th, last, Kudzinowski was in the City of New York. About half past five o'clock of that evening he was walking along First Avenue in the City of New York and a little boy about six years of age, known as Joe Storelli, was on the street. This defendant lured this boy to him, bought him a box of candy, and walked a little ways with him and took him to a moving picture theater. The theater was on Third Avenue between 13th and 14th Streets. He took him in to see the show and stayed there about forty-five minutes. This little boy was dressed with a brown overcoat, khaki pants, and after coming out of the  
40 show, spending about forty-five minutes, he walked

over 14th Street to the Hudson Tube, bringing the boy with him. They came over by way of the Tube to Journal Square, Jersey City, and got off the train at Journal Square, he and the boy. When they got up to that place where the elevator goes up to the street the little boy protested against going on the elevator and didn't want to go up. He protested so loud that he attracted the attention of someone who was there, but instead of taking him up in the elevator over his protest he walked up the stairway, and took the boy out onto the Boulevard and walked with the boy up to Newark Avenue, where he crossed the street. The little boy was then with him and he encountered a traffic officer who told him he should not cross the street against the traffic signal with a little baby with him. He said he was very careless and called him down for doing that. He proceeded along and went up the Boulevard to a block this side of Manhattan Avenue. At Manhattan Avenue there is a policeman stationed who directs traffic on the Boulevard, and there is a signal light. He didn't go up to Manhattan Avenue but went a block this side of it, or two blocks, and then went over and reached the County Road that leads out through Secaucus and out to the County Institutions at Snake Hill. There is a bridge crossing the road a little ways as you go on this County Road, and he walked with this boy about 250 feet west of the bridge. If any of you men recall this place—but we will describe it however to you. It is a lonely road. There are no houses on it at all on either side of the road. It is on meadow land, grown up rank with tall wild vegetation. About 250 feet west of this railroad bridge, the Lackawanna bridge that crosses the road at that point, and 400 feet in from the road he took this boy. There is

nobody that walks up or down that road. The only thing that passes on that road is automobiles. And this was, as nearly as we can make out, about nine o'clock in the evening. When he got this boy into this spot in this meadow he said, "Take off your overcoat," and the boy refused to do it and he  
10 tore it off his back. He then either unbuttoned his khaki trousers or tore them off and tore off his union suit, and then threw the boy face down on the ground. He tried to put his penis in his rectum and got it in a little ways, in the boy's rectum. The boy commenced to holler, "Mama! Mama!" This man was fearful that this boy's hollering would attract the attention of passing automobiles, so he punched him about the body and for a minute he stopped, or for a second or two he stopped, and  
20 the boy again started to holler, when the man on top of him, with his penis in him, put his hand in his pocket, took out a pocket knife, opened it and slashed the boy's throat three or four times. The boy died instantly. He then completed his act of copulation per rectum with this boy and he satisfied himself. He had an ejaculation.

He then took the boy's overcoat and put it over the boy, climbed onto the railroad trestle and went over to the railroad yards where there was a pump  
30 and he washed his penis and he spoke to a friend of his who was in the railroad camp there. He then caught a freight train to Scranton, and went to his mother's house and spent a little time with his mother, got some clothes and some money and caught another freight to Buffalo, New York, and when he got to Buffalo, New York, he took a bus to the City of Detroit, where he changed his name from Peter Kudzinowski to, I think, Roy Lambert, and got employment as a dishwasher in a restaurant in Detroit, and later in the Gratiot Hotel. A  
40

few days later he got drunk and he had been drinking for a couple of days in Detroit and he was arrested, and was what was known in that city as a "Golden Rule Drunk," that is, a man picked up by a policeman who is drunk and taken to the stationhouse by the policeman and to sober up and not brought to court at all. When he was arrested he said, "If you knew what I was wanted for you wouldn't let me go." and a day or two later he made a confession of this whole thing. 10

If we prove these things to your satisfaction, as as I said at the outset, we are going to ask you gentlemen to bring in a verdict of murder against this man, murder in the first degree without recommendation.

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WILLIAM R. HARRISON, sworn for the State. 20

Direct Examination by Mr. McMahon:

Q. Mr. Harrison, where do you live? A. Gautier Avenue, Jersey City.

Q. What number, A. 71.

Q. What is your business? A. Photographer.

Q. How long have you been a photographer? A. Forty-five years.

Q. Have you ever made photographs for the Prosecutor's Office in homicide cases? A. Yes, sir. 30

Q. For how long a period? A. About thirty-five years.

Q. In good many cases? A. Yes, sir.

Q. In making photographs for the Prosecutor's Office do you focus the camera yourself? A. Yes, sir.

Q. Do you develop the plates? A. Yes, sir.

Q. And print the pictures? A. Yes, sir.

Q. And develop them? A. Yes, sir. 40

Q. I show you a photograph and ask you if you took that photograph in the manner you have testified for? A. Yes, sir.

Q. What is it a picture of?

10 Mr. Simpson: I object to that. The picture speaks for itself.

The Court: Yes, I think so.

Mr. McMahon: I don't think so. The picture is a picture of a man standing in a field. I think I have a right to have him describe it and how he took it.

The Court: I will permit it.

Mr. Simpson: I ask for an exception.

The Court: You may have an exception.

20 (Exception allowed, signed and sealed accordingly.)

Judge.)

A. This photograph was taken about two hundred feet north of the County Road and about two hundred and fifty feet west of the Susquehanna Railroad.

Q. In Jersey City? A. Yes, sir.

Q. And it shows a view at that point? A. It shows a view of that point.

30 Q. Who is the man in the picture? A. Captain Hogue, of the Sixth Precinct.

Mr. McMahon: I offer this photograph in evidence.

Mr. Simpson: I object to it because it doesn't appear when the picture was taken.

Mr. McMahon: This picture was taken on the 7th day of December, 1928.

Mr. Simpson: 7th day of December?

40 Mr. McMahon: Yes.

Mr. Simpson: I object again on the ground that there is no proof that the condition on the 7th of December was the same as the condition on the date of the indictment or on the 17th day of November.

Mr. McMahon: I offer it for identification. 10

The Court: It will be marked for identification.

(Marked Exhibit S-1 for identification of this date).

Q. I show you another photograph. Did you take that picture? A. Yes, sir.

Q. What is that a picture of? A. That is a picture that was taken out in the Delaware-Lackawanna Railroad Camp. 20

Q. Where? A. In the neighborhood of—not far from Snake Hill.

Q. On what day? A. I took that on the 12th day of December, 1928.

Mr. McMahon: I offer this for identification.

The Court: It will be marked for identification.

(Marked Exhibit S-2 for identification of this date.) 30

Q. I show you another photograph. Did you take that picture in the manner described by you? A. Yes.

Q. What is that a photograph of? A. That is a photograph of the County Road near the bridge where the creek ran through.

Q. Does that show the Lackawanna bridge? A. Yes, sir.

The Court: What railroad bridge? 40

Mr McMahon: Lackawanna.

The Witness: That is where there was a creek there.

10 Q. Looking at the Lackawanna Railroad bridge, or looking in what direction? A. I was shooting west from Jersey City towards Secaucus.

Mr. McMahon: I offer this photograph for identification.

The Court: Let it be marked for identification.

(Marked Exhibit S-3 for identification of this date.)

Q. I show you another photograph. Was that taken by you in the same manner? A. Yes.

20 Q. What is that a photograph of? That picture taken in what they called the Delaware and Lackawanna Railroad camp, made to show that pump.

Q. That pump that is in the center of the picture? A. Yes, sir.

Mr. McMahon: I offer this for identification.

The Court: Let it be marked.

30 (Marked Exhibit S-4 for identification of this date).

Q. I show you another photograph, was that taken by you? A. Yes.

Q. What is that a photograph of? A. This is a picture taken in the Delaware camp to show those two cars with the particular numbers that are on there and a dog.

Q. A dog that is standing in the vestibule of the train? A. Yes.

40 Mr. MacMahon: I offer this picture for identification.

The Court: Let it be marked.

(Marked Exhibit S-5 for identification of this date.)

Q. I show you another picture. Did you take that picture? A. I did.

Q. What does that show? A. That is a scene taken on the County Road about five hundred feet from the Susquehanna Railroad looking west. 10

Q. Five hundred feet in which direction? A. Five hundred feet west from the Susquehanna Railroad, away from Jersey City.

Q. Looking west? A. Yes, sir.

Mr. McMahon: I offer this photograph for identification.

The Court: Let it be marked.

(Photograph marked S-6 for identification of this date.) 20

Q. I show you another photograph. Did you take that picture? A. Yes.

Q. What is that a photograph of? A. That is a photograph taken about 200 feet from the Susquehanna Railroad showing the entrance from where the first picture that you showed me was taken.

The Court: What direction from the Susquehanna Railroad is that? 30

The Witness: That is west of the railroad looking north.

Q. About 250 feet north of— A. North of the Susquehanna Railroad.

Mr. McMahon: I offer this picture for identification.

The Court: Let it be marked.

40

(Marked Exhibit S-7 for identification of this date.)

Q. I show you another photograph. Did you take that picture? A. Yes.

10 Q. What is that a photograph of? A. That is a photograph taken by me on the County Road.

Q. What does that show? A. Looking south on the County Road about three hundred feet from the bridge.

Q. That is toward Jersey City? A. Yes, sir.

Mr. MacMahon: I offer this photograph for identification.

The Court: Let it be marked.

20 (Marked Exhibit S-8 for identification of this date.)

Q. I show you another photograph. Did you take this picture? A. Yes.

Q. What is this a photograph of? A. This view is looking east from Jersey City.

Q. And shows— A. The Susquehanna bridge.

Q. Across the County Road? A. Yes.

Mr. McMahan: I offer this photograph for identification.

30 The Court: Let it be marked.

(Marked Exhibit S-9 for identification of this date.)

Q. I show you another photograph. Did you take that picture? A. Yes.

Q. What is that a photograph of? A. That is a view looking west from the County Road.

40 Q. That is a view looking in the opposite direction from the picture that has been marked S-9 for identification? A. Yes, sir.

*William R. Harrison—Direct Examination.*

Mr. McMahon: I offer that for identification.

The Court: Let it be marked.

(Marked Exhibit S-10 for identification of this date.)

Q. Did you take this picture that I now hand you? A. Yes, sir. 10

Q. What does that show you? A. That is a view looking south about 300 feet north of the County Road.

Q. Looking south? A. Yes, that is looking south.

Q. From the County Road? A. No, looking towards the County Road.

Q. Where was the picture taken? A. Looking south about 300 feet. 20

Mr. McMahon: I offer this photograph for identification.

The Court: Let it be marked.

(Marked S-11 for identification of this date.)

Q. I show you another photograph. Did you take that? A. I did.

Q. What does that show? A. This is a view between the railroad bridge and the creek looking south. 30

Q. On the meadows? A. Yes.

Mr. McMahon: I offer this for identification.

The Court: Let it be marked.

(Marked Exhibit S-12 for identification of this date.)

Q. I show you another picture, did you take that? A. I did. 40

Q. Where did you take that? A. Blacker's Morgue.

Q. When? A. Sixth day of December.

Q. 1928? A. Yes, sir.

10 Mr. McMahon: I offer that for identification.

The Court: Let it be marked.

Q. Do you know what it was a picture of? A. It was a picture of a small boy's rectum.

(Marked Exhibit S-13 for identification of this date.)

20 Q. The boy was in the morgue at that time? A. Yes, sir.

Mr. Simpson: Whose morgue was it?

The Witness: Blacker's, on Jackson Avenue.

Q. I show you another photograph. Did you take that picture? A. Yes, sir.

Q. When did you take that? A. On the 6th day of December, 1928, at Blacker's Morgue.

30 Q. Is that the same boy who is described in S-13 for identification? A. Yes, sir.

Mr. MacMahon: I offer this for identification.

The Court: Let it be marked.

(Marked S-14 for identification of this date.)

Q. I show you another picture. Did you take that picture? A. Yes, sir.

40 Q. Where? A. Blacker's Morgue, on December 6th.

Q. Does that show the same boy? A. Yes.

Mr. McMahon: I offer that for identification.

The Court: Let it be marked.

(Marked Exhibit S-15 for identification of this date.)

10

Cross Examination by Mr. Simpson:

Q. That photograph at the morgue you say was taken on the 6th day of December? A. Yes, sir.

Q. 1928? A. Yes, sir.

Q. That was the first time you had seen this body? A. Yes, sir.

Q. What time of day was it? A. It was about 3:30 in the afternoon.

Q. Was it a dark day or a light day, bright day? A. Why, I really don't remember.

20

Q. Did you take the photograph by artificial light or how did you take it? A. I used the lights that were there, that is, the electric light.

Q. At whose request did you take this photograph? A. The Prosecutor's Office, Mr. Charlock and County Physician Hasking.

Q. Anybody with you when you took these photographs? A. Dr. Hasking, Mr. Charlock.

Q. Those were the only people with you? A. Yes, sir.

30

Q. Was Dr. Hasking with you when you took these photographs as you described as being out on the Lackawanna bridge? A. No, he wasn't there on the bridge.

Q. Who was with you then? A. Inspector Underwood, Captain Walsh and Captain Hogue.

Q. Did they point out to you the places to be photographed? A. Yes, sir.

Mr. Simpson: That is all.

40

(Witness excused.)

FRANK J. O'LERI, sworn as a witness for the State.

Direct Examination by Mr. McMahon:

10 Q. Mr. O'Leiri, where do you live? A. 14 Monitor Place, West New York.

Q. What is your business? A. Civil Engineer and Surveyor.

Q. Did you make, at the request of the Prosecutor, a survey of the road leading from Journal Square to Manhattan Avenue and continuing down a block or two to Tonnele Avenue and across Tonnele Avenue to the County Road and out the County Road to a point beyond the Lackawanna bridge? A. Yes, sir.

20 Q. I show you a drawing. Is this the survey you made? A. Yes, sir, that is the one.

Q. Is that map drawn to a scale? A. Yes, sir.

Q. What is the scale? A. The scale varies. The original scale was drawn one inch equals two hundred feet, and then I have details drawn at various scales. One detail is one-eighth of an inch equals one foot and another detail is one inch equals thirty feet and still another detail one inch equals thirty feet.

30 Q. Does that map accurately delineate all the measurements and the physical conditions of that road that I have just described to you? A. Yes, sir, it does.

Mr. McMahon: I offer it in evidence.

Mr. Simpson: When was it made?

The Witness: This was made in the middle part of December, over a period of a few days.

40 Mr. Simpson: Are you familiar with that territory?

The Witness: Yes, sir.

Mr. Simpson: You know there was no change in it between the 17th day of November and the day you made the survey?

The Witness: Oh, yes, there has been a change.

Mr. Simpson: Between the 17th of November and the time you made the map? 10

The Witness: Yes, sir.

Mr. Simpson: Then I object to it.

Mr. McMahon: What change was it?

A. The change was made in the Tube Station. The change has been progressing since some time before the 17th of November.

Mr. Simpson: Yes, but as far as the road itself is concerned the road has not been changed? 20

The Witness: No, the road has not been changed.

Mr. Simpson: Then I have no objection.

The Court: It will be received in evidence.

(Admitted Exhibit S-16 in evidence of this date.)

Q. Mr. O'Leri, can you see this map there? Commencing at this point of the map, which is marked A in side of the scale, the Tube Station, what part of Jersey City is that? A. That is at Journal Square, now Veterans Square. 30

Q. And this road shown here, what is that road?

A. That is the Hudson County Boulevard.

Q. Does it show each street intersection? A. Yes, sir, and the names of each street as you pass it.

Q. And to what street? A. The map is drawn showing up to Manhattan Avenue. 40

Q. How many streets are shown from the Boulevard? A. There is one street between Tonnele Avenue and the Boulevard. You hit into Tonnele Avenue two blocks west of the Boulevard.

Q. Does it continue to show Tonnele Avenue? A. Yes, to the County Road.

10 Q. It shows the County Road how far out? A. Out to the railroad yards on the other side of the intersection of that forking of the road there, one going back into Secaucus proper and the other to the State Institutions.

Q. Is that Lackawanna Railroad bridge delineated by these lines here? A. Yes, that is the crossing. Yes, that is the bridge there.

20 Q. Now, you have a scale with the letter B at the intersection of Tonnele Avenue and the new County Road. Have you enlarged that detail on this map? A. Yes, it is directly above it there.

Q. This detail marked "B" is an enlargement of the thing described in the scale? A. Yes, sir.

30 Q. How far is it by actual measurement from the Tube Station to the Boulevard and down the Boulevard to Manhattan Avenue and then to Tonnele Avenue and out the County Road to this point about 300 feet beyond the Lackawanna bridge? A. It is approximately one and one-half miles.

Q. Detail A, what does that show? A. That is the interior of the Tube Station. It shows the two elevators. It shows the escalator, the direction which the escalator takes; it shows the two stairways leading to the street level.

Q. These things marked "elevators" are the two elevators? A. Yes, sir.

40 Q. These lines marked "up" are the stairs? A. Those are the two stairs leading up.

Q. And the passage marked "escalator"— A. Is the direction to the escalator.

Q. These stairs marked "down", what are they?

A. Those are a few steps that lead to the level of the elevator platform.

Q. And the ones on the other side marked "up"?

A. To the same level, one is used for an exit from the elevator and the other one is transient. 10

Mr. Simpson: Do you mean elevator or escalator?

The Witness: The escalator.

Q. This detail marked "C." What does that show? A. That is a detail of the railroad yard. It shows the cars used for bunking and eating by the men that worked in the yards. It shows the path that leads into the section. 20

Q. Is that mark a cinder path from the new County Road? A. Yes, sir, that is a path that leads from the new County Road into that section. It also shows two pumps, pump number one and pump number two, as well as a toilet on the extreme end of the plan.

Q. The toilet is on the extreme top part of the plan? A. Yes.

Q. Do you know what was the condition of these elevators in the Tube Station on November 17th? 30

A. Just exactly as depicted there. I got that from a friend in the Engineer's Office. The Engineer—they are doing work there, have a progressive plan, and as the work progresses they keep marking off the gradual progress and also the exact condition practically day to day and the plan would show the actual condition on that date as depicted there.

Q. On detail A? A. Yes, sir.

Q. Do you know whether there is a traffic signal 40

or not at the intersection of Newark Avenue and the Boulevard? There is, yes, sir, on the north side of the Boulevard about the center of the Boulevard—on the north side of Newark Avenue rather.

Q. Is there a traffic signal at Manhattan Avenue?

A. There is, yes, sir.

10 Q. And do you know whether those places are attended by a policemen? A. Every time I have passed there there has always been a policeman there.

Mr. McMahon: That is all.

Mr. Simpson: I don't think we will make any point of that. I suppose everybody knows that the traffic is heavy, and we are willing to admit that on the day of the alleged crime there was a traffic policeman there, if it is worth anything.

20

(Witness excused.)

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COSMO STORELLI, sworn for the State.

Direct Examination by Mr. McMahon:

30 Q. Mr. Storelli, where do you live? A. 165 First Avenue, New York City.

Q. I show you a picture—

Mr. Simpson: If the court please, I object to the use of the picture until it is in evidence.

The Court: I will allow it for the purpose of identification. He can have any witness identify a picture just the same as the man who took it.

40

Mr. Simpson: I ask for an exception.

The Court: You will have an exception.  
(Exception allowed, signed and sealed accordingly.)

Judge.)

Q. I show you Exhibit S-14 for identification and ask if you can tell me whose picture that is? A. That is brother's, that is a picture of my brother Joseph Storelli. 10

Mr. McMahon: I offer it in evidence.

Mr. Simpson: I object to it on the ground that the picture evidently is a picture taken at the Morgue and there is no proof whatever that the body was in the same condition as it was on the 17th of November, the date of the alleged crime.

Mr. McMahon: At what time on the day of November 17th do you complain it isn't in the same condition? 20

Mr. Simpson: I say there is no proof that the object photographed was in the same condition as it was on the day the crime was committed and therefore it isn't proper to allow it in evidence.

The Court: I will allow it. You may have an exception.

Mr. Simpson: I ask for an exception. 30

(Exception allowed, signed and sealed accordingly.)

Judge.)

(Exhibit S-14 for identification received in evidence and marked S-14 in evidence.)

Q. I show you Exhibit S-15 and ask you whose photograph that is? A. That is a picture of my brother too.

Q. The same boy? A. Yes. 40

Mr. McMahon: I offer that in evidence.

Mr. Simpson: Same objection.

The Court: I will allow it. You may have an exception.

Mr. Simpson: Exception.

10 (Exception allowed, signed and sealed accordingly.)

Judge.)

(Exhibit S-15 for identification received in evidence and marked Exhibit S-15.)

Q. How old was your brother? A. A little over seven.

Q. After the 17th of November when did you first see your brother? A. After the 17th of November?

20 Q. Yes. A. I didn't see him no more until I seen him murdered, in the picture there.

Q. Where did you see him? A. I see him in a undertaker's.

Q. Where, in what city? A. Jersey City.

Q. Do you know what street it was? A. I think it was Atlantic Avenue.

Q. Do you know the name of the Undertaker's place? A. They told me the name was Blacker's.

30 Q. Was your brother dead or alive then? A. He was dead.

Q. Did you see your brother on the 17th of November? A. No, sir.

Q. When did you see him last alive? A. Last year. You see I am a soldier in the United States Army and stationed in Vermont.

Q. You don't live at home? A. No, sir.

Mr. McMahon: That is all.

Mr. Simpson: No questions.

40

(Witness excused.)

ROSE CALIANDRO, sworn for the State.

Direct Examination by Mr. McMahon:

Q. Mrs. Caliandro, where do you live? A. 1601 Ade Avenue.

Q. Is that in the Bronx? A. Yes, sir. 10

The Court: What avenue is that?

The Witness: Ade.

Q. Are you a sister of Joseph Storelli? A. Yes, sir.

Q. Did you see your brother on the 17th of November, last? A. I seen him on the 18th when he came home.

Q. On the 18th? A. You mean to see my brother.

Q. Yes. A. I seen him a week before. 20

Q. When did you next see your brother? A. I seen him on Sunday.

Q. Where? A. Over at my house.

Q. What Sunday was that? What date? A. I don't know, before the 17th.

Q. Before the 17th? A. Yes.

Q. He was alive at that time? A. Yes, sir.

Q. After the 17th where did you next see him? A. I see him when he was dead.

Q. Where? A. I don't know, over at Blacker's Morgue, they call it. 30

Q. Blacker's Morgue? A. I don't know the name.

Q. Do you know what day your brother Joseph disappeared? A. He disappeared on the 17th.

Mr. Simpson: I object to that unless she has personal knowledge of it. She says she saw him on the Sunday before the 17th, so how can she testify when he disappeared? She was not living at the house. She knew 40

nothing about it. It must be purely hearsay.

Mr. McMahon: The question is, "Do you know?"

The Court: Do you know?

The Witness: Yes, sir.

10 Q. Do you know when he disappeared? A. Yes, sir, my mother called me up.

The Court: She says yes, and then proceeds to tell us how she got the information.

Q. Did you go to your mother's house on November 17th? A. I went on the 18th, on Sunday. My mother called me up and I went over to the house.

20 Mr. Simpson: I object to any conversation.

Mr. McMahon: She is not giving any conversation. She said her mother called her up.

Mr. Simpson: She said she called her up over the telephone. There must positively have been a conversation and I object to it or any result of it.

The Court: I will allow that as far as it goes. You may have an exception.

30 Mr. Simpson: I ask an exception.

(Exception allowed, signed and sealed accordingly.

.....  
Judge.)

Q. Did you go to your mother's house on the 18th? A. Yes, sir.

Q. Was Joseph around? A. No.

40 Q. And from the 18th on did you see him before you saw him in Blacker's Morgue in Jersey City?  
A. Yes, sir.

*Rose Caliandro—Cross Examination.*

- Q. You did see him? A. When he was dead, yes.
- Q. From the 18th did you see him? A. What do you mean, from the 18th.
- Q. Did you see him on the 18th? A. No.
- Q. Did you see him on the 19th? A. No.
- Q. Did you see him any day before you saw him in Blacker's Morgue? A. No. 10
- Q. How long did you stay at your mother's house? A. I stayed from the 18th up until now.
- Q. Up until now? A. Yes, sir.
- Q. What time on the 18th did you go there? A. About eleven o'clock.
- Q. In the morning or evening? A. In the morning.

Mr. McMahon: Cross examine.

Cross Examination by Mr. Simpson: 20

- Q. Where did your mother live on the 18th of November, 1928? A. Where did she live? 165 First Avenue.
- Q. 165 what? A. First Avenue.
- Q. That is where your mother lived? A. Yes.
- Q. You got there at eleven o'clock on the 18th? A. Yes, sir.
- Q. Who did you see when you got there? A. My mother. 30
- Q. Only your mother? A. That is all.
- Q. And you stayed there you say ever since? A. Up until today.
- Q. Up until now? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

INSPECTOR JOHN J. UNDERWOOD, sworn.

Direct Examination by Mr. McMahon:

Q. Inspector, you are an Inspector of the Jersey City Police? A. I am.

10 Q. In charge of the Detective Bureau? A. Yes, sir.

Q. And you were the Inspector of Police also last year? A. Yes, sir.

Q. And still are? A. Yes, sir.

Q. On the 5th day of December, 1928, did you receive any communication about the murder of a boy ten years old in the meadows near the Susquehanna bridge in Jersey City? A. Yes, I did.

20 Q. From whom? A. Edward H. Fox, the Chief of Detectives of Detroit, Michigan.

Q. How did that information come to you? A. By telegram.

Q. I show you a telegram and ask you if that is the telegram you received? A. It is.

Mr. McMahon: I offer it in evidence.

Mr. Simpson: Objected to.

The Court: I will allow it and allow you an exception.

30 Mr. Simpson: I object to it in the present form of proof.

Mr. Griffin: (Looking at telegram.) We object to it on the ground it is incompetent, not proper proof and irrelevant.

Mr. McMahon: I do not press it.

40 Q. As a result of this telegram that you got what did you do? A. I communicated with the Police Department of the City of New York and informed Lieutenant Kerr of that Department, who had been referred to me by the Missing Persons Bureau that

they had a boy missing from 165 First Avenue, New York City, and the description of the boy at that time compared favorably with the description of the Detroit case. I communicated with Captain Kelly, of the Night Squad, and notified him at day-break the following morning, which would be December 6th, to take a searching squad to the meadow in the neighborhood of the County Road and the Lackawanna Railroad Bridge to start a search to see if this body could be located, which was specified in the telegram of December 5th. I also instructed Captain Hogue to report at the meadow the following morning with a detail of men and take up the search, and communicated with Chief Doyle of Secaucus to take up the search, as I was under the impression that the body might be found in the territory of Secaucus. The following morning at 7:40 A. M., during the search Captain Hogue came upon the body probably two hundred feet west and two hundred or two hundred and fifty feet north of the County road.

Q. Just before you get to that point. Did you send a message to Detroit for a better description of that boy than that contained in your first telegram? A. Yes, sir.

Mr. Simpson: I object to that on the ground the message itself would be the best evidence. You can't prove by him what was contained in a message that was sent.

The Court: Are you pressing that?

Mr. McMahon: I will reframe the question.

Q. Did you send this telegram to Edward H. Fox, Chief of Detectives, on December 5th, 1928? (Handing paper to witness). A. Yes, sir, I did, at 8:20 p. m., December 5th.

Insp. John J. Underwood—Direct Examination.

Mr. McMahon: I offer this copy of the telegram in evidence.

Mr. Simpson: Objected to on the ground it is not properly proven.

The Court: I will allow it and give you an exception.

10

Mr. Simpson: Exception.

(Exception allowed, signed and sealed accordingly.)

.....,  
Judge.)

(Admitted and marked S-17 in evidence of this date.)

Mr. McMahon: Exhibit S-17 reads as follows:

20

"Police Hdqts., Dec. 5, 1928.

Sent 8:20 P. M.

Edward H. Fox, Chief of Detectives, Detroit, Mich.

30

New York City police reports a boy missing since Nov. 17th. Description as follows: Joseph Storelli—residence 165 First Ave., Italian—age 7—3 feet 6 inches—50 pounds—dark brown eyes—brown hair—double-breasted brown overcoat—three buttons on each side—white shirt—brown overalls—black lace shoes—brown stockings—blue and white cap—compare this description with description of boy given by Zudzinowski. Advise.

JOHN J. UNDERWOOD,  
Inspector of Detectives."

40 Q. Did you get an answer to that telegram? A. Yes, sir, I did, the following morning at 7:40 a. m.

Insp. John J. Underwood—Direct Examination.

Q. Is this the original telegram that you got in answer to that one that was just sent by you?

A. Yes, sir, it is.

Mr. McMahon: I offer this telegram in evidence.

Mr. Simpson: Objected to on the ground 10  
it is incompetent and not properly proven.

The Court: I will allow it and give you an exception.

Mr. Simpson: I ask for an exception.

(Exception allowed, signed and sealed accordingly.)

.....,  
Judge.)

Admitted and marked Exhibit S-18 in 20  
evidence of this date.)

Mr. McMahon: Exhibit S-18 reads as follows:

Dec. 6, 1928. 4:06 a. m.

John J. Underwood, Inspector of Detectives,  
Jersey City, N. J.

Peter Kudzinowski alias Roy Lambert, worked Lackawanna Railroad, address, box 30  
sixty-three, Hoboken. Description of boy same. Lambert states boy's name Joe. Can find body two hundred feet west Susquehanna Bridge and one hundred fifty to four hundred feet north of Secaucus Road—letter follows.

EDWARD H. FOX,  
Chief of Detectives."

Q. Where did you actually find this body?

Mr. Simpson: I object unless the Inspector was there when it was found. 40

Insp. John J. Underwood—Direct Examination.

Q. Were you there when it was found? A. No, sir.

Q. Were you there when Captain Hogue came upon the body? A. No, sir.

Q. You weren't in the meadows at all? A. Five minutes later.

10 Q. Five minutes later did you see the body there? A. Yes, sir.

Q. Was it in the same place it was in when Hogue found it? A. Yes, sir.

Mr. Simpson: I object to that.

The Court: Objection sustained.

20 Q. Where was the body when you came there five minutes later? A. The body was lying in the position about two hundred feet west of the Susquehanna bridge and probably about between two hundred and two hundred and fifty feet north; the body was laying face down. Captain Hogue and a number of police officers were around there at the time. The men from the morgue had just arrived on the scene. The boy was laying face downward with a brown overcoat thrown over his body.

Q. Was the boy fully clothed? A. Yes, sir, he was.

30 Q. Were his clothes drawn up around his buttocks? A. After the overcoat had been lifted from the body his khaki overalls had been pulled down exposing the anus.

Q. Did you look at the anus? A. Yes, sir.

Q. What condition did you find it in? A. Bloody.

40 Mr. Simpson: I object to that, your Honor, unless it is proven that there was no change between November 17th and the date the Inspector was there.

The Court: I think I will allow the question and give you an exception.

Mr. Simpson: I ask for an exception, your Honor.

The Court: You may have it.

(The exception allowed, signed and sealed accordingly. 10

.....,  
Judge.)

Q. What was his condition? A. Blood was running from the anus and the throat. After the body had been moved a little it opened up the wounds again and caused the blood to run. His throat was severely cut on both sides.

Q. Was there any covering at all over the buttocks of this boy when you removed the overcoat? 20  
A. No, sir.

Q. Did you send men out for Kudzinowski to bring him back? A. I did, yes, sir.

Q. You didn't have to have extradition? He waived it? A. He waived extradition.

Mr. McMahon: I would like to interrupt the Inspector's direct examination at this time, reserving the right to recall him.

Mr. Simpson: Why can't you exhaust it now? 30

Mr. McMahon: I want to show a continuity of this thing. If I do it now I jump to another phase of this thing, and I want to develop this thing before the jury as a continuance picture.

Mr. Simpson: If it is supposed to be a Vitagraph all right.

Mr. Simpson: Will you fix that date for me again, the date of finding the body. 40

*Capt. William Hogue—Direct Examination.*

The Witness: At 7:40 a. m. December 6th.

Mr. Simpson: Of course, we will have the right to cross examine later.

Mr. McMahon: I have no objection to that.

10

(Witness excused).

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CAPTAIN WILLIAM HOGUE, sworn for the State.

Direct Examination by Mr. McMahon:

20 Q. Captain, you are connected with the Jersey City Police Department? A. Yes, sir.

Q. And you were in December of last year? A. Yes, sir.

Q. And still are? A. Yes, sir.

Q. Did you make the search for the body of a boy in the meadows north of the Lackawanna bridge off the County Road? A. Yes, sir.

Q. On what day? A. Sixth of December.

Q. Did you find the body? A. Yes, sir.

30 Q. I show you Exhibit S-14. Is that a picture of the body that you found? A. Yes, sir.

Q. I show you Exhibit S-15. Is that another view of that same body? A. Yes, sir.

Q. Where did you find that body? A. About two hundred feet west of the Susquehanna bridge and about between two and three hundred feet north of the County Road.

Q. Were you the first of the searching party that found the body? A. Yes, sir.

40 Q. And when you came to him what condition was he in? A. He was lying face downward and a brown overcoat was thrown over his head.

Q. How were his hands and arms? A. One was outstretched and one was in position like that.

Q. Stretched beyond his head. A. One was out and the other was—

Q. How were his legs? A. Straight, lying parallel with the body.

Q. Were they side by side or spread apart? A. 10  
They were spread apart.

Q. When you removed the coat how was the boy dressed? A. The lower part of his body was exposed, looked like what you would call a union overall suit, I guess, and that flap that covers the lower part of the body was pulled down and the lower body was all exposed.

Q. Did you find anything around the body, that is, anything else besides clothes, or did you find anything in the pockets of the clothes? A. I had 20  
a description of a child that was missing from New York City and I lifted the coat up to see if it in any way suited the description. There were buttons on each side and he corresponded to the description and there was a small box marked "Cherry Drops."

Q. I show you a box and ask you if that is the box that you found in this boy's clothing? A. Yes, sir.

Q. That is the box? A. Yes, sir. 30

Mr McMahon: I offer this in evidence.

Mr. Simpson: We have no objection.

(Box of candy marked "Cherry Drops" received in evidence and marked S-19).

Q. Captain, you can point out on this map the exact place where you found this boy? A. Can I step down, your Honor?

The Court: Yes.

(Witness goes to map, S-16). 40

Q. Here is the bridge. A. The body was north of the County Road and West of the Susquehanna Railroad bridge.

Q. Did you know how the County Road runs there? A. Yes, sir, the County Road runs kind of northwest.

10 Q. It runs almost due north, doesn't it, with relation to the points of the compass Do you know in which direction it runs? A. It seems to me it runs west, northwest.

Q. Here is your Lackawanna bridge. This is the County Road; this is coming from Jersey City, out this way. Now then, as you come under the bridge walking this way was he found on the right or left hand side of the road walking towards Snake Hill? A. On the right hand side.

20 Q. How far in from the road on the right hand side was the body? A. About three hundred feet.

Q. How far away from the embankment of the bridge? A. About two hundred feet

Q. At a point about two hundred and fifty feet north of the Lackawanna bridge? A. Two hundred and fifty feet north of the Susquehanna bridge.

Q. Susquehanna bridge—and how many feet in? A. About three hundred feet in according to my judgment.

30 Q. About three hundred feet in from the County Road? A. Yes.

(Witness resumes the stand.)

Q. Are you familiar with the conditions on the County Road? A. Yes, sir.

Q. Are you familiar with the conditions on the County Road in the month of December, last—were you? A. Yes, sir.

40 Q. Was there any change of any kind on either

*Capt. William Hogue—Direct Examination.*

side of the County Road in the vicinity of the sus-  
quehanna bridge at any time during the month of  
December, 1928? A. No change.

Q. No change in the road? A. No, sir.

Q. Or anything around the road? A. No, sir.

Q. Or in the vicinity of the bridge? A. No, sir.

Q: I show you Exhibit S-9 for identification. 10

Do you know that location? A. Yes, sir.

Q. Was that the same on the 17th of November  
as it was on the day this picture was taken? A.  
Yes, sir.

Mr. MacMahon: I offer the picture in evi-  
dence.

Mr. Simpson: Same objection.

The Court: I will allow it.

Mr. Simpson: Exception.

(Exception allowed, signed and sealed 20  
accordingly.)

(S-9 for identification received in evidence  
and marked Exhibit S-9.)

Q. I show you a picture marked S-1 for identifi-  
cation. What does that show? A. That is a  
picture of myself pointing to the spot where the  
child was found on December 6th.

Q. Was there any change in that site from the 17th  
of November until the day that picture was 30  
taken? A. Except I noticed the cat-tails and fox-  
tails were all trampled on. At this particular time  
it was grown up.

Q. You mean that the wild grass was lying down  
at the time the picture was taken and on the 17th  
of November it was straight? A. Yes, sir.

Q. That is the only difference? A. Yes, sir.

Mr. McMahon: I offer this Exhibit S-1  
for identification in evidence. 40

*Capt. William Hogue—Direct Examination.*

Mr. Simpson: Objected to.

The Court: Objection overruled.

Mr. Simpson: Exception.

(Exception allowed, signed and sealed accordingly.)

10 (Exhibit S-1 for identification received in evidence and marked Exhibit S-1 of this date.)

Q. Do you know what view this S-4 shows? A. I am not familiar with that.

Q. I show you S-5 for identification. Are you familiar with that? A. Yes, sir.

Q. Was there any change in that view from the condition of November to the middle of December, from the condition on November 17th to the middle of December? A. No, sir, just the same.

20

Mr. McMahon: I offer this in evidence.

The Court: It will be allowed.

Mr. Simpson: Exception.

(Exception allowed, signed and sealed accordingly.)

(Exhibit S-5 for identification received in evidence and marked Exhibit S-5 of this date.)

30

Q. I show you Exhibit S-10 for identification?

A. That is the Susquehanna bridge.

Q. Is there any change in that? A. No, sir.

Q. That is exactly the same? A. Yes, sir.

Mr. McMahon: I offer this picture in evidence.

Mr. Simpson: Same objection.

The Court: Objection overruled.

Mr. Simpson: I ask for an exception.

40

The Court: You may have an exception.

*Capt. William Hogue—Direct Examination.*

(Exception allowed, signed and sealed accordingly.)

(Exhibit S-10 for identification marked Exhibit S-10 in evidence of this date.)

Q. Are you familiar with this view, Exhibit S-11 for identification? A. Yes, sir, that is the same location, Susquehanna bridge. 10

Q. Any change in that? A. No, sir.

Q. What does that show? A. That shows about the exact spot where the child's body was lying.

Q. Can you mark there on that picture where the body was? A. About in here.

Q. Mark it with that pencil. Mark an X there.

Mr. McMahon: Now I offer this in evidence. 20

Mr. Simpson: Same objection.

The Court: Same ruling. Exception.

(Exception allowed, signed and sealed accordingly.)

(Exhibit S-11 for identification marked Exhibit S-11 in evidence of this date.)

Q. I show you Exhibit S-8 for identification. A. That is the County Road.

Q. Was there any change in that situation? A. No, sir. 30

Q. Do you know what that picture shows? A. The picture would show about the same locality where the child's body was found.

Mr. McMahon: I offer this picture in evidence.

The Court: It will be allowed; exception granted.

(Exception allowed, signed and sealed accordingly.) 40

(Exhibit S-8 for identification received in evidence and marked Exhibit S-8 of this date.)

Q. Are you familiar with this view, S-12 for identification? A. No, sir.

10 Q. You don't know that? A. No, sir.

Q. Are you familiar with this view shown in this picture, S-B for identification? A. No, sir, I am not.

Q. I show you Exhibit S-15 in evidence. Was that the condition of the boy's clothes as he was found by you? A. The child was laying face downward when I found him. The overcoat was thrown over his shoulders and head.

20 Q. When you removed his overcoat from his body was that the condition of his clothes? A. His overalls was down and his little underwear was down exposing his body.

Q. Did you look at the body of this boy? A. Yes, sir, I did.

Q. What else did you find on any other part of the body? A. After I had found the child and looked at the coat I turned the child over and I noticed a gash probably caused by a sharp instrument on his neck or throat. His throat was cut.

30 Q. How many? A. It looked like two to me.

Q. Did you find any other marks of violence on his body? A. There were several black marks on his body, looked like bruises on the back. They were dark marks. Looked as if it might have been pressure or blows.

Q. Any other marks of violence on him? A. No, sir.

Mr. McMahon: I think that is all.

Cross Examination by Mr. Griffin:

Q. Captain, was the picture shown you marked for identification showing the body of the boy, was that taken at the time the body was found or was it taken at the morgue? A. The body shown in the last exhibit?

10

Q. The one shown to you? A. They were pictures taken at the morgue.

Q. And does that picture show the exact position of the body in which it was at the time you discovered it out in the meadows? A. No, sir.

Q. It does not show the exact position? A. No, sir.

Mr. Griffin: That is all.

(Witness excused.)

20

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FRED W. FRAHM, sworn for the State.

Direct Examination by Mr. McMahon:

Q. Inspector, where do you live? A. Detroit.

Q. What street and number? A. 423 Phillip Avenue, Detroit.

Q. And you are a member of the Detroit Police Department? A. I am, yes. 30

Q. Inspector of policemen? A. I am, yes, sir.

Q. In what department are you employed? A. Homicide Squad.

Q. Do you know this defendant, Kudzinowski? A. Yes, sir, I met him on the 5th day of December last year.

Q. Where? A. In Police Headquarters, Detroit.

Q. Did you have a talk with him? A. I did.

Q. Was that talk reduced to writing? A. No, sir, not the first talk I had with him. 40

Q. Well, was the second talk reduced to writing?  
A. It was, a stenographic statement taken.

Q. Was that the same day? A. The next day, on the 6th.

10 Q. On December the 5th when you had your first talk with him, where was that? A. In my office in room 432 at police headquarters.

Q. At police headquarters? A. Yes, at Detroit.

Q. Who was present? A. Detectives Rickman, Bayer and Doyle.

20 Q. What talk did you have with him? A. Well, the other boys, Doyle and Bayer, had talked with Peter first and then they went to the Chief and reported to my Chief and he at that time told me to send for this boy and talk to him to see if there was any truth in the story, and I at that time sent for him and I asked him whether or not he had anything to tell me about killing the boy in Jersey City and he said he would tell me and I asked him a few questions.

Mr. Simpson: We object unless the circumstances are shown so that your Honor can rule that this was a voluntary statement not induced by threats.

30 The Court: You have a right to examine him on that question.

By Mr. Simpson:

Q. What were the circumstances under which he made this first statement? A. I knew at that time that he had talked to two of the other boys from the First Precinct. Knowing that he had talked to them at that time I just asked him the questions and asked him if he cared to tell me, and he said he did.

40

Q. You didn't hold out any promises to him of any kind or threaten him? A. No.

Direct Examination by Mr. McMahon (Cont'd.):

Q. What did he say to you? A. He said about five or five thirty March 17, 1928, that he met a young boy on First Avenue, east side of New York. 10

The Court: What did you say, Inspector?

The Witness: March 17th.

The Court: March 17th?

A. (Continuing) Pardon me. November 17th. And he had taken him and bought him a box of candy and that he then took him to a show on Third Avenue between Thirteenth and Fourteenth Streets and remained there for about half an hour to three quarters of an hour and then walked over Fourteenth Street to the Hudson Tube and boarded the Hudson Tube and came to Journal Square, Jersey City, where they both got off and he walked over to he thought was the Hudson Boulevard but was not sure and that he walked up the Hudson Boulevard over to a Secaucus Road and there he says he went to the right in the meadows off the Secaucus Road, and then I asked him as to how this boy was dressed, and he told me that this boy had a brown overcoat, khaki pants, khaki overalls, he said, and I asked him what he did with the boy and he said he took his coat off and he says the boy hollered for his mama and he says the boy hollered for his mama and he said he put up a cry and he said he struck him a couple of times and put him to the ground and he says "I held him" and he said he didn't remember whether or not he tore the boy's overalls or whether or not he unbuttoned the flap at the back of the overalls and pulled him down, 20  
30  
40

but he does remember that he tore the boy's underwear, and then proceeded to put his penis into the boy's rectum. The boy again cried for his mama and he struck him again and he was quiet for a little while and he tried to get his penis in further and he said the boy cried and fought so that while  
10 he was laying on the boy he pulled the knife from his pocket and cut the boy, he said, just a little bit and then he continued his job until he got satisfaction, he claims, and after that he walked over to the Secaucus road again and walked about two or three hundred feet and there threw his knife away and walked over into the Lackawanna Railroad yards, leaving the boy about nine o'clock in the evening, and he walked over in the Lackawanna  
20 Railroad yards and he caught a freight train about midnight for Scranton, Pennsylvania. He was in Scranton, Pennsylvania about three hours. I asked him whether he saw any of his people there or anyone that he knew at Scranton and he said no, he just had lunch there and then he said he waited for a freight train for Buffalo. He went to Buffalo. He caught the train, I think it was along about noon or a little later, for Buffalo and got into Buffalo the next morning and he stayed around Buffalo for a while and then caught a bus from Buffalo to  
30 Detroit and he stopped at the McGregor Mission for a couple of nights and then moved from there to the Gratiot Hotel, and he later was arrested as a drunk.

Q. All this was told to you on the 5th? A. Yes, sir, and I talked to him again on the 5th. We received a wire on the 5th asking whether or not the description—they sent us a description of the boy and what clothing the boy was wearing and wanting to know if it was identical, and I told them that  
40 it was, and they also wanted to know if we could

give them a better location as to where the body could be found, and they asked me—they called me at home and I talked with Peter again and I asked him if he could give a better location, and at this time I believe I was alone with him, and he said, “Yes, the body is about two hundred feet west of the Lackawanna Railroad, or the Susquehanna Railroad bridge, and about one hundred and fifty to four hundred feet north of the Secaucus road”; and I immediately answered that wire giving that information. 10

The Court: You say three hundred feet?

The Witness: One hundred and fifty to four hundred feet north of the Secaucus Road.

Q. Did you have any other conversation with him on the 6th of December? A. On the 6th of December? A. On the 6th of December, at that time we had taken a stenographic statement. Mr. Rickman was present and Mr. Reis and the reporter was Leon McAuley. 20

Q. And this was a formal statement that you took on the 6th of December? A. Yes, sir.

Q. You say this was taken by you in the presence of Rickman and Reis? A. Yes, sir.

Q. They are detectives attached to your Bureau? A. Yes, sir. 30

Q. And the stenographer was whom? A. Leon McAuley.

Q. Before you proceeded to take that examination did you say anything to Peter Kudzinowski? A. Yes, sir, I warned him as to his rights, that anything he might say would be used against him and that he need not answer my questions unless he so desired.

Q. Did he answer your questions? A. He did. 40

Q. I show you a paper and ask you if that is the

paper upon which is recorded your questions and his answers? A. It is.

Q. Did he sign each page of this paper? A. I believe he did—yes, sir.

Q. Is that his signature? A. It is.

Q. And that? A. Yes, sir.

10 Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

Q. And that? A. Yes, sir.

20 Q. Did he read this statement? A. He read every page and then signed it.

Q. He signed it as he read it? A. Yes, sir.

Mr. McMahon: I offer this paper in evidence.

Mr. Simpson: I object until we have a right to examine him.

The Court: You may examine him.

By Mr. Simpson:

30

Q. When he made this statement was he reluctant or was he very voluble? Did he seem to want to talk about it or was it procured by asking questions? A. It was procured by asking questions.

Q. Was he reluctant or did he seem willing to answer any questions? A. He answered all questions freely.

40 Q. Did he show any remorse of any kind or any indication that he realized what an atrocious thing he was telling?

Mr. McMahon: I object to that. This man can't testify to that. We don't want to go into the state of his mind. How can this man tell the state of the defendant's mind when he was telling this story? I think it is immaterial.

Mr. Simpson: I am trying to find out the circumstances under which this statement was made, to show its competency. We are not objecting to the statement itself. In fact we think it helps the defense, but at the same time we are entitled to know the circumstances. Now then, part of the circumstances of the making of the statement was whether this man indicated that he realized the terrible things that he was telling or whether he didn't, whether he showed any remorse or whether he didn't, whether it was freely given or whether it wasn't. On that your Honor can rule whether or not it is a competent statement. Now the objection that we can't ask him whether the man showed any remorse is, of course, met by that line of cases beginning with—I think it is—the State against Lax, that held that a lay witness can testify to things from ordinary experience or observation, and it would be ordinary experience for this officer to say whether or not this man was reluctant at all or wasn't reluctant, whether he was very willing to talk or whether he wasn't, whether he indicated he knew the horror of the things he was talking about. We are entitled to know so that we can argue whether or not this was a voluntary statement. That is the purpose of the examination.

Mr. McMahon: But your Honor can see very readily that we are going far afield.

10 This man met Kudzinowski for the first time the day before and had a talk with him. It hasn't been shown that he knows how the defendant expresses remorse. I think it is perfectly immaterial about the remorse. I have no objection, and I think Senator Simpson should be allowed to go into all the circumstances under which this statement was taken, to ask questions whether there was any hope of reward given the defendant, whether it was a voluntary statement or not, but to try and find out the processes of this man's mind at that time and his reactions, I don't think are proper subjects of inquiry by him.

20 The Court: Read the question.

(Question repeated by the stenographer.)

The Court: I think the question is objectionable; sustain the objection.

Mr. Simpson: That is all.

Mr. McMahon: May I offer this in evidence.

Mr. Simpson: Objected to because we haven't had an opportunity to examine the circumstances under which it was made.

30 Mr. McMahon: I don't want him to be foreclosed from any such thing as that. I want him to have the fullest opportunity to go into that.

The Court: You won't be foreclosed, Senator, if you desire any further examination on it.

Mr. Simpson: We are not going to ask any more questions. We object to the statement.

40 The Court: The statement will be received in evidence and your exception will be noted.

(Exception allowed, signed and sealed accordingly.)

.....,  
Judge.

(Statement received in evidence and marked Exhibit S-20 of this date.) 10

(See page 423 for complete copy of S-20.)

Q. May I read this to the jury now?

The Court: Yes.

(Thereupon Exhibit S-20 was read to the jury by Mr. McMahon.)

(Thereupon, at 1:10 P. M. a recess was taken until 2:25 P. M.)

20

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After Recess, 2:25 P. M.

FRED W. FRAHM, recalled.

Direct Examination by Mr. McMahon (cont'd):

Q. Did you have a picture of this Storelli boy before you at any time in Detroit? A. No.

Q. You took no further statement from Peter Kudzinowski? A. No, I didn't. 30

Q. When was he returned to Jersey City? A. I believe it was either on the night of the 7th or 8th of December.

Q. And do you know who he came to Jersey City with? A. When he left Detroit he was in company of Mr. Davis, Mr. Dougherty and Mr. Egan, and there were two other boys who came on that I have forgotten their names, although they were introduced to me. 40

## Cross Examination by Mr. Simpson:

Q. Who was the first person in the Detroit Police Department that this defendant mentioned this affair to? A. The first persons were Detectives Doyle and Bayer, of the First Precinct Station.

10 Q. What? A. Of the First Precinct Station.

Q. How long was that before you had your first talk with him? A. I didn't know just how long that was.

Q. Do you know how long he was in detention in Detroit before you talked to him? A. I believe he was arraigned on the 5th—I mean on the 4th, rather.

20 Q. What was the date of your first talk with him? A. The 5th. I am not sure now. I believe the 4th was the date and I talked to him on the 5th about noon.

Q. And where did you talk to him? A. In my office.

Q. Was he brought to your office? A. Sir?

Q. Was he brought to your office? A. By one of my men, yes, sir.

Q. By whom? A. By Max Rickman.

Q. What is the name? A. Max Rickman.

30 Q. And why did you have him brought to your office? A. Because I was told to talk to this man by my Chief, Edward H. Fox.

Q. Chief of Police? A. Chief of Detectives.

Q. Did you have a talk with him before you interviewed the defendant? A. I talked with the Chief's secretary.

Q. And it was from him you got your instructions? A. I got my instructions from my Chief.

40 Q. What instructions did you get? A. To have this man brought to my office and talk with him in reference to this crime.

Q. What were the exact instructions that you got? A. He told me that they had a man at the First Precinct and he said he understood that he confessed or made some statement as to killing two people.

Q. Is that all that you were told? A. And I was told to investigate and see whether there was any truth in the story. 10

Q. And when was the first talk you had with the defendant? A. About noon on December 5th.

Q. Was there anyone present besides yourself and the defendant? A. Yes, sir.

Q. Who was present? A. Mr. Rickman, Detective Bayer and Detective Doyle.

Q. Now, that talk was not reduced to writing, was it? A. It was not, sir.

Q. And how long did it last? A. Oh, possibly an hour and a half. 20

Q. Did he talk quite freely to you? A. Yes.

Q. Did he seem eager to talk? A. No.

Q. When you say he talked quite freely and was not eager to talk what distinction do you make? A. He talked quite freely and when he came down to talk about what he did to the boy he kind of dropped his head and hesitated a while.

Q. After he came to that part of it he stopped and dropped his head and waited for a little while, is that right? A. Yes, sir. 30

Q. And you are now describing the talk you had with him? A. Yes, sir.

Q. You didn't see him when he was first arrested? A. I did not.

Q. Do you know what he was arrested for? A. Only from my records, as a Golden Rule drunk.

Q. What does that mean? A. That means that he was brought in and held until he was sobered up and then let go. 40

*Claude E. Bergin—Direct Examination.*

Q. Without being taken into court? A. Yes, sir.

Q. What is the origin of the term "Golden Rule drunk"? A. It is just an old saying, I believe.

Q. That means a man is taken in and allowed to sober up and then allowed to go? A. Yes, sir.

10 Q. Do you know whether he was drunk when he made his first statement, or sober? A. To me?

Q. No. I mean to anyone in the department?  
A. I didn't see him at that time.

Q. You have no personal knowledge of that? A. I didn't see him at that time.

(Witness excused.)

20 CLAUDE E. BERGIN, sworn for the State,

Direct Examination by Mr. McMahon:

Q. Mr. Bergin, where do you live? A. In the City of Detroit.

Q. What street and number? A. 1531 West Forrest.

Q. Are you a member of the Traffic Division of the Police Department in the City of Detroit? A. I am.

30 Q. At about 3:15 on December 3rd, 1928, were you doing traffic duty at the intersection of Brush Street and Gratiot Avenue? A. I was.

Q. During that time while you were doing that traffic duty did anybody approach you? A. Yes, sir.

Q. Who was it? A. Roy Rogers, a man by the name of Roy Rogers.

Q. Do you see him here in the court room? A. I do.

40

Q. Where is he? A. Sitting between the two officers.

Mr. McMahon: Indicating the defendant.

Q. What did he do when he approached you?

A. He come up to me and he said that he was wanted, and I asked him what for. He said murder or something. He was in a very intoxicated condition and he said, "Well, you'll find out later." 10

Q. Was that all that was said between you and him? A. That is all.

Q. When you say he was very intoxicated what do you mean by that? A. I helped him to stand up.

Q. You helped him to stand up? A. I did.

Q. What did you do with him? A. I took him into the station for a Golden Rule drunk.

Q. As a Golden Rule drunk? A. Yes, sir. 20

Q. And the name he gave you was what? A. Roy Rogers.

Q. Did you have anything further to do with him? A. I did not.

Q. That is all you had to do with him? A. That is all.

Q. When you took him into the station house as a Golden Rule drunk where did you put him? A. I turned him over to the man in the registering room. 30

Mr. McMahon: Cross examine.

Cross Examination by Mr. Simpson:

Q. About what time was this you had this talk with him? A. About 3:15 December 3rd—3:15 P. M.

Q. In the afternoon? A. Yes, sir.

Q. And the ordinary procedure would have been as soon as he sobered up he would have been allowed to go out of the station, wouldn't he? A. Yes, sir. 40

*Leo Doyle—Direct Examination.*

Q. That would have been the ordinary procedure? A. Yes, sir.

Re-direct Examination by Mr. McMahon:

10 Q. When this man told you that he was wanted for something and you asked him what it was and he said, "Never mind, you'll find out," did you report that conversation to any of your superiors?  
A. I reported it to the man in the registry room.

Re-cross Examination by Mr. Simpson:

Q. What did you report that he had said to the man in the registry room? A. I told him that the man said he was wanted.

20 Q. Did you make a written report or just oral?  
A. Just oral.

(Witness excused.)

LEO DOYLE, sworn as a witness for the State:

Direct Examination by Mr. McMahon:

30 Q. You are connected with the Police Department in the City of Detroit? A. Yes, sir.

Q. In what capacity? A. Detective.

Q. And you were so connected on December 3rd, 1928? A. I was.

Q. Do you know this defendant, Peter Kudzi-  
nowsky? A. I do.

Q. When did you first see him? A. On the night of December the 3rd.

40 Q. Where? A. In the registry room at police headquarters in Detroit.

Q. Were you the registry officer? A. No, sir.

Q. How did you happen to meet him? A. Well, the man was brought in the station as a Golden Rule drunk. He had told the officers, that is, Claude Bergin that he was wanted, so the registry man, Claude Jones, came to Detectives Bayer and myself and told us that he had a drunk down there, that there was something wrong with him, to see what it was. So we went to the bull pen, that is where they are kept before they are registered, and as we entered the bull pen he was up at the bars in the window. That would be about four feet from the floor. He had broken a couple of windows at the time, and one of us asked him what was the matter. He was trying to get out. And he said it would be too bad if we knew. So we took him upstairs. He was in a very drunken condition, and tried to get his name and where he was from and the likes of that from him and we couldn't get no answer from him in any way at all because he was too drunk, so he was sent upstairs to the cell block. The following day I went upstairs again, we went upstairs again. 10

Q. Who is we? A. Detective Bayer and myself. He is the one that works with me, and he was in no condition to talk then from drinking this moonshine liquor. He was very nervous, so the following day, the 5th, about 9:30 in the morning, Detective Bayer and myself went upstairs and asked to have an interview with him and he came out and I stood talking to one of the other detectives about some other case while Detective Bayer took him in the room to talk to him, so it was only perhaps a minute or two until Detective Bayer came out and told me to come on in the room, that this boy had something to tell us, so as we went back in the room again why he started to tell, in his own 20 30 40

way, about meeting a little boy on First Street in New York City and taking him to a moving picture show and then coming through the Tubes and over to Journal Park. We just got the rough edges of the story, and then he told us about killing the little boy and just about where we would find him, so the case at that time was turned over to Inspector Frahm.

10

Q. And your connection with it ended? A. My connection with it was ended.

Q. On the day that you and Bayer had this talk in this room was he sober then? A. Sir?

Q. Was he sober when you had this last talk with him? A. The last talk, yes, he was. That was on December 5th.

Q. What time of day? A. That was around 9:30 in the morning.

20

Cross Examination by Mr. Simpson:

Q. You are the first person in the Detroit Police Department that got the story, aren't you? A. Yes, sir.

Q. You say you got the rough edges, now will you tell us what he actually told you? A. Well, we didn't go into the details as the Inspector did because it was a homicide case and that is his work. It is not our work.

30

Q. But I am trying to find out what this defendant actually told you. You are the first man that he talked to? A. Well, he told us about meeting this boy on First Street, the only thing he knew him by was the name of Joe, and he took him to the theater, and he didn't say how long he stayed in the theater, but he bought him a box of candy and he then came through the Hudson Tubes and he came to Journal Park with the boy and from

40

*Edward Francis Bayer—Direct Examination.*

Journal Park he went to the Susquehanna bridge, or under the Susquehanna bridge, over to a meadow, where we would find the boy laying. He said if we would telephone there or wire there we would find the boy laying there, so that was about all the story we got from him.

Q. Did he tell you what had been done to the boy? A. No, sir, he didn't. 10

Q. Simply told you he had taken the boy to these meadows and if you went there or sent there you would find the boy's body lying there? A. That we would find the boy's body lying there.

Q. He didn't tell you the details about cutting the boy's throat? A. He told us about cutting the boy's throat. He said that is the way he killed the boy.

Q. Did he tell you what he did to the boy? A. No, he did not. 20

Q. Before and after the boy was dead? He didn't tell you that? A. No, he did not.

Mr. Simpson: That is all.

(Witness excused.)

EDWARD FRANCIS BAYER, sworn for the State: 30

Direct Examination by Mr. McMahon:

Q. Where do you live? A. 5315 Newport Avenue, Detroit, Michigan.

Q. Are you a member of the Detroit Police Department? A. I am.

Q. What department? A. Detective.

Q. Do you know this defendant, Peter Kudzi-  
nowski? A. I do. 40

*Edward Francis Bayer—Direct Examination.*

Q. Where did you first meet him? A. At the bull pen in Police Headquarters at Detroit.

Q. Who was with you? A. Leo Doyle.

Q. That is the man who was just on the stand?  
A. Yes, sir.

10 Q. What day was that? A. December 3rd, about 4:30 in the afternoon.

Q. What was his condition? A. Very drunk.

Q. Did you have a talk with him then? A. Tried to but no sense to it.

Q. When did you next see him? A. The next morning, December 4th.

Q. Where? A. Upstairs in the police headquarters.

Q. Who was with you at that time? A. Leo Doyle.

20 Q. Was he drunk then? A. He had a hangover; he was very nervous and in no condition to talk to.

Q. And you didn't talk to him? A. No.

Q. When did you next see him? A. 9:30 on December 5th.

Q. Where was he when you saw him that morning? A. We had him brought to the questioning room upstairs.

Q. Who brought him to the questioning room?  
A. One of the patrolmen.

30 Q. Who went into the questioning room first?  
A. I did.

Q. Did he say anything to you or you to him when you went in there? A. I just told him to sit down. I said, "Your name is Roy Rogers?" and he hung his head for a minute and then he looked up and said, "It is Peter Kudzinowski," or something like that.

40 Q. What else was said? A. I said, "Now, Peter, have you anything on your mind?" I said, "You were brought in here for telling a patrolman you

were wanted." I said. "Now, if there is anything wrong you might as well tell me now," so he thought a minute and he said, "Yes, I killed a man and a boy."

Q. Did he say where he killed the boy? A. Yes, he gave me the whole details.

Q. Will you give us as nearly as you can the conversation that passed between you and him in this council room? A. Well, he stated that on a Saturday night, it was either November 17th or 18th, that he met a little fellow and he pointed out about this high (indicating) over on First Street, East New York. 10

Q. East New York? A. Yes, I think it was something like that—East New York—and he bought him a box of candy and took him to a show on Third Street, and he said he was in there possibly a half an hour, and he then took the boy out of the show and went to the Hudson Tubes to a Park called Journal Park, I believe, and from there went on a road about two hundred and fifty feet past the Susquehanna River. 20

Q. River? A. River or bridge, I don't know, I am not acquainted with it—and he said he cut the little fellow's throat and I got the position as near as I could and I went up to Chief Fox and it was then turned over to Inspector Frahm, who handles all the homicide cases. 30

Q. Are you certain he said, "East New York" to you?

Mr. Simpson: Maybe east side, New York.

Q. East Side, New York? A. Maybe that is it, I am not sure.

Q. Did you have anything further to do with him after that? A. I just sat up and listened to the first statement taken from him by Inspector Frahm. 40

Q. That is the one that wasn't reduced to writing? A. Yes, sir.

Q. Were you present at that time? A. Yes, sir.

Q. Who else was present? A. Max Rickman, and Leo Doyle.

10 Q. Do you recall what he told the Inspector on that occasion? A. Well, it was similar to what I have just—

Q. Well, did he amplify it in any way or add to it or take from it? A. No, I don't think he did.

20 Q. Did he say he did anything else to the boy besides killing him? A. Oh, yes, he made a statement in front of the Inspector that he took the little fellow out there and took his overcoat off and he doesn't remember if he tore his little pants from him or if they opened themselves, and he said he put his penis into this little boy's rectum and the boy hollered and he punched the boy a few times and the boy kept still for a little while and then he hit him again and then he took his jack knife out of his pocket and cut his throat.

Q. Did he say what words the little boy hollered? A. "Mama! Mama!"

Q. Did he tell you anything else about what he did after doing these things? A. Yes, he finished his desire with the little fellow.

30 Q. And after finishing his desire did he say what he did after that? A. He covered the little boy up with his coat.

Q. What did he do after he covered the little boy up? A. He went to the railroad camp.

Q. What did he do while he was there? What did he say he did? A. I just can't recall.

Q. Well, did he say how he left the railroad camp? A. Yes, he left on a box car, or he hopped a freight.

40 Q. Did he say where the freight brought him to? A. He went to Scranton, to his home town.

Q. Did he say how long he stayed at Scranton?

A. I think about three hours.

Q. Did he say whether he saw anybody in Scranton? A. His mother.

Q. He saw his mother? A. Yes.

Q. Did he say where he went to in Scranton? A. From Scranton?

10

Q. What place he went to in Scranton? A. To his home.

Q. Did he say where he went to from Scranton?

A. To Buffalo.

Q. Did he tell you how he got to Buffalo? A. I can't recall.

Q. Did he say what he did in Buffalo? A. I can't recall that.

Mr. McMahon: Cross examine.

20

Cross Examination by Mr. Simpson:

Q. I understand if he hadn't told this story he would have been allowed to go, wouldn't he? A. He would have.

Q. Just arrested as a drunk and if he had sobered up he could have gone? A. Yes.

Q. As a result of the statements made by him he was held? A. Yes, sir.

Q. Did he tell why he told this story, what induced him to tell this story or what moved him to tell it? A. Yes, he told me it had been preying on his mind right along, the first murder had been preying on his mind first.

30

Q. Having committed the first murder, the second murder preyed on his mind and he felt like talking about it, is that it? A. I guess so.

Q. I want to get your impression of it; that is all. I want to get your impression as to what he

40

said induced him to tell the story. He told practically the same story to the witness who just left the stand, in your hearing, didn't he? A. He did.

Q. I mean you were both there? A. Yes.

Q. Now, you say you couldn't talk to him the day he was arrested because he showed the effects of liquor? A. He did.

Q. But the day after that was the day he talked to you, was that right? A. Yes, sir.

Q. Now, the other witness said something about his having broken a window. Do you know anything about that? A. Yes, in the bull pen.

Q. What is the bull pen? A. That is where we put them. They are brought in there first before they are registered.

Q. They are held before they are registered? A. Just until the registering man has time to register them and send them upstairs.

Q. This window that was broken out, how high was it? A. It was about four feet from the ground, just a small window.

Q. How did he get up there? Was he able to reach it? A. Oh yes, he could reach it.

Q. Did he tell you why he broke it? A. He had been up there holding on the bars and when he went in there he fell back and we asked him what the trouble was and he said if we knew it would be too bad for him.

Q. He said if you knew it would be too bad for him? A. Yes.

Q. And then two days afterwards he told this story? A. He did.

(Witness excused.)

*Mrs. Luigia Storelli—Direct Examination.*

MRS. LUIGIA STORELLI, sworn for the State.  
(Through the Italian Interpreter.)

Q. Mrs. Storelli, where do you live? A. 165  
First Avenue, New York.

Q. Are you the mother of Joseph Storelli? A.  
Yes. 10

Q. Did Joseph Storelli disappear from his home?  
A. Half past seven went downstairs and I never  
found him since.

Q. What day was that? A. On Saturday.

Q. Saturday, what day of the month? A. On  
the 17th.

Q. Did you ever see him alive after that? A.  
Saturday and all night and the following day Sun-  
day and Monday I was always looking for him and  
I couldn't find him. 20

Q. Did you ever see him again? A. When they  
brought him home to my house dead.

Q. When was that? A. I think it was the 21st.  
He was away from the house twenty-one days.

Mr. McMahon: That is all.

Mr. Griffin: No cross examination.

(Witness excused.)

30

JOHN BALBOVSKY, sworn.

Direct Examination by Mr. McMahon:

Q. Where do you live? A. I live at the Secau-  
cus camp.

Q. What camp is that? A. Lackawanna Rail-  
road Company.

Q. Where is that camp? A. I don't know how  
far it is from here. 40

Q. I didn't ask you that. Is it in Jersey City or Secaucus? A. Jersey City, yes.

Q. I show you a picture, do you recognize that? A. I don't know that picture.

Q. I show you another picture. Do you recognize that? A. No, I don't know that picture.

10 Q. Do you recognize that picture? A. That is the camp.

Q. That is the camp? A. Yes.

Q. Is that the camp that you live at? A. Yes, sir.

Mr. McMahon: I offer this picture in evidence.

20 Mr. Griffin: I object to the introduction of the photograph on the ground the picture is improperly introduced and on the ground that it is incompetent and immaterial.

The Court: It will be admitted in evidence.

Mr. Griffin: Exception.

(Exhibit S-2 for identification received in evidence and marked Exhibit S-2 in evidence.)

Q. How long have you been working at the camp? A. Pretty near two years—not even two years.

30 Q. Well, how long? A. Next month it will be two years.

Q. Do you know Peter Kudzinowski? A. I don't know his name, please.

Q. What name did you know him by? A. Nearly everybody called him Whitey and I called him Whitey.

Q. Do you see the man in court that you called Whitey? A. Yes.

Q. Where is he? A. Between them officers.

40 Mr. McMahon: Indicating the defendant.

Q. You knew him by the name of Whitey? A. Yes, sir.

Q. How long did you know him? A. About two years.

Q. Where did you meet him? A. Harrison Railroad Camp—I met him over there.

Q. Did he work for the railroad? A. Yes, sir. 10

Q. What did he do? A. Well, we worked one position about four or five or six weeks.

Q. Did you see him on the 17th of November last? A. Yes, sir.

Q. Where? A. In the Secaucus camp.

Q. What time of day or night was it? A. It was around nine o'clock or half after nine. I don't know for sure what time it was, please.

Q. Did you speak to him? A. Yes, sir.

Q. What did you say to him? A. He knocked and I went out and I said, "Who is it?" and I said, "Is that you, Whitey?" and he said yes, and I said, "What are you doing over here?" and he said, "I am looking for a flop," and I asked him, "You have got nothing to drink?" and he said no and he told me, he said, "Wait, I go get a quart of whiskey." He go after quart of whiskey and he never come back. I never see him any more. 20

Cross Examination by Mr. Griffin:

30

Q. Before the 17th of the month how many times had you seen this man called Whitey? A. When?

Q. Yes, how many times? A. November 17th.

Q. Before November 17th how many times had you seen him? A. Before 1927 I saw him about fifty times.

Q. Do you know him very well? A. Not very well. In camp he worked there about three or four weeks.

40

*Dr. Arthur P. Hasking—Direct Examination.*

Q. He worked there about three or four weeks?

A. In 1927.

Q. In 1927? A. Yes.

Q. Had you seen him before that time in 1927 when you first saw him for three or four weeks and between that time and this time in 1928? A.

10 In 1928 I never saw him so much, please.

Q. Between 1927 when you saw him three or four weeks—from that time you didn't see him again until November, 1928, and you knew him right away? A. I saw him before November, 1928. I saw him on the railroad. Ask him.

Q. Then you did see him between 1927 and November 17th, 1928? A. (No answer.)

(Witness excused.)

20

DR. ARTHUR P. HASKING, sworn as a witness for the State.

Direct Examination by Mr. McMáhon:

Q. You are a physician and surgeon? A. I am.

Q. Graduated from what college? A. College of Physicians and Surgeons, Columbia University, New York City, 1903.

30 Q. Have you been practicing medicine in the State of New Jersey since that time? A. I have.

Q. Are you connected with any institutions in this State or County? A. I am.

Q. What institutions? A. Why, in either an attending or consulting capacity in practically all the hospitals and institutions in this county.

Q. Are you also the Assistant County Physician? A. I am.

40 Q. How long have you been Assistant County Physician? A. Unofficially since 1903, officially since 1910.

Q. Have you ever performed autopsies upon the bodies of people who met violent or sudden deaths?

A. I have.

Q. About how many autopsies have you performed? A. I can't state exactly. I would say approximately in the neighborhood of three thousand.

Q. Have you testified as to the results of your autopsies in murder cases? A. I have. 10

Q. How many cases have you testified in? A. I have no record of it. I have testified in most all of the homicides in this county since that time.

Q. Since 1903? A. Well, since 1910, and at many of them before that time.

Q. I show you Exhibit S-15 and ask you if you performed an autopsy on the body of the boy represented by that picture? A. I did.

Q. And is that the same boy shown in Exhibit S-14? A. It is. 20

Q. I show you Exhibit S-13 for identification and ask you if you were present when that photograph was taken? A. I was. The photograph was made under my direction.

Q. Is that picture a part of the body of the same boy shown by Exhibits 14 and 15? A. It is.

Mr. McMahon: I offer it in evidence.

Mr. Simpson: Same objection, and also because there is no proof that the condition depicted here is the same as the condition that existed on the 17th of November. 30

The Court: The photograph will be received in evidence.

Mr. Simpson: May I have an exception?

The Court: Yes.

(Exception allowed, signed and sealed accordingly.)

.....  
Judge.) 40

(Exhibit S-13 for identification marked Exhibit S-13 in evidence of this date.)

- Q. Doctor, will you please tell the court and jury what you found at that autopsy? A. The autopsy was down at Blacker's Morgue, Jersey City, on December 6th last. The body as I saw it was that of a boy partially clothed with a blue sweater, the upper part folded up. The underwear was torn and had blood stains on its upper portion. He had a romper or jumper on with brown colored stockings, which were partially down, black lace shoes; part of the underwear was torn; the face was dirty; the hair was mussed and the body was covered with dirt and pieces of straw or grass, drying. On removing the clothing and washing the body we found that the left side of the face was generally abraded. There was a white streak along the left side of the jaw from which the superficial epithelium was denuded, that is, the superficial surface of the skin was scraped off and rather uniformly. Running across the lower portion of the body on the left side there was a whitened or brighter area where the deeper layers of the skin had been abraded or removed. I found on the middle of the left arm in front two superficial abrasions of the skin, or rather linear scratch marks measuring approximately an inch and three-quarters of an inch respectively. I found on the front of the belly about an inch to the right of the navel a linear scratch mark measuring about three-quarters of an inch in length and about an inch below that was a circular shaped abrasion of the skin measuring about three-eighths of an inch in diameter. There was a bruise on the forehead at about its center. The nose was abraded. The tongue was clenched between the teeth, fixed. The eyes were brown and the hair was of a dark

brown color. I found, beginning at a point about an inch and a half or an inch and a quarter below the mastoid—that is the bone prominent behind the ear—on the right side and extending downwards and forwards and to the left and terminating slightly to the right of the middle line and about the top of the bone or sternal notch, which you can feel in your neck—this was a deep gaping wound with sharply cut edges with which the skin wound was continuous. The cut end of the windpipe was visible on inspection. On examining the deeper layers we found that the right carotid, which is the large blood vessel of the neck going to the head, had been completely severed at about the level of the sternal notch or bony prominence of the neck. The jugular vein and the vessels connecting it were completely severed. There was a slight muscle breach uncut separating approximately this wound into two portions; the front portion being the deeper. As I said, the windpipe was completely severed at about the upper portion of the breast bone. The anus, the opening of the rectum, was dilated, relaxed, and measured in its open aspect about three quarters of an inch. There were no other marks of recent violence on external examination of the body.

On opening the chest we found that the right lung was collapsed; the body was exsanguinated, or bloodless, the organs of the body and the body itself; it was in a good state of preservation with the exception of the brain, which is common in cases to be the first to show decomposition, and that brain was slightly decomposed.

On opening the body the rectum was found extensively dilated, stretched up to its full area, the rectum running up inside to the lower portion of the gut which is attached to it. That was extensively dilated.

*Insp. John J. Underwood—Recalled, cross.*

The organs of the body were otherwise 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 an incized wound of the neck involving the deeper and important structures of the neck.

10

Mr. McMahon: That is all.

Mr. Simpson: No cross examination.

(Witness excused.)

(The State Rests.)

Mr. Simpson: How can the State rest when he put Inspector Underwood on the stand and gives us no opportunity to cross examine him?

20

Mr. McMahon: You may recall him.

Mr. Simpson: No. If you rest without giving us the right to cross examine him it is a substantial right of the defendant—

Mr. McMahon: He is here, if Senator Simpson wants to cross examine him.

Mr. Simpson: That isn't the question. You withdrew him and said you were interrupting his direct examination and would put him back on the stand, and now you say you are going to rest.

30

The Court: I will allow him to be cross examined. Recall Inspector Underwood.

---

INSPECTOR JOHN J. UNDERWOOD, recalled for the State.

Cross Examination by Mr. Simpson:

Q. Inspector you said you went up to the Hackensack meadows or these Kearny meadows? A. Known as the Secaucus meadows, Senator.

40

*Insp. John J. Underwood—Recalled, cross.*

Q. When did you go, Sunday? A. On December the 6th about 7:40 a. m.

Q. And who was there when you got there? A. There was Detective Nagel, Sergeant McLyon, Lieutenant Davis, Captain Hogue and several more police officers in uniform and other men who were in plain clothes with rubber boots and rubber coats and like equipment. 10

Q. Had the body been found when you got there? A. Yes, sir, it had.

Q. And was lying there when you got there? A. Yes, sir.

Q. Were you there when it was removed? A. I was.

Q. To where was it removed? A. To Blacker's Morgue, 418 Jackson Avenue.

Q. What time of day was it taken to the morgue? A. About 8:10 a. m. 20

Q. Was there any officer left with it? A. Yes, sir, there was.

Q. Who was left with it? A. An officer assigned by Captain Hogue to accompany the body.

Q. You said something about sending someone to Detroit for this man? A. Yes, sir.

Q. Who did you send? A. Lieutenant Edward Davis, representing my office.

Q. Anybody else? A. There were two men representing the Prosecutor's Office. 30

Q. Who were they? A. Lieutenant George Egan and Detective Doherty.

Q. Did they return with the prisoner? A. Yes, sir, they did.

Q. Where did they bring him? A. To the Market Street station, Newark.

Q. From there where did they bring him? A. To the Seventh Precinct Police Station.

Q. Did you see him there? A. Yes, sir, I did. 40

Q. What time of day did you see him? A. At 9:07 p. m. At the Market Street Station, December 9th.

Q. In whose custody was he? A. In the custody of Lieut. Edward Davis, Detective Doherty, Lieut. Jennings, Lieut. McNamara and Detective George Egan.

Q. Did you have any conversation with him there?

Mr. McMahan: I object to that. I didn't go into that on my direct case and I object to it unless Senator Simpson makes this man his own witness at this time.

Mr. Simpson: This is a pretty sorry spectacle. Here is the State, that has no interest in this case except to see justice done, trying to suppress evidence. They know this man has been interviewed by the Inspector, they know he has been interviewed by Inspector Walsh; they know we have statements that will bear out our contention that he is insincere. So the State attempts to thimblorig this case and suppress certain evidence which legitimately belongs in the case, statements made by this man. They don't want them in because they know that it will probably demonstrate that this defendant is insane, which we expect to prove. Now I submit that this is no time for technical rules of evidence. The jury wants the facts. If the jury believes this man is sane they will have no difficulty at all in convicting him, and shouldn't have, and if they believe he is insane—all we want is the facts. Now they call the Inspector, an able police officer, who knows his business as good as anybody in the country, who

admittedly gets this man, who admittedly meets him at Market Street and brings him to Jersey City. Because they haven't asked him anything about that they now want to foreclose me on cross examination. Having produced the Inspector, having shown the telegrams about the murder, having shown the evidence about the statement that this man made in Detroit, having put him in custody of the Inspector and having the Inspector testify as to what he did about the body, we certainly are now allowed, they having opened the door, to cross examine the Inspector and to find out what his connection with the case is. What did he say to the defendant? What did the defendant say to him? How did he act? Has he any written statements that the defendant made to him? Where are they? All those things are proper subjects of examination. Of course, I could call the Inspector as one of my witnesses. That is perfectly true, but that isn't the situation. The State is now trying to be smart and suppress evidence which the State has stated goes to show what the facts are; and I submit, your Honor, in your discretion—and of course it is entirely a matter of discretion—you are sitting as a trial Judge with wide powers—I submit in my humble opinion, and without any apology to the State, that your Honor has power as trial Judge to let us go completely into the connection of the defendant with the Inspector, the witness in this case. You certainly can't take any narrow view because they haven't asked him anything that happened on the afternoon of March 6th, we

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10 will say, that we can't ask him on cross examination because he has only testified as to what happened on the morning of March 6th. Now, we are not trying to be smart; the State may be very smart. We are trying to get the facts, and I submit, your Honor, it would be error for you now to foreclose my cross examination.

20 I know you are familiar with the case of Prout versus Bernard Township, and that case lays down clearly the principle that cross examination is a subjective right. Here is a nice state of affairs when the criminal machinery of the county, taking possession of this man, getting statements from him, are now to have the mouth of this witness shut up because the State don't want him cross examined on that subject.

Why? Why is that? Because the State knows that these statements if put in evidence will demonstrate that this man is not a human being, that he is insane, that he is like a beast. I submit this is a proper question on cross examination and I submit that the question is perfectly proper.

30 Mr. McMahon: If your Honor please, after that long speech by Mr. Simpson I still insist that this witness should not be cross examined on matters that were not brought out on direct examination. If Senator Simpson is so sure that statements that we have will convince the jury that this man is insane it is his job as defending this man to get them in evidence. The purpose of cross examination is and always has been to discredit the witness, to show that he isn't telling the truth, and it is not for the purpose

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of bringing out a lot of the other side's case on the State's case. They are limited entirely in their investigation of the things that he did in this case to what we brought out. Now they can go as far as they like in attacking his credibility or anything of that kind, but certainly they can't make out their case on our side of the case. 10

Mr. Simpson: As to attacking his credibility, I know Inspector Underwood very well. His credibility can't be impeached. Mr. McMahon is as lame on his law as he is on his tactics, because cross-examining is not solely for the purpose of attacking credibility. It is for the purpose of bringing out something that will modify or relate to statements made by the witness. Now, this witness has been put on the stand and has testified to a missing boy, to a murder, to finding the body, to identifying the man, the defendant, who made the statement in Detroit. He identified him and as a result of that statement he had him locked up and brought here. Now, then isn't it proper cross examination to say to him in reference to what he said, "All right, you have testified to all those telegrams, inquiries, investigations, searching for the body, the identity of the defendant—isn't it proper to show what happened between the Inspector and the defendant when he was brought here?" 20 30

The Court: I think that the Defense, if they feel that the witness has any new matter that will help their cause, is in position to have it presented by having the witness brought in as their witness, and I think the contention of the State is that it not having 40

been brought out on direct examination the Defense is barred from bringing it out on cross examination. Objection sustained.

Mr. Simpson: I would like to have the ruling plain, that your Honor says we cannot ask the Inspector anything.

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The Court: I sustain the objection.

By Mr. Simpson:

Q. What did this man say to you when you got him in Newark? A. Not a word.

Q. When you got him to Jersey City did you talk to him? A. No.

Q. Did he make any statement to you? A. No.

Q. Did he make any statement in your presence?

20 A. Yes, sir.

Q. To whom did he make the statement?

Mr. McMahon: I object to all this line of questioning.

The Court: Objection sustained.

Q. Did this defendant in your presence say that—in connection with this case, while discussing this case, make the statement in your presence that he had committed sodomy with animals? A. No, sir.

30

Q. He didn't say that? A. No, sir.

Q. Where was he when he made this statement that you heard? A. In the Seventh Precinct Detective room.

Q. Who was present? A. Lieutenant Francis J. Kean, of the Police Department of the State of New York.

Q. Was that reduced to writing?

Mr. McMahon: Objected to.

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The Court: Objection sustained.

*Insp. John J. Underwood—Recalled, cross.*

Mr. Simpson: I ask for an exception.  
 The Court: Exception granted.  
 (Exception allowed, signed and sealed accordingly.)

.....  
 Judge.)

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Q. Was there any police captain there at the time, Captain Walsh?

Mr. McMahon: Objected to as immaterial and as not proper cross examination.

The Court: Objection sustained.

Mr. Simpson: Exception.

The Court: You may have an exception.

(Exception allowed, signed and sealed accordingly.)

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.....  
 Judge.)

Q. Did you see this defendant at all after you met him at Newark? A. I did.

Q. Where did you see him? A. I brought him in my car from the Market Street Station in Newark to the Seventh Precinct Station, Jersey City.

Q. And he said nothing to you all the way in? A. No, not a word.

30

Q. What was done with him when you brought him to the Seventh Precinct Station? A. He was brought to the Captain of the Seventh Precinct Station where he was fingerprinted and pictured.

Q. Did he make any statement there? A. No, sir, not at that time.

Q. When was the first statement made by him?

Mr. McMahon: Objected to as not proper cross examination.

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The Court: Objection sustained.

Mr. Simpson: I ask for an exception.

The Court: You may have it.

(Exception allowed, signed and sealed accordingly.)

.....  
Judge.)

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Q. Did you see him at any other time than the time you brought him from Newark to the Seventh Precinct Station? A. Yes, later on in the afternoon.

Q. Of the same day? A. Yes, sir.

Q. Where did you see him? A. At the Detective Bureau, the Seventh Precinct.

Q. Did you see him after that day? A. I did.

20 Q. How long was he in your custody? A. He was never entirely in my custody.

Q. Well, under you, under the Inspector of Police? You are the Inspector of Police, aren't you? A. Yes. He was detained at the Seventh Precinct Station under Captain Walsh.

Q. For how long? A. Until the time he was before the magistrate and held by the Police Judge without bail for the Grand Jury.

Q. Did you ever speak of any statements to him? A. No, sir.

30 Q. Did you ever see any written statements made by him? A. I did.

Q. In whose possession were they?

Mr. McMahon: Objected to.

The Court: Objection sustained.

Mr. Simpson: I ask for an exception.

The Court: You may have it.

(Exception allowed, signed and sealed accordingly.)

40

.....  
Judge.)

*Insp. John J. Underwood—Recalled, cross.*

Q. Did you yourself personally take charge of this prisoner after you brought him from Newark or did you leave him at the Seventh Precinct? A. Left him at the Seventh Precinct.

Q. And he was always at the Seventh Precinct? A. Always.

Q. Did you have him taken up to Lake Hopatcong? A. No. 10

Mr. McMahon: Objected to.

The Court: Objection sustained.

Mr. Simpson: Exception.

The Court: Exception granted.

(Exception allowed, signed and sealed accordingly.)

..... Judge.) 20

Mr. McMahon: He said no anyway.

Q. You say he was always in the Seventh Precinct Station? A. To the best of my knowledge.

Mr. Simpson: That is all.

(Witness excused.)

(The State rests.) 30

Mr. Simpson: Mr. McMahon having closed without putting in any statement from the Police of Jersey City, we will ask your Honor to adjourn at this time because we are not ready to proceed with the defense. Mr. McMahon told Mr. Griffin that he thought it would take the rest of the day. I don't think it would be wise or for the interests of the defendant to have Mr. Grif- 40

fin open this case now and then wait and commence putting the proof in tomorrow. So I would ask your Honor at this time—we only have a half an hour to go—to adjourn until ten o'clock tomorrow morning.

10 Mr. McMahon: I don't want to object to Mr. Simpson's request to go over until tomorrow morning, but I do object to what he said I told Mr. Griffin.

Mr. Griffin: Mr. McMahon stated that he would probably take the balance of the afternoon, as I remember it, owing to the fact that there was only one hour and a half to go, so therefore we didn't get in touch with our experts.

20 The Court: We will adjourn until ten o'clock tomorrow morning.

Mr. Simpson: Will your Honor direct the police officers to appear tomorrow morning?

The Court: Inspector Underwood and Captain Walsh are to appear tomorrow without notice.

30 The Court: Now, Mr. McMahon, Senator Simpson wants me to direct you to produce every statement you have. What have you to say to that?

Mr. McMahon: I will produce every statement that the Prosecutor has.

Mr. Simpson: That the Jersey City Police have given you.

Mr. McMahon: Every statement that we have.

Mr. Simpson: You had better subpoena everybody in the Police Department.

40 Mr. McMahon: Further, that we will give you a list of every witness, if you want it.

Mr. Simpson: No, we don't need that.

(Thereupon a recess was taken until ten o'clock tomorrow morning, January 10th, 1929.)

January 10, 1929, ten a. m.

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(The trial continued pursuant to adjournment.)

(The Defense opens to the jury.)

Mr. Griffin: May it please your Honor and gentlemen of the Jury: In this case the Defense expects to show that the defendant is a man of low-grade mentality and at the present time is suffering from an old depressed fracture of the skull, which is of long standing. We will further show that the pressure of the fluid in the brain and in the spinal column is about sixty percent above the normal pressure of the fluid in the brain and spinal column of the ordinary man.

20

Now if you can imagine the skull and the brain—surrounding the brain is a sac. Between that sac and the bone of the skull there is a fluid, which fluid runs continuously from that space between the sac of the brain and the skull down into the spinal column, so that, therefore, if a puncture is made in the spinal column and the pressure of the fluid taken in the spinal column that pressure in the spinal column will be the same as the pressure in the brain.

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Now in the case of the defendant that pressure is sixty percent above normal. Now if you can imagine the inside of the skull and compare it with the well in a thermometer, compare the reservoir of the thermometer with the spinal col-

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umn, the tube running up wherein the temperature is registered in the thermometer, the difference between the spinal column and the thermometer is that the fluid in the spine fills the entire tube whereas in the thermometer it doesn't. When the pressure in the well of the thermometer is increased  
10 the mercury in the thermometer has an opportunity to rise, but in the spinal column or in the brain or the skull, when the pressure increases there is no way for it to expand, and therefore that pressure is taken up against the brain and against the spinal column; and as I said, in this case the defendant's pressure in his spinal column and the pressure in his brain is sixty percent above normal.

We will show that this pressure causes deterioration of the brain cells and makes the man insane,  
20 not necessary insane continuously, but will subject him to recurring periods of insanity, and those recurring periods of insanity will occur under a certain set of circumstances. Now in this case, or in some cases—the taking of alcohol into the system will increase that pressure; it will increase the action of the heart and increase the pressure of the blood and increase the pressure on the brain, and when that set of circumstances takes place the man is absolutely insane, and we will show that  
30 in this case.

We will also show that the man is of an inferior grade of mentality; that the man is a man of the common laborer type, born and brought up in the mining district where the facilities of education are not what they are in the city; that the man has never had an opportunity to work and has been what may be called a drifter from railroad camp to railroad camp and, as the State has already shown, he would work for a while and when he got  
40 enough money to buy liquor he would go and drink it up.

If we show that state of facts, our contention is that the defendant was incapable of committing murder.

ALEXANDER K. MOERING, sworn as a witness for the Defendant.

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Direct Examination by Mr. Griffin:

Q. Mr. Moering, where do you live? A. 17 Montgomery Avenue, Newark, New Jersey.

Q. Where is your place of business? A. 1007 Broad Street, Newark, New Jersey.

Q. What is your business? A. I am an X-ray technician.

Q. For whom do you work? A. For different physicians and hospitals.

20

Q. In the X-ray line do you work for anybody or do you run the business yourself? A. I have a partner.

Q. How long have you been in this business Mr. Moering? A. Since 1905.

Q. What has your experience been in it? A. I have been taking a good many pictures in most all the hospitals in Newark I was connected with.

Q. Are you an X-ray expert for any hospitals? A. I am X-ray expert for the Beth Israel Hospital in Newark.

30

Q. Any other hospitals? A. Not at present.

Q. You have been called in by doctors often times to take X-ray photographs? A. I have.

Q. Now, Doctor, how long has your experience been in this X-ray business? A. Since 1905, twenty-three years.

Q. Were you called upon by the defense in this case to take any X-ray pictures? A. I have been.

Q. Did you take those pictures? A. I did.

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Q. When did you take them? A. December 28th, 1928.

Q. Where? A. At the Hudson County Jail at 6:30.

Q. Do you see the subject of those pictures in the room? A. I do.

10 Q. Will you point him out? A. Sitting between the two court officers.

Q. Have you got those pictures with you, Doctor?  
A. Yes.

The Court: He indicates the defendant by pointing out the man between the two court officers.

Q. I show you an X-ray film, Doctor, and ask you what that is.

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Mr. McMahon: I object because I don't think he is properly qualified and I think I ought to have a right to cross examine him.

The Court: I will permit you to.

By Mr. McMahon:

Q. Where did you get your experience? A. Bellevue Hospital, under Dr. Codel.

30 Q. Did you ever take any X-ray pictures before in a jail? A. In Newark, in the County Jail.

Q. Did you ever take any in the Hudson County Jail before? A. No, sir.

Q. How big was the room you took the pictures in? A. It was a room I would imagine ten by eight.

Q. Who was in the room with you? A. Senator Simpson's assistant, Major Beet, one of the wardens there, two or three men of the jail. I don't recall the names.

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Q. And the prisoner? A. And the prisoner.

Q. What articles of furniture were in the room?

A. There was a brown desk and four chairs, there was an entrance to the left of the desk and one in the rear of the desk, there was a window to the right that was barred, there was a little watercloset also to the right of the desk.

10

Q. Wouldn't you have gotten a better picture if you had taken this man to your laboratory? A. I doubt it.

Q. Haven't you more facilities in your laboratory? A. I have, sir.

Q. Insuring greater accuracy?

Mr. Griffin: If your Honor please, I object to this line of questioning. This line of questioning has absolutely nothing to do with the qualifications of this man as an expert. It simply has to do with the accuracy of the expert and the condition of the room.

20

Mr. McMahon: I withdraw that question.

Q. You say you got your training under a doctor in Bellevue Hospital? A. Yes, sir.

Q. What did that training consist of? A. The study and technique. In 1905 the X-ray technique wasn't very well developed at all.

30

Q. Have you a degree from any university? A. No, I have not.

Q. Have you any degree as a roentgenologist? A. I have not.

Q. Are there degrees in that profession? A. Some professional men have switched over from the medical to the technician.

Q. I am asking you if there are any degrees in the profession of roentgenology?

40

Mr. Griffin: I object to that.

The Court: I think I will sustain that objection.

Mr. McMahon: I want to show his professional training.

10 The Court: That would be something that wouldn't have any particular bearing, whether a man is given a degree or not. Very often a degree means nothing.

Q. Did you ever go to school to study X-ray? A. No, sir, there is no such thing. There was no such thing in my days. We had to develop it ourselves.

Q. How long did you work with this Doctor? A. About three years.

Q. Then where did you go? A. I started with Dr. Frederick Baker in Newark.

20 Q. Frederick who? A. Frederick Baker, in Newark, at intervals, and from there I established the laboratory known as the Moering X-ray Laboratory in Newark.

Q. Have you had any training in photography? A. I have, sir.

Q. You are a professional photographer? A. I am not.

30 Q. What training did you have in photography? A. I trained myself in order to produce X-ray negatives.

Q. What did that training consist of? A. It means in the X-ray line experience, self training.

Q. X-ray is nothing but photography, is it? A. No, I wouldn't say that.

Q. What experience did you have in photography? A. In photography I wouldn't qualify as a photographer, don't intend to. I have taken X-ray films.

40 Mr. Griffin: If your Honor please, I object to that line of questioning.

The Court: Suppose you let him finish his answer.

Mr. Griffin: All the examination by the Prosecutor on this line is simply on the plates themselves, and I think those plates will speak for themselves. The development of plates or anything else affects the plates themselves and does not affect the man's qualifications. 10

The Court: He has got to be satisfied as to the qualifications of the man and I think he has a right to go into his qualifications.

Mr. Simpson: Will your Honor hear me a minute on that?

The Court: Yes.

Mr. Simpson: X-ray, much to Mr. McMahon's surprise, is not the practice of medicine; it is a technical occupation and has nothing to do with ordinary photography as we know it. I think that general experience will teach you, and doctors will tell you, in the Army particularly, that there are X-ray technicians. Now all this examination as to whether there were red chairs in the room or blue chairs has nothing to do with the question. The question is, is this man a technician in X-rays, and we object to all this line of questioning and any question except that which goes to his knowledge or ability as a technician in making X-rays. 20 30

The Court: That is what I want to hear. Repeat the question.

(Question repeated by the stenographer.)

The Court: I think that question is objectionable. There is no use of having an argument about that. I want to be convinced about his qualifications. 40

Q. Aren't X-rays produced by focusing a camera?

A. No, not by cameras.

Q. Isn't the object to be photographed reflected upon a plate through the medium of a prism? A. No, sir.

10

Mr. Simpson: I object to that because there is nothing in this question to show that there is an object to be photographed. It is in no sense photography. X-ray is entirely distinct from photography, so we submit that there is no warrant for using the word photograph or photography.

The Court: The witness has said no.

Q. What hospitals are you connected with now?

A. The Newark Beth Israel Hospital.

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Q. The Newark Beth Israel Hospital? A. The Newark Beth Israel Hospital.

Q. How long have you been connected with that hospital? A. Over a year, sir.

Q. What? A. Over a year.

Q. Eight years? A. Over a year.

Q. A year? A. Yes.

Q. What hospitals were you connected with before that? A. In Newark or generally?

30

Q. Yes. A. St. Mary's, Passaic; St. Michael's, Newark, Newark City Hospital, St. Barabas Hospital.

Q. Were you a member of their staffs? A. I was not; I was their technician.

Q. Taking pictures? A. Yes, sir. I have a few more hospitals to mention.

Q. In which you took pictures? A. Yes, sir. I was then assistant to Dr. Baker, who was officially appointed roentgenologist to these hospitals.

Q. Are you a roentgenologist? A. I am an X-ray technician.

40

Q. You merely take pictures? A. Yes, sir.

Mr. McMahon: I have no objection.

The Court: All right; proceed.

Direct Examination by Mr. Griffin (cont'd):

Q. Now doctor, I show you what purports to be an X-ray film. Will you tell me what that is? A. That is the front view of Peter Kudzinowski. 10

Mr. Simpson: I can't hear you. Front view of what?

The Witness: Of the skull of Peter Kudzinowski.

Q. Front view of the skull of Peter Kudzinowski?  
A. Yes, sir.

Q. When and where was that taken? A. This was taken on December 28, 1928 in the Hudson County Jail. 20

Q. By whom? A. By myself.

Mr. Griffin: I offer this in evidence and ask that it be marked.

(Admitted and marked Exhibit D-1 in evidence of this date.)

Q. I show you another X-ray film. What is this?  
A. Right lateral view of Peter Kudzinowski taken the same date. 30

Q. And by you? A. By myself.

Q. In the same place? A. Same place.

Mr. Griffin: I offer this in evidence.

(Admitted and marked Exhibit D-2 in evidence of this date.)

Q. I show you another film. What is this? A. This is the right lateral view of Peter Kudzinowski. 40

Mr. Griffin: I offer this in evidence.  
(Admitted and marked Exhibit D-3 in evidence of this date.)

Q. What is D-3? A. Also the right lateral view.

10 Mr. McMahon: Is that the same picture?  
The Witness: It was taken a few minutes later to make sure. It is a slightly different angle.

Q. I show you another film. What is this? A. It is the left lateral view of Peter Kudzinowski taken at the same time.

Q. Of the skull? A. Of the skull.

20 Mr. Griffin: I offer this in evidence.  
(Admitted and marked Exhibit D-4 in evidence of this date.)

By Mr. Simpson:

Q. How many are there altogether? A. Four.

Q. That is of the front of the skull and two of the right side? A. Yes, and one of the left side.

Q. And one of the left side? A. Yes.

30 Q. And what was the reason there was omission to take the back of the skull? A. Well, I thought it was the three pictures necessary to take.

Q. You took them under the direction of who?  
A. Dr. Trainor.

Cross Examination by Mr. McMahon:

Q. You didn't use any discretion in taking them at all? A. I took them in the regulation way.

40 Q. You took what you were told to take? A. I took the skull.

Q. Did you take these pictures or did somebody tell you to take them? A. We were requested by Senator Simpson to take the case and under the direction of Dr. Trainor I have taken these pictures.

Q. Who told you to take the front of the skull?  
A. It is customary to take—

10

The Court: You were asked who told you to take it, if anybody.

A. Dr. Trainor.

Q. Did he tell you to take these different positions? A. No, just told me to take the skull.

Q. And you took these of your own action? A. It is customary to take those in those positions.

(Witness excused.)

20

DR. JAMES H. TRAINOR, sworn as a witness for the defendant.

Direct Examination by Mr. Simpson:

Q. You are a practicing physician and surgeon?  
A. Yes, sir.

Q. Have you had any experience in reading X-ray plates? A. Yes, sir. 30

Q. Covering what time? A. Twenty-five years.

Q. Are you connected with any hospitals in Newark? A. I have been connected with—

Q. Name them. A. St. James, St. Michael's, Irvington-General.

Q. You have had, you say, twenty-five years experience in reading X-ray plates? A. Yes, they were plates in the old days. We call them films now. They were originally classed as plates. 40

Q. They were originally classed as plates? A. Yes.

Q. I show you D-1. Will you read that for the jury. Come down and use this box if necessary.

A. Yes. That shows an area of increased density on the right side of the skull, this black spot right  
10 here.

Q. What would that indicate? A. That would indicate the possibility of an old skull fracture.

Q. Does it indicate, without the other plates that I am going to show you, the presence of an old skull fracture? A. Yes, but the lateral view will show it better.

Q. Now, will you read D-2 to the jury? A. That shows the same thing, right here; this dark spot is what we call an area of increased density in the  
20 bone.

Q. It shows the presence of an old fracture? A. Yes, sir.

Q. Could you tell by the plate how old that fracture was, approximately? A. No.

Q. Would it be over a year old? A. Very possibly. It might be a year and it might be twenty.

Q. Now I show you D-3. Will you read that plate? A. That shows the very same thing.

Q. Will you point out to the jury where? You  
30 had better step back so the Foreman can see it.  
A. It is apparent (pointing to film).

Q. I know, but it isn't apparent when they can't see it. Will you put the pointer where you show it?  
A. Right there.

Q. Right where you point? A. Yes, sir.

Q. That shows what? A. The same area of increased density, dark shadow.

Q. I show you D-4. A. This does not show it so well. It is taken from the other side.

40 Q. The left side? A. Yes, sir.

Q. What would that indicate to you? A. That it was on the right side, and that is corroborated by physical findings.

Q. What physical findings was it corroborated by? A. There is a very distinct depression in this man's skull at that same site.

Q. That is, the same site as shown by the X-ray findings? A. Yes, sir, by the X-ray findings. 10

Cross Examination by Mr. McMahon:

Q. Come down here again, Doctor. A. (Witness leaves stand and goes to X-ray box.)

Q. How does increased density reflect itself on a film? A. By a shadow.

Q. Now does increased density show a greater shadow? A. Yes.

Q. It doesn't show white? A. No. 20

Q. In other words, if the density is increased the light penetrates the increased density, is that it? A. The light shows a darker spot there because the light does not go through.

Q. Are you sure about that, Doctor? A. Yes.

Q. If the light can't go through a dense object won't the film be white? A. No, it would be darker.

Q. Now this D-1 which I am showing you. Will you point out to me the darker spot on that skull? A. Right there. 30

Q. There are darker spots right here too, aren't there?

Mr. Griffin: Let him use the pointer so the jury can see.

Q. There are other dark spots on this skull besides that? A. Sure, that is probably a sinus.

Q. No, up here. A. There is probably sinus or space where the pituitary bone has been—

Q. Probably. A. Yes. 40

- Q. And what is this dark spot? A. Same thing.
- Q. Probably. A. Yes.
- Q. What is this dark spot? A. I think that whole thing is where one of the large veins—
- Q. Do you know, Doctor? A. Yes, I think that is what it is, a groove in the skull.
- 10 Q. What is this dark spot? A. The same thing, the sinus.
- Q. This dark spot here is a sinus? A. Yes, lateral sinus.
- Q. I mean this spot here. A. It runs all the way in there. It is a very large vein, you know.
- Q. Point out to me and mark on this picture with something that will show where the increased density is. A. It isn't shown very well on here.
- Q. Can you mark where it is shown? A. Yes,
- 20 right in through here.
- Q. Where you put a circle? A. Yes, the lateral view shows it much more plainly than the other.
- Q. Is this a lateral view, D-2? A. Yes, sir.
- Q. Now, point it out. A. All through here.
- Q. Will you put a circle around it. A. It is just back of the coronal suture.
- Q. Where is the dark place that is dark in the circle that you have marked, that is darker than the rest of the skull? A. It runs right up to the top
- 30 of the skull.
- Q. Is that darker than the place you didn't mark? A. I should have marked that up a little higher.
- Q. Mark it where it should be marked. A. It goes right up to the top of the skull.
- Q. Now will you say that what you have now marked within the circle is darker than the rest of it? A. Yes, I do; it is more dense.
- Q. Now I am showing you Exhibit D-3. Mark it out. A. That shows the same thing. That is
- 40 well marked, more marked than this one or anyone we have had.

Q. Now you say that shows a depression? A. Yes, sir.

Q. Doesn't that show an elevation, Doctor? A. An elevation?

Q. Yes. A. No, there is a depression there. There is a depression in this man's skull.

Q. We are not talking about his skull. We are talking about the picture. A. I think it shows evidence of a density due to a fracture. 10

Q. Does that show an elevation? A. No, it does not. The contour is of the skull. There is just a slight drop there. It certainly is not elevated.

Q. Isn't that black spot there elevated? A. No, it is not.

Q. I show you now D-4. A. That was taken from the other side and shows very little, if anything.

Q. Will you mark on this D-4— A. That is taken from the left side and doesn't show it except that there is a slight depression there on the top of his skull. 20

Q. You say there is a depression there? A. Yes, sir.

Q. And that it is due to that fracture? A. I think so.

Q. Take the stand, Doctor.

(Witness resumes the stand.)

Q. Does this picture show how far that fracture goes down into his skull? A. No. 30

Q. So that your pictures merely show these black marks on the skull? A. Yes, sir.

Q. There is more than one table in the skull, isn't there? A. Yes, sir.

Q. These pictures do not show what happened to that other table? A. No, they do not, in my estimation.

Re-direct Examination by Mr. Simpson:

Q. The ordinary doctor can't read these plates as well as a man who is especially trained? A. That is true.

10 Q. What is the name of that part of the medical profession designating those that pursue the professional branch of reading these plates? A. Roentgenology.

Q. Is that from Roentgen? A. Yes, the man that discovered the X-ray.

Q. And that is a special branch of medicine, the reading of these plates? A. Yes, sir.

Q. So that a layman without training would not be able to read these plates without training, would he? A. That is true.

20 Mr. Simpson: That is all.

(Witness excused.)

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JULIAN KUDZINOWSKI, sworn as a witness for the defendant.

Direct Examination by Mr. Simpson:

30 Q. Where do you live? A. 3521 Winfield Avenue, Scranton, Pennsylvania.

Q. Is this defendant your brother? A. Yes, sir.

Q. How old is he? A. Twenty-six years old, sir.

Q. How old are you? A. Thirty-five.

Q. Do you know whether at any time he received a fracture of the skull? A. Yes, sir, when he was about eight or nine years old.

40 Mr. McMahon: I object to that, a fracture of the skull. He can say what hap-

*Dr. Jack Blumberg—Direct Examination.*

pened to him. I don't think he can diagnose it.

Q. What happened to him when he was eight or nine years old? A. When he was eight or nine years old he dove and fractured his skull.

Mr. McMahon: I object to the "fracture." 10

Q. Well, he dove and injured his head? A. Yes, sir.

Q. And that you say was when he was eight or nine years old? A. Yes, sir.

Mr. Simpson: Cross examine.

Mr. McMahon: No cross examination.

(Witness excused.) 20

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Dr. JACK BLUMBERG, sworn for the Defendant.

Direct Examination by Mr. Simpson:

Q. Doctor, you are a practicing physician and surgeon? A. Yes, sir. 30

Q. Do you make any specialty? A. Head work exclusively.

Q. How long have you been practicing? A. I have been practicing since 1916, have been specializing in head work for the last five years exclusively, but have been doing head work for the last ten years.

Q. Were you in the Army at all in the medical service? A. I was.

Q. When did you go in? A. I went in in 1917 40

and served as first lieutenant, then as Captain, then as major and then as Lieutenant Colonel.

Q. Were you connected with the Medical Department of the Army? A. Yes, sir, I was connected with the Medical Department entirely.

10 Q. When did you get out of the Army? A. In 1919.

Q. What rank did you go out with? A. I went out with rank of Major and then was promoted as soon as I got out to Lieutenant Colonel.

Q. And since that time you have been practicing in Newark? A. No, in Elizabeth and Ellenville, New York.

Q. Did you examine the defendant's head at my request? A. I did, sir.

20 Q. When did you make that examination? A. Night before last, January 8th.

Q. Did you do anything else in the way of an examination, make any tests? A. I made what for me consists of a complete investigation for a head injury.

Q. Will you tell us what that was? A. That consists of the examination of the head proper, the eyes, the interior of the eyes, cranial nerves and the spinal fluid pressure.

30 Q. How did you ascertain the spinal fluid pressure? A. By taking a needle attached to a manometer, putting the needle into the spinal canal and measuring the pressure directly.

Q. What did you find the pressure to be? A. 24 milimeters.

Q. What would the normal pressure be? A. 15 milimeters.

40 Q. What did your examination indicate as to the condition of this man's head? A. An injury to the brain, that is, the man had sustained a head injury which had given him a brain injury and that the effects were persisting up to now.

Q. Up to the time you examined him? A. Up to the time I made my examination.

Q. And your diagnosis was that this condition was caused by an injury to the head? A. Yes, sir.

Q. Did you ascertain any fracture of the skull by feeling the skull? A. When I felt this man's skull I felt a distinct depression in his parietal region which was more pronounced at its upper than its lower end. 10

Q. Did you have these X-ray plates, D-1, 2, 3 and 4 at all? A. They were there after I finished my examination.

Q. And you looked at them? A. I did, sir.

Q. Did they confirm you in your opinion, the X-ray plates? A. They did, yes.

Q. Now, will you give us in detail what your examination was of the eyes and tongue and what they showed? A. His eyes showed a pupil which was very sluggish and even under a thoroughly bright light contracted very slowly. At the beginning, it remained entirely wide but after a second or two it then contracted. The interior of his eyes, showed a slight fullness of the retinal veins. 20

Q. What does that mean? A. The veins in the interior of his eye were slightly fuller than normal. His mouth—

Q. Before you leave the eyes, what did that condition indicate to you as to his normalcy? Was he normal or what, the eye condition? A. The eye condition per se wouldn't indicate anything. 30

Q. That was one step in the— A. That is it.

Q. What was the next step? A. His face was drawn slightly to the right and the muscles on the left side of his face are smooth, or not acting as forcibly as the opposite side. His tongue, when he is asked to put it outside of his mouth is turned to the left. Both knee jerks, simply tapping his knees, shows an exaggerated response. 40

Q. And all those things taken together indicate to you an injury to the brain? A. Yes, sir.

Q. Could you determine the extent of the injury or did you simply have the opinion that it was a brain injury? A. Simply to my mind—the conclusion simply came to my mind that here is a  
10 brain injury with effects persisting up to now. That was the trend of my mind.

Cross Examination by Mr. McMahon:

Q. Did you take his temperature? A. No, sir.

Q. Take his pulse? A. Yes, sir.

Q. What was his pulse? A. It was very variable. I took it four times. His pulse ranged between  
82 and 128.

Q. Was that standing or sitting? A. I took it  
20 standing and sitting, but every time I took it I took it standing and sitting.

Q. What did that indicate to you? A. Why an unstability of the center which governed the circulation.

Q. Well, wouldn't you have to take his temperature to find that out? A. To find out the unstability of his circulation?

Q. Yes, sir. A. The temperature would have  
30 absolutely nothing whatsoever to do with this phase.

Q. What kind of meter did you say you used? A. I have a meter which is called a manometer, a spinal manometer.

Q. Whose make is it? A. I can't tell you off-hand, sir.

Q. How long have you had it? A. I have had it, the manometer, for two years.

Q. How many kinds of manometers are there?  
40 A. There is a mercury manometer and a water manometer.

Q. And did I ask you how long you had used the manometer? A. Two years, but I don't remember the name.

Q. Have you got it with you? A. No, sir; I can get it very easily.

Q. Did you take this puncture of his spinal column standing up or lying down? A. Neither, I had him reclining over a table which was in the warden's office in the Hudson County Jail. 10

Q. What do you mean, lying on his stomach? A. No, reclining. He was standing on his feet but his body reclined on a support which I had placed on the table to get a curvature of his spine.

Q. Did you use any anaesthetic? A. I used novocaine.

Q. How far in the skull does this skull fracture go? A. I haven't the slightest idea. 20

Q. Are the inner tables fractured? A. I don't know that.

Q. Does the X-ray show it? A. I don't think the X-ray shows a fracture of the inner table.

Q. How would it affect the brain if there is no fracture of the inner table? A. In head injuries it is not the fracture of the skull at all which is the important part. The fracture in the skull proper may be very extensive and still a fairly small amount of damage done to the brain, and on the other hand there may be absolutely no fracture whatever and still its brain be terribly damaged. It is simply the concussion to the brain which does the damage. 30

Q. How long will that damage which the concussion makes last? A. It may last for the rest of the patient's lifetime.

Q. And it may not? A. It may not.

Q. You have no absolute indisputable evidence of injury to this brain? A. I have the depression in this man's skull. 40

Q. But you don't know whether it goes to the inner table or not? A. I am not interested in that at all.

Q. Maybe I am. A. I am interested in whether this man sustained a trauma to his head which will account for what he shows me now.

10 Q. Do you know whether he had any symptoms right after this injury? A. The only way I knew that was from asking him. I don't know of my own accord.

Q. Did you ask him? A. I did ask him.

Q. What did you ask him? A. I said, "How did you get this?" He said, "I got it diving." I said, "What happened after that?" and then he gave me a very incoherent statement as to what happened after that, so much so that I couldn't make out  
20 just what he felt.

Q. Give us his answer. A. I wish I could; it was a jumble.

Q. Didn't you make notes? A. No, sir; I have got some notes here that I made then but not on that answer.

Q. Wasn't it important to know the coherency of this man's answer? A. Yes, the effect was decided in my mind right then.

30 Q. That isn't the question. Was it important to you— A. It was important.

Q. And you didn't do it? A. I didn't do that, no.

Q. Over what particular area of the brain is this head injury? A. This is in the right parietal region.

Q. Over what area? A. You mean what center?

Q. Yes. A. It would probably be in the sensory area of the brain.

40 Q. Don't you know? You are a physician.  
A. It would be in the sensory area of the brain.

I want to qualify this statement now, that the areas in the brain vary very greatly in individuals and when a locality in the brain is given that a particular area of the brain controls a particular part, that is for the general, but that is not absolute.

Q. Where is the motor area of the brain? A. 10  
Right in front of the central fissure.

Q. Point it out on your head. A. (Witness points to top of head.) The motor area of the brain would be about there, where my finger is.

Q. On a line with your ears? A. Yes.

Q. Now if this injury affected the motor area would there be any symptoms shown in his locomotion? A. If the injury affected the motor area, if the injury was slight; if the lesion was severe enough to cause pressure there would be paralysis 20  
of the part of the body affected.

Q. You didn't see any such systems as those you have described in this man? A. No.

Q. Then there is no pressure? A. There is no pressure localized to the motor area; there is a generalized increased pressure in that man's brain.

Q. The depression in this man's skull is over the motor area? A. I think it was over the sensory area, but for the sake of discussing it I will say it was over the motor. 30

Q. And there are no symptoms that show a depression over the motor area? A. Certainly not, because this patient's depression is not pressing on that motor area.

Q. How do you know that? A. Because the man doesn't show any signs either of irritation or paralysis of the motor area on that side.

Q. Doesn't show any signs at all of pressure on the motor area? A. No, that is what I am saying.

Q. Does it show any over the sensory area? A. 40  
No.

## Re-direct Examination by Mr. Simpson:

Q. As I understand it, you are indifferent as to whether these X-ray plates show a fracture of the inner skull or not? A. That doesn't interest me one bit, no, sir.

10 Q. You base your opinion and make your examination on the tests that you have described? A. I made my examination and my conclusions are based on the tests that I described, and on the fact that the depression in this skull is positive, and by reading it over the clock.

Q. By the clock you mean the manometer? A. By the clock that is attached to my spinal needle.

20 Q. I mean that manometer showed you pressure which was on the brain and which shouldn't be there? A. That is right.

Q. How did the spine show you that? A. There is a fluid in the spine that goes around the brain. The brain has a tail to it, the spinal cord. Covering the brain and its tail is a membrane and between the membrane and the brain is this fluid. Now this fluid is under a certain pressure. Its normal pressure in mercury would be eight milometers and in water would be fifteen milometers. Now I simply measured the pressure that was there.

30 Q. And the pressure that was there shouldn't be there? A. That is right.

Q. What would be the greatest pressure that that could be shown on this meter? A. Fifty.

Q. And fifteen is the normal? A. Yes, sir.

Q. And he showed what? A. Twenty-two to twenty-four.

## Re-cross Examination by Mr. McMahon:

40 Q. What was the blood pressure? A. Didn't take it.

Q. Doesn't increase of blood pressure increase all pressures throughout the body? A. It has very little increase on cranial pressure.

Q. It has some? A. It has some.

Q. You didn't take it? A. I didn't take it; I saw it being taken.

Q. What was the blood pressure? A. 90 over 150. 10

Q. 90 diastolic over 150 systolic? A. Yes.

Q. What would be the normal for this man's age? A. I wouldn't want to say; I don't know enough about general medicine to tell you.

Q. Well, blood pressure is a guide in your determination of your diagnosis, isn't it? A. It isn't particularly in mine, no.

Q. Isn't it related? A. Every part of the body is related, but in my particular field blood pressure is unimportant. 20

Q. Doesn't any illness produce spinal pressure? A. Yes.

Q. There are many illnesses outside of the brain that produces this blood pressure? A. I don't know of any.

Q. You don't know of any? A. No, sir, not outside of these diseases to the brain or cord.

Q. Well, there are conditions of the cord? A. Yes, certainly there are a few diseases that will do that. 30

Re-direct Examination by Mr. Simpson:

Q. The blood pressure was taken in your presence? A. Yes; I didn't take it.

Q. His blood pressure was abnormal? A. I wouldn't want to venture an opinion.

Q. You don't deal with blood pressure? A. No, sir.

Mr. Simpson: That is all.

(Witness excused.) 40

*Dr. William J. Donahue—Direct Examination.*

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Dr. WILLIAM J. DONAHUE, sworn as a witness for the defendant.

Direct Examination by Mr. Simpson:

- 10 Q. Where do you live? A. 173 Roseville Avenue, Newark, New Jersey.
- Q. You are a practicing physician and surgeon? A. Yes, sir.
- Q. Where do you practice? A. Newark, New Jersey.
- Q. Do you make any specialty? A. Neurology and Psychiatry.
- Q. What is psychiatry in ordinary language? A. The study of abnormal conditions of the brain.
- Q. Did you examine this defendant at my request? A. I did.
- 20 Q. When did you make that examination? A. On the evening of the 8th of January, 1929.
- Q. Were you there when Dr. Blumberg made his tests? A. Yes, sir.
- Q. And did you have the benefit of the X-ray plates? A. They were there, yes.
- Q. And did you also have the benefit of talking to this defendant and examining him and knowing what Dr. Blumberg had found out? A. Yes, sir.
- 30 Q. And what did you make up his mind as to his mental condition, was it normal or otherwise? A. I found it to be abnormal.
- Q. And in what way was it abnormal? A. He was a low-grade mentality, at the outset, and that there possibly was a congenital defect or retardation of full development at some time during his life and that his psychological reactions, his answers to questions,—not what he told in answers but how he heard the questions and how he studied before he answered them, indicated that there was
- 40 a definite slowing of brain processes.

Q. Brain what? A. Brain processes, brain faculties.

Q. What kind of answers did he give you? Would he give you intelligent answers or answers like a parrot? A. He would begin, in answer to a question, and speak quite a streak, which might or might not be relevant to the question asked, and he would repeat just a lot of poll parrot stuff in answer to my questions, in answer to any questions that were asked him. The answers he gave had no relation to the questions. 10

Q. What did you make up your mind as to his condition, assuming that a man with his condition and with the condition of the brain that Dr. Blumberg described, that a man like that would take alcohol, what effect would that have on his brain? A. It would cause a definite cerebral excitation. 20

The Court: Meaning what in ordinary language?

The Witness: It would excite cerebral activity; it would stimulate him.

Q. Would it produce insanity? A. It would produce a state of abnormal, mental condition.

Q. Amounting to what? A. He wouldn't know what he was doing.

Q. Would he be able to distinguish the difference between right and wrong? A. Not at that time, no. 30

Cross Examination by Mr. McMahon:

Q. At the time he was drunk, you mean? A. If that happened to be the stimulus that gave him the excitation at the time.

Q. Does he know the difference between right and wrong now? A. I doubt that he does.

Q. If he admitted sodomy on a little boy and 40

Dr. William J. Donahue—Cross Examination.

admitted cutting his throat would he know the nature of the act or what he was doing on November 17th last? A. I don't think so.

Q. You have made a record of the questions and answers that you asked him? A. Partly.

Q. Have you got them with you? A. Yes, sir.

10 Q. Where are they? A. In my records.

Q. Will you tell us some of the questions and answers that you asked him? Are these taken down stenographically? A. No, they are not.

Q. Did you look at him when you were writing? A. Yes, sir.

Q. You mean to say you wrote and looked at him at the same time? A. Yes, sir.

20 Q. When you were writing the answers you could see the facial expressions and watched this man's facial expressions? A. Yes, sir.

Q. You don't have to look at a man when you are writing? A. No, sir, not that kind of writing.

Q. You don't have to see whether you are writing on the line or above the line? A. No, sir, it is written in long hand.

Q. I know, but your eyes don't have to look at the paper at any time when you are writing? A. No, sir.

30 Q. And you can write on a piece of paper and commence evenly on a line and end evenly on the line without looking at the paper? A. I didn't say that.

Q. Didn't you do that in this instance? A. At times I did and at other times I did not.

Q. Let me see the paper. A. That is my record, sir.

Q. You refuse to give it to me? A. Certainly, by what right do you ask for it?

40 The Court: You are not here to ask questions.

Mr. Simpson: He has no right to refer to it in cross examination. I didn't ask anything about that in direct examination. I object to the question. He objects to giving it because he hasn't referred to this paper.

The Court: The Prosecutor hasn't pressed it.

10

Q. You refuse to produce that record?

Mr. Simpson: I object to that as not proper cross examination because he hasn't referred to this record in his direct testimony, and therefore it is improper to refer to it now and try to put him in an embarrassing position.

Mr. McMahon: This witness has testified that he examined this man and that his answers were incoherent and that he reduced those questions and answers to writing, and it is introducing no new matter. I think I have a right to go after that.

20

Mr. Simpson: I don't think he has any right to the record or any right to refer to the record, but I don't object to his asking the doctor to refer to the record and give him an incoherent answer to a question but I would certainly object to the doctor being put in position of being forced to read a private record which he made and to which he hasn't referred to on his direct testimony.

30

Mr. McMahon: The doctor has testified that he can write on a piece of paper without looking at it; that he can start on a line and end on the line. He refuses, when requested, to produce that paper. I think we have a right to see how accurately he has written.

40

Mr. Simpson: The only question on cross examination is as to the validity of his opinion, not as to his expertness as a writer.

Mr. McMahon: If he refuses I won't press it any further.

10 Q. Now, doctor, you didn't give us any definite diagnosis of this man's mental affliction. What is it? A. Sexual psychopath.

Q. What does sexual psychopath mean in the ordinary language of the street? A. A man whose mental capacity is abnormal and who shows abnormal sexual tendencies.

Q. And that makes him insane? A. In episodes.

Q. In episodes? A. Yes.

20 Q. How can you tell when he has an episode? A. No, psychopathic episode, the episode of abnormal conduct which makes him irresponsible at the time, which produced the psychosis and the sexual stimulant. In this case there are various factors that tended towards that. First we have the low standard of mentality and second we have the possible retardation of mental development.

30 Q. Possible retardation? A. Yes; or the congenital defect which he acquired at first or by accident some time ago, and that must be taken into consideration with his increased intracranial pressure.

Q. How far did he go in school? A. I have been told that he went as far as the fifth grade.

Q. And how old was he when he left school? A. At about the age of thirteen.

Q. Does that show any abnormality so far?

40 Mr. Simpson: I object to that as calling for a conclusion. When a man went to

school and when he went out of school, how can that indicate anything. His grades or his percentages of what he did or whether he was intelligent or unintelligent—it might indicate something, but how can the fact that a man started to school at eight and stopped at twelve, without showing what he did in school,—how could that have any effect whatever upon judging his mental condition? 10

The Court: I will allow the doctor to state whether he knows that or not. I will give you an exception.

(Exception allowed, signed and sealed accordingly.)

.....,  
Judge. 20

Q. Does that show any abnormality so far, the reaching of the fifth grade at the age of thirteen?

A. To a degree it does.

Q. What does it show? A. It would show that there was either a congenital defect that didn't permit him to absorb what they taught him in school or that the defect existed or occurred subsequent to his birth, possibly due to the injury he sustained as a boy. 30

Q. Could it be also possible that he had to work for a living and didn't have time to study and go to school? A. They go to school early—

Mr. McMahon: I object to that and ask that it be stricken out.

The Court: The question wasn't answered and I can't see any point to it where he stopped.

Mr. McMahon: I withdraw the question. 40

Q. What in your opinion would be the normal age for a boy to reach the fifth grade?

10

Mr. Simpson: I object unless he shows the fifth grade in the place of this man's birth. We don't know whether he went to school. I submit this is not a proper question, because this man seems to have gone to school in Pennsylvania. There is no proof what the fifth grade means.

Mr. McMahon: The doctor has testified that he got to the fifth grade in Pennsylvania at the age of thirteen. I am asking him what would be the normal age for him to reach the fifth grade?

The Court: I will allow him to answer.

20

A. Age eleven.

Q. At what age to start to school? A. Six.

Q. At what age did this boy start to school?

A. I have been told that he started to school at the age of six.

Q. Who did you get that information from? From the crazy man? A. From the crazy man.

30

Mr. Simpson: He couldn't possibly know. This man has testified that everything he got was from the defendant or somebody else, so how can he know what age he went to school?

The Court: If he doesn't know he ought to say so and not give an answer about something he knows nothing about.

Mr. Simpson: I agree with that ruling.

Mr. McMahon: Is there any objection now?

The Court: Repeat the question.

40

Q. Question repeated by stenographer as follows): From the crazy man? A. Yes.

*Dr. William J. Donahue—Cross Examination.*

Q. That you didn't regard as coherent? A. No.

Q. You based your conclusion upon that answer? A. Not up until now.

Q. But you do now? A. You rather forced me into it. You asked me what age he began going to school and I gave you the answer he gave me.

Q. You based your conclusion that the boy reaching the fifth grade at the age of thirteen was abnormal, you stated your conclusion, and I asked you at what age that boy should start to school if normal and you said at the age of six. A. He told me he began at six. 10

Mr. Simpson: I object to the question first on the ground of its length and second on the ground it is argumentative. The real objection is that he is arguing with this witness. It is an argumentative question. 20

Mr. McMahon: I withdraw the question.

Q. Do you know whether this man had any infantile diseases that kept him out of school? A. No, I do not.

Q. So you know nothing at all about his early history except what he himself told you? A. No.

Q. And you are basing your conclusion that he is insane upon what he himself has told you? A. But deductions are formed from his psychological reactions. 30

Q. Did you ever hear of a malingerer? A. Yes.

Q. Can you pick out a malingerer? A. It is rather a difficult thing to do.

Q. Do you know whether this man was a malingerer or not? A. I do not believe he was.

Q. Did you test his knowledge of current events? A. Pardon me?

Q. Did you test his knowledge of current events? A. Yes. 40

Dr. William J. Donahue—Cross Examination.

Q. What did you ask him? A. I didn't meet with very great satisfaction.

Q. What did you ask him? A. I asked him concerning the political events, of civic events, of the State of New Jersey.

10 Q. What questions did you ask him? Have you that on your record? A. No.

Q. You have not? A. No.

Q. Did you test his mental processes by asking him to do any arithmetic? A. No.

Q. Did you test his mental processes by any other means? A. Except the question and answer method.

Q. And your questions and answers related to his life? A. Not entirely.

20 Q. Did you consult with his family? A. I had no opportunity.

Q. Didn't you think it was important to find out from some member of his family and verify his statements? A. I did.

Mr. Simpson: I object to that on the ground—

Mr. McMahon: He has answered.

30 Mr. Simpson: Yes, but I ask to have the answer stricken out because he answered before I had a chance to object. As I understand it he couldn't legally base his opinion on what somebody else told him. He has got to make up his opinion from observation and the way the man answered the questions, and the fact that he didn't go and ask the mother or father is incompetent because his testimony could all be stricken out if he based his opinion on that. There is a long line of cases. If he went out and asked the father and mother and then based his opinion on

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their statement it would be incompetent, as your Honor knows, and therefore it is irrelevant.

The Court: I think that is so and I will sustain the objection and strike out the answer.

Q. Did you apply the Bennet Simon test? A. I used some parts of a modification of that known as the Turman modification. 10

Q. Known as the Turman modification? A. Yes.

Q. What were the questions under that modification that you asked? A. Offhand I don't remember.

Q. Did you reduce them to your record? A. I did not.

Q. Now you say this man has a sexual psychosis? A. I said that he is a sexual psychopath. He is a psychopathic person and in his stages of psychopathic episodes he becomes a sexual psychopath. 20

Q. And I understood you further to say that he had these episodes when he was drunk? A. I said that alcohol as a stimulant might produce one of these episodes.

Q. How long would that stimulus, the stimulus of the alcohol last to produce an episode? A. The time duration of such stimulation in this particular sort of individual would be considerably longer than in an ordinarily normal individual. 30

Q. A day? A. It would be longer than that I believe, two or three days.

Q. Would you say that every time this man got drunk he has an episode? A. I cannot say yes to that.

Q. How many episodes has he had? A. I can't answer that.

Q. Do you know if he ever had an episode? A. 40

From the description—not the description—from my study of his psychological reactions to the questions which I put to him in reference to memory content and line of action which he followed at any given time after taking alcohol, I came to the conclusion that he was irresponsible at that time for his actions.

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Q. Now, all these questions upon which you based these conclusions were questions which you asked this defendant? A. Yes.

Q. And all the answers that you got were answered only from this defendant? A. Yes.

Q. All the statements about the episodes were statements from the defendant? A. Yes.

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Q. Now if a man has an episode such as you describe, a psychopathic episode, would he remember what he did? A. I can't say that he would. I have no real knowledge. When he described to me what occurred I have no knowledge that he was telling me exactly what had occurred.

Q. Or that he was telling you the truth? A. I have no knowledge of that.

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Q. You say he would have no recollection of an episode when he recovered, that his mind would be a complete blank as far as that episode was concerned? A. Not having studied this case before I can't answer that question.

Q. Wasn't it important for you to know that before you came to a definite conclusion? A. Yes, but in this particular case this man's mind doesn't seem to be a blank.

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Q. I am asking you generally. Isn't it the medical fact that if a man has an episode that his mind is blank when the episode ceases? A. A straight sexual psychopath, not necessarily. A man suffering from a lapse of memory, suffering from amnesia, might, but a psychopath doesn't always show defects in his memory.

*Dr. William J. Donahue—Re-direct Examination.*

Q. Do you mean to maintain that when a man has an episode that he knows what he is doing?

A. I deny that he does.

Q. Does he remember it? A. In this particular case this man remembers that episode, whether he remembers others I don't know.

Q. How do you know he remembers it or whether somebody told it to him? A. I can't answer that. 10

Q. You say he remembers that. A. I told you before what he told me was all I had to go on.

Q. And his answers on that were incoherent? A. Not always. I didn't judge him on his answers; I judged him on his reaction to my questions. As to the veracity of his story or how his memory is of the event he is charged with I don't know.

Q. Now, Doctor, if a man has an episode and knows what he is doing and he has recollection of it wouldn't he be able to tell right from wrong? 20

A. I would think so, yes.

Re-direct Examination by Mr. Simpson:

Q. Suppose this man was telling you a story that he didn't experience at all but by reason of his association with tramps and people that jumped on freight trains, and so forth, this story had been told to him, is his the kind of mentality that would have absorbed that story as his own and repeated it to you as if he had done that? A. Yes, sir. 30

Mr. McMahan: I object to that.

Mr. Simpson: Let me point out what my point is. Mr. McMahan said in his opening that he would prove that this man was in Jersey City on this day. He said he was going to prove that he went up in an elevator at the tube station. He hasn't done 40

10 that. This man may be of such a mental type that he never did this thing and he may be of such peculiar mentality that he absorbs this thing as his own, and so I am asking the Doctor now what he knows of this man's mentality, assuming he is the kind of man that jumped on freight trains and associated with that kind of people. Is he of such mentality that he would have absorbed that whole story if somebody told it to him and then repeat it as if he went through it? That seems perfectly proper in view of the cross examination of Mr. McMahan, in which he tried to show that if this man in any insane frenzy did this thing that after it was over he wouldn't remember anything about it. So it is arguable to the jury that 20 this man can't be insane because the Doctor says if true he would have no recollection of it if he was insane, and I am trying to get from the Doctor whether it is possible that a man of this mentality would have absorbed this story.

Mr. McMahan: I would have no objection to that if you frame it along that line.

30 Q. Assume that this man, whose mentality you have examined, never was through any such episode that he told you about but he had been told of it by someone else. Has he the kind of brain that would absorb that and repeat the story as if he had done that himself? A. Not only that, but he is a man of low-grade mentality and a man such as that, being a sexual psychopath and one who consorted with men rather than naturally, he takes stories unto himself, and one he recited to me particularly he took unto himself and took the blame 40

for it when he said to me he never had anything to do with it.

Q. Did he also tell you he had committed sodomy with animals? A. Yes, sir.

Q. Did he indicate to you that he knew the heinousness of it at all? A. No, it didn't make any difference to him who he cohabited with.

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Re-cross Examination by Mr. McMahon:

Q. Do you think the mind you have described is a mind that would absorb in all its details this crime that is being developed here in this court room and relate it to you? A. You can teach a parrot to say almost anything.

Q. Is that your best answer? A. Yes, sir.

Q. Can you teach a parrot to say anything?

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Mr. Simpson: I object to that, if your Honor please. We are not a bird store here. We are trying a homicide case, and the Doctor has taken this way of saying that this man is a parrot. Now it seems to me frivolous to ask the Doctor whether he can teach a parrot anything. It might be possible to teach a parrot to be a lawyer.

Q. What do you mean by you can teach a parrot anything? A. I mean that is an expression, an ordinary expression, that by the constant repetition of anything—you can teach a dog tricks, a cat tricks.

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Q. There has to be constant repetition though, not by the merest recital of it. The fact that he told you that he had intercourse with animals, would that be impressed upon his mind if it never happened at all? A. He told me that.

Q. Could somebody tell him that? Supposing

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somebody told him that he had intercourse with animals, would he believe it? A. I don't believe he would.

Q. And he wouldn't tell anybody that he had intercourse with animals if he didn't have it, would he? A. I think not.

10 Q. Yet he would tell anybody that he buggered this boy because somebody told him he had, wouldn't he? A. He made no such claim.

Q. Didn't you say you could teach a parrot anything? A. Yes.

Q. Didn't you say it was possible for him to have had this story told him and he accept it as his own story? A. I said that was one of the defects of his mental capacity and if the story was repeated to him often enough he would make himself one of the actors in it.

20 Q. And has he the mentality to carry that through? A. His mentality is of a very low order.

Q. I asked you if he has the mentality to carry that deception through?

30 Mr. Simpson: I object to that, if your Honor please. There is no question of carrying deceptions through. The Doctor says it is no part of a mental disease. There is no question of him deceiving anybody or intending to deceive anybody or having the power to carry the deception through.

The Court: I think the question is based on an unwarranted assumption of fact.

Mr. McMahon: All right, I will reframe it.

40 Q. Do you believe, Doctor, that in this man's present mental state, from a recollection of what has been told him about this crime that he could

repeat it over again in all its details to anyone?

A. It is possible that he could do so and he may not be able to do so; I don't know.

Q. It is possible that he could? A. It is possible that he could and he may not be able to do so.

Q. Is it possible that he could accept this story, the story of this crime having been committed by himself when he didn't actually commit it? A. It is. 10

Q. It is? A. Yes.

Q. It is possible that he could accept the charge against himself of having intercourse with animals and never had intercourse with animals? A. Yes.

Q. Is it possible that he could have done other things in the same way and took the blame for them himself? A. Under certain stimulants, punishment or deprivation of food or deprivation of sleep, this man will admit to anything. 20

Q. But there will have to be a stimulant? A. Some stimulant, yes.

Q. He was with you for an hour, what stimulus did you exert on him? A. I used questions and answers to observe his psychology. I didn't care what answers he made; I was studying his mental processes.

Q. He told you he had intercourse with animals? A. Yes. 30

Q. Do you know whether that was because somebody told him that? A. No.

Q. Or whether it was because he actually did it? A. No.

Q. Do you believe it? A. Do I believe that he did?

Q. Yes, do you believe that he did have intercourse with animals? A. Yes.

Q. You believe then that he was telling you the truth in that answer? 40

Mr. Simpson: I object to that. It isn't the Doctor's belief. What we are concerned with is the Doctor's opinion of this man's mental condition. Whether the Doctor believes that this man committed this crime or not is of no help to this jury.

10 The Court: Objection sustained.

Mr. McMahon: May I argue that? What I am trying to get at is what part of this man's mental examination he throws into the waste basket and is incoherent and what part of the examination is coherent and which he accepts.

20 Mr. Simpson: That isn't the point. If it were he could at once say to the witness, what do you reject and what do you accept as the fact? What do you believe? But he wants to know the Doctor's mental processes. What statements did he accept and what statements did he reject, that I don't object to, but to ask the Doctor, with a man on trial for this murder and a jury sitting here. Do you believe, Doctor, that he did this murder, when the Doctor doesn't know anything about it, I submit that is an improper question.

30 Mr. McMahon: That isn't the question.

The Court: I will sustain the objection to the question as it stands. Reframe the question.

Q. Do you believe the patient's answer when he tells you he had intercourse with animals?

40 Mr. Simpson: I object to that, whether he believes it or not. That he accepted it or rejected it in making his deduction or con-

clusion I do not object to. I withdraw the objection.

A. Yes.

Q. So you believe he told you the truth? A. Yes.

Q. Then he told you some truth? A. Yes.

Q. And he told you some falsehoods? A. I can't say that, something which may be true or may not be true or something which I may not believe. This man is a constitutional psychopath. Any of the psychiatrists here will agree with me on that. The vagaries of the constitutional psychopath are many. There are many forms of episodes which they undergo. 10

Q. Now, Doctor, let us find out upon what you base your conclusion that he is a psychopath. You say he is constitutionally psychopathic? A. Yes, his antecedent history as I learned it from his home environment. 20

Q. From him? A. Yes, where, for instance a child on one day might sustain a head injury and was treated so neglectfully or his existence there was so ignored that his family was not cognizant of it until four days later—

Q. He told you that? A. And that was corroborated by his brother.

Q. Did you talk to his brother? A. Yes. 30

Q. You heard his brother describing the accident which he sustained on the stand here? A. No, I heard him describe it and then I heard him describe it before he came here. And then the limited educational advantages had in that environment didn't serve to steady him or make him a citizen of any great civic value in the community in which he lived. He acquired irregular habits quite early in life.

Q. Did you get that from the patient himself? A. Yes. 40

Q. What age did he begin? A. He had gone from home between fourteen and fifteen, and began the life of a wanderer, working in this camp, that camp or another camp and his recourse to the use of alcohol was at an early age.

10 Q. Did you get that use of alcohol from the patient himself? A. Yes.

Q. At how old did he start the use of alcohol? A. He said he was drinking pretty much before he was sixteen. The fact that he engaged in these nefarious sexual practices at an early age—

Q. How early did he say he engaged in them? A. He said before sixteen. And the fact that he changed jobs so frequently. He always rode on freight trains, paid no railroad fare. From my investigation he admitted paying his railroad fare 20 once at one time since he left home. He is an unstable citizen; he is emotionally unstable at all times.

The Court: What did you say, Doctor?

The Witness: Emotionally unstable at all times.

A. (Continuing) His civic worth is not of a very great deal. He worked here, he worked there, sufficient time to get money to drink and then 30 under the stimulation of liquor would resort to practices such as he described. He is not a normal human being. I consider him of less value in this world than many beasts.

Q. The question we are to determine, Doctor, is not what you consider him but, does he know the difference between right and wrong? A. I don't believe he ever knew the difference between right and wrong.

Q. You don't believe he ever knew the difference 40 between right and wrong at any time in his life? A. I think not.

Q. And you base that conclusion upon an hour's conversation with him? A. No, I base that conclusion upon a considerably longer period of examination than that.

Q. How long was your examination? A. I think it was three hours and a half.

Q. Three hours and a half conversation with him and you come to the conclusion that in his whole lifetime he never knew the difference between right and wrong? A. Yes. 10

Q. Did he say he knew the difference? A. I wasn't particularly interested in his answer to that question.

Q. Did you ask him the question? A. I was more interested in his psychological reaction to my questions than the answers he gave.

Q. Did you ask him? A. Yes. 20

Q. What did he say? A. May I quote what he said?

Mr. Simpson: Certainly, if you have got it there.

A. "I didn't realize I was doing wrong until after I had done it."

Q. What was the question you asked him? A. "Did you ever realize that you were doing wrong?"

Q. "Did you ever realize"? A. Yes. 30

Q. Did you ask him whether he knew he was doing wrong in doing this particular thing that we are trying here? A. Yes, sir.

Q. What was the answer to that? A. The same answer.

Q. Have you got that in your record? A. No.

The Court: "I didn't realize that I was doing wrong"?

The Witness: "Until after I had done it." 40

Q. Does he realize it now?

10 Mr. Simpson: I object to that "now." How can he tell the mental processes of this man now. The mental processes of this man now are of no importance. The fact for this jury to determine is whether if he did this thing on the 17th of November, 1928, he realized the nature and character of his act, realized it was wrong, and the Doctor says he didn't. Whether he does now is of no consequence.

Q. Did he when you examined him, did he recognize the difference between right and wrong when you examined him? A. He said that he did.

20 Re-direct Examination by Mr. Simpson:

Q. Do you think he did or didn't? A. I presented certain problems where the object was to differentiate between right and wrong and he failed on all.

Q. He couldn't distinguish the difference. That is all, Doctor.

30 (Witness excused.)

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DR. DAVID H. ORGEL, sworn as a witness for the defendant.

Direct Examination by Mr. Simpson:

Q. Where do you live? A. 1165 Park Avenue, New York.

40 Q. Doctor, you are a practicing physician and surgeon? A. Yes.

Q. Have you made any study of diseases of the brain or mental disorders? A. The first ten years of my practice, and then since that time doing neurological surgery.

Q. Were you in the Thaw case in New York?

A. No, I was not called into it; I saw the case, but I was in other cases besides that.

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Q. What cases were you associated with? A. The Frederick W. Madison case.

Mr. McMahon: What do you mean, associated?

The Witness: I examined him.

A. (Continuing) I was in the case of Charlotte Hitchcock, I was in the will case of Alexander Beck, I was in the murder trial of Alexander—

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Q. Well, a murder trial in which insanity was in question? A. Yes. And the Wallace will case in which insanity was also involved.

Q. Now, Doctor, did you examine this defendant at my request? A. I did.

Q. And when did you make your examination?

A. On Monday night—on Tuesday night.

Q. Who was present when you made the examination? A. Dr. Blumberg and an associate of his; I don't know the name; Dr. Donahue was there for some time afterwards. I think your associate was there and Mr. Huey.

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Q. And your examination was to determine, if you could, what the mental condition of this man was, wasn't it? A. Right.

Q. Did you have the advantage of Dr. Blumberg's findings as to the fracture of his skull and the pressure of the spinal fluid? A. I joined in that examination; the examination was done by both.

Q. Will you describe what his mental condition

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is, to the jury? A. His mental condition is of a low grade. He is very easily influenced as to various things by external irritations. He gave us a subjective history which came on from the age of about between six and seven and led up to the time of the commission of the act. Do you want me to

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enumerate that?  
Q. No, you needn't give that in detail. A. And then we had these objective findings. The objective findings upon examination of the skull, I found three depressions on the right side of the brain, of the skull, in the middle bone, which we call the parietal bone,—three distinct depressions. Upon examination of his eyes his pupils were dilated, the lids were in a condition of tremor, especially more

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marked on the left side; examination of his eye-balls showed dilation of his blood vessels; upon protrusion of the tongue it deviated to the left; upon testing the ataxia of his arms and legs we found an increased sensibility on the left and greater tremor; reflexes of his legs were increased; his blood pressure was 150 over 90; his spinal blood pressure by water manometer swerved between twenty and twenty-five; and as a result of this examination and in an examination of X-ray

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plates which were handed to me, plus the report of the radiologist I came to the conclusion that this boy had suffered an intracranial injury resulting in the production of new tissue, scar tissue and connective tissue and the pressing upon the motor and sensory areas of the brain, giving a reason for his lowered mentality. At the same time from the subjective symptoms we got from him that following his injury he was subject to headaches and these headaches were preceded by a feeling of staggering toward the left in which he had to hold

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himself—he would not, however, lose consciousness.

This occurred several times during the day and it lasted for short intervals. This had another effect upon his mentality. His mind was pretty clear upon a great many things upon being tested psychologically. He could describe very minutely some things, but when it came down to the commission of certain acts he described them minutely showing that his mind was acute at times when a certain thing was mentioned to him, at other times when the condition of sex was not mentioned to him he was laggard, but on the mention of sex his mind became active and he would describe minutely every move that he made. 10

Q. In that description did he say that he had committed sodomy with animals? A. He said he had committed sodomy with animals, especially with cows and mares, at the age of seventeen. He was a masturbator from the age of thirteen continuously. At the age of fifteen he became acquainted with a man by the name of Quinn and then started his drinking. He went along with Quinn for a good many years, working at odd things here and there for a few dollars and then drinking. He had never had sexual intercourse with women and he abhorred them. 20

Q. He abhorred them? A. Yes. He had sexual connection with Quinn after he had killed him, what you call in English buggery or sodomy or pederasty. That, however, was only committed after the excitement of the alcohol indulgent, which stimulated the centers of erratic desire. That was upon Quinn, and it didn't follow immediately after he killed Quinn but followed about fifteen minutes afterwards. 30

Q. After he said he killed Quinn, but they haven't been able to find Quinn. 40

Mr. McMahon: Objected to.

The Court: Sustain the objection.

10 A. (Continuing) When we came down to the condition of the child he described very minutely every movement he made until he came to the meadows, the tearing off of the child's coat, throwing him upon the ground, the tearing of his clothes and the sexual act per rectum. The child commenced to scream and he hit him on the head and he still continued his act. The child still screaming he whipped out his knife and cut his throat and followed that by continuing his act until he was finished. He did not know—as a result of my questions he said—I said was it wrong and he said he didn't believe that it was wrong, the act of committing Sodomy with Quinn and it was not wrong  
20 to commit sodomy with the child. "Did you know it was wrong after you had committed it?" He said the act of sodomy was not wrong but the deed of killing the child when he came to himself he thought was wrong.

Q. But while he was doing it. A. While he was doing it he said he had no regrets.

30 Q. Then as a result of all this what is your opinion of his mentality as of November 17th, the time it is alleged he committed the sodomy and homicide upon the child? What is your opinion of his then mental condition? A. He didn't know what he was doing.

Q. Because of a mental defect? A. Because of a mental defect.

Cross Examination by Mr. McMahon:

40 Q. He told you a pretty clear story of what he did in this case, didn't he? A. Well, pieced together it was pretty clear.

Q. You have told us that his mind was very acute. A. Yes, on the question of sexual perversion.

Q. And he told you how he took this boy over to New Jersey from New York? A. Yes.

Q. His questions and answers were coherent? A. Yes.

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Q. The answers were coherent? A. Right.

Q. And he told you how he brought the boy to the meadows and his answers on that were coherent? A. Yes, sir.

Q. He told you how he laid the boy down on the meadows and his answers on that were coherent? A. Yes.

Q. And how he entered the boy's rectum, and the answers were coherent? A. He didn't tell me when—he told me that the boy screamed when he started to commence his act; that was coherent.

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Q. That was coherent and he told you that he finished his act and that was coherent? A. Yes.

Q. He told you that he slashed the boy's throat, and that was coherent? A. Yes.

Q. And so through this whole story of this episode as he told it, he told a connected, coherent story? A. Yes, sir.

Q. Was there anything abnormal about the story outside of the crime itself, about the telling of it? A. The telling of it, no.

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Q. Was the other doctor there who was on the stand at the same time when you examined him? A. Dr. Blumberg was there with his associate and Dr. Donahue came in afterwards.

Q. After you had completed your examination? A. After the examination of questions and answers; he came in at the time of the physical examination.

Q. You asked this man was it wrong and he told you it wasn't wrong to commit sodomy, is that right? A. Yes, sir.

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Q. And you believe he believes that?

10 Mr. Simpson: I object to that, if your Honor please. What this witness believes is of no consequence. He is detailing a history of the examination he made. What he believes seems to me to be of no consequence. Whether he took a certain element into consideration in his diagnosis is of course competent, but whether this witness believes he was telling the truth about the sodomy or about the murder is of no consequence.

20 Mr. McMahon: I think whether a man is telling the truth or telling a falsehood must be of some consequence to an alienist who is fishing into that man's intellectuality. If he believes he is lying he can put one construction upon the answer and if he believes he is telling the truth certainly there must be another deduction to be drawn from the answers.

30 Mr. Simpson: My answer to that is that the mentality of the Doctor is of no consequence. What he believes or doesn't believe isn't of any consequence. In other words, what effect that recital had on the Doctor's belief is of no consequence. It is what the Doctor took into consideration as facts in making up his opinion.

Mr. McMahon: Well, in order to make up his opinion he must believe that certain things are true and certain things are false.

The Court: Objection sustained.

40 Q. Did you pay any attention to anything this man told you? A. Certainly; I had to take every thing into consideration.

Q. Could you tell whether he was telling you the truth or telling a falsehood? A. I believe he was telling the truth on account of the fact I asked several times for him to repeat the same thing. He didn't deviate as somebody telling an untruth would deviate in some details.

Q. Do you think he made up this story? 10

Mr. Simpson: I object to that, if your Honor please. That will be a matter of argument to the jury, as to whether or not this was an hallucination.

Mr. McMahon: I withdraw the question.

Q. You believe he was telling you the truth? A. I believe it, sir.

Q. Was there anything abnormal in the way he recited this story to you? A. The story of the last act? 20

Q. Yes. A. No, sir, except the excitement.

Q. Except the excitement? A. He became excited.

Q. Well, a man charged with murder being examined by you in the County Jail, on trial for his life, is it unusual for such a man to become excited?

Mr. Simpson: I object to that, if your Honor please.

The Court: Sustain the objection. 30

Q. Was there any cause for his excitement?

Mr. Simpson: I object to that, if your Honor please, unless he asks this witness, in your opinion as an expert was there cause for excitement? I don't object to that.

Mr. McMahon: I withdraw the question.

Q. In your opinion as an expert, with a man on trial for his life, facing the electric chair, being ex- 40

amined in the County Jail by a group of physicians, is there any cause for excitement? A. Not in this case because he knew that we were for the defense; he had nothing to fear.

10 Q. But notwithstanding that knowledge he was excited? A. He was when it came to talking of sexual things.

Q. You mean to say he had an episode then? A. No, sir, but the mind working back upon that same thing.

Q. He was getting a renewed pleasure from it? A. I believe that he did.

Q. You believe that he did. You mean to say that he had an ejaculation when he told you the story? A. No, sir, he didn't have an ejaculation at that time.

20 Q. You are sure of that, are you? A. I am because I examined his privates and examined his rectum.

Q. But you are sure he had some sexual gratification in telling the story? A. Well, the excitement in telling the story, the sexual act.

Q. How did that manifest itself? A. Oh, by the rapidity of thought and he would be more aggressive in his ways.

30 Q. By rapidity of thought and by aggression? A. Where he would otherwise sit with his head more or less downcast to us, and when that question was brought up he immediately straightened up and his face became more or less flushed.

Q. You don't believe then that he was then approaching the vital part of the story—

Mr. Simpson: I object to that. Your Honor has already ruled this "belief" question out four or five times.

40 Q. Well, substitute the word "opinion" for "belief."

(Question repeated by the stenographer as follows): In your opinion was he then approaching the vital part of the story? A. No, sir.

Q. And that that might excite him? A. No, sir.

Q. Did he have any hallucinations? A. None, sir.

Q. Did he have any delusions? A. None. 10

Q. Has he any recognized form of mental disease? A. Yes, sir.

Q. What is it? A. Psychopathic; he is a sexual psychopath.

Q. Does that prevent him from knowing the difference between right and wrong? A. At the time of the commission of the act.

Q. Does it destroy his ability to know the nature and quality of his act? A. Only at the time of the commission of the crime. 20

Q. So whenever he had a sexual episode is it your opinion that whenever this man had a sexual episode he was insane? A. It is according to what you determine insanity is.

Q. It is what you determine. I am not determining anything.

Mr. Simpson: This witness has testified that at the time of the commission of the act because of the mental defect the defendant, if he did commit the act, didn't know what he was doing and didn't know it was wrong. Now, Mr. McMahan wants to use the general term "insanity", which nobody has agreed upon. One text writer says this and another text writer says that, and the witness very properly objects to the term "insanity", and I think he is perfectly correct in asking Mr. McMahan to define the term insanity. 30 40

Mr. McMahan: I withdraw the question.

Q. Is it your opinion that whenever this man has a sexual episode he does not know the difference between right and wrong? A. Yes, sir.

Q. When he masturbates does he know the difference? A. That is not a sexual episode.

10 Q. Well, what is a sexual episode? Define it, please. A. It is the act of the erection of the penis, the throwing of blood into the penis, the throwing of more blood into the brain and into the spinal column.

Q. That is a sexual episode? A. That and then the ejaculation.

Q. What does a masturbation produce? A. A masturbation is devoid of the mental sensation and only has to do with the ejaculation and pleasurable feeling from the ejaculation.

20 Q. Isn't there an erection? A. Yes, sir.

Q. Isn't there a throwing of blood into the penis? A. Yes, but the psychic effect is not there.

Mr. Simpson: And by psychic you mean brain?

The Witness: Yes.

30 Q. Tell us just exactly what you mean by the brain effect? A. The excitement of the brain; the sensations that are sent there have that pleasurable feeling which he would not feel from masturbation.

Q. Then you say there is a physical and biological difference between masturbation and the sexual act? A. There is a difference.

Q. Is there a difference between masturbation and the sexual act per rectum? A. Certainly, sir.

Q. Is the brain then stimulated in the sexual act per rectum? A. It is, absolutely.

40 Q. What was the result of your physical exami-

nation? What did you find? A. As a result of the physical examination the man showed that he was of low mentality. He had received an injury which had left a certain mark on him.

Q. The low mentality isn't physical, is it? A. Well, as a result of that, that is, more or less from my physical examination I can determine that. One is subjective and one is objective. 10

Q. I am asking you what you found on your physical examination. A. Depression of the skull, the three depressions on the parietal region of the skull. I found his pupils would not react to light; they reacted very slowly to accommodation. Upon microscopic examination the pupils and the retinal blood vessels were dilated; there was tremor of the muscles of his eyes; there was tremor of the muscles of his face; tremors of the tongue upon extension and deviation of the left; tremor of his arms and tremor of his legs. 20

Q. That was the only physical examination you made? Did you make all this yourself? A. What?

Q. Did you use the ophthalmoscope yourself? A. I did, sir.

Q. Did you take his temperature? A. No, sir.

Q. Did you take his pulse? A. Yes, sir.

Q. What was his pulse? A. His pulse was ninety. 30

Q. How were his tonsils? A. I didn't go into looking at his tonsils.

Q. You didn't look at his tonsils? A. No, there was no occasion for it.

Q. What was his blood pressure? A. 150 over 90.

Q. What was his diastolic pressure? A. 90.

Q. And 145 was the systolic? A. 150 was the systolic. The difference between the two is the blood pressure. 40

Q. Do you think the blood pressure has anything to do with this spinal fluid pressure? A. I don't think so, not in a general way would it have anything to do with it.

10 Q. What area of the brain were these depressions on the skull? A. Over the motor area of the face and arms.

Q. Did you have a history of any convulsions on the part of this patient? A. I would know that by attacks of petit mal.

Q. Petit mal means small? A. A mild form of epileptic attacks.

Q. Did he have epilepsy? A. That is the form of petit mal, in a light form.

Q. Did you ever see him in an attack of epilepsy? A. No, sir.

20 Q. Did he ever tell you that he had an epileptic fit? A. He don't know what an epileptic attack is.

Q. Did he ever tell you that he had an epileptic fit? A. I asked him.

Q. What did he say? A. "I don't know what it means."

Q. Did you try to explain it to him? A. No, sir.

Q. What was the answer? A. No, sir.

30 Q. You did not explain it to him? A. Except the minor form which I described.

Q. Is this pressure on the brain over a higher intelligence area? A. Not directly, sir, but the extension of the process of skeletal tissue, plus the formation of new connective tissue in an injury of that sort extends a whole lot further than the injury itself.

Q. Are you sure there was skeletal tissue in this brain? A. Except from the X-ray.

40 Q. Does that show it? A. The X-ray shows a lot of pressure upon a piece of bone that is utterly hanging down.

Q. On the inner table? A. On the inner table of the skull.

Q. It shows the pressure of the inner table? A. It shows pressure of the inner table of the skull pressing down on the brain, which is underneath it.

Q. Will you please show me that on the picture, Doctor? A. Yes, sir, there is a view anterior-posterior. 10

Q. Where is it? A. That area there (indicating).

Q. Does that show the two tables? A. That shows a pressure on the inner table.

Q. It shows a pressure on the inner table? A. From the inner table down.

Q. Does this show the inner table? A. Here is the inner table of the skull, sir. The upper one is the outer table but on an X-ray you can tell where the inner and outer table is. 20

Q. You say these lines—did you hear another Doctor testify that that is the sinus? A. No, the sinuses come below.

Mr. Simpson: Objected to.

Q. Isn't this line down here the sinus? A. Right here, yes, sir, here is the sinus. That isn't what I said. I said up here. Here is the skull itself; here is the outer table and there is the inner table. 30

Q. Which, the black mark? A. No, before you get to the black mark.

Q. Are there two tables in the front part of the head? A. The entire skull has the outer and inner table.

Q. Under this front part of the skull there is another table of bone. A. That is one table, sir, 40

with simply the small little spaces between the bone tissue. You can fracture a skull by simply hitting a man's head and you may crack the outer table and not fracture the inner table and you may not fracture the outer table and you may fracture the inner table.

10 Q. Which table is fractured in this case? A. In this case you have part of the outer table which is small and part of the inner table that is pressing down, that presses right down on the brain tissue here.

Q. Is that the mark you mean? A. Area A and Area B.

Q. You have another one coming over here? A. Yes.

20 Q. I understand you have—this is area A? A. Yes.

Q. Does that go down into the brain? A. It does not; it presses upon the covering of the brain. It is like a rubber ball. The indentation that a rubber ball—

Q. What I am trying to ask you is this: This outline, that is area A? A. Yes, sir.

Q. Now, is that pressing down into the skull in that way or is that over the surface? A. Over the surface of the covering of the brain.

30 Q. So that that does not penetrate to that depth? A. No, sir, it does not.

Mr. Simpson: Let the jury see it. Fortunately you are not going to decide this case; the jury is.

Q. Now this area A does not press to that extent upon the brain cap? A. It presses upon the covering of the brain and it is like a rubber ball—

40 Q. I don't want all that Doctor. What I want

you to do is to answer my questions. A. I am trying to, sir.

Q. I am asking you if that extends into the brain that depth? A. No, sir, it does not extend into the brain; it presses upon the meninges of the brain.

Q. Does it extend into the second skull cap to that extent? A. It is a direct view of the skull. 10  
If you would cut the skull in half—

Q. What I am trying to ask you is this: Is that area on the side the curve of the skull or is it sort of an inverted volcano or mountain? A. It is just straight as it is; it is like right straight down because that is your view.

Q. Does that go that depth into the brain? A. I told you it doesn't go into the brain at all.

Q. Does it go into the skull caps to that depth? A. It presses down into the covering of the brain. 20  
There are three coverings of the brain.

Q. This is area B. A. No, this doesn't go so far.

Q. Will you mark it? You know more about it than I do. A. (Witness marks film.)

Q. Now that only goes— A. That is distinct from the other. There are three areas like that.

Q. What I mean by this depth here is if this wasn't here at all could you stick your pencil down this far into this man's skull to get to the bottom of that? A. If this wasn't here? 30

Q. If that covering wasn't on top of that? A. You could drill a hole.

Q. You could go that far into the skull? A. Yes.

(Witness resumes the stand.)

Q. Does the density of the bone show light or dark on a plate? A. Dark,—no shows light on a plate—light on a plate. Of course the tissue of the bones might show a little marking on the bone, 40

depending upon the amount of development you gave it.

Q. So if the bone is denser at one point that will show light on this plate and not this darkening?

A. And if it is exposed too long it will show a little darkness in between.

10 Q. If it is exposed too long what will it show?

A. That depends on the man that develops it.

Q. A plate properly developed, what will the density of bone show with relation to the other bone in the head? A. It would show lighter in character.

Re-direct Examination by Mr. Simpson:

Q. That was your work at one time? A. Yes, I am still doing a good deal of it in my work.

20 Q. When did you do it entirely? A. In my early years.

Q. Now, you are quite sure that a man to intelligently read those X-rays would be compelled to testify that they show the inner table exerting some pressure on the meninges and some pressure on the brain? A. Yes.

Q. Do you think this fracture could have resulted from a fracture to a boy eight or nine years old? A. The fracture is there.

30 Q. I mean, it could have been obtained by a boy eight or nine years old? A. Yes.

Q. Now, Dr. Blumberg called my attention to the fact that I hadn't brought out that there would be reaction from this pressure. A. It produces pressure all over the entire brain surface.

Q. And the effect of this pressure is what? A. To produce this abnormal condition.

40 Q. Mr. McMahon asked you if this man had any delusions or illusions. Suppose this man had never killed Quinn or committed sodomy with him and

told you that he knew a man named Quinn and had murdered him and had committed sodomy afterwards, wouldn't that be either a hallucination or a delusion? A. It might.

The Court: And might not, also.

The Witness: And might not.

10

Q. These are not called plates? These are called films? A. Yes, films.

Q. So that on a plate it would be light but on a film it would be dark? A. Yes, sir.

Q. The plate itself would be light but when you made a film like this it would be dark? A. Yes, that is simply the change of conditions.

Q. There is nothing wrong about the bones showing dark here on the film, is there? A. No, sir.

20

Q. It would be light on the glass plate but dark on the film? A. Yes, sir.

Q. And this is the film or print? A. Right.

Re-cross Examination by Mr. McMahon:

Q. Isn't this the original? A. I don't know whether he took this as the original or through a screen.

Q. You say you are an expert. A. I don't know what the man used. He could use the same identical thing. He can use a glass tube or—

30

Q. What I am asking you is this: Is this the original plate that was put under the man's head when it was taken? A. I don't know, sir; I didn't take it.

Q. Is it a print or paper? A. No, sir.

Q. What is it? A. It is a reproduction of something that the X-ray must have passed through and left an impression on.

40

Re-direct Examination by Mr. Simpson :

Q. It could be printed from a plate or direct?

A. Yes.

Q. In other words, this could be put in a machine and a plate copied from it? A. Yes.

10

Re-cross Examination by Mr. McMahon :

Q. You don't know whether this is a positive or a negative? A. No, sir.

Q. Is there any way you can tell? A. By asking the man who did it.

Q. If he used a screen would a defect in the screen cast a shadow? A. It might, yes.

20

By Mr. Simpson :

Q. Sometimes this is taken directly, is it, right on this film? A. Yes, sir.

Q. Sometimes on a plate? A. Right.

Q. If it was taken on a plate the plate would show bone light and the film would show it dark? A. Yes.

By Mr. McMahon :

30

Q. Is this print printed on celluloid or paper?  
A. You could do the same thing, sir, on celluloid. You can take it any way you will. That is what I do all the time.

By Mr. Simpson :

Q. In colloquial terms, from your examination of this man and his history as you got it, and taking this pressure on the brain which you described as being due to a fracture, would he have any more intelligence than a beast on certain subjects?

40

*Capt. Harry W. Walsh—Direct Examination.*

Mr. McMahon: I object to that.

Mr. Simpson: The other doctor said he was little more than a beast.

Q. Would you say he had as much intelligence as a beast on these sexual subjects?

10

Mr. McMahon: I object to the word beast. We can compare human beings with human beings.

The Court: I think that the question is objectionable, Senator.

Mr. Simpson: All right, I ask for an exception.

(Witness excused.)

20

CAPT. HARRY W. WALSH, sworn as a witness for the defendant.

Direct Examination by Mr. Simpson:

Q. You are a Captain of Police? A. Yes, sir.

Q. What precinct? A. Number seven.

Q. Was this defendant in your custody at any time? A. Yes, sir.

30

Q. From what time to what time? A. If I remember rightly it was from the 9th to the 13th of December.

Q. Was he examined by Dr. Senator Love of New York, who is a physician? A. I don't know whether you can call it an examination or not. He went up and talked to him for about five minutes.

Q. He talked to him in your presence? A. No, he didn't talk to him in my presence.

40

Q. Didn't he afterwards make public the opinion that this man was a lunatic and was suffering from dementia praecox and didn't you convey that information to the State and the public?

Mr. McMahon: I object to that.

10 Mr. Simpson: I withdraw the whole question.

Q. Dr. Love from New York, who is Senator Love and who is an alienist did see this man, didn't he?  
A. Yes, sir.

Q. In your custody? A. Yes, sir.

Q. What time of day was that, do you know?  
A. I think it was on a Thursday evening.

Q. And when was he taken out of your custody?  
20 A. On Saturday, if I remember correctly.

Cross Examination by Mr. McMahon:

Q. Did you send for Dr. Love? A. I did not.

Q. Was he sent for by anybody? A. No, sir, not to my knowledge.

Q. Did he tell you anything about his examination? A. No, sir, he did not.

Q. What did he do? A. I don't know what he  
30 did. He went upstairs to the prisoner and came down again and then left the jail. He talked to me for a while.

Q. What did he talk to you about?

The Court: How is that material?

Mr. McMahon: I don't want the jury to believe that we are hiding anything.

Mr. Simpson: I object to any conversation he had with the Doctor.

40 The Court: Sustain the objection.

*Alexander K. Moering—Recalled, direct.*

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Q. Did the Doctor tell you anything about the mental condition of this man?

Mr. Simpson: I object to that.

The Court: Sustain the objection.

Mr. McMahon: That is all.

10

(Witness excused.)

(Thereupon at 12:45 a recess was taken until 2:00 P. M.)

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After Recess.

ALEXANDER K. MOERING, recalled by the defendant.

20

Direct Examination by Mr. Simpson:

Q. Mr. Moering, these exhibits made by you and offered by us, D-1, 2, 3 and 4, are they positives or negatives? A. They are negatives.

Q. And on them does the bone show white or dark? A. The bone shows white.

30

Mr. Simpson: That is all.

Cross Examination by Mr. McMahon:

Q. By negatives you mean they are the original films? A. Yes.

(Witness excused.)

40

DR. JAMES H. TRAINOR, recalled for the defendant.

Direct Examination by Mr. Simpson :

10 Q. There seems to be some confusion in the testimony about D-1, 2, 3 and 4, as to whether the bone shows white or dark on these. A. I am glad to be given an opportunity to try to clear that up. When that question was asked me this morning I am quite certain that the word used was picture. This is a negative.

Q. These are not pictures? A. No, these are negatives.

Q. In these negatives what does the bone show? A. It shows lighter.

20 Q. Lighter than on the picture? A. Yes, sir, it would show dark if a positive was made of that negative.

Q. These are negatives? A. Yes.

Cross Examination by Mr. McMahon :

Q. So if it was dense it would show light? A. Yes, sir.

30 Q. The denser it is the lighter it shows? A. Yes, sir.

(Witness excused.)

(Defendant rests.)

## Rebuttal.

DR. HENRY A. COTTON, sworn.

Direct Examination by Mr. McMahon :

Q. Dr. Cotton, where do you live? A. Trenton, New Jersey. 10

Q. Are you a physician and surgeon? A. I am.

Q. What college are you a graduate of? A. University of Maryland, 1899.

Q. With any degrees? A. M. D.

Q. Have you practiced your profession since that time? A. I have limited my practice from that time to nervous and mental diseases in Baltimore, and Massachusetts, a year, in Munich, Germany, and twenty-one years at Trenton. 20

Q. Are you connected with any hospitals and institutions? A. Medical Director of the State Hospital at Trenton.

Q. Is that a hospital for treating mental diseases? A. It is.

Q. How long have you been a director of that institution? A. Since December, 1907.

Q. Before 1907 were you connected with any institutions? A. Three years at the Worcester State Hospital, in Massachusetts, and four years at the Danville State Hospital, and one year of that period I was abroad studying in the Royal Psychiatric Clinic at Munich under Crapeland. 30

Q. And these places at Denville and Worcester, were those for the treatment of mental diseases? A. Yes, sir.

Q. You spoke of some place in Baltimore. A. The City Asylum, after I graduated.

Q. Was that also for the treatment of mental diseases? A. Yes, sir. 40

Q. Have you now in the State Hospital at Trenton patients suffering from mental disorders? A. We have about twenty-five hundred.

Q. How many cases of mental disorders have you treated and inspected in your medical experience?

10 A. I would say about nine hundred a year, from six to nine hundred a year, increasing in the latter years.

Q. Did you make an examination of this defendant, Peter Kudzinowski? A. I did.

Q. When? A. On Tuesday afternoon, January 8th.

Q. Where? A. At the Hudson County Jail.

Q. Who was present at that time? A. George W. King, Dr. Arthur Haskings, Dr. Braunstein and the attendants in the jail, whom I don't know.

20 Q. Will you tell us, Doctor, what examination you made?

30 Mr. Simpson: I object to that on the ground that it appears that this man was examined without any consent from me. This man was examined without any notification to me, and I submit that under the authorities of this state the state had no right to examine this man under these circumstances, compel him to incriminate himself, and it is a violation of the statutory provision regarding self-incrimination. The least these men could have done was to notify me that they were about to make an examination so this man's rights could have been protected, and I submit that such examination was wholly illegal and unethical.

40 In your Honor's chambers Mr. McMahon asked me, in your presence, whether I would have any objection to him being ex-

amined by the experts for the State, and I said no, providing he was examined by the defendant's experts first. He said nothing to me about him being examined without authority from me. On the contrary, I wrote to the warden of the jail and asked him to see that the defendant was not examined without authority from me. That is not the fault of the warden, who is sick and was not at the jail. I submit that the examination was wholly illegal and unethical because these doctors should have notified us, and I therefore object on the ground that this examination was unauthorized and therefore illegal and I object to any recital of it. 10

Mr. McMahon: Your Honor will recall the conversation in your chambers when Mr. Simpson asked for permission to have alienists examine the defendant; that I then asked for the right to examine this defendant and Mr. Simpson himself said, "Yes, you ought to examine him. The only condition that I will impose on you is that you do not have your experts there when we have our experts there. I do not want to get mixed up like I was in the Gaynor case." He gave me unqualified permission to have the examination made at any time, with that one stipulation. That is the only stipulation he made, that I would not have my experts there when his experts were there. 20 30

The Court: As I recall it that was the situation.

Mr. Simpson: I certainly would never have given permission for this man to be examined without me being present, other- 40

wise why would I have written the letter to the warden. I didn't expect them to shoot some doctors in there to say what they like and report what they like.

10

The Court: I don't know anything about a letter to the warden, of course, but I certainly take your word for that; but I recall the conversation and as I recall it it was substantially as stated by Mr. McMahon and yourself. The only addition to what took place that wasn't related by you was that the doctors shouldn't meet, that is, the doctors representing the defendant and the doctors representing the state. You stated at that time that you got in some sort of a mix-up over the Gaynor examination, and

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as I recall it that was the only condition imposed; and under the circumstances I think I will allow the examination and give you an exception.

Mr. Simpson: I ask for an exception.

(Exception allowed, signed and sealed accordingly.

.....

Judge.)

30

Q. (Question repeated.) Will you tell us, Doctor, what examination you made? A. We made first a mental examination, going over the facts of his life, various points in the mental history, development and so forth, and a physical examination.

Q. What did you do first? A. The mental.

40

Q. And how did you make the mental examination? A. By asking questions, Dr. King, Dr. Hasking and myself asking questions, which were taken down by a stenographer.

Q. And how were his answers to the questions which you asked him? A. The answers to the questions were relative, coherent, sometimes a little hesitation but at no time was there considerable hesitation, enough hesitation to say that it was a blocking or an abnormal retardation or inhibition. He seemed to be anxious to tell his story but did not talk rapidly. Sometimes questions had to be repeated but he seemed to understand perfectly what was being asked of him and the answers, as I say, were given honestly, adequately, without any attempt at malingering or hiding anything. 10

Q. Did you examine him as to current events, political events? A. I examined him as to his present situation, what we call orientation. He knew the date with the exception, I think he had one day off. I think it was the 8th and he called it the 7th. He knew the day of the month, the year, where he was and his surroundings. There was no confusion; he seemed to be perfectly clear; his memory was clear; he gave a very connected account of his life, of his accident at nine years of age, of his experiences, school life, his work, and a detailed account of his experiences on November 17th, and from that time on. So there didn't seem to be any evidence of amnesia or memory disturbances of any kind, no confusion. 20 30

Q. What further test did you make of his knowledge of current events? A. I asked him about the last election, who was elected president. He said Hoover, and who ran against him, and he said Smith. He knew the President, the present President. He knew the Governor of this State but he did not know the Governor of Pennsylvania, although Pennsylvania was his original home. He knew about the World War, who was fighting, who 40

won the war; he seemed to be, for his experience and education—evidently what he said was in harmony with his experience and education. He left school when he was thirteen, in the fifth grade, went to work in the breakers picking slate, and later went to work in the mines. His calculating ability was in keeping with his education. He knew the multiplication table up to twelve times twelve. When asked what twelve times thirteen was he made a mistake but was easily corrected. Other mental arithmetic problems were answered satisfactorily without showing any deterioration or loss of his school knowledge. He seemed to maintain the amount of knowledge that he had from the fifth grade.

10  
20  
30  
Q. Was there anything else you did to search his mentality? A. We asked him about his habits, drinking. He said he began to drink when he was seventeen, or at least during the flu epidemic, which was in 1918; that he was the only one in the house in his family that was well or didn't have the flu and that he drank whiskey and ate onions and that that seemed to keep him well, and from that time on he drank excessively, sometimes intoxicated; he said that he drank whenever he could get it; that it was in the house; that his father had it and he drank whatever his father had and he drank on a great many occasions whenever he could get it.

Q. Did you make any physical examination of him? A. He said he had a hernia and that for four years he didn't work because he thought he had strained himself. Yes, we made a physical examination.

40  
Q. What did you find from your physical examination? A. The physical examination showed a slight degree of tremor of the tongue and hands;

no evidence of any paralysis; his muscular strength was good; there was no incoordination; he could bring his fingers together and put his fingers on his nose with his eyes closed; no neurological disturbances except the pupils were dilated and did not react to light only within narrow limits. The tongue was turgid in the middle line; we didn't see any deviation but there was a slight fibrillary of the tongue. 10

Q. What do you mean by slight fibrillary? A. Just a slight tremor, just the fibres of the tongue were active; his speech was correct; he showed no evidence of any brain lesion which would cause paralysis, motor or sensory, his sensations were normal, recognized touch anywhere on his body where you would stroke him, whether you were going up and down or across; he recognized pin pricks, whether it was sharp or dull, and reflexes were exaggerated, practically all of the reflexes were exaggerated; the sexual organs were normal in appearance. 20

Q. Did you examine his skull? A. We did. On the top of the skull about an inch— I mean about a finger's breadth ahead of the line drawn from ear to ear a depressed fracture in which you could put the tip of your finger. It seemed that the outer table of the bone had been fractured at one time, and he said when he was nine years old he got it from diving. 30

Q. Did you look at his tonsils? A. Yes. His temperature, I might say, was 100. He had evidently been having a slight attack of grippe or perhaps a sore throat. His throat was very much reddened and one tonsil seemed to be enlarged.

Q. Did you take his blood pressure? A. His blood pressure was 145 diastolic and 70, I think systolic. His pulse at that time was very rapid. 40

At that time his pulse was 140 to 142, which increased a little more rapid than his temperature.

Q. How did you find his stream of thought?

A. His stream of thought was clear, connected; I found no blocking; his answers were relevant; he didn't volunteer much information. There wasn't  
10 a great deal of spontaneity. We would have to ask him questions to get the answers and he would stop when he answered the question; he wouldn't go on until we asked the question.

Q. Did you find any delusions? A. I found no delusions at all; he had nobody persecuting him; he blamed nobody for his difficulties; had no enemies, and as far as I could know he had no delusions of self accusation. He didn't accuse himself of anything that we could determine.

Q. Did you get any history of his sexual activity  
20 from him? A. I did. He stated from the time he was sixteen or seventeen he had been more or less—he had more or less sexual excitement without gratification, which he had masturbated, and had had intercourse with animals, mares and cows, and that when he was drinking this sexual appetite was increased; that he never had any relations with man or women except the two instances which he  
30 cited, one in 1924 and the other November 17th, 1928; that he had the inclination but that he was bashful; he had no aversion to women but he didn't know how to go about to get a woman. That was his expression, he was bashful, and of course he couldn't approach men for the same reason, and his gratification was largely a matter of masturbation, but when he had this sexual activity he couldn't control it. He never had any other sexual perversions, that is, he never had done other things which he might have done.

Q. In your opinion did he have a knowledge of  
40

right and wrong? A. He seemed to have a perfect knowledge of right and wrong. He realized that it was wrong to do what he did but he realized that as far as the sexual part was concerned that he had no control over himself. He seemed to show remorse of what he had done. He stated that in Detroit after this crime that he worried about what he had done; that he finally took some drinks— he first got a position and then took some drinks so he could tell the story to the police; he felt he couldn't do it unless he was stimulated and he felt he had to tell his story. He said he felt on several occasions like blowing his brains out but that he had some religious scruples and he didn't know what would happen to him in the after world and he thought if he took his medicine he would have a better chance of restoration or forgiveness than if he committed suicide. He realized the nature of his act and the penalty of it and felt convinced that it was due him. As he put it, he owed a debt to society for his act. 10 20

Q. From your examination of him, Doctor, can you tell us whether he is suffering from any form of insanity? A. I saw no evidence of any form of mental disease.

Q. And he was able to appreciate the nature and quality of the act which he committed on the 17th of November? A. He was. 30

Q. And he knew that it was wrong? A. He did.

Cross Examination by Mr. Simpson:

Q. Are you a salaried state official? A. Beg pardon?

Q. Are you a salaried state official? A. I am.

Q. You draw a salary from the State of New Jersey? A. I do. 40

Q. Now, when did you make this examination?  
A. Tuesday afternoon.

Q. What date? A. January 8th, on the 8th of January.

Q. And you didn't see him on the 17th of November, did you? A. I did not.

10 Q. Isn't it possible for a man to have recurring periods of insanity, to be sane at one time and then to be insane at another? A. It is.

Q. If you didn't see him on the 17th of November then your examination has to do with him as you found him in December, is that right? A. Yes, sir.

20 Q. And is there often a brain injury where the attendant symptoms will clear up, where a man will be sane even where a brain is injured, and then again insane? A. Yes, sir.

Q. How can you testify then as to what his condition was on the 17th of November, if you didn't see him on the 17th of November? A. I haven't testified as to his condition on the 17th of November.

Q. You don't know anything about it? A. Only what he told me.

30 Q. You have written a book, haven't you, entitled "The Defective, Delinquent and Insane"? A. I have.

Q. And don't you say in that book as follows (p. 17):

40 "From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on bio-chemical evidence, as well as clinically, in delirion tremens. In this condition we know that the brain has been seriously affected but with the removal of the alcohol

it becomes perfectly normal again. Therefore, it cannot be argued that because of recoveries in the acute psychoses the brain has not been affected. Moreover we have seen many recoveries among the acute psychoses occur in a day or two after the removal of the chronic foci of infection."

You so wrote, and it is a fact, is it? A. It is a fact. 10

Q. Then it might very well be, if this man had a fracture of the skull and had pressure on the brain that that would produce a kind of insanity which would be present at some times and absent at other times? A. Possibly.

Q. And that alcohol would bring it in? A. It is possible.

Q. And as I understand you you are simply testifying to the condition he was in when you saw him on the 8th of December? A. The 8th of January at one o'clock. 20

Q. And at that time he was perfectly normal? A. Perfectly normal, yes.

Q. Now, in cases of emotional insanity of this sexual kind where a man would be seized with these perverted sexual notions and after they are satisfied he would return to a normal state such as you saw this man in on December the 8th? A. No one can say definitely, but it is a possibility. 30

Q. Then how do you diagnose the condition described by him, that he couldn't control this unnatural sexual desire? Do you say that cannot be attributed to any mental defect or brain disorder? A. It might be attributed to alcohol. It was exaggerated when he was drinking.

Q. Yes, but suppose there was a brain injury plus alcohol. Would that or would it not produce such a case of mental disorder as to render him unable to control what he was doing? A. There 40

is a possibility, the brain injury being sufficiently severe.

Q. There is such a possibility? A. The brain injury being sufficiently severe.

Q. You did not have an X-ray made of this man?  
A. No.

10 Q. Of this man's head? A. No.

Q. You don't know how severe the fracture was at the time he got it, do you? A. No.

Q. Now then, you know of this test which Dr. Blumberg used, of extracting the spinal fluid, don't you? A. Yes, sir.

Q. You didn't do that in this case? A. No.

Q. You were one of the first men in this country to adopt that, weren't you? A. Yes.

20 Q. Isn't it a fact that you were retained by the State to examine Gallagher, who shot Gaynor? A. Yes, sir.

Q. And you made such a test and determined that Gallagher was insane? A. Yes, but the cells and condition of the spinal fluid—

Q. But that was your opinion? A. Yes, sir.

Q. And the jury said he was sane? A. Yes.

Q. He went to Trenton and died and you performed an autopsy and found that you were correct and that the man was really insane? A. Yes.

30 Q. And you made your diagnosis upon this spinal fluid test, and with other things, I presume? A. Yes.

Q. What did your spinal fluid test show ultimately? A. That he had an increase in the cell quantity of spinal fluid, a watery liquid—the spinal fluid is a watery liquid with no cells normally. In paralysis you have an increase of the cells of twenty-five to one hundred per cubic milometer.

40 Q. Which would indicate, as Dr. Blumberg said,

a pressure on the brain? A. The chemistry I am talking about.

Q. No, I am talking about you putting your needle in the spine and taking out the fluid and finding the pressure on a meter, on a manometer. Doesn't that show any pressure? A. It may or it may not.

10

Q. I mean, is there a normal pressure? A. Well, normal varies in individuals. It depends—

Q. Can we get something positive from you? What is the variation? A. It depends whether you use a water manometer or a mercury manometer or plain tubes

Q. Well, take the water manometer. That was used in this case. A. It would be around fifteen.

Q. That is what it ought to be if a man was in sound health? A. Yes, sir.

20

Q. If it was twenty or twenty-five would that increase instruct you as to any condition of the brain? A. No, because he had high blood pressure. I think high blood pressure has a direct relation.

Q. Do you say as an expert that the tests made by Dr. Blumberg are valueless? A. No, it is not valueless.

Q. What is its value? A. I say, if you take it in connection with the blood pressure or any other symptoms a pressure on the brain—if he showed symptoms of paralysis, for instance, or if he had convulsions or fits or epilepsy.

30

Q. Suppose he didn't have paralysis but a leaning to the side and suppose he had this motion of the tongue to the side and had this eye condition, would that mean anything to you at all? A. I didn't see that; I examined him very carefully.

Q. I mean if Dr. Blumberg found those things, would that have any effect in your making up your mind or would you require a paralysis, and so

40

10 forth? A. I would think if he had enough pressure from the fracture to cause mental trouble the relation of that fracture to the part of the brain involved is important. That is right over the motor area, and if there is a depressed fracture that doesn't show in the X-ray—the inner table is not fractured—then you would expect to get convulsions or an attack of paralysis of the face or hands or feet; and right under the skull is the leg area, and it comes on down to the face and hands.

20 Q. Then do I understand you to say that a man who had a fracture of the skull and pressure of the brain, who had abnormal sexual impulses, had no relation with women whatever, who took a little boy and who bought him candy and took him in the meadows and attempted to sodomize him and cut his throat and then after the poor little boy was dead finished the sodomization, you say that man was perfectly normal though he couldn't resist doing this thing? A. I would say he was normal so far as the legality—so far as the insanity—

Q. Don't be a lawyer. I am asking you whether a man in that condition is normal.

30 Mr. McMahan: I object to that. The test in this case is whether he knew and could appreciate the nature and quality of the act which he committed and knew that it was wrong.

The Court: The Senator is asking him if that is normal. Objection overruled. Go ahead.

A. I wouldn't say any act like that was normal.

40 Q. Here in your book, on page 174, do you say this—this book, of course is written for the edification of the world and the advancement of science?

A. Yes, sir.

Q. Everything in here is true, as far as you know? A. Yes.

Q. Didn't you say in this book, page 174: "Here again the sexual element plays a very important role in their abnormal conduct, and we are of the opinion that the discussion of this problem among the defectives applies equally well to the delinquents. Many of them are sex offenders and are easily misled because of hyper-sexual activity. This is due to a disturbance of the sex glands and it becomes an uncontrollable factor in their habits." Did you say that in your book? A. Yes, but that doesn't apply to insanity. 10

Q. I am asking you whether you said it? A. Yes, I said it.

Q. You said that in your book on Defectives, Delinquents and Insane? A. Yes. 20

Q. Now, do you say you know and can state under oath as a matter of medical knowledge what the condition of this man was on the 17th day of November mentally? A. I cannot, only what he told me.

Q. I am not asking you what he told you. I am asking you from your examination on the 8th as to whether or not you can tell what his condition was on the 17th of November? A. From what he told me. 30

Q. No, from your knowledge, from your first examination of his tonsils and teeth? A. You are a great man on teeth. You recommend the pulling of teeth for nearly every disease? A. No, sir.

Q. The teeth and the tonsils and the intestines—were you able to examine his intestines? A. No, I didn't operate on him. I couldn't examine his intestines.

Q. Then you were limited entirely to the veracity of his statements, were you, as to the condition on the 17th? A. Absolutely. 40

Q. Now, will you give us that blood pressure test over again, please? You said something about blood pressure. The doctors say you got the cart before the horse when you used the terms systolic and diastolic. You gave one figure— A. 15 being normal.

10 Q. No, you described the blood pressure— A. 145 diastolic over 70 systolic.

Q. They say you are right this time but you were wrong before. I have to depend on the doctors. This pressure on the brain, couldn't you have that without convulsions and without exaggerated changes in parts of the body? If there was a pressure on the brain, as I understand you to say, there would have to be convulsions or interference with his gait, or something of that kind, is that what you say?

20 A. Paralysis or convulsions or epilepsy.

Q. In other words, all pressure on the brain, no matter how slight it is, would cause epilepsy or paralysis or interference with the limbs? A. No, I said nothing of the sort.

Q. Suppose this fracture you found had gone through the inner table of the skull and suppose there was pressure on the covering of the brain, would that in any way affect this man's brain? A. If it was serious enough he would probably not have learned anything after the injury.

30 Q. Would it be such as would cause recurrent insanity? A. Well, it is a possibility. I don't see how it could.

Q. What do you know about this fracture of the skull? Do you claim that by examination you can swear it didn't go through the inner table? A. The X-rays that I see, from them there is no evidence of fracture of the inner table.

Q. That is your opinion? A. Yes.

40 Q. You don't read them the way the doctors read

them? A. I haven't heard anybody say yet that there was a fracture of the inner table.

Q. How long did you examine this man? A. It seemed to me that it was about two hours and a half.

Q. And he discussed his sodomizing of animals with you, didn't he? A. He did. 10

Q. Didn't show any signs of shame in discussing it, did he? A. Remorse.

Q. Of the animals? A. Remorse over his own conduct.

Q. How did he show it? A. He said he knew it was wrong; that he couldn't control himself.

Q. Did you ask him the question, "Do you know it was wrong?" A. Yes.

Q. And he said yes? A. Yes.

Q. He answered you like a parrot, didn't he? 20  
A. No.

Q. Any question you asked him. A. No, plenty of times he said no. I asked him if he had any connection with anybody else after the episodes in 1924 and 1928 and he said no, he had no relations with anybody else.

Q. And you say that the reason he hadn't approached women was because he was bashful? It wasn't because of any sexual abnormality? A. He didn't have any aversion to women. He would liked to have had it but he didn't know how to go about it. 30

Q. And you believed that? You believed that these horrible habits that he had with animals and humans was due to bashfulness and not due to abnormality, either mental or physical? A. He said his not having relation with women was due to bashfulness.

Q. Then the consequence, as I take it, is, that his relations with animals and humans was due to 40

the same timidity. It wasn't due to any form of abnormality? A. He had an uncontrollable impulse which he couldn't control.

Q. Well, what was that due to in your opinion?

A. Well, that is hard to say.

10 Q. Assuming that he has an uncontrollable impulse sometimes to do that? A. That is hard to say.

Q. Could it be due to pressure upon the brain?

A. I don't think so, the accident happening when he was nine years of age.

20 Q. I didn't ask you that. Please don't argue the case for the State. I am asking you whether this pressure could have caused this? Did you say in your book, your learned treatise on "The Defective, Delinquent and Insane, by Henry A. Cotton, M. D., Medical Director, New Jersey State Hospital at Trenton. Lecturer in Psycho-Pathology, Princeton University. Director, Psychiatric Clinic for Correctional Institutions of New Jersey. Introduction by Adolph Meyer, M. D."—I won't read his titles—don't you say on page 30:

"In a like manner, sexual excesses and masturbation are probably to be looked upon as symptoms of a disordered metabolism rather than causative factors in insanity?" A. Yes.

30 Q. Exactly what does that mean? What does that mean when you say "Sexual excesses and masturbation are properly to be looked upon as symptoms of a disordered metabolism?" A. To explain that, formerly everybody believed that masturbation and sexual excesses caused insanity, but we have found out more and they are considered more as symptoms than as causes.

40 Q. In other words, instead of masturbation and sexual excesses causing insanity, insanity causes masturbation and sexual excesses? Is that what you mean? A. In some cases, exactly.

Q. You needn't put "some cases" in. We are trying to find out what the general rule is. A. In every case a masturbator is not insane.

Q. Why didn't you take this spinal test? A. The man had a temperature of 100 and a pulse of 142, and I saw no evidence of paralysis or syphilis, and I didn't think he was in condition to have a lung punctured at that time if I had wanted to do it. 10

Q. It was the lumbar puncture that proved that you were right in the Gaynor case? A. That was the Gaynor case, and—

Q. Proved you were right when you said he was insane and McDonald and Hamilton said you were wrong, when they said he was sane? A. Yes.

Q. And you didn't make that lumbar puncture in this case, did you? A. No. 20

Q. Will you say this man has no increased intracranial pressure? A. No, I wouldn't say that.

Q. Wouldn't the increased intracranial depression at times cause mental deterioration? A. I see no evidence of it.

Q. No, would it cause it? A. If it was severe enough.

Q. If there was pressure there nine years of age, accompanied by intracranial pressure would that cause mental deterioration? A. Not in all cases. 30

Q. Would it in any case? A. I don't know of a case.

Q. So you say increased intracranial pressure over any substantial period of time would never cause mental deterioration? A. With the symptoms—

Q. I didn't ask you anything about symptoms. I am asking you whether increased intracranial pressure causes deterioration of the brain if extended over any period of time? A. It might. 40

Q. Does it commonly do it? A. No.

Q. Won't pressure on any nerve tissue cause it to die? A. It depends on the severity of the pressure.

10 Q. Did you also say in your learned work on *The Defective, Delinquent and Insane*: "As we have stated, at least forty percent of the defective delinquents show mental abnormalities and physical disturbances it is manifestly improper to send this class of delinquents to the reformatories of disciplinary institutions, as they exist today, for at present even the best of such institutions have no means, other than disciplinary to handle them. Each institution should have, if possible, well equipped hospital wards for the observation and treatment of this class and a research bureau. But  
20 this would require the duplication of many facilities in the various institutions, whereas the necessary treatment could be better given in a central institution." A. Yes.

Q. So that, as I take it, you there state that many of these defective delinquents show mental abnormalities? A. Yes.

Q. Would you say this man was one of them? A. Not in the sense of a man to be committed to an institution on the basis of insanity.

30 Q. Would you say that this man as a defective delinquent showed any mental abnormalities? A. I say he showed an abnormal condition.

Q. Well, mental or physical or what condition? A. I think more physical than mental.

Q. Due to physical conditions? A. Yes, his sexual impulses.

Q. Now you say you thought he was sane because he didn't know the name of the Governor of his own state. A. No, I didn't say that.

40 Q. That is one of the tests. You said one of

the tests you made was he didn't know the name of the Governor of Pennsylvania. Therefore the man was sane. Do you know the name of the Governor of Mississippi? A. I do not.

Q. What is your native state? A. Well, I have lived in North Carolina and Virginia.

Q. That is your native state, North Carolina? 10  
A. Well, I haven't lived there since I was three years old.

Q. Do you know the name of the Governor of that State in 1900? A. I do not.

Q. Then why do you take into consideration the fact that this man didn't know the Governor of his State as indicating that he was sane? A. I did not say that.

Q. You used it? A. No.

Q. Didn't you testify here that you asked him if 20  
he knew the name of the Governor of Pennsylvania in your examination and he said he did not? A. I said he knew the Governor of New Jersey and he knew the President and the president-elect and the present election but he did not know the Governor of his own state.

Q. Are there any people among the 2,500 in your insane asylum at Trenton, New Jersey, that know the names of the President of the United States and the Governor of New Jersey? A. Most of them 30  
do.

Q. And they are insane? A. Yes.

Q. What value was your test in asking him who was the Governor and citing that as evidence when you come to testify, and saying that he knew the name of the President and the Governor of the State and the President-elect and yet he is not insane but most of the 2,500 people who are insane do know the name of the President, President-elect and Governor of New Jersey? What evidential value 40

has that test? A. That he wasn't confused; that during this period he knew what was going on around about him; he had no memory disturbance.

Q. Do all insane have memory disturbances? A. There are so many types—if they are confused they do.

10 Q. How many types of insanity are there? A. There is a large group, subdivided. We have psychoneurosis, dementia praecox—three or four types.

Q. Does dementia praecox ever manifest itself in offenses such as his? A. I don't think I have but one case in the hospital to be compared with him.

Q. Is that one of the symptoms of dementia praecox? A. Possibly I have one case out of 2,500.

20 Q. Well, what type of insanity causes sexual excesses and masturbation? What type of insanity causes that? A. As I said, it is a question of deranged metabolism.

Q. Metabolism is a big word, like the old lady said, "That blessed word, Mesopotamia." A. It is the balance in the economy of the system. That is, you have a lot of assimilation of food and you have a lot of glands of internal secretion which are pouring blood into the circulation, and that all indicates

30 metabolism.

Q. Metabolism means the nourishment of the body? A. Not necessarily, no.

Q. Would you put this boy in any classification? Would you call him a normal mental human being or would you put him in any classification? A. I wouldn't classify him as a normal human being; I wouldn't classify him as insane. I say he has abnormal conduct.

40 Q. Due to what? A. Due to his physical condition.

Q. To his excessive sexual habits? Due to his physical condition? A. Yes.

Q. Due to the food he eats? A. No.

Q. What particular physical condition is the cause of his condition? A. I think it is the effect of alcohol.

Q. If a person is injured in the brain and it clears up your books says that it is apt to bring back insanity? A. Sometimes. 10

Q. So if a man had pressure on the brain and it seemed to clear up alcohol might bring that back, that insanity, according to your book? A. It might.

Q. When you saw this man on the 8th he had had no alcohol for a long period of time? A. Not as far as I know.

Q. You saw him on the 8th, did you? A. Yes, sir.

Mr. Simpson: What was the date, Mr. McMahan, that he was arrested in Detroit? 20  
The Court: The third.

Q. Then for five days he had evidently been without alcohol, so when you saw him he had no alcohol, as far as you know? A. No.

Q. Have you in your institution cases of sexual psychoneurosis? A. I haven't any at present; I have seen such cases.

Q. Have you had them confined in your place? 30  
A. I have seen them more in outside institutions. Most of them do not get in institutions. They are not committed. They are not insane.

Q. Have you seen any under confinement at all?  
A. Seen what?

Q. Didn't you say you had some in your institution in your present testimony? A. No.

Q. And as far as you know you have none showing sexual psychoneurosis, is that right, confined to 40

the State Hospital? A. There may be some; I don't recall them; I can't recall offhand.

Q. Well, it is better to confine them, isn't it, if they break out with uncontrollable impulses? They ought to be confined? A. Certainly.

10 Q. Doctor, they tell me you examined him a month after he was arrested? A. I beg pardon?

Q. You examined him on the 8th of January? A. The 8th of January.

Q. Then you examined him a month after his incarceration? A. I don't know when he was incarcerated.

Q. He was arrested on the third of December and has been in custody ever since and therefore had been without alcohol for over a month? A. Yes.

20 Q. Did you say Dr. King was with you when the examination was made? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

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DR. HARRY J. PERLBERG, sworn.

30 Direct Examination by Mr. McMahon:

Q. Where do you live? A. Jersey City.

Q. Are you a practicing physician and surgeon? A. I am.

Q. From what college were you graduated? A. Long Island College Hospital, 1911.

Q. Were you admitted to practice in New Jersey? A. Yes, in 1912.

40 Q. Do you make a specialty of any branch of medicine? A. I have specialized in X-ray work since 1918.

Q. And you are known as a roentgenologist? A. Yes, sir.

Q. Were you connected with any institution? A. My present associations or affiliations are County Roentgenologist of Hudson County, having charge of all Hudson County Hospitals and Clinics, I am also attending roentgenologist to the Jersey City Hospital; also consulting roentgenologist to the New Jersey State Rehabilitation Commission, and I was formerly in the Roentgenological Department of the United States Army. 10

Q. Did you examine these X-ray films, D-1, 2, 3 and 4? A. Yes, sir.

Q. Are they original films? Are they negatives or are they positives? A. These are negatives.

Q. So that dense objects show up white on these negatives? A. Yes, sir. 20

Q. And objects that are not so dense show up dark? A. Gray or various shades up to dark according to the denseness of the object.

Q. Did you examine an alleged fracture on these prints? A. I examined the prints and find no definite radiographic evidence of a fracture.

Mr. McMahon: That is all.

Cross Examination by Mr. Simpson: 30

Q. Are you testifying to what these negatives show? A. I am testifying as to my findings from an examination of these negatives.

Q. Could you print a positive from this negative? A. Yes.

Q. What are you reading now, a positive or a negative? A. A negative.

Q. So you read these plates, the part pointed out as showing the fracture as testified to by the two 40

physicians. What do you read that as? A. I find a density that is marked on the films. This density is probably a thickening in the inner side of the skull. The skull is irregular.

10 Q. What is the thickening due to? A. I was explaining that. The skull is irregular on its inner side. Some parts are thicker than others. There are depressions on the inside of the skull to permit of the passage of the blood vessels. These passages are thinner and the walls about the depressions are naturally thicker and by the contrast on the X-ray film they will have a denser appearance than the remaining portions of the skull.

Q. Let us get this straight. Do you say these prints do not show any evidence of any fracture?

20 A. I find no definite radiographic evidence of a fracture.

Q. I didn't ask you that. Do you say that these films show no evidence of a fracture at any time?

A. I have answered that.

Q. No, I am asking you whether you say as an expert that it doesn't exist, because you might shut your eyes and look at it and not find them. Do you say as an expert that no such thing exists on this? A. After a careful examination of these films I do not find enough in there to permit me

30 to state that there is a fracture.

Q. Or that there is not a fracture. A. I would say there is not a fracture.

Q. Have you examined the man's head? A. No.

Q. Would that help you at all? A. It might.

Q. Did you ask to examine him? A. No, I read from the history of the case.

Q. Then Dr. Cotton was wrong when he said he did have a fracture? A. He may be wrong.

DR. GEORGE W. KING, sworn.

Direct Examination by Mr. McMahon:

Q. Doctor, you are a physician and surgeon? A. I am.

Q. From what college were you graduated? A. 10  
University of Michigan, 1879.

Q. When were you admitted to practice medicine in the State of New Jersey? A. 1880.

Q. Have you been practicing continuously since that time? A. I have.

Q. Have you specialized in any branch of the medical profession? A. I have.

Q. What branches? A. Nervous and mental diseases.

Q. How long have you been specializing in that branch of your profession? A. I am in my forty-  
eighth year now. 20

Q. Are you connected with any institution? A. Yes.

Q. What institutions are you connected with?  
A. I am the Medical Superintendent of the Hudson County Hospital for the Insane, situated at Secaucus, Hudson County, New Jersey.

Q. How long have you been superintendent? A. Since June, 1881. 30

Q. How many cases of mental disorders have you examined in your professional career? A. Well, in all those years I have examined probably an average of three or more a day. It is a very simple mathematical calculation, which will convince you that I have examined close on to 50,000 insane persons.

Q. Did you examine this defendant, Peter Kudzinowski? A. I did.

Q. When? A. January 8th, in the County Jail. 40

Q. Who was present at the examination? A. Dr. Cotton, Dr. Hasking, one or two jail attendants, and Dr. Braunstein.

Q. What examination did you make that day? A. We made a physical and mental and neurological examination.

10 Q. Will you tell us first what your physical examination was? A. The physical examination was an examination of his heart and lungs. We take in his reflexes, examined his pulse, his teeth, his throat and a depression on the top of his head we discovered during our examination. His neurological examination showed, as was testified to by the other side, that the reflexes, his knee jerks were somewhat exaggerated, that the pupils were sluggish, that they did not respond to light completely.

20 Otherwise the neurological examination was negative, and so was his physical examination.

Q. What examination did you make of his mentality? A. We asked him questions from his early boyhood up to the present time, the experiences he went through, where he worked and what work he did do. And we seemed to obtain very intelligent replies and we had every reason to believe that he was truthful, yet he was timid; questions, would have to be repeated to him. He would respond in such a low tone, although on the whole we had no trouble in eliciting all the information that we were after.

30

Q. What did you find from him was his early life? A. He told us that when he was in swimming one day he dived in the water some place and got that injury to his skull. He told us he went to school when he was about six years of age and continued until he was thirteen, telling us that he went as far as the Fifth Grade. In examining his knowl-

40 edge of the education that he received in the public

school we inferred that he didn't go any further than that but he was probably truthful when he said he went as high as the fifth grade.

Q. Did you make any other examination of his early life or what he worked at or what he did after he left school? A. He told us that he went from one place to another, was in different cities in the east; that he worked at railroading; something else he worked at but I don't remember what he said that was just now; I can't recall; but his work was laboring work, and his muscles showed that he did that kind of work. 10

Q. Did you ask him about this crime that we are trying him for now? A. I did.

Q. What did you ask him about that? A. We first asked him about his sexual vices and he stated that he started to masturbate when he was between sixteen and seventeen years and had done that two or three times a day, and I remember asking him if he ever had any determination to stop that. He said he did, and that after each act he would have the most profound regrets for doing that and he would have a firm determination never to do it again, and his reasons for doing it were that when this irresistible desire would come on him he was sexually excited, his will power was such that he couldn't control himself and he gave the same reason in attacking—when he attacked this boy as well as that other case a few years before that. He went through his experiences as Dr. Cotton has stated here on the stand. There is no use me going through that. It is practically the same; it is just as I remembered it; and we were particularly anxious to find out why he was so anxious to have intercourse with this brutality, this so-called sadism, sexual intercourse inflicting punishment. That is what that word means. He stated 20  
30  
40

that he hurt this boy, he entered his anus and he hurt the boy. The boy shouted and he put his hand over his mouth and then he took the knife out and he cut his throat.

10 Q. Did he say why he cut his throat? A. To stop the boy from hollering, fearing that somebody would come and catch him in the act. And afterwards he finished, had his sexual desires gratified and went to the D. L. & W. Railroad, or some place, and went out of town some place. I forget now where he said he had gone to, but that was his description.

20 Q. Did he tell you about any intercourse with any beasts? A. We particularly asked him about that and he said that he had had intercourse with cows and mares, and, as Dr. Cotton stated he was anxious to have intercourse with the female sex but his timidity, his bashfulness, prevented him from making the attempt.

Q. How were all his answers to your questions? Were they coherent or incoherent, logical and responsive? A. They were responsive; they were coherent and they were logical, and every evidence to my mind that they were truthful.

30 Q. Did you examine him as to his drinking? A. We did, he stated that he commenced to drink at an early age, during the war; that he used to have it in the house for his father and sometimes he would take his father's share, and that he would get drunk whenever he had the opportunity and that when he would be under the influence of liquor then the sexual impulses were dominant in his entire being; he couldn't resist them; they stimulated his sexual desires and he blamed the alcohol for those things.

40 Q. Did you find out what his blood pressure was? A. His blood pressure was 145. I thought it was

80 but Dr. Cotton said 90—I thought it was 145 over 80. Dr. Cotton might be correct. The notes will show that.

Q. Did you examine his tonsils? A. We did, and they showed that they were infected; and he had some bad teeth; he had evidences of a sore throat. He probably—he looked to me like an individual just recovering from grippe or a cold or some slight illness of that kind. He had a temperature of 100 at that time. 10

Q. From your examination of this man, Doctor, are you prepared to tell us whether in your opinion this man could appreciate the nature and quality of the act for which we are trying him and that it was wrong? A. I am.

Q. What was it? A. I believe he understood the nature and quality of the act and I believe he knew that it was wrong. 20

Mr. McMahon: That is all.

Cross Examination by Mr. Simpson:

Q. Did you say to anybody that in your opinion this man was insane? A. Well, I think I agree with two of your experts. I think he is a psychopathic and I think he has a low type of mentality. 30

Q. Did you ever say before you took the witness stand that this man was insane or normal? A. I don't think he is normal.

Q. What do you mean by sanity? A. What is medical insanity?

Q. No, I d.dn't say insanity, sanity. Mr. McMahon is trying to get you to say that this man is sane. Now I want to know what you mean by sane? A. A man normally, mentally sound we would understand is sane. 40

Q. Do you say he is normal? A. I wouldn't say that he is normal mentally, no.

Q. Now suppose he had a fracture of the skull when he was nine years of age which produced a pressure on the brain, would that pressure on the brain or could that pressure on the brain produce mental abnormality? A. Those things happen; they do occur.

Q. Let me read to you from a great work by Dr. Cotton and see if you agree, unless Mr. McMahon objects. A. Read louder, please.

Q. Dr. Cotton in his great work on *The Defective Delinquent and Insane*, says that, "From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on his bio-chemical evidence, as well as clinically, in delirium tremens. In this condition we know that the brain has been seriously affected but with the removal of the alcohol it becomes perfectly normal again. Therefore, it cannot be argued that because of recoveries in the acute psychoses the brain has not been affected. Moreover we have seen many recoveries among the acute psychoses occur in a day or two after the removal of the chronic foci of infection." Do you agree with that? A. I do.

Q. Then what knowledge would your examination made a month after November 17th, what scientific knowledge would that give you of this man's mind on November 17th? A. Of course, I don't know how that man was on November 17th. I spoke of his condition as I found him on the day of the examination.

Q. Then you are testifying, as I understand it, as he was on the 8th of January, that if he had done

this thing on the 8th of January he would have understood it was wrong, but what his mental processes were on the 17th of November you have no knowledge of whatever because you didn't examine him on that day? A. Perfectly true.

Q. Will you tell me how you explain the sluggishness of pupils, Doctor, and the exaggerated reflexes? How do you explain them? A. That could be due to various causes. A toxic condition was present, his illness, the nervous condition he must have been in, being tried for his life. That I think would be sufficient to cause that, the toxic condition. 10

Q. You will have to keep your voice up. You think every man who is waiting to be tried for a homicide has exaggerated reflexes and pupils? A. No. 20

Q. Do you say that masturbation and sexual offenses, abnormalities, are caused by insanity or that they cause insanity? I ask you that because Dr. Cotton swore that at one time it was believed that masturbation and sexual excesses caused insanity but that the modern doctors preach that insanity causes masturbation and sexual excesses? A. Yes, I agree with Dr. Cotton.

Q. That if a man is insane and masturbates and indulges in sexual excesses that that is a result of his insane condition? A. Yes, I agree with Dr. Cotton on that. 30

Q. Now this man, when you examined him he told you frankly about his sexual excesses, abnormalities with animals, didn't he? A. He did.

Q. He didn't keep it back at all? A. He did not.

Q. Dr. Cotton said—one of the answers which influenced Dr. Cotton was that he knew the President of the United States, the President-elect and Governor A. Harry Moore of New Jersey. Would 40

that have any effect on you at all as to his sanity or insanity? A. That would be a link in the chain. You ask several questions and the different ways he replies you would put that one among the other number of questions that you ask and put the aggregate together and get your conclusion.

10 Q. Are the insane ever logical and coherent and reasonable? That is, is there such a thing as a man being insane on one subject and on other subjects being logical and coherent? A. Yes.

Q. Suppose a man had the kind of insanity that manifested itself in pederasty and sadism, could he on all other subjects talk reasonably and logically but yet go off the handle on that subject? A. Yes, very few people know what a person's sexual life is.

20 Q. They testify here, Doctor—some doctors—that when they examined him at the jail he sat with a stooped head and didn't seem to be much interested, and that the minute they mentioned sex he straightened up and seemed to be interested. A. I didn't see that.

Q. But if that happened would it indicate anything? A. It would indicate that sexual perversion—indicate sexual perversion.

Q. Sadism means sexual pleasure with cruelty? A. Yes, sir.

30 Q. Taken from the Marquis de Sade? A. Yes.

Q. The Frenchman that wrote some books that have been suppressed? A. Yes, sir.

Q. And who died in an insane asylum? A. Yes.

Q. And isn't that type of man one who has no sense of pleasure unless it is accompanied with cruelty? A. It is a mental defect.

Q. You have often testified for me in cases? A. I have had that pleasure, yes.

40 Q. And you and I never had any quarrel about the testimony? A. No.

*Dr. George W. King—Re-direct Examination.*

Q. Either when you are with me or against me?

A. No.

Re-direct Examination by Mr. McMahon:

Q. In the recital of this story to you was that a test of his memory? A. It was.

10

Q. Would that indicate to your mind anything about his mental condition on the 17th of November? A. It would strengthen my opinion that he was in about the same condition on the 17th because if he were not I can't make myself understand how he could tell such a clear-cut decisive story.

Q. From the clear-cut decisive story that he told you on the 8th of January you conclude that he was in the same state of mentality on the 17th of November as he was when you found him on the 8th of January? A. I give that as my opinion, yes.

20

Re-cross Examination by Mr. Simpson:

Q. We referred to Dr. Cotton's great work. Dr. Cotton said, as I read you, that a man might make a spontaneous recovery and from that we could argue that the brain itself could not have been affected, but this is not necessarily true as we have already seen, that the presence of alcohol would bring back the insanity. Now then if on the day you examined him he had had no alcohol and he had had alcohol on the 17th of November, which, according to Dr. Cotton, would create insanity, how could you judge his condition on the 17th of November when you made the examination on the 8th of January? Merely because he could remember the horrors that he had been through? A. I couldn't judge it in any other way. If he was profoundly under the influence of alcohol he wouldn't remember it.

30

40

Q. Well, a man in delirium tremens remembers the pink camels and green monkeys and so forth.

A. Some do and some do not.

Q. And delirium tremens are a species of insanity? A. Oh, yes.

10 Q. So some of the patients when they come out can recite, like Kipling, all the facts or hallucinations of the delirium tremens, and like Jack London, who had delirium tremens and recited all the experiences and hallucinations he had, wrote about it. A. Yes.

(Witness excused.)

DR. ARTHUR P. HASKING, recalled.

20 Direct Examination by Mr. McMahon:

Q. Doctor, I think you have already testified to your qualifications when you were put on for proof of the post mortem. Have you had any experience in addition to that which you testified in neurological cases? A. Nervous and mental diseases.

30 Q. What experience have you had? A. Well, my official capacity requires the examination of all cases alleged to be insane for the purpose of commitment and care. I am also attending psychiatrist to the Jersey City Hospital, where we have a large psychopathic division, and I am also consulting psychiatrist to most of the various institutions in the City and County. In some of the cases attending, others consulting.

Q. And have you examined a great many neurological cases? A. I have.

Q. Nervous cases? A. Yes, sir.

Q. And insane persons? A. Yes.

40 Q. Did you examine this defendant, Peter Kudziowski? A. I was present at the examination.

Q. On January 8th, in the Hudson County Jail?

A. Yes, sir.

Q. In company with Doctors Cotton, King and Braunstein? A. Yes, sir.

Q. What tests did you put this defendant to?

A. Well, the usual examination and tests that have been described by the two previous witnesses. I 10  
was present.

Q. That is, you made a physical examination and a mental examination and a neurological examination? A. Yes.

Q. What was your physical examination? A. The physical examination was conducted by,—the major portion of it was by Dr. Cotton and reported by him, and I am in accord with what he has already previously stated.

Q. What was your neurological examination? 20

A. He has already covered the same subject.

Q. What examination did you make as to his mentality? A. Why, the questions asked. The major portion of the questions were asked by Dr. King and Dr. Cotton. I merely listened to the questions and to the replies. I asked a few questions of my own.

Q. You put in a few questions of your own? A. I did.

Q. Were the replies to the questions propounded 30  
by any of the doctors responsive to the questions asked? A. They were prompt and responsive.

Q. Were they logical and coherent? A. They were.

Q. Was there any hesitation on the part of the person examined?

Mr. Simpson: I object to that. I think that is a leading question. I think this witness ought to tell what happened.

The Court: Objection sustained. 40

10 Q. Tell us the manner in which he answered the questions? A. At times he took some time to answer the question—one or two questions. Apparently from his replies he was framing a reply and others apparently forming replies. When he did not understand the previous question he hesitated for that reason and twice the questions were repeated, once by his request; he didn't understand it. Otherwise his answers were what one would consider among normal replies.

Q. Did your examination take him through the greater part of his life? A. Yes.

20 Q. Did you find out how long he went to school? A. He outlined that he went to school up to the age of thirteen, left in the fifth grade and went to work in the breakers for about two years and then in the mines, and had been working in various other positions covering up to the present time.

Q. Did he tell you about his drinking episodes? A. He outlined them. He started in to drink about the flu epidemic, and when I asked why he started to drink he outlined the fact that during the flu epidemic in 1918 the family had been affected and he drank whiskey and took onions to prevent the flu and that since that time he had been drinking ever since whenever he could get it.

30 Q. Did he tell you anything about this crime we are trying him for today? A. Yes, he did.

40 Q. What did he tell you about that? A. Well, he outlined, when asked what he was arrested for, and he said the crime was killing a boy, and he was asked to outline or describe the crime and he described it, about picking up the boy in New York and coming over to Jersey City with the boy and the reasons for it and how he journeyed to the scene and what transpired there and what transpired after he left, approximately where he left and the

circumstances, about arriving in Detroit and why he went to the police officer, and the fact that he drank in order to get his courage up in order to go to the police and make the report, and in a general way described the statements in Detroit, and then discussed various points and answered the questions concerning his statement, which was rather a consecutive one, and then he amplified it and answered questions on other points that were asked. 10

Q. Did he tell you about this thing that he did to the boy? A. He did.

Q. What did he say happened when he was doing this thing to the boy? Did he say anything about killing the boy? A. He said he was going along Tonnele Avenue with the boy for the purpose of having sexual intercourse with him, and he was asked what he intended to do after he had the sexual gratification. He said he intended to turn the boy loose, didn't intend to do him any harm, and he was asked if at the time he was going along Tonnele Avenue to the County Road if he had any intentions of doing any harm to the boy or killing him and he said he did not, and he said that while in the act the boy began to cry and then he took his knife from his pocket and cut his throat, and when asked why he did that he said the automobiles were going by and he was afraid somebody would hear him and he cut his throat in order to keep his quiet and he then completed the act, and he was asked what was the condition of the boy when he got through and he said the boy was dead, he had cut his throat, and he said he got out of that locality across the road and disposed of his knife and got on a train and went to Scranton. My recollection is he said to his folks' home. 20 30

Q. From that examination are you prepared to 40

- 10 tell us in your opinion whether this man knew the nature and quality of the act he committed at that time and whether or not it was wrong? A. In reply to queries as to what he thought about the act he said it was wrong, that he knew it was wrong, that he had done a great wrong to society and owed society to pay for it, he felt that it was an irreparable impulse that came over him in drinking; that he had only had one or two drinks. He insisted that he was not drunk then nor was he drunk when he went to the police in Detroit. He only took a few drinks, but, as he said, he knew what he was saying and doing. He impressed me with the idea that he was trying to indicate that a few drinks caused him a certain amount of sexual disturbance which he was not able to control; that
- 20 he realized what he was doing and he admits he knew it was wrong. He further states that he contemplated suicide but he did not feel that he wanted to do that with the crime he had committed and he decided to help the police and he took a few drinks in order to go to the police officer, who at first would not believe him, and he outlined that as the reason why he drank then; and also he had been drinking a short time in New York before he picked this boy up, and he seemed to lay stress on
- 30 his sexual disturbances, being excited by a few drinks of liquor. That is what he seemed to impress me with, and while he had a full realization of what was going on and realized it was wrong, and he realizes it now. He was connected and coherent and he carried his story along in a logical, connected way. There appeared to be no gaps that I was able to appreciate. He outlined in his answers plainly and freely.
- 40 Q. Is it your opinion that he knew the nature and quality of his act? A. It is.
- Q. And that he knew it was wrong? A. He did.

Cross Examination by Mr. Simpson:

Q. You are an employee of the County? A. I am.

Q. In constant association with the Prosecutor's Office? A. Connected with the homicide work, which brings me in contact with their office on all homicide cases. 10

Q. You say that man insisted that he wasn't drunk in Detroit? A. Yes.

Q. Told you he had only had a drink or two? A. He said he had only had a few drinks.

Q. He said he wasn't drunk? Did this man tell you he was not drunk in Detroit? A. He was asked if he was drunk and he said, not so he didn't know what he was doing or saying.

Q. In Detroit? Did you hear when the police officers testified that he was so drunk that he had to hold him up? A. Yes, sir, but when he outlined his drinking to us he insisted that he was not drunk. 20

Q. In Detroit? A. Yes.

Q. Did you take down his questions and answers? A. No, they were stenographically taken down.

Q. Who took them down? A. This gentleman (indicating the court stenographer), the court stenographer. 30

Q. The who? A. The court stenographer.

Q. Took down the questions and answers? A. Yes.

Q. Did you consult those before you took the stand today. A. I looked them through.

Q. Did you see this man on the 17th of November? A. I did not.

Q. Do you admit that if this man had a fractured skull and constant pressure on the brain that 40

that would cause mental deterioration? A. Not necessarily.

Q. Could it do it? A. In my judgment it would have to be extensive.

Q. Well, extensive or inextensive, would pressure on the brain produce any condition of abnormality? A. If the pressure was sufficient and prolonged enough.

Q. Do you agree that brain injuries from mental disturbances may clear up and afterwards the use of alcohol will produce the same condition? A. Not necessarily.

Q. Do you admit that such a thing is possible? A. I say not necessarily because I have seen a number of cases that have cleared up and have subsequently treated them.

20 Q. So you don't agree with Dr. Cotton where he says in his great work, on page 17—

Mr. McMahon: I object to that.

Mr. Simpson: I withdraw the question.

Q. You say that is true or not true? I will read it to you: "From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on bio-chemical evidence, as well as clinically, in delirium tremens. In this condition we know that the brain has been seriously affected but with the removal of the alcohol it becomes perfectly normal again." Is that true or not? A. I do not know. I can say that a brain seriously injured—in an ordinary case of delirium tremens—

40 Q. Will you say whether what I read to you is correct or incorrect?

Mr. McMahon: I object to that. He doesn't have to characterize that statement of Dr. Cotton's.

Q. Would you say that is so? A. I would say that is so except with serious injury to the brain.

Q. What do you mean by "except with serious injury to the brain?" A. He may have a condition of meningitis or probably hemorrhage following the excitement. If you get a toxic irritation of the cell function or of the brain function then the answer would be yes. 10

Q. You mean that insanity is the cause of sexual abnormalities and masturbation? A. I believe they are the manifestations of a disturbed mental state and not its cause.

Q. That is, sexual abnormality is the result of a disturbed mental stage? A. Yes. 20

Q. Well, if this man on the 17th of November committed sodomy on a little boy and cut his throat and finished the act, would you say that he was sexually normal? A. No, sir.

Q. So if he was not sexually normal then it might have been produced by insanity? A. If he was insane, yes.

Q. If the answer is yes it would be yes and if no it would be no. A. (No answer.) 30

Q. Doctor, the only examination you made of this man, I take it, was in the jail? A. Yes, Tuesday afternoon.

Q. And from the replies he made to your questions and as a result of your physical examination you base your conclusion? You never saw him on the 17th of November and do not know what his condition was on that day. Do you say under oath that from your examination on the 8th of January, when he was without any alcohol, that on the 17th 40

of November you are sure he knew what he was doing and he was not in any way mentally defective?

A. I do.

10 Q. And is there such a thing as recurrent insanity, recurrent periods where a man will be insane today and then sane next week? A. Several circular types.

Q. How can you testify what is the characterization of the insane period? A. One would have to take the whole general picture.

20 Q. What I want to get is this: When you see a man who was insane six months ago and you see him today and he is perfectly sane, how can the knowledge you get today from the sane man tell you what his condition was six months ago when he was insane? A. By his description of his conduct at that time.

30 Q. I am not talking about this case. Suppose I put it this way: A man is insane on the first of June and then by treatment by yourself or Cotton or Dr. King or some other great physician he recovers his sanity. He has no recollection of what his condition was on the first of June. He can't tell you anything about it. But you see a perfectly sane man on the first of January. How can you know the information you get on the first of January, how can that tell you anything about his condition on the first of June? A. If he says he had no recollection, that his mind is blank, one would infer that he did not know what he was doing at a given time.

40 Q. But if a man walked into your office and he talks to you on the first of January and you give him a certain physical examination and ask him certain questions, now if he can't tell you anything about the first of June—he may have slept for forty-eight hours at the time—if he can't tell you

anything about the first of June would you say under oath that the first of January you can tell what his mental condition was on the first of June?  
 A. If he says that he has no knowledge of what was going on one would infer—

Q. Suppose a man was on a drunk and was drunk for two days; that he then lay off the drunk and he don't remember what happened the first of June or the second of June and he comes into your office and he says, "Doctor, will you look me over?" Now, this is the first of January—can you then tell whether he was sane or insane on the first of June when he comes into your office on the first of January? A. I would simply have to be guided first by the circumstance of whether he was telling the truth or not telling the truth. He might not be telling the truth.

Q. If he wasn't telling the truth you could not diagnose his case? A. I could not.

Q. Now supposing this defendant had been in the hands of the police for thirty days, had been continuously drilled with this story; it had been written down and talked over and over and he had this thing drilled into him so he believed it and then he told you the story and told you he had remorse for the thing now that happened on the 17th of November, how could you tell whether he was giving you a recital of how he felt on the 17th of November or whether he was telling you what the police had drilled into him?

Mr. McMahon: I object to this question because it contains an unwarranted assumption of fact. There is no evidence in this case that the police drilled this man at any time or reiterated the story or constantly reiterated it.

Mr. Simpson: That isn't the point. The doctor says he knows now what his condition was on the 17th of November.

Q. How do you know it? A. I know from what he told me on the 8th of January.

10 Q. Now irrespective of what the police did, assuming, Doctor—

The Court: Do you withdraw that question?

Mr. Simpson: Yes.

20 Q. I say, Doctor, assume that the police had this man in their custody and were asking him this story and pounding it into him until he knew it by rote and then he told you this story by rote and then he had remorse, would that enlighten you as to his condition in November, 1928?

Mr. McMahon: I object to that. If it is a hypothetical question it ought to state the facts brought out in the testimony.

Mr. Simpson: I withdraw the question.

30 Q. Doctor, as I understand it, your opinion depends upon the truthfulness, the veracity and the correctness and the actuality of the story the man told you, is that right? A. And his statement to me in reply to a previous question that apparently from his statement it was a fact known to him and not repeated to him.

Q. I am not asking you to defend this case, I am asking you to answer my question.

40 Mr. Simpson: That is not responsive to the question and I ask to have it stricken out.

*Dr. Arthur P. Hasking—Recalled, cross.*

Q. I ask you if it is a fact that your opinion depends upon the truthfulness and accuracy and the correctness of what this man told you. A. All of the things that the man told me.

Q. What is the answer? A. (Answer repeated by the stenographer.)

Q. Depends upon the accuracy of what was in his statement and his statement is what he told you? A. Yes. 10

Mr. Simpson: I think that is all.

(Witness excused.)

Mr. McMahon: If your Honor pleases, I have produced all the doctors who were present at the examination except Dr. Braunstein. We don't hold Dr. Braunstein out as an expert on insanity cases. He is merely the prison physician and doesn't pose as a sanity expert. However, I don't want to close my case and be charged with having suppressed any evidence. He isn't here; he is about the business of the jail. However, I will call him. 20

Mr. Simpson: If you say you do not produce him because he is not an expert and is simply the jail physician—if the jury understands that Mr. Braunstin is merely the jail doctor and present at the examination I will make no point about not calling him. 30

Mr. McMahon: That is all I wanted to call Dr. Braunstein for, and with that understanding.

(The State rests.)

Mr. Simpson: No rebuttal. 40

*Charge to the Jury.*

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(Thereupon a recess was taken until ten a. m., January 11, 1928.)

(Thereupon at 12:15 p. m. a recess was taken until 1:15 p. m.)

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After Recess.

1:15 P. M.

The Court: Mr. McMahon, do I understand that you are going to stand on all the counts of the indictment?

Mr. McMahon: No, the State abandons every count in the indictment except that for murder.

20 Thereupon the court charged the jury as follows:

**Charge to the Jury.**

The Court: Gentlemen of the Jury: The defendant, Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, was indicted by the Grand Jury of this County at the September Term, 1928, for the crime of murder.

30 The indictment contains three counts. The first count is for murder. The second count is for manslaughter. The third count is for assault and battery. The State has abandoned the second and third counts of the indictment, so that all you will need consider is the first count, or the count for murder.

The crime of murder in this State is defined by statute. It is as follows: Any person who in committing or attempting to commit any unlawful act against the peace of the State of which the prob-

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*Charge to the Jury.*

able consequence may be bloodshed, shall kill another, shall be guilty of murder.

Murder is divided into two separate degrees, murder in the first degree and murder in the second degree. Murder in the first degree is the more grievous form of murder and the statute says it 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, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree." Murder in the second degree is of course the lesser form of murder.

It will be your duty in this case, if you find the defendant guilty of murder, to indicate by your verdict whether you find him guilty of murder in the first degree or of 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 prescribes as necessary elements to that degree of murder, a wilfulness, a deliberateness and a premeditation of the killing; and also it is murder in the first degree if the murder is committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy; and without those elements it fails into or becomes murder in the second degree.

An unlawful killing does not amount to murder in the first degree unless it is 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 execution, that is, deliberated upon it; and, also, it is murder in the first degree

if the murder was perpetrated in the commission of any of the acts which I have already enumerated among them, the perpetration or the attempted perpetration of the crime of sodomy or the other crimes I have already mentioned.

10 Now, while I have dealt with these terms wilful, deliberate and premeditated in such a way as to indicate to you that they signify, as they do, three separate and distinct functions or operations of the human mind engaged in the premeditation of the killing, I also charge you that the taking  
20 place of these functions of the human mind does not require necessarily any prescribed period of time; but 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  
30 capable of acting. In other words, premeditation and intent to kill need not be for a day or an hour or even a minute, for if you gentlemen of the jury believe that there was a design and a determination to kill distinctly formed in the mind of this defendant at any moment before the time the victim was stabbed or cut, which design was deliberately and with premeditation carried out, it was a wilful, deliberate and premeditated killing, and therefore murder in the first degree. Or if the death of the  
40 victim ensued while the defendant was perpetrating or attempting to perpetrate a sodomy upon him, then, therefore, the crime would be murder in the first degree.

As to murder in the second degree, the law is that any person who in committing any unlawful act against the peace of the State of which the probable consequence may be bloodshed, shall kill another, shall be guilty of murder; and I charge  
40 you now, gentlemen, that the stabbing or cutting of the decedent, this little boy, by the defendant

was an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing here 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 all that you find in this case is that the defendant was guilty of murder only because the killing was an unlawful act of this defendant, which I have just indicated to you, and because you find no evidence in the case to justify, excuse or to extenuate the killing, you can only find the degree of that murder in the second degree. 10

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 that unlawful act of stabbing or cutting the throat of the victim, but in addition that the killing of the decedent was wilful, deliberate and premeditated (and these terms I have already explained to you) or that the killing resulted from the perpetration or attempted perpetration on the part of the defendant, of the crime of sodomy upon the body of the victim. 20

On the question of sodomy our statute provides as follows: "Sodomy, or the infamous crime against nature, committed with man or beast, shall be high misdemeanor." 30

The defendant, like every other defendant on trial, is presumed by the law to be innocent and the burden rests upon the state to prove each and all of the essential elements of the crime charged against him beyond a reasonable doubt. This burden never shifts and always remains with the State throughout the trial.

Reasonable doubt, the term which I have already used, gentlemen, is defined by the upper courts of 40

10 this State as being that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully compared and considered all the evidence in this case your minds are in that state that you cannot say you feel an abiding conviction to a moral certainty of the truth of the charge, you have what the law says is a reasonable doubt and it is your duty to give the defendant the benefit of that doubt and acquit him. But you are not required to give him the benefit of anything except such reasonable doubt.

20 The defense is insanity. Against such a defense the law entertains no prejudice. On the contrary, if a defense of this character be properly proved and sufficiently established, the law accords the accused the full benefit of it by an acquittal of all criminal responsibility. But with regard to the methods by which such a defense may be made successful, the law, from considerations of public policy—the welfare of society and the safety of human life—proceeds with the greatest circumspection, exacting, in the proof of such a defense, strict compliance with the standard adopted by the law for determining where criminal responsibility ends and criminal irresponsibility begins.

30 In the first place, the burden of proof rests upon the accused, upon the defendant. The law presumes that every man is sane until the contrary be 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  
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preponderance of proof, and by the most satisfactory evidence. Insanity is a disease and not a transient impulse of the mind, and manifestations of the existence of the disease, before and after the commission of the deed, would naturally be expected.

In the next place, the law adopts a standard of its own as a test of criminal responsibility—a standard not always in harmony with the views of scientists. Many of the forms and degrees of mental disease, which, in the judgment of learned men, would be regarded as insanity, are utterly rejected by the law in the administration of criminal justice. The law regards insanity as a disease of the mind, implying fixedness and continuance of mental condition. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act and ends when it is consummated. Says a writer who has given much attention to this subject: "Insanity is only a manifestation of disease of the brain. The doctrine that an individual can be entirely sane immediately before and after any particular act, and yet insane at the instant the act was committed, is contrary to every principle of sound psychological science."

The law also utterly repudiates, in criminal prosecutions, such defenses when based on a defective or perverted moral sense—generally known as moral insanity. A person who steals the property of another, knowing the nature of the act he is doing, whose moral sense is so perverted that he cannot restrain his propensity to steal, is sometimes called a kleptomaniac, but in law he is regarded as a thief and is punishable as such.

The doctrine of moral insanity as a defense to a criminal accusation has been repudiated by an almost unbroken current of decision, as hostile to

the principles of law and to the welfare of society. If the persons from whom the subjects of criminal law are derived should be permitted to prosecute their avocations because they are such as their moral propensities have led them to adopt, the object of organized society—the preservation of life and property—would be defeated. Stripped of its high-sounding name, moral insanity is wickedness, depravity. Laws are enacted and courts established for the suppression of crime begotten of such causes, and therefore moral insanity—crime excused on the ground of a defective or perverted moral sense—has no place in the criminal law. Furthermore, the law not only considers insanity, when offered as a defense to a criminal charge, as a disease of the mental faculties, but it also prescribed the degree of the mental disorder or disease which shall be exacted as the condition on which a defense of insanity shall be allowed; for it is not every kind nor every degree of insanity that will render a man irresponsible for acts of atrocity. The law does not require, as the condition on which criminal responsibility shall follow the commission of crime, the possession of one's faculties in full vigor, or a mind unimpaired by disease or infirmity. The mind may have been so weakened by disease as not to be capable of realizing the enormity of the crime, or may have become so irritable and excitable, through a life of degrading vice and sensual indulgence, and yet the accused will be criminally responsible for his acts.

To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not

know that what he was doing was wrong. If an accused has sufficient mind to know the difference between right and wrong with respect to the act he is doing, and to control his conduct under ordinary circumstances, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistible impulse. Capacity and reason sufficient to enable the accused to distinguish between right and wrong was adopted as the test of insanity in criminal cases by 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. 10

If, then, on a defense such as has been interposed in this case, it appears, as the result of the evidence, that the accused had sufficient mind to enable him to distinguish between right and wrong, and to control his conduct under ordinary circumstances, he cannot acquit himself on the plea of irresistible impulse that led him to do the criminal act. 20

Now, gentlemen, if, by reason of the habits and mode of life of the prisoner or any injury to him his mind had become so impaired and diseased that he was incapable of distinguishing between right and wrong with respect to the act he was about to do, he was then, in the eye of the law, insane, and entitled to an acquittal on that ground. But, gentlemen, if the prisoner, though his mind had been impaired by the causes mentioned, had still sufficient mind to enable him to know the difference between right and wrong, and to control his conduct under ordinary circumstances, he was, in legal sense, sane and responsible for his act; and if his passion became so inflamed as to overcome his judg- 30 40

ment and impel him to do an act which, if he reflected, he would have known to be wrong, he cannot excuse himself on the ground that he acted under an impulse that he could not resist. For the question is, not whether the accused, when he engaged in the deed, in fact thought whether the act  
10 was right or wrong, but whether he had sufficient mind and understanding to have enabled him to comprehend that it was wrong, if he had used his faculties for that purpose.

It has been testified that this defendant was addicted to the use of alcohol. Drunkenness may be insanity but it is voluntary. It is no excuse for the consequences of crime. Even if you believe the faculties of this defendant were so prostrated as to, in your minds, amount almost to a condition of  
20 insanity, if it was the result of voluntary drunkenness, it is no defense for the crime here alleged.

Now, gentlemen, the testimony of these doctors who were witnesses is entitled to great consideration as the opinions of gentlemen of intelligence, learning and experience. It is true that these medical experts examined the prisoner since the homicide. I believe the testimony indicated that they examined the defendant, some of them, on the 7th or 8th or 9th of January. I may be wrong in the  
30 time, but you, of course, who heard the evidence will recall just what the dates were. But you will remember that insanity is a disease of the mind, evidence of which naturally would be exhibited in the conduct and actions of the sufferer before and after the period when the crime was committed, especially so when the disease is supposed to have been the result of degrading and enervating practices, and is a gradual, steady and continuing result of their pernicious effects.

40 I now leave this case in your hands. I have been solicitous only that the law should be so expressed

that no precedent prejudicial to the public peace or the security of life shall be established. Your duties are also responsible duties. You are to care, on the one hand, that the prisoner shall not be convicted contrary to law, and, on the other hand, you are to see that the law is executed. In both respects your verdict will be a precedent of no common significance. The burden of proof of establishing the defense of insanity is on the prisoner, and he is bound to satisfy you, by the clear preponderance of proof, that he was insane in the sense in which I have defined insanity, before he can escape responsibility for his acts. If he has, by such proof, satisfied your minds of that fact, he will be entitled to an acquittal; but if the evidence on that subject has not convinced your minds that he was insane and irresponsible in the sense in which I have defined insanity as a legal defense, it will be your duty to convict, leaving the consequences to the law, where they belong.

Now I am going to pay slight reference to some of the testimony, gentlemen of the jury, that has been submitted here. Sometime in the month of December, I believe it was around the 6th or 7th, the local Jersey City police officials received information from the Detroit police authorities that a man in that city had been arrested as a Golden Rule drunk. The man arrested was the defendant at the bar, Kudzinowski. They said that he claimed to have committed a crime in Jersey City; that he had taken a little boy from New York City, brought him over to Jersey City and had killed him, and I believe the information stated that it had been somewhere on the meadows located in the vicinity of Secaucus. The local authorities wired back for additional information and a description of the location. The information that was sent to the

local authorities was that it was on the Secaucus road and near the Susquehanna railroad tracks, north of the Secaucus or County road some 150 to 400 feet from the roadway. The local police went to the spot, and I believe it was Captain Hogue, a local officer, who found the body of the child who

10 has since been identified as the Storelli child, the boy who is named in the indictment. The details that were telegraphed or wired or telephoned to the local police were that the boy was lying on his face, that he had a brown overcoat and khaki suit, that his little pants or his underclothes had been torn from the lower portion of his body, and the police went to this spot and found the body at the spot which had been named. Other details of the crime

20 seem to have been mentioned in the confession, which is in evidence before you. Substantially they are that the defendant on the 17th day of November went to the City of New York over on the east side, found this little boy Joseph Storelli, bought him a package of candy, brought him to a theatre, where they remained about three-quarters of an hour, left the theatre, went over 14th Street, New York City, to the Hudson Tube, came over to Journal Square, went out on the Boulevard, up the Boulevard to the County Road and went out

30 to a railroad bridge at night, to a lonely isolated spot, and the child was taken there, according to this confession, which I have already stated is in evidence, and that the defendant took the boy's overcoat off. The boy began to cry. He struck the child, threw him to the ground and sodomized him, and that the child began to cry for his mother, and the defendant, according to some of the testimony that has been submitted here in evidence as related

40 and cut the child's throat so that the child's cries

would not be heard by passing motorists on the Secaucus road.

Now, gentlemen of the jury, whether those things took place there as the confession states is for you to say. It is for you to determine from the evidence whether this defendant took this child from New York as he said, brought him over the course which it is alleged that he did bring him over, that he sodomized the child, if he did, that he cut this child's throat, if he did, and whether or not his relation of that indicated that he knew all the details of what took place at that time. Was he conscious of all the details? If he were then his offense falls short of the test laid down by the law as to insanity—whether he knew right from wrong at the time of the commission of the act. Now did his relation of what took place, if he did relate it as the State says he did, indicate a statement emanating from a mind that was sane at the time of the commission of the act? Is and was his story coherent? Was it altered? Does the fact that this child was brought from New York to Jersey City after traveling some time in the company of the defendant at this hour of the night, and brought out to this lonely, isolated and forsaken spot and killed indicate the action of a man who knew what he was doing? Did he have sense enough to understand the nature of his act? Was his mind so conscious as to understand what he was doing? Does the fact that he selected this isolated spot away from the public gaze where nobody could see him indicate to you or to your minds that he knew what he was doing and that he was sane at the time of the commission of this act, if he did it? Those are matters, gentlemen of the jury, for you to give consideration to in determining, with all the rest of the evidence, of course, this man's sanity.

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There was some question brought up by counsel for the defense in his summation about an appeal being taken for a reversal. That, gentlemen of the jury, is no concern of yours. It is no part of your business at all. It is no part of your duty to determine and act from that suggestion. You are concerned with the evidence that has been submitted here. You took an oath, gentlemen of the jury, you each took an oath when you went into that jury box that you would return a true verdict on the evidence, so help you God. That is what you are expected to do. That is the measure of your duty, and when you have done that you will satisfy not only this defendant but the State of New Jersey and your own conscience. Determine this case from the evidence that has been submitted here and according to no other rule.

In the event, gentlemen, that your verdict shall be that the defendant is guilty of murder in the first degree, it will be necessary for you to bear in mind a statute of this state which I shall now read to you. This statute gives you as a jury in this case, if 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 I refer to is 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 and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment for life at hard labor, in which case this and no greater punishment shall be imposed."

That, gentlemen, is the statute, so that if upon returning a verdict of murder in the first degree you make no recommendation, the penalty 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 upon this defendant shall be imprisonment at hard labor for life, it will be necessary by your verdict and as a part thereof, for you to recommend imprisonment at hard labor for life, in which case that will and must be the punishment imposed. 10

In this case, however, gentlemen, I deem it incumbent upon me to inform you that the Court of Pardons in this State now has the power to change or reduce or abolish or set aside whatever result you may have arrived at in this matter, whether you fix the penalty at life imprisonment or not. They can reduce or change it, but they cannot make the punishment any greater than you make it. 20

Now gentlemen, in the course of my presentation of this case to you and my instructions to you, and in the course of the summation of counsel for the state and for the defendant, statements have been made as to what constitutes the facts in this case, and if the court or counsel has stated something to be a fact which is not in accord with your recollection of the facts, disregard what the court or what counsel may have said and allow your own recollection of the facts to prevail. You will be guided wholly and solely by the evidence which has been submitted here. Your recollection of the evidence is to prevail entirely. Your verdict should be based solely upon the evidence adduced as you recall it. 30

After what you have listened to in this case during the last few days no words of mine can add, and it is now for you to say whether the defendant be not guilty or guilty of murder in the first or second degree. 40

*Defendant's Requests to Charge.*

I have some requests to charge which counsel for the defendant asked me to submit to you. The first request is as follows:

10 Number one. 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.

I so charge you, but I think I have covered that in my original charge. I nevertheless reiterate it and charge you again to the effect mentioned in the first request.

20 Number two. 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. If he has raised a reasonable doubt, that doubt is not with him, but, if by a fair preponderance of the evidence, the accused is proven insane, he must be acquitted.

I so charge you.

Number three. Murder can only be committed by a person of sound memory and discretion.

I think that word memory there—

Mr. Simpson: Substitute "sound mind."

30 The Court: I will charge request number three as follows: "Murder can only be committed by a person of sound mind and discretion." With that change I so charge that request.

Number four. 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.

40 I so charge you.

*Defendant's Requests to Charge.*

Number five. Emotional insanity depends upon a mere emotion at the time arising from some defective of perverted moral sense which begins on the eve of a criminal act and ends when it is finished. The test is whether the accused at the commission of the crime was conscious that what he was doing, he ought not to do.

10

I so charge you.

Number six. When a man reaches manhood the presumption is that he possesses ordinary mental capacity normally pertaining to his age and it is for him to overcome that presumption and whether he has done so is for the jury to determine. Deficiency of intellect is a species of insanity and when this defense (deficiency of intellect) is sustained by the proof by a fair preponderance of the evidence the defendant shall be acquitted, the presumption being at all times that the accused is sane.

20

I so charge you.

Number seven. The jury may designate at the time of the rendering of their verdict a recommendation of imprisonment at hard labor for life, in which case no greater punishment can be imposed.

I so charge you, although I covered that in my original charge.

Request number eight the court refuses to charge.

30

Number nine. A recommendation for life imprisonment can only be rendered after the finding of a verdict of murder in the first degree and it is purely discretionary with the jury, and is subject to no restrictions and need not rest on any testimony.

I so charge you.

So that, gentlemen of the jury, with these words an officer will be sworn and you will take the case.

40

(Thereupon the jury retired.)

10 Mr. Simpson: I ask for a general exception and also an exception especially to that part of your charge where your Honor said that if the defense of insanity fails he shall be convicted, because in my opinion that takes away from the jury the power to say whether or not he did the act. In other words, you have charged the jury in such a way as to relieve the State from the burden of proving beyond a reasonable doubt that the defendant is guilty of the commission of the offense with which he is charged.

The Court: I will call the jury back on that.

(The jury returned to the courtroom.)

20 The Court: Gentlemen of the jury: Counsel for the defense, Senator Simpson, has called my attention to a statement that I made in submitting my instructions to you, wherein I said:

30 "The burden of proof of establishing the defense of insanity is on the prisoner, and he is bound to satisfy you, by the clear preponderance of proof, that he was insane in the sense in which I have defined insanity, before he can escape responsibility for his acts. If he has, by such proof satisfied your minds of that fact, he will be entitled to an acquittal; but"—and this seems to be the point excepted to—"but if the evidence on that subject has not convinced your minds that he was insane and irresponsible in the sense in which I have defined insanity as a legal defense, it will be your duty to convict."

40 Counsel takes exception to that statement and I think it is proper, the exception that he did take. I will add to that, after the word "convict", the following words: "If you are satisfied from all the evidence in the case that the defendant is guilty beyond a reasonable doubt." Only in that

event can you or should you convict. So that I will reframe my charge so that you may have it, and it will be as follows:

If the defendant has, by such proof, satisfied your minds of the fact that he was insane in the sense that I have already defined insanity to you he will be entitled to an acquittal; but if the evidence on that subject has not convinced your minds that he was insane and irresponsible in the sense in which I have defined insanity as a legal defense, it will be your duty to convict, if you are satisfied from all the evidence in the case that the defendant is guilty beyond a reasonable doubt. 10

I think that covers it.

Mr. Simpson: That disposes of the special exception but still leaves me with my general exception? 20

The Court: Oh, yes, you may have that.

(General exception allowed, signed and sealed accordingly.)

.....,  
Judge.)

(Thereupon the jury again retired.)

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(Later the jury returned to the court room.) 30

The Clerk: Gentlemen of the jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: What say you, Mr. Foreman, do you find the prisoner at the bar, Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, guilty or not guilty as charged?

The Foreman: We find the defendant guilty of murder in the first degree.

The Clerk: No recommendation? 40

*Defendant's Requests to Charge.*

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The Foreman: Without recommendation.

Mr. Griffin: If your Honor please, may I ask that the jury be polled?

The Court: The jury will be polled.

10 (Thereupon the Clerk polled the jury and in response to the call of his name each juror responded, "I find the defendant guilty of murder in the first degree without recommendation.")

The Court: The prisoner will be remanded.

(Case closed.)

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Defendant's Requests to Charge.

20 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.

30 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. If he has raised a reasonable doubt, that doubt is not with him, 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.

40 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 defend-

*Defendant's Requests to Charge.*

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ant was so insane that he could not distinguish between right and wrong as to the particular act in question, he should be acquitted.

5. Emotional insanity depends upon a mere emotion at the time arising from some defective or perverted moral sense which begins on the eve of a criminal act and ends when it is finished. The test is whether the accused at the commission of the crime was conscious that what he was doing, he ought not to do. 10

6. When a man reaches manhood the presumption is that he possesses ordinary mental capacity normally pertaining to his age and it is for him to overcome that presumption and whether he has done so is for the jury to determine. Deficiency of intellect is a species of insanity and when this defense (deficiency of intellect) is sustained by the proof by a fair preponderance of the evidence the defendant shall be acquitted, the presumption being at all times that the accused is sane. 20

7. The jury may designate at the time of the rendering of their verdict a recommendation of imprisonment at hard labor for life, in which case no greater punishment can be imposed. 30

8. The jury has a right to find the defendant guilty of murder in the first degree and recommend imprisonment at hard labor for life, such recommendation is no part of the verdict and need not be based on any fact.

9. A recommendation for life imprisonment can only be rendered after the finding of a verdict of murder in the first degree and it is purely discretionary with the jury, and is subject to no restrictions and need not rest on any testimony. 40

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HUDSON COUNTY COURT OF OYER AND  
TERMINER.

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	THE STATE		Indictment 229, September Term, 1928 MURDER.
10	v.		
	PETER KUDZINOWSKI, alias Roy Lambert, alias Roy Rogers, Defendant.		

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Before—Hon. CHARLES M. EGAN, Judge, and a jury.  
Jersey City, N. J., January 16, 1929.

APPEARANCES :

20 For the State: ALOYSIUS MCMAHON, Esq., Deputy  
Attorney General.  
For the Defendant: ALEXANDER SIMPSON, Esq.,  
WILLIAM L. GRIFFIN, Esq.

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Mr. McMahon: In the absence of a Supreme  
Court Justice will your Honor convene as a Court  
of Oyer and Terminer?

30 The Court: The court will convene as a Court  
of Oyer and Terminer.

Mr. McMahon: I ask for imposition of sentence  
on Peter Kudzinowski, alias Roy Lambert, alias  
Roy Rogers.

(The prisoner was thereupon called to the bar.)

Mr. Simpson: We object, before you pronounce  
sentence, to the imposition of sentence because it  
cannot be done legally because the man is not sane.  
The case has been tried before your Honor, who  
40 heard the evidence of the medical witnesses, and I

think they were unanimous, perhaps with the exception of the County Physician,—the experts were unanimous that the man was not normal mentally. As to the experts for the State, the most that can be said was that one of them said that at the time of the commission of the crime he knew the difference between right and wrong, and therefore was legally sane. The testimony clearly established that the man is mad. Now under those circumstances counsel for the defense objects to the imposition of the death sentence at this time, because the statute provides that if a man does not comprehend the sentence by reason of a defective understanding it is illegal to impose the sentence. We do this, of course, to make our record clear. We understand your Honor is going to impose the death sentence, and to keep the record clear and protect the rights of the defendant we wish to object to the imposition of the death sentence at this time for the reasons stated and to ask your Honor, in fixing the time for the execution to fix it sufficiently ahead from to-day so as to give counsel for the defense an opportunity to perfect an appeal. We understand that under the law an appeal is obligatory where counsel is assigned, and that while there is no provision to pay counsel on appeal there is provision to pay for the transcript and printing. Therefore, when your Honor fixes the day I wish you would fix it a reasonable time distant to allow us to apply to the Chancellor and sue out a Writ of Error.

The Court: Senator, your objection will be noted and it will accordingly be overruled and exception granted.

(Exception allowed, signed and sealed accordingly.)

.....  
Judge.)

The Court: Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, 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?

10

(No response from the prisoner.)

20

The Court: The sentence of the law is, and it is by the court here considered and adjudged, that you, Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, be taken by the Sheriff of the County of Hudson hence from the bar of this court, and you, Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, 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 twenty-fourth day of February, in the year nineteen hundred and twenty-nine, and that then and there you, Peter Kudzinowski, alias Roy Lambert, alias Roy Rogers, 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.

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ERIE RAILROAD  
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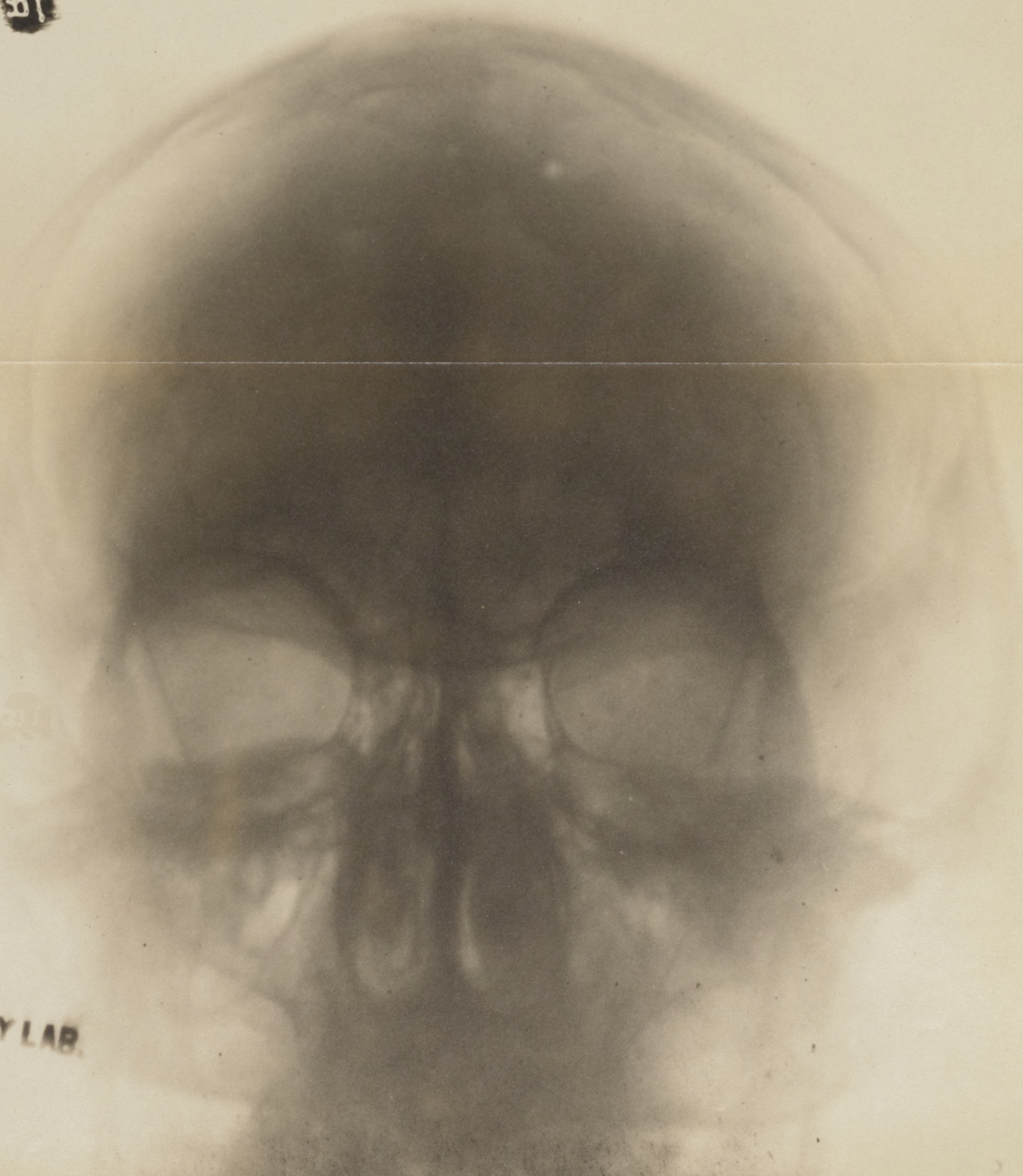




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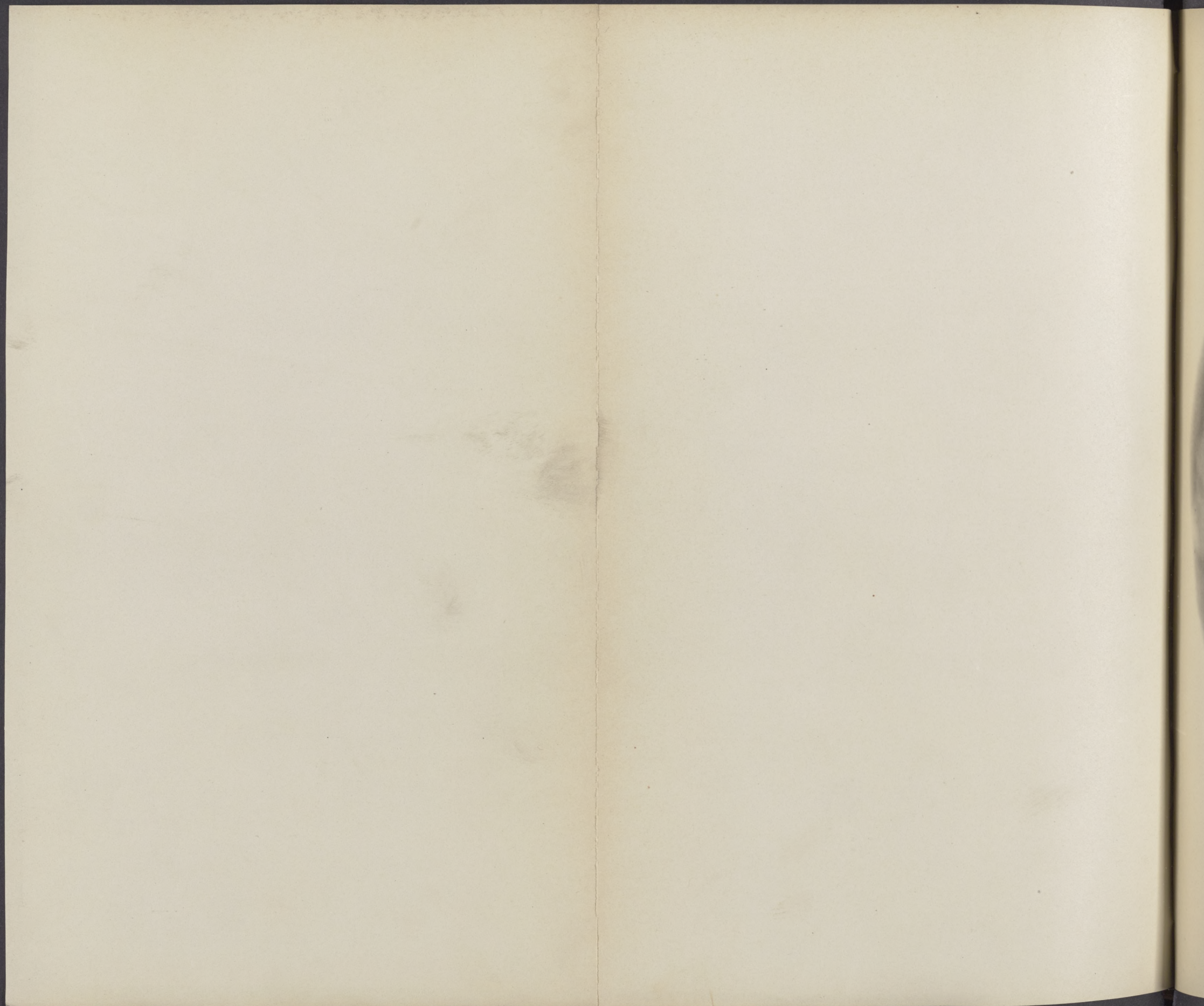
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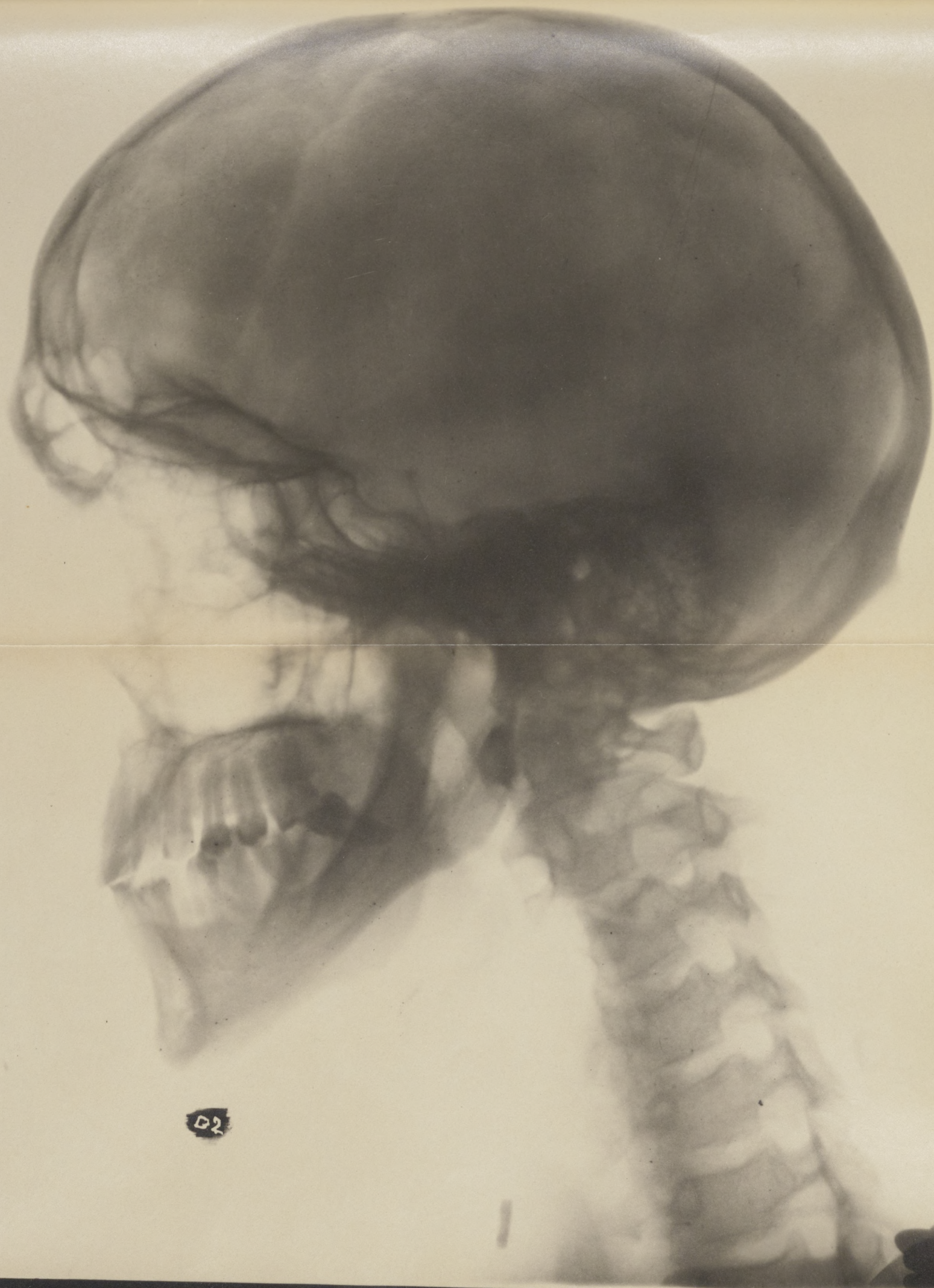
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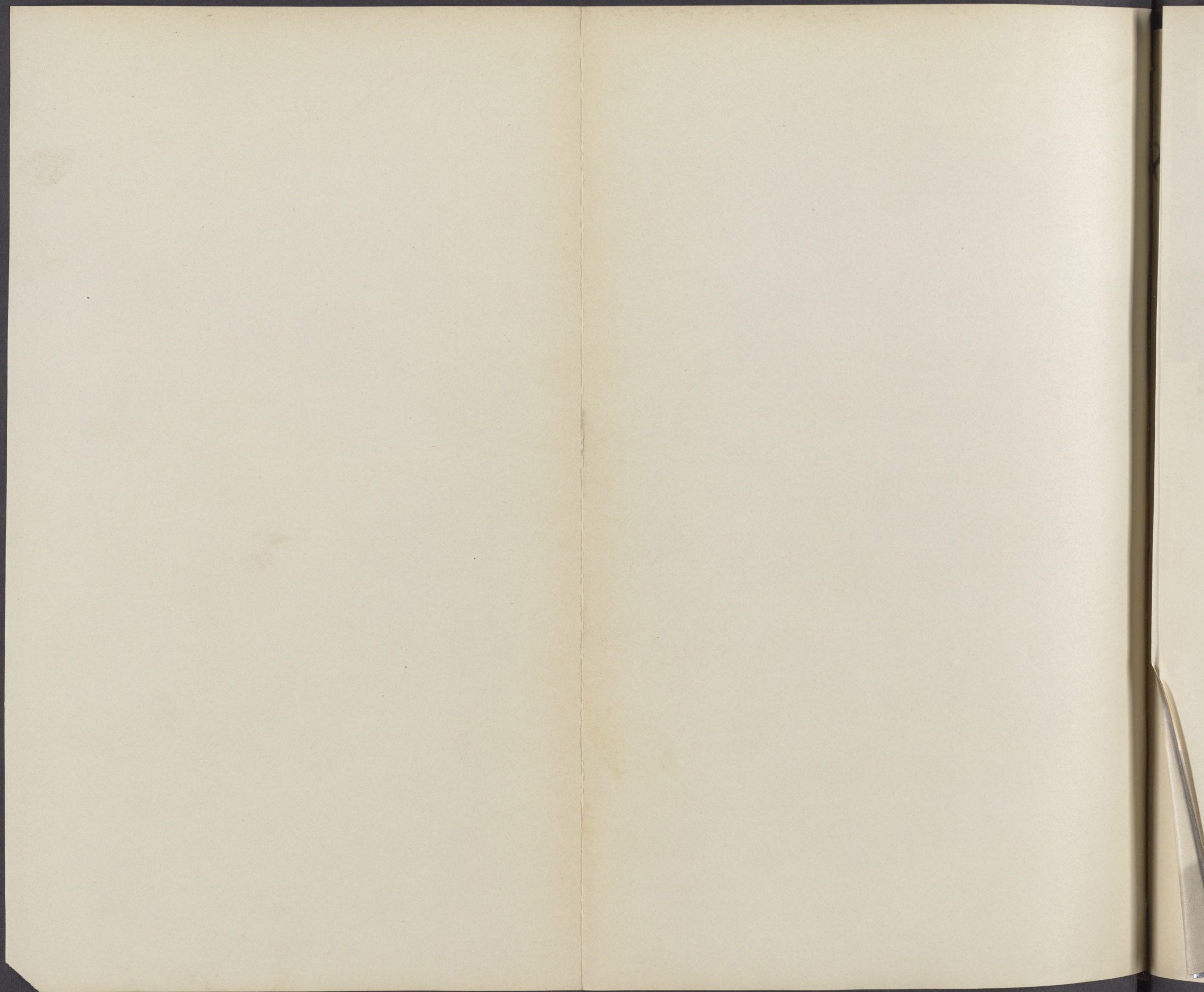




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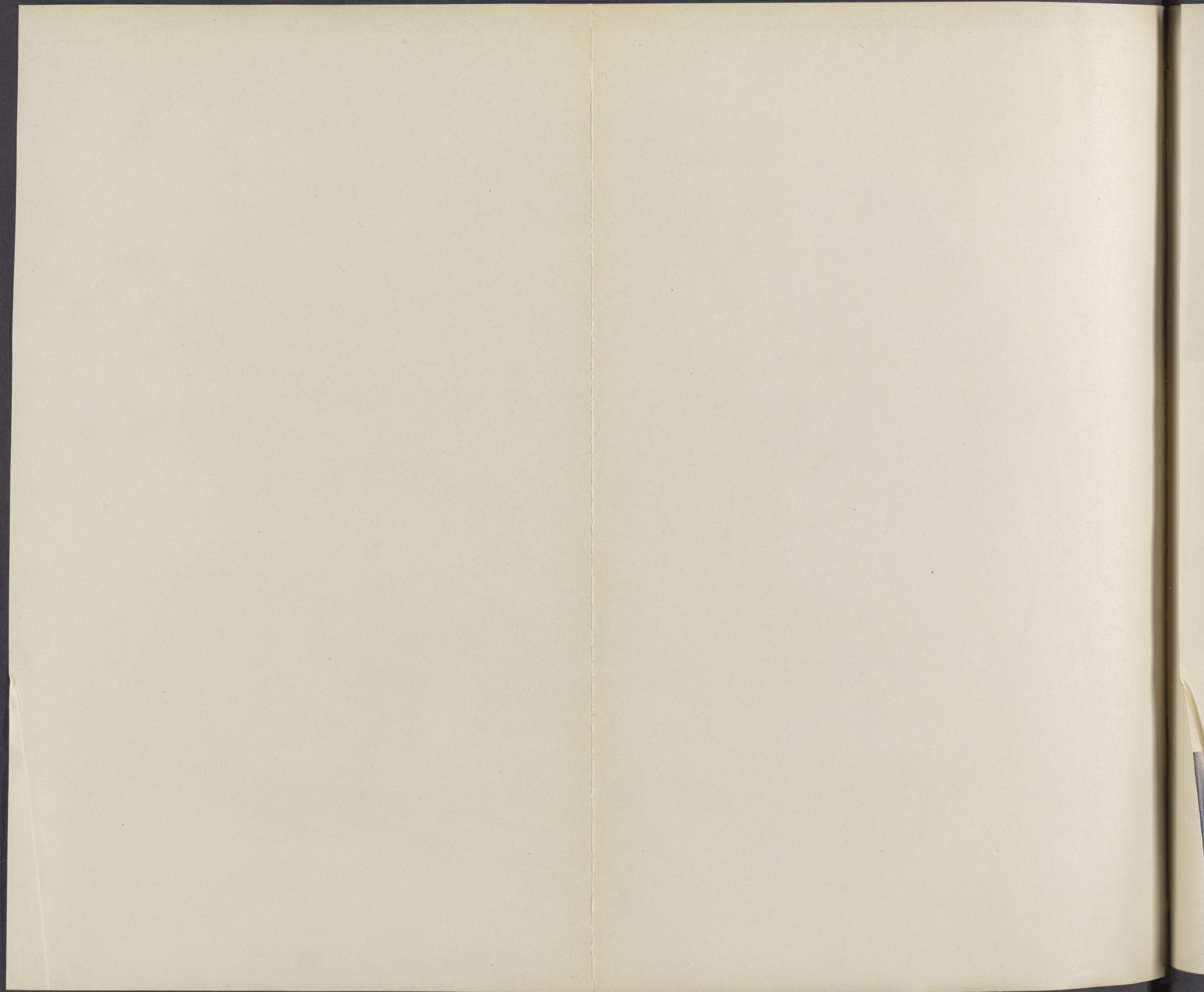
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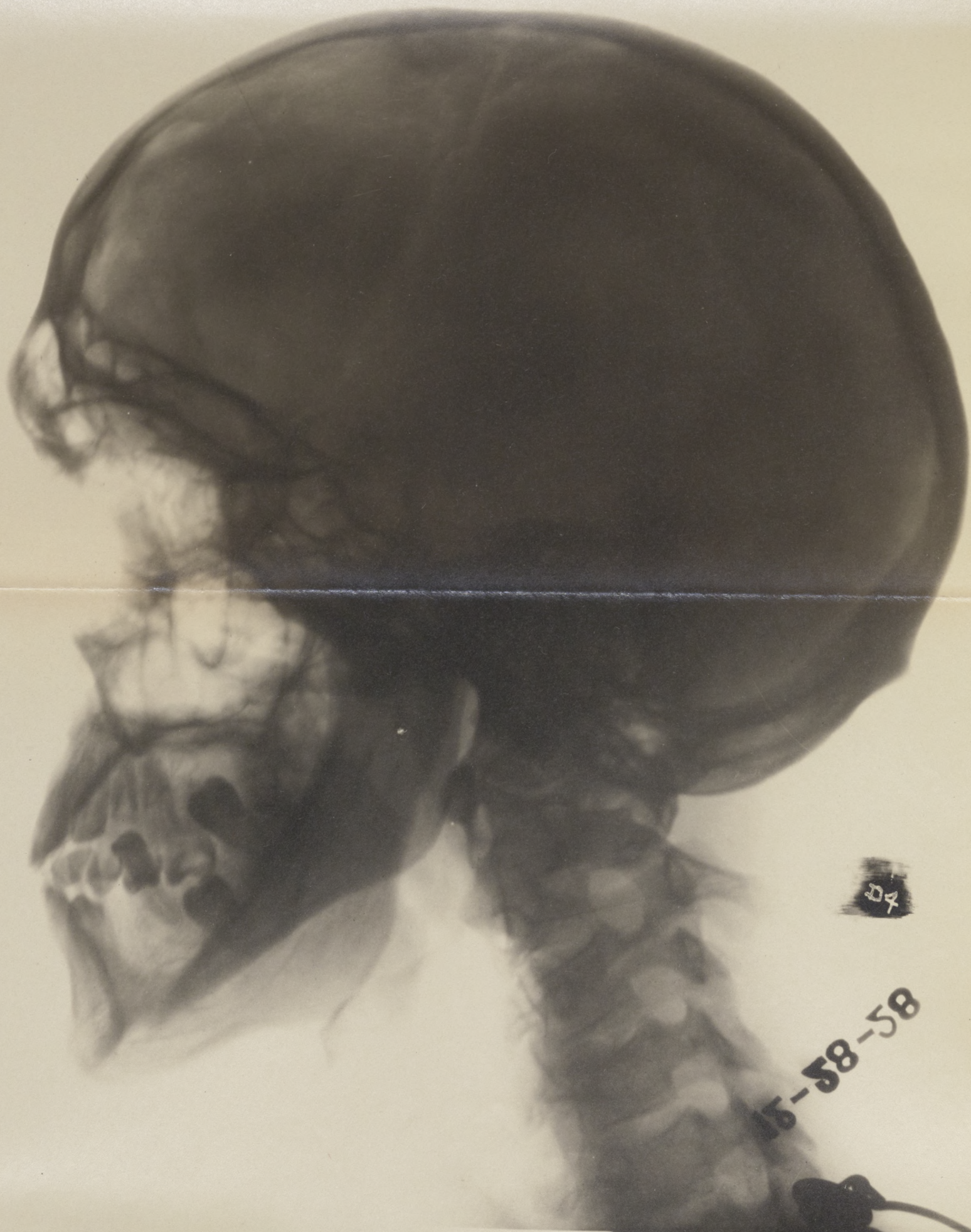




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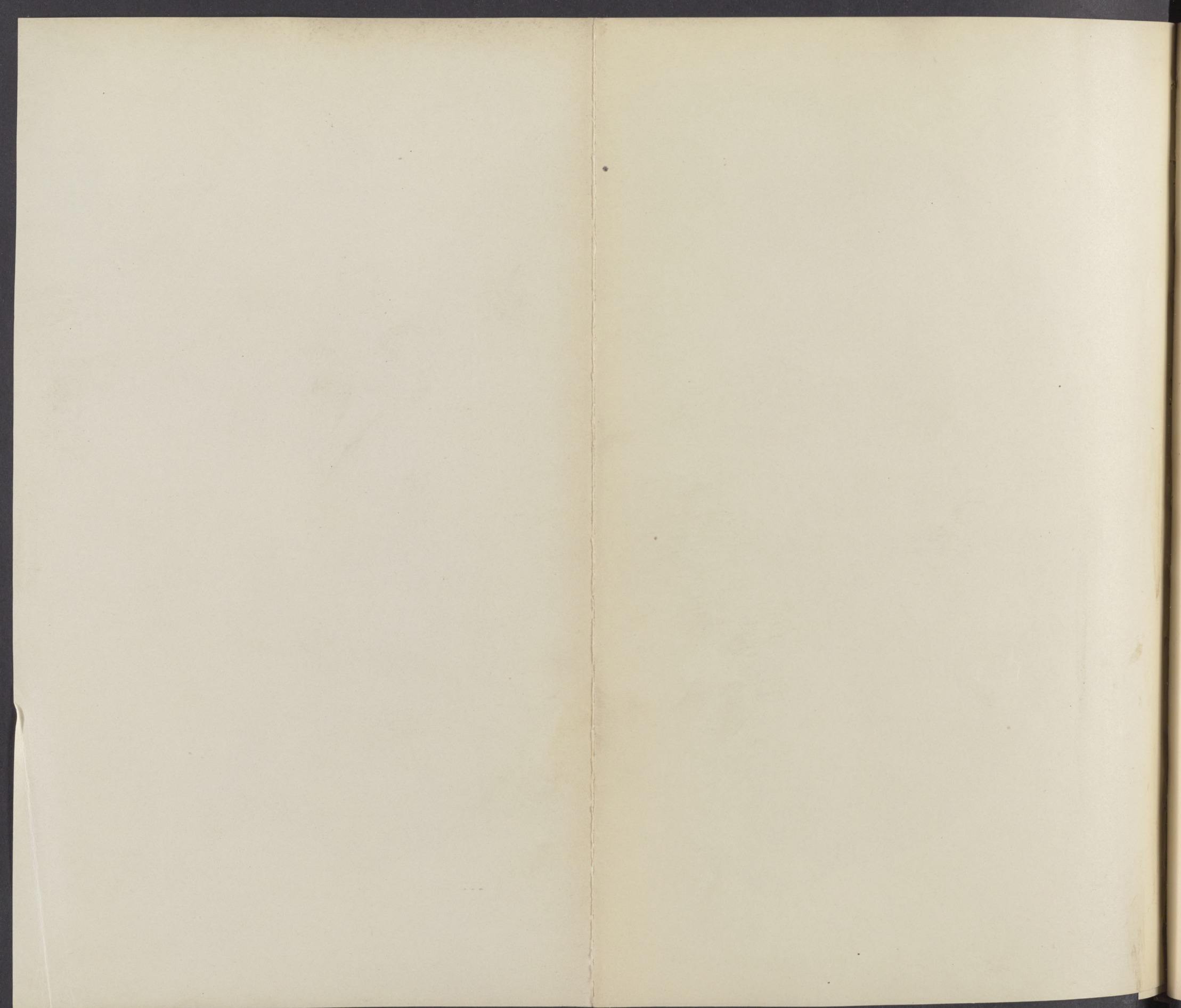
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15-58-58



**Exhibit S-17.**

Police Hdqtrs.

Dec. 5, 1928.

Charge Montg. 2500—

Sent 8:20 P. M.

Edward H. Fox—

Chief of Detectives—

Detroit, Mich.

10

New York City police reports a boy missing since Nov. 17th. Description as follows: Joseph Storelli—residence 165 First Ave., Italian—age 7—3 feet 6 inches—50 pounds—dark brown eyes—brown hair—double breasted brown overcoat—three buttons on each side—white shirt—brown overalls—black lace shoes—brown stockings—blue and white cap—compare this description, with description of the boy given by Zudzinowski. Advise.

20

JOHN J. UNDERWOOD,  
Inspector of Detectives.

**Exhibit S-18.**

WESTERN UNION.

John J. Underwood,  
Inspector of Detectives,  
Jersey City N. J.

30

Peter Kudzinowski alias Roy Lambert worked Lackawanna Railroad address box sixty-three Hoboken description of boy same Lambert states boy's name Joe. Can find body two hundred feet west Susquehanna Bridge, and one hundred fifty to four hundred feet north of Secaucus road—letter follows.

EDWARD H. FOX,  
Chief of Detectives.

40

**Exhibit S-20.**DETROIT POLICE DEPARTMENT,  
Detective Division

December 6, 1928.

STATEMENT OF PETER KUDZINOWSKI, ALIAS ROY  
ROGERS, ALIAS ROY LAMBERT.

10 Taken in the office of the Homicide Squad between the hours of 11:15 a. m. and 12:30 p. m., December 6, 1928.

Questioned by Inspector Fred W. Frahm. In the presence of Detective Max Rickman and Detective John Reif.

Reported by Leon S. McAuley.

Subject: MURDER OF JOSEPH STORELLI.

20 Q. I am Inspector Frahm, of the Homicide Squad. These men are Detective Rickman and Detective Reif, connected with the Homicide Squad; and this is Mr. McAuley. I want to warn you of your rights. I want to ask you in reference to the murder of Joseph Storelli, who was murdered near the Susquehanna Bridge between Jersey City and Secaucus. Now I want to warn you of your rights; that you need not answer any of my questions if you so desire: and I will also state that anything

30 you may state may be used against you in case you should be tried for this offense. With that understanding, are you willing to answer questions that I ask you in reference to this case? A. Yes.

Q. Now, what is your name? A. Peter Kudzinowski.

Q. Are you known by any other name? A. Roy Lambert and Roy Rogers.

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

Q. Where is your home? A. Scranton, Pennsylvania.

40 Q. Your address? A. 3521 Winfield Avenue.

Q. Were you ever in New York City? A. Yes, sir.

Q. When? A. Nineteen twenty-four.

Q. Do you remember the month? A. March.

Q. How long were you there? A. There at different periods—there two days.

Q. Then what happened after you were there two days? A. Shipped out on the railroad. 10

Q. What railroad? A. Lackawanna.

Q. How long did you work for the Lackawanna? A. Four years, on and off.

Q. What doing? A. Laboring.

Q. Where did you ship to out of New York? A. The first place I shipped to was Secaucus.

Q. What were you doing there? A. Working on the track as a laborer.

Q. You state you worked there off and on? A. Yes, sir. 20

Q. What do you mean by off and on? A. When I would go on a drunk I would throw the job away.

Q. You state you worked off and on for four years. How long did you work at a time? A. Sometimes I worked about a month or six weeks—two months.

Q. Then what would you do? A. I would go out and drink it up—draw all my money and drink it up. 30

Q. Where would you drink it up? A. New York Hoboken, Jersey City.

Q. After you were broke what would you do? A. Go back to the camp.

Q. You continued that for four years? A. Yes, sir.

Q. While in New York, where did you stay? A. At 90 Bowery.

Q. Do you know the name of the house? A. Palmer House, I believe. 40

Q. On the seventeenth day of November nineteen twenty-eight were you in New York? A. Yes, sir.

Q. Will you tell me what happened there that day? A. Why, I lured a seven year old child on First Avenue.

10 Q. What time of the day was that? A. Half past five in the evening—something like that.

Q. Was that child a boy or girl? A. Boy.

Q. Do you remember how he was dressed? A. Well, I know he had a brown overcoat on, khaki overalls—all I can remember.

Q. Did you know his name? A. He told me his first name was Joe.

Q. Did you know his nationality? A. Yes. He told me he was an Italian, too.

20 Q. Where did you take this boy to? A. I took him to a show first.

Q. Where was this place at? A. On Third Avenue between Thirteenth and Fourteenth.

Q. Do you remember whether it was a picture house? A. It was a picture house—yes, sir.

Q. Do you remember the picture that was shown there that day? A. No, sir.

Q. The title? A. No, sir.

30 Q. How long did you remain in there? A. Half four or forty-five minutes—something like that.

Q. Did you watch the picture? A. Did for a while.

Q. Or were you mostly interested in the boy? A. Watched the picture for a while.

Q. You were interested in the boy for a while? A. Yes, sir.

Q. What did you plan to do when you were there? What were your plans? A. To take him out.

Q. What? A. Planning where I would take him.

40 Q. For what purpose. A. Abuse the boy, I guess.

Q. In what way were you going to abuse him? A. Back scuttle him, I guess.

- Q. Did you fool around with the boy? A. No, sir.
- Q. Did he with you? A. No.
- Q. Did he put his hands on any part of you? A. No.
- Q. When you left the theatre where did you go? A. I walked him up Fourteenth Street and down town to the Hudson Tube, got a car and went over to Journal Square. 10
- Q. Where is the Journal Square at. A. State of Jersey.
- Q. What city? A. Jersey City.
- Q. Then where did you go. A. I walked from there out to the meadows.
- Q. How did you get to the meadows? How far is it? A. Meadows to Journal Square? Journal Square—three-quarters of a mile, I believe. 20
- Q. What street leads out to the meadows from the Journal Square? A. I walked up. I think they call it the Boulevard.
- Q. What Boulevard, do you know? A. Hudson.
- Q. Hudson Boulevard? A. I believe it is.
- Q. Yes? A. I don't know what street we turned down there. I do not know the street that leads out.
- Q. Did you have to cross any bridges or go under any bridges after leaving Jersey City for the meadows? A. No. That was the first bridge we had to go under. 30
- Q. What bridge was that? A. Susquehanna Bridge.
- Q. You had to go under that bridge after leaving Hudson Square? A. Yes, sir.
- Q. Do you know what road takes you to the bridge? A. It is a highway leading to Secaucus.
- Q. You have taken the boy as far as the bridge. You went underneath the bridge? A. Yes, sir. 40
- Q. Where did you take him from there? A.

About two hundred feet west of the bridge and I went two to four hundred feet north of the road.

Q. What road is that? A. I guess it is the Secaucus Road they call it.

10 Q. Now when you got the boy to this place, to the four hundred feet north of the Secaucus Road, what did you do to the boy? A. I took his coat off. I don't know whether I ripped his pants or whether I unbuttoned them. I remember ripping his drawers. He tried to get away and I knocked him down.

Q. How did you knock him down? A. Got hold of him and threw him down.

Q. Where did you grab him? A. The arms and shoulders.

20 Q. Then what did you do? A. The boy tried to get away and I guess I hit him a few times.

Q. Where did you hit him? A. On the body somewhere.

Q. Then what happened? Did he lie still there? A. No—he was hollering.

Q. Then what did you do? A. I cut his throat.

Q. After you cut his throat what did you do? A. Before he was dead I tried to back scuttle him.

30 Q. After you cut his throat or before you cut his throat? A. Before. I tried to get it into him before.

Q. Did you get it in? A. I did.

Q. How far—all the way? A. No, sir.

Q. How far did you get it in? A. About an inch or so.

Q. And after you cut his throat did you continue the attack? A. After he lay still I continued.

Q. Did you put it in all the way after you cut his throat? A. No, sir.

Q. How far? A. About an inch or so.

40 Q. What do you mean by "So?" A. An inch or an inch and a half.

Q. And what did you do then? A. After I got satisfaction out of it I went into the yards.

Q. What time did you leave the boy—about? A. About nine o'clock, I believe.

Q. How long did you stay with him after you got your satisfaction? A. About five minutes.

Q. How long do you figure you were in this field with this boy? A. Twenty-five minutes altogether. 10

Q. How long does it take you to go from the theatre on Third Avenue to the meadow where you had the boy; that is, walking and catching the car and walking over to this location? A. It is quite a ways from there—two hours or so.

Q. And you figure you were with the boy about one-half hour and immediately after you cut his throat what did you do? A. I left him there and covered him with a coat and left him and walked into the yards. 20

Q. Throw any brush over him? A. No, sir.

Q. What did you cut him with? A. A pocket knife.

Q. What kind of a pocket knife? A. A pocket knife about four or four and one-half inches.

Q. Was it sharp? A. Yes, sir.

Q. How many blades? A. It had two blades.

Q. Where did you buy that knife? A. I didn't buy it—I found it. 30

Q. Where? A. I found it at the camp.

Q. Is it a knife that would be used by a butcher? A. No, sir.

Q. For trimming or— A. Just an ordinary pocket knife they use.

Q. And what did you do with that knife after you cut the boy's throat? A. Why, when I got out on the road again I took it down a little ways and threw it down on the south side of the road.

Q. Do you know about where? A. I think I do. 40

Q. Do you think you could show the men when

you go back there where they can find this knife?

A. I believe I could.

Q. Now, you say you left the boy about nine o'clock? A. I don't know the exact time, there were no clocks in the meadow.

Q. Where did you go? A. The railroad yards.

10 Q. What did you do in the railroad yards? A. Just hung around there for a freight.

Q. For where? A. Scranton.

Q. Did you know the time it would be leaving?  
A. No, sir.

Q. How long did you stay there? A. I figured about three hours—until midnight.

Q. Did you catch a train? A. A freight.

Q. Over what line? A. Lackawanna.

20 Q. What time did you catch it? A. About mid-  
night.

Q. Where did they take you to? A. Scranton.

Q. What time did you arrive at Scranton—  
about? A. About nine or ten—something like  
that.

Q. The next morning? A. No—about noon time.

Q. Noon the next day? A. Yes, sir.

Q. How long did you stay there? A. Three  
hours.

Q. Did you get off at Scranton? A. Yes, sir.

30 Q. Did this train continue on? A. No, sir.

Q. Did you see any of your people or any of your  
friends when you stopped at Scranton? A. No.

Q. No one you knew at all? A. No, sir.

Q. What did you do at Scranton? A. Just had  
lunch and went down to catch a freight for Buffalo.

Q. Did you have any idea as to when to catch  
that freight? A. I went down to wait for one. I  
didn't know what time.

40 Q. What time did you catch the train for  
Buffalo? A. About three or half past.

Q. And did you go to Buffalo? A. Yes, sir.

Q. What time did you arrive there? A. Arrived there about nine o'clock the following day.

Q. Morning? A. Yes, sir.

Q. Where did you ride on this train? A. Where did I ride? Between the cars.

Q. Between the cars all the way? A. Well, at different points I rode in the cars. 10

Q. What would be your object for changing? A. They dropped some cars out at different points. I would get off a while and catch the freight again when it starts up switching cars around.

Q. Did any switchmen or brakemen bother you any? Did they see you? A. I didn't let them see me.

Q. What do you mean you wouldn't let them see you? A. I was hiding from them.

Q. You arrived in Buffalo at nine o'clock the next morning. What date would this be about? You took the boy on the seventeenth, about five o'clock the seventeenth. Is that right? A. Yes, sir. 20

Q. When you arrived in Buffalo it would be the morning of the nineteenth? A. About the nineteenth.

Q. How long did you stay around Buffalo? A. A few hours—about a half a day.

Q. Did you hang around any particular place? Did you know anybody in Buffalo? A. No, sir. 30

Q. Then what did you do? A. Took a bus over from Buffalo.

Q. For where? A. Detroit.

Q. What time of the day? A. About half past one—I believe ten minutes after.

Q. What was the fare? A. Eight dollars.

Q. Eight dollars? A. Yes, sir.

Q. On the bus? A. Yes, sir.

Q. What time did you arrive in Detroit? A. Five or six in the morning—something like that. 40

Q. That is the morning of the twentieth? A. Yes, sir.

Q. Where did you stay that night? A. Over at McGregor's.

Q. You were there then from the twenty-first to the twenty-third? A. That is the day I came?

10 Q. Can it be you stopped over for a day or so coming from New York here? A. I stopped nowhere.

Q. While you were here did you do any work while staying at the McGregor Mission? A. No, sir.

Q. After leaving the McGregor Mission where did you go? A. They gave me a job and when I came back it was too late to get a bed there.

20 Q. Where was the job? A. I got the job in the afternoon.

Q. Where was the job? A. Washing dishes in a restaurant.

Q. Where was the restaurant? A. Norfolk Restaurant.

Q. How long did you work there? A. A week.

Q. While you were working there where were you living? A. Gratiot Hotel.

Q. When you were in New York and met this boy were you sober? A. No, sir.

30 Q. Were you drunk? A. I was about half drunk.

Q. How many drinks did you have? A. I was drinking the previous day and had a few drinks to sober up.

Q. You knew what you were doing? A. I guess I did.

Q. You know what you were doing there and knew what you were doing at the time? A. Yes, sir.

Q. What you have told us here is the truth is it? A. Yes, sir.

40 Q. And what you have told us is simply because you want to get it off your mind? A. Yes, sir.

*Exhibit S-20.*

Q. No one has threatened you? A. No, sir.

Q. No one has abused you? A. No, sir.

Q. How were you used by the officers here? A. Very good.

(Signed.) Peter Kudzinowski, Gratiot Hotel, 509 Gratiot Ave., Detroit, Mich. 10

(Signed.) Lieut. Geo. F. Egan.

(Signed.) Lieut. Edward Davis, Jersey City Police Dept.

(Signed.) Inspector Fred W. Frahm, Detroit Police Dept.

(Signed.) Detective Max Rickman, Detroit Police Dept.

(Signed.) Detective John Reif, Detroit Police Dept.

(Signed.) John J. Dougherty, Prosecutor's Office. 20

(Signed.) Leon A. McAuley, Stenographer, Detroit Police Dept.

Stenographer's Note: Exhibit S-20 in evidence consists of twelve typewritten pages, on the first page of which appear the following signatures written in ink:

"Peter Kudzinowski, Gratiot Hotel, 509 Gratiot Ave., Detroit, Mich. 30

Leon S. McAuley, Stenographer, Detroit Police Dept.

Lieut. Geo. F. Egan.

Lieut. Edward Davis, J. C. P. D."

On each of the succeeding ten pages (2 to 11 inclusive) appear the signatures of Peter Kudzinowski, Lieut. Geo. F. Egan and Lieut. Edward Davis. On page 12 appear the signatures as copied on previous page.

**Writ of Error.**NEW JERSEY COURT OF ERRORS &  
APPEALS.

10

STATE OF NEW JERSEY,  
Defendant-in-Error,

v.

PETER KUDZINOWSKI, alias ROY  
LAMBERT, alias ROY ROGERS,  
Plaintiff-in-Error

Writ of Error.

Assignments  
of Errors.

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And now comes the said Peter Kudzinowski by Alexander Simpson, Esq., his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error and for error assigns the following causes:

1. Because the trial court, over the objection of the defendant, permitted William R. Harrison, a witness for the State, to be asked the following questions:

Q. I show you a photograph and ask you if you took that photograph in the manner you have testified for?

30

A. Yes, sir.

Q. What is it a picture of?

(Page <sup>24</sup> 9.)

2. Because the trial court, over the objection of the defendant, permitted Cosmo Storelli, a witness for the State, to be asked the following questions:

Q. I show you a picture.

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Q. I show you Exhibit S4 for identification and ask if you can tell me whose picture that is?

A. That is brother's. That is a picture of my brother, Joseph Storelli.

(Page 36.)

3. Because the trial court, over the objection of the defendant, admitted a certain photograph marked S14.

(Page <sup>37</sup>~~13~~.)

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4. Because the trial court, over the objection of the defendant, admitted into evidence photograph marked Exhibit S-15 for identification.

(Page <sup>38</sup>~~14~~.)

5. Because the trial court, over the objection of the defendant, permitted Rose Caliandro, a witness for the state, to be asked the following questions:

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Q. Do you know what day your brother, Joseph, disappeared?

A. He disappeared on the 17th. My mother called me up.

Q. Did you go to your mother's house on November 17?

A. I went on the 18th, on Sunday. My mother called me up and I went over to the house.

(Pages <sup>40</sup>~~14-15~~.)

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6. Because the trial court, over the objection of the defendant, admitted into evidence a certain telegram alleged to have been received by a John J. Underwood, a witness for the state.

(Page <sup>43</sup>~~15~~.)

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10 9. Because the trial court, over the objection of the defendant, permitted John J. Underwood, a witness for the state, to be asked the following questions:

Q. Did you look at the anus?

A. Yes, sir.

Q. What condition did you find it in?

A. Bloody.

(Page <sup>46</sup>~~17~~.)

20 10. Because the trial court, over the objection of the defendant, admitted into evidence a photograph marked Exhibit S-9 for identification.

(Page <sup>51</sup>~~18~~.)

11. Because the trial court, over the objection of the defendant, admitted into evidence certain photographs marked S-1, S-5, S-10, S-11, S-8.

(Page <sup>51-52-53</sup>~~19~~.)

30 12. Because the trial court, refused to allow Fred W. Frahm, a witness for the state, to be asked the following question:

Q. Did he show any remorse of any kind or any indication that he realized what an atrocious thing he was telling?

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40 (Page <sup>62</sup>~~23~~.) (For exhibit see page <sup>244</sup>~~423~~.)

14. Because the trial court, over the objection of the defendant, admitted into evidence a certain photograph marked Exhibit S-2 for identification.

(Page <sup>78</sup>28.)

15. Because the trial court, over the objection of the defendant, admitted into evidence a certain photograph marked Exhibit S-13 for identification.

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16. Because the trial court refused to allow John J. Underwood, a witness for the state, to be asked the following question:

(Page 81.)

Q. Did you have any conversation with him there?

(Page <sup>86</sup>31.)

17. Because the trial court refused to allow John J. Underwood, a witness for the state to answer the following question:

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Q. Was that reduced to writing?

(Page <sup>90-91</sup>33.)

18. Because the trial court refused to allow John J. Underwood, a witness for the state to answer the following question:

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Q. Was there any Police Captain there at the time, Captain Walsh?

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Q. When was the first statement made by him?

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Q. In whose possession were they?

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PLEASE NOTE—On page <sup>93</sup>~~94~~ Mr. Simpson objected to the question asked of Inspector Underwood:

Q. Did you have him taken up to Lake Hopatcong?

The objection was interposed and exception granted but the answer was "no" and had already been given.

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(Page 93.)

21. Because the trial court, over the objection of the defendant, permitted William J. Donahue, a witness for the defendant, to be asked the following question:

Q. How far did he go in school?

A. I have been told he went as far as the 6th grade.

Q. And how old was he when he left school?

30

A. At about the age of 13.

Q. Does that show any abnormality so far?

(Pages 124-125.)

22. Because the trial court refused to allow David H. Orgel, a witness for the defendant, to be asked the following questions:

Q. In colloquial terms from your examination of this man and his history as you got it, and taking this pressure on the brain which you described as being due to a fracture, would

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Q. Would you say he had as much intelligence as a beast on these sexual subjects.

<sup>158-159</sup>  
(Page ~~57~~.)

23. Because the trial court, over the objection of the defendant, permitted witness, Henry A. Cotton, to be asked the following questions: 10

Q. Did you make an examination of this defendant, Peter Kudzinowski?

A. I did.

Q. When?

A. On Tuesday afternoon, January 8.

Q. Where?

A. At the Hudson County Jail. 20

Q. Who was present at that time?

A. George W. King, Dr. Arthur Haskings, Dr. Braunstein, and the attendants in the Jail, whom I do not know.

Q. Will you tell us, doctor, what examination you made?

<sup>164-165-166</sup>  
(Page ~~59~~.)

24. Because the trial court refused to charge defendant's eighth request to charge as submitted: 30

§. The jury has a right to find the defendant guilty of murder in the first degree and recommend imprisonment at hard labor for life, such recommendation is no part of the verdict and need not be based on any facts.

(Page 229.)

25. Because the trial court charged the jury erroneously as follows:

In the first place, the burden of proof rests upon the accused, upon the defendant. The law pre- 40

sumes that every man is sane until the contrary be proved. Hence, when an accused sets up a 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.

10

<sup>214-215</sup>  
(Page, 76.)

26. Because the trial court erroneously failed to define the term "preponderance of evidence."

(Page 215.)

27. Because the verdict was against the weight of the evidence. The jury should have found defendant not guilty instead of guilty.

20

28. Because the verdict was against the weight of the evidence. The jury should have found the defendant insane at the time of the alleged commission of the alleged murder.

30

29. The trial court erroneously imposed sentence upon the defendant because by a preponderance of the evidence he was proven to be insane and therefore could not comprehend the sentence thus imposed upon him.

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NEW JERSEY COURT OF ERRORS &  
APPEALS.

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<sup>214-215</sup>  
(Page 76.)

26. Because the trial court erroneously failed to define the term "preponderance of evidence."

(Page 215)

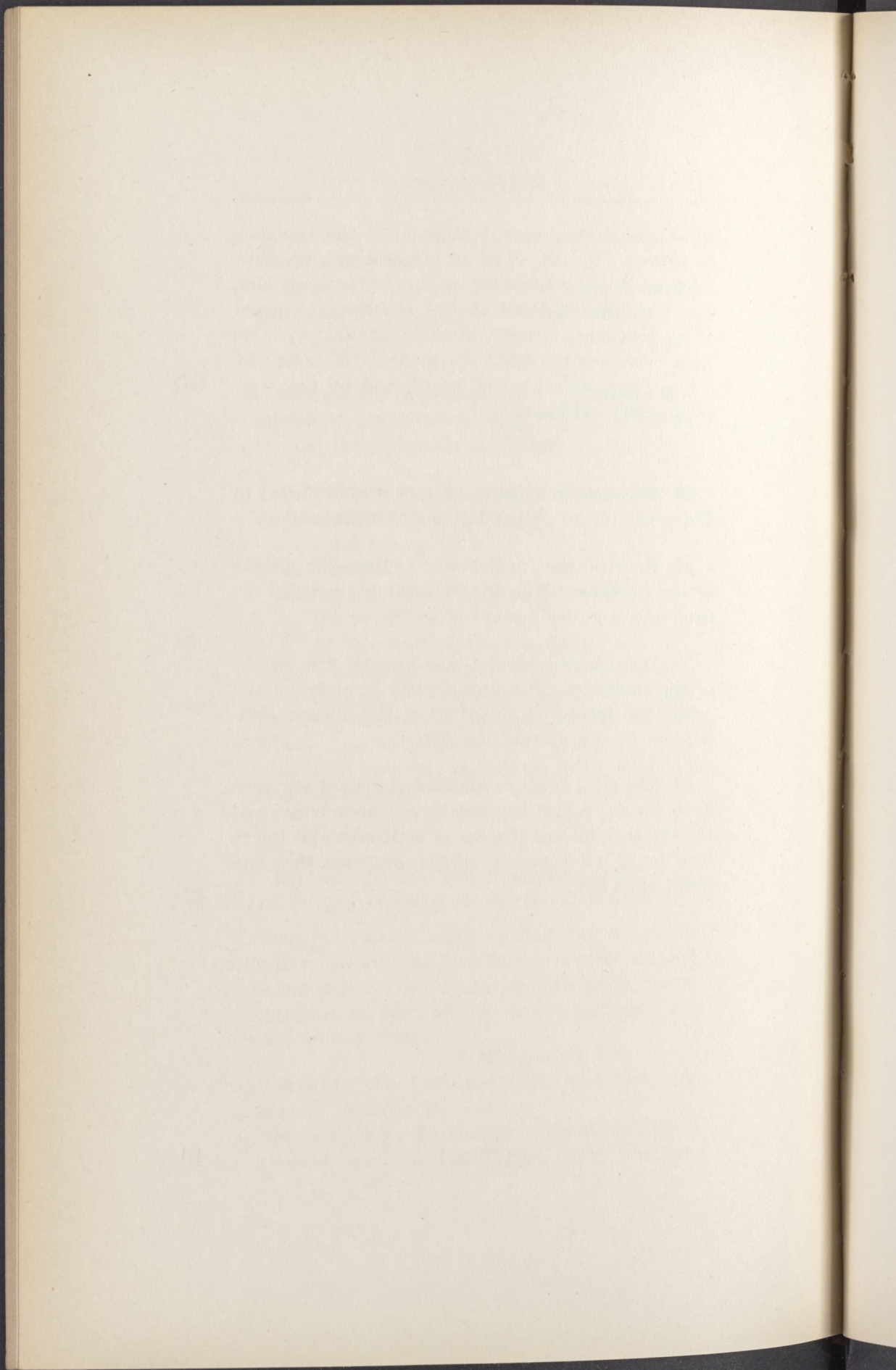
27. Because the verdict was against the weight of the evidence. The jury should have found defendant not guilty instead of guilty.

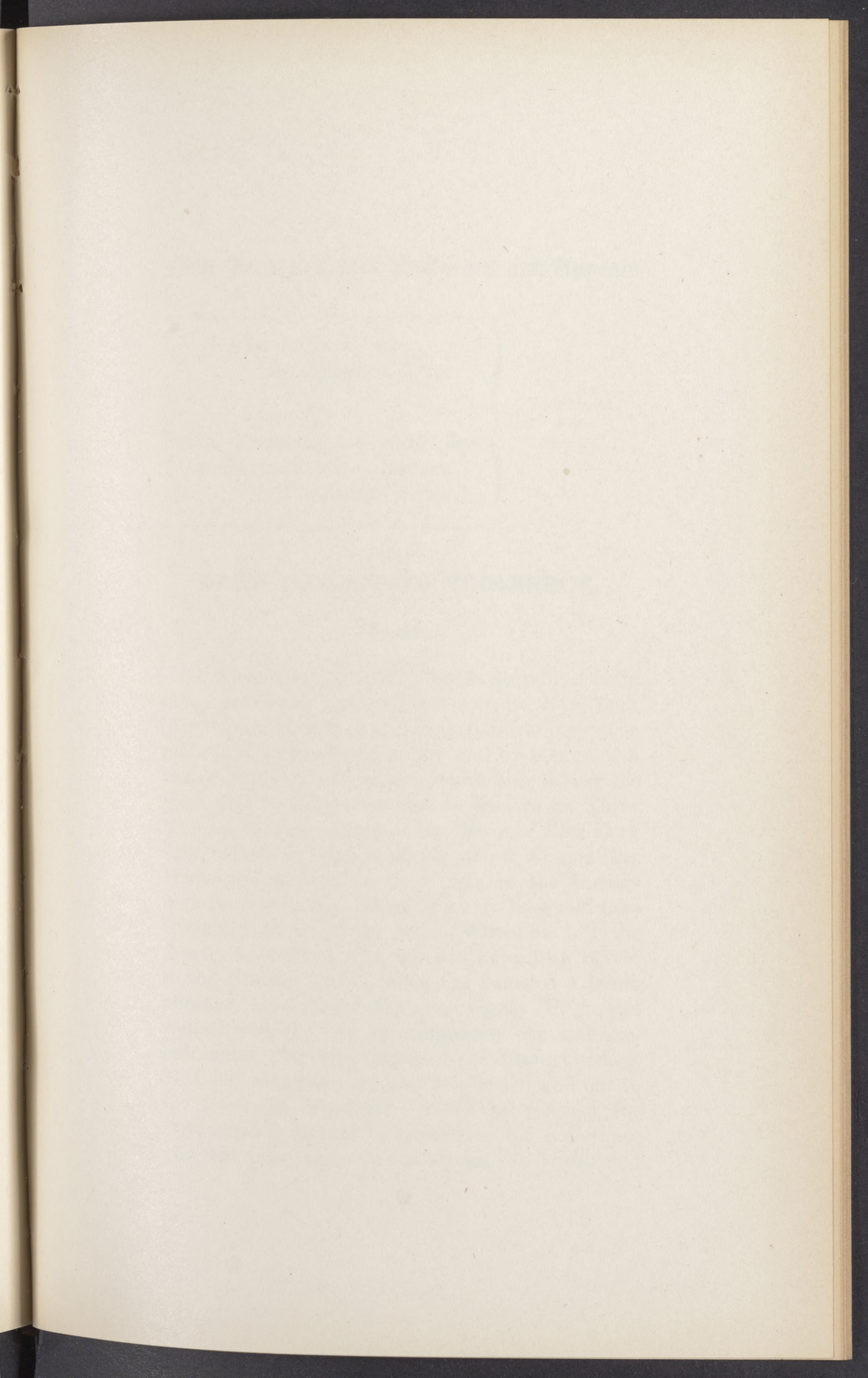
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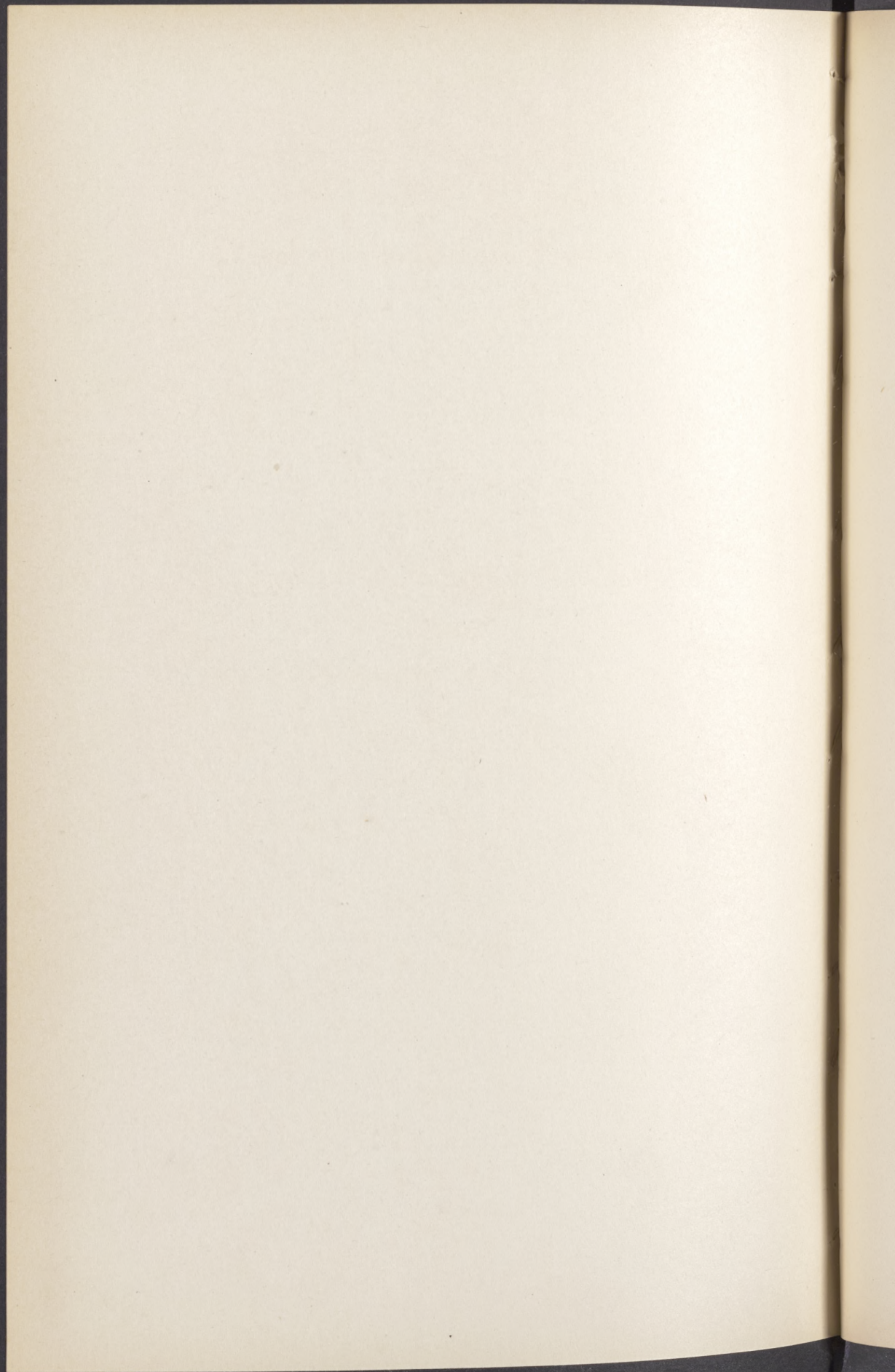
28. Because the verdict was against the weight of the evidence. The jury should have found the defendant insane at the time of the alleged commission of the alleged murder.

29. The trial court erroneously imposed sentence upon the defendant because by a preponderance of the evidence he was proven to be insane and therefore could not comprehend the sentence thus imposed upon him.

30







## New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, Defendant-in-Error,	}	Indictment For Murder.
<i>vs.</i>		
PETER KUDZINOWSKI, alias Roy Lambert, alias Roy Rogers, Plaintiff-in-Error.		

### BRIEF OF DEFENDANT-IN-ERROR.

#### Facts.

On November 17, 1928, Joseph Storelli, a child seven years old, was on First Avenue, New York City, at about half-past five in the evening. The plaintiff-in-error met the boy and by means of a box of candy lured him away with him, taking the child first to a moving picture theatre on Third Avenue, between 13th and 14th Streets, New York City, where he remained for about 45 minutes. While the plaintiff-in-error was in the theatre with the boy he was planning where he would take the child to sodomize him. When he left the theatre he walked with the boy over 14th Street to the Hudson Tubes, where he boarded a train, alighted at Journal Square, Jersey City, and walked with the boy approximately one and one-half miles (for measurement see State Case, p. 34, l. 29) along the Hudson Boulevard and out to the Secaucus Meadows. When he reached the Susquehanna Bridge he proceeded for a distance of about two hundred feet beyond the bridge and

then left the road and went into the meadow a distance of about two to four hundred feet. He then ripped the boy's clothing. The boy tried to get away and the plaintiff-in-error knocked him down and hit him a few times all the while the boy was hollering for his mother (S. C., p. 74, l. 25). After ripping the boy's clothing he attempted to sodomize him and penetrated the boy slightly. The plaintiff-in-error was fearful that the boy's outcries would attract passing automobiles and with his penis in the boy's rectum he took out his pocket knife, slashed the boy's throat and completed his act of intercourse. He covered the boy's body with the boy's overcoat, leaving it in the meadows. The plaintiff-in-error then threw his knife away, went to a railroad camp near Secaucus looking for a place to sleep. Met the keeper of the camp, spoke to him and left by way of a freight train for Scranton, Pennsylvania. He stayed at Scranton about three hours and caught a freight train for Buffalo, N. Y. He remained in Buffalo a few hours and boarded a bus for Detroit, arriving there at about 5 or 6 o'clock on the morning of the 20th of November. He stopped at a mission in Detroit, got a job in the Gratroit Hotel washing dishes for a week (see Exhibit S. 20, p. 244, S. C., for verification of foregoing). About 3:15 Dec. 3, 1928, Claude E. Bergin, a police officer, was doing traffic duty at the intersection of Brush Street and Gratroit Avenue, Detroit. A man apparently drunk, who gave his name as Roy Rogers (later identified as Peter Kudzinowski), approached him and said he was wanted. When asked what for, replied murder or something: "Well, you will find out later". This man was arrested as a Golden Rule drunk, that is taken in to be sobered and let go. This conversation of Kudzinowski's was reported by Bergin to his superiors. Kudzinowski was questioned by

the Homicide Squad in Detroit and made a confession. He was brought to Hudson County, tried on an indictment charging murder and convicted of murder in the first degree without recommendation.

Kudzinowski told Dr. Hasking and the doctors for the State that he was not drunk in Detroit, that he had taken only a drink or two and knew what he was doing and saying (S. C., p. 203, ll. 11 to 30). The witness Balborsky, who lives at the Lackawanna Railroad camp, testified he saw and spoke to Kudzinowski on the night of November 17, 1928, who was known to the witness as Whitey for about two years. Kudzinowski told this witness he "was looking for a flop" and promising to get a quart of whiskey left and never came back (S. C., p. 79, ll. 10 to 30). This was between 9 and 9:30 P. M. Kudzinowski says he left the meadows about 9 o'clock. The defendant Kudzinowski did not take the stand or offer to take the stand at the trial.

### POINT I.

#### **No error was committed in admitting telegram marked S-17 in evidence.**

The telegram S-17 was an inquiry by an inspector of police respecting a description of a boy missing from New York City, and was proven by the person who wrote it and sent it. Even if its admission was error it was harmless as it invaded no right of the defendant. It merely showed the police activity and does not fasten anything to the defendant.

## POINT II.

**The Trial Court properly charged the jury as to the burden of proof resting on the defendant when insanity is the defense.**

The appellant objects to the use of the words "He must overcome the legal presumption of sanity by a clear preponderance of proof; and by the most satisfactory evidence".

He argues that the words "and by the most satisfactory evidence" places an added burden on the defendant than that required by law. Chief Justice Hornblower in the case of the *State vs. Spencer*, 21 Law, p. 202, in his charge to the jury said, "The proof of insanity at the time of the committing the act ought to be clear and satisfactory, in order to acquit him on the ground of insanity" and in the case of the *State vs. Noel*, 133 Atl., p. 281, this Court said, "We here reaffirm the test of sanity in a criminal case laid down in the *Spencer* case".

The words alleged to be fatal to the charge are taken from the charge given in the case of the *State v. Graves*, 45 L. 349; in that case the Court charged the jury "He must overcome the legal presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence". This case was affirmed by this Court. In the case of the *State v. Maioni*, 78 L. p. 343, this Court said, "The language of the instruction is almost identical with that used in the *Graves* Case. The rule laid down by us although not in harmony with that existing in some of our sister states has been steadfastly adhered to since the *Spencer* Case in the year 1843 and is too firmly imbedded in our law to be subject to alteration or modification by judicial decision." In the *Maioni* Case

the Court reasoned that the word "convince" used in that charge had the same meaning as the words "satisfy the mind by evidence".

To the same effect are the cases

*Genz v. State*, 58 L. 482;

*Clawson v. State*, 59 L. 434;

*Winters v. State*, 61 L. 613.

### POINT III.

#### **The verdict was according to the weight of the evidence.**

The defendant did not take the stand or offer to take the stand; he did not contest any fact presented by the State, but relied entirely on a defense of insanity as made out by experts.

The defendant first offered X-ray specialists who proved four films were made of Kudzinowski's head known as D-1, D-2, D-3, D-4. These films were taken by a Mr. Moering who did nothing more than prove the films. Dr. Trainor was then put upon the stand to read and interpret the pictures for the jury. He testified:

"Q. I show you D-1. Will you read that for the jury? Come down and use this box, if necessary. A. Yes. That shows an area of increased density on the right side of the skull, *this black spot right here.*

Q. What would that indicate? A. That would indicate the possibility of an old skull fracture.

\* \* \* \* \*

Q. Now, will you read D-2 to the jury? A. That shows the same thing, right here; this *dark spot* is what we call an area of *increased density* in the bone.

Q. It shows the presence of an old fracture? A. Yes, sir.

\* \* \* \* \*

Q. Now I show you D-3. Will you read that plate? A. That shows the same thing.

\* \* \* \* \*

Q. That shows what? A. The same area of increased density, *dark shadow*.

Q. I show you D-4. A. This does not show it so well. It is taken from the other side. (S. C., p. 106, ll. 3 to 40.)

*Cross-examination:*

Q. How does increased density reflect itself on a film? A. *By a shadow*.

Q. Now, does increased density show a greater shadow? A. Yes.

Q. It doesn't show white? A. No.

Q. In other words, if the density is increased, the light penetrates the increased density, is that it? A. The light shows a *darker spot* because the light does not go through.

Q. Are you sure about that, Doctor? A. Yes.

Q. If the light can't go through a dense object, won't the film be white? A. No, it would be darker" (S. C., p. 107, ll. 16 to 30).

Dr. Jack Blumberg, a specialist for the defendant Kudzinowski, testified that the X-ray plates confirmed his opinion (S. C., p. 113, ll. 13 to 15).

Dr. William J. Donohue, another of Kudzinowski's experts, testified that he had the benefit of the X-ray plates in making his diagnosis (S. C., p. 120, l. 25).

Dr. David H. Orgel, who claims to be a physician, a surgeon, a neurological surgeon, a roentgenologist, testified:

"Q. Are you sure there was skeletal tissue in this brain? A. *Except from the X-ray*.

Q. Does that show it? A. The X-ray shows a lot of pressure upon a piece of bone that is utterly hanging down.

Q. On the inner table? A. On the inner table of the skull (S. C., p. 152, ll. 37, *et seq.*).

\* \* \* \* \*

Q. There is nothing wrong about the bones showing dark on the film? A. No, sir.

Q. It would be light on the glass plate but dark on the film? A. Yes, sir.

Q. *And this is a film or print?* A. *Right.* (S. C., p. 157, ll. 19-23).

“*Cross-examination:*

Q. Isn't this the original? A. *I don't know* whether he took this as an original or through a screen.

Q. What I am asking you is this: Is this the original plate that was put under the man's head when it was taken? A. *I don't know, sir; I didn't take it* (S. C., p. 157, ll. 27-40).

\* \* \* \* \*

Q. You don't know whether this is a positive or negative? A. No, sir.

Q. Is there any way you can tell? A. By asking the man who did it” (S. C., p. 158, ll. 11-15).

After all this testimony Dr. Trainor was recalled and testified about exhibits D 1-2-3-4.

“Q. These are not pictures? A. No, these are negatives.

Q. In these negatives what does the bone show? A. It shows lighter.

Q. So if it was dense it would show light? A. Yes, sir.

Q. The denser it is the lighter it shows? A. Yes, sir” (S. C., p. 162, l. 15 *et seq.*).

There was no correction of the testimony from the other experts and no one pointed out or read to the Jury any light spots on the exhibits that indicated a thickening of the skull and a possible fracture, and the only reasonable inference is that none could be shown and that there was no fracture. Dr. Perlberg, called for the State as an expert Roentgenologist, testified:

“Q. Did you examine x-ray plates D 1-2-3-4? A. Yes, sir.

Q. Are they original films? Are they negatives or are they positives? A. These are negatives.

Q. So that dense objects show up white on these negatives? A. Yes, sir.

Q. Did you examine an alleged fracture on these prints? A. I examined the prints and find no definite radiographic evidence of a fracture" (S. C., p. 187, ll. 14-30).

Here we have the sorry spectacle of so-called experts testifying to something they apparently know nothing about. One of them sees something showing skeletal tissue utterly hanging down yet he doesn't know whether he is reading an original or a negative, the one being the exact reverse of the other. What greater weight does such testimony have? On the contrary, wouldn't the apparent falsity, and utter worthlessness of it permeate all the testimony given by such witnesses so that the Jury would be justified in absolutely disregarding it as unreliable and untrustworthy.

We pass to the testimony of the physicians. Dr. Blumberg was the first called for Kudzinowski. He claims to be a head specialist, and came to the conclusion, as he says, that there was an injury to the brain.

"Q. Could you determine the extent of the injury or did you simply have the opinion that it was a brain injury? A. Simply to my mind—the conclusion simply came to my mind that here is a brain injury with effects persisting up to now. That was the trend of my mind" (S. C., p. 114, l. 3).

The injury to the skull according to this witness is either over the motor area or sensory area of the brain, yet he finds no symptoms showing pressure over either area.

"Q. Now if this injury affected the motor area would there be any symptoms shown in

his locomotion? A. If the injury affected the motor area, if the injury was slight; if the lesion was severe enough to cause pressure there would be a paralysis of the part of the body affected.

Q. You didn't see any such symptoms as those you have described in this man? A. No.

\* \* \* \* \*

Q. Doesn't show any signs at all of pressure on the motor area? A. No; that is what I am saying.

Q. Does it show any over the sensory area? A. No." (S. C., p. 117, l. 15, *et seq.*)

He does not indicate or claim that such an injury as he finds would affect the man's ability to know right from wrong. He does not indicate what is the extent of the brain injury he found or what effect the injury has on the brain. He nowhere claims that Kudzinowski is insane or mad or out of his mind, or that his intelligence is even slightly affected.

Dr. Donohue, a neurological and psychiatry specialist, at most testified that if the defendant took alcohol it would create cerebral excitation, stimulate him, produce an abnormal mental condition so that he at that time would not know what he was doing (S. C., p. 121, ll. 15 to 33). These seem to be the symptoms of the plain drunk. Kudzinowski himself says: "I was about half drunk, I was drinking the previous day and had a few drinks to sober up. I knew what I was doing, (S. C., p. 252, ll. 30 to 37). Dr. Donohue diagnosed Kudzinowski as a sexual psychopath who is insane in episodes (S. C., p. 124, ll. 10 to 18). While his colleague Dr. Orgel testifies that Kudzinowski does not know the difference between right and wrong when he has a sexual episode, which episode he defines: "It is the act of the erection

of the penis, the throwing of blood in the penis, the throwing of more blood into the spinal column and then the ejaculation" (S. C., p. 150, ll. 1 to 15). He further testified:

"Q. Has he any recognized form of mental disease? A. Yes, sir.

Q. What is it? A. Psychopathic; he is a sexual psychopath.

Q. Does that prevent him from knowing the difference between right and wrong? A. *At the time of the commission of the act.*

Q. Does it destroy his ability to know the nature and quality of his act? A. *Only at the time of the commission of the crime.*" (S. C., p. 149, ll. 13 to 20).

With these definitions we have no quarrel, because it might be set down as a truism that no one in the whole world knows, much less cares, what is right or wrong at that precise moment.

Dr. Donohue also testified that if a man had an episode and knows what he is doing and has a recollection of it he would be able to tell right from wrong (S. C., p. 131, ll. 19 to 22).

This defendant told every one of the physicians a coherent, connected story in detail of his crime and of all the facts leading up to it and his subsequent doings. In fact it was only on what the defendant told the doctors that they made their diagnosis. His early history, his schooling, his injury, his abnormalities all were related by him.

Dr. Cotton for the State after a recital of his examination reached the conclusion that he saw no evidence of any form of mental disease, and that Kudzinowski was able to appreciate the nature and quality of his act on November 17, 1928, and that he knew it was wrong (S. C. p. 171, ll. 25-32).

Dr. King for the State testified that Kudziowski knew the nature and quality of his act and knew it was wrong (S. C. p. 193, l. 19).

Dr. Hasking for the State testified that the defendant knew the nature and quality of his act and knew it was wrong (S. C. p. 202, l. 38).

That the defendant was abnormal no one will attempt to deny. Sodomy is not practiced by normal human beings. This abnormality, however, does not amount to insanity. If abnormality is the test in law of the consequence for crime then very few indeed would ever be convicted. Sodomy, the infamous crime against nature, committed with man or beast, is a crime. It is so revolting and so much against the natural order—so abnormal that it is not to be mentioned among Christians. Yet it is a crime. If the person practicing this disgusting crime shall go unwhipped of justice, because it is abnormal, because he gives into his low and vile sexual desires, and says he cannot control his passions, and must go even to the extent of taking human life to satisfy his lustful desires then should sodomy be wiped off our list of crimes. It should no longer be a crime to commit sodomy, but the perpetrator should at once be sent to the mad house. The legislature has not yet taken that step and we believe that the pervert can distinguish right from wrong just as this pervert did when he dallied with this boy until it was dark, took him to a lonely, deserted, dank meadow far from human habitation for his nefarious work. Did he know right from wrong when he did that? If he had an irresistible sexual psychosis at the sight of this boy he repressed it for 3½ hours, from the time he met him at 5:30 until 9 P. M. Couldn't he have suppressed it altogether? Did he know right from wrong when he fled the scene of his crime? Did he know right from wrong when he changed his name on his

arrival in Detroit? Yes, this defendant knew right from wrong. He told the Doctors for the State "on several occasions he felt like blowing his brains out, but that he had some religious scruples and he didn't know what would happen to him in the after world, and he thought he would have a better chance of restoration or forgiveness if he took his medicine, than if he committed suicide" (S. C., p. 171, l. 20).

#### POINT IV.

**The writ should be dismissed and the judgment affirmed.**

Respectfully submitted,

JOHN DREWEN,  
Prosecutor of Pleas.

ALOYSIUS McMAHON,  
Of Counsel.

**New Jersey Court of Errors and Appeals**

STATE OF NEW JERSEY,  
Defendant-in-Error,

*vs.*

PETER KUDZINOWSKI, alias ROY  
LAMBERT, alias ROY ROGERS,  
Plaintiff-in-Error.

INDICTMENT  
FOR MURDER.

**REPLY BRIEF OF DEFENDANT-IN-ERROR.**

The plaintiff-in-error on the 22nd day of May, 1929, served upon the State a typewritten copy of his brief in this case. In that brief the plaintiff-in-error said "there are 29 assignments of errors and 29 specifications of causes for reversal of judgment. Most of the points for reversal will be abandoned except points 6, 7 and 8, which shall be treated as one, and points 25, 27, 28 and 29, which will be argued as one". He then argued under these headings in his brief:

**POINT I.**

The Trial Court erred in admitting into evidence a copy of a certain telegram marked S-17.

**POINT II.**

The Trial Court erroneously charged the jury as to the burden of proof upon the defendant when the defense of insanity is set up.

## POINT III.

**The verdict was contrary to the weight of the evidence.**

The State prepared and had printed its answer to this brief and thereafter the following letter was received May 25th, 1929:

ALEXANDER SIMPSON  
Counsellor at Law  
921 Bergen Avenue-Journal Square,  
Jersey City.

May 24th, 1929.

ALOYSIUS McMAHON,  
76 Montgomery Street,  
Jersey City, N. J.

State *v.* Kudzinowski

Dear Mr. McMahon:

This is to advise you that I am redrawing my brief in the above-entitled matter. You can go on with your brief, but disregard point 2 in my present brief.

Very truly yours,

ALEX. SIMPSON.

AS:A.

In the brief which Kudzinowski has filed objection is made to telegram S-18 instead of S-17 and additional assignments of error are argued under point II which were said to be abandoned in the first brief. The State files this supplemental brief to answer the propositions raised in the brief served on it on June 1st and which were not argued in the original brief of the defendant.

## POINT I.

**No harmful error was committed in admitting S-18 in evidence.**

S-18 was a telegram in answer to S-17, sent by the police of Jersey City to the police at Detroit, Michigan, being part of the police work in trying to locate the body of the boy alleged to be missing. It does not change any fact which the defendant admitted in his confession. Preliminary police work has to be done on hearsay or on any information the police can get to work upon. The telegram offered in evidence was the telegram received from the Telegraph Company.

“A telegram delivered by the transmitting company is admissible evidence where the original and the office from which it was sent are beyond the jurisdiction of the court” (Ruling Case Law, Vol. 10, p. 1152, sec. 354).

The office from which this telegram was sent was in Detroit, Michigan.

Frahm, Inspector of Police from Detroit, testified:

“We received a wire on the 5th asking us whether or not the description—they sent us a description of the boy and what clothing the boy was wearing and wanting to know if it was identical and I told them that it was, and they also wanted to know if we could give them a better location as to where the body could be found, and they asked me at home and I talked with Peter again and I asked him if he could give me a better location, and at this time I believe I was alone with him and he said: ‘Yes, the body is about two hundred feet west of the Lackawanna Railroad or the Susquehanna Railroad Bridge, and about one hundred and fifty to four hundred feet north of the Secaucus road’; and I immediately an-

swered that wire giving that information” (S. C., p. 58, l. 35, *et seq.*).

Here we have the substance of the objectionable telegram testified to by the sender of it. The testimony here related was competent as an admission of the defendant Kudzinowski. We submit no manifest wrong or injury was done the defendant by the admission of the telegrams S-17 and S-18.

## POINT II.

**No error was committed as alleged in the 12th assignment of error.**

The State had just proven a written confession made by Kudzinowski (a parol confession of the same tenor and effect having been already received in evidence) when the defendant properly sought, before the admission of the written document, to find out if the written confession was a voluntary confession made without the pressure of hope or fear from persons in authority. The question “Did he show any remorse of any kind or any indication that he realized what an atrocious thing he was telling?” was not relevant or material to the matter then in issue. It did not go to show that any pressure of any kind was exerted on Kudzinowski to make the confession. Whether the defendant did or did not show remorse could not in any way indicate that those in authority and who were questioning him were using improper means to obtain the confession. The fullest opportunity was given the defendant to establish the fact, if he could, of the improper methods of the officers in obtaining the confession. We submit the confession was properly received. *State v. Roesel*, 62 Law 216, seems to be the leading case on this question.

## POINT III.

**No error was committed as alleged in the 5th, 16th, 17th, 18th, 19th, 20th and 21st assignments of error.**

Rose Caliandro was asked a perfectly proper question. Her answer was not responsive, no motion was made to strike out her answer, and an objection was made after the answer was given. We submit that a reading of her whole testimony will show that there is no point to this objection. She clearly and positively states that she was at her mother's house from the 18th on and when she next saw her brother was when he was at Blacker's Morgue in Jersey City. The day of his disappearance was clearly established by his mother at page 77, State of the Case.

Assignment 16 relates to the cross-examination of Inspector Underwood found on page 91. The defendant undertook on cross-examination to bring out matters not brought out in the examination in chief. This the Court, on objection, refused to let him do. Underwood's examination in chief was confined to the telegrams, the finding of the body and sending men to bring Kudzinowski to Jersey City (*State v. Sprague*, 64 L. 419).

The question asked Dr. Donohue, found at page 124, line 33, was proper on cross-examination. No objection was made to the question or answer. The doctor was testifying to a low mental condition and the effect of an accident received early in life. If the doctor didn't know when he left school he should have said so. How could he determine the "*possible* retardation of mental development" (S. C., p. 124, l. 23) unless he went through his early school years? The State was trying to find out on what the doctor based his conclusions, what material the doctor had to find

anything the matter with Kudzinowski. We submit the question was proper on cross-examination not to establish the age of the defendant, but to test the doctor's conclusions.

Whether the defendant made other statements to other policemen, unless they were different, and there is no suggestion that he made any different statement to anyone, is immaterial. The lurid story of the defendant was gone over a great many times by physicians, by policemen, and to add to the lot would not be helpful. Every statement the prosecutor had was offered to the defendant (S. C., p. 94, l. 30). He could use them as he saw fit. Surely the prosecutor was not obliged to put upon the stand every one to whom the defendant admitted his crime.

#### POINT IV.

##### **The verdict was according to the weight of the evidence.**

This subject is fully discussed in the former brief filed by the State under this head, but in the brief now filed by the appellant this statement is made, in the first paragraph of his brief under point 3:

“Before discussing the testimony of insanity, it must be pointed out that the evidence of the State's experts related to the condition of the defendant at the time of the trial, whereas what was in issue was his condition at the time of the commission of the offense.”

This is not the fact. State of Case, page 171, line 25, Dr. Cotton testified:

“Q. From your examination of him, Doctor, can you tell us whether he is suffering

from any form of insanity? A. I saw no evidence of any form of mental disease.

Q. And he was able to appreciate the nature and quality of the act which he committed on the 17th of November? A. He was.

Q. And he knew that it was wrong? A. He did."

Dr. King, for the State, testified (S. C., p. 193, l. 14):

"Q. From your examination of this man, Doctor, are you prepared to tell us whether in your opinion this man could appreciate the nature and quality of the act for which we are trying him and that it was wrong? A. I am.

Q. What was it? A. I believe he understood the nature and quality of the act and I believe he knew that it was wrong."

Again on page 197 (S. C., l. 9) Dr. King testified:

"Q. In the recital of this story to you was that a test of his memory? A. It was.

Q. Would that indicate to your mind anything about his mental condition on the 17th of November? A. It would strengthen my opinion that he was in about the same condition on the 17th because if he were not I can't make myself understand how he could tell such a clear-cut, decisive story.

Q. From the clear-cut, decisive story that he told you on the 8th of January you conclude that he was in the same state of mentality on the 17th of November as he was when you found him on the 8th of January? A. I give that as my opinion, yes."

Dr. Hasking, for the State, testified (S. C., p. 202, l. 39):

"Q. Is it your opinion that he knew the nature and quality of his act? A. It is.

Q. And that he knew it was wrong? A. He did."

Cross-examination (S. C., p. 205, l. 33):

“Q. And from the replies he made to your questions and as a result of your physical examination you base your conclusion? You never saw him on the 17th of November and do not know what his condition was on that day? Do you say under oath that from your examination on the 8th of January, when he was without any alcohol, that on the 17th of November you are sure he knew what he was doing and he was not in any way mentally defective? A. I do.”

Respectfully submitted,

JOHN DREWEN,  
Prosecutor of the Pleas.

ALOYSIUS McMAHON,  
Of Counsel.

## New Jersey Court of Errors and Appeals 10

<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">PETER KUDZINOWSKI, alias Roy Lambert, alias Roy Rogers, <i>Plaintiff-in-Error.</i></p>	<p>Sur Indictment for Murder.</p> <p>Appeal from Court of Oyer and Terminer in and for the County of Hudson.</p>	20
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**BRIEF FOR PLAINTIFF-IN-ERROR.**

The plaintiff-in-error, Peter Kudzinowski (hereinafter referred to as defendant) was convicted in the Hudson County Court of Oyer and Terminer for murder in the first degree without recommendation of life imprisonment. The indictment under which he was tried and convicted charged him with the murder of Joseph Storelli on the 17th day of November, 1928. 30

The trial judge, in view of the verdict, sentenced the defendant to be electrocuted. This case comes before this Court under the 136th section of the Criminal Procedure Act (2 Comp. St., 1910, p. 1863), and Assignments of Error. 40

Both assignments of error and specifications of causes for reversal have been filed, which indicate the alleged infirmities in the proceedings below. There are 29 assignments of errors and 29 specifications of causes for reversal of judgment.

10

### Statement of Facts.

The defendant when a boy of 8 or 9 years of age suffered a fractured skull while swimming. He was born and raised in the mining districts of Pennsylvania, and did not go beyond the fifth grade in school. As a result of the fracture, there is a pressure on his brain, which is about 60% above normal, and this depression is causing deterioration of his brain cells, which makes him subject to recurring periods of insanity, especially when he drinks liquor to excess.

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On or about the 3rd day of December, 1928, while the defendant was in Detroit, Michigan, in a very intoxicated condition, he approached a police officer in Detroit and told him that he had murdered someone. (State of Case, p. 67.) As a result of this he was arrested as a "Golden Rule" drunkard, which means that he would be held until he "sobered up" and then would be allowed to go out of the police station. (State of Case, p. 67, lines 38-40.) Because of his drunken condition on December 3rd, 1928, no one could speak to him. (State of Case, p. 72, lines 10-13.) On the following day, or December 4th, 1928, he was still drunk and very nervous and in no condition to talk (State of Case, p. 72, line 20), but on December 5th, 1928, he told how he met the deceased boy in New York, took him over to Jersey to the Secaucus Meadows and there took the boy's over-

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coat and trousers off and then sodomized him. While doing this, the deceased began to cry, so the defendant took out a knife from his pocket and cut his throat, killing him. He continued to sodomize the youngster after he had killed him.

As the result of this confession, he was brought to New Jersey to stand trial and convicted of the crime. Experts were produced by both the State and the defense as to the mental condition of the defendant and all of them agreed that he was not mentally normal, while the defense experts were of the unanimous opinion that he did not know the difference between right and wrong at the time of the murder. This shall be dealt with later. 10

At the trial, the prosecutor refused to put in a number of statements obtained from the defendant after his arrest. It is no answer to say the defendant could put them in because they could be ruled as self-serving declarations, but the jury were entitled to have all statements made by the defendant because it was important to know whether or not the statement made by the defendant could be relied on. All that the jury had was the first statement made in Detroit. He made a number of statements after. None of this the State offered although urged to do so by the defense. 20 30

#### POINT 1.

The trial court erred in admitting into evidence a copy of a certain telegram marked S-18. (S. C., p. 45.)

The admission in evidence of this telegram was erroneous because prior to the offer to admit 40

same, no proof was adduced explaining what had become of the original. It was only a copy. No proper foundation was laid for the reception of the copy.

10 This telegram so-called was material because of the peculiar circumstances of the trial. The defendant was convicted almost entirely upon a statement made by himself. Exclusive of what he said, there was no evidence of his presence in New Jersey or at the place of the crime. The only evidence in addition to the statement made by himself was as to the condition of the body and the place of the crime.

20 One of the questions before the jury was whether the defendant's statement was the statement of an insane man in which he placed himself as the central figure in a crime, the details of which had been told to him by some of the vagrant class among whom he lived and with whom he traveled on freight trains, or whether he was actually the perpetrator of the crime. It became important to the State to get any evidence which would corroborate his statement that he was the person.

30 The paper writing received by the police in Jersey City from the telegraph office in Jersey City was admitted in evidence as an original document. There was no proof of the original telegram or whether it was lost or in existence or where it could be obtained. The telegram read (State of Case, p. 45):

December 6th, 1928. 4:06 a. m.

John J. Underwood, Inspector of Detectives,  
Jersey City, N. J.

40 Peter Kudzinowski, alias Roy Lambert, worked Lackawanna Railroad, address, box sixty-three,

Hoboken. Description of boy same. Lambert states boy's name Joe. Can find body two hundred feet west Susquehanna Bridge and one hundred fifty to four hundred feet north of Secaucus Road—letter follows.

EDWARD H. FOX,  
Chief of Detectives.

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This paper admitted into evidence was not the original telegram. It was what was received by John J. Underwood and it was pure hearsay. It not only stated description of the body but also "Lambert states boy's name Joe."

The case in 139 Atlantic, 394, Porter vs. Wainright, is to the following effect. The Court said, referring to a paper such as that now being discussed: "The admission of these copies were error. In the first place, they were copies. There was no evidence that the original had been destroyed. The proper foundation for their reception was not laid. In the second place, we think the contents irrelevant. They did not tend to establish the assumption by the prosecutor of the care or maintenance of the children or any duty towards them. The remittances might have been in payment of a debt or a voluntary gift."

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It can thus be seen that as the proof against the defendant rested entirely upon a statement made by himself, the admission of this telegram and its use by the jury established illegally three things:—

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1. The name of the boy.
2. The place where body was found.
3. Description of the boy.

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In other words, it linked up something in Detroit in the possession of the police; ~~that the case~~ against the defendant which being in Detroit was hearsay and which case the paper admitted was only a copy; it could not be said to be an accurate description of the existence of the facts in Detroit.

10 This method of establishing the guilt of the defendant was clearly harmful to him.

In addition to this there was objection made to the telegram on page 44 of the State of Case. This was clearly incompetent, being the statement of John J. Underwood a recital of the description of the boy and the fact that he was reported as missing by the New York Police. This was a copy of an alleged telegram sent by Underwood to Detroit. It was clearly inadmissible, even if the original was produced, being a hearsay recital by Underwood of certain facts not in his knowledge and when connected with the other copy received allegedly in reply, went to establish by incompetent evidence certain essential facts. The vice of the admission of this testimony is, that it tended to corroborate a story of the defendant, which might have been the tale of an insane man and the objection goes to 6, 7 and 8 of the assignments of errors and specification of causes.

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#12 of the assignment of errors and specification of cause which is the refusal of the Court to permit an answer to the question:

Q. Did he show any remorse of any kind or any indication that he realized what an atrocious thing he was telling? This is found on page 60 of the State of Case.

The demeanor of the defendant in telling this story was very important because the jury must find that it was either recital of facts given by

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one who understood the horrors he was reciting or the parrot-like tale of a mad man. Yet, the Court refused to allow the witness to be examined as to the condition of the defendant and his appearance when he was giving this recital.

This clearly injured the proper presentation of the case. The question asked was competent. It was competent for the witness to state things or ordinary observation. See case of *Koccis vs. State*, 56 N. J. L., 44. 10

Also see case of *State vs. Koettgen*, which refers to language of Mr. Justice Garrison in *State vs. Koccis*, where he says:

“Familiar instances in which testimony of this kind may be given are—whether two people were in love, whether a man was sick or dazed, or despondent or drunk; whether a dog was savage or a horse gentle, and, in general, any matter touching physical or mental manifestations or appearances as well as all questions of identity, resemblance, duration, distance, dimension, velocity, noises, smells and many other matters where an inference drawn by an observer is commonly recognized and received as an equivalent for the congeries of facts that produces it.” 20 30

*State vs. Morris*, 98 Law, 624.

*State vs. Doro*, 103 Law, 94.

Testimony sought to be obtained was competent that it was most material is apparent from the fact that the veracity, accuracy and ~~where~~ the capacity of the defendant was in issue and anything that would throw light on these facts clearly was material and the exclusion of it was error. 40

## POINT 2.

The fifth assignment of error and specification of causes is as follows:-

10 Because the trial court, over the objection of the defendant, permitted Rose Caliandro, a witness for the State, to be asked the following questions:

“Q. Do you know what day your brother Joseph disappeared? A. He disappeared on the 17th. My mother called me up.

20 Q. Did you go to your mother’s house on November 17th? A. I went on the 18th, on Sunday. My mother called me up and I went over to the house.”

30 It recites evidence, admission of which might work manifest injury to defendant. It was important to fix a date of disappearance of the boy who was killed. This testimony was pure hearsay and was incompetent. It may be argued that the plaintiff-in-error suffered no wrong or injury because the fact was established by other evidence but that does not meet the objection. This evidence was incompetent evidence. It may be that the evidence of the mother (State of Case, p. 77) established the fact of disappearance, but the jury might refuse to accept this without the evidence objected to which is on page 40 of the State of Case. This witness had no knowledge whatever of the time of disappearance of the little boy. All this testimony objected to is on page 40 of the State of Case and was pure hearsay and it was  
40 admitted by the Court to establish a material fact, the date of the disappearance of the boy, all the

more important because the conviction must be rested upon the confession of the defendant.

The same objection is made to 16 of the assignments of errors and specification of causes on page 86 of the State of the Case. The refusal of the trial judge to allow Inspector Underwood to testify as to conversation with the defendant while he was in custody was clearly relevant to show what defendant's condition was. It cannot be argued that the defendant could summon Underwood as a witness because statements made by the defendant would not be evidently by the defendant. They would be self-serving declarations. Therefore, to refuse to allow Underwood to give conversations with the defendant was to cut off any proof as to the condition of mind of the defendant and a denial of the right of cross examination (State of Case, p. 90). 10  
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See,

Prout vs. Bernard's Township, 77 N. J. L., 719;

State vs. Black, conspiracy case, 97 Law, 363;

Davenport vs. Patteson, 98 Law, 66;

Baus vs. Trenton, etc., Corp., 100 Law, 368;

Babirecki vs. Virgil, 97 Equity, 320. 30

The same objection goes to 19 of the specification of causes and assignments of error (testimony on pp. 91 and 92 of the State of Case).

Assignments of error and specification of causes No. 21; the trial court over the objection of the defendant allowed Dr. William J. Donahue to be asked testimony of hearsay character as to 40

the age of the defendant when he left school. This might at first seem a trivial objection but when it is considered that the mental condition of the defendant was in issue, the time at which he left school was a fact of some importance and to allow this to be established in the minds of the jury by hearsay evidence as by the testimony of Dr. Donahue on pages 124 and 125 was clearly prejudicial to the defendant.

Nos. 17, 18, 19 and 20 of the specification of causes and assignments of errors covered the refusal of the trial court to allow the defendant's counsel to show what was the situation, in reference to the police's contact with the defendant; whether he had made other statements; what the contents of these statements were; under what circumstances he had made them. This was important because his whole conviction rested evidently as is apparent now upon a statement made by defendant. Therefore, every light that could have been thrown on that statement should have been thrown upon it. The Prosecutor and the police were there as much to do justice as to get a conviction, if a conviction was proper. But, the trial court refused to let the jury know what was the conduct of the defendant while in custody of the police; what statements he made; what were the contents of the statements, so the jury might match one against the other and see if the statement relied on to convict him was trustworthy and the statements of the same man. This deprived him of a fair trial.

## POINT 3.

The verdict was contrary to the weight of the evidence.

Before discussing the testimony of insanity, it must be pointed out that the evidence of the State's experts related to the condition of the defendant at the time of the trial, whereas what was in issue was his condition at the time of the commission of the offense. 10

It was contrary to the weight of the evidence because the jury should have found the defendant insane at the time of the alleged commission of the crime. The only defense that the defendant had was that he did not know the difference between right and wrong at the time of the commission of the crime because of his diseased mind. 20

The testimony of the witnesses who testified as to the defendant's mental condition in the order in which they testified follows:

Following in this point are excerpts from the testimony in the case.

The first witness of the defense on this score was Alexander Moering who was an X-ray expert and who took four (4) different X-rays of the defendant's skull and introduced into evidence as Exhibit D-1, which is a front view of the skull (State of Case, p. 103). Exhibits D-2 and 3, which are right lateral views of the defendant's skull (State of Case, pp. 103 and 4) and Exhibit D-4, which is a left lateral view of the defendant's skull. (State of Case, p. 104.) 30

The next witness was Dr. James Trainor who is a practicing physician and surgeon and who had twenty-five (25) years' experience in reading X-ray plates. (State of Case, p. 105, line 32.) He 40

testified that Exhibit D-1 showed an old skull fracture. (State of Case, p. 106, lines 11-12.) He stated that Exhibit D-2 also revealed an old fracture (State of Case, p. 106, line 21) but he could not tell how old the fracture was. (State of Case, p. 106, line 23.)

10 Exhibit D-3 showed the same thing as Exhibit D-2. (State of Case, p. 106, line 27.) He testified that Exhibit D-4 showed that the fracture was on the other side of the skull or right side. (State of Case, p. 106, line 39 to p. 107, line 3.) His findings were corroborated by the distinct depression in the defendant's skull. (State of Case, p. 107, line 8.) Only an expert can read X-rays, not an ordinary layman. (State of Case, p. 110.)

20 The next witness for the defense was the defendant's brother who testified that when the defendant was eight or nine years of age, he dove and fractured his skull. (State of Case, p. 111, lines 3 to 15.)

30 Dr. Jack Blumberg testified that he had specialized in head work exclusively. (State of Case, p. 111, line 31.) He made a complete examination of the defendant for head injury (State of Case, p. 112, line 21), and his examination consisted of the head proper, the eyes, the interior of the eyes, the cranial nerves and the special fluid pressure. By the use of a manometer, he obtained the pressure of the spinal canal which revealed twenty-four (24) milometers, while the normal pressure is fifteen (15) milometers. (State of Case, p. 112, line 25 to bottom of page.) He stated that his condition, which is persisting up to the present time, was due to an injury of his head. (State of Case, p. 112, line 40 to State of Case, p. 113, line 5.) He also testified that

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he found his skull fractured because there was a distinct depression in his parietal region. (State of Case, p. 113, lines 8 to 12), and this diagnosis was confirmed by looking at the X-rays which he did after he had made his examination. (State of Case, p. 113, line 17.)

On cross examination, Mr. Blumberg testified that in head injuries it is not the fracture of the skull at all which is the important part; the fracture in the skull proper may be very extensive and still a fairly small amount of damage done to the brain and on the other hand, there may be absolutely no fracture whatever and still its brain be terribly damaged. It is simply the concussion to the brain which does the damage and this damage may last the rest of the patient's life time. (State of Case, p. 115, lines 26 to 37.) He further testified on cross examination, that the depression that he found in the defendant's skull gave him an absolute indisputable evidence of an injury to his brain. (State of Case, p. 115, lines 39 to 41.) The defendant admitted to Dr. Blumberg that he received an injury to his head while diving. (State of Case, p. 116, line 16.) On redirect examination, Dr. Blumberg said that his manometer showed a pressure on the brain, which pressure should not be there, and that the fracture revealed by the X-ray did not control his opinion at all. (State of Case, p. 118, lines 1 to 20.) The pressure that he found was twenty-two (22) to twenty-four (24), while the normal pressure is fifteen (15). (State of Case, p. 118, lines 34 to 36.)

The next expert to testify for the defense was Dr. Donahue who made a specialty of neurology and psychiatry. Psychiatry is the study of the

- abnormal conditions of the brain. Dr. Donahue's examination revealed to him that the defendant was mentally abnormal. (State of Case, p. 120, line 30.) He showed his abnormality by his low-grade mentality; that there was a congenital defect or retardation of full development at some time during his life and that his psychological re-action indicated that there was a definite slowing of brain process (State of Case, p. 120, lines 33 to 40), and also stated that alcohol, taken by a man in the defendant's condition, would cause cerebral excitement (State of Case, p. 121, line 20), which would produce a state of abnormal mental condition so that he would be unable to distinguish the difference between right and wrong. (State of Case, p. 121, lines 20 to 30.)
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- 20 Dr. Donahue on cross examination said that even though defendant admitted that he sodomized the deceased and admitted cutting his throat, that the defendant would not know the nature of his act at the time it was committed. (State of Case, p. 122, lines 1 to 3.) Dr. Donahue on cross examination said that the defendant was a sexual psychopath or a man whose mental capacity is abnormal and who shows abnormal sexual tendencies, which made him insane in episodes. (State of Case, p. 124, lines 13 to 18.)
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- 40 On re-direct examination, in answer to a hypothetical question as to whether or not a man of the defendant's mentality would have a brain of such character that he could absorb and repeat a story as if he had done the thing himself, Dr. Donahue said that such a man, especially one being a sexual psychopath and one who consorted with men rather than naturally, would take a story upon himself and blame himself for some-

thing he had never done. (State of Case, p. 132, lines 30 to 40.) The defendant even admitted to Dr. Donahue that he committed sodomy with animals and it did not make any difference to him with whom he cohabited, nor did he seem to realize the heinousness of it all. (State of Case, p. 133, lines 3 to 10.) On cross examination, Dr. Donahue again reiterated this "absorption story." (State of Case, p. 135, lines 9 to 20.) 10

Dr. Donahue stated on re-cross examination that the defendant had admitted to him that he did not realize what he was doing until after it was done. (State of Case, p. 139, line 28.) The last thing that Dr. Donahue said, while on the stand, was that in the problems which he submitted to the defendant, whose object was to see if he could differentiate between right and wrong, the doctor was convinced that he could not. (State of Case, p. 140, lines 22 to 28.) 20

The next expert to testify for the defendant was Dr. David H. Orgel, who testified that he made a study of diseases of the brain or mental disorders for a long period of years and that at the present time he is engaged in neurological surgery. (State of Case, p. 141, lines 1 to 4.) He also testified that he had testified in murder cases and will cases in which the question of insanity was involved. (State of Case, p. 141, lines 11 to 22.) 30  
Dr. Orgel found three distinct impressions on the right side of the defendant's skull. (State of Case, p. 142, line 13.) From his examination and the examination of the X-ray plates plus the report of the radiologist, he came to the conclusion that there was a pressing upon the motor and sensory areas of the brain giving a reason for the defend- 40

ant's lowered mentality. (State of Case, p. 142, lines 33-34.) He also stated that the defendant's mind, when the question of sex was mentioned became very active and could describe minutely every move that he made, but when other things were mentioned, it was laggard. (State of Case, p. 143, lines 1 to 16.) He also stated that the defendant admitted to him that he committed sodomy with animals, especially with cows, and mares, but that he never had sexual relations with women and he abhorred them. (State of Case, p. 13, lines 17 to 29.) The defendant also admitted that he had committed sodomy with one Quinn, after he had killed him. This crime was committed after the excitement of alcoholic indulgent. (State of Case, p. 143, lines 29 to 38.) The defendant also told him that he did not think it was wrong to commit sodomy with Quinn and the young boy, but he stated that the deed of killing the child, when he came to himself, he thought was wrong and that he had no regrets while he was doing the act. (State of Case, p. 144, lines 10 to 28.) The doctor testified that, in his opinion, as the result of all of these things, the defendant at the time he committed the sodomy and the homicide upon the child, he did not know what he was doing because of his mental deficiency. (State of Case, p. 144, lines 29 to 35.)

Under cross examination by the Prosecutor, Dr. Orgel testified that during his examination of the defendant, he became excited while telling his story pertaining to sexual things. (State of Case, p. 148, line 10.) He also testified on cross examination that the defendant was a sexual psychopath, and that at the time of the commission of the act, he is unable to tell the difference between

right and wrong. (State of Case, p. 149, lines 13 to 20.)

It is respectfully submitted that from the testimony of the medical experts produced for the defendant, he was of such low mentality and of such a condition that he did not know the difference between right and wrong; that at times, especially when matters of sex were not mentioned, he seemed to be normal, but when sexual things were either mentioned or indulged in by him, he did not know what he was doing. The mere fact that the defendant, in his confession, described his different movements from the time he took the deceased from New York to New Jersey and sodomized him after he had killed the child does not evidence the fact that he knew the difference between right and wrong. It is known from experience that one who is insane and who commits a crime can go through certain mental processes without understanding the quality of his act on which he is engaged or know the difference between right and wrong. He may, apparently, be logical in certain respects as to what has transpired during the commission of his crime and yet be of such a low mentality that he would not know the difference between right and wrong. The weight of the medical testimony produced by the defendant shows by a greater weight of the evidence that his mind was so diseased that he did not understand what he was doing at the time the act was committed and did not know the difference between right and wrong when it was perpetrated.

We will now dwell on the experts produced by the State in rebuttal. The first witness for the State was Dr. Henry Cotton who testified that the

defendant seemed anxious to tell his story to him (State of Case, p. 167, line 10); that he had admitted to him that he had had intercourse with animals and that when he was drinking this sexual appetite was increased (State of Case, p. 170, lines 25 to 39). Dr. Cotton also testified that the defendant told him that as far as the sexual part was concerned that he had no control over himself (State of Case, p. 171, lines 3 to 5). Dr. Cotton on cross examination admitted that a man could have recurring periods of insanity; to be sane at one time and then to be insane at another (State of Case, p. 172, lines 10 to 12). He also admitted that where you have a brain injury, the attendant symptoms can clear up and a man will be sane and then at other times can be insane (State of Case, p. 172, lines 17 to 20). Dr. Cotton testified that his examination was as to the defendant's condition at the time it was made and not at the time when the crime was committed (State of Case, p. 172, line 21). This expert also testified that the defendant could have had a fracture of the skull and had a resultant pressure on the brain; that that could produce a kind of insanity which would be present at some time and not present at others and that alcohol could bring it on. In other words, he could be perfectly normal at one time and not normal at others (State of Case, p. 173, lines 11 to 24). He also testified that in cases of emotional insanity of the sexual kind, such as the defendant was suffering from, that he could be seized with perverted sexual notions and if they are satisfied, he would return to normal state (State of Case, p. 173, lines 24 to 30). Notwithstanding that Dr. Cotton was one of the first men in this country to adopt the spinal fluid test

as it was used by the defendant's expert, Dr. Blumberg, in his examination of the defendant, he did not use this test (State of Case, p. 174, lines 13 to 18). It was with such a test that Dr. Cotton determined the insanity of another murderer some years ago and although the jury found this murderer sane, when he died, the autopsy revealed that Dr. Cotton's test was right (State of Case, p. 174, lines 19 to 32). Dr. Cotton admitted that the act of the defendant was not normal (State of Case, p. 176, line 37). It is well to remark here that Dr. Cotton would never give a direct answer to any question on cross examination, but was very evasive. He admitted that a person showing sexual psychoneurosis, like the defendant, should be confined in a State Hospital (State of Case, p. 185, line 39, to p. 186, line 8), and this is the State's main medical expert who is in charge of the New Jersey Insane Asylum at Trenton, who testified that such a man ought to be confined to an institution (State of Case, p. 186, line 3). Yet, the State and the jury have condemned this unfortunate individual to be electrocuted.

The next witness for the State was Dr. Perlberg who stated that the X-rays showed no fracture although Dr. Cotton, the State's medical expert, testified that the defendant did have a fracture (State of Case, p. 188, lines 31 to 40). If Dr. Perlberg was right in his diagnosis, then Dr. Cotton, the State's main medical expert, was all wrong in his entire testimony, for surely no doctor could be mistaken as to a fracture such as the defendant had, especially when you consider that the depression was easily discernible on the defendant's skull.

The next medical expert produced by the State was Dr. George King who testified that he found

a depression in defendant's skull. His neurological examination revealed practically the same things that the defendant's doctors testified to (State of Case, p. 190, line 15). Dr. King also testified that the defendant admitted to him that he had had intercourse with cows and mares (State of Case, p. 192, lines 18 to 22). He also testified that he agreed with two of the defendant's experts that the defendant was a psychopathic and had a low type of mentality (State of Case, p. 193, lines 28 to 30). Dr. King also admitted that the defendant is not normal (State of Case, p. 193, line 33). His definition of a man who is sane is one who is normally and mentally sound (State of Case, p. 193, lines 39 to 40). This State's expert admitted that he could not say what the defendant's condition was on the day of the murder but only on the day of the examination which took place before the trial or almost two months after the murder was committed (State of Case, p. 194, line 32). Dr. King admitted that what Dr. Cotton said in his work on the Defective, Delinquent and Insane that "From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on his bio-chemical evidence, as well as clinically, in delirium tremens. In this condition, we know that the brain has been seriously affected but with the removal of the alcohol, it becomes perfectly normal again. Therefore, it cannot be argued that because of recoveries in the acute psychoses the brain has not been affected. Moreover, we have seen many recoveries among the acute psychoses occurring a day or two after the removal of the chronic foci or infection," is correct.

In other words, Dr. King admits that where you have a serious mental disturbance which has been seriously affected by the use of alcohol, and with the removal of alcohol, the person can become normal again.

Dr. King admitted that if a man is insane, who masturbates and indulges in sexual excesses, that that is the result of his insane condition. Dr. King testified on cross examination, that a person can be insane and can manifest itself in pederasty and yet he can talk reasonably and logically on other subjects, but would "go off the handle" on that subject (State of Case, p. 196, lines 10 to 18). Dr. King bases his conclusion that the defendant was in the same condition on the day that the crime was committed as he was on the day he made his examination of the defendant because the defendant could remember the horrors he had been through although, Dr. King admitted that a man suffering from delirium tremens which is a species of insanity, could recite all the facts or hallucinations that he had been through (State of Case, p. 197, line 23 to p. 198, line 15).

The last medical expert produced by the State was Dr. Arthur Hasking whose testimony, on cross examination, was very evasive to say the least, and who admitted that sexual abnormality is the result of a disturbed mental stage (State of Case, p. 205, line 19). He also admitted that there are recurrent periods of insanity, that is, that a man can be sane today and insane either the following day or week (State of Case, p. 206, lines 7 to 10).

Dr. Cotton admitted it would be better to confine persons like the defendant in a State Hospital "if they broke out with uncontrollable impulses" (State of Case, p. 186, line 3). The preponder-

ance of the evidence seems to be that the defendant did not know the difference between right and wrong when he committed his crime.

The foregoing is a summation of the testimony of the witnesses who testified as to the defendant's mental condition in the order in which they testified and at the end of this reference there is  
 10 printed excerpts from this testimony. There is no escape from the conclusion that in their opinion the defendant was mad and mad to that extent that he had no consciousness of either right or wrong. See the following excerpts:

“Cross Examination by Mr. Simpson of Dr. Henry A. Cotton, State's Witness:

20 Q. Are you a salaried state official? A. Beg pardon?

Q. Are you a salaried state official? A. I am.

Q. You draw a salary from the State of New Jersey? A. I do.

Q. Now, when did you make this examination? A. Tuesday afternoon.

Q. What date? A. January 8th, on the 8th of January.

30 Q. And you didn't see him on the 17th of November, did you? A. I did not.

Q. Isn't it possible for a man to have recurring periods of insanity, to be sane at one time and then to be insane at another? A. It is.

40 Q. If you didn't see him on the 17th of November then your examination has to do with him as you found him in December, is that right? A. Yes, sir.

Q. And is there often a brain injury where the attendant symptoms will clear up, where a man will be sane even where a brain is injured, and then again insane? A. Yes, sir.

Q. How can you testify then as to what his condition was on the 17th of November, if you didn't see him on the 17th of November? A. I haven't testified as to his condition on the 17th of November. 10

Q. You don't know anything about it? A. Only what he told me.

Q. You have written a book, haven't you, entitled 'The Defective, Delinquent and Insane'? A. I have.

Q. And don't you say in that book as follows (p. 17):

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'From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on bio-chemical evidence, as well as clinically, in delirium tremens. In this condition we know that the brain has been seriously affected but with the removal of the alcohol it becomes perfectly normal again. Therefore, it cannot be argued that because of recoveries in the acute psychoses the brain has not been affected. Moreover, we have seen many recoveries among the acute psychoses occur in a day or two after the removal of the chronic foci of infection.'

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You so wrote, and it is a fact, is it? A. It is a fact.

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Q. Then it might very well be, if this man had a fracture of the skull and had pressure on the brain that that would produce a kind of insanity which would be present at some times and absent at other times? A. Possibly.

10 Q. And that alcohol would bring it in? A. It is possible.

Q. And as I understand you you are simply testifying to the condition he was in when you saw him on the 8th of December? A. The 8th of January at one o'clock.

Q. And at that time he was perfectly normal? A. Perfectly normal, yes.

20 Q. Now, in cases of emotional insanity of this sexual kind where a man would be seized with these perverted sexual notions and after they are satisfied he would return to a normal state such as you saw this man in on December the 8th? A. No one can say definitely, but it is a possibility.

30 Q. Then how do you diagnose the condition described by him, that he couldn't control this unnatural sexual desire? Do you say that cannot be attributed to any mental defect or brain disorder? A. It might be attributed to alcohol. It was exaggerated when he was drinking.

Q. Yes, but suppose there was a brain injury plus alcohol. Would that or would it not produce such a case of mental disorder as to render him unable to control what he was doing? A. There is a possibility, the brain injury being sufficiently severe.

40 Q. There is such a possibility? A. The brain injury being sufficiently severe.

Q. You did not have an X-ray made of this man? A. No.

Q. Of this man's head? A. No.

Q. You don't know how severe the fracture was at the time he got it, do you? A. No.

Q. Now then, you know of this test which Dr. Blumberg used, of extracting the spinal fluid, don't you? A. Yes, sir. 10

Q. You didn't do that in this case? A. No.

Q. You were one of the first men in this country to adopt that, weren't you? A. Yes.

Q. Isn't it a fact that you were retained by the State to examine Gallagher, who shot Gaynor? A. Yes, sir.

Q. And you made such a test and determined that Gallagher was insane? A. Yes, but the cells and condition of the spinal fluid— 20

Q. But that was your opinion? A. Yes, sir.

Q. And the jury said he was sane? A. Yes.

Q. He went to Trenton and died and you performed an autopsy and found that you were correct and that the man was really insane? A. Yes.

Q. And you made your diagnosis upon this spinal fluid test, and with other things, I presume? A. Yes. 30

Q. What did your spinal fluid test show ultimately? A. That he had an increase in the cell quantity of spinal fluid, a water liquid—the spinal fluid is a water liquid with no cells normally. In paralysis you have an increase of the cells of twenty-five to one hundred per cubic milometer. 40

Q. Which would indicate as Dr. Blumberg said, a pressure on the brain? A. The chemistry I am talking about.

Q. No, I am talking about you putting your needle in the spine and taking out the fluid and finding the pressure on a meter, on a manometer. Doesn't that show any pressure?  
10 A. It may or it may not.

Q. I mean, is there a normal pressure? A. Well, normal varies in individuals. It depends—

Q. Can we get something positive from you? What is the variation? A. It depends whether you use a water manometer or a mercury manometer or plain tubes.

Q. Well, take the water manometer. That was used in this case. A. It would be around  
20 fifteen.

Q. That is what it ought to be if a man was in sound health? A. Yes, sir.

Q. If it was twenty or twenty-five would that increase instruct you as to any condition of the brain? A. No, because he had high blood pressure. I think high blood pressure has a direct relation.

Q. Do you say as an expert that the tests made by Dr. Blumberg are valueless? A. No, it is not valueless.  
30

Q. What is its value? A. I say, if you take it in connection with the blood pressure or any other symptoms a pressure on the brain—if he showed symptoms of paralysis, for instance, or if he had convulsions or fits or epilepsy.

Q. Suppose he didn't have paralysis but a leaning to the side and suppose he had this  
40

motion of the tongue to the side and had this eye condition, would that mean anything to you at all? A. I didn't see that; I examined him very carefully.

Q. I mean if Dr. Blumberg found those things, would that have any effect in your making up your mind or would you require a paralysis, and so forth? A. I would think if he had enough pressure from the fracture to cause mental trouble the relation of that fracture to the part of the brain involved is important. That is right over the motor area, and if there is a depressed fracture that doesn't show in the X-ray—the inner table is not fractured—then you would expect to get convulsions or an attack of paralysis of the face or hands or feet; and right under the skull is the leg area, and it comes on down to the face and hands. 10 20

Q. Then do I understand you to say that a man who had a fracture of the skull and pressure of the brain, who had abnormal sexual impulses, had no relation with women whatever, who took a little boy and who bought him candy and took him in the meadows and attempted to sodomize him and cut his throat and then after the poor little boy was dead finished the sodomization, you say that man was perfectly normal though he couldn't resist doing this thing? A. I would say he was normal so far as the legality—so far as the insanity— 30

Q. Don't be a lawyer. I am asking you whether a man in that condition is normal.

Mr. McMahon: I object to that. The test in this case is whether he knew and 40

could appreciate the nature and quality of the act which he committed and knew that it was wrong.

The Court: The Senator is asking him if that is normal. Objection overruled. Go ahead.

10 A. I wouldn't say any act like that was normal.

Q. Here in your book, on page 174, do you say this—this book, of course, is written for the edification of the world and the advancement of science? A. Yes, sir.

Q. Everything in here is true, as far as you know? A. Yes.

20 Q. Didn't you say in this book, page 174: 'Here again the sexual element plays a very important role in their abnormal conduct, and we are of the opinion that the discussion of this problem among the defectives applies equally well to the delinquents. Many of them are sex offenders and are easily misled because of hyper-sexual activity. This is due to a disturbance of the sex glands and it becomes an uncontrollable factor in their habits.' Did you say that in your book? A. 30 Yes, but that doesn't apply to insanity.

Q. I am asking you whether you said it? A. Yes, I said it.

Q. You said that in your book on Defectives, Delinquents and Insane? A. Yes.

40 Q. Now, do you say you know and can state under oath as a matter of medical knowledge what the condition of this man was on the 17th day of November mentally? A. I cannot, only what he told me.

Q. I am not asking you what he told you. I am asking you from your examination on the 8th as to whether or not you can tell what his condition was on the 17th of November? A. From what he told me.

Q. No, from your knowledge, from your first examination of his tonsils and teeth? You are a great man on teeth. You recommend the pulling of teeth for nearly every disease? A. No, sir.

10

Q. The teeth and the tonsils and the intestines—were you able to examine his intestines? A. No, I didn't operate on him. I couldn't examine his intestines.

Q. Then you were limited entirely to the veracity of his statements, were you, as to the condition on the 17th? A. Absolutely.

20

Q. Now, will you give us that blood pressure test over again, please? You said something about blood pressure. The doctors say you got the cart before the horse when you used the terms systolic and diastolic. You gave one figure— A. 15 being normal.

Q. Now, you described the blood pressure— A. 145 diastolic over 70 systolic.

Q. They say you are right this time but you were wrong before. I have to depend on the doctors. This pressure on the brain, couldn't you have that without convulsions and without exaggerated changes in parts of the body? If there was a pressure on the brain, as I understand you to say, there would have to be convulsions or interference with his gait, or something of that kind, is that what you say? A. Paralysis or convulsions or epilepsy.

30

40

Q. In other words, all pressure on the brain, no matter how slight it is, would cause epilepsy or paralysis or interference with the limbs? A. No, I said nothing of the sort.

10 Q. Suppose this fracture you found had gone through the inner table of the skull and suppose there was pressure on the covering of the brain, would that in any way affect this man's brain? A. If it was serious enough he would probably not have learned anything after the injury.

Q. Would it be such as would cause recurrent insanity? A. Well, it is a possibility. I don't see how it could.

20 Q. What do you know about this fracture of the skull? Do you claim that by examination you can swear it didn't go through the inner table? A. The X-rays that I see, from them there is no evidence of fracture of the inner table.

Q. That is your opinion? A. Yes.

Q. You don't read them the way the doctors read them? A. I haven't heard anybody say yet that there was a fracture of the inner table.

30 Q. How long did you examine this man? A. It seemed to me that it was about two hours and a half.

Q. And he discussed his sodomizing of animals with you, didn't he? A. He did.

Q. Didn't show any signs of shame in discussing it, did he? A. Remorse.

Q. Of the animals? A. Remorse over his own conduct.

40 Q. How did he show it? A. He said he knew it was wrong; that he couldn't control himself.

Q. Did you ask him the question, 'Do you know it was wrong?' A. Yes.

Q. And he said yes? A. Yes.

Q. He answered you like a parrot, didn't he? A. No.

Q. Any question you asked him. A. No, plenty of times he said no. I asked him if he had any connection with anybody else after the episodes in 1924 and 1928 and he said no, he had no relations with anybody else. 10

Q. And you say that the reason he hadn't approached women was because he was bashful? It wasn't because of any sexual abnormality? A. He didn't have an aversion to women. He would liked to have had it but he didn't know how to go about it.

Q. And you believed that? You believed that these horrible habits that he had with animals and humans was due to bashfulness and not due to abnormality, either mental or physical? A. He said his not having relation with women was due to bashfulness. 20

Q. Then the consequence, as I take it, is, that his relations with animals and humans was due to the same timidity. It wasn't due to any form of abnormality? A. He had an uncontrollable impulse which he couldn't control. 30

Q. Well, what was that due to in your opinion? A. Well, that is hard to say.

Q. Assuming that he has an uncontrollable impulse sometimes to do that? A. That is hard to say.

Q. Could it be due to pressure upon the brain? A. I don't think so, the accident happening when he was nine years of age. 40

10 Q. I didn't ask you that. Please don't argue the case for the State. I am asking you whether this pressure could have caused this? Did you say in your book, your learned treatise on 'The Defective, Delinquent and Insane, by Henry A. Cotton, M.D., Medical Director, New Jersey State Hospital at Trenton. Lecturer in Psycho-Pathology, Princeton University. Director, Psychiatric Clinic for Correctional Institutions of New Jersey. Introduction by Adolph Meyer, M.D.'—I won't read his titles—don't you say on page 30: 'In a like manner, sexual excesses and masturbation are probably to be looked upon as symptoms of a disordered metabolism rather than causative factors in insanity?' A. Yes.

20 Q. Exactly what does that mean? What does that mean when you say 'Sexual excesses and masturbation are properly to be looked upon as symptoms of a disordered metabolism?' A. To explain that, formerly everybody believed that masturbation and sexual excesses caused insanity, but we have found out more and they are considered more as symptoms than as causes.

30 Q. In other words, instead of masturbation and sexual excesses causing insanity, insanity causes masturbation and sexual excesses? Is that what you mean? A. In some cases, exactly.

Q. You needn't put 'some cases' in. We are trying to find out what the general rule is. A. In every case a masturbator is not insane.

40 Q. Why didn't you take this spinal test? A. The man had a temperature of 100 and a

pulse of 142, and I saw no evidence of paralysis or syphilis, and I didn't think he was in condition to have a lung punctured at that time if I had wanted to do it.

Q. It was the lumbar puncture that proved that you were right in the Gaynor case? A. That was the Gaynor case, and—

Q. Proved you were right when you said he was insane and McDonald and Hamilton said you were wrong, when they said he was sane? A. Yes. 10

Q. And you didn't make that lumbar puncture in this case, did you? A. No.

Q. Will you say this man has no increased intracranial pressure? A. No, I wouldn't say that.

Q. Wouldn't the increased intracranial depression at times cause mental deterioration? A. I see no evidence of it. 20

Q. No, would it cause it? A. If it was severe enough.

Q. If there was pressure there nine years of age, accompanied by intracranial pressure would that cause mental deterioration? A. Not in all cases.

Q. Would it in any case? A. I don't know of a case. 30

Q. So you say increased intracranial pressure over any substantial period of time would never cause mental deterioration? A. With the symptoms—

Q. I didn't ask you anything about symptoms. I am asking you whether increased intracranial pressure causes deterioration of the brain if extended over any period of time? A. It might. 40

Q. Does it commonly do it? A. No.

Q. Won't pressure on any nerve tissue cause it to die? A. It depends on the severity of the pressure.

10 Q. Did you also say in your learned work on 'The Defective, Delinquent and Insane': 'As we have stated, at least forty per cent. of the defective delinquents show mental abnormalities and physical disturbances it is manifestly improper to send this class of delinquents to the reformatories of disciplinary institutions, as they exist today, for at present even the best of such institutions have no means, other than disciplinary to handle them. Each institution should have, if possible, well equipped hospital wards for the observation and treatment of this class and a research bureau. But this would require the duplication of many facilities in the various institutions, whereas the necessary treatment could be better given in a central institution'? A. Yes.

20

Q. So that, as I take it, you there state that many of these defective delinquents show mental abnormalities? A. Yes.

30 Q. Would you say this man was one of them? A. Not in the sense of a man to be committed to an institution on the basis of insanity.

Q. Would you say that this man as a defective delinquent showed any mental abnormalities? A. I say he showed an abnormal condition.

Q. Well, mental or physical or what condition? A. I think more physical than mental.

40 Q. Due to physical conditions? A. Yes, his sexual impulses.

Q. Now, you say you thought he was sane because he didn't know the name of the Governor of his own state? A. No, I didn't say that.

Q. That is one of the tests. You said one of the tests you made was he didn't know the name of the Governor of Pennsylvania. Therefore the man was sane. Do you know the name of the Governor of Mississippi? A. I do not. 10

Q. What is your native state? A. Well, I have lived in North Carolina and Virginia.

Q. That is your native state, North Carolina? A. Well, I haven't lived there since I was three years old.

Q. Do you know the name of the Governor of that State in 1900? A. I do not. 20

Q. Then why do you take into consideration the fact that this man didn't know the Governor of his State as indicating that he was sane? A. I did not say that.

Q. You used it? A. No.

Q. Didn't you testify here that you asked him if he knew the name of the Governor of Pennsylvania in your examination and he said he did not? A. I said he knew the Governor of New Jersey and he knew the President and the president-elect and the present election but he did not know the Governor of his own state. 30

Q. Are there any people among the 2,500 in your insane asylum at Trenton, New Jersey, that know the names of the President of the United States and the Governor of New Jersey? A. Most of them do.

Q. And they are insane? A. Yes. 40

10 Q. What value was your test in asking him who was the Governor and citing that as evidence when you come to testify, and saying that he knew the name of the President and the Governor of the State and the President-elect and yet he is not insane but most of the 2,500 people who are insane do know the name of the President, President-elect and Governor of New Jersey? What evidential value has that test? A. That he wasn't confused; that during this period he knew what was going on around about him; he had no memory disturbance.

Q. Do all insane have memory disturbances? A. There are so many types—if they are confused they do.

20 Q. How many types of insanity are there? A. There is a large group, subdivided. We have psychoneurosis, dementia praecox—three or four types.

Q. Does dementia praecox ever manifest itself in offense such as his? A. I don't think I have but one case in the hospital to be compared with him.

30 Q. Is that one of the symptoms of dementia praecox? A. Possibly I have one case out of 2,500.

Q. Well, what type of insanity causes sexual excesses and masturbation? What type of insanity causes that? A. As I said, it is a question of deranged metabolism.

40 Q. Metabolism is a big word, like the old lady said, 'That blessed word, Mesopotamia.' A. It is the balance in the economy of the system. That is, you have a lot of assimilation of food and you have a lot of glands of

internal secretion which are pouring blood into the circulation, and that all indicates metabolism.

Q. Metabolism means the nourishment of the body? A. Not necessarily, no.

Q. Would you put this boy in any classification? Would you call him a normal mental human being or would you put him in any classification? A. I wouldn't classify him as a normal human being; I wouldn't classify him as insane. I say he has abnormal conduct. 10

Q. Due to what? A. Due to his physical condition.

Q. To his excessive sexual habits? Due to his physical condition? A. Yes.

Q. Due to the food he eats? A. No. 20

Q. What particular physical condition is the cause of his condition? A. I think it is the effect of alcohol.

Q. If a person is injured in the brain and it clears up your book says that it is apt to bring back insanity? A. Sometimes.

Q. So if a man had pressure on the brain and it seemed to clear up alcohol might bring that back, that insanity, according to your book? A. It might. 30

Q. When you saw this man on the 8th he had had no alcohol for a long period of time? A. Not as far as I know.

Q. You saw him on the 8th, did you? A. Yes, sir.

Mr. Simpson: What was the date, Mr. McMahon, that he was arrested in Detroit?  
The Court: The third. 40

Q. Then for five days he had evidently been without alcohol, so when you saw him he had no alcohol as far as you know? A. No.

Q. Have you in your institution cases of sexual psychoneurosis? A. I haven't any at present; I have seen such cases.

10 Q. Have you had them confined in your place? A. I have seen them more in outside institutions. Most of them do not get in institutions. They are not committed. They are not insane.

Q. Have you seen any under confinement at all? A. Seen what?

Q. Didn't you say you had some in your institution in your present testimony? A. No.

20 Q. And as far as you know you have none showing sexual psychoneurosis, is that right, confined to the State Hospital? A. There may be some; I don't recall them; I can't recall offhand.

Q. Well, it is better to confine them, isn't it, if they break out with uncontrollable impulses? They ought to be confined? A. Certainly.

30 Q. Doctor, they tell me you examined him a month after he was arrested? A. I beg pardon?

Q. You examined him on the 8th of January? A. The 8th of January.

Q. Then you examined him a month after his incarceration? A. I don't know when he was incarcerated.

40 Q. He was arrested on the third of December and has been in custody ever since and therefore had been without alcohol for over a month? A. Yes.

Q. Did you say Dr. King was with you when the examination was made? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)”

Direct examination of Dr. Alexander K. Moering, defendant's witness:

10

“Q. Now, Doctor, I show you what purports to be an X-ray film. Will you tell me what that is? A. That is the front view of Peter Kudzinowski.

Q. Front view of the skull of Peter Kudzinowski? A. Yes, sir.

Q. When and where was that taken? A. This was taken on December 28, 1928, in the Hudson County Jail.

20

Q. By whom? A. By myself.

Q. I show you another X-ray film. What is this? A. Right lateral view of Peter Kudzinowski taken the same date.

Q. And by you? A. By myself.

Q. In the same place? A. Same place.

Q. I show you another film. What is this? A. This is the right lateral view of Peter Kudzinowski.

30

Q. What is D-3? A. Also the right lateral view.

Q. I show you another film. What is this? A. It is the left lateral view of Peter Kudzinowski taken at the same time.

Q. Of the skull? A. Of the skull.”

Direct examination by Mr. Simpson of Dr. James H. Trainor, defendant's witness:

40

“Q. I show you D-1. Will you read that for the jury. Come down and use this box if necessary. A. Yes. That shows an area of increased density on the right side of the skull, this black spot right here.

10

Q. What would that indicate? A. That would indicate the possibility of an old skull fracture.

Q. Does it indicate, without the other plates that I am going to show you, the presence of an old skull fracture? A. Yes, but the lateral view will show it better.

Q. Now, will you read D-2 to the jury? A. That shows the same thing, right here; this dark spot is what we call an area of increased density in the bone.

20

Q. It shows the presence of an old fracture? A. Yes, sir.

Q. Could you tell by the plate how old that fracture was, approximately? A. No.

Q. Would it be over a year old? A. Very possibly. It might be a year and it might be twenty.

Q. Now I show you D-3. Will you read that plate? A. That shows the very same thing.

30

Q. Will you point out to the jury where? You had better step back so the Foreman can see it. A. It is apparent (pointing to film).

Q. I know, but it isn't apparent when they can't see it. Will you put the pointer where you show it? A. Right there.

Q. Right where you point? A. Yes, sir.

Q. That shows what? A. The same area of increased density, dark shadow.

40

Q. I show you D-4. A. This does not show it so well. It is taken from the other side.

Q. The left side? A. Yes, sir.

Q. What would that indicate to you? A. That it was on the right side, and that is corroborated by physical findings.

Q. What physical findings was it corroborated by? A. There is a very distinct depression in this man's skull at that same site.

10

Q. That is, the same site as shown by the X-ray findings? A. Yes, sir, by the X-ray findings."

Cross examination of Dr. James H. Trainor, defendant's witness:

"Q. And what is this dark spot? A. Same thing.

20

Q. Probably. A. Yes.

Q. What is this dark spot? A. I think that whole thing is where one of the large veins—

Q. Do you know, Doctor? A. Yes, I think that is what it is, a groove in the skull.

Q. What is this dark spot? A. The same thing, the sinus.

Q. This dark spot here is a sinus? A. Yes, lateral sinus.

30

Q. I mean this spot here. A. It runs all the way in there. It is a very large vein, you know.

Q. Point out to me and mark on this picture with something that will show where the increased density is. A. It isn't shown very well on here.

Q. Can you mark where it is shown? A. Yes, right in through here.

40

Q. Where you put a circle? A. Yes, the lateral view shows it much more plainly than the other.

Q. Is this a lateral view, D-2? A. Yes, sir.

Q. Now, point it out. A. All through here.

Q. Will you put a circle around it. A. It is just back of the coronal suture.

10 Q. Where is the dark place that is dark in the circle that you have marked, that is darker than the rest of the skull? A. It runs right up to the top of the skull.

Q. Is that darker than the place you didn't mark? A. I should have marked that up a little higher.

Q. Mark it where it should be marked. A. It goes right up to the top of the skull.

20 Q. Now will you say that what you have now marked within the circle is darker than the rest of it? A. Yes, I do; it is more dense.

Q. Now I am showing you Exhibit D-3. Mark it out. A. That shows the same thing. That is well marked, more marked than this one or anyone we have had."

Direct examination by Mr. Simpson of Dr. Jack Blumberg, defendant's witness:

30 "Q. Did you examine the defendant's head at any request? A. I did, sir.

Q. When did you make that examination? A. Night before last, January 8th.

Q. Did you do anything else in the way of an examination, make any tests? A. I made what for me consists of a complete investigation for a head injury.

40 Q. Will you tell us what that was? A. That consists of the examination of the head

proper, the eyes, the interior of the eyes, cranial nerves and the spinal fluid pressure.

Q. How did you ascertain the spinal fluid pressure? A. By taking a needle attached to a manometer, putting the needle into the spinal canal and measuring the pressure directly.

Q. What did you find the pressure to be? 10  
A. 24 milimeters.

Q. What would the normal pressure be?  
A. 15 milimeters.

Q. What did your examination indicate as to the condition of this man's head? A. An injury to the brain, that is, the man had sustained a head injury which had given him a brain injury and that the effects were persisting up to now.

Q. Up to the time you examined him? A. 20  
Up to the time I made my examination.

Q. And your diagnosis was that this condition was caused by an injury to the head?  
A. Yes, sir.

Q. Did you ascertain any fracture of the skull by feeling the skull? A. When I felt this man's skull I felt a distinct depression in his parietal region which was more pronounced at its upper than its lower end. 30

Q. Did you have these X-ray plates, D-1, 2, 3 and 4 at all? A. They were there after I finished my examination.

Q. And you looked at them? A. I did, sir.

Q. Did they confirm you in your opinion, the X-ray plates? A. They did, yes.

Q. Now, will you give us in detail what your examination was of the eyes and tongue 40

and what they showed? A. His eyes showed a pupil which was very sluggish and even under a thoroughly bright light contracted very slowly. At the beginning, it remained entirely wide but after a second or two it then contracted. The interior of his eyes, showed a slight fullness of the retinal veins.

10 Q. What does that mean? A. The veins in the interior of his eye were slightly fuller than normal. His mouth—

Q. But before you leave the eyes, what did that condition indicate to you as to his normalcy? Was he normal or what, the eye condition? A. The eye condition per se wouldn't indicate anything.

20 Q. That was one step in the— A. That is it.

Q. What was the next step? A. His face was drawn slightly to the right and the muscles on the left side of his face are smooth, or not acting as forcibly as the opposite side. His tongue, when he is asked to put it outside of his mouth is turned to the left. Both knee jerks, simply tapping his knees, shows an exaggerated response.

30 Q. And all those things taken together indicate to you an injury to the brain? A. Yes, sir.

Q. Could you determine the extent of the injury or did you simply have the opinion that it was a brain injury? A. Simply to my mind—the conclusion simply came to my mind that here is a brain injury with effects persisting up to now. That was the trend of my mind."

40

Dr. WILLIAM J. DONAHUE, sworn as a witness for the defendant:

“Direct Examination by Mr. Simpson:

Q. Where do you live? A. 173 Roseville Avenue, Newark, New Jersey.

Q. You are a practicing physician and surgeon? A. Yes, sir. 10

Q. Where do you practice? A. Newark, New Jersey.

Q. Do you make any specialty? A. Neurology and psychiatry.

Q. What is psychiatry in ordinary language? A. The study of abnormal conditions of the brain.

Q. Did you examine this defendant at my request? A. I did. 20

Q. When did you make that examination? A. On the evening of the 8th of January, 1929.

Q. Were you there when Dr. Blumberg made his tests? A. Yes, sir.

Q. And did you have the benefit of the X-ray plates? A. They were there, yes.

Q. And did you also have the benefit of talking to this defendant and examining him and knowing what Dr. Blumberg had found out? A. Yes, sir. 30

Q. And what did you make up your mind as to his mental condition, was it normal or otherwise? A. I found it to be abnormal.

Q. And in what way was it abnormal? A. He was of low-grade mentality, at the outset, and that there possibly was a congenital defect or retardation of full development at some time during his life and that his psycho- 40

logical reactions, his answers to questions,—not what he told in answers but how he heard the questions and how he studied before he answered them, indicated that there was a definite slowing of brain processes.

Q. Brain what? A. Brain processes, brain faculties.

10

Q. What kind of answers did he give you? Would he give you intelligent answers or answers like a parrot? A. He would begin, in answer to a question, and speak quite a streak, which might or might not be relevant to the question asked and he would repeat just a lot of poll parrot stuff in answer to my questions, in answer to any questions that were asked him. The answers he gave had no relation to the questions.

20

Q. What did you make up your mind as to his condition, assuming that a man with his condition and with the condition of the brain that Dr. Blumberg described, that a man like that would take alcohol, what effect would that have on his brain? A. It would cause a definite cerebral excitation.

Q. Would it produce insanity? A. It would produce a state of abnormal mental condition.

30

Q. Amounting to what? A. He wouldn't know what he was doing.

Q. Would he be able to distinguish the difference between right and wrong? A. Not at that time, no.

40

Q. Assume that this man, whose mentality you have examined, never was through any such episode that he told you about but he had been told of it by someone else. Has he the kind of brain that would absorb that and re-

peat the story as if he had done that himself?

A. Not only that, but he is a man of low-grade mentality and a man such as that, being a sexual psychopath and one who consorted with men rather than naturally, he takes stories unto himself, and one he recited to me particularly he took unto himself and took the blame for it when he said to me he never had anything to do with it. 10

Q. Did he also tell you he had committed sodomy with animals? A. Yes, sir.

Q. Did he indicate to you that he knew the heinousness of it at all? A. No, it didn't make any difference to him who he cohabited with."

Direct examination of Dr. David H. Orgel, defendant's witness: 20

"Q. Will you describe what his mental condition is, to the jury? A. His mental condition is of a low grade. He is very easily influenced as to various things by external irritations. He gave us a subjective history which came on from the age of about between six and seven and led up to the time of the commission of the act. Do you want me to enumerate that? 30

Q. No, you needn't give that in detail. A. And then we had these objective findings. The objective findings upon examination of the skull, I found three depressions on the right side of the brain, of the skull, in the middle bone, which we call the parietal bone, —three distinct depressions. Upon examination of his eyes his pupils were dilated, the 40

lids were in a condition of tremor, especially more marked on the left side; examination of his eyeballs showed dilation of his blood vessels; upon protrusion of the tongue it deviated to the left; upon testing the ataxia of his arms and legs we found an increased sensibility on the left and greater tremor; reflexes of his legs were increased; his blood pressure was 150 over 90; his spinal blood pressure by water manometer swerved between twenty and twenty-five; and as a result of this examination and in an examination of X-ray plates which were handed to me, plus the report of the radiologist I came to the conclusion that this boy had suffered an intracranial injury resulting in the production of new tissue, scar tissue and connective tissue and the pressing upon the motor and sensory areas of the brain, giving a reason for his lowered mentality. At the same time from the subjective symptoms we got from him that following his injury he was subject to headaches and these headaches were preceded by a feeling of staggering toward the left in which he had to hold himself—he would not, however, lose consciousness. This occurred several times during the day and it lasted for short intervals. This had another effect upon his mentality. His mind was pretty clear upon a great many things upon being tested psychologically. He could describe very minutely some things, but when it came down to the commission of certain acts he described them minutely showing that his mind was acute at times when a certain thing was mentioned to him, at other times when the condition of sex was not mentioned to him he was

laggard, but on the mention of sex his mind became active and he would describe minutely every move that he made.

Q. In that description did he say that he had committed sodomy with animals? A. He said he had committed sodomy with animals, especially with cows and mares, at the age of seventeen. He was a masturbator from the age of thirteen continuously. At the age of fifteen he became acquainted with a man by the name of Quinn and then started his drinking. He went along with Quinn for a good many years, working at odd things here and there for a few dollars and then drinking. He had never had sexual intercourse with women and he abhorred them. 10

Q. He abhorred them? A. Yes. He had sexual connection with Quinn after he had killed him, what you call in English buggery or sodomy or pederasty. That, however, was only committed after the excitement of the alcohol indulgent, which stimulated the centers of erratic desire. That was upon Quinn but followed about fifteen minutes afterwards. 20

Q. After he said he killed Quinn, but they haven't been able to find Quinn. 30

Mr. McMahon: Objected to.

The Court: Sustain the objection.

A. (Continuing) When we came down to the condition of the child he described very minutely every movement he made until he came to the meadows, the tearing off of the child's coat, throwing him upon the ground, the tearing of his clothes and the sexual act 40

per rectum. The child commenced to scream and he hit him on the head and he still continued his act. The child still screaming he whipped out his knife and cut his throat and followed that by continuing his act until he was finished. He did not know—as a result of my questions he said—I said was it wrong and he said he didn't believe that it was wrong, the act of committing sodomy with Quinn and it was not wrong to commit sodomy with the child. 'Did you know it was wrong after you had committed it?' He said the act of sodomy was not wrong but the deed of killing the child when he came to himself he thought it was wrong.

10 Q. But while he was doing it? A. While he was doing it he said he had no regrets.

20 Q. Then as a result of all this what is your opinion of his mentality as of November 17th, the time it is alleged he committed the sodomy and homicide upon the child? What is your opinion of his then mental condition? A. He didn't know what he was doing.

Q. Because of a mental defect? A. Because of a mental defect."

30 Cross examination by Mr. Simpson of Dr. George W. King, state's witness:

"Q. Did you say to anybody that in your opinion this man was insane? A. Well, I think I agree with two of your experts. I think he is a psychopathic and I think he has a low type of mentality.

40 Q. Did you ever say before you took the witness stand that this man was insane or normal? A. I don't think he is normal.

Q. What do you mean by sanity? A. What is medical insanity?

Q. No, I didn't say insanity, sanity. Mr. McMahon is trying to get you to say that this man is sane. Now I want to know what you mean by sane? A. A man normally, mentally sound we would understand is sane.

Q. Do you say he is normal? A. I wouldn't say that he is normal mentally, no. 10

Q. Now suppose he had a fracture of the skull when he was nine years of age which produced a pressure on the brain, would that pressure on the brain or could that pressure on the brain produce mental abnormality? A. Those things happen; they do occur.

Q. Let me read to you from a great work by Dr. Cotton and see if you agree, unless Mr. McMahon objects. A. Read louder, please. 20

Q. Dr. Cotton in his great work on *The Defective, Delinquent and Insane*, says that, 'From the fact that certain serious mental disturbances do permit of spontaneous recovery it has been argued that the brain itself could not have been affected, but this is not necessarily true as we have already seen, on his bio-chemical evidence, as well as clinically, in delirium tremens. In this condition we know that the brain has been seriously affected but with the removal of the alcohol it becomes perfectly normal again. Therefore, it cannot be argued that because of recoveries in the acute psychoses the brain has not been affected. Moreover, we have seen many recoveries among the acute psychoses occur in a day or two after the removal of the 30 40

chronic foci of infection.' Do you agree with that? A. I do.

10 Q. Then what knowledge would your examination made a month after November 17th, what scientific knowledge would that give you of this man's mind on November 17th? A. Of course, I don't know how that man was on November 17th. I spoke of his condition as I found him on the day of the examination.

20 Q. Then you are testifying, as I understand it, as he was on the 8th of January, that if he had done this thing on the 8th of January he would have understood it was wrong, but what his mental processes were on the 17th of November you have no knowledge of whatever because you didn't examine him on that day? A. Perfectly true.

Q. Will you tell me how you explain the sluggishness of pupils, Doctor, and the exaggerated reflexes? How do you explain them? A. That could be due to various causes. A toxic condition was present, his illness, the nervous condition he must have been in, being tried for his life. That I think would be sufficient to cause that, the toxic condition.

30 Q. You will have to keep your voice up. You think every man who is waiting to be tried for a homicide has exaggerated reflexes and pupils? A. No.

40 Q. Do you say that masturbation and sexual offenses, abnormalities, are caused by insanity or that they cause insanity? I ask you that because Dr. Cotton swore that at one time it was believed that masturbation and sexual excesses caused insanity but that the modern doctors preach that insanity causes

masturbation and sexual excesses? A. Yes, I agree with Dr. Cotton.

Q. That if a man is insane and masturbates and indulges in sexual excesses that that is a result of his insane condition? A. Yes, I agree with Dr. Cotton on that.

Q. Now this man, when you examined him he told you frankly about his sexual excesses, abnormalities with animals, didn't he? A. He did. 10

Q. He didn't keep it back at all? A. He did not.

Q. Dr. Cotton said—one of the answers which influenced Dr. Cotton was that he knew the President of the United States, the President-elect and Governor A. Harry Moore of New Jersey. Would that have any effect on you at all as to his sanity or insanity? A. That would be a link in the chain. You ask several questions and the different ways he replies you would put that one among the other number of questions that you ask and put the aggregate together and get your conclusion. 20

Q. Are the insane ever logical and coherent and reasonable? That is, is there such a thing as a man being insane on one subject and on other subjects being logical and coherent? A. Yes. 30

Q. Suppose a man had the kind of insanity that manifested itself in pederasty and sadism, could he on all other subjects talk reasonably and logically but yet go off the handle on that subject? A. Yes, very few people know what a person's sexual life is.

Q. They testify here, Doctor—some doctors—that when they examined him at the jail 40

he sat with a stooped head and didn't seem to be much interested, and that the minute they mentioned sex he straightened up and seemed to be interested. A. I didn't see that.

Q. But if that happened would it indicate anything? A. It would indicate that sexual perversion—indicate sexual perversion.

10 Q. Sadism means sexual pleasure with cruelty? A. Yes, sir.

Q. Taken from the Marquis de Sade? A. Yes.

Q. The Frenchman that wrote some books that have been suppressed? A. Yes, sir.

Q. And who died in an insane asylum? A. Yes.

20 Q. And isn't that type of man one who has no sense of pleasure unless it is accompanied with cruelty? A. It is a mental defect.

Re-cross Examination by Mr. Simpson:

30 Q. We referred to Dr. Cotton's great work. Dr. Cotton said, as I read you, that a man might make a spontaneous recovery and from that we could argue that the brain itself could not have been affected, but this is not necessarily true as we have already seen, that the presence of alcohol would bring back the insanity. Now then if on the day you examined him he had had no alcohol and he had had alcohol on the 17th of November, which, according to Dr. Cotton, would create insanity, how could you judge his condition on the 17th of November when you made the examination on the 8th of January? Merely because he could remember the horrors that he had been through? A. I couldn't judge in any

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other way. If he was profoundly under the influence of alcohol he wouldn't remember it."

Sir Edward Coke said:

"The execution of an offender is, for example, *ut paena ad paucos metus ad omnes perveniat*, but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty and can be no example to others." 10

To convict the defendant of murder in the first degree, it was necessary for the State to prove that he committed this crime wilfully, with premeditation and deliberation, and that possessing quality of normality and mentality, he was guilty upon the evidence, beyond a reasonable doubt. 20

How can it be said that this defendant whose mind was so disrupted and so deranged was capable of such deliberation and premeditation as required by the law to convict him of murder in the first degree, upon the evidence, beyond a reasonable doubt. In the case of *State vs. Spencer*, 21, New Jersey Law, 210, Chief Justice Hornblower declared it to be the law of this State, and his decision has been followed to the present time, that the test is "Was the defendant conscious that he was doing what he ought not to do," and this test has been simply reduced as to whether or not the defendant at the time he committed the act knew the difference between right and wrong. Can it be said that the defendant possessed sufficient mental ability to be able to distinguish right from wrong and did he have sufficient mentality and will power to resist the 30 40

perpetration of his crime? The medical testimony produced at the trial refutes such a declaration.

In the case of *State vs. Maioni*, Chief Justice Gummere speaking for the Court of Errors and Appeals on page 341 said:

10           “*In case of Mackim vs. State*, 59 Law, 495, we held that insanity is a defense to crime only when the diseased condition of mind was such that the defendant did not 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.”

20           Because the will and the act of the accused did not join, an insane person is not able to commit a crime in the eyes of the law. Insanity must, however, be present at the time of the commission of the deed. See the case of *State vs. Overton*, 85 N. J. L., 287.

In the case of *State vs. James*, 97 N. J. L., page 132, point 12 of the syllabus holds:

30           “*A criminal defendant’s mental condition need not be such as to enable him to realize the fullest extent of his acts before he may be convicted; the law presumes a man to be sane, and if the contrary exists thereby defeating this natural presumption, it must be shown by the party who alleges it, and, when insanity is set up as a defense 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.*”

40           See also the case of *State vs. Noel*, reported in 102 N. J. L., 659.

It is respectfully submitted that the verdict of the jury finding the defendant guilty of murder in the first degree is against the weight of the evidence because the medical testimony adduced at the trial showed that the defendant did not possess sufficient mental ability to distinguish right from wrong at the time of the commission of his crime; because it was proven by the medical experts that the defendant's mind was so distorted that he was incapable of deliberation and premeditation as required by the law to convict him of murder in the first degree; because all the medical experts including the State's experts, admitted that the defendant is not a normal person and that he is in that class of persons who are suffering from recurrent insanity, that is, that he is sane one day and insane another; and that the main expert for the State admitted that a person like the defendant should be confined in a State Hospital.

All matters apparent to counsel have been argued herein but it may be that the discerning mind of the Court will discover in the transcript matters injurious to the defendant, not argued, the defendant being in the mind of counsel a mad man and therefore, unable to consult with counsel, counsel respectfully urges that if the Court finds in the within record matter which is prejudicial to the defendant which has not been argued by the counsel yet in favoram vitae, the Court will relieve the defendant.

It is respectfully submitted that the judgment should be reversed.

ALEXANDER SIMPSON,  
WILLIAM L. GRIFFIN,  
Of Counsel with Plaintiff-in-Error.

