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WRIT OF ERROR.

STATE OF NEW JERSEY, SS:

The State of New Jersey to Ralph W. E. Donges, Esq., one of the Justices of the Supreme Court of the State of New Jersey, Constituting the Court of Oyer and Terminer, holden at Camden, in and for the County of Camden, of the term of December, 1946;

(Seal)

Because in the record and proceedings and also in the giving of judgment upon a certain indictment in our said Court of Oyer and Terminer against Howard Auld, late of Bellmawr, County of Camden and State of New Jersey, for that the said Howard Auld, on the fifteenth day of August, in the year of our Lord, one thousand nine hundred and forty-five, in the Borough of Haddon Heights, in the County of Camden aforesaid, did wilfully, feloniously and of his malice aforethought kill and murder Margaret McDade, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

Pro ut the said indictment whereof before you, he, the said Howard Auld, has been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Howard Auld, as it is said, manifest error hath intervened to the great damage of the said Howard Auld, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Howard Auld, do

command you that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals in the last resort in all causes to law to be held at Trenton, on the 20th day of April, 1946, and this writ, that the record and proceedings as aforesaid being inspected we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS, Luther A. Campbell, Esq., our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton, this first day of April, 1946.

/s/ LLOYD B. MARSH,
Clerk.

/s/ ROCCO PALESE,
Attorney.

RETURN TO WRIT OF ERROR.

The answer of Ralph W. E. Donges, Esquire, and Bartholomew A. Sheehan, Esquire, by assignment, Judges of the Court of Oyer and Terminer, in and for the County of Camden and State of New Jersey within named:

The record and proceedings of the plaint whereof mention is within named, with all things touching and concerning the same, including the record of

the proceedings had upon the trial of the said defendant, to the Court of Errors and Appeals in the last record in all causes, within specified, at the day and place within contained, we certify in a certain schedule to this writ annexed, as we are within commanded.

/s/ RALPH W. E. DONGES,
/s/ BARTHOLOMEW A. SHEEHAN,
Judges.

STATE OF NEW JERSEY—CAMDEN COUNTY COURT OF OYER AND TERMINER, HOLDEN BEFORE BARTHOLOMEW A. SHEEHAN, JUDGE, SITTING ALONE BY DESIGNATION OF JUSTICE RALPH W. E. DONGES.

THE STATE,
vs.
HOWARD AULD.

December Term, 1945.
Sur Indictment Murder.

CAMDEN COUNTY, to wit: BE IT REMEMBERED, That at a Court of Quarter Sessions, held at Camden, in and for the said County of Camden, on the sixth day of September in the year of our Lord one thousand nine hundred and forty-five, being the day on which the Grand Jury heretofore summoned before the Court of Oyer and Terminer and then and there sworn and charged to inquire in behalf of the

State of New Jersey in and for the said County of Camden and now sitting in and for the said County, desires to make presentment of sundry bills of indictment and no justice of the Supreme Court being present at the courthouse in said County, before the Honorable Batholomew A. Sheehan, Judge of the said Court of Quarter Sessions in and for the said County of Camden, according to the form of the statute in that case made and provided; by the oath of

1. Samuel J. Ginns
2. Ray J. McKay
3. Mortimer Nottebrock
4. Stewart H. Rudisill
5. Charles Brumbach
6. Donald Wallace
7. J. J. Van Artdalen
8. Walter Dease
9. John J. Bach
10. Frank W. Tunstall
11. Barbara Edginton
12. Harvey L. Gaumer
13. Harry C. Rankin
14. Joseph A. Viviani
15. Fred E. Cunningham
16. Anna Keville
17. Mary Rudolph
18. Robert Galvin
19. Margaret Wood
20. William S. Gannon
21. Anna G. Holl
22. Harry A. Bauer
23. John Shires

good and lawful men and women of the said County of Camden, summoned, sworn and charged as afore-

said to inquire in behalf of the State of New Jersey in and for the said County of Camden, it is presented in manner and form following, to wit:

The Bills herewith presented are true Bills.

JOHN A. SHIRES,
Foreman.

Filed September 6, 1945.

FRANK J. SUTTILL,
County Clerk.

IN THE
COURT OF OYER AND TERMINER OF
CAMDEN COUNTY.

April Term A. D. 1945.

CAMDEN COUNTY, to wit:

THE GRAND INQUEST of the State of New Jersey and for the body of the County of Camden, upon their respective oath, PRESENT THAT Howard Auld late of the Borough of Haddon Heights in the said County of Camden, on the fifteenth day of August in the year of our Lord one thousand nine hundred and forty-five at the Borough aforesaid in the County aforesaid, and within the jurisdiction of this Court, in and upon one Margaret McDade, in the peace of God and this State then and there being, willfully, feloniously and of his malice aforethought did make an assault, and her, the said Margaret McDade, then and there willfully, feloniously and of his

malice aforethought did 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.

GENE R. MARIANO,
Prosecutor of the Pleas.

A True Bill,
JOHN A. SHIRES,
Foreman.
Filed September 6, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

April Term A. D. 1945.

STATE OF NEW JERSEY,	On Indictment for Murder of
vs.	Margaret McDade.
HOWARD AULD.	Request &c.

Pursuant to R. S. 2:11-5, I, Ralph W. E. Donges, Justice of the Supreme Court, within whose district the Camden County Court of Oyer and Terminer is, hereby request the Honorable Bartholomew A. Sheehan, Judge of the Inferior Court of Common

Pleas of said County, sitting alone, to constitute and hold the Court of Oyer and Terminer of said County, for the purpose of arraignment of said defendant and the trial of or other and further proceedings on said indictment as authorized by law.

RALPH W. E. DONGES,
Justice of the Supreme Court,
President Judge of the Court
of Oyer and Terminer.

Enter in the minutes of
the Oyer and Terminer
Court,
Dated Sept. 11th, 1945, A. D.
Filed September 11, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD.	Sur Indictment for Murder of Margaret McDade. Petition for Appointment of Counsel.

To the Honorable Judge of the Court of Oyer and Terminer in and for the County of Camden and State of New Jersey:

Your petitioner, Howard Auld, respectfully shows that there was heretofore presented by the Grand Jury of Camden County in your honorable Court, an indictment charging your petitioner with Murder, upon which indictment your petitioner is to be tried and that your petitioner is without means and ability to procure counsel to defend him.

Wherefore, your petitioner prays that counsel may be appointed and assigned to defend him upon the trial of said indictment and that he may have the State's writ of subpoena for the compulsory attendance of witnesses at the said trial.

HOWARD AULD,
Petitioner.

Dated, Camden, N. J., September
1945, A. D.
Signed in the presence of
/s/ JOSEPH BENNIE.

State of New Jersey }
County of Camden } ss.

Howard Auld, being duly sworn according to law on his oath deposes and says:

I am the petitioner in the foregoing petition named and the matters and things therein contained are true to the best of my knowledge, information and belief.

HOWARD AULD,
Petitioner.

Sworn and subscribed before me this 18th day of September, 1945.

/s/ CASIMER A. WOJTKOWIAK,
Notary Public of N. J.

My Comm. expires April 10th, 1949.

Filed September 24, 1945.

FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY,	Sur Indictment for Murder
vs.	of Margaret McDade.
HOWARD AULD.	Rule Appointing Counsel.

It appearing from the verified petition of Howard Auld that he has been indicted by the Grand Jury in and for the County of Camden for the crime of MURDER, and that he is without funds with which to retain counsel,

IT IS on this 24th day of September, 1945, ORDERED that Walter S. Keown, Esquire, a practicing Counsellor at Law of the State of New Jersey, be and he is hereby assigned as Counsel to Howard Auld,

agreeable to the statute in such case made and provided.

RALPH W. E. DONGES,
Justice of the Supreme Court
Ex-Officio Judge of Camden
County, Court of Oyer and
Terminer.

Filed September 24, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD.	Sur Indictment for Murder. Affidavit of Service of Notice.

State of New Jersey } ss.
County of Camden }

LAWRENCE T. DORAN of full age, being duly sworn according to law upon his oath deposes and says:

I am the Chief of the County Detectives in and for the County of Camden, New Jersey, and as such,

on the 8th day of October, A. D., 1945, I served upon the defendant Howard Auld, a copy of the annexed notice by handing the same to him, personally, in the Camden County Jail at 12:35 P. M., in the afternoon of the said eighth day of October, 1945. And on said day I also served a true copy of the annexed notice on Walter S. Keown, Esquire, Attorney for the above defendant, by handing the same to him, personally, at his office located in the West Jersey Trust Building, Broadway and Cooper Streets, Camden, New Jersey, at 12:45 P. M., on October 8th, 1945.

/s/ LAWRENCE T. DORAN.

Sworn to and Subscribed before me, this 8th day of October, A. D. 1945.

/s/ DAISY K. ROURKE,
Notary Public of N. J.

My Commission expires Oct. 9, 1946.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY,
vs.
HOWARD AULD.

Sur Indictment for Murder.
Notice.

TO: HOWARD AULD, Defendant, and WALTER S. KEOWN, Esquire, Attorney for Defendant.

SIRS:

TAKE NOTICE that on Tuesday, the 16th day of October, 1945, at 10 o'clock Eastern Standard Time, in the forenoon thereof, I shall apply to the Honorable Batholomew A. Sheehan, who has been heretofore requested to constitute and hold the Court of Oyer and Terminer in and for the County of Camden for the purpose of arraignment and trial of the defendant in this cause, for the trial of the indictment in the within cause by a struck jury.

On motion of,

GENE R. MARIANO,
Prosecutor of the Pleas of
Camden County.

Dated: October 8, 1945.

Filed October 9, 1945.

FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD.	Sur Indictment for Murder. Rule for Struck Jury.

The State of New Jersey having moved for an order for a struck jury to try the issue joined on the

indictment for murder against Howard Auld, filed herein, and it appearing to the Court that due notice of this application has been given to the said Howard Auld and Walter S. Keown, Esquire, his attorney, and it further appearing that a proper cause exists;

It is, on this sixteenth day of October, A. D. one thousand nine hundred and forty-five, at the instance of the State of New Jersey, in the presence of the said Howard Auld, Walter S. Keown, Esquire, his attorney, and Gene R. Mariano, Prosecutor of the Pleas in and for the County of Camden, ORDERED that a struck jury be empanelled to try the issue joined between the said State of New Jersey and the said Howard Auld on the said indictment for murder.

It is further ordered, on the motion of the said Prosecutor of the Pleas that this Court shall select from the persons qualified to serve as jurors in and for the County of Camden, one hundred names with their respective places of abode, from which the said Prosecutor of the Pleas and the said defendant shall each strike twelve names, and that thereafter the Sheriff of the County of Camden shall empanel the remaining seventy-six persons to try the issue joined between the said parties.

/s/ BARTHOLOMEW A. SHEEHAN,
Judge of the Inferior Court of
Common Pleas Constituting
and Holding the Court of
Oyer and Terminer of the
County of Camden.

Filed October 16, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD. } Sur Indictment for Murder. Affidavit of Service of Rule for Struck Jury.

State of New Jersey } ss.
County of Camden }

CASIMER A. WOJTKOWIAK of full age, being duly sworn according to law upon his oath deposes and says:

I am a detective employed by the Camden County Detective Bureau, and as such, on the 16th day of October, A. D. 1945, I served upon the defendant Howard Auld, a true copy of a Rule for Struck Jury, the original of which is on file in the Office of the Clerk of the Camden County Court of Oyer and Terminer, by handing the same to him, personally, in the Camden County Jail at 12:00 o'clock noon, of said day. And on the same day I also served a true copy of the said Rule for Struck Jury on Walter S. Keown, Esquire, Attorney, for the above defendant, *be* handing the same to him personally, at his office located in the West Jersey Trust Building, Broadway and Cooper Streets, Camden, New Jersey, at 3:35 P. M.

/s/ CASIMER A. WOJTKOWIAK.

Sworn to and subscribed before me, this 16th day of October, A. D. 1945.

/s/ ELMER J. MATHIS,
Notary Public of N. J.

My Commission Expires Oct. 9, 1946.
Filed October 18, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD.	Sur Indictment for Murder. Struck Jury List and Order Fixing Time and Place of Striking.

The Court having heretofore made and entered a Rule for a Struck Jury to be impanelled to try the issue joined between the State of New Jersey and Howard Auld, Defendant, on an indictment for murder found against the said Howard Auld and filed herein, and pursuant to the terms of said rule having selected from the persons qualified to serve as jurors in and for the County of Camden, one hun-

dred names with their places of abode to be and comprise the struck jury list;

I, BARTHOLOMEW A. SHEEHAN, Judge of the Inferior Court of Common Pleas, constituting and holding the Court of Oyer and Terminer of the County of Camden, have selected the following one hundred persons whose names and their places of abode are next hereafter set forth, to be and comprise the struck jury to be impanelled to try the said issue joined between the State of New Jersey and the said Howard Auld, on the said indictment for murder found against the said Howard Auld and filed herein;

Name Address

1. Aceto, Charles A.
   1210 Grant Ave., Collingswood
2. Adams, Earle R.
   20 Wauseon Ave., Clementon
3. Adams, Emily J.
   203 Penn Ave., Westmont
4. Ahlberg, Walter E.
   100 E. Walnut Ave., Merchantville
5. Allen, Roger
   1111 Collings Ave., Collingswood
6. Ames, Frank
   1261 Park Blvd., Camden
7. Amos, William A.
   240 Haddon Ave., Collingswood
8. Aristone, Minotti
   24th & Marlton Ave., Camden
9. Arthur, Robert L.
   1017 Market St., Camden
10. Baker, Elsa L.
    1157 N. 33rd St., Camden
11. Bancroft, T. Edward
    110 Washington Ave., Collingswood

12. Bickert, Francis A.
    305 Cypress Ave., Woodlynne
13. Bielicki, Stephen
    1031 Kaighn Ave., Camden
14. Buecker, Helen A.
    306 Cooper St., Camden
15. Clark, Richard J.
    409 Strawbridge Ave., Westmont
16. Connell, Joseph
    633 Bailey St., Camden
17. D'Acierno, Mario
    Chesilhurst
18. Dale, Edmund A.
    221 Hopkins Ave., Haddonfield
19. Detwiler, H. W. Bland, Rev.
    1430 Kaighn Ave., Camden
20. Evered, Carl
    450 Broadway, Camden
21. Fallon, Walter
    132 N. 11th St., Camden
22. Trattner, Henry
    228 Wyoming Ave., Audubon
23. Geibel, Carl F.
    2320 Browning Rd., Pennsauken Twp.
24. Goodman, Harry
    417 Haddon Ave., Haddonfield
25. Gsell, Harry W.
    Atlantic Ave., Atco, Waterford Twp.
26. Guyer, Zev
    700 Station Ave., Haddon Heights
27. Harkins, Edward A.
    304 Chestnut St., Brooklawn
28. Hartman, Harold
    25 E. Crystal Ave., Westmont
29. Herbert, Walter
    Clearview Ave., Pine Hill.

30. Hoffman, Joseph E.
2432—46th St., Pennsauken Twp.
31. Holman, Katherine
2704 Cove Rd., Merchantville
32. Hurff, Paul B.
Berlin
33. Jennings, J. Evans
Sicklerville, Winslow Twp.
34. Jensen, John K.
1266 Merrimac Rd., Camden
35. Johnson, Elizabeth
27 W. Cedar Ave., Merchantville
36. McCabe, Thomas A.
5114 Holmcrest Rd., Camden
37. Meiler, Mary
1147 Langham Ave., Camden
38. Meng, Rue
Church Rd., Delaware Twp.
39. Metts, William
414 Addison Ave., Westmont
40. Moses, Linwood C.
215 Third Ave., Haddon Heights
41. Murphy, John J.
3086 Federal St., Camden
42. Myers, John V.
1109 Elm Ave., Collingswood
43. Nece, Lotta B.
30 Strawbridge Ave., Westmont
44. Newman, Alwyn L.
1217 Newton Ave., Collingswood
45. Obus, Harry
1198 Haddon Ave., Camden
46. Palmer, Stephen I.
31 Central Ave., Audubon
47. Pelouze, H. Pierce, Jr.
43 Estaugh Ave., Haddonfield

48. Pole, William H.
    176 Fern Ave., Collingswood
49. Porter, Lewis S.
    321 Warwick Rd., Haddonfield
50. Pratt, Ann
    Clementon
51. Radebaugh, Reed
    178 Fern Ave., Collingswood
52. Radey, F. Herbert
    947 Park Ave., Collingswood
53. Reihmann, Paul
    19 Browning Rd., Merchantville
54. Reinking, Arthur O.
    30 E. Greenwood Ave., Oaklyn
55. Reynolds, John A.
    323 Belleview Ave., Haddonfield
56. Risley, Earl H.
    6 Browning Rd., Collingswood
57. Roache, Arthur
    600 Haddon Ave., Collingswood
58. Robbins, Irving
    Apt. A., 1635 Park Blvd., Camden
59. Roberts, George F.
    115 Washington Ave., Haddonfield
60. Ruark, L. E.
    1801 Maple Ave., Haddon Heights
61. Rubenstein, Harry H.
    1236 Haddon Ave., Camden
62. Rudderow, Carl B.
    729 Haddon Ave., Collingswood
63. Runyon, Harold K.
    5407 Browning Rd., Pennsauken Twp.
64. Saline, Walter D.
    1596 Kaighn Ave., Camden
65. Sallade, Wiley U.
    110 Colonial Ridge Dr., Haddonfield

66. Saunders, George
115 Frazer Ave., Collingswood
67. Schaffer, Frank
349 W. Merchant St., Audubon
68. Scharnagl, Andrew A.
304 Beechwood Ave., Haddonfield
69. Scheflen, Anna
7829 Osler Ave., Pennsauken Twp.
70. Schild, Charles B.
3121 S. Constitution Rd., Camden
71. Schlorer, John A.
106 White Horse Pike, Haddon Heights
72. Seaman, Elwood T.
49 Colonial Ridge Dr., Haddonfield
73. Seiner, Majorie M.
113 Ormond Ave., Oaklyn
74. Selby, Mildred W.
3029 S. Atlanta Rd., Camden
75. Siddons, Joseph L.
48 W. Atlantic Ave., Audubon
76. Smitheman, Clark W.
532 Queensboro Lane, Haddonfield
77. Snyder, Carrie M.
135 Eutaw Ave., Camden
78. Stanbach, Norma
Church & Main St., Blackwood
79. Suydan, Thomas B.
430 Haddon Ave., Camden
80. Till, Walter
218 W. End Ave., Haddonfield
81. Toussaint, Edward J.
3617 Freemont Ave., Camden
82. Uber, Henry E.
Erlton, Delaware Twp.
83. Weldy, Russell L.
568 Royden St., Camden

84. Whelan, Patrick, Sr.
Somerdale Rd., Somerdale
85. Stille, William R.
221 E. Madison Ave., Collingswood
86. Strandwitz, Constance (Miss)
109 Marne Rd., Brooklawn
87. Straub, Howard S.
107 St. James Ave., Merchantville
88. Stretch, James
8 Kings Highway W., Haddonfield
89. Sullender, William B.
800 State St., Camden
90. Tiedeken, Genevieve E.
107 Parker Ave., Woodylnne
91. Thorpe, William
Braddock Ave., Braddock, Winslow Twp.
92. Troiano, Louis
5th & Spruce Sts., Camden
93. Vieser, Fred C.
130 Chestnut St., Haddonfield
94. Walton, E. Berry
1203 Collings Ave., Collingswood
95. Ward, Atlie M.
117 Warwick Rd., Haddonfield
96. Webster, Goodwin B.
123 N. 27th St., Camden
97. Whiteway, Philip J.
140 Hawthorne Ave., Haddonfield
98. Williams, Diana M.
202 Fourth Ave., Haddon Heights
99. Winner, Charles S.
418 Overhill Rd., Haddonfield
100. Zelley, B. Everett
Park Ave., Laurel Springs

I, BARTHOLOMEW A. SHEEHAN, Judge of the Inferior Court of Common Pleas, constituting and

holding the Court of Oyer and Terminer of the County of Camden, do hereby on this 19th day of October, A. D., 1945, fix the 29th day of October next, at the hour of ten o'clock in the forenoon, at the Camden County Court House, as the time and place at which the State of New Jersey and Howard Auld, the defendant, shall each strike off twelve names on the aforesaid list of one hundred names, the remaining seventy-six names to be impanelled to try the issues so joined between the parties; the said date appointed by me for such striking being not less than five nor more than ten days from the date hereof.

BARTHOLOMEW A. SHEEHAN,
Judge of the Inferior Court of Common Pleas, constituting and holding the Court of Oyer and Terminer of the County of Camden.

Filed October 19, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD.	Sur Indictment for Murder. Affidavit of Service of Struck Jury List and Order Fixing Time and Place of Striking.

State of New Jersey } ss.
County of Camden }

CASIMER A. WOJTKOWIAK of full age, being duly sworn according to law upon his oath deposes and says:

I am a detective employed by the Camden County Detective Bureau, and as such, on the 19th day of October, A. D. 1945, I served upon the defendant Howard Auld, a true copy of the Struck Jury List and Order Fixing Time and Place of Striking, the original of which is on file in the Office of the Clerk of the Camden County Court of Oyer and Terminer, by handing the same to him, personally, in the Camden County Jail at 12:05 P. M., on said day. And on the same day I also served a true copy of said Struck Jury List and Order Fixing Time and place of Striking upon Walter S. Keown, Esquire, Attorney for the above defendant, by handing the same to him,

personally, at his office located in the West Jersey Trust Building, Broadway and Cooper Streets, Camden, New Jersey, at 1:35 P. M.

/s/ CASIMER A. WOJTKOWIAK.

Sworn to and Subscribed before me, this 19th day of October, A. D. 1945.

/s/ ELMER J. MATHIS,
Notary Public of N. J.

My Commission Expires Oct. 9, 1946.

Filed October 22, 1945.

FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY,	Sur Indictment for Murder.
vs.	Rule Vacating Appointment
HOWARD AULD.	of Counsel.

It appearing from the verified petition heretofore filed by Howard Auld that he has been indicted by the Grand Jury in and for the County of Camden for the crime of murder, and that he is without funds with which to retain counsel; and

It further appearing that Walter S. Keown, Esquire, a practicing counsellor at law of the State of

New Jersey, was heretofore assigned as counsel for the said Howard Auld; and

It further appearing that for good and sufficient reasons the said Walter S. Keown, Esquire, cannot act as such counsel;

It is, therefore, on this 26th day of October, A. D., 1945, ORDERED that the rule dated the twenty-fourth day of September, A. D. 1945, appointing the said Walter S. Keown, Esquire, as counsel for the said Howard Auld, be and the same is hereby vacated.

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

Filed October 26, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY,
vs.
HOWARD AULD.

Sur Indictment for Murder.
Rule Appointing Counsel.

It appearing from the verified petition heretofore filed by Howard Auld indicted by the Grand Jury in and for the County of Camden for the crime of mur-

der, that he is without funds with which to retain counsel;

It is, thereupon, on this 26th day of October, A. D. 1945, ORDERED that Rocco Palese, Esquire, a practicing counsellor at law of the State of New Jersey, be and he is hereby appointed to defend the said Howard Auld on the trial of the said indictment; and

It is further ORDERED that the said Howard Auld may have the State's writ of subpoena for compulsory attendance of witnesses upon the said trial.

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

Filed October 26, 1945.
FRANK J. SUTTILL,
County Clerk.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

September Term A. D. 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD. } Sur Indictment for Murder. Affidavit of Service of Rule for Struck Jury.

State of New Jersey } ss.
County of Camden }

JOSEPH BENNIE of full age, being duly sworn according to law upon his oath deposes and says:

I am a detective employed by the Camden County Detective Bureau, and as such, on the 5th day of November, A. D. 1945, I served upon the defendant Howard Auld, a true copy of a Rule for Struck Jury, the original of which is on file in the office of the Clerk of the Camden County Court of Oyer and Terminer, by handing the same to him, personally, in the Camden County Jail at 1:58 P. M. of said day. And on the same day I also served a true copy of the said Rule for Struck Jury on Rocco Palese, Esquire, Attorney for the above defendant, by handing the same to him personally, at his office located at 328 Market Street, Camden, New Jersey at 1:45 P. M.

/s/ JOSEPH BENNIE.

Sworn to and Subscribed before me, this 5th day of November, A. D. 1945.

/s/ ELMER J. MATHIS,
Notary Public of N. J.

My Commission Expires Oct. 9, 1946.
Filed November 14, 1945.
FRANK J. SUTTILL,
County Clerk.

COURT OF OYER AND TERMINER OF THE COUNTY OF CAMDEN.

December Term, 1945.

STATE OF NEW JERSEY, vs. HOWARD AULD. } Sur Indictment for Murder. Affidavit of Service.

State of New Jersey } ss.
County of Camden }

VINCENT A. SARUBBI, of full age, being duly sworn according to law upon his oath deposes and says:

1. I am a Special Deputy Clerk in and for the County of Camden.

2. On Friday, the first day of March, 1946, at the hour of 2:00 P. M., I served upon the above defendant, Howard Auld, in the Camden County Jail located in the Court House, Camden, New Jersey, a certified copy of the Indictment in this matter, a certified copy of the Struck Jury List and a certified copy of the Order of Designation, the originals of which have been filed in the office of the Clerk of the Camden County Court of Oyer and Terminer, by handing the same to him, personally.

/s/ VINCENT A. SARUBBI.

Sworn to and subscribed before me this first day of March, A. D. 1946.

JOSEPH E. HALPIN,
Special Deputy Clerk.

Filed March 1, 1946.
FRANK J. SUTTILL,
County Clerk.

And thereupon let a jury come before the Honorable Bartholomew A. Sheehan, Judge of the Court of Common Pleas in and for the County of Camden, aforesaid, sitting alone by request and designation of Justice Ralph W. E. Donges, at Camden, aforesaid, in the County of Camden at the December Term in the year of our Lord one thousand nine hundred and forty-five, of the Court of Oyer and Terminer aforesaid on eleventh day of March in the year of our Lord, one thousand nine hundred and forty-six, fourteen good and lawful men and women, each of whom shall be a citizen of this State, and reside within the County of Camden aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Howard Auld, to recognize upon their oaths whether the said Howard Auld be guilty of murder in the Indictment aforesaid specified, or not guilty, because as well the said Gene R. Mariano, Prosecutor of the Pleas, for the County of Camden aforesaid, who prosecutes for the State of New Jersey aforesaid, as the said Howard Auld, have put themselves upon

said jury, and the same is given to the parties aforesaid, at the same place at which time, that is today, the eleventh day of March, in the year of our Lord, one thousand nine hundred and forty-six, at the same term of Oyer and Terminer, holden at Camden aforesaid in the County of Camden, before the Judge aforesaid, sitting alone by designation of said Justice aforesaid, here cometh as well the said Gene R. Mariano, Prosecutor of the Pleas aforesaid, as well as the said Howard Auld, in the custody of the Sheriff of the County of Camden, being brought to the bar here in his proper person by the said Sheriff, and the trial of the Indictment aforesaid being moved by the said Gene R. Mariano, Prosecutor as aforesaid, and the jurors of the said jury by the Sheriff of the County for the purpose empanelled and returned and two of the panel to wit Roger, Allen, John A. Reynolds being sworn on the voirdire were accepted and placed in the jury box and on the day aforesaid, the eleventh day of March, in the year of our Lord, nineteen hundred and forty-six, the Prosecutor of the Pleas, Gene R. Mariano, then having found that the defendant, Howard Auld, had not entered a plea to the Indictment charging him with murder, called the defendant, Howard Auld, to the bar to plead to said Indictment, and having heard the Indictment read and forthwith being commanded of the concerning premises in said Indictment, aforesaid specified and charged upon him how he will acquit himself thereof, he remains mute upon the advice of his counsel, Rocco Palese, Esquire; the presiding Judge, Honorable Bartholomew A. Sheehan then instructed the Clerk of the Court to enter a plea of Not Guilty upon the record of the said Indictment charging said defendant with murder. Counsel for

the defendant made objection to the order of the Court in instructing the Clerk to enter the said plea of Not Guilty; the Court overruled this objection and granted an exception; the Court then instructed the Sheriff to proceed with the empanelling of the remainder of the jury; to wit, Carl Evered, Harold K. Runyon, Thomas B. Suydam, Frank Schaffer, Walter E. Ahlberg, Mario D'Acierno, John R. Jensen, William Metts, William R. Stille, Stephen I. Palmer, Harry Goodman, Joseph E. Hoffman, being called came, who each being chosen, tried and sworn individually to speak the truth of and concerning the premises were all sworn collectively and together and thereupon the trial of the issue commenced and continued before the said Court and Jury from day to day until the fifteenth day of March, in the year of our Lord nineteen hundred and forty-six, when the Court excused Frank Schaffer, juror number six, due to the sudden death of said juror's sister, and the Court instructed alternate juror number one, Harry Goodman to replace Frank Schaffer, juror number six, and the case then proceeded to trial, with twelve jurors and one alternate juror, from day to day until the twentieth day of March, in the year of our Lord, nineteen hundred and forty-six, at Camden aforesaid, the Jury in the meantime having all that time been kept together and in the care of Officers of the said Court, who were selected and duly sworn for that purpose at which last mentioned day the said issue after a charge of the said Court, the Court ordered the Clerk to place the names of the thirteen jurors in a box from which the Clerk then drew the following twelve names, to wit; John A. Reynolds, William Metts, Harry Goodman, Walter E. Ahlberg, Roger Allen, William R. Stille, Thomas B. Suydam, Carl Evered, John R. Jensen, Mario D'Acierno,

Harold K. Runyon, Joseph E. Hoffman, and the said above jury in charge of the officers of the said Court duly sworn for the purpose, were taken to private room to consider on the verdict, and afterwards, that is to say, on the day aforesaid, at Camden, the said jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said prosecutor, Gene R. Mariano, and the said defendant, Howard Auld, do say that the said Howard Auld is Guilty of Murder in the first degree in manner and form as in and by said indictment as charged against him; the jury was then polled by the Clerk.

And the said Howard Auld, now to wit, on the twenty-first day of March, in the year of our Lord, one thousand nine hundred and forty-six, being produced before the said Court at Camden aforesaid in his proper person, in the custody of the Sheriff of the said County, whereupon all and singular, the premises being seen and by the Court here being fully understood, it is considered and adjudged that the said Howard Auld be forthwith taken by the Sheriff of the County of Camden, to the State Prison at Trenton, New Jersey and delivered to the principal keeper of the said State Prison and there confined until the week beginning Sunday the twelfth day of May next, and during said week within the State Prison enclosure, the said Howard Auld shall be put to death by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, and the application of such current shall be continued until said Howard Auld is dead.

Judgment entered and signed the twenty-first day

of March in the year of our Lord one thousand nine hundred and forty-six.

BARTHOLOMEW A. SHEEHAN,
Judge of the Inferior Court of Common Pleas in and for the County of Camden, sitting alone by request and designation of Ralph W. E. Donges, Justice of the Supreme Court in and for the Second Judicial District.

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, FRANK J. SUTTILL, Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of record and proceedings and judgment with all things touching the same in the matter of:

THE STATE,
vs.
HOWARD AULD.

Sur Indictment
Murder.

filed March 21, 1946, and recorded in the Clerk's Office of the County of Camden, in Book H of Oyer and Terminer, page 302, &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Camden, this tenth day of April A. D. 1946.

FRANK J. SUTTILL,
Clerk.

(Seal)

CAMDEN COUNTY COURT OF OYER AND TERMINER.

HOWARD AULD,
Plaintiff-in-Error,

vs.

STATE OF NEW JERSEY,
Defendant-in-Error.

On Writ of Error.
Certificate.

State of New Jersey
County of Camden
ss.

I, BARTHOLOMEW A. SHEEHAN, Judge by designation of the Court of Oyer and Terminer of the County of Camden and the Judge who presided over the trial of the aforesaid cause, do hereby certify that the annexed book contains the entire record of the proceedings had upon the trial of said cause, and that the same is returned by the plaintiff-in-error therein with the Writ of Error, bringing up the bill of exceptions signed and sealed in this cause.

BARTHOLOMEW A. SHEEHAN,
Judge by Designation of the
Court of Oyer and Terminer
of the County of Camden.

CHARLES S. WINNER, sworn on his voir dire.

BY MR. PALESE:

Q. Have you read anything in the newspapers concerning the matter of Howard Auld?

A. Parts of it.

Q. As a result of what you read in the newspapers and any discussion that you may have had regarding the matter, have you formed an opinion as to the guilt or innocence of the defendant?

A. I would say I have.

Q. Is that opinion so fixed that it could not be changed in the face of sworn testimony you may hear in Court, if you are selected as a juror?

A. My mind is definitely made up.

Q. Do I understand from that that if you are selected as a juror you could not disregard that fixed opinion that you have respecting the matter?

A. Yes, that's right.

Q. And that you could not be fair to the defendant to deliberate solely upon the testimony in the case?

A. I would say so.

Q. I didn't hear you?

A. I would say yes.

Q. You say that opinion is so fixed you can't disregard it or disassociate it with your deliberations if you are selected as a juror?

A. Yes.

MR. PALESE: Take the juror.

BY THE PROSECUTOR:

Q. Are you opposed to capital punishment?

A. Yes, sir.

Q. Beg pardon?

A. I am.

Q. Is that by reason of your conscientious or religious belief?

A. It's just my personal feeling in the matter.

Q. How long have you entertained that?

A. Beg pardon?

Q. How long have you entertained such beliefs?

A. For a long while.

Q. They are not expressed here today for the purpose of avoiding jury duty?

A. No, sir.

Q. You say it's your own personal opinion excluding your religious beliefs?

A. Yes.

Q. Therefore, it's your personal opinion in what respect?

A. It is my personal feeling I am opposed to capital punishment. I would not vote for any case where it is a case of capital punishment.

Q. It's just a matter of conscience?

MR. PALESE: That's not fair. He should not be characterized for his beliefs.

THE PROSECUTOR: I will withdraw the question.

Q. You have formed an opinion as to the innocence or guilt of this defendant?

A. Yes, sir.

Q. You could not subordinate or disassociate your opinion if you are selected as a juror, in arriving at an opinion as to the innocence or guilt by reason of the testimony presented during the course of the trial?

A. No.

Q. You couldn't do it?

A. No, sir.

Q. It is so fixed in your mind that you couldn't think of or give consideration to the obligations incident to the oath which would be administered to you?

A. That's right.

Q. Have you ever expressed to anyone before your disbelief in capital punishment?

A. I probably have. I would say I have, yes.

Q. How long ago?

A. I can't tell you just how long, but a long while.

Q. Can you describe for the benefit of the Court why you are opposed to capital punishment?

A. I just don't believe in it. It's my personal belief.

Q. It's not by reason, as I have asked you, of any religious belief?

A. No, sir.

Q. What kind of a belief is it?

A. That I don't believe in capital punishment as a means of treating a murder case.

Q. Why don't you believe?

A. I don't approve of it.

Q. Just because you don't approve of it?

A. That's my own personal feeling in the matter.

Q. Can you conceive of facts in a given case, which would warrant the imposition of the death penalty?

A. No, sir, never.

Q. Never?

A. No, sir.

Q. Therefore, no facts or circumstances at the commission of an outrageous crime, no matter what the Court says, how heinous it might be, you couldn't

compel yourself to come to the conclusion you were to vote for the death penalty?

A. That is absolutely right.

BY THE COURT:

Q. Is that opinion of yours idly held, Mr. Winner, or is it grounded in reasons that you have considered well and used to aid in that determination?

A. I am opposed to capital punishment. I don't know any other answer for it.

Q. Without reason?

A. My personal belief in the matter.

Q. That belief is predicated on what foundation?

A. That I don't approve of that procedure in a murder case.

Q. Why?

A. I don't approve of capital punishment.

Q. Without reason?

A. I am entitled to my reasons, am I not?

Q. Yes, you are, but what are the reasons?

A. My own personal belief.

Q. Is it arbitrarily held, just held, and no reason ever suggested itself?

A. I would never vote for capital punishment in any case.

THE COURT: Anything further, gentlemen?

THE PROSECUTOR: I would like to enter a challenge.

THE COURT: For what reason?

THE PROSECUTOR: On the ground that he is absolutely opposed to capital punishment.

THE COURT: The juror has not said he has a conscientious belief. He says that he has an arbitrarily held opinion that capital punishment should not be invoked in murder cases.

THE PROSECUTOR: Isn't that sufficient, if your Honor please? I would like to have the opportunity of citing a case to your Honor, but I don't have it here.

THE COURT: What is the language of the statute?

THE PROSECUTOR: I don't have it right offhand. I could find it for the Court in just a moment. I don't have any more peremptory challenges, that's the reason.

THE COURT: I understand.

BY THE PROSECUTOR:

Q. Did you just state you were opposed to capital punishment simply for the purpose of avoiding jury duty in this matter?

A. I did not.

Q. You did not?

A. No, sir.

Q. Have you ever been called as a prospective juror before?

A. I have been subpoenaed, but I have never been called before on the witness stand to be selected as a juror.

Q. Have you been interrogated in similar fashion before?

A. Have I been what?

Q. Asked the same questions before?

A. I have never been questioned before.

Q. But you were summoned and never called?

A. That's right, in the Lynch case the second time.

Q. As I understand also you made the statement that you would not under any circumstances that could be conceived change your opinion insofar as the imposition of the death penalty is concerned?

A. That's right.

BY THE COURT:

Q. You have also said, Mr. Winner, that your opinion as to the guilt or innocence of the defendant is so fixed that no testimony that would be produced would change it?

A. I am positive in my own mind that he committed the crime.

Q. That is not the question. I understood you to say that you are so convinced in your own mind that no testimony that would be produced would change it?

A. That's right.

THE PROSECUTOR: It seems we both have cause for challenge.

THE COURT: Do you have anything to say?

MR. PALESE: Yes, I do, if the Court please. The Court ——

THE COURT: Let us hear it at side bar, gentlemen.

MR. PALESE: No, I want to interrogate the witness.

THE COURT: I thought you wanted to argue. You want to question further?

BY MR. PALESE:

Q. Mr. Winner, do I understand you to say that if you are selected as a juror in this case and you are sworn as a juror in this case, that you would not be guided by the sworn testimony in this case, as to the guilt or innocence of this defendant?

A. That's right.

Q. Do you mean to say that if you took the oath and listened to the testimony that you would not be guided by the testimony?

A. Yes, I don't think I could change my mind on it.

Q. As to what?

A. Guilty in the case.

MR. PALESE: That is all.

THE PROSECUTOR: Could we have a side bar conference, if the Court please?

THE COURT: Yes.

(At side bar):

THE COURT: I am wondering whether the Court does not have some obligation in the matter.

MR. PALESE: I think the Court has taken a lot of obligation by cross-examining the witness on the stand. I have no quarrel with the Court. I think the Court has a right to do it.

THE COURT: I would not expect you to have any quarrel with the Court about examining. My question now as it presents itself to me is whether or not the Court, on its own motion, after examination, does not have an obligation.

MR. PALESE: When a juror gets on the stand and says he believes the defendant is guilty, I don't know what objection the Court could have. The only person could have any objection would be the attorney for the defendant.

THE PROSECUTOR: How about the State of New Jersey, when a man says he would not bring in a verdict of guilty in the first degree that carries with it the death penalty?

MR. PALESE: You are protected because of a statute which says certain things must happen before you can disqualify a juror. It says he must have conscientious and religious scruples. This man says it is neither. There cannot be any question about it. He just entertains a personal opinion. The Court has decided in two other cases that it is not sufficient to disqualify a juror for cause. I attempted to get from this juror two or three times and he has definitely stated it is his own personal opinion. He does not believe in capital punishment. That is the only contention the State of New Jersey has, it seems to me.

THE PROSECUTOR: This man has expressed not only malice and ill-feeling toward the defendant by stating no facts or circumstances could be produced to change his feeling of guilt, but he has also expressed malice and ill-feeling toward the State of

New Jersey in that he says he cannot under any circumstances return a verdict of guilty of murder in the first degree without recommendation.

MR. PALESE: If this man says he believes he is guilty, I am the man should complain about it and not the Prosecutor.

THE PROSECUTOR: Now, the Court has a right to complain about it too.

THE COURT: What section of the statute speaks of conscientious or religious scruples, Prosecutor?

THE PROSECUTOR: I have sent for it. If your Honor please, I think I have found the answer. In other words, the failure of the Court to disqualify this juror would, in sum and substance, do away with the infliction of the death penalty for this crime. In our Court of Errors and Appeals it is so stated in the matter of State vs. Juliano, 103 N. J. L., 663. What I have just stated can be found on page 671, wherein this language is used by the Court of Errors and Appeals: "It was the privilege of the State to contend before the jury under this statute that upon the evidence the crime was of such atrocity that the jury's verdict should be without recommendation. It was the right of the State to have jurors who would receive this contention with open mind, and when the jurors, upon their examination, disclosed that this phase of the case could not be so submitted to them, they were obviously disqualified to pass upon one of the phases of the evidence as to which they might or might not exercise the clemency contemplated by the statute. If sworn as jurors, their scruples would shut out this proof

and be in defiance of the law which submitted to them the proper punishment to impose on the defendant, based upon the evidence solely. To hold otherwise might be to, in effect, work the practical abolition of capital punishment in this State." So it appears to me that the State of New Jersey is deprived of one of the necessary elements that a jury must decide. In sitting as such juror he has shut the door in the face of the State of New Jersey to have such a jury decide the punishment.

THE COURT: The problem here, Prosecutor, is distinguishable from that which was presented in the case you refer to, because reference is made to an opinion based upon scruple. In this instance what we have now is the opinion expressed by the juror arbitrarily, capriciously, without the assignment of any reason and with the negation that it is predicated upon a religious conviction that he is against capital punishment and, upon questioning by counsel and by the Court, maintained that point, not giving any reason for it.

THE PROSECUTOR: It says, "The next point raised in sequence is that the Court erroneously sustained the challenge made by the State to jurors whose scruples against capital punishment precluded their finding a verdict without recommendation for life imprisonment. Inasmuch as it appears that none of the defendants had exhausted their peremptory challenges they suffered no injury by reason of this ruling of the Court." It does not speak here of religious or conscientious scruples.

THE COURT: What does it mean when it says "scruples"?

THE PROSECUTOR: You cannot say it is either conscientious or religious. He is just opposed to capital punishment.

THE COURT: That is what this juror says.

THE PROSECUTOR: Therefore the State is deprived, as was stated by the Court of Errors and Appeals, of the right to have it submitted to a man with an open mind as to impose the punishment.

THE COURT: The statute says that the Court may of its own motion excuse an incompetent juror. I am prepared to rule, Prosecutor.

(In open court):

THE COURT: The consideration by the Court of the testimony evoked by the examination of both the Prosecutor and defense counsel of this prospective juror leads the Court to the conclusion that, while there has been no expressed statement by the juror that his conviction in opposition to capital punishment is grounded in either religious or expressly so stated conscientious grounds, that they indicate the presence of scruples which require the allowance of the challenge for cause.

MR. PALESE: Your Honor will allow me an exception to the excuse of the juror?

THE COURT: Yes, an exception is allowed.

PLEA.

During the course of the selection of the jury and after two jurors had been accepted, the following took place:

THE COURT: Prosecutor.

THE PROSECUTOR: If the Court please, it appears that no plea has been made to the indictment returned by the Grand Jury of this county against this defendant. After the presentment of the indictment, Mr. Walter Keown, a member of the bar of this county, was appointed counsel, and certain steps in the procedure, the criminal processes were taken. Subsequently thereto, Mr. Keown withdrew with permission of the Supreme Court Justice, as a result of which Mr. Palese was appointed in his place and stead. After his appointment, several motions were made for adjournment, also the Prosecutor's office made such a motion at one time, all of which were consented to by the parties concerned, and your Honor granted the postponement. Motions were made for a struck jury and at the return day of the motion, twelve names were stricken in accordance with the statute, and seventy-six names were arrived at and served upon the defendant personally and upon his counsel. All of these steps were taken in accordance with the statute, and during the time that Mr. Palese was counsel for the defendant the steps were participated in by both Mr. Palese, as counsel for the defendant, and myself. Today, the matter as previously set forth, was the day for the commencement of the trial.

The jury was summoned under a venire issued by the Court, and, therefore, as a result of which notices were served in accordance with the statute, and all were made returnable today. The State moved the trial of the indictment in the presence of the defendant and his counsel, several jurors, prospective jurors, were interrogated, some were rejected and of the number interrogated, two are acceptable and are now sitting in the box. All of these steps were participated in and consented to by the defendant. I now find that no plea to the indictment has been taken. I would like at this time to have the defendant plead to the indictment. I would like also to have the record show that the actual trial of this matter has not been started as yet, and also note on the record that only two of the prospective fourteen jurors to be selected have been selected, and that the jury has not been sworn as such to try the issue.

THE COURT: Call the defendant for plea.

MR. PALESE: Your Honor please, if I may before your Honor asks him the question, I think your Honor ——

THE COURT: Step before the Court, please.

(Defendant steps forward.)

MR. PALESE: (Continuing) Your Honor is well aware of the circumstances in this case, and I don't believe what the Prosecutor has in mind as to the defendant's consenting or acquiescing in these procedures is applicable. In the first place, your Honor well knows that Mr. Keown was attorney of record

for this defendant, and while he was attorney of record, application was made to your Honor for a struck jury, and after your Honor had actually struck the jury but before the twelve names were struck, by which time Mr. Keown got out of the case, I was appointed by Justice Donges to represent this defendant. It does not seem to me that this defendant has acquiesced because, so far as he knows, he has been represented by counsel, and, as far as I know, I haven't at any time been asked as to whether or not this defendant has pleaded to the indictment. It seems to me at this stage of the proceeding that it can't be said, and I repeat that, that this defendant has acquiesced in what has gone on. If Mr. Keown were sitting at this table, maybe he would acquiesce in the trial progressing as it has up to the present time. We have come here to-day and several of the jurors have been called, and two have actually been sworn, and it seems to me that this defendant cannot at this time, without reserving unto himself any rights he may have as a result of the case progressing thus far, be called upon to plead, and I am going to advise the defendant not to plead to this indictment because I think it is not proper, and it is not a proper time for him to answer this indictment after he has been called here for trial, several jurors have been called, many interrogated and two now are actually sitting in the box awaiting to try him. I don't think we have to wait until the entire jury is in the box, and then I am assuming further what the Prosecutor has said to your Honor, that at that stage we might be called upon to plead. Whether or not I am right, I am going to ask your Honor to bear with me. I am going to ask this defendant not to plead to this indictment at this stage of the proceedings because I

don't think it is proper and just. I have no authority, your Honor, because it has only come up within the last few hours. I assumed everything had been done up to the present time, and I assumed further all proceedings had been accomplished before I became counsel for Mr. Auld, and for us to be called upon at this stage to come to plead, I say it is not fair or just, and I am not in a position to stand here and ask him to plead to this indictment as though it was before this jury and it had actually been called, summoned and interrogated here to-day. Now, I think I am within my rights. As I said before, I have no authority to quote to your Honor, but my advice to Mr. Auld is not to plead to this indictment.

THE COURT: What disadvantage enures against the defendant?

MR. PALESE: It is not a question of disadvantage; it is a question of right. I am not here as to whether or not it would be advantageous or disadvantageous to this defendant to plead. I am only making that assertion. If your Honor asks me to quote him the authority, I have no authority because it has come upon me in such a close—such a short time. It is not a question of whether it is an advantage to Mr. Auld or a disadvantage. I am only making that assertion because of the fact I don't think it is right, and I don't think at this stage of the proceedings this defendant can be asked to plead.

THE COURT: In your reasons, Mr. Palese, at one stage, you also included the words, "it is not fair and just" in addition to saying it was not right,

so, I would like to know in what respect of fairness or justice.

MR. PALESE: Your Honor please, I want to withdraw the word "fair." I say it is not right at this stage of the proceedings to ask this man—I don't want your Honor to misinterpret the question of fairness. It may be that it had no place in my remarks to your Honor, but I say in justice or matter of right, legal right, I don't think the Prosecutor can call upon the defendant at this stage to plead to the indictment.

THE COURT: Mr. Prosecutor, let the indictment be read so that he may plead thereto.

THE PROSECUTOR: Mr. Auld, the Grand Jury of Camden County during this April Term, 1945, present that you, late of the Borough of Haddon Heights, in the County of Camden, on the fifteenth day of August, in the year of our Lord one thousand nine hundred and forty-five, at the borough aforesaid and county aforesaid, and within the jurisdiction of this Court, in and upon one Margaret McDade, in the peace of God and this State then and there being, willfully, feloniously and of your malice aforethought did make an assault, and her, the said Margaret McDade, then and there willfully, feloniously and of your malice aforethought, did 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.

MR. PALESE: Your Honor please, to that indictment we now refuse to plead because of the progress of the case.

THE COURT: Is there any disability under which the defendant presently stands that requires him to remain mute, Mr. Palese?

MR. PALESE: None I know of.

THE COURT: Is it upon advice from you, as his counsel, he stands mute?

MR. PALESE: That is correct.

THE COURT: Under those circumstances, we will direct that a plea of not guilty be entered.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: It will be allowed.

New Jersey State Library

TESTIMONY.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

THE STATE,
vs.
HOWARD AULD. } On Indictment, &c.

Camden, N. J., March 12, 1946.

SECOND DAY.

Before SHEEHAN, J., and a Jury.

APPEARANCES:

For the State, GENE R. MARIANO, ESQ., Prosecutor.

For the Defendant, ROCCO PALESE, ESQ.

(Trial of the case resumed at 10:00 o'clock a. m., on the above date, in the presence of the defendant and counsel for the respective parties.)

(The Prosecutor opened the case for the State to the jury.)

(Mr. Palese opened the case for the defendant to the jury.)

THE CASE FOR THE STATE.

RICHARD MARR, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Richard Henry Marr.
Q. Where do you live?
A. 1944 Sycamore Street, Haddon Heights, N. J.
Q. Do you go to Haddon Heights High School?
A. Yes, sir.
Q. About how far do you live from the pumping station located in Haddon Heights?
A. About two and a half blocks.
Q. Do you remember taking a walk with a friend on August 19, 1945?
A. Yes, sir.
Q. Who was with you?
A. Thomas Welsh.
Q. Do you remember where you walked to?
A. Down past the sump station.
Q. Do you remember in what direction you walked on Maple Avenue in Haddon Heights?
A. What direction? We didn't walk on Maple

Avenue, we walked through the field and passed the pumping station.

Q. Passed the pumping station?

A. Yes.

Q. Is the pumping station located on Maple Avenue?

A. Yes, sir.

Q. I show you what purports to be a picture of the pumping station, and ask you whether you can recognize it.

A. Yes, I do.

THE PROSECUTOR: I offer it for identification.

(Received and marked S-1 for identification.)

MR. PALESE: I have no objection to its offer in evidence.

THE COURT: It will be admitted without objection and marked S-1.

(Received and marked S-1.)

Q. Did you go in the enclosure of the pumping station?

A. Yes.

Q. What did you do after you got in?

A. Lifted up the lid of the cistern.

Q. Why did you do that?

A. Just curiosity, wanted to see what was down in the well.

Q. When you lifted the lid of the cistern what did you see?

A. A body.

Q. Body of what?
A. A girl.
Q. What did you do thereafter?
A. Set the lid down and went to someone else and called for the police.
Q. Did you call your friend over?
A. Yes.
Q. Did he see the body?
A. Yes.
Q. After you closed the lid again, where did you go?
A. Went to Blyth's house, and told Mr. Blyth.
Q. You told him what you had seen?
A. Yes.
Q. Then did you and Thomas and Mr. Blyth go somewhere?
A. Yes, we went to someone's house and called the police.
Q. Where does Mr. Blyth live?
A. On High Street.
Q. High Street?
A. Yes.
Q. How far away from that is the cistern?
A. About 150 feet.
Q. 150 feet?
A. Yes, sir.
Q. Then Mr. Blyth called the police?
A. Yes, sir.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Marr, in order to get where you had to lift the lid you had to go through the enclosure, did you not?

A. Yes.

Q. Had you ever been in that enclosure before?

A. Yes.

Q. Had you ever lifted the lid before?

A. Yes.

Q. Then what was your curiosity if you knew what was under the lid, what was your curiosity on this date?

A. I had not been in there for two or three years before.

Q. You had not been there for two or three years before that time?

A. No.

Q. How old are you?

A. Sixteen.

Q. That would make you how old the last time you were there?

A. About thirteen.

Q. And at that time were you able to lift the lid?

A. Yes.

Q. By yourself?

A. No, with someone helping me then.

Q. What's that?

A. Someone helped me then.

Q. Who was it that helped you when you were thirteen years old to lift the lid?

A. Anyone that went down with me. I don't know who was there now.

Q. Was that boy as big as you were at that time?

A. Yes.

Q. You say when you were thirteen years old with the assistance of another boy your same age you were able to lift the lid?

A. Yes.

Q. With a lot of difficulty, a lot of trouble?

A. Yes.

Q. On this occasion, I think it was August 19, wasn't it?

A. Yes.

Q. That was a Sunday?

A. Yes.

Q. Did you lift the lid by yourself?

A. Yes, I did.

Q. And on this occasion you were able to do it yourself?

A. Yes.

Q. This other young boy, Thomas Welsh, where was he when you lifted the lid?

A. He was out in the street.

Q. Out in the street?

A. Maple Avenue.

Q. You are certain, Mr. Marr, that the only reason why you lifted the lid on August 19, was because of curiosity?

A. Yes.

Q. Although you knew the condition there prior to the time?

A. Yes.

Q. When you lifted the lid did you throw it all the way back or stand it on the edge?

A. Stood it up.

Q. What time of the day was it when you were there on this occasion?

A. About two-thirty.

Q. In the afternoon?

A. Yes.

Q. Was the gate to the enclosure closed or open on this occasion?

A. It was partly open.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. I show you several more pictures—just sit down—I show you a picture and ask you whether or not that's the pumping station as you saw it on Sunday, August 19, 1945?

A. Yes, it is.

THE PROSECUTOR: I ask that that be marked for identification.

MR. PALESE: I have no objection if that's the one you just showed me.

(Received and marked Exhibit S-2 for identification.)

Q. I show you another photograph, and ask you whether or not that correctly portrays the pumping station as you saw it on August 19, 1945?

A. It does.

THE PROSECUTOR: I ask that that be marked for identification.

(Received and marked Exhibit S-3, for identification.)

Q. I ask you whether or not this photograph cor-

rectly portrays the pumping station on Maple Avenue as it was on August 19, 1945?

A. Yes.

THE PROSECUTOR: I ask that that be marked for identification.

(Received and marked Exhibit S-4 for identification.)

THE PROSECUTOR: If you have no objection I will offer all three of them in evidence.

MR. PALESE: I have seen one, I haven't seen the others. I have no objection.

THE COURT: They will be admitted and marked Exhibits S-2, S-3, and S-4.

(Received and marked Exhibits S-2, S-3, and S-4.)

THE PROSECUTOR: All right, S on, that's all.

JAMES BLYTH, sworn.

BY THE PROSECUTOR:

Q. Where do you live?

A. 2012 High Street, Haddon Heights.

Q. Were you home on the early afternoon of August 19, 1945?

A. Yes, sir.

Q. How far is that away from this pumping station and the cistern located in Haddon Heights?

A. Just rough speaking, I would say 100 feet and some feet, I couldn't just say what it was.

Q. Did anything occur on the early afternoon of August 19, 1945?

A. Yes, I was in the back yard, and a couple of boys came over and says there was a body in the well.

Q. What did you do?

A. I went over and notified the police and called them up on the phone.

Q. Did you go to the well?

A. I went to the well to make sure the body was down there.

Q. When you went to the well, what did you see?

A. I just looked down.

Q. Did you open the lid?

A. No, the boys opened the lid for me.

Q. What did you see after they opened the lid for you?

A. I looked down the well, and I could see half the girl's body, so I got away down closer, it was dark down there, and I seen it was a woman, and I went and notified the police.

Q. Who went with you when you notified the police?

A. I think one of the boys, I think, come along with me, and went to Grenlock's house, two doors below our place on High Street. She got the police on the phone for me, and I talked to them.

MR. PALESE: I object, unless she was there when she got the police.

THE WITNESS: I talked to them, I got her to get them on the phone.

Q. Did you talk to the police on the phone?
A. Yes.
Q. As the result of your conversation with the police did they come over?
A. Yes.
Q. After you had finished your conversation did you go back to the well?
A. I called Mr. ——
Q. Did you go back to the well?
A. Yes, across the lot.
Q. You stayed there until the police came?
A. That's right.
Q. After the police arrived what did you do?
A. I stood around there a few minutes and went over home again for a while.
Q. Were you there when the body was taken out?
A. I was at the back lot looking across, I couldn't see all they did.
Q. When you looked down the well you saw the body of a woman, did you?
A. That's right.
Q. I show you a photograph, and ask you whether or not that correctly portrays what you saw when you looked down into the well?
A. Yes, sir.

THE PROSECUTOR: I ask that be marked for identification.

(Received and marked Exhibit S-5 for identification.)

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

SERGEANT FORREST EASTLACK, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Forrest Eastlack.
Q. What is your occupation?
A. Sergeant of Police, Haddon Heights.
Q. Do you remember receiving a call on August 19, 1945?
A. I do.
Q. As a result of the call, what did you do?
A. I contacted the radio car, told them I had just received a phone call from Mr. Blyth, who said ——
Q. Now, what did you do?
A. Contacted that radio car.
Q. You passed the information along to the red car?
A. I did.
Q. Who in the red car did you talk to, do you know?
A. Officer Shoch and Officer Shaw.
Q. Then, what did you do?
A. Immediately after that, I contacted Kayser.
Q. Who else?
A. Then, I guess a lapse of a few minutes after I had received the call from Mr. Blyth, Sergeant Heistand, he came on duty. I explained the cir-

cumstances to him. He proceeded over to this Mr. Blyth's house.

Q. Did you call the Coroner?

A. I did.

Q. Did you call Chief Doran?

A. Yes, sir, I did.

Q. Did you go to the scene?

A. I did not, no, sir.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

JOHN P. SHAW, SR., sworn.

BY THE PROSECUTOR:

Q. Mr. Shaw, you are a member of the Police Department of the Borough of Haddon Heights?

A. Yes, sir.

Q. You were in that radio car with Officer Shoch?

A. Yes, sir.

Q. On the afternoon of August 19, 1945?

A. Yes, sir.

Q. And as the result of a call that came in over the radio in your car, what did you do?

A. We were notified to go to 1212—2012 West High Street to investigate.

Q. When you got there, whom did you see?

A. Mr. Blyth and Tommy Marr or Tommy Welsh and Richard Marr.

Q. Then, you got out of the car?

A. No, sir. I stayed in the car.

Q. Did Officer Shoch get out of the car?

A. Not at that time.

Q. When did he get out?

A. Went around to West High or Maple Avenue. They said go to Maple Avenue and we will show you something in the cistern.

Q. Who said that?

A. Mr. Blyth.

Q. Did you then go around?

A. Yes, sir.

Q. You and Officer Shoch?

A. Yes, sir, to Maple Avenue.

Q. Did you go into the pumping station?

A. Yes, sir.

Q. Who went in with you?

A. Mr. Blyth started to go in but he didn't go in. The boys went in.

Q. Did someone open the lid on the well?

A. Yes, sir. The boys opened it for me.

Q. Did you go to the well?

A. Yes, sir.

Q. Did you look in?

A. Yes, sir.

Q. What did you see?

A. Discovered a body.

Q. I show you a picture and ask you whether or not that is a picture of the body as you saw it when you first looked into the well.

A. Yes, sir. The identical same thing I seen.

THE PROSECUTOR: The witness was shown Exhibit S-5 for identification.

Q. Now, what did you do next, Officer?

A. I contacted the Hall. I stayed on the gate, closed the gate and kept everybody out.

Q. When you say "gate", Officer, you mean the gate that is portrayed on what has been marked in evidence as S-3?

A. Yes, sir.

Q. You mean this gate here (indicating)?

A. Yes, sir, the iron gate.

Q. The iron gate. Now, while you were stationed on the gate, what did you do?

A. Well, when the Chief and the Sergeant got there, of course, I stayed right there and allowed nobody, only the officials I knew, like County Detective Chief Doran, Dube, Wojtkowiak, Chief Kayser, and Sergeant Heistand.

Q. Did you make any inspection of any part of the well or of the gate or the power house there?

A. Yes, sir, of the gate. Right on the gate, yes, sir.

Q. What do you mean, "on the gate"?

A. Well, on the gate I found some strands of hair.

Q. On what part of the gate?

A. Right near the latch of the gate.

Q. Will you indicate for the members of the jury just where you mean?

A. Right here.

Q. Just hold it up.

A. Just about where that latch is.

MR. PALESE: Can't the witness mark it? Wouldn't that be better? Let him put a circle there.

THE PROSECUTOR: Let him mark it. He is unable to get off the witness stand. I do not want to cause him any more discomfort.

(Witness marks photograph.)

Q. Have you got it marked, Officer?

A. I think you will find it about right.

THE PROSECUTOR: The witness marked an "X" mark in ink on the exhibit marked in evidence as Exhibit S-3, which indicates the place where he found the strands of hair.

Q. What did you do after you found the strands of hair, Officer?

A. I turned it over to Chief Doran; let it hang right there on the gate. He took it off.

Q. You turned it over to Chief Doran?

A. Yes, sir.

Q. Then, the balance of your job was to keep unauthorized persons out?

A. That is right.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Shaw, how long was it after you had been stationed at the gate that you found this strand of hair, or strands of hair?

A. Oh, I imagine about—well, I guess about three minutes. I discovered it on the gate.

Q. When you speak of the "gate", do you mean the door or the post where the door hangs?

A. Well, where the door latches, where the door latches. The latch is here, and it is just right above

the latch on the door, on the gate, on the post of the gate, on the gate post, rather.

Q. On this door, there is a lift, is there not, as you open it, and when you close it, you drop it?

A. That is right.

Q. There is a receptacle or catch on the post?

A. That is right.

Q. With respect to the catch on the post, or near that drop on the door?

A. Right above it.

Q. Right above that?

A. Yes, sir, right on the post.

Q. How many strands of hair would you say you found?

A. Well, I imagine, anywhere from twelve to fifteen. It might be any more or less. I could not say any less than twelve.

Q. You, then, turned it over to Chief Doran?

A. That is right.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. I show you a photograph and ask you whether that correctly portrays the entrance to the pumping station.

A. Absolutely.

THE PROSECUTOR: May I have it marked?

THE COURT: S-6 for identification.

THE PROSECUTOR: It is now being offered in evidence without objection by counsel for the defendant.

THE COURT: It will be admitted.

(Photograph received and marked S-6 in evidence.)

Q. Officer, I ask you to mark on this photograph that point or spot on the gate, that part of it whereon you found the strands of hair.

(Witness marks photograph.)

THE PROSECUTOR: Witness put an ink mark on what has been marked in evidence as Exhibit S-6, showing the place where he found the strands of hair, on his investigation. Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

THE COURT: We will recess now until 1:30.

(At this point a recess was taken until 1:30 P. M.)

(Trial of the case resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of the defendant and respective counsel.)

———

HERBERT KAYSER, sworn.

BY THE PROSECUTOR:

Q. Chief, you are the head of what police department?

A. Haddon Heights.

Q. And you have been for how long?

A. Two years in July.

Q. Before that you were a member of the police department?

A. That's right.

Q. For how long?

A. I have been on the force 20 years.

Q. Now, Chief, on August 19, 1945, you received a telephone call and, as a result of that call, what did you do?

A. Went over to Maple Avenue. I walked inside the gate of the pumping station and there's a well there I guess about four feet wide and fourteen feet deep, concrete, and there's a big iron grating at the bottom, and about six feet from the bottom there's an iron pipe about six feet wide and the sewage comes through that pipe into the well, and at the bottom of the well, on the grating, was the nude body of a woman and her head and left arm was covered with filth from the sewage.

MR. PALESE: If your Honor please, the question was what did he do, I think. Wasn't that the question?

THE COURT: Yes.

MR. PALESE: If your Honor please, I ask that the entire answer be stricken as not responsive to the question.

THE PROSECUTOR: I have no objection to it being stricken at this time.

Q. After you arrived at the scene of the pumping station and the well, what did you do?

A. Just looked down the well.

Q. Are you familiar with the well?

A. I know it's there, that's all.

Q. Did you make an inspection of the well?

A. At that time I did.

Q. What did your inspection consist of?

A. There's a well there four feet wide, about fourteen feet deep, and there's an iron grating, a big iron grating at the bottom. There's a pipe about six foot from the bottom that the sewage comes through into this well, and on the iron grating there was the body of a nude woman with her head and left arm to the shoulders covered with filth from the sewage, couldn't see the head.

Q. After you made your inspection ——

THE PROSECUTOR: Strike that.

Q. When you looked down the well and made your inspection you say you saw the body of a nude woman?

A. Yes.

Q. In the position as outlined by you. Now, I ask you whether or not that is what you saw when you looked into the well and before anyone had touched the body?

A. That's it.

Q. No question about it?

A. No question about it.

Q. Witness is shown exhibit marked for identification S-5 and that picture correctly portrays what you saw when you arrived at the well and looked down into the well?

A. That's right.

Q. I show you photograph and ask you whether or not that photograph portrays the lid which was over the cistern or well?

A. It does, sir.

THE PROSECUTOR: I ask that it be marked for identification.

THE COURT: It will be marked.

(Photograph marked Exhibit S-7 for identification.)

THE PROSECUTOR: I now offer it in evidence with the consent of counsel.

(Photograph marked Exhibit S-7.)

Q. I show you photograph and ask you whether or not that correctly portrays the opening after the lid is lifted up from the cistern and the iron ladders on the side thereof?

A. It does.

THE PROSECUTOR: I ask that it be marked in evidence with the consent of counsel.

THE COURT: It will be admitted and marked Exhibit S-8.

(Said photograph marked Exhibit S-8.)

Q. Chief, does this correctly portray the bottom of the well with the iron grating located there at the time you made your inspection?

A. Yes.

THE PROSECUTOR: With the consent of counsel it is offered in evidence.

(Photograph marked Exhibit S-9.)

Q. Now, who went to the scene with you, please?

A. William Butler.

Q. After you made your inspection and looked down into the well, what did you then do?

A. I started to look for evidence.

Q. Where did you look?

A. Well, I went across the street ——

MR. PALESE: Chief, can you talk just a little louder, please?

THE WITNESS: Beg pardon?

MR. PALESE: Chief, can you talk just a little louder, please?

THE WITNESS: I went across the street to the south side and walked back toward the lake which

is about 600 feet and I walked back in there looking for evidence.

Q. You say 600 feet. You mean from the cistern?
A. That's right.
Q. In a southerly direction?
A. That's right.
Q. As a result of your search, did you find anything?
A. I didn't find anything at that time.
Q. Well, did someone else find something?
A. William Butler.

MR. PALESE: If your Honor please, if he knows.

Q. If you know.
A. Yes, I know.
Q. Were you there when it was found?
A. No, I was not there.
Q. You were not there?
A. Yes.
Q. Who called you there?
A. William Butler called for me, and Sergeant Heistand.
Q. Called for you?
A. That's right.
Q. And as a result of their call you went over and saw some articles?
A. I went over and they had a pair of slippers, a hat they use for celebrating, with red feather, a flower from a dress, made out of cloth of a dress, and a pair of panties and bracelet.
Q. What happened to those articles?
A. They were turned over to Chief Doran.
Q. Who turned them over to Chief Doran?
A. Sergeant Heistand.

Q. Sergeant Heistand, in your presence?

A. Yes.

Q. Now then, subsequently did you make another search in and about the vicinity of the cistern?

A. Later on.

Q. When was that?

A. That was on the 22nd of August.

Q. What time?

A. About 6:10 in the morning.

Q. And who made the search with you?

A. Mr. Abel, Sergeant Heistand and myself.

Q. Was anything found?

A. Mr. Abel found a pocketbook and, inside of the pocketbook ——

Q. Were you there when it was found?

A. I was there. The pocketbook was turned over to me and it had a dress and slip, brassiere, and a pair of stockings. The stockings was all tied around the clothing and pushed inside of the pocketbook, and, inside the pocketbook, besides, there was a makeup kit and a comb, cigarette case, pair of earrings and a handkerchief and a dollar bill.

Q. What did you do with the pocketbook?

A. Turned it over to Chief Doran.

Q. I show you pocketbook and ask you whether or not that is the pocketbook which you found as a result of your search on the 22nd day of August, 1945, at about 6 o'clock in the morning?

A. That's right.

Q. Then you turned that over to Chief Doran with the contents and everything?

A. Yes.

THE PROSECUTOR: I ask that it be marked for identification.

THE COURT: It will be marked Exhibit S-10 for identification.

(Pocketbook marked Exhibit S-10 for identification.)

Q. Chief, did you turn that pocketbook over to Chief Doran or was it Captain Mulligan?

MR. PALESE: If your Honor please, the witness has testified he turned it over to Chief Doran.

THE PROSECUTOR: He can change his testimony in that respect.

MR. PALESE: But you are not going to change it. You may by questioning.

THE COURT: Call his attention to the fact, Prosecutor.

Q. You have just testified, Chief, that you turned this pocketbook over to Chief Doran. Won't you try to recollect the facts as they really were, to determine whether or not you did really turn it over to Chief Doran?

MR. PALESE: I object, if your Honor please. You cannot interrogate your own witness unless the Prosecutor now says he is a hostile witness.

THE PROSECUTOR: He is not a hostile witness, never was and never will be, no matter how much Mr. Palese would like to make him one, because he is one of the best witnesses the State has.

MR. PALESE: Are you through?

THE PROSECUTOR: Yes.

MR. PALESE: Or do you want to make another speech?

THE PROSECUTOR: No, you make it.

MR. PALESE: I object to the question, if your Honor please, because he is now endeavoring to impeach his witness by reason of an answer he gave to the former question.

THE COURT: The objection is overruled.

MR. PALESE: May I have an exception?

(Exception noted for defendant.)

THE PROSECUTOR: All right.

Q. Chief, will you answer the last question?

THE COURT: Repeat the question, Mr. Stenographer.

(Question repeated.)

MR. PALESE: If your Honor please, I would like to renew my objection, because the question has been re-read.

THE COURT: An exception will be allowed.

(Exception noted for defendant.)

THE COURT: Will you answer, please, Chief?

A. I was in error. I turned the pocketbook over to Detective Mulligan.

Q. Now, did you turn over anything at all to Chief Doran, that you can remember?

MR. PALESE: I object to the question being leading.

THE COURT: It is leading but I will allow it.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: Yes.

(Exception noted for defendant.)

A. No, not myself, I didn't.

Q. Chief, I want you to inspect the contents of what has been marked Exhibit S-10 for identification and take therefrom the contents, to determine whether or not they were the contents which you found in the pocketbook when it was found?

THE PROSECUTOR: May I add with the exception of the dress, if your Honor please, and another article, which was forwarded to Trenton, for analysis, which will be produced by the State's witnesses?

MR. PALESE: If your Honor please, is the Prosecutor testifying here or is the witness? He has propounded a question to the witness to examine the pocketbook and tell us if they are the contents but

he immediately says with the exception of a dress which he forwarded to Trenton.

THE PROSECUTOR: I was addressing the Court.

MR. PALESE: You cannot address the Court when you have addressed a question to the witness. If your Honor please, he cannot tell the witness to do certain things and then say with the exception of this or that. The Chief knows, I am assuming, from the fact he is on the stand, as to the articles he turned over to now Mulligan. I do not think he needs any help from the Prosecutor.

THE PROSECUTOR: I withdraw the remark made, if your Honor please, if it is going to cause any difficulty. I will withdraw the remark made to the Court.

MR. PALESE: If your Honor please, it is not going to cause any difficulty. We are trying this case and the Prosecutor knows how to try the case.

THE PROSECUTOR: Thank you.

MR. PALESE: I am not throwing any flowers either.

THE COURT: Is there a question pending?

MR. PALESE: Yes, there is a question pending and the Prosecutor injected other remarks that I understand he has withdrawn.

THE PROSECUTOR: That is right and the question is submitted to the witness.

MR. PALESE: Will you please read that again, Mr. Stenographer?

(Question repeated as follows:

"Q. Chief, I want you to inspect the contents of what has been marked Exhibit S-10 for identification and take therefrom the contents, to determine whether or not they were the contents which you found in the pocketbook when it was found?")

A. They are the contents outside of the slip and the dress, they are, yes.

Q. What's inside, Chief?

A. A pair of stockings, handkerchief, brassiere, cigarette case, bracelet, garters, buckle, comb, a make-up kit, and a small pocketbook, a dollar bill, a broken mirror.

Q. That's all in there, Chief?

A. That's all.

Q. Now, Chief, you say you found this pocketbook, or it was found in your presence, how far away from the pumping station, as it is portrayed on exhibit marked S-4 in evidence?

A. I would say, from the pumping station south

Q. Which way would be the south?

A. That way (indicating) from where the pumping station is here (indicating) in the street, the Black Horse Pike, it is down here (indicating), that would be south, across the street, well, three hundred or three hundred and fifty feet down there (indicating) we found the pocketbook.

Q. What was the nature of the locality where the pocketbook was found?

A. All grown up, bushes, trees, weeds.

Q. About how far is it from the pumping station located on Maple Avenue in feet?

A. How far from the pumping station to where we found the pocketbook? About three hundred and fifty feet.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Chief, when you delivered the pocketbook to Detective Mulligan, did you make a list of the articles in the pocketbook?

A. Yes, sir.

Q. Do you have that list with you?

A. Yes, sir.

Q. And you kept that list ever since that time?

A. Yes, sir.

Q. Was that made at the time or on the day when the pocketbook was turned over to him?

A. That's right.

Q. Now, you also testified, Chief, in your direct testimony, whether it was the pocketbook or some other clothing or something else was found way beyond that three hundred and fifty feet.

A. The slippers and bracelet, hat with the feather, flower from the dress, a pair of panties, was found in a different place altogether.

Q. Not the same place where the pocketbook was found?

A. No, sir.

Q. Chief, where did you get the measurements for the opening of this cistern, or well, or whatever you call it, that you have testified to today?

A. Measured them.

Q. How big is the opening to this well?

A. The cover, the way we measured it, was four feet.

Q. I am talking about the opening, not the outside dimensions. How big is the door or the slot that comes down?

A. We measured from the edge of it, and it was four feet that way.

Q. How wide or big is the opening?

A. I imagine about three feet.

Q. About three feet?

A. Yes.

Q. How did you get the depth of this as fourteen feet?

A. Measurement.

Q. Did you measure it?

A. No, I didn't.

Q. Where did you get the information from, Chief?

A. From the Supervisor of Streets and Sewers.

Q. Did he tell you that the depth of this was fourteen feet?

A. That's correct.

Q. When did he give you that information?

A. When we were over there looking down, I asked him about the depth and he said about fourteen feet.

Q. That's the extent of your knowledge as to the depth of this well?

A. Fourteen feet.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. Chief, you said on cross-examination that the red hat, the feather, and those flowers and slippers, were found in a different location.

A. That's right.

Q. Now, with respect to the photograph which has been shown to you on direct examination, marked S-4 in evidence, you said the pocketbook was found three hundred and fifty feet south of the pumping station. Now, with respect to the same photograph, indicate to the jury where those other articles were found.

A. They were found about sixty feet up here (indicating). That's west, towards the Black Horse Pike, and about six feet in from the sidewalk in the bushes.

Q. In the bushes. In other words, the pocketbook and its contents were found three hundred and fifty feet south of the pumping station and the bracelet and other articles were found about sixty feet west?

A. That's right.

Q. Of the pumping station?

A. That's right.

Q. Did I show you this photograph? I ask you to take a look at S-5 for identification, and ask you whether or not that photograph correctly, accurately portrays the condition of the body when you saw it in the well before it was removed.

A. That's right, it does.

THE PROSECUTOR: Just a moment, Chief, Mr. Palese may want to ask you some questions.

THE COURT: The Court has a question in mind. How far from the cistern, Chief, would you say the articles that weren't in the pocketbook were found?

THE WITNESS: About sixty feet.

THE COURT: That's all.

HARRY SALTZMAN, sworn.

BY THE PROSECUTOR:

Q. Mr. Saltzman, in the month of August, 1945, by whom were you employed?

A. The Philadelphia Record.

Q. As what, Sir?

A. Staff photographer.

Q. And in line with your duties, did you have occasion to go to the pumping station and cistern located in the Borough of Haddon Heights?

A. I did.

Q. And when was it you went there?

A. It was on Sunday, I believe, August 19, late in the afternoon. I would say about four thirty or five o'clock.

Q. You went there for the purpose of taking pictures?

A. That's correct.

Q. I show you what has been marked for identification as S-5, and ask you whether or not that is a picture taken by you of the nude woman in the well when you arrived before anybody had changed the body.

MR. PALESE: I object to that. I don't think this witness can answer that question. How does he know whether anybody changed the body or not?

THE COURT: Sustain the objection.

Q. Is that the picture taken by you at the time you arrived at the scene?

A. Yes, sir.

Q. I show you a photograph and ask you whether or not that is a picture taken by you on the same day, at the same time, near the pumping station?

A. No, sir.

Q. Where was it?

A. Beg pardon?

Q. What does that picture portray?

A. I didn't take this picture.

THE PROSECUTOR: Oh, you didn't take this one. I am sorry. There is somebody else's name on the back. Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. When was this picture taken?

A. The picture was made on Sunday afternoon; I believe August 19th, approximately four thirty or five o'clock in the afternoon.

MR. PALESE: That's all.

THE PROSECUTOR: I now offer the photograph in evidence, if Your Honor please.

MR. PALESE: I object to it.

THE COURT: I will hear you at side bar.

(In Chambers.)

MR. PALESE: If Your Honor please, my objection to the introduction of the photograph is that there is no testimony at the present time that the body as it appeared when the witnesses who identified the picture as being the same as when the photographer took the picture. The testimony as I get it is that these boys, I think it was about two o'clock or shortly thereafter, when they saw the body. The photograph was not taken until four thirty, four thirty the witness just stated. My objection is that we must have a continuity of the body after it was first observed by the police officers who came there shortly after it was found, and prove that nothing was done or changed up until the time the photograph was taken, because if there was a change in the body, or the position or posture of the body in the well, this picture would not be evidential. There is no testimony in the case now like that. All we have is the Chief says that when he got there, he saw the body in the bottom of the well, as shown by this photograph, and we don't have any testimony as to how long it was there or whether any other person did or did not change or disturb the body. Surely we can't have the photographer, who comes there two and a half hours later and takes a picture, to show what other witnesses said was the position and posture of this body in the well.

THE COURT: I will overrule your objection.

MR. PALESE: Will Your Honor allow me an exception?

THE COURT: I will allow an exception. The

photograph will be admitted as an exhibit in evidence and be marked Exhibit S-5.

(Trial of the cause was resumed in the courtroom before the jury.)

WILLIAM BUTLER, sworn.

BY THE PROSECUTOR:

Q. Where do you live?

A. At the time, on August 19, I lived in Barrington, N. J.

Q. Where do you live now?

A. Woodbury.

Q. On August 19th, whereabouts in Barrington did you live?

A. 17 Page Avenue.

Q. You don't know any of the parties to this proceeding?

A. No.

Q. What is your employment?

A. Supervisor, RCA-Victor.

Q. On August 19, 1945, did you accompany Chief Kayser to the station?

A. I did.

Q. And what did you do?

A. Upon arrival at the pumping station on Maple Avenue I went in with Chief Kayser into the enfenced area and looked down the well that the lid was open, held by Sergeant Heistand, and down the well at the bottom of the grate was the nude body

of a female, on her back, with her head inclined at the bottom. You couldn't see her head, which was covered by sewerage being pumped through a pipe that ran over her neck and her head and her feet were up at the top landing of this incline.

Q. I show you what has been marked in evidence S-5, and ask you whether or not that photograph correctly depicts the position of the body when you saw it in the well?

A. Yes.

Q. What time was that about, on the 19th of August, 1945?

A. Between 3:15 and 3:30.

Q. You then looked around?

A. I did.

Q. And with whom?

A. At first after Chief Kayser gave the officers their instructions to conduct a search for anything they might find, I by myself just walked out of the gate and walked along Maple Avenue. There were other persons there looking through the weeds and I went south on Maple Avenue, and on the right-hand side I saw a little path beaten in the weeds there that were overgrown from the curb across the pavement and back into the vacant lot, and right where the pavement is covered by weeds I saw two shoes, violet color, I guess you would call them, and laying in the ground there a little further in at this path that was beat through there's a little bank there about three feet high, I saw a red hat. That's a novelty hat, and beside that was a red feather. I then called Sergeant Heistand and Chief Kayser and pointed to the spot where the shoes were.

Q. I ask you whether or not these are the shoes that you referred to as being first seen by you.

A. They are the shoes.

THE PROSECUTOR: May I have them marked for identification.

THE COURT: They will be marked S-11, for identification.

(Received and marked S-11, for identification.)

Q. What else was it that you first saw, Mr. Butler?

A. I saw the shoes first, then a hat.

Q. Do you know which hat it was?

A. A novelty hat, red.

Q. I show you a red novelty hat and a feather, and ask you whether or not you can identify these two articles.

A. That's the red hat that I saw. That's the feather.

THE PROSECUTOR: I ask that they be marked for identification as one unit.

THE COURT: Exhibit S-12 for identification.

(Received and marked S-12 for identification.)

Q. What else did you find, Mr. Butler, or first see?

A. Sergeant Heistand picked these objects up, and presented them to Chief Kayser, Sergeant Heistand and myself walked around there and both at the same time, I mean, I am speaking that I saw them, but he saw them at the same time, a flower, a woods flower, a synthetic flower, and a bracelet later on in this little path leading back into this vacant lot. It was sort of a tunnel affair that was beaten through the tall weeds. At first it was just

beaten back, and then was an actual tunnel back up this incline to an area there that all the weeds were beaten down.

Q. I ask you whether or not this was the flower you referred to which was seen by you and several of the officers at the same time?

A. That's the flower.

THE PROSECUTOR: I ask that that be marked for identification.

THE COURT: Exhibit S-13 for identification.

(Received and marked S-13 for identification.)

Q. You say that's the bracelet?

A. Yes.

THE PROSECUTOR: I ask that be marked for identification.

THE COURT: S-14 for identification.

(Received and marked S-14 for identification.)

Q. You didn't actually pick any of these things up, did you?

A. No, I didn't, I immediately told Sergeant Heistand to call Chief Kayser to the place, and he picked them up.

Q. Were you there when the body was taken up?

A. Yes, I was.

Q. Did you help take the body up?

A. No.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. You looked at the bracelet when the prosecutor asked you if you identified it. Are there any marks that you placed on that bracelet?

A. No, there are not.

Q. What is there about the bracelet that you say it is the bracelet you found this evening?

A. Well, the bracelet in my memory is the bracelet, because at that time it was noted that it was something similar to the bracelet that could have been made at the New York Shipyard. They brought that subject up, because trying to trace any clues down they made the statement that that bracelet was similar to one some one had seen that was made in the New York shipyard.

Q. You mean the New York Shipyard makes bracelets?

THE PROSECUTOR: He didn't say that. I object to that question and ask that it be stricken. The witness did not make such a statement.

THE COURT: I will allow it.

MR. PALESE: Will you repeat the question?

(Question repeated.)

A. I didn't say that. I said, the statement was made that that bracelet was similar to ones that this person heard had been made at the New York Shipyard. I don't know what they make at the New York Shipyard besides ships.

Q. What is there about this bracelet that permits you to identify it as having seen it on August 19, without you having made any marks of identification on it?

A. I am interested in metal work, and that imbedded it in my mind than if I just picked it up and looked at it. I looked at it closely to see how they could make such a thing.

Q. You also looked at the flower and examined it. Are there any marks of identification on the flower?

A. Sergeant Heistand picked it up. He initialed it with his initials in my presence, and I remember seeing that.

Q. What initials did he put on it?

A. P.H.

Q. That is what you were looking for when you looked at the flower?

A. That's right.

Q. Is it because it has the initials on there of P.H. that you say it was the flower that you saw on the 19th of August?

A. Yes.

Q. Are you familiar with the initials made by the Chief?

A. It wasn't made by the Chief, it was made by Sergeant Heistand.

Q. Are you familiar with the Sergeant's writing?

A. I saw him make those initials.

Q. Did you stand over him while he made the initials?

A. That's right.

Q. You identified the flower by reason of that fact?

A. Besides that fact I recall in my mind seeing that flower.

Q. What about the feather? Are there any marks of identification on the feather?

A. I didn't see any marks on the feather but in my mind that is the feather that I saw at that time.

Q. Are there any marks of identification on the feather?

A. I didn't see any marks of identification, no.

Q. Your recollection is that it is the feather because you looked at it, is that ——

A. That's right, I have my memory.

Q. Are there any marks of identification on the hat?

A. Yes.

Q. What marks of identification?

A. Sergeant Heistand's initials, P.H.

Q. Was that also done in your presence?

A. Yes.

Q. Where was it done?

A. On the side of the squad car. He walked over and in the presence of other persons there he initialed them.

Q. With a lead pencil or with a pen?

A. A pen.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. I show you what has been marked as Exhibit S-12, the hat, and ask you whether or not you can see on there any initials placed in ink?

A. I see P-8.

Q. I show you Exhibit S-13, and I ask you to look it over, and ——

THE COURT: Just a minute, Prosecutor, those items have not been offered in evidence.

Q. I show you Exhibit marked S-13 for identification, which is the flower, and ask you whether or not you can find the letters P.H. in ink inscribed on that exhibit.

MR. PALESE: I object to that. The witness has already testified ——

THE COURT: Sustained.

THE PROSECUTOR: I will withdraw the question.

Q. About how far away were these articles first seen by you from the pumping station?

A. Approximately sixty feet west of Maple Avenue, on the right-hand side.

Q. Going towards the Black Horse Pike?

A. The Black Horse Pike.

Q. I show you what has been marked S-4 in evidence and ask you to indicate by pointing thereon or placing a mark in pencil just about where you found or first saw these articles.

A. Well, the telephone pole is practically in line with the left fence, probably sixty feet below that west, where I have indicated with a cross, is approximately the spot.

THE PROSECUTOR: Witness placed a mark in ink on S-4 in evidence, to indicate where the hat and shoes and the flower were found, as well as the bracelet, as first seen by him.

Cross-examine.

MR. PALESE: No further questions.

THE PROSECUTOR: That is all, Mr. Butler. Thank you a whole lot, sir.

SERGEANT PAUL HEISTAND, sworn.

BY THE PROSECUTOR:

Q. Sir, what is your full name?
A. Paul Heistand.
Q. What is your occupation?
A. Sergeant of Police, Haddon Heights.
Q. How long have you been connected with the Police Department?
A. Eighteen years.
Q. Now, Sergeant, you received a call, and as a result of that call you went to the pumping station and the cistern?
A. I was told by Sergeant Eastlack what had occurred and I proceeded to the pumping station.
Q. Did you go with anyone?
A. By myself.
Q. How did you get there?
A. With a squad car.
Q. When was that?
A. On August the 19th.
Q. What time, sir?
A. I arrived there about seven minutes after three.
Q. And upon arrival there, whom did you see?
A. Officer Shaw was standing there at the gate, and Mr. Blyth was standing inside the enclosure.

Q. You saw two boys, too?
A. Two boys.

MR. PALESE: I object; it is leading.

THE COURT: It is leading, but I will allow it, Mr. Palese. I do not think it is a matter of importance.

Q. What happened after you arrived?
A. After I arrived, Officer Shaw showed me the hair that was caught on the keeper of the latch of the gate, and then I proceeded to the inside, and Mr. Blyth and myself lifted the lid and looked down in the well.
Q. When you looked down in the well, what did you see?
A. I saw a naked body of a woman.
Q. A woman?
A. Yes, sir.
Q. Can you describe for us the position of the body when you first saw it upon your looking down in the well?
A. The body was in a twisted position, on its back; the left arm and the left shoulder and the head pointed toward the left or to the center of the wall, where the raw sewage pours into the well. The end of the body was extending up to a concrete platform over the top of the grating.
Q. I show you a picture, or a photograph, rather, which has been marked in evidence as S-5, and ask you whether or not that is a picture of the body in the well as you saw it upon your arrival there.
A. That is right. It is.
Q. Now, after you saw the body in the well, what did you do?

A. Why, I waited for Chief Kayser to arrive to take over, and also told Officer Shaw not to let anybody in there, inside the enclosure, that wasn't supposed to be in.

Q. Did you make a search?

A. After Chief Kayser arrived there, he gave us orders to look around. So I started in a westerly direction from the pumping station and Mr. Butler was ahead of me. He called to me and said he had found, had seen a pair of shoes ——

MR. PALESE: I object.

Q. As a result of what he said, what did you do?

A. I went to the spot where the shoes were.

Q. Can you tell us where that was when you arrived at the spot?

A. From the entrance of the walk into the pumping station to where the shoes were lying at the pavement was fifty-two feet west of the edge of the pumping station.

Q. When you say "west", would that be toward the Black Horse Pike?

A. That would be toward the Black Horse Pike.

Q. Go ahead.

A. Where the shoes were lying on the pavement; there was also a red hat with a feather; also there were a bit of honeysuckle that had growed over the top of the pavement, and scattered amongst the honeysuckle was an awful lot of confetti. At a spot nine feet north of where the shoes were found, directly in from the pavement, is a bank. On this bank was a flower made of the goods of a dress that women wear, partially buried in the soft dirt. Five feet behind that, in an enclosure of shrubs, or scrub growth, was a pair of bloody panties, and eight feet

beyond that point was quite a space where the weeds had been trampled down looking like a skirmish had taken place.

MR. PALESE: If Your Honor please, I do not like to interrupt, but is that information you have compiled?

THE WITNESS: Pardon me, sir.

MR. PALESE: What are you reading from?

THE WITNESS: This is a little notation I made.

MR. PALESE: That you made yourself, Sergeant?

THE WITNESS: I made myself.

Q. Go ahead.

A. At the time I found the shoes, I picked them up, also the red hat and the feather. I put my mark of identification at a later time on the feather, the red hat, and also on the flower and on the shoes, and put them in the patrol car for safekeeping, with the red feather.

Q. What did you do with the pants, Sergeant?

A. Sir?

Q. What did you do with the pants?

A. The panties were also wrapped in paper and put in the patrol car.

Q. All right. Go on, Sergeant.

A. A little later, Chief Kayser, when he came there, after we notified him we found these things, we then turned them over to the County Police, the evidence we had found.

Q. To whom did you give them?

A. It was given to Chief Doran himself.

Q. What did you give to Chief Doran on that occasion?

A. I gave to Chief Doran a pair of shoes, a red hat, a red feather, this flower, lavender and white flower, and also a bracelet that was found over there.

Q. I show you what has been marked S-11 for identification and ask you whether or not they are the shoes which were found at the scene, and which you gave to Chief Doran.

A. Those are the shoes. My identification marks are on them.

Q. What are your identification marks?

A. "P.H.", my initials and my name.

Q. I show you what has been marked for identification S-13 and I ask you whether or not that was the flower found at the scene by you in the presence of Mr. Butler, which you later gave to Chief Doran.

A. That is the flower. My initials are right here, P.H.

Q. I show you a flower which has been marked S-12 for identification and ask you whether or not that was the flower that was found at the scene, and which you turned over to Chief Doran.

A. Yes, sir; that is the hat and the flower.

Q. Did you make some identification on them?

A. My initials are right here, P.H.

Q. I show you S-14, marked for identification, the bracelet, and ask you whether or not that is the bracelet you picked up and took into your possession, and later gave to Chief Doran.

A. That looks like the bracelet I picked up.

Q. I show you a pair of what purports to be silk

pants, and ask you whether or not you can identify these pants.

A. That is right. They are the panties.

Q. Where did you find those?

A. The panties was fourteen foot from the center of the pavement, directly in from the spot where we had found the shoes, in the middle of a growth of trees and weeds.

Q. How far south would that be—or how far west of the pumping station would that be?

A. That would be fifty-two feet from the walk into the pumping station.

THE PROSECUTOR: I ask that this be marked for identification, referring to the silk panties.

THE COURT: It will be marked S-15 for identification.

Q. Did you make an inspection of the pants, Sergeant?

A. Pardon me?

Q. The silk pants, did you make an inspection of them?

A. Yes, sir.

Q. What did they look like?

A. They were all crumpled up, and covered with blood.

Q. You gave them to Chief Doran?

A. Yes, sir. I marked my initials on them, also gave them to Chief Doran.

Q. Were you there when the pocketbook was found?

A. Yes, sir.

Q. When was it found?

A. That is the morning of August 22nd; I would say about six fifteen A. M.

Q. Did you find it?

A. No, sir. Mr. Abel found them.

Q. Mr. Abel. Were they found in your presence?

A. They were found in my presence. He called to Chief Kayser and I that here was a pocketbook, and we both went over as he picked it up.

Q. Now, where was it found?

A. The pocketbook was found, in my measurements from Maple Avenue directly to the spot is two hundred ninety-six feet from the straight line to the spot where the pocketbook was found. It was also forty-two feet from the edge of the lake to the spot where the pocketbook was found.

Q. Is there a lake around there?

A. There is a lake forty-two feet beyond where the pocketbook was.

Q. Did you pick up the pocketbook?

A. No, Mr. Abel picked up the pocketbook.

Q. And he gave it to you?

A. He handed it to me in the presence of Chief Kayser. The three of us were there together.

Q. What was in the pocketbook?

A. There was a slip, brassiere, a pair of stockings, a cigarette case, and, I believe, a watch case for a Hamilton watch. I just don't recall at the time most of the small items, but the pocketbook had one of the stockings tied around it at the time.

Q. Now, I show you what has been marked S-10 for identification and ask you whether or not that is the pocketbook just referred to by you.

A. Yes, sir, that is the pocketbook.

Q. I understood you to say, Sergeant, that in the pocketbook was a dress and a slip.

A. A brassiere, dress, and slip, a cigarette case and several small articles. That is the dress.

Q. Now, I show you what purports to be a dress and a slip. Inspect those, Sergeant, and state whether or not that is the dress and slip which was found in the pocketbook.

A. Yes, sir, that is the dress and it is also the same as the flower that was found. It is the same kind of goods and the same style. That also is the slip that was found, stuffed inside the pocketbook that was wrapped up in the stocking.

Q. Did you make any identifying mark on those two articles?

A. No, sir. I turned those over to Chief Kayser.

THE PROSECUTOR: I ask that these be marked for identification.

THE COURT: They will be Exhibit S-16 for identification. It is a paper bag containing a slip and a dress.

Q. Now, did I understand you to say, Sergeant, that these articles—pardon me, the pocketbook and the various articles mentioned by you—were found around six o'clock in the morning of August 22nd?

A. That is right, sir.

Q. Now, Sergeant, you made an inspection of the immediate vicinity of the pumping station and thereabouts, is that true?

A. Yes, sir.

Q. And did you find anything there in the way of bushes, shrubs, et cetera?

A. Well, the spot ——

MR. PALESE: You can answer that yes or no.

THE WITNESS: Yes, plenty of these.

MR. PALESE: That was not the question, if your Honor please.

THE WITNESS: Plenty of them.

MR. PALESE: If your Honor please, the question calls for a yes or no answer.

THE COURT: Answer yes or no, Sergeant.

THE WITNESS: Yes, sir.

Q. Describe it to us, Sergeant.

A. Well, the spot from the pumping station to the spot where the shoes was found is strictly weeds, brush, and an undergrowth of honeysuckle and small weeds.

Q. When you say small, what do you mean by that, Sergeant?

A. I would say to reach the length of up to your knee, as far as the weeds. There was little trees probably reached five or six foot. The honeysuckle is strictly on the ground.

Q. Did you mention something about confetti, Sergeant?

A. Yes, on the pavement at that spot the pavement is not used, the people walking by use the street, and in years gone by the honeysuckle has growed across the pavement, and in amongst the honeysuckle there different colored confetti was filtered through to the pavement below and also lying on the honeysuckle.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Sergeant, when did you make the identification on the hat?

A. At the time after finding the hat I held it in my hand until I walked over to the patrol car and then I put my initials on it.

Q. And how far did you have to walk to get to the patrol car?

A. A matter of fifteen feet.

Q. Did anyone go with you?

A. Sir?

Q. Did anyone go with you?

A. Yes, Mr. Butler, Chief Kayser, were with me at the time, and also Chief Doran arrived about that time.

Q. And did you make any identification on the bracelet?

A. No identification on the bracelet.

MR. PALESE: That is all.

HERBERT KAYSER, recalled.

BY THE PROSECUTOR:

Q. Chief, when this pocketbook was given to Captain Mulligan did it then contain therein the slip and the dress?

A. Yes, sir.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

OLIVER P. LAMBERT, sworn.

BY THE PROSECUTOR:

Q. Mr. Lambert, what is your occupation?

A. Do you mean my living or my occupation in the borough?

Q. In the borough?

A. In the borough, Chief of the Fire Department.

Q. And as such Chief did you receive a call in the afternoon of Sunday, August 19, 1945?

A. I did.

Q. As a result of that call, what did you do?

A. I proceeded to a cistern on Maple Avenue, taking what we call a salvage cover.

Q. Salvage cover?

A. Salvage cover.

Q. Explain that to the jury.

A. It's a piece of canvas used in fire departments to protect property from water damage, and eventually I lowered it into the well.

Q. For what purpose?

A. The purpose to wrap the body with it, get it lifted to the surface.

Q. And did you do that?

A. I assisted in lifting the body.

Q. Did you go into the well?
A. I did not.
Q. Stayed on the outside?
A. Yes.
Q. And you then had the body wrapped in the canvas?
A. I did.
Q. What happened to the body after that?
A. It was raised to the surface and taken into the pump house, right about five foot from the well, and it remained there until the Coroner decided to move the body.
Q. And it was taken away?
A. It was taken away.
Q. In what, sir?
A. Beg pardon?
Q. In what, sir?
A. I think it was the Coroner's car.
Q. You are not sure?
A. I am pretty positive it was.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

MARGARET RUST, sworn.

THE PROSECUTOR: Would you mind stepping off a minute, please?

THE PROSECUTOR: I would like to recall this witness.

THE COURT: Yes.

EDWARD GARDNER, sworn.

BY THE PROSECUTOR:

Q. You are the Coroner of Camden County, sir?
A. Yes.
Q. And, as I understand, you received a call in the early afternoon of Sunday, August 19, 1945?
A. Yes.
Q. As a result of that call, where did you go?
A. To the pumping station on Maple Avenue in Haddon Heights.
Q. What did you do when you got there?
A. I was told why I was called.
Q. I beg pardon?
A. And shown the lid of the cistern, where a body was lying in the cistern.
Q. Did you look in the cistern?
A. Yes.
Q. What did you see?
A. The nude body of a white woman, young woman, lying head down, with the head and part of the shoulders and one arm in the sewage.
Q. How about her feet?
A. They were up on a grate, lifted.
Q. Lifted?
A. She was lying on an angle of the grate.

Q. I show you what has been marked Exhibit S-5 in evidence and ask you whether or not that is the picture of the nude woman as you saw her in the well when you arrived there and looked in?

A. Yes, exactly.

Q. What did you do next, Coroner?

A. Well, we waited while the pictures were taken, the detectives and police did their work, and removed the body from the cistern.

Q. How was the body removed from the cistern?

A. Why, ropes and a canvas supplied by the firemen of Haddon Heights and with the assistance of some men present.

Q. After the body was removed from the well, where was it put?

A. On a stretcher and then in my car and taken to the Cooper Hospital morgue, for identification.

Q. Did you make an examination of the body?

A. Yes.

Q. What kind of an examination did you make?

A. External examination there at the scene and at the hospital.

Q. What did your examination disclose?

A. Abrasion of the face, thighs, and a good bit of the body, numerous abrasions and lacerations of the body.

Q. Well, can you describe the numerous lacerations and abrasions that you found and on what parts of her body or face or any part of her body?

A. Well, the most prominent was on the left side of her lower lip. That was cut completely through with an abrasion about two and a half to three inches cut, and in her lower part of the thighs and abrasions, that is, on the left mid thigh and on the inner aspects of the thigh, and marks and abrasions.

Q. When you say inner aspects of her thighs, what do you mean by that?

A. Inside the leg.

Q. Inside?

A. Yes.

Q. Do you know how long an abrasion that was on the left thigh, about?

A. Two to three inches. Measurements were not made. General observation.

Q. I show you a photograph of Margaret McDade when she was taken to the morgue at the Cooper Hospital by you, and ask you whether or not you can identify that photograph?

A. Yes.

THE PROSECUTOR: I ask that it be marked for identification.

THE COURT: It will be marked Exhibit S-17, for identification.

Q. Now, Coroner, you spoke of a laceration on the lip, on the side of the lower left lip, is that correct?

A. Yes.

Q. I want you to take a look at the photograph and I ask you whether or not it correctly portrays the laceration on the lower lip on the left-hand side, as seen by you at the cistern and at the hospital?

A. Yes.

THE PROSECUTOR: I ask that this photograph be marked in evidence.

MR. PALESE: May I see it, please. I object to it, if your Honor please, to the admission of the photograph.

THE COURT: I will hear you at side-bar.

(In Chambers):

MR. PALESE: If your Honor please, I make the same objection as to the other photograph, that there is no evidence here up to the present time that the body was not moved prior to the taking of this picture. The same objection I made to the other photograph.

THE PROSECUTOR: I will withdraw my offer at the present time because I did forget to put the photographer on. He is here and I can put him on and follow the continuity.

THE COURT: The offer is withdrawn at this time.

(Trial of the cause resumed in the presence of the jury.)

Q. Now, Coroner, you saw the body of the dead girl in the well and after it was taken out of the well and placed in the pumping station?

A. Yes.

Q. Did you make a superficial or any kind of examination at the pumping station?

A. Yes.

Q. Did you notice anything about her face?

A. I noticed the cut, the laceration on the left lower lip.

Q. And then you took the body to the hospital, is that right?

A. Yes.

Q. And you there made an external examination?

A. Yes.

Q. Did you notice anything about her left lower lip?

A. Yes, a laceration.

Q. When the body was taken out of the well and you made your examination and determined that there was a laceration on the left lower lip, as described by you, I ask you whether or not what has been marked for identification as S-17 correctly depicts the laceration on the left lower lip as seen by you immediately after she was taken out of the well?

A. Yes.

Q. Now, after you arrived at the hospital, a postmortem examination was performed, is that correct?

A. Yes.

Q. Were you present at any time when the body was identified?

A. Yes.

Q. When was the time?

A. Identification was made August 20, on Monday afternoon, at 6:20 P. M.

Q. Do you remember by whom?

A. By her sister, Mrs. Kathleen Halpin, by her father, James McDade, and mother, Grace McDade.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

THE PROSECUTOR: That's all.

CARL DRESKWICZ, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Carl Dreskwicz.
Q. What is your occupation?
A. Connected with the State Police.
Q. In what capacity?
A. Identification officer.
Q. And where are you stationed?
A. Hammonton.
Q. As the result of a telephone call, did you go to the Cooper Hospital morgue in Camden?
A. Yes, sir.
Q. When was that?
A. The evening of Sunday, August 19.
Q. And upon your arrival there you took photographs?
A. Yes.
Q. I show you what has been marked for identification as S-17, and ask you whether or not you took that photograph?
A. Yes, sir.
Q. Does that correctly depict the condition of the dead woman upon your arrival there?
A. Yes, sir.
Q. It shows the laceration on the left lower lip?
A. Yes, sir.
Q. Can you describe it to us, the laceration?
A. Well, the lip was lacerated. I don't remember correctly ——

THE PROSECUTOR: All right. That's all. Cross-examine.

MR. PALESE: No questions.

THE PROSECUTOR: I now offer the photograph in evidence.

MR. PALESE: If your Honor please, I make the same objections I made to the other photographs.

THE COURT: Your objection will be noted for the reasons you have previously stated and your objection overruled and an exception allowed. The exhibit will be marked in evidence S-17.

(Picture marked Exhibit S-17 in evidence.)

MARGARET RUST, recalled.

BY THE PROSECUTOR:

Q. What is your full name?
A. Anna Margaret Rust.
Q. Margaret, or Anna, rather, would you speak a little louder, please.
A. Anna Margaret Rust.
Q. And you knew Margaret McDade?
A. Yes.
Q. Where are you employed?
A. Horn & Hardart's.
Q. Speak louder, please.
A. Horn & Hardart's.
Q. And on August 14, 1945, do you know where Margaret McDade was employed?

A. Yes, Horn & Hardart's.

Q. Now, were you with Margaret after finishing work in the evening of Tuesday, August 14, 1945?

A. Yes.

Q. That was V-J night, as I understand it?

A. Yes.

Q. Do you remember how Margaret was dressed?

A. Yes, I do.

Q. I show you what has been marked for identification as S-11, and ask you whether or not you can identify this exhibit?

A. Yes.

Q. What are they?

A. Margaret's shoes.

Q. Did you actually see them on Margaret that evening?

A. Yes, I did.

Q. I show you what has been marked for identification as S-13, and ask you whether or not you can identify that?

A. Yes.

Q. What is it?

A. The flower she wore on her dress.

Q. I show you what has been marked S-14 for identification and ask you whether or not you can identify that?

A. Yes, I can.

Q. What is it?

A. The bracelet she wore on her arm.

Q. A bracelet she wore on her arm when?

A. The night of V-J Day.

MR. PALESE: Speak louder, please.

THE WITNESS: The night of V-J Day.

Q. Do you know what kind of a dress she had on?
A. Yes, I do.

THE PROSECUTOR: If your Honor please, the witness is shown what has been marked for identification S-16, containing two exhibits. I am only going to refer to the dress, show it to her and ask her if she can identify it.

Q. Can you identify the exhibit which is marked for identification S-16, purporting to be a dress?
A. Yes.
Q. What is it?
A. The dress Margaret wore.
Q. When?
A. The night of V-J Day.
Q. I show you what has been marked for identification as S-10, and ask you whether or not you can identify it?
A. Yes, I can.
Q. What is it?
A. A pocketbook.
Q. Whose pocketbook is it?
A. Margaret McDade's.
Q. When was the last time you saw it?
A. V-J Day night.
Q. Is that the pocketbook you can identify as being worn by Margaret that night?
A. Yes, that's right.
Q. Now, what time did you finish work on the night of August 14, 1945?
A. Eight o'clock.
Q. Eight o'clock?
A. Yes.
Q. And as I understand it, you, Margaret, and two sailors came into New Jersey?

A. That's right.

Q. And where did you go to in New Jersey?

A. We got off at Browning Road and Black Horse Pike, walked down past the firehouse to a little taproom. We had a drink and then went on down to Mary's, and they were closed, were just closing up. And we asked Mary what time the next bus went back. She said twenty minutes after eleven, and it was around eleven then. On the way back we stopped at the firehouse, and I didn't know anybody down there ——

MR. PALESE: Speak louder, please.

A. I didn't know anybody down there and Margaret knew some people, and so she excused herself and went in. Shortly after that they pulled the door down, and I had taken Margaret's pocketbook off the table and I walked around to the side door and handed her her pocketbook. And I said, "I am leaving." She said, "You don't mind if I ——"

MR. PALESE: I object to the conversation.

Q. Did you leave?

A. Yes.

Q. You left Margaret there and went on alone?

A. That's right.

Q. When you left was she alive?

A. Yes, she was.

Q. When was the next time you saw Margaret?

A. A week later at the Cooper Hospital, at the morgue.

Q. In the morgue?

A. Yes.

Q. What was her condition then?

A. She was dead.

Q. Was that the same Margaret you left on V-J Day in Bellmawr?

A. That's right.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. You say when you got off the bus at Browning Road you went to Mary's place?

A. No, we stopped at another little place, I don't know where that is.

Q. When you speak of another little place, what kind of a place was it?

A. A taproom.

Q. Had you been in Bellmawr before?

A. No, never.

Q. That was your first visit there?

A. That's right.

Q. And then you found that little place closed, and who suggested going to Mary's place?

A. Margaret, she knew Mary.

Q. She knew Mary. What kind of a place was Mary's place?

A. A little taproom.

Q. Then you got to Mary's place, and you say it was closed?

A. That's right.

Q. How far is Mary's place from the firehouse?

A. I don't know the exact distance, but it isn't very far.

Q. Were you able to walk it?

A. Yes.

Q. You say you had two sailors with you?

A. Yes.

Q. Where did you meet the two sailors?
A. I met Margaret and the sailors at Broad Street.
Q. You met Margaret and the two sailors?
A. At Broad Street.
Q. At Broad Street and where?
A. Chestnut.
Q. In Philadelphia?
A. That's right.
Q. How did you come to meet Margaret at Broad Street, by appointment or chance?
A. By appointment.
Q. Did you know she was to have two sailors with her at the time?
A. No, I didn't, but I had planned to meet her.
Q. You planned to meet her?
A. That's right.
Q. You didn't plan to meet her with two sailors, did you?
A. That's right.
Q. So then you and Margaret and with these two sailors you had not met before started for Bellmawr?
A. That's right.
Q. Were you introduced to the two sailors?
A. No, I wasn't.
Q. Do you know their names?
A. No, I don't.
Q. Had you seen them before?
A. No.
Q. Then you got down to Bellmawr, and the first place you and Reta and the two sailors went to was this little place that was closed?
A. Yes.
Q. And then it being closed you went to Mary's?
A. Yes.
Q. During all that time did you find out the names of the two sailors?

A. No.

Q. You weren't introduced to them?

A. No.

Q. And then you went to Mary's place, and it was closed, and you went to the firehouse?

A. Yes, that's right.

Q. Did Reta go into the firehouse?

A. Yes, she did.

Q. You said something about her pocketbook, what did she do with it?

A. She laid it down on the table by the door.

Q. Laid it what?

A. Laid it down on the table by the door.

Q. The door of the firehouse?

A. Yes, that's right.

Q. Didn't you go in the firehouse?

A. No.

Q. Did Reta come out of the firehouse later?

A. No, she didn't.

Q. Didn't you see her after she went in the firehouse?

A. Yes, I took her pocketbook around to the side door.

Q. Did you talk to her?

A. I told her I was leaving.

Q. Did you tell her you were leaving with the two sailors?

A. Yes.

Q. And the two sailors, you didn't even know their names?

A. That's right.

Q. And went where?

A. Went back to Philly.

Q. Philadelphia?

A. 8th and Market.

Q. Where did you leave the two sailors in Philadelphia?
A. 8th and Market.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. Were the sailors perfect gentlemen?
A. Yes, they were.

MR. PALESE: I object, if your Honor please.

THE COURT: Sustained.

KATHLEEN HALPIN, sworn.

BY THE PROSECUTOR:

Q. You are a sister of Margaret McDade, the dead girl in this case?
A. Yes.
Q. You are married?
A. Yes.
Q. Your name is Halpin?
A. Yes.
Q. Did Margaret live with you?
A. Yes.
Q. Where?
A. At 2015 Vici Street.
Q. And did you see Margaret when she left for work on Tuesday morning, August 14, 1945?

A. Yes.

Q. Did you see what she had on or what she was wearing?

A. She wore an orchid ——

Q. Just answer yes, please.

A. Yes.

Q. When she left that morning she was alive?

A. Yes.

Q. When is the next time you saw your sister?

A. In the Cooper Hospital.

Q. When was that?

A. About the 20th of August.

Q. What was her condition then?

A. Dead.

Q. Is there any question in your mind that the person you saw at the Cooper Hospital in the morgue, who was dead, was your sister, the one who left for work on the early morning of August 14, 1945?

A. No.

Q. When she left for work that morning do you remember what kind of pocketbook she wore or carried?

A. Yes, that's her pocketbook.

Q. I show you what has been marked for identification S-10, and ask you whether or not that's the pocketbook she carried?

A. Yes.

Q. I show you what has been marked for identification S-11, and ask you whether or not they are the shoes she wore?

A. Yes.

Q. I show you that part of S-16, marked for identification, purporting to be a dress, and ask you whether or not that's the dress she wore?

A. Yes.

Q. I show you what has been marked S-13 for identification, which is the flower she wore on her dress, and ask you whether that is the flower she wore?

A. Yes.

Q. I show you what has been marked S-14, and ask you whether or not that is the bracelet she wore?

A. Yes.

Q. Do you know what kind of a slip she had on?

A. I know she had on a white satin slip.

Q. A white satin slip?

A. Yes.

Q. I ask you to take a look at that other portion of what has been marked for identification as S-16, and ask you whether or not that portion is the white satin slip which she wore?

A. Yes.

Q. Do you know what she carried in her pocketbook?

A. She usually carried a wallet and a make-up kit.

Q. I ask you to take the contents from what has been marked for identification S-10, and ask you whether or not you can identify all or part of them or any of the articles contained therein?

A. All of these things that are in her pocketbook belonged to her.

Q. All the things in that pocketbook are what she carried out with her that morning?

A. No, but the cigarette case and everything in there belongs to her.

Q. You have seen her wearing them before and carrying them before?

A. Yes.

Q. Do you know what kind of pants she wore

that morning, can you recognize what has been marked for identification S-15?

A. Yes.

Q. What is it?

A. A pair of pink silk pants.

Q. Is that what Margaret wore, if you know, on the morning she left for work, August 14 of 1945?

A. Yes.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Did your sister live with you?

A. Yes.

Q. Did your mother and father live with you?

A. No, they didn't live with me. My sister lived with me.

Q. And your mother and father didn't live in the same house you lived in?

A. No.

Q. How far did they live from where you lived?

A. They lived out in West Philadelphia, and I lived out in North Philadelphia.

Q. How long has your sister been living with you?

A. About a year and a half.

Q. When she left on the morning of August 14, was she to come home that evening?

A. She didn't come home that evening.

Q. Was she to come home that evening?

A. Yes.

Q. And when was the first time that you reported your sister missing?

A. I didn't report my sister missing.

Q. What?

A. I didn't report my sister missing.

Q. You did not?

A. No.

Q. Why didn't you report your sister missing if she didn't come home on the evening of August 14th?

A. Because V-J Day my sister was talking about going back to Jersey to visit friends in Bellmawr.

Q. Did she say she would not be home over night?

A. She didn't say she would, no, that night, but when she hadn't came home that's where I thought she was, and I knew she was safe down here, because she had friends down here, and she was very fond of her.

Q. You mean at Mary's Cafe?

A. Yes.

Q. That was her friend?

A. Mary was her friend, yes.

Q. Where the taproom was?

A. Yes.

Q. When she didn't come home the next night what did you do about it, if anything?

A. I didn't do anything about it. I still knew my sister was safe, I knew she was safe, that's all.

Q. When she didn't come home the third night, this happened Tuesday night, when she didn't come home Wednesday night, did you do anything about it?

A. No.

Q. When she didn't come home Thursday night did you do anything about it?

A. No, but I just was sure my sister was going down Jersey, and I knew she was all right, and she liked to go swimming.

Q. You did not hear from your sister Wednesday, Thursday, Friday, Saturday, did you?

A. No.

Q. And it didn't give you any concern that she did not come home?

A. If she had not come home that Sunday night I intended to go down Jersey Monday afternoon.

Q. So you were going to wait until Sunday night before you would inquire where she was?

A. Yes.

Q. Do you know where Rita was working?

A. Yes.

Q. Was she supposed to go to work on Wednesday?

A. Yes.

Q. Did you call her place of employment to find out whether she was working or not?

THE PROSECUTOR: I am wondering who is on trial. I object to the question.

MR. PALESE: If you object to the question, don't make any remarks. I ask that the other remarks be stricken.

THE COURT: They will be stricken and the objection will be sustained.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. You didn't hear from your sister Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, Monday, and you have never heard from her since?

MR. PALESE: I object.

THE COURT: Sustained.

Q. Have you ever heard from your sister since?
A. No.

THE PROSECUTOR: That's all. I forgot to ask on direct examination several questions, and I would like the privilege of doing it now.

THE COURT: You may.

BY THE PROSECUTOR:

Q. How old was your sister?
A. Twenty-four years old.
Q. And how tall was?
A. About five feet four inches.
Q. And how much did she weigh?
A. About 105 pounds.
Q. Had your sister ever stayed away from home over night prior to August 14, of 1945?
A. No.

BY MR. PALESE:

Q. I understand you to say your sister had not been away from your home before August 14, 1945?

THE PROSECUTOR: I object, that is an incorrect premise, that is not the testimony of this witness.

THE COURT: This is cross-examination, I will allow the question.

MR. PALESE: Will you repeat the question?

(Question repeated.)

A. She had her vacation down in Bellmawr.
Q. When was it she was on vacation in Bellmawr?
A. She was living down there on Browning Road in Bellmawr, stayed down there for one week.
Q. Where was she living in Bellmawr?
A. In Mary's place on Browning Road.
Q. And what kind of a place does Mary have in Bellmawr?

THE PROSECUTOR: I object to the question, it is improper cross-examination, and it is immaterial, irrelevant, and repetitious, in that the same question was asked in cross-examination immediately after my direct examination.

THE COURT: I will allow it.

MR. PALESE: Will you repeat the question?

(Question repeated.)

A. She had a taproom.
Q. Was that the only occasion that your sister has been away from home?
A. Yes.

MR. PALESE: That is all.

EDWARD F. SHISSLER, sworn.

BY THE PROSECUTOR:

Q. What is your name, sir?
A. Edward Shissler.
Q. Where do you live?
A. Haddon Heights.
Q. Do you hold an official position with Haddon Heights?
A. I am Superintendent of Public Works.
Q. And in line with your duty, have you in your immediate charge, under your supervision, the pumping station and cistern located on Maple Avenue?
A. Right. That is right.
Q. Can you describe to us—can you give us the dimensions of the cistern?
A. The tank is ten foot by ten foot square. The depth from the top of the hatch to the inside bottom of the tank is fourteen foot six inches. The opening on the hatch on the left—on the east side of the tank—is three foot by three foot square. The cleaning platform below the hatch is nine and one-half feet below the top of the hatch. The bar screen that rises on the cleaning platform and against the south wall is five foot by five foot. The hatch is covered with a three-eighths steel plate door or hatch cover weighing one hundred seventy pounds. The cleaning platform is five and three-quarter feet by five and one-half feet, concrete construction. The lowest level of the bar screen from the top of the hatch is eleven and three-quarter inches.

THE COURT: How much was that?

THE WITNESS: Eleven and three-quarter inches—eleven feet—eleven feet three-quarter inches.

Q. Mr. Shissler, the grating you are speaking about, how is that installed?

A. That is what is known as a bar screen, constructed of seven and one-quarter by three-eighths steel, spaced one-half inch apart and fastened into the wall at the base, and lies on the top of the cleaning platform.

Q. Well, is it on an angle?

A. Yes, on an angle of about forty-five degrees.

Q. About forty-five degrees?

A. Right.

Q. Now, from the lowest part of the screen to the top of the ground is how many feet, about?

A. Eleven feet, three-quarter inches to the top of the hatch.

Q. Are there steel ladders or something on the side of this cistern?

A. Pardon me?

Q. Are there steel ladders?

A. Oh, yes, there is a concrete brace across there, a screen that stops very heavy matter going by there into, directly into the tank.

Q. Now, where is the pipe which carries forth the sewage into the cistern?

A. The pipe is about ten and a half feet below the top of the hatch, or six inches below the bottom of the top screen.

Q. In other words, as the sewage comes out of the pipe, it goes right onto the screen?

A. Onto the bar screen.

Q. Will you tell us how much the hatch weighs, or the cover?

A. The hatch cover weighs about one hundred seventy pounds.

Q. Did you see the body in the well, sir?

A. I did.

Q. With what part of the well—what part of the well was the head of this body located?

A. Well, under the influent pipe.

Q. What does that indicate?

A. That is where the sewage comes in.

Q. Assuming that the sewage came in, what part of the body would it strike?

A. The head.

Q. Was the head submerged in the sewage?

A. Not altogether; it looked that way, but as it covered, I don't think it was.

Q. But, as the sewage came in, it would drop on her head?

A. Cover it, yes.

Q. What goes through the pipe?

A. Sanitary sewage from the west end of Haddon Heights.

Q. It is not a water sewer?

A. You mean a storm sewer? It is a sanitary sewer.

Q. What does that mean?

A. That means it takes nothing but sanitary waste from the residents.

Q. How often is the well cleaned out?

A. Every week we try to get it cleaned out, and sometimes oftener, if necessary.

Q. Do you know when this well was cleaned out the last time?

A. The Friday before—it was to be—it should have been cleaned the Friday before the body was found, but that particular week we had a lot of employees away on vacation. I generally send two men

there, but I only had one man for emergency that week, so we didn't bother.

Q. Therefore, it wasn't cleaned out the Friday before?

A. The Monday.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Shissler, as the sewage comes through, isn't it treated some before it gets to that point?

A. No.

Q. When it comes to this point, isn't it water?

A. It is not pure water.

Q. I am not saying "pure water". It flows very fast?

A. Ninety-five per cent of it is water.

Q. Now, when you got there, Mr. Shissler, you say that her face and head were not submerged in the sludge, if we may call it that?

A. I thought it was just falling on her face.

Q. By that you mean her face was lying on the screen?

A. On the screen.

Q. And this screen is so spaced so that the water will fall on the screen and then go into your main tank?

A. That is right.

Q. Now, after the body was taken out, was there any sludge or any material on the screen?

A. Very little. The amount there that day was unusually small. I don't know why. I don't sup-

pose it was over a cubic foot of what we call screenings.

Q. Now, can you describe that to us a little differently? A cubic foot does not mean very much.

A. Well, a cubic foot, I would say, is about five or six gallons, in that case.

Q. You mean which would be on the grate?

A. Yes, spread along there over a five-foot area. Of course, immediately around her head there were some heavy particles on both sides.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. What do you mean by "screenings"?

A. That is the heavy stuff that comes there through any sanitary system.

Q. You mean feces?

A. Yes, but not altogether. Bags and sticks, they might get in there from youngsters getting sticks in the manhole. That is why we have the screen there, so it doesn't get into the tank.

Q. You say ninety-five per cent was water?

A. About that.

Q. Natural water?

A. No, not natural.

Q. Diluted in any way?

A. It is diluted.

Q. What is the other five per cent?

A. Well, it is kitchen waste, washtub waste, and body waste.

Q. Body waste?

A. Not all of it, very little of it.

THE PROSECUTOR: I think that is all, Mr. Shissler.

JAMES McDADE, sworn.

BY THE PROSECUTOR:

Q. Mr. McDade, you are the father of Margaret McDade, the girl that was murdered in this case?

A. Yes, sir.

Q. I show you what purports to be a photograph of Margaret McDade and ask you whether or not you can identify it?

A. Yes, that is her.

Q. Is that a picture of your daughter before her death?

A. Yes, sir.

THE PROSECUTOR: I ask that it be marked in evidence.

MR. PALESE: No objection.

THE COURT: It will be received without objection and marked Exhibit S-18.

Q. Mr. McDade, did you see your daughter at the Cooper Hospital?

A. Yes, sir.

Q. When was it, about, sir?

A. That was on Monday, I think it was the 21st, the 21st of August, about six thirty in the evening.

Q. Did you identify the body of a person as being that of your daughter?

A. Yes, sir.

Q. And it was your daughter?

A. Yes, it was.

Q. What was her condition?

A. Oh, she looked to me—she was changed.
Q. Was she alive or dead?
A. She was dead.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

JAMES J. MULLIGAN, sworn.

BY THE PROSECUTOR:

Q. Mr. Mulligan, you are Captain of the Camden County Detectives?
A. Yes, sir.
Q. You received from Chief Kayser, I believe, some articles that had been marked for identification in this case?
A. Yes.
Q. What were they, Captain?
A. I received a pocketbook, with contents, that was found on the morning of the 22nd.
Q. Of the contents that were found in the pocketbook, did you find a slip, a dress, and a pair of pants?
A. No pants in the pocketbook.
Q. The dress and slip?
A. Yes, sir.
Q. When were they given to you, what did you do with them?
A. I brought them to the office and had them in

my possession until Friday, the 24th. I brought the dress and slip and the pants to the New Jersey State Police for a blood test.

Q. Where did you get the pants from, Captain?

A. Chief Doran.

Q. You then delivered the three articles to the State Troopers' Department in Trenton, or Newark?

A. In Trenton, sir.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

LAWRENCE T. DORAN, sworn.

BY THE PROSECUTOR:

Q. Chief, I show you what has been marked for identification Exhibit S-15, purporting to be a pair of pants, silk pants, and ask you whether or not you received them from either Chief Kayser or Sergeant Heistand?

A. Sergeant Heistand.

Q. After you received them from Sergeant Heistand, to whom did you give them?

A. James Mulligan, to take to the laboratories at Trenton.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

JOHN P. BRADY, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. John P. Brady.
Q. And with what department are you connected?
A. Bureau of Identification, New Jersey State Police.
Q. And you have been for about how long, Mr. Brady?
A. About eight years.
Q. Eight years?
A. Yes, sir.
Q. You have made many identifications?
A. Chemical.

THE PROSECUTOR: Strike that.

Q. What is the nature of your work?
A. Analytical and toxological chemistry.
Q. And in line with your duty did you receive in your department what has been marked for identification Exhibit S-16 and S-15?
A. Yes, sir, I did.
Q. And for what purpose?
A. To determine whether the stains thereon was blood of human nature.
Q. Did you conduct such an examination?
A. I did.
Q. And what did your examination consist of?
A. I found the stains were blood and they came from a human being.
Q. What was the nature of the examination?
A. Well, the nature includes complex chemical

examination first to determine whether the stains were blood and then to determine whether they were human blood.

Q. And as a result of your examination what did you conclude?

A. I concluded that the stains had come from a human being.

Q. You say the stains had come from a human being, will you take the various exhibits and indicate thereon where the blood of the human being is located, if you can, just generally, John?

A. In the case of the dress, the section of the armpits, I took a small piece of material, subjected it to a chemical examination. The slip, I took a small spot marked off in red crayon, subjected it to the same thing. In the case of the panties, I marked off a spot, took a small section and examined it chemically for blood.

Q. Would you say on the panties there were many spots of human blood?

A. Yes, sir, clothing was multistained with blood.

Q. Multistained? What do you mean by multi?

A. Stained throughout the entire clothing.

Q. Since you have received them, up until the time, the very time, they have been in your custody up until to-day?

A. That's right, yes, sir.

Q. And you have brought them into the courtroom?

A. I did, sir.

THE PROSECUTOR: I now offer the same in evidence, if the Court please. I offer Exhibit marked for identification S-16 in evidence, I also offer at the same time Exhibit S-15 for identification in evidence.

THE COURT: Before cross-examination there is now pending an offer of the exhibits previously marked for identification into evidence. They will be admitted without objection.

MR. PALESE: If your Honor please ——

THE COURT: Do you object? Did you say something?

MR. PALESE: Nothing.

THE COURT: They are admitted without objection and marked Exhibits S-15 and S-16 respectively.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Brady, what was the test that you subjected the portions of the garments to?

A. Well, there were two tests. One was a chemical test and one was a biological test.

Q. And the chemical test is made in what fashion?

A. It was a precipitation test for blood and it involved the placing of a small section of garment on a white porcelain dish and treating it with acetic acid and benzidin and then treating that with hydrogen peroxide, and the resulting indication gave a blue color that would indicate blood. The precipitation test was blood.

Q. That was not the end of it, was it?

A. I beg pardon?

Q. Was it then subjected to another test?

A. Then precipitant test, biological test for blood, was made.

Q. That is what?

A. In which you take a very small sample and extract it with serum of a rabbit which has been injected over a period of time until the blood of the rabbit reacts to the human blood or until the proteins in the human blood are thrown out with the solution for the rabbit blood and give it a light pale cloud, take the sample of the small specimen of blood and put it in a test tube with the serum and extract it over a period of time and then you take this extraction and make a comparison by underlying the serum with the solution from the test tube. If precipitation occurs, the line of demarcation between the two serums, that would indicate the blood would be of human origin.

Q. That is all?

A. Check tests of human blood are run at the same time.

MR. PALESE: That is all.

THE COURT: Is your next intended witness, Prosecutor, one whose examination might be concluded by four o'clock?

THE PROSECUTOR: Under no question, no. Any witness I would call, I would never conclude by four o'clock. I am taking into consideration at the present time it is ten minutes to four.

THE COURT: We will recess now until 10 o'clock tomorrow morning.

(At this point a recess was taken until March 13, 1946, at 10 o'clock A. M.)

March 13, 1946.

THIRD DAY.

(Trial of the cause resumed at 10:00 o'clock a.m., on the above date in the presence of the defendant and counsel for the respective parties.)

THE CASE FOR THE STATE (Continued).

ANNA DELANO, sworn.

BY THE PROSECUTOR:

Q. Mrs. Delano, where do you live?

A. Black Horse Pike and Browning Road, Bellmawr.

Q. Do you have any connection with Henny's Inn, located in Bellmawr?

A. Yes.

Q. What?

A. My husband is proprietor of Henny's cafe.

Q. Were you in this cafe on VJ-Night, August 14, 1945?

A. I was.

Q. And did you on that particular night see the defendant, Howard Auld?

A. I did.

Q. Were there any other persons there?

A. There was a number of people in there.

Q. Now, did you give out any red hat for celebration that night?

A. No, sir, I did not give any hats out.

Q. Did you have any hats that night?

A. There was a few hats there, yes, sir.

Q. Where did you get them?

A. From my attic.

Q. And after you got them from the attic, where did you put them?

A. On my kitchen table.

Q. You say you didn't give out any hats?

A. No.

Q. Did someone come in and take one?

A. No, they didn't take them, I gave permission.

Q. After you had given permission to take them, who came in and took a hat?

A. No one took a hat.

Q. Well, how did they get them?

A. They asked me could they have one.

Q. Did Mr. Auld ask whether he could have one?

A. Yes, sir.

Q. Did you see him take one?

A. At the time I didn't, I had my head turned at the time, my back was toward him, and I told him to go ahead and take one but I didn't see him.

Q. Did he take one of them?

A. I believe he did.

Q. Did you see him with a red hat?

A. Yes, sir.

Q. Did you see him wear it in your place on this night?

A. Yes, sir.

Q. How many hats did Mr. Auld take?

A. He asked for one, and when he had that he asked could he have another one for Mom.

Q. Who else took a hat with your permission?

A. Mrs. Fritzsche.

Q. Do you remember whether it was the defendant, Howard Auld, or Mrs. Fritzsche who took the red celebration hat that had a feather on it?

A. Mrs. Fritzsche.

Q. Now, did you notice the defendant do anything about the feather that night?

A. No, sir.

Q. What time did you close your place?

A. Between 8:30 and 9:00 o'clock it was closed to the public.

Q. What time did the celebration stop in your place?

A. About quarter of eleven.

Q. Everybody left your place?

A. Yes, sir.

Q. Including the defendant?

A. Yes, sir.

Q. Do you know of your own knowledge or any circumstances which would indicate that the defendant, Mr. Auld, took the feather from Mrs. Fritzsche's hat?

A. No, sir, I do not.

Q. Is this the type of hat you have been referring to?

A. A hat similar to that.

Q. The witness is shown Exhibit S-12, marked for identification. Will you look that over and tell us whether or not that is the hat or type of hat you went upstairs to get and put on the kitchen table?

A. Yes, sir.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

THE COURT: Did you say that was the hat?

MR. PALESE: She said that type of hat.

THE WITNESS: Similar to that.

THE COURT: She said a hat similar to that, and then in answer to the last question, the answer was yes, sir.

MR. PALESE: As to the type of hat.

THE COURT: What was the question?

(Question repeated as follows: "Will you look that over and tell us whether or not that is the hat or type of hat you went upstairs to get and put on the kitchen table? A. Yes, sir.")

THE COURT: Which is it, the hat or the type of hat?

THE WITNESS: The type of hat, a hat similar to that.

THE COURT: That's all.

THE PROSECUTOR: That's all.

ALICE FRITZSCHE, sworn.

BY THE PROSECUTOR:

Q. Mrs. Fritzsche, where do you live?
A. Hall Avenue, Bellmawr.
Q. Did you attend the celebration in Henny's Cafe on the evening of August 14, 1945?
A. I was in and out.
Q. Did you procure one of these red hats from the table in back of Henny's Cafe?
A. I did.
Q. Which one did you take?
A. I gave it to Mr. Auletto.
Q. Which one did you take while you were in Henny's Cafe?
A. A red hat.
Q. Did the red hat which you took have anything in it?
A. A feather.
Q. A feather. I show you what has been marked Exhibit S-12, for identification, and ask you whether or not that is the feather and the hat which you took from the table, the kitchen table in Henny's Cafe?
A. There was a feather similar to that in the hat, in my hat.
Q. During the course of the evening did the defendant attempt to do anything with that red hat and feather?
A. We had been fooling all night ——

MR. PALESE: I object. Do you mean the hat or the feather?

THE PROSECUTOR: All right. The red hat with a feather.

THE COURT: Repeat the question.

(Question repeated.)

A. He asked me once for it and I told him Mrs. Delano had some back in the kitchen but wasn't giving them out.

Q. Did he try to take the hat and feather from you?

A. He tried to take ——

MR. PALESE: I object. We are interested in what he did do and not what he tried to do.

THE COURT: It is leading. I will sustain the objection.

Q. How long did you stay there?

A. I was in and out all evening. I judge around quarter of eleven I left.

Q. What happened between you and the defendant, Mr. Auld, during the course of the evening?

A. We were ——

THE COURT: With respect to the hat that you had taken.

A. We were all friends. You mean my hat?

Q. Yes.

A. Occasionally he tried to take my hat and feather off.

Q. Hat and feather?

A. And feather.

Q. How many times did he try to take it from you?

A. I didn't pay any attention. I don't remember. We were cutting up all night and fooling.

Q. More than once, twice, three times, how many times?

A. Until we finally got home from Mrs. Delano's.

Q. That's all you know about this?

A. That's all I know about the hat and that.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mrs. Fritzsche, then I understand you to say he didn't eventually get the hat and feather?

A. He didn't get my hat. I didn't know the feather was gone until I went to look for it.

Q. In other words, he was cutting up and made several efforts to get it, but eventually did not get the red hat or the feather that you had?

A. I didn't know it was gone, the feather, I still had the hat ——

Q. What's that?

A. I still had the hat, I didn't know the feather was gone until I looked for it.

Q. You say you still have the hat?

A. I still had the hat but the feather was gone.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. You took the red hat home with you?

A. Yes.

Q. When did you first discover the feather was not there?

A. When Mr. Auletto came and asked me if I had a red hat.

Q. Who is Mr. Auletto?

A. He is a police officer in our town.

Q. When was it he came to you?

A. I don't know the dates. I didn't mark nothing down.

Q. Was it after or before Mr. Auld was arrested?

A. Before Mr. Auld was arrested.

Q. Did you give him the hat?

A. He told me there was a hat similar to that and I gave the hat to him ——

MR. PALESE: I object to anything that he said.

THE COURT: With respect to the hat that Mrs. Fritzsche had on?

MR. PALESE: I object to anything this witness said to Mr. Auletto or that Mr. Auletto said to this witness.

THE COURT: The question didn't imply anything he said.

THE PROSECUTOR: I will repeat the question.

THE COURT: Let it be withdrawn.

THE PROSECUTOR: I withdraw the question.

Q. What did you do with the red hat that you got at Delano's?

A. After the night's celebration, I threw it in the top of the closet in the bedroom.

Q. After that what happened to it?

A. Mr. Auletto came to my house right before they caught Howard and said, "Do you still have that red hat?" I said, "Yes."

Q. Don't tell what was said.

MR. PALESE: I ask that that portion of the answer be stricken.

THE COURT: That portion referring to conversation between the witness and Mr. Auletto will be stricken.

Q. Did you give Mr. Auletto the red hat?

A. I did.

Q. Did it have a feather in it?

A. Not when I gave it to Mr. Auletto, no.

THE PROSECUTOR: That's all.

MR. PALESE: That's all.

DOROTHY CREEK, sworn.

BY THE PROSECUTOR:

Q. What is your full name?

A. Mrs. Dorothy Creek.

Q. And where do you live?

A. Mary Anderson Avenue, Bellmawr, New Jersey.

Q. After a few celebrations that evening, did you attend the one at the fire hall in Bellmawr?

A. I did.

Q. With your husband?

A. I did.

Q. And at the fire hall did you see the defendant Howard Auld, charged with murder?

A. Not in the hall ——

MR. PALESE: I object, defendant charged with murder is no part of the question.

Q. I am sorry. Did you see the defendant?

MR. PALESE: Do you withdraw the question?

THE PROSECUTOR: I will withdraw it.

Q. Did you see the defendant, Howard Auld, in the firehouse?

A. Outside the fire hall, he was standing.

Q. Who was he with?

A. When I saw him he was with Rita.

Q. Anyone else?

A. No, not when I saw him, not when I took notice of him.

Q. Did you see Rita or Margaret McDade in the fire hall?

A. Yes.

Q. This was VJ-Night?

A. Yes.

Q. Did you speak with Rita?

A. Yes.

Q. Now, when you saw Howard Auld in the fire hall, was he wearing anything on his head?

A. A hat, a red hat on the corner of his head.

Q. Similar to the red hat marked S-12 for identification?

MR. PALESE: She hasn't been shown the hat yet.

THE PROSECUTOR: It is right before her eyes.

A. I didn't see no feather. I just saw this red hat on the corner of his head.

Q. You saw him have one on?

A. Yes.

MR. PALESE: Are you talking about a feather? Do you mean a feather or a hat?

THE PROSECUTOR: I will get to the feather.

THE COURT: Right now, Prosecutor. Are you speaking of a hat or a feather in that question?

THE PROSECUTOR: A hat.

Q. Did you see Mr. Auld wearing a red hat similar to the one marked S-12, that lays right before your eyes?

A. I did.

Q. Did anyone else have a red hat on?

A. Two other people.

Q. Who were they?

A. Skiff, I don't know his last name.

Q. This gentleman here (indicating), Mr. Hulse?

A. Yes, his wasn't like that, though. It was

smaller, it looked to me. And Mrs. Fritzsche had one on.

Q. How many people were outside of the fire hall when you saw the defendant and Rita talking?

A. I don't know. I didn't count them. Quite a few, all celebrating.

Q. When you saw a red hat on the defendant, did it have in it a feather?

A. I did not notice any feather, I just noticed the red hat on the corner of his head, that's all.

Q. What attracted your attention to the red hat on his head?

A. Well, at that time Howard's hair was bushy. And it seemed to make his head large. And I took particular notice it seemed like the hat was so small on his big head. I didn't look for any feather.

Q. Do you remember whether anybody had a red hat with a feather on it?

A. I don't remember seeing anyone, I didn't take notice ——

MR. PALESE: I object. We are not interested in a hat anyone else had on.

THE COURT: That might be material.

MR. PALESE: May I have an exception?

THE COURT: An exception will be allowed.

A. I didn't pay particular notice to any feather, any feather in a hat.

Q. Now, what time did the fire hall close?

A. It must have been a little after eleven o'clock, it was somewhere around there, closed, because the

town couldn't give any more beer, and the police closed it up then, or were supposed to close.

Q. What happened after that?

A. Well, I wasn't satisfied with that little bit of celebration. I decided to take the crowd up to my house and continue the party.

Q. Will you tell the Court and jury the manner in which you extended the invitation to come to your house.

A. I just said, "Come up to my house. We will keep on celebrating, keep on drinking." That's all, I just waved my hands.

Q. Did many people come to your house?

A. Oh, yes.

Q. You have a bar in the cellar?

A. I do.

Q. Is that the portion of the house the people came to?

A. Yes.

Q. Did you see the defendant in your house?

A. Yes, Howard was in my place.

Q. Did you see Margaret McDade down in the cellar?

A. She was in the house, too.

Q. When you saw the defendant, Howard Auld, in your house, was he wearing anything on his head?

A. Yes, he still had the little hat on.

BY THE PROSECUTOR:

Q. You were the one who extended the invitation to Rita to come to your house?

A. I did.

Q. You had known her?

A. I knew Rita.

Q. When you first saw her, what did Rita say to you?

MR. PALESE: I object; not in the presence of the defendant.

THE COURT: Sustained.

THE PROSECUTOR: I will withdraw that question.

Q. You had some conversation with Rita?
A. I did.
Q. In front of the fire hall?
A. In the fire hall.
Q. Was the defendant, Howard Auld, anywhere near there?
A. No, Rita was by herself, she was talking to me.
Q. She wasn't with anyone?
A. No, she was looking for me.
Q. She was looking for you?
A. Yes, she was inquiring where I was at.
Q. You had some conversation with her?
A. I did.
Q. I am sorry if I asked you this question before, but you extended to her the invitation to come to your house?
A. I did.
Q. You also saw her in your house?
A. She was.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Was the invitation that you extended to Rita the same that you extended to the entire group in the fire hall?

A. It was a general invitation to them, but Rita had not saw me earlier, and she inquired where I was at, because I had known Rita, and when I told her I was having the party up at my place, she looked at me and she said, "Am I invited?" I said, "Certainly, come on up." She said, "That's swell", and the girl came up to the party in my house.

Q. That was before you had the information that the party was going to break up in the fire house, wasn't it?

A. No.

Q. Was that after the party had been broken up at the fire hall?

A. Yes.

Q. When you saw Rita?

A. Yes, we had walked in the fire hall to get a drink, and we were just about to get a drink when they told us we couldn't get no more, it was after hours, and they had got orders to close, and when I turned around to come out, and I waved my hand, I said to my husband and them, "Come on, let's all go up to my house and continue the party," and I walked out, and then I went back in again, because we had some money coming to us, and as I went back then Rita waved to me.

Q. Is that the first time you had seen Rita that evening?

A. That's the first time I seen Rita, yes.

Q. What time was it?

A. It must have been some time after eleven, I don't know the time.

Q. Where was it you first saw Rita that evening?

A. In the bar in the fire hall.

Q. Was she by herself at that time?

A. She was by herself until she was talking to me.

Q. Did she have her hat on?

A. No, she had confetti in her hair.

Q. Up until that time had you seen the defendant, Howard Auld, at the party?

A. I saw him in Henny's.

Q. Did you see him at the fire hall?

A. Outside the fire hall.

Q. Was that when you saw him talking to Rita?

A. When I extended the invitation to come up, the crowd was there, and Howard was standing with his arm around Rita.

Q. Was that before or after you had extended the invitation to Rita to come to your house?

A. After.

Q. After, so you extended the invitation to Rita, then you extended the invitation to the entire crowd, then you went outside?

A. That's right.

Q. And you then saw Howard Auld, the defendant here, and Rita?

A. Yes.

Q. Had you seen them together prior to that time?

A. No.

Q. Did you have to walk by them?

A. No.

Q. When you came out of the fire hall by Howard and Rita?

A. They were standing there, and I stopped, and

was talking to the different ones about coming up to the house and getting into the cars.

Q. You had an automobile there, did you not?

A. Yes, I had an automobile there.

Q. You took some people over to your home in your automobile?

A. My husband did, I didn't.

Q. Were you in the same car as your husband going to your home?

A. No.

Q. Were you in the same car as that Howard and Rita used to get over to your home?

A. No.

Q. When you got to your home after this invitation when was the first time that you saw Howard there?

A. When I got to the house I told every one to go down to the basement, and I was running up and down getting glasses and chairs, and taking them down, and Howard was standing in the basement, that's all.

Q. Was there anyone near him at the time?

A. I really couldn't say, because the basement was crowded.

Q. Did you see Rita there at the time?

A. Yes, Rita was there.

Q. Was she talking to Howard?

A. I don't know.

Q. Did you see her talking to Howard?

A. I couldn't say I did, because I didn't take particular notice of anyone talking.

Q. You had been drinking very much that evening?

A. Sure, we were celebrating.

Q. You started celebrating what time at Henny's Cafe?

A. I didn't take particular notice of the time.

Q. Approximately what time was it you started?

A. I would say around a little before eight, or maybe around eight I got to Henny's.

Q. And you were drinking?

A. Yes.

Q. Drinking what?

A. Everything.

THE PROSECUTOR: I object to this line of cross-examination, it is immaterial, irrelevant and incompetent.

THE COURT: For the purpose of testing the recollection I will allow it.

THE PROSECUTOR: I will withdraw the objection.

Q. When you say everything, what was it?

A. We were drinking beer, and we had money collected between the bunch that was down at Henny's laying there for this celebration. They closed the doors and said they was going to keep the public out, and it was just among the ones that had donated this money. They said we could have whatever we want, and we all started drinking whisky.

Q. Did you participate in drinking whisky there?

A. Yes.

Q. How many drinks of whisky would you say you had at Henny's Cafe?

A. I didn't count them.

Q. Approximately how many?

A. I really couldn't count them.

Q. Many?

A. I guess I did.

Q. You continued to drink whisky at Henny's until when?

A. Until I got to my house, and I didn't have that evening much time to get a drink up there.

Q. You had something to drink at the fire hall, didn't you?

A. No, we was over there, and they said there was no more to drink. They were closing then, we didn't even get a drink in the fire house.

Q. What time was this you left Henny's, and went over to the fire hall, and found you couldn't get anything to drink there?

A. I would say close on to eleven o'clock, when they said they were closing, and we had to go outside.

Q. Then they went over to your home?

A. Yes.

Q. Did you have anything to drink at your home?

A. Yes, when I had time to grab one, I had a few drinks.

Q. You drank what, beer or whisky?

A. I guess I drank both, I don't know.

Q. Did you have some drinks of whisky at your home?

THE PROSECUTOR: I object to this line of cross-examination, I don't see the materiality of it.

THE COURT: Sustained.

MR. PALESE: Here is a witness testifying as to happenings. I surely have the right to elicit from her the fact that she had been drinking.

THE COURT: Your question now is as to what she drank at her own home. Her testimony has

been as to what happened before she got to her own home, and did not go beyond that point.

MR. PALESE: Because it did not come out on direct examination, is that what your Honor indicates?

THE COURT: No, because any further inquiries with respect to her drinking would have no merit in testing her recollection as to what she has testified to as facts. You have been examining the witness with respect to her drinking on the assumption properly so made, that that would affect her ability to recall what she saw, but now you are asking her about her drinking at a party, concerning which she testified to nothing that she saw. That's the basis for my ruling.

MR. PALESE: That's all.

THE PROSECUTOR: That's all.

LLEWELLYN CREEK, sworn.

BY THE PROSECUTOR:

Q. Mr. Creek, you are the husband of the woman who just testified and left the witness stand?

A. That's right.

Q. Did you attend the celebration at the fire hall on the night of August 14, 1945?

A. I did.

Q. Did you see the defendant, Howard Auld, at the fire hall?

A. Yes, I did.

Q. Was he wearing anything on his head?

A. I didn't take particular notice.

Q. Did you see Auld at Henny's Cafe?

A. Yes, I saw him there prior.

Q. Was he wearing anything on his head at Henny's Cafe?

A. I couldn't say he did, I would not say he had anything on.

Q. What time did the fire hall close?

A. Around eleven o'clock.

Q. What did you do after it closed?

A. I drove some of the people up to my house in the car.

Q. Up to whose house?

A. My house.

Q. Would you want to venture an opinion as to how many people got in your car?

A. About eight, I would say.

Q. What kind of a car did you have?

A. Chevrolet deluxe sedan.

Q. Four doors or two doors?

A. Four doors.

Q. Do you know whether the defendant, Howard Auld, got in your car to go to the house?

A. He did.

Q. Do you know where he sat with respect to position in your car?

A. He was in the back seat, that's all I could say.

Q. Did the decedent, Rita McDade, get in your car also?

A. She did.

Q. Do you know where she sat in your automobile?

A. She was in the back, too.

Q. Then you proceeded to the cellar of your home?

A. That's right.

Q. Drinks were dispensed?

A. That's right.

Q. Did you see the defendant, Howard Auld, and Rita McDade, in the cellar of your home?

A. I saw them both in my home.

Q. You also saw Officer Auletti there?

A. I did.

Q. Was he there all evening or early morning after you left the fire hall?

A. He was there quite a while, I would not say he was there all the evening.

Q. In your home?

A. That's right.

Q. Did you see Rita McDade leave your home the early morning of August 15, 1945?

A. Yes, I saw her going up the cellar steps.

Q. And do you know who was following her?

A. Mr. Auld was following her going up the steps.

Q. About what time was that?

A. I couldn't say the exact time, I gather it was between one and two o'clock.

Q. Somebody told you something after, didn't they?

A. Yes.

Q. And the last you saw the defendant that night and the dead girl was when they were walking up the steps?

A. Up the cellar steps.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. How many people would you say were in your cellar that night?

A. I couldn't say how many people, there was quite a few, four or five cars brought people up to my house.

Q. Approximately, can you help us in approximating the number of people that you say accepted the invitation to come to your home?

A. I would say between twenty and thirty people in my house.

Q. How large a basement do you have where these twenty or thirty people congregated?

A. I have a good-sized basement, I have got a double house.

Q. What would be the dimensions of the basement?

A. About twenty-four by thirty, somewhere around there.

Q. I assume you had a bar down there where liquor was dispensed?

A. Yes, sir.

Q. And who was taking care of the bar?

A. I was.

Q. Anyone helping you?

A. Different ones would walk back there to give me a hand.

Q. Did you remain behind the bar all the time, or did you leave it from time to time?

A. I was walking out amongst the people once in a while, and other people would take over the bar if I did.

Q. This stairway that you say leads from the base-

ment to the first floor with respect to the bar is located where?

A. Right opposite the bar. If you stand behind the bar the staircase is right in front of you.

Q. You mean you could stand behind the bar and see this stairway that leads from your basement upstairs?

A. That's right, the bar faces the stairway.

Q. Now, where had you seen Rita and Howard just before you say you saw them going up the stairway?

A. They were standing in the basement.

Q. What is that?

A. They were standing in the basement, drinking.

Q. Where, near the bar?

A. Off to the side, toward where my heater sat.

Q. How far is that from the bar?

A. It is only three or four feet.

Q. How long had they been there talking?

A. Well, I didn't take particular notice.

Q. What made you take particular notice, Mr. Creek, that you saw Rita, and then you say following her was Howard, sometime in the early part of the morning?

A. I just happened to look. I just happened to notice the two of them walking up the steps. There was no particular reason for it.

Q. Were there other people going up and down the stairway?

A. There were people going up and down the stairway all night.

Q. You say you remember seeing Rita going up and Howard was following her up the stairs?

A. That is right. Like they were going out together, like going upstairs together, not out.

Q. Were they going up arm in arm?

A. No, the steps are not wide enough for you to go arm in arm. You have to follow one another.

Q. And you had been drinking that evening?

A. A few, not many.

MR. PALESE: That is all.

GEORGE R. HULSE, sworn.

DIRECT EXAMINATION.

BY THE PROSECUTOR:

Q. Mr. Hulse, where do you live?

A. Church Street, Blackwood.

Q. You are acquainted with the defendant in this case, Howard Auld?

A. Yes, sir.

Q. You are very friendly with him?

A. Yes, sir.

Q. Prior to August, 1945, you had made some arrangement to enter some business venture with him?

A. Yes, sir.

Q. Do you remember meeting him on the morning of August the 14th, 1945?

A. Yes, sir.

Q. What time did you meet him?

A. Now, wait—the 14th, that was V-J Day?

Q. That is correct, sir.

A. Yes, sir. I would say about—I don't remember times very good. It would be around ten o'clock.

Q. Well, approximately?

A. Say, around ten o'clock.

Q. In the morning?

A. Something like that.

Q. Where did you go with him?

A. Him and I intended to take a job in Philadelphia. I had just quit one in Baltimore. I am a steam and Diesel engineer. I called up a concern and asked if they could use a chief engineer. I was going to take Howard as my second. So, we went to Camden, and we got talking it over.

Q. What do you mean, "talking it over"?

A. Howard and myself.

Q. About going into business.

Q. Did he carry on an intelligent conversation with you?

MR. PALESE: I object.

THE COURT: The objection is sustained.

Q. What were the details of the business you were going to enter into?

A. Wholesale sea food.

Q. There was much discussion?

A. Yes.

Q. Where were you supposed to go into the business by virtue of an agreement with the defendant?

MR. PALESE: I object, unless the Prosecutor can tell us the purpose of this examination.

THE COURT: I don't want to have it expressed in open court. We will hear it at side bar. There is a request for an offer of proof.

(At side bar.)

THE PROSECUTOR: If Your Honor please, the purpose of this trend of examination is preliminary in a certain sense, leading up to the actual commission of the crime, and for the second reason, based upon the defense of insanity at the time this crime was committed, it appears to me that, perhaps, I should be in a position to show through this witness, on direct examination as my witness, that he carried on a conversation, they had spoken about a business venture, details. That is the only purpose in the trend of this examination.

MR. PALESE: If Your Honor please, if that is the purpose, I will object to it.

THE COURT: I will sustain the objection as to the second purpose. Now, Prosecutor, you say it is also related to the commission of the crime?

THE PROSECUTOR: Preliminarily.

THE COURT: How is it preliminary? What next fact links it with the commission of the crime?

THE PROSECUTOR: That he was in company with the defendant from early morning until the time they went to Creek's he was constantly in the presence of Mr. Hulse, and at times with his wife. At six-thirty that night, they both went some place together, and they came back together and attended Henney's cafe, and the Fire Hall together, and Creek's together.

THE COURT: I will permit it for the purpose of showing the actions of the defendant during the time before and immediately preceding—we will ex-

tend it beyond the time immediately preceding, and permit you to begin in the morning, but no reference in the examination should be made to the nature of his acts or the particularization of them.

THE PROSECUTOR: I will confine myself to that.

MR. PALESE: If Your Honor please, will you allow me an exception, because I say this is at ten o'clock in the morning, and we are dealing with a crime that may or may not have been committed at two or three o'clock in the morning.

THE COURT: I will allow it as being not too remote. Your request for exception is allowed.

(Exception noted for the defendant.)

THE PROSECUTOR: After you left Philadelphia ——

MR. PALESE: Do I assume the Prosecutor has withdrawn the question?

THE PROSECUTOR: Repeat the question.

(Question repeated as follows: "Where were you supposed to go into business by virtue of an agreement with the defendant?")

THE COURT: I will allow that question for the purpose of establishing the whereabouts and the activities of the defendant on the day in question.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: An exception will be allowed.

(Exception noted for the defendant.)

THE PROSECUTOR: Repeat the question.

("Where were you supposed to go into business by virtue of an agreement with the defendant?")

A. We were going in down at my home in Blackwood.

Q. What time did you and Mr. Auld return from Philadelphia?

A. It was late in the afternoon, sometime.

Q. Well, can you give us approximately the time, Mr. Hulse?

A. I would say around three o'clock, something like that.

Q. Where did you go in Jersey around three o'clock with the defendant, Mr. Auld?

MR. PALESE: Will Your Honor please allow me an objection to this question ——

A. We stayed at a place ——

MR. PALESE: Just a minute. And make the same objection, and if the Prosecutor is going to continue, I would like a general exception.

THE COURT: Your exception is to the line of testimony?

MR. PALESE: That is correct.

THE COURT: The exception is allowed.

(Exception noted for the defendant.)

MR. PALESE: I do not know whether Your Honor wants me to make an exception each time. I do not know how much further the Prosecutor is going to pursue it. I do not like to make an objection to each question.

THE COURT: You may.

MR. PALESE: I object to the question.

THE COURT: The objection is overruled and exception is allowed.

(Exception noted for the defendant.)

A. We stopped at Abe's Browning Lane Inn and inquired about a loan to start us in business. He was going to loan us five hundred dollars.

Q. How long did you and the defendant stay at the Browning Lane Inn?

A. Just a short while.

MR. PALESE: If Your Honor please, I object to the question.

THE COURT: The objection is overruled and exception is allowed.

(Exception noted for the defendant.)

Q. Where did you go after you left the Browning Lane Inn?

A. We went to my home and ate dinner.

Q. What time about did you arrive at your home?

A. Oh, I would say approximately four-thirty or five o'clock.

Q. Did Mr. Auld, the defendant, have dinner at your house?

A. Yes, sir.

Q. And after dinner, where did you and the defendant go?

A. We went back to Auld's house, or back to the Auld family.

Q. How long did you stay there, about?

A. We stayed there and listened to the broadcast that came over the radio.

Q. Did you hear the actual broadcast at seven o'clock?

A. Yes, sir.

Q. After that, where did you and the defendant go?

A. Howard and I went across the street to the Fire House and we were riding the fire truck around with a large crowd.

Q. A general celebration?

A. Yes.

Q. After the fire truck had been driven around the roads of the borough, where did you and the defendant go?

A. Well, we got off at Howard's house, and Howard's mother, my wife, myself, and sister, and his niece went over to Henney's.

Q. How long did you stay at Henney's?

A. While we were in there for a while, my wife missed her ring. She had taken them off at the sink at home. She figured with the celebration, the children might bring someone in and pick them up. So, she asked me to go get them.

Q. Where was the defendant at that time?

A. He was right with me.

Q. Did he go with you to get the ring?

A. Yes, sir. There wasn't any busses running and we hitchhiked a ride to Blackwood.

Q. On the way down to Blackwood you were conversing with the defendant?

A. That is right.

Q. Then you came back to Henney's?

A. Why, we stopped at my house for about an hour, I guess, and I had a couple of quarts of liquor. I had a quart of brandy and a quart of Gallagher & Burton's. I told Howard to help himself to it. When we left there, why, both of us were feeling pretty good. We were drinking it in water glasses.

Q. Then, did you go to Henney's cafe?

A. No, we went immediately to the Fire House.

Q. The Fire House?

A. And we was drinking beer there.

Q. After the Fire House, where did you go?

A. We went in to Henney's, and they had this money put up, and we got down to some steady drinking.

THE PROSECUTOR: What was the last part?

A. We decided we were going out for a celebration, and we were going to get drunk.

MR. PALESE: Can you talk a little louder?

THE WITNESS: We decided the celebration was going on strong; in that way we are going to get drunk.

THE PROSECUTOR: You decided that in your mind?

THE WITNESS: Yes, sir.

THE PROSECUTOR: I move it be stricken from the record.

MR. PALESE: If Your Honor please, the Prosecutor asked him. How can he strike it?

THE COURT: The witness has now said it was in his mind.

THE WITNESS: We stayed ——

MR. PALESE: Just a minute, Mr. Hulse. It is not a question whether it is in his mind if he has asked for it, and I think he has a right to answer. I think it was in response to the question whether or not it was in his mind. I think we are entitled to the answer. May I have the question read?

THE COURT: It will be stricken.

Q. Now, do you know where Auld and Mrs. Fritzsche and yourself got a red hat?

A. Why, the hat was handed out by either one of the two, and when the hats came out of the kitchen I grabbed on to one.

Q. Did you see Auld with a red hat on at Henney's?

A. Yes, sir.

Q. Did you see the feather in it?

A. I couldn't swear there was a feather. I know there was one hat with a feather in it.

Q. Do you know who had the hat with the feather in it?

A. I only saw three hats.

Q. Do you know the person who had the hat with the feather in?

A. I couldn't swear which one had it.

Q. And you say you don't remember whether Auld's hat had a feather in it?

A. That's right.

Q. What time did you and Auld and your wife arrive at the fire hall?

A. We left Henney's, and Howard and I had donated eight dollars towards the beer, and we went over. I couldn't say what time it was. I think we had the last beer. We was there right before they closed.

Q. From there where did you go?

A. This lady, Mrs. Creek—I didn't know her at that time—she had invited everybody in general to go to her house for to finish up the celebration.

Q. Did you and your wife go to the Creeks' home?

A. Yes, sir.

Q. Did Auld go with you?

A. Yes, sir.

Q. And did you meet Rita McDade at the—what time was it that you met her, about?

A. Why, when the crowd was gathered outside of the firehouse, when we were about ready to leave for Creeks'.

Q. Who introduced you to her?

A. I wasn't formally introduced to her until we got to Mrs. Creek's. She was with Howard at the time.

Q. You didn't see Howard and Rita leave?

A. He went in the same car with us, him and Miss McDade and Howard Auld and myself was part of the party and my wife was in the party, in Creeks' car. I don't know who all was there or where they sat in the car.

Q. My question was you didn't see Howard Auld and Rita McDade leave the Creeks' cellar?

A. No, I didn't.

Q. While down in the cellar you were talking to the defendant, Howard Auld?

A. Yes, sir.

Q. And was there a general conversation between you and Auld and Patrick Auletto, the police officer?

A. Yes, sir.

Q. The three of them?

A. No, the four of us, the officer, Howard, and Rita, and they were at the end of the bar, making love, and Pat and I wasn't paying much attention to them, and my wife was down there talking to them too.

THE PROSECUTOR: Is Mr. Auletto here? Step right up.

Q. Is this the officer?

A. Yes, sir.

Q. That you were having the general conversation with in the cellar?

A. Yes, sir.

Q. In the cellar of Creeks'?

A. Yes, sir.

Q. That is, the defendant, you, your wife, Rita McDade, and this officer?

A. That's right.

Q. What did you say they were doing?

A. They were down at the end of the bar, loving one another up and kissing one another, and it was, well, just making love, that's it, in public.

Q. You are certain of that?

A. Positive.

Q. Positive?

A. Yes, sir.

Q. Now, as I said you didn't see them leave?

A. No, sir.

Q. You had gone to the washroom or something?

A. No, I was drinking pretty heavy then.

Q. I didn't ask you that but you can put it in if you want. I didn't ask you how much you were drinking. Have you got a reason for saying that?

MR. PALESE: If your Honor please ——

THE PROSECUTOR: I withdraw the last question.

A. Pat and I were talking ——

MR. PALESE: The Prosecutor two or three times has made these remarks and saying, "I will withdraw them."

THE COURT: The witness has continuously made irresponsive answers. You can make the proper motion and I will rule on it.

THE PROSECUTOR: I ask that it be stricken.

THE COURT: It will be stricken.

MR. PALESE: And also the remark of the Prosecutor?

THE COURT: The remark of the Prosecutor will also be stricken.

Q. Did you leave the company of Mr. Auld, Officer Auletto, and Rita McDade, while you were in Creeks' cellar?

A. I didn't miss them. I was talking to officer ——

THE PROSECUTOR: I ask that that be stricken.

THE COURT: It will be stricken. Repeat the question, Mr. Stenographer, and will you listen to it, Mr. Hulse?

(Question repeated.)

A. No, sir.

Q. Not at all?

A. Maybe to go to the men's room and come right back.

Q. Well, what time was that?

A. Maybe a dozen different times.

THE PROSECUTOR: I ask that that be stricken as not responsive.

THE COURT: I will allow the answer to stand.

Q. Well, when was the first time you left?

A. I couldn't answer that.

Q. Do you remember when the last time was?

A. I couldn't answer that.

Q. Do you remember when it was you left to go to the bathroom and came back and didn't find Mr. Auld there?

A. That was about a half hour after my wife told me he went out that I missed him.

Q. Then there was a time that you left to go to the bathroom, as you say, then you came back and Mr. Auld was not there?

A. That's right.

Q. Was Rita McDade there?

A. I didn't notice her there either.

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Q. Now, were you not talking to Mr. Auld in the Creeks' cellar, concerning the business?

A. That's right.

Q. Did you ask him if the deal was O. K.?

A. Yes.

Q. What was his response?

A. He said yes.

Q. When was the next time you saw Mr. Auld?

A. The following night or I would say the same night. It was after 12 o'clock that night I ——

THE COURT: What was it?

THE WITNESS: V-J night was on the 14th and it was after 12 o'clock, which was the 15th, and I saw him the night of the 15th.

Q. What time?

A. Approximately 11 o'clock.

Q. I beg pardon?

A. Approximately about 11 o'clock.

Q. Where?

A. At the firehouse.

Q. 11 o'clock?

A. That's right.

THE PROSECUTOR: Will your Honor bear with me half a minute? I am laying the foundation for something and I am marking it all out.

THE COURT: Yes. We will recess for five minutes and the jury may leave the box.

(At this point a recess was taken.)

AFTER RECESS.

THE COURT: Mr. Palese.

MR. PALESE: If Your Honor please, as the jury was leaving the box, the Prosecutor exclaimed sufficiently loud enough so I could hear him, that somebody was going to jail. Now, if any of the jurors heard that remark, I am asking Your Honor to ask them to expunge that, if they heard it. It was loud enough for me to hear, and the jury were passing out, and I am sure some of them may have heard it.

THE COURT: If such a remark was heard by any member of the jury, that remark is not a matter of evidence in the case and should be expunged entirely from your minds. You may proceed, Mr. Prosecutor.

Q. When was it, Mr. Hulse, that you next saw Auld after the early morning of August 15th, 1945?

A. About eleven o'clock that night.

Q. And who was with you when you saw him?

A. We was at the Fire House continuing the party

THE PROSECUTOR: I move that that be stricken as not responsive.

Q. Who was with you?

THE COURT: It will be stricken.

A. My wife was with me.

Q. And where was it that you and your wife saw Mr. Auld?

A. At the Fire House.

Q. Where is the Fire House located?

A. Back of Henney's Cafe in Bellmawr.

Q. Did you not go to Auld's house in the early morning of August 15th, 1945, looking for the defendant?

A. Yes, sir.

MR. PALESE: Just a moment, if Your Honor please. I object as to the form of the question: did you not go?

THE COURT: It is leading in its present form, Prosecutor.

THE PROSECUTOR: I will put it in the alternative, if the Court pleases.

Q. Did you or did you not go to Mr. Auld's house early on Wednesday morning, August 15th, 1945?

MR. PALESE: If the Court please ——

A. Yes, I did.

MR. PALESE: Just a minute. That is a leading question. He can ask the witness where he went the following morning, but he has put the question so it must be answered yes or no ——

THE COURT: It is leading, Prosecutor, and under the circumstances I will sustain the objection on that ground.

Q. Where did you go early Wednesday morning, August 15th, 1945?

A. I went to Howard Auld's home.

Q. Did you see the defendant?

A. No, sir.

Q. You had a conversation with his sister?

A. Yes, sir.

Q. Did you go to the Fire Hall in Bellmawr on Wednesday morning, August 15th, 1945?

A. Yes, sir.

Q. With whom?

A. My wife and Howard Auld's sister.

Q. Did you go somewhere else?

A. Yes.

Q. Where?

A. We went to the diner to eat, and then we went to Wayne's Twin Cedars, out near Clementon.

Q. Where did you first see Howard Auld after you had gone to the Twin Cedars, as you say?

A. We came back to the farm house and saw him there.

Q. You say, what time was that?

A. I would say approximately eleven o'clock or eleven-thirty.

Q. Did you talk with the defendant?

A. Yes, sir.

Q. And what did you say to him?

MR. PALESE: I object, if Your Honor pleases. We are now beyond the primary crime, and unless it has some bearing, I don't know, if Your Honor please, how he can ask what did you say to him, after the commission of a crime.

Q. Was your wife with you when you saw the defendant?

A. Yes, sir.

Q. At about eleven o'clock, as you say, on the evening of Wednesday, August 15th, 1945?

A. Yes, sir.

Q. Did you have any conversation with Mr. Auld, the defendant?

A. Yes, I did.

Q. What was it about?

MR. PALESE: I object, if Your Honor please.

THE COURT: Objection sustained.

Q. Now, when you saw the defendant, Howard Auld, on the evening of Wednesday, August 15th, 1945, did you notice anything about him?

A. Yes, I noticed he had some scratches on his face and hand.

Q. What part of his face?

A. Why, on his jaw.

Q. Right or left?

A. I couldn't say now.

Q. How many scratches?

A. I couldn't say how many.

Q. On which hand did he have scratches?

A. I don't recall.

Q. Would you say both hands?

A. Well, I didn't see both. It was one of them.

Q. Which one?

A. I couldn't say.

Q. Did you ask him about the scratches?

A. Yes, I did.

Q. What did you ask him?

A. I asked him where he got the scratches.

Q. What did he say to you?

A. He said he was in a fight with a British sailor in Camden.

Q. Was your wife there when this question and answer was given by Howard Auld?

A. Yes, sir.

Q. Then when you asked him that question and he gave that answer, what did he do?

A. I asked him to drink with me, and I turned around—I asked him if he would drink with me and he said yes, and I got talking at the bar and turned to look for him and I couldn't find him.

Q. Can you indicate by pointing to your face where the scratches were?

A. On the face, I don't know which side. It was right around there (indicating).

THE COURT: The witness points to the right side of his face and rubs up and down.

Q. Can you indicate by your hands, Mr. Hulse, where the scratches were?

A. Just like this.

THE COURT: Where?

THE WITNESS: On the knuckle.

Q. When did you next see the defendant?

A. I haven't seen him since then until this morning.

Q. Now, I understand, Mr. Hulse, about a week before V-J night you and the defendant were in a seashore resort together.

A. That's right.

Q. Where was that?

A. Beach Haven.

Q. Did you sleep in the same bedroom?

A. Yes, sir.

Q. Did you notice how he was dressed on that occasion?

A. Why, yes.

Q. Did you notice in particular the shorts he had on?

A. Yes, I saw his shorts when we got undressed.

Q. When, after that occasion, did you next see the shorts that the defendant was wearing a week before V-J night?

A. At my house.

Q. In what part of your house?

A. In the bathroom.

Q. When was that?

A. The detectives had us down to Wildwood, I think it was on a Saturday morning, I am not sure of that, and we came back late that night, and the next morning my wife went to empty the receptacle in the bathroom and the shorts were there.

Q. Did you recognize the shorts?

A. Yes, I did.

Q. Were the shorts in any way discolored?

A. There seemed to be spots on them.

Q. Spots of what?

A. I couldn't make out what it was, but it looked like blood.

Q. Were there a lot of spots that appeared to be blood?

A. I didn't look them over that good.

Q. What did you do with the pants, or shorts?

A. We had called your office—I talked to—it was Jim Mulligan, I believe it was him—I am not sure now—and he said to forget about it, to disregard it.

Q. Captain Mulligan said that?

A. That's right.

Q. To you?
A. To my wife.
Q. To your wife?
A. Yes.
Q. Did you listen to the conversation?
A. I was with her when she called him up.
Q. You heard her talk to Captain Mulligan?
A. That's right.
Q. Wasn't it Mr. Mitchell she talked to?
A. It may have been, I am not sure.
Q. Do you know where the shorts are today?
A. No, we looked for them and couldn't find them.
Q. But you are certain they were Mr. Auld's shorts?
A. They were G. I. shorts.
Q. Had you seen them before?
A. Well, I have seen shorts similar to them on him; I can't say whether or not these were the same ones, I couldn't swear to it.
Q. Were they the same pair you saw the week before in Beach Haven?
A. They were the same kind.
Q. They weren't yours?
A. No, they wasn't mine.
Q. When was it, Mr. Hulse, that you saw or determined that your residence had been disturbed somewhat?

MR. PALESE: As to what?

THE PROSECUTOR: I withdraw the question.

Q. When was it, Mr. Hulse, that you determined that some milk had been taken from your home?

MR. PALESE: I object to that, if Your Honor please. What has milk got to do with this case? The

question is when was it that you determined that some milk had been taken from your home.

THE COURT: I will overrule the objection and allow the question subject to its being linked up.

MR. PALESE: If Your Honor please, then the damage is done after the question gets in, and if it proves that it is not relevant. If Your Honor please, how can we gamble or guess, and if the witness is permitted to give an answer and then Your Honor says it is immaterial. I think the harm is done. I think we should hear what the purpose is.

THE COURT: What is the purpose, Mr. Prosecutor?

THE PROSECUTOR: During the absence --I don't want to prejudice the minds of the jury. I could tell it to Your Honor in chambers.

THE COURT: Do you want it heard at side bar?

MR. PALESE: I want it heard right here.

THE PROSECUTOR: During the absence of Mr. and Mrs. Hulse from their home, someone entered, drank some milk and beer and cooked a steak. I understand from the statement of this witness that they have concluded that it was none other than the defendant. Now, from that ——

THE COURT: I will hear you, Mr. Palese.

MR. PALESE: I object. How can these people conclude that because the milk had been taken out

of their home, that the defendant had been there? I object to the question.

THE COURT: The objection will be overruled.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed. You may examine, Prosecutor.

Q. Will you answer the question?
A. Will you give me the question again?

THE COURT: What is the question?

(Question repeated as follows: "When was it, Mr. Hulse, that you determined that some milk had been taken from your home?")

A. Why, it was the next morning, but it wasn't milk.
Q. When you say "the next morning", what do you mean?
A. We came home with Captain Mulligan and the other detectives from the shore. They had us down to Wildwood. And I had three quarts of beer in the refrigerator. I asked the children if they had drank it, and they said no. I couldn't find the empty bottle. So that morning my wife had emptied the receptacle in the bathroom and this pair of shorts fell out. Then we pieced it together ——

MR. PALESE: If the Court please, I object to this witness giving that answer. That is only what was in his mind with respect to this case.

THE COURT: So far as conjecture or conclusion in the witness's answer are concerned, the answer will be stricken.

MR. PALESE: That I have no objection to.

THE COURT: Will you read that part of the answer, please?

(Portion of answer read as follows: "So that morning my wife had emptied the receptacle in the bathroom and this pair of shorts fell out. Then we pieced it together ——")

THE COURT: The answer from "Then we pieced it together" will be stricken.

Q. Mr. Hulse, in Henney's cafe, or at the Fire Hall, did you see the defendant, Howard Auld, with a red celebration hat on which had a feather in it?

A. Yes, sir.

THE PROSECUTOR: That's all. Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Hulse, prior to the discharge of Mr. Auld from the service, you didn't know him, is that correct?

A. No, sir.

Q. When did you first know Mr. Auld?

A. I met him in a saloon down in Blackwood.

Q. With respect to V-J Night, which we say was August 14, when was your first meeting with Mr. Auld?

A. I had known him three days before that and we had been down to the shore.

Q. So you became acquainted with him about three days prior to August 14?

A. Yes, sir.

Q. And had never seen him prior to that time?

A. No.

Q. Did you know his family prior to that time?

A. No, I didn't.

Q. So that as a result of meeting him in this bar room or tap room about three days before V-J Night you and he went to the shore?

A. Yes, sir.

Q. And you went to Beach Haven, did I understand you to say?

A. Yes, sir.

Q. Did you have a home up there or a hotel, or what?

A. We were with friends. They had a cottage down there. My wife and I had friends with a cottage down there.

Q. Did your wife accompany you and Mr. Auld to Beach Haven?

A. Yes, sir.

Q. Did you and Mr. Auld occupy the same bedroom in this place at Beach Haven?

A. Yes, sir.

Q. And that's when you saw him wearing a GI undergarment or trunks?

A. It was during the day I noticed it when he was changing into a bathing suit.

Q. What color were the trunks he was wearing that you saw?

A. They seemed to be a faded brown.

Q. A khaki color, would you say?

A. Yes, a light khaki color.

Q. Have you seen similar underwear prior to that time?

A. Yes, I have seen similar underwear.

Q. Then do I understand you that this evening that the prosecutor talked to you about is when you saw an undergarment in your pan in the bathroom, is that where it was?

A. Yes, sir.

Q. And that was a pair of what?

A. A pair of shorts.

Q. What color?

A. They were pretty well faded. It was between a light tan and a white. I would say a dirty white.

Q. Would you say they looked somewhat similar to the underwear you saw Mr. Auld wearing?

A. It looked similar to it.

Q. That's as far as you can go, looked similar to that?

A. Yes, that's as far as I can go.

Q. How long did you remain with Mr. Auld at Beach Haven?

A. We were down there Saturday night until Sunday night, or Saturday afternoon, we left until Sunday night, and him and I were still together Monday.

Q. Then by appointment you met him on Tuesday, August 14th?

A. Yes, sir.

Q. That's what we know as V-J Day?

A. Yes, sir.

Q. Where did you meet him by appointment?

A. I came up to his house that morning.

Q. Had you been to his home prior to that time?

A. I went up to his home before we went down the shore, while he got dressed. He had left and went to his home and I stopped to dress and went up and picked him up.

Q. You met him at his home that morning, and after that you met him?

A. I met him that afternoon after I met him in the saloon.

Q. We are talking about V-J Day.

A. V-J Day.

Q. When was it you saw him on that day, and where?

A. I don't recall whether I went up to his house, or whether he came down to mine.

Q. You did see him?

A. Yes, sir.

Q. The time was what?

A. Around ten o'clock, I guess.

Q. And did you remain in his company until you went to Henny's, or were you there any time during the day?

A. No, we stayed together all day.

Q. After you met him where did you and Mr. Auld go?

A. We started for Philadelphia, and we decided when we got to Camden not to take the job that I had offered to me, and we decided to go into business for ourselves.

Q. Where was that decision made?

A. Broadway and Kaighn Avenue.

Q. How did you get from Bellmawr, your home, to Broadway and Kaighn Avenue?

A. Rode the bus.

Q. You got off the bus at Broadway and Kaighn Avenue, made your decision, and then where did you and Mr. Auld go?

A. We came back to Bellmawr, and went to Abe's Browning Lane Inn.

Q. How did you get from Broadway and Kaighn Avenue back to Abe's Browning Lane Inn, or whatever the name is?

A. By bus.

Q. Do you know what time it was you got the bus?

A. I would say approximately around three o'clock, something like that.

Q. What did you and Mr. Auld do in Abe's?

A. We went in and asked Abe if he would back us up, because we were going in business for ourselves, and he said he would.

Q. Did you stay in there for any length of time?

A. I would say about half an hour.

Q. While you were there a half hour did you and Mr. Auld do any drinking in there?

A. We had a few drinks, yes, sir.

Q. What did you have to drink?

A. I think we each had a shot and a beer apiece.

Q. What do you mean by a shot?

A. A whiskey and a beer apiece.

Q. That's what they call a boilermaker?

A. A boilermaker's helper.

Q. Was that the first drink that you and Mr. Auld had that day?

A. No, sir, we had been drinking several places before then.

Q. Where had you been drinking several places that day prior to the time you went to Abe's?

A. We stopped at a saloon in I think Mt. Ephraim and Kaighn Avenue, and then we stopped at another one up the street from that, before we got to Kaighn Avenue. We got off the bus at Mt. Ephraim and Kaighn and walked around the corner and had a drink in the saloon and we each one had a drink, and we got on the bus to go to Philly, and got off at Broadway and Kaighn, and didn't go to Philly.

Q. What did you have to drink at Mt. Ephraim and Kaighn Avenue?

A. I believe we only had beer there.

Q. Then where did you go after you and Mr. Auld left Abe's place on the Black Horse Pike?

A. We came down to my house and had dinner.

Q. You went to your home in Blackwood?

A. Yes, sir.

Q. How did you get from Abe's place to your home in Blackwood?

A. By bus.

Q. What time was it, Mr. Hulse, when you and Mr. Auld got to your home in Blackwood on Tuesday, August 14?

A. I would say approximately five o'clock.

Q. Who was home when you got there?

A. My wife and children.

Q. What did you and Mr. Auld do at your home?

A. We had dinner, and then we went back to his house.

Q. How long did it take to have dinner?

A. I think we got back to his house about seven o'clock, something like that.

Q. When you speak of his home, do you mean Mr. and Mrs. Auld, the parents' home in Bellmawr?

A. Yes, sir.

Q. And how did you get from your home to Mr. Auld's parents' home in Bellmawr?

A. I don't remember whether a friend of Howard's picked us up, or whether we came back on the bus then.

Q. Did you have anything to drink while you were home having dinner?

A. Yes, we had a few.

Q. By a few, you mean what? What did you drink, and how many?

A. I think we had two or three whiskies, that's all I had at home.

Q. How many drinks did Mr. Auld have?

A. We had the same.

Q. That's how many?

A. Two or three apiece.

Q. Whisky?

A. We had whisky, and Howard he was drinking brandy for a chaser, or rum, rather.

Q. How many rums did he use for chasers?

A. I think he had one with each whiskey he had.

Q. Then you went up to his parents' home in Bellmawr, and you say that was about seven o'clock?

A. Approximately, yes, sir.

Q. You heard the news, is that correct?

A. Yes.

Q. And then where did you and Mr. Auld go after you had heard the news?

A. We went on out on the fire truck.

Q. Where did you get on the fire truck, where was it?

A. Right at the fire house in the back of Henny's Cafe.

Q. Were there many others that got on the fire truck at the same time?

A. Yes, sir.

Q. How long did you and Mr. Auld remain on the fire truck?

A. I would say about a half an hour.

Q. Where did you go?

A. Just riding around the town.

Q. Then you came back to the fire house and where did you and Howard go?

A. We came back to the fire house, and him and I walked over to his mother's place, and we got my wife and Mrs. Auld and his sister and we went over to Henny's.

Q. How far is Henney's from where Mr. and Mrs. Auld, the parents, live?

A. Approximately half a block.

Q. When you got into Henney's did you see Mr. Auld have anything to drink?

A. Yes, sure, him and I were both drinking.

Q. You were drinking what?

A. We were drinking beer at that time when we first went in.

Q. You continued to drink there until when?

A. Until my wife missed her rings, she had left them over the sink, and she asked me if I would go down after them, so I asked Howard if he would go down with me, so we got out there, and there wasn't any transportation, and we thumbed it back home.

Q. Back to your home?

A. Yes.

Q. Were you successful in getting a lift?

A. Yes, we got a hop right away.

Q. When you got down to your home who was there?

A. I met the children on the corner. Howard took them in and bought them ice cream, and we walked up to the house and I put the children to bed.

Q. Do you have a daughter, Mr. Hulse?

A. Yes, sir, I have four.

Q. How old is your daughter?

A. The oldest one is seventeen.

Q. Is that your daughter, Barbara?

A. No, I have one Florence, and the next one is Doris.

Q. Did all of the children come in with Mr. Auld after they had some ice cream?

A. No, the next to the oldest one came back home with me, and I brought the children up, and Doris

put them to bed, and I made sure they were secure before we had left.

Q. After you checked the statement about the rings your wife had talked about, did you and Mr. Auld do any drinking on that occasion?

A. Yes, I had brought out this bottle of Gallagher & Burton, and this rum, and I left Howard sitting at the table, and told him to help himself while I went up and squared the children away, and I came down and we had three water glasses full.

Q. Three water glasses full of what?

A. Whiskey.

Q. When you had drunk that where did you and Howard go?

A. We were feeling pretty good then, and we hitch-hiked a ride back to the party again, back to Henney's.

Q. Were you able to get in Henney's?

A. We didn't try to get in there, because we went right into the fire hall, and then decided to go over to Henney's.

Q. Then did you finally get into Henney's place?

A. Yes, sir.

Q. You stayed there on that occasion for how long?

A. We stayed there it was nine, and I left before they had closed, before they got the warning to close, right shortly before.

Q. When you got the warning the place was closing did you and Howard go out?

A. We was in the firehouse when the warning came through. We had left there before the warning came to Henney's.

Q. When did you leave the firehouse?

A. When we couldn't get any more beer.

Q. While you were at the firehouse did you see Howard do anything?

A. Yes, we was drinking in there.

Q. What was he drinking at the firehouse?

A. Just beer.

Q. You then got an invitation, did you not, to go over to Mrs. Creek's home?

A. Yes, sir.

Q. Up until that time, did you know this girl, Rita, or Margaret McDade?

A. No, I never saw her before.

Q. Did you see her at any time before you got into the automobile?

A. I saw her and Howard talking by the Fire House, outside the Fire House.

Q. In what automobile did Howard and this girl get in?

A. We got into Creek's car.

Q. Were you also a passenger in the automobile?

A. Yes, sir.

Q. Do you know where Howard and the girl sat in the automobile?

A. Could not say offhand. It was in the back.

Q. What part, do you know?

A. Could not tell you that. I could just breathe.

Q. What is that?

A. I could just about breathe. They were piled in there so tight.

Q. Now, when you got over to the Creek home, when was the first time that you did see Howard and Rita talking together?

A. Well, I seen them talking at the Fire House. They were talking in the car. You could hear them cutting up, and Rita went into the bar. We had two or three cases of beer in the back of the car that Howard and I brought in, and I went down to

the end of the bar and he was talking to Rita and loving her up.

Q. You say you took some beer in the automobile?

A. Three cases.

Q. So that not only the passengers were in there but you also had some beer?

A. The beer was in the trunk.

Q. You say you and Howard enlisted in getting the bar out of the automobile into the cellar?

A. Yes, sir.

Q. After that was done, you say you saw Howard and Rita loving it up?

A. Yes, sir.

Q. Where were they when you saw that?

A. They were standing at the left hand side of the bar.

Q. In the basement of the Creek home?

A. Yes, sir.

Q. Were there other people there in the basement?

A. There was quite a crowd.

Q. How long did you see and observe Howard and Rita loving it up?

A. I wasn't paying much attention to that. I was talking to this officer back here.

Q. By the "officer," you mean Officer Auletto?

A. That is right.

Q. Was he in the cellar at the time?

A. Yes, sir.

Q. Participating in the celebration, I guess?

A. Yes, sir.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. You say you weren't paying much attention because you were talking to the officer?

A. That is right.

Q. Now, Mr. Hulse, isn't it a matter of fact that Mr. Auld's sister was alongside of you?

A. That is right. She was down there, too.

Q. What time did you return from Philadelphia?

MR. PALESE: On what day, if your Honor please?

THE COURT: Fix the day, Prosecutor, in your question.

Q. The early morning of August 14, 1945.

A. What time did we return?

Q. Return from Philadelphia?

A. Oh, around two thirty or three o'clock, something like that.

Q. In the morning or the afternoon?

A. In the afternoon.

Q. How did you go to Philadelphia?

A. Went up on the bus—we didn't go to Philadelphia.

Q. Oh, you didn't go to Philadelphia?

A. We went to Camden.

Q. Oh, I see, I see. Now, you got off at Kaighn Avenue and Broadway?

A. No, we got off at Mt. Ephraim and Kaighn.

MR. PALESE: If your Honor please, the Prosecutor has made him his witness. He is your witness and I think he is entitled to a little more respect.

THE COURT: Are you addressing the Court, Mr. Palese?

MR. PALESE: Yes, I am. This witness is his, produced by them. He has no right to put the question in his mouth.

Q. You went over to Philadelphia ——

THE COURT: I think I have a recollection of what was said and whose witness it is, Mr. Palese. Do you have any objection you want to make?

MR. PALESE: Yes, I object to the attitude of the Prosecutor.

THE COURT: The objection is sustained.

Q. How did you get to Philadelphia?

A. We didn't go to Philadelphia. I called Philadelphia.

Q. You now called Philadelphia?

A. That is right. You put that in my mouth, but I haven't been giving it a thought, the way you have been putting it.

Q. You thought of it now?

MR. PALESE: If your Honor please, he didn't think of it now. He thought of it before. He said he didn't go. I object to the question.

Q. I asked you what time you came back to Philadelphia.

A. I didn't think. I thought you meant Camden. I didn't think.

Q. Can you tell me any similarity between Camden and Philadelphia in pronunciation?

A. No, I am just telling you it was Camden and not Philadelphia. I had Philadelphia on my mind.

Q. You did say you had gone to Philadelphia?

A. I was going to Philadelphia.

Q. You did state you had gone to Philadelphia?

A. I didn't mean to say that.

Q. Now, you say you didn't go to Philadelphia, is that right?

A. I didn't go to Philadelphia.

Q. But, instead, you got off where, from the bus?

A. At Kaighn Avenue and Mt. Ephraim.

Q. At Kaighn Avenue and Mt. Ephraim?

A. Yes, sir.

Q. Now, then, where does Kaighn Avenue and Mt. Vernon come in?

A. Mt. Vernon?

Q. Well, I am asking you where Kaighn Avenue and Mt. Vernon comes in?

A. I don't know.

Q. You don't know?

A. No.

Q. Didn't you have a drink in a saloon somewhere at Kaighn Avenue and Mt. Vernon?

A. Mt. Ephraim.

Q. Didn't you have any at Mt. Vernon?

A. No.

Q. After you left the saloon at Mt. Vernon—I mean Mt. Ephraim and Kaighn Avenue—well, strike that. Didn't you get off the bus at Kaighn Avenue and Broadway?

A. That is right. We came back and got a bus at Mt. Ephraim and Kaighn and was going to Philadelphia, and we decided we were going into business for ourselves, and we got off at Broadway and

Kaighn Avenue. We got off that bus instead of going to Philadelphia.

THE PROSECUTOR: Let me have that answer, please.

(Above answer repeated: "That is right. We came back and got a bus at Mt. Ephraim and Kaighn and was going to Philadelphia, and we decided we were going into business for ourselves, and we got off at Broadway and Kaighn Avenue. We got off that bus instead of going to Philadelphia.")

Q. Where did you get off the bus?

A. Mt. Ephraim and Kaighn Avenue.

Q. So that you didn't get off at Broadway and Kaighn?

A. No.

THE COURT: Was that the first bus, Prosecutor?

THE PROSECUTOR: The first bus. I am sorry. It is the first bus I am referring to.

THE COURT: He said he got off at Mt. Ephraim and Kaighn Avenue.

MR. PALESE: I object to this line of examination.

THE COURT: The objection is sustained.

Q. Where did you get off the bus to go back to your home?

MR. PALESE: I object.

THE COURT: The objection is sustained.

Q. Was there a lot of joking going on down in the basement of Creek's?

MR. PALESE: I object, if your Honor please. This is re-direct examination unless the Prosecutor says he forgot to ask a question, and then I have no objection. I do not think it is proper re-direct examination.

THE PROSECUTOR: I will withdraw the question.

Q. Do you know where it was you met the man from Pitman, on this day?

MR. PALESE: I object.

THE COURT: It is not proper re-direct, Prosecutor.

THE PROSECUTOR: May I suggest to the Court at this time that we take our noon recess?

THE COURT: All right. We will recess now until 1:30.

(Recess taken until 1:30 o'clock P. M.)

AFTERNOON SESSION.

(Hearing resumed in the presence of defendant and the respective counsel.)

DR. WILLIAM T. READ, JR., sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Dr. William T. Read, Jr.

THE PROSECUTOR: If your Honor please, I am calling Dr. Read out of turn, according to my program. I would like to have the privilege of recalling Mr. Hulse, perhaps after Dr. Read has finished testifying.

THE COURT: You may.

Q. What is your profession?
A. I am a physician.
Q. Of what institution, or institutions, are you a graduate?
A. I am a graduate of the University of Pennsylvania Medical School.
Q. How long have you been practicing medicine?
A. Since 1931.
Q. With what hospital have you been connected?
A. The University Hospital in Philadelphia, the Cooper Hospital in Camden, the Philadelphia Gen-

eral Hospital in Camden, and at one time the Children's Hospital in Cincinnati, Ohio.

Q. How long have you been connected with the Cooper Hospital?

A. I worked at the Cooper Hospital from 1933 to 1937, and then again from 1939 to the present time, except for the period I was in the Army.

Q. Is there any particular branch of the medical profession that you specialize in, Doctor?

A. Yes.

Q. What is it?

A. Pathology.

Q. Pathology means what, sir?

A. Pathology is the study of diseases. So far as the hospital practice goes, I am in charge of the laboratory.

Q. Doctor, in your experience as pathologist and physician, have you had occasion to examine many dead—many bodies of dead people?

A. Yes.

Q. You have testified in court?

A. Yes.

Q. On about how many occasions?

A. I don't know, sir; many occasions.

Q. Well, roughly speaking, Doctor?

A. I still don't know. Twenty or thirty, anyway.

Q. Now, Doctor, did you have occasion to perform a post-mortem examination upon the body of one Rita McDade?

A. Yes.

Q. On what date did you perform that examination?

A. On the 19th of August, 1945.

Q. At about what time, sir?

A. It was in the evening. I got to the hospital

at seven thirty. I think the autopsy examination started around nine.

Q. What did your examination consist of?

A. I made an external examination of the body, and subsequent to that an internal examination to examine various internal organs.

Q. Now, Doctor, in so far as the external examination is concerned, what was disclosed as the result of your examination?

A. May I refer to my notes?

Q. You may, sir—just one moment. The notes you have in your hand, Doctor, were they made at the time you performed the post-mortem examination?

A. They were made from notes I made at the time and dictated, perhaps a day or two later. The external examination revealed that the body was that of a young white female about twenty to twenty-five years of age. It was considerably decomposed. The hair was dark brown, fine, and matted together with sewage material, in which were fragments of paper resembling confetti. The body was about five foot two inches in length. Skin of the hands was wrinkled, such as you see after being immersed in water, and the skin was loose. The skin was also loose about the face and arms, and also to the lowest extent on the body and on the legs. The face and the upper chest were distended with gas and had a mottled reddish-green color. The hair on the head was still in place but could be removed easily because of the disintegration. The eyes bulged considerably on opening the lids, and there was sufficient disintegration of the eyes that the color of them could not be determined.

We noted a laceration or cut of the left side of the lower lip and the left side of the tongue. The

tear of the lip was about a little over one inch long. There were abrasions, that is, bruises and scratch marks of the entire left side of the body. A definite bruise was noted on the left mid-side region slightly lateral and anterior. Scratch marks were noted on the inner aspect of her right thigh, just below the external genitalia, or her private parts. It was a contusion, that is, a bruise, of the left side of her private parts, and a small tear of the right side of her private parts. There was also a tear with recent hemorrhage noted in the hymen, that is, the membrane which is inside the opening of the genital tract. The hymen also showed an old laceration. Rigor mortis, that is, the stiffness that occurs after death, was still slightly present in the calf muscles of her legs.

We examined her mouth and found that the teeth were in fairly good condition, but the two center teeth were loose, and then we noted the following teeth were missing—apparently they had been extracted some time previous. They were healed. We did that for the purposes of identification. I do not think they are necessary unless you want them read. We noticed that the wisdom teeth were present in the lower jaw but had not yet come through in her upper jaw. That constituted the external examination.

Q. Well now, doctor, will you tell us what your internal examination disclosed and what parts of her organs or her body did you examine internally?

A. We examined most of the viscera, some of them by microscopic examination as well. On opening the body, gas escaped from the abdominal cavity. That was due to decomposition. The organs generally were in their normal position. There was a small amount of bloody fluid in her chest cavi-

ties. The heart was flabby, due to degeneration, and contained no blood, which is usual after sufficient decomposition. The lungs showed a very severe congestion and old adhesions at the left lung—at the right lung—excuse me. When we opened the bronchus, or the tube coming off the windpipe leading to the lungs, we found in the one on the left side a small piece of brownish material. It looked like chewing gum but it was much harder than chewing gum, and the surface of the bronchus was congested as well as the rest of the lung, had a dirty brown material. The liver also showed congestion, as did the spleen. The adrenal pancreas showed too much degeneration to evaluate, and the kidneys showed, from the congestion, a degeneration. The stomach contained a few particles of apparent food material. The bladder showed nothing of importance. Between the aorta of the hymen blood vessel of the body showed stain due to decomposition of the blood. The genital organs, the internal genital organs, uterus and so on, was entirely present. The womb was of itself normal size. We measured it carefully and found that the opening of the womb, the lower opening, measured about 1.2 cm. That is about three-quarters of an inch in width. The ovaries showed nothing of importance. We did try to establish at about what stage she was between her menstrual periods, for purposes of identification. There was no evidence of pregnancy. The brain also was examined and when we removed the skull there was hemorrhage in the left temporal muscle, which is in the muscle lying just under the skin, on the left temple area. There were no fractures of her skull.

Q. Doctor, pardon me just a moment. Prior to going into your diagnosis, will you tell us the re-

sult of your microscopic examination of the kidneys?

A. Well, in the microscopic examination of the kidneys we saw severe degeneration of the kidney tissue and there were clumps of bacteria seen after death in decomposition. Is there anything else you want?

Q. No. You may now go into your diagnosis.

A. There are notes I made at that time and I will read it, if I may. Due to the absence of fractures and presence of rather severe congestion of the lungs, liver and spleen, it is felt that the most likely course of events was that the individual was in a state of shock due to the multiple contusions and lacerations and could well have been unconscious due to concussion of the brain which might not leave any anatomic changes to be seen at autopsy. If the body was dropped into the sewage matter, death may not have occurred until suffocation would take place beneath the surface of the sewage material. The signs of trauma about the external genitalia make it seem most probable that the woman had been raped.

MR. PALESE: If your Honor please, I ask that the last word be stricken from the record. The doctor cannot, as part of his diagnosis, say that the external genitalia made it most probable that the woman had been raped. There is no such thing as rape except in the legal definition of the act of intercourse, as I understand it, or carnal abuse. The doctor is using the word "rape," which means having intercourse with a person against the wish or desire of the female. How can this doctor say that that happened at that particular time?

BY THE COURT:

Q. Is that the opinion you formed from your examination, doctor?

A. If your Honor please, I think I should have worded it, "It seems most probable that the woman had been raped or rape had been attempted." That must be my opinion because of the very definite and rather severe injury to her private parts.

MR. PALESE: I would like to ask the doctor one question.

THE COURT: Yes.

BY MR. PALESE:

Q. Doctor, what is rape?

A. Well, you know the definition legally better than I do.

Q. What is rape, doctor?

A. As I understand rape, it is the attempted intercourse in which at least the male member must be introduced between the vulva. Whether there is actual completion or not I think is not necessary.

Q. Is there any difference, doctor, between carnal abuse or carnal knowledge of a female and rape?

A. It must be against her will.

Q. How do you know it was against this female's wishes and will?

A. It is only due to my definition of the injuries.

MR. PALESE: I ask that it be stricken from the record.

THE COURT: I will deny the motion.

MR. PALESE: May I have an exception?

THE COURT: Yes.

(Exception noted for defendant.)

BY THE PROSECUTOR:

Q. Is there anything else you want to add to your statement, doctor?

A. In my paragraph on the diagnosis I said there was, because of the severe congestion of the lungs, and because I thought the injury not sufficient in itself to have killed her, that she died of suffocation. I should add to that as well the finding of foreign materials, brown material, in her bronchus tubes leading to the lungs also indicated she had been submerged before she was dead.

Q. Doctor, you said something about fresh hemorrhages or recent hemorrhages—I beg your pardon. What do you mean by that?

A. Are you referring to recent hemorrhage noted in the hymen?

Q. That is correct, sir.

A. I mean it was a very fresh injury. Blood, recognizable blood, was present. Compared to other lesions on her body, and with a permanent injury there of short duration, I would say not over a period of hours.

Q. Doctor, you also said that the hymen had showed old lacerations. Can you describe that to us?

A. I must refer to my notes. I cannot remember it in detail and I think I will have to take it at that, they were old lacerations of the hymen present.

Q. Does that indicate anything, doctor?

A. It indicates that the hymen has been injured.

Q. In your opinion, doctor, does that of necessity mean that previous pregnancy or intercourse had taken place?

A. You cannot establish either previous pregnancy or intercourse because you see an old laceration or injury to the hymen.

Q. Doctor, what was there generally speaking of the cervix?

A. I have noted here that the opening of the cervix, that is the lower end of the womb, measured 1.2 cm. I have 1.2 cm. That is about three-quarters of an inch.

Q. Was that of normal size?

A. That is larger than normal.

Q. How do you account in this particular case for the difference?

A. Well, the opening of the womb was examined carefully again for purposes of identification and we noted this was somewhat larger than normal, it was slightly irregular. The idea of the examination was to decide whether or not she might have been a married woman who had had a child or not. The size of the opening of the womb might indicate that she had had a child. It might, however, have been due simply to the post-mortem degeneration with the loss of elasticity of the tissues.

Q. You say it could have been due to the post-mortem change that had taken place which affected the elasticity of the tissues?

A. Yes.

Q. Would you explain that to the jury, doctor?

A. All of the organs were quite degenerated, as I have already mentioned, for instance, I think I said the heart was quite flabby. With degeneration after death of the tissues, most of the tissues become soft,

they are sometimes even easily separable when you pick them up, so it is possible this opening into the womb was wider because of the relexation due to the post-mortem change, the change following death.

Q. Doctor, you also examined the uterus, I understand?

A. Yes.

Q. Did you determine its size?

A. I haven't the measurements down here but I think the uterus of the woman is of normal size.

Q. That would indicate what, doctor?

A. We could find nothing wrong, abnormal, with the uterus, again considering whether she might have had a child or not. It is very frequent after pregnancy the uterus is slightly larger than normal.

Q. Her uterus was not slightly larger than normal?

A. No.

Q. Doctor, in your opinion, what was the cause of death?

A. I think death was probably due to suffocation, and contributing causes are multiple contusions, bruises, and lacerations of the body, and shock.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Doctor, did you make a statement following your autopsy as to whether or not, in your opinion, this girl had borne a child?

THE PROSECUTOR: I object to the question

because it is not proper cross-examination. It was not brought out on direct examination ——

MR. PALESE: As to pregnancy ——

THE PROSECUTOR: I am entitled to a little bit of courtesy.

THE COURT: All right, Mr. Prosecutor.

THE PROSECUTOR: As I understand it, cross-examination must be confined as much as possible to the matters divulged on direct examination. This witness was not asked whether he had made a statement to anyone, and if he did, what would be the difference? It would be incompetent, irrelevant and immaterial evidence at this stage of the proceedings. And for two reasons I object. First, it is not proper cross-examination because not brought out on the direct examination, and second, it is incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

A. May I have the question, please?

Q. Will you please read the question, Mr. Stenographer?

(Question repeated as follows: "Doctor, did you make a statement following your autopsy as to whether or not, in your opinion, this girl had borne a child?")

A. If my memory is correct, I only made one statement. That was to Mr. Dube. I have a note on the bottom of the autopsy record here, I will

read that and will tell you the statement I made to Mr. Dube, if you wish.

Q. You have answered the question as to whether you made that statement. That's what I am interested in, in any statement you made.

THE COURT: The witness is entitled to have the time and the place of the statement to which you refer fixed, and he is attempting to do that. Do you mean at any time or any place?

MR. PALESE: Following the autopsy that the doctor made.

THE COURT: That could cover any period from August 19th up to date.

MR. PALESE: I am entitled to that. That's what I want the doctor to answer.

THE COURT: Repeat the question, then.

(Question repeated as follows: "Doctor, did you make a statement following your autopsy as to whether or not, in your opinion, this girl had borne a child?")

THE PROSECUTOR: May I interject, to whom?

THE COURT: To anyone at any time, from August 19th until today.

A. That is somewhat difficult to answer, Mr. Palese. I think if I may say this, I should say this, I don't think that I have stated that the woman had had a child.

Q. Doctor, I am going to read what appears in the public press and ask you whether or not you made this statement, "That Dr. William T. Reed, Jr., ——

THE PROSECUTOR: I object to this. This is not proper cross-examination, something that appeared in the public press ——

THE COURT: Just a minute. I will hear you at side-bar.

THE PROSECUTOR: For the purpose of the record I will withdraw the objection and Mr. Palese may examine Dr. Reed with any questions he desires at this time.

MR. PALESE: I ask that that last remark be stricken from the record.

THE COURT: That will be stricken.

MR. PALESE: Now, how far had I gotten with my question.

(Question repeated as follows: "Doctor, I am going to read what appears in the public press and ask you whether or not you made this statement, 'That Dr. William T. Read, Jr.' ——?")

Q. —"Chief Pathologist at the Cooper Hospital indicated the girl had borne at least one child." Is that statement, was that statement or was that indicated by you following the autopsy examination?

A. I made no statement to the press at any time.

Q. Did you state to anyone that the autopsy ex-

amination made by you indicated that Miss McDade had borne at least one child?

A. I will be glad to tell you, I think accurately, my statement to Mr. Dube, if you wish.

Q. You can answer that question did you or did you not make it to Mr. Dube?

A. A statement that she had had a child?

Q. No, that the examination you made of this girl indicated to you that the girl had borne at least one child?

A. I don't believe I ever made such a statement.

Q. Now, doctor, the irregularity of the os indicates what ordinarily in medical parlance?

A. The opening of the uterus, the external os, if it is irregular in size and shape may indicate several things.

Q. Ordinarily, what does it indicate?

A. The most frequent cause of enlargement and tearing, if that is what you mean, is usually pregnancy and bearing of a child.

Q. The irregularity of the os indicates what to a medical man or a pathologist in making an autopsy?

A. Irregularity is a very general term. You could have erosion of the cervix which would show a diseased process, infection of the cervix. All these things would cause it to be irregular.

Q. But, Doctor, one of the main signs of an irregular os is the fact that the girl may have borne a child, isn't that one of the usual diagnoses, if I may use that word, may, that a pathologist will make an autopsy that irregularity of the os indicates that the woman may have borne a child?

A. I think I have answered that. Irregularity is too general a term, and I think I have stated that

enlargement and laceration would most probably be caused by child bearing.

Q. In your autopsy why did you make mention of the fact that the external os is somewhat irregular in size and measured 1.2 centimeters in width, why did you make that observation?

A. That was made because Mr. Dube asked me particularly if this woman could have had a child, and we examined very carefully for purposes of identification the womb to try to establish whether she had or had not borne a child.

Q. Doctor, you now state that the reason why you did this was because your attention was directly called to it by a member of the police force to measure the external os of this girl, is that correct?

A. Yes.

Q. For you to make a special note of it?

A. Yes.

Q. Do you ordinarily in your autopsy make such an observation if your attention has not been particularly called to it?

A. We observe all the organs in the autopsy, and I think we may examine or we may not examine every one so carefully.

Q. Doctor, ordinarily, what does a laceration of the hymen indicate to a doctor that performs an autopsy?

A. That the hymen has been torn.

Q. And ordinarily, what is the cause in laceration, the cause of laceration of the hymen?

A. Well, there are many causes. Naturally, the one we think of most is sexual intercourse.

Q. In this case, Doctor, would you say that the old lacerations that you found upon your autopsy were not due to prior acts of intercourse?

A. May I have that question again?

(Question repeated.)

A. Would I say they were not due to intercourse?

Q. That's right.

A. I can't say what they were due to.

Q. What is your opinion that they were due to?

A. I wouldn't say that because for one case I wouldn't know, in the number of cases I can only tell you that sexual intercourse is the most probable cause.

Q. What in your opinion is the most probable cause of the old laceration of the hymen that you observed upon your autopsy?

A. I think the most probable cause for laceration of the hymen is sexual intercourse.

Q. Doctor, considering the autopsy that you performed on August 19, 1945, what is your opinion of the most probable cause of the lacerations of the hymen that you observed, the old lacerations of the hymen?

A. Probabilities all depend on a number of cases; as to a specific case, I can't tell you.

Q. You don't even have an opinion as to the probable cause of the lacerations you observed in the autopsy?

A. I have told you in the number of cases the most frequent cause is sexual intercourse, in any one case I can have no opinion.

Q. Why do you eliminate the most frequent cause in this case?

A. I don't eliminate it.

Q. You did not give us your proximate opinion.

A. I have not as to the actual cause in this case.

Q. I don't want the actual cause. I want the probable cause.

A. The probable cause depends on a number of cases, not on any one case.

Q. Now, Doctor, you have stated in your opinion that you found some foreign substance in the lungs, is that correct?

A. That's correct.

Q. And you mean by that this brown material that you thought was chewing gum?

A. That appeared to be chewing gum, had the appearance of chewing gum.

Q. You found no other material in the lungs, or in the bronchus, either bronchus, either side of the lungs, other than this brown material which you thought was chewing gum?

A. This particular fragment was relatively large. The cover of the bronchus, the mucous membrane had a very dirty brown color.

Q. When you speak of that matter, do you mean what you thought was chewing gum?

A. The dirty brown matter is not what I referred to as the individual piece of material.

Q. Doctor, look at your notes, if you will, and read what you have there in your notes with respect to the lungs.

A. Yes.

Q. Will you read it, please?

A. Both lungs present severe congestion and there are fibrous adhesions about the right lung. On opening the left bronchus, a small piece of light brown material is present. It is possible that this represents chewing gum, although it is rather hard in consistency.

Q. And Doctor, do I understand, I understand that that is the only foreign material that you found in the, in either lung, or in the bronchus?

A. That was the only foreign article I could handle, yes.

Q. I didn't get the last of your answer.

A. That I could handle.

Q. What do you mean by that?

A. I mean, that in addition to the piece that I have described, the lining of the bronchus was a dirty brown. It could very well represent sewage water that might have been in there. I couldn't say so, and I didn't put it in my description.

Q. Doctor, in making up your autopsy report, wouldn't that be the place to show this information as to this material that you may or may not have found, or the material that you did find, in the lungs? Where do you have that in your autopsy report that has been testified now that there may have been some other material that you couldn't handle? Where do you have that in your autopsy report?

A. I didn't think it was important, since I couldn't identify it as any matter, so I did not put it in my report. The foreign body that I referred to is the body mentioned here.

Q. And the foreign body is this substance you think was chewing gum?

A. It had the color of chewing gum.

Q. Did you have an expert examination made of this particular matter that was found in the bronchus?

A. I took it out and showed it to Dr. Costanzo and we both described it as having the color of chewing gum, but being harder than chewing gum so we thought it was not. We did not have a chemical examination made.

Q. What happened to it?

A. I believe I turned it over to the detectives but I may still have it.

Q. In your opinion, did the finding in the lung of this material play any part in the cause of death?

A. Only as part of my opinion in showing in-

spiration of foreign matter. It did not affect or cause death.

Q. The material lodged there where you found it you say would not play any part in the death?

A. That particular piece of matter I think was of little importance.

Q. What, Doctor, if I understand your diagnosis and opinion correctly, what foreign material played any part in the cause of death of Miss McDade, if any?

A. I think I have described that the head and upper chest showed a rather marked degree of decomposition. There was a fairly sharp line between the decomposition of the head and upper shoulders, and the rest of the body, and from that I presume that the head and upper shoulders had been submerged some time. We have this sewage material, naturally, if they were submerged and the woman was living at the time, the foreign material in the sewage well would be what would cause her death.

Q. Doctor, then if I understand you correctly, if there was any life in this girl when she was thrown into the cistern, and that if her face, or mouth, or respiratory organs, were submerged in the sludge or material, that part of that material would be found in her lungs or bronchus?

A. Yes.

Q. You couldn't find that?

A. I found this one piece.

Q. I say, you couldn't find anything else, you didn't find anything in the lungs or the bronchus of this girl other than a piece of material, hard in substance, that you thought looked like and was chewing gum?

A. That is correct, other than the brown staining I have described.

BY MR. PALESE:

Q. I am going along with you, Doctor, to that extent, I understand from you that this other material in color, and whatever you described, played no part?

A. No significant part.

Q. No significant part in the death of this girl, so we can eliminate that, and we get back to the beginning. If this girl had any life left in her, and she was submerged, as you think she was, although the facts doesn't state that in this case, that you think that she was on her face and nose and mouth were submerged in this sludge or sewage, that part of that would be found upon autopsy in her lungs or bronchus?

A. You don't have to find an including amount of water in the lungs or in the bronchus to cause suffocation.

Q. That is true, Doctor, if the submerged is so deep that there isn't opportunity of getting air. In other words, if a person is dropped in the mud, with their head in the mud, then, of course, you don't have the opportunity of pulling into the lungs and bronchus any of the parts or sludge or dirt or whatever material the head may be submerged in, is that correct?

A. I don't think that it is.

Q. Drowning, a person alive, going overboard and drowning, it has water in the lungs, isn't that correct?

A. Usually has some, not necessarily.

Q. Ordinarily, drowning people that go over alive,

and brought up, have water in the lungs and in the bronchus?

A. Not necessarily.

Q. Ordinarily, Doctor?

A. All right, ordinarily.

Q. You look, do you not, for persons drowning, submerged under water, when the person is brought up you will look for water in the lungs?

A. We look for it, it's not easy, it's difficult to see, and we can establish the cause of death by other means.

Q. That's providing you think the person may have died as a result of diving overboard and was dead before he hit the water?

A. That is not the only explanation.

Q. Isn't that the explanation, that a person diving overboard, by reason of the fright and shock may die before they hit the water, and then you would not find any water in the lungs or bronchus?

A. That's one explanation, it's not the only one.

Q. Is your opinion in this case that the girl died of suffocation based upon the fact that her face and head was submerged in sludge or sewage after she had been dropped into the cistern?

A. My opinion must take in much more than that.

Q. Is it based upon part of that?

A. That is in part.

Q. Where did you get the information, Doctor, that the face and head of this girl had been submerged entirely in sludge, if you can call it that, and sewage?

A. I was told, I believe, by the detectives that brought her in, that the upper part of her body was in sewage. I don't know that they described it in detail. I also made my opinion from the fact

that the decomposition was so much greater on that part of her body.

Q. Assuming, Doctor, that her head and her face was not submerged in sludge and sewage, but that the sewage or the water coming out of the intake pipe, if we may call it that, just flowed over her head, then would your opinion be the same as to the cause of death?

A. In your hypothetical description would it have been possible for that water to have gotten into her mouth or nose?

Q. It flowed over her head, Doctor, coming in from the pipe, and her head was up against the intake pipe, and the water flowed over her head and down over her mouth and nose, going down into the tank?

A. In your description could water have gotten into her nose and mouth?

Q. No, with suffocation, would suffocation be the cause of death?

A. If water could have gotten into her nose and mouth, and she was unconscious, that could have caused suffocation.

Q. Where do you get the information in this case, and upon what do you base your opinion, that this girl was unconscious when she was thrown into the cistern?

A. As I understand the description, had she not been unconscious, the chances are she could have gotten out of it, is that true?

Q. Who was helping you in giving you this information in this case? I am assuming, Doctor, that when a pathologist performs an autopsy that he doesn't ask the prosecutor's office to go in and get information from them, and then gets a request from the prosecutor's office to particularly

call your attention to the size of the os. That is not the usual way a pathologist performs an autopsy, is it, Doctor?

A. Absolutely, any diagnosis whether on a live person or a dead one, we must have at hand all the information possible so we may add it to all the findings to come to the most probable diagnosis, whether it's a living person or dead.

Q. Who, Doctor, gave you any information at all that led you to believe that this girl was unconscious when she was thrown into the cistern?

A. All the information that I had in the case before I made my report was obtained, I believe, from Mr. Dube, and Chief Doran and Coroner Gardner.

Q. What information did you get from Mr. Dube that led you to believe that this girl was unconscious when she was thrown in the cistern?

A. I don't know that I had any direct statement from Mr. Dube. I am sure he made no conjecture as to whether she had been living or dead, or unconscious or conscious when she went into the well, but I asked them to describe the well to me, and I must depend, as I say, on the other findings at the autopsy as to what I thought most likely happened.

Q. Then I take it, Mr. Dube didn't give you any help?

A. He described the well to me.

Q. Was it Mr. Dube that told you that the head had been submerged in sludge?

A. I was talking with Mr. Dube, Mr. Doran, and Coroner Gardner. What items of information each gave me I do not remember at this time.

Q. Did either one of the three, Mr. Gardner, the coroner, Chief Doran of the Prosecutor's office, or Mr. Dube, of the prosecutor's office, did they give

you information that the head and the face of this girl had been submerged, and when we say submerged, Doctor, I assume that you ——

THE COURT: He utilized that information.

A. I believe the upper part of her body was submerged in sludge, and that was part of the reason that I came to my diagnosis.

Q. You believed it because you got information from someone?

A. That is correct.

Q. If that isn't so, and as I have asked you before, if that isn't so, that her head was not submerged in sludge as the testimony has been in this case now, would your opinion be the same today?

A. I still think she died most likely of suffocation, yes.

Q. That's as far as you will go, most likely of suffocation?

A. That's my probable diagnosis.

BY THE COURT:

Q. That is based on the assumption that her head was not submerged in sludge?

A. Even so.

BY MR. PALESE:

Q. With that information, as the Court has asked you, the most that you will say is it is most likely?

A. In this case I can't put down probable diagnosis, that is my diagnosis of the probable cause of death.

Q. Isn't it unusual in an autopsy to have a prob-

able cause of death, it's rather unusual, isn't that so?

A. No.

Q. It is not?

A. No.

Q. Is medical science so far behind that you can't tell the cause of death?

THE PROSECUTOR: I object to that question as argumentative.

THE COURT: Will you let me hear the question?

(Question repeated.)

THE COURT: Sustained.

Q. As a medical man, experienced as you are in the performance of autopsies, you now say in this particular case the best that you can give us is most likely she died of suffocation?

THE PROSECUTOR: I object to that on the ground that it is repetitious, and I think it has been answered five times.

THE COURT: I will allow it, it is cross-examination.

THE WITNESS: May I have the question again?

(Question repeated.)

A. Yes.

Q. I am going to call your attention again to

your notes, won't you please look in your notes and see if you don't have this among your notes, that the possibility of a previous pregnancy is considered due to the wide external os of the cervix. Do you have that in your report?

THE PROSECUTOR: I object to it. That is very unfair. I think that the whole paragraph should be read, and not one sentence of the paragraph, in order to create a different impression and thought other than what is contained in the paragraph, which consists of four lines.

THE COURT: This is cross-examination.

MR. PALESE: Will you repeat the question?

(Question repeated.)

A. Yes.

Q. What do you mean by that, Doctor, if it is in your notes, that the wideness of the external os indicates the possibility of a previous pregnancy. How do you eliminate that from this case?

A. May I read the rest of the paragraph?

Q. Yes, you may do anything to answer the question.

A. The paragraph goes on to say "It is possible, however, that post-mortem change distorted the tissue elasticity. This point has no bearing on the cause of death but is only considered for purposes of identification."

Q. I see that, Doctor, but as part of this case I would like you to answer the question, and the question is not whether it applies to the cause of the death, I am asking you to state why you say

that the possibility of previous pregnancy is considered due to the wide external os of the cervix. Suppose you do say in your next paragraph ——

THE PROSECUTOR: He doesn't.

THE COURT: A characterization of that kind is objectionable.

Q. You said, Doctor, immediately following that "It is possible, however, that post-mortem change distorted the tissue elasticity." Why do you endeavor to explain the reason for the wideness of the external os of the cervix?

A. I think I have already answered that, at the request of Mr. Dube, as to whether or not the woman may have had a child.

Q. Mr. Dube of the prosecutor's office?

A. But to make no particular record of that finding.

Q. Who asked you to put the word rape in your report?

A. No one.

Q. Why did you insert the word rape in your report?

A. Because of the character of the injuries about the girl's external genitalia, that seemed to me the only reason for such injuries, and I put it down to impress that on myself when I went back to my notes.

Q. The nature of the injuries, the only thing that could have caused the condition that you found was the act of intercourse. I am not talking about the scratches on the inner aspect of the leg, I am talking about the condition of her hymen.

A. I thought I told the Judge I should have said

rape or attempted rape. That is an improper article. I mean I will withdraw it.

Q. I am not even going that far, Doctor. What I want is whether, when you used the word "rape" in your autopsy report, did you mean that the condition was caused by carnal abuse or sexual intercourse with this girl?

A. It would indicate that most likely in this case.

Q. Well, what is your opinion, Doctor, as to the act that was performed that caused the hemorrhage in the hymen, or a laceration of the hymen?

A. The most probable opinion?

Q. Yes.

A. An attempt at intercourse.

Q. Is that your opinion in this case?

A. Yes.

Q. Why did you use the word "rape"?

A. I do not believe there would have been such an injury if it had not been against the girl's will. Therefore, I presume that is rape. Is that incorrect?

Q. Doctor, you mean to say there is a difference when intercourse is performed against the will or voluntarily on the part of the girl, so far as the result on the hymen is concerned, after there is penetration?

A. I described much more than laceration of the hymen.

Q. You added some hemorrhage.

A. I added more than that.

Q. What more than that have you got in there?

A. I have scratches on the thigh next to the genitalia and on the labia, which is the external parts of the genital tract of a woman.

Q. The scratches were not caused by rape or intercourse?

A. Attempted rape or intercourse.

Q. No, what I am asking about now, Doctor, is by committing rape, or in an attempt to do the act of committing rape or intercourse with this girl, that does not cause the scratches in the area of the organ, does it?

A. I think it is quite possible, yes.

Q. That a person having intercourse with a girl with or against her will would cause scratches on her thigh or in the area near the organ?

A. I think it is quite possible. If you will consider only the act of intercourse is involving the genital organ, it would be unlikely. I think you must consider more than the genital organ. You must consider that the act of intercourse is helped by the individual's hand. What I mean by the act of intercourse—I don't know—according to my understanding of what probably occurred, I would say it was part of an act of intercourse or an attempt at intercourse, and from that there could well have been produced the injury I saw at the autopsy.

Q. But you substituted the word "rape" for those two words you just used now?

A. Yes.

MR. PALESE: That is all.

BY THE COURT:

Q. At the time you made your post-mortem examination, Doctor, had any member of the deceased girl's family identified her as Margaret Rita McDade?

A. No, we didn't know who she was.

Q. Was part of your post-mortem examination

then designed to uncover facts that would aid in determining who she might have been?

A. Yes.

Q. Was that the reason you inquired to discover ailments that would indicate whether she was married or single?

A. Yes.

THE COURT: That is all.

THE PROSECUTOR: No further questions. Thank you, Doctor.

WILFRID DUBE, called.

MR. PALESE: What about Mr. Hulse?

THE PROSECUTOR: Mr. Hulse is going to wait.

MR. PALESE: I have no objection to Dr. Read. I know he is a busy man. I am not going to wait until tomorrow to examine Mr. Hulse. You put him on the stand yourself. I object to putting Mr. Dube or anyone else on the stand at the present time.

THE PROSECUTOR: I understand, if your Honor please, it is discretionary with the Court as to what order I shall present my proof, and I now find myself in this position. As a result of the cross-examination of Dr. Read, I feel in duty bound to present a very small piece of testimony in order to

clarify one situation. I can assure Mr. Palese that after I do that, that Mr. Hulse will take the stand. I would like to add he is not subject to cross-examination by Mr. Palese, because he has finished his cross-examination of Mr. Hulse.

MR. PALESE: If you ask him any more questions ——

THE PROSECUTOR: You don't know what I am going to ask.

MR. PALESE: I object to Mr. Dube going on the stand and ask that Mr. Hulse be put on the stand.

THE COURT: Your objection is sustained. We will recess for five minutes. The jury may leave the box.

AFTER RECESS.

GEORGE HULSE, recalled.

BY THE PROSECUTOR:

Q. Mr. Hulse, on cross-examination you stated that you had three tumblers full—that the defendant had three tumblers full of whiskey, and that he used as a chaser, rum after that.

A. Yes, sir.

Q. Where did that take place?

A. In my home.

Q. You also said he had a drink at some place else. Did you say that?

A. Yes, we drank a lot that day.

Q. That is what I understood you to say on cross-examination: that you had drank a lot, beginning at ten o'clock in the morning.

A. That is right.

Q. You had something to drink in the morning?

A. That is right, when we got to Camden.

Q. Now, when you got to Camden, where did you have the first drink?

A. At Mt. Ephraim and Kaighn Avenue, right on the corner.

Q. What did you have to drink there?

A. A couple of shots of liquor.

Q. And beer chaser?

A. Beer chaser.

Q. When you say "couple", how many do you mean?

A. I don't know offhand; maybe two or three.

Q. Then, you got on the bus again and you went, I understand, to Mt. Ephraim?

A. Right around the corner.

Q. Right around the corner?

A. Yes.

Q. You had some more?

Q. What did you have around the corner?

MR. PALESE: I object. This is supposed to be re-direct on my cross-examination. Nothing was brought out on cross-examination. He is now going over the same thing, which he really has no right to do.

THE COURT: It is repetition of the cross-examination.

MR. PALESE: I think we probably could get along faster. I don't care. I withdraw the objection.

Q. You went around the corner and had several more whiskeys?

A. That is right. I think we had beer. I am not quite sure what we had around the corner.

Q. You went to Abe's Browning Lane Inn?

A. When we came back to get on the bus, we was going to go to Philadelphia. We got out at Broadway and Kaighn Avenue.

Q. Did you get off at Broadway and Kaighn Avenue?

A. No, I got off at Mt. Ephraim and Kaighn Avenue. Then, we went into these two saloons. In the one saloon I called up about this job. They said to come over. So, we got the bus at Broadway, or Mt. Ephraim and Kaighn Avenue, and for the short period from Mt. Ephraim and Kaighn Avenue to Broadway and Kaighn Avenue we decided to go into business for ourselves.

Q. You got off at Broadway and Kaighn Avenue?

A. Yes.

Q. Did you have something to drink as you got off there?

A. Not as we got off there.

Q. Where did you go from there?

A. We got back on the bus and went to Abe's Browning Lane Inn.

Q. What did you have to drink there?

A. We had a couple of shots of liquor and a couple of beers.

Q. Where did you go after that to have something to drink?

A. We left there and went down to my home.

Q. You had something to drink at your home?
A. That is right.
Q. Beer and whiskey?
A. No, I only had whiskey.
Q. No rum?
A. I had rum and whiskey.
Q. You had rum and whiskey?
A. Yes.
Q. Is that where you had the three tumblers full of whiskey?
A. No, that is when we came back that night.
Q. You had several when you got to your home?
A. We had a couple, not several.
Q. What do you mean?
A. Maybe one or two, not three. I don't recall.
Q. Were they whiskey glasses?
A. Ordinary whiskey glasses.
Q. What was the chaser?
A. I just drank water. Howard was drinking brandy or whiskey, I am not sure.
Q. Which is it, whiskey or brandy?
A. Whiskey.
Q. Where did you go then?
A. To Auld's home.
Q. Did you have something to drink there?
A. Yes, we had some beer, had a few bottles of beer in the refrigerator.
Q. Did the defendant drink beer?
A. Yes.
Q. How many bottles?
A. We just had glasses. I don't know how many.
Q. From there, where were you going to have something to drink?

MR. PALESE: I am going to object.

THE COURT: Objection sustained. It is repetitious of the cross-examination.

THE PROSECUTOR: Well, then, you had something to drink after you left the Auld home?

MR. PALESE: I object.

THE COURT: Objection sustained.

Q. When you got to the Fire House, there was also something to drink there?

MR. PALESE: I object, if Your Honor please. This is the State's witness who has been under cross-examination and now is taken back by the Prosecutor. I object to the question.

THE COURT: The objection is sustained.

THE PROSECUTOR: All these facts were brought out in cross-examination. I didn't bring them out. I just wanted to get that straight. So far as I am concerned, he is the State's witness, but these matters were brought out on cross-examination. I didn't bring them out on direct examination. I just wanted to go into them. That is all, Mr. Hulse.

WILFRID L. DUBE, sworn.

BY THE PROSECUTOR:

Q. Mr. Dube, you are a member of the Camden County Detective Force, is that right, sir?

A. Yes, sir.

Q. During the investigation of the murder of Rita McDade, did you have occasion to go to the Cooper Hospital to view the body of a dead person?

A. I did.

Q. Do you remember when that was?

A. It was the same night we found the body in the cistern, in the afternoon. It was Sunday evening.

Q. You went there on Sunday evening?

A. Yes.

Q. Did you see Dr. Read?

A. Yes.

Q. Did you see the body?

A. Yes, sir.

Q. Had the body been identified as yet?

A. Oh, no.

Q. Did anybody know who she was?

A. We had no idea who she was.

Q. Was there a conversation there between you, Dr. Read, and somebody else, concerning the body?

A. The Chief was there, Dr. Read, and myself, and Dr. Constanzo. I did have a conversation with Dr. Read.

Q. Concerning what?

A. We wanted to find out everything we could find out about that body for the purposes of identification.

Q. No one knew the body up to that time?
A. We had no idea who she was.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

HARRY AGNEW, sworn.

BY THE PROSECUTOR:

Q. Mr. Agnew, where do you live, sir?
A. 3125 Salmon Street, Philadelphia.
Q. You are married?
A. That is correct.
Q. What is your wife's name?
A. Orilla.
Q. Mr. Agnew, on Thursday, August 17th, 1945, did you commence to take a journey to Margate?
A. I did.
Q. What time did you leave your home in Philadelphia on that morning?
A. About ten o'clock.
Q. Who was with you?
A. My wife and I.
Q. Anyone else?
A. That is all.
Q. What type of automobile were you driving?
A. Pontiac two-door.
Q. How many people could you get in the front?

A. You could get three in the front, if necessary.

Q. How many in the rear, behind the front seat?

A. Three.

Q. Now, as you left Philadelphia, what course of travel did you take?

A. Came off the Delaware Bridge, down the Crescent Boulevard to, I believe, where you call it Fairview Circle, where the Black Horse Pike starts.

Q. What time about would you say it was when you arrived at the Fairview Circle, or what is known, as you say, as the commencement of the Black Horse Pike?

A. About ten thirty.

Q. Ten thirty?

A. Yes, sir.

Q. In the morning?

A. Yes.

Q. What was the date?

A. Thursday, August the 16th.

Q. The 16th or the 17th?

MR. PALESE: Wait a minute. Let the witness testify. You put the date in his mouth before.

A. The 14th was Tuesday, Wednesday was the 15th, and the next day was Thursday. It was the 16th.

Q. All right, the 16th. What, if anything, happened at the Circle in Fairview at the beginning of the Black Horse Pike on this particular morning and hour?

A. Upon approaching, I saw a fellow standing on the Circle, a soldier. It was nothing unusual to come to a stop and ask him if he wanted a hop. I made that a practice ——

Q. You said you asked him if he wanted a hop?

A. Yes.

Q. What happened?

A. He said, yes, he did. I said, "Get in." He walked around the back of the car and got in on my wife's side. She, in turn, had to lean forward and let him in. After I started and proceeded down the Black Horse Pike, I asked him if he was going to the shore. He said no, he was going a short distance to Bellmawr. So, there was nothing much said. I guess I started most of the conversation. I asked him what he thought of V-J Day. He said he was glad it was all over. I said, "What is the possibility of you getting out?" He said he didn't want to get out, he was a regular Army man. I asked him where he was stationed V-J Day. He said, "In Baltimore." That sort of takes care of all the conversation I started. The only conversation he really started was the fact he said, "I guess you notice my face all scratched." I said, "Yes, I do." I said, "What happened?" He said, "We were down in Baltimore, and there were about thirty British sailors bragging about winning the war, and ten of us worked on them." That is all I know. He got out and went on his way.

Q. In other words, the man you picked up called your attention to the scratches on his face?

A. That is right.

Q. How close were you to him?

A. Oh, not more than three feet. I talked to him out the window of the car and he was standing there at the circle.

Q. Would you say there were many scratches?

MR. PALESE: If your Honor please, I object.

THE COURT: It is leading.

THE PROSECUTOR: I will withdraw it.

Q. Can you tell us, if you know, how many scratches were on his face?

A. I couldn't say as far as numbers. They were noticeable. They were more like gouges. They were more than scratches. Scratches are just a little line. These were very distinguishable. You could see them without looking very hard.

Q. Did you notice his hands?

A. No, I had no reason to see his hands. They were below me at all times.

Q. I want you to look around the court room and I want you to select the person if you see him.

A. Yes.

Q. Whom you picked up on Thursday morning at 10:30 at the circle in Fairview. Look around.

A. That man there (indicating).

THE PROSECUTOR: Stand up, Mr. Auld.

(The defendant stands.)

Q. Is that the man you picked up?

A. That's the man.

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

A. No question at all.

MR. PALESE: I object, if your Honor please. Just a minute.

THE COURT: The objection will be sustained and the answer stricken.

Q. When did you next see this man, after that morning?

A. I never saw him in person until just now.
Q. How come that you are a witness in this case?

MR. PALESE: I object, if your Honor please.

THE COURT: The objection is sustained.

Q. Did you ever see a picture of this man since that morning?
A. Yes, sir, I did.
Q. Where?
A. In the Philadelphia newspaper.

MR. PALESE: Just a minute, if your Honor please. I object to the form of the question. The picture of the man, all this man can say is he saw a picture, and I think we ought to have the picture here. The witness is a little too fast. I cannot get up fast enough. If your Honor please, the question was, "Did you ever see a picture of this man?"

THE COURT: I know that is the question and the answer, Mr. Palese. I am now pondering whether or not the form in which you put it is obviously an objection as properly before the Court and I am inclined to think that it is but the objection I think now would be removed by a simple statement, "I object." I will permit the objection to be noted now and I will sustain it and the answer will be stricken.

Q. Did you then proceed to Margate?
A. I did.
Q. How long did you stay in Margate?
A. Just the day. I came back that evening.

Q. Did you arrive home in Philadelphia that evening?

A. I did.

Q. When, if you know, were you next attracted by anything which indicated to you that this was the gentleman that you picked up on Thursday morning?

MR. PALESE: I object, if your Honor please, to the form of the question, "When was the next thing indicated to you?" That is not proper and we are not bound by anything that may indicate to this person as to what he may or may not have seen in the way of a picture, because we do not have the picture in court from which this man would be permitted to answer this question.

THE PROSECUTOR: I will withdraw the question. Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Agnew, when do you say it was that you saw this gentleman on the Black Horse Pike?

A. On Thursday.

Q. What date was that?

A. August 16th, I think.

Q. What time did you say it was?

A. About 10:30 in the morning.

Q. How do you know that it was the 16th of August at 10:30 in the morning?

A. Why, the Tuesday was V-J night. The next day we didn't go any place, and the following day

I realized I had another day off and we decided to go down the shore and see my son and his family.

Q. You had three days off and you didn't go away the following day?

A. No, two days proclaimed afterwards. We went away the following day.

Q. You stopped your car at the Fairview circle?

A. Yes, I did.

Q. You saw this young man who was there thumbing or standing there and you asked him if he wanted a hop or lift?

A. That's right.

Q. What kind of car do you drive?

A. Pontiac two-door.

Q. A Pontiac two-door sedan?

A. That's right.

Q. And do you drive on the left-hand side or the right-hand side of the car?

A. Left-hand side.

Q. And when you saw this man, was he to your right or to where you were on the left-hand side?

A. He was to the left. He had to be.

Q. Then he was standing in the middle of the street?

A. No, he was standing in the middle of the circle, in the middle of the circle.

Q. And that is the circle when you got in Fairview?

A. I believe they call it the Fairview circle.

Q. He was standing there and you saw him and stopped your car?

A. That's right.

Q. And asked him if he wanted a ride?

A. That's right.

Q. And he accepted the invitation?

A. He did.

Q. Did he get in from your side or did he have to go around the other side?

A. Walked around the back of the car and got in on the wife's side.

Q. Is it just a one-seater or a seat in back of the driver's seat?

A. It's a seat in back but there's only one door to enter.

Q. Where did he take his place in your automobile?

A. In back of my wife.

Q. In the seat in back of the driver's seat?

A. No, not in back of the driver, back of my wife.

Q. So your wife had to move over and push the seat forward so he could get in?

A. Sort of pushed forward.

Q. So the seat was pushed forward?

A. That's right.

Q. I suppose you started your car?

A. That's right.

Q. How far did you take him before he got off?

A. Just about four miles.

Q. Do you know where it was that he got out of your car?

A. Not exactly, no. I recall him saying, "Leave me off at the next intersection."

Q. Why do you say it was four miles?

A. He told me it was four miles. He explained it was four miles. I asked him if he was going down to the shore and he said, "No, about four miles down the road."

Q. Then you had to look back at him?

A. Sort of.

Q. How could you be driving your car? You had to look back?

A. Yes, glanced back on occasion.

Q. How many times did you glance back?

A. Maybe twice.

Q. So, in driving down the Black Horse Pike ——

A. Yes.

Q. —for a distance of about four miles, you took time out to glance back on two occasions?

A. Yes.

Q. Is that right?

A. That's right.

Q. That is the only time you saw this man with the exception of the time he got in at the circle and when he got off at his destination?

A. And when I talked to him out the window of my car and asked him where he was going.

Q. You saw him through the reflector of your car?

A. No, when he was standing at the circle I looked out my window and talked to him where he was going, standing not more than two or three feet from me, had a very good look at him.

Q. How long did you have the opportunity of seeing him then?

A. A good minute, I believe.

Q. So with that time of seeing him you got two glances in the back?

A. Yes.

Q. And then you let him off at Bellmawr?

A. That's right.

Q. They are the only four times you glanced at this young man?

A. That's right.

Q. And you thought nothing of it?

A. I thought nothing of it.

Q. Went on your way to Atlantic City and this was on a Thursday?

A. Right.

Q. And you now say to-day that this is the man that you gave a ride to?

A. That's correct.

Q. On that day?

A. That's correct.

Q. What is there about him that makes you certain he is the man?

A. His unusual size. I noticed that immediately.

Q. What is that?

A. His unusual size. I noticed that immediately.

Q. What else?

A. And after I noticed the scratches on the face I sort of resented stopping. Something didn't seem to me right. Then I thought, "I am sorry I stopped for this chap." I don't know what did it. I took a good look at him and resented stopping and still wish it to-day.

Q. You only took two glances at him?

A. When I looked out the window I had a very good look.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. Did I understand you to say correctly, Mr. Agnew, the defendant was the one who called your attention to the scratches on his face, after he got in the car?

A. He is the one.

Q. And you actually saw them before he got in?

A. I saw them and he was conscious of the fact.

Q. What else makes you positive that this is the man you saw?

MR. PALESE: I object, if your Honor please. It is not proper re-direct examination.

THE COURT: I will hear you, Mr. Palese.

MR. PALESE: If your Honor please, this witness was turned over for cross-examination. Now counsel is asking him what else is there, which is now re-direct examination and I say it is improper.

THE COURT: I shall sustain the objection as to the form of the question.

Q. Is there any other factor which you take into consideration which makes you certain this is the man you picked up on Thursday morning?

A. Yes, there is.

Q. What do you say, sir?

A. Yes, there is.

Q. What is it?

MR. PALESE: I object, if your Honor please. The same thing. He is endeavoring to get out on re-direct examination things he had the opportunity, if he wanted to, as his part of the case. He turns him over for cross-examination and then re-directs his attention to certain factors in the case.

THE COURT: I overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Yes.

(Exception noted for defendant.)

Q. What is it?

A. On Sunday we read of the case and the finding of the girl's body. Monday I noticed they had a

notice in the paper they were looking for man with scratches, and my wife called my attention, she said, "You know ——"

Q. Don't tell us what she said. Tell us what you did.

THE COURT: After you spoke with your wife, what did you do?

THE WITNESS: Well, I figured from the fact, I said he was a soldier and that's all there is to it, and then next day the picture came out in the paper and she said, "My God! Harry, it is him."

THE PROSECUTOR: I ask that what she said be stricken.

Q. What conclusion did you come to?

MR. PALESE: I object to what conclusion he came.

THE COURT: The objection is sustained.

Q. What did you see in the paper?

A. I saw his picture in the paper. My wife drew most of the conclusions.

THE COURT: Not the conclusions. What did you see in the paper?

THE WITNESS: She just saw his picture and recognized him.

THE COURT: You saw a picture?

THE WITNESS: Several times. The first one was the one we noticed.

Q. What did you do then?
A. Called the Philadelphia police.

MR. PALESE: I object, if your Honor please.

THE COURT: The objection is sustained.

BY THE COURT:

Q. Is the man whose picture you saw in the newspaper in the room?
A. Yes, he is.
Q. Where is he?
A. The man sitting right there.
Q. Witness points to whom?
A. The third man in the middle, the man next to his counsel.

THE PROSECUTOR: That is all.

BY MR. PALESE:

Q. When did you see the picture?
A. I believe on Tuesday evening, in the Philadelphia Inquirer. They were still looking for him at that time.

MR. PALESE: I ask that the latter part be stricken out.

THE COURT: That part of the answer after the statement as to where he saw the picture will be stricken.

Q. That is when you saw it, on Tuesday night?
A. Tuesday night.
Q. Following this ride on the Black Horse Pike?
A. Yes, that's correct.

MR. PALESE: That is all.

THE PROSECUTOR: That is all. Thank you, Mr. Agnew.

ORILLA AGNEW, sworn.

BY THE PROSECUTOR:

Q. Mrs. Agnew, you are the wife of the gentleman who just testified?
A. Yes.
Q. Will you speak a little louder, please?
A. Yes, sir.
Q. And you live at 3135 Salmon Street, Philadelphia?
A. 25.
Q. 3125?
A. Yes, sir.
Q. Philadelphia?
A. Yes, sir.
Q. Were you in company with your husband on Thursday, August 16, 1945?
A. Yes, sir.

MR. PALESE: I object, if your Honor please. Let the witness testify when she was with her husband, and not the Prosecutor giving her the date.

THE COURT: I sustain the objection.

Q. Do you remember when it was you took a trip after V-J Day to go to Margate?

MR. PALESE: I object to that, if your Honor please.

THE COURT: The objection is overruled.

MR. PALESE: May I have an exception?

THE COURT: Yes.

(Exception noted for defendant.)

THE COURT: Repeat the question.

(Question repeated.)

A. Thursday.
Q. What date of the month was that, if you know?
A. 16th.
Q. Of what month?
A. Of August.
Q. Of what year?
A. 1945.
Q. And what time was it about that you left your home?
A. I think we left around 10 o'clock I would say.
Q. And did you cross the bridge?
A. Yes, we did.
Q. And where were you seated in the automobile?
A. Up with my husband.
Q. In front with your husband?

A. Yes, sir.
Q. On the right-hand side?
A. Yes.
Q. And what kind of car is it?
A. It is a Pontiac two-door.
Q. What year is it?
A. What year the car?
Q. Yes.
A. I think it is a 1937 Pontiac.
Q. What color is it?
A. Green.
Q. What kind of wheels does it have on, if you know?

THE PROSECUTOR: I will withdraw the last question.

Q. What time was it you arrived at what purports to be and has been referred to as the circle in Fairview?
A. I would say around 10:30.
Q. And where were you going?
A. Down to Margate, to see my son.
Q. And did anything happen at the circle in Fairview?
A. Yes, my husband stopped the car and asked the soldier if he wanted a lift, and he said yes.
Q. When your husband stopped the car to ask the soldier if he wanted a lift, on what side of the automobile was this purported soldier?
A. On my husband's side.
Q. Would that be the left-hand side of the automobile?
A. Yes.
Q. Now, when your husband asked him, how far

away was your husband from the man he was speaking to?

A. Not far, because he was right here (indicating) near the car.

Q. Now, after he had accepted the ride, did the man enter the automobile?

A. Yes, he walked around and came to the side where I was sitting and got in the back.

Q. Did you have to get off your seat?

A. I just moved myself forward.

Q. And the door on your side was opened?

A. Yes.

Q. He got in and you just bent forward?

A. Yes.

Q. Where did he sit?

A. In the back.

Q. In back of you or in back of the driver?

A. In back of me, in the back of the car.

Q. Was there any conversation?

A. Yes, him and my husband started talking about V-J night, and they were talking about the Army. My husband asked if he was coming out, and he said no, he didn't think so; he was staying in, he was an Army man. And he called my husband's attention to the fact that he had these scratches, referred to take notice of the scratches, that he was in a fight in Baltimore. They had a fight with about ten British sailors, twenty-eight or thirty American soldiers worked out on them in this fight. He wasn't in the car long; that's what he said when he got out.

Q. Where did he get out?

A. In Bellmawr. He said he was only going four miles to Bellmawr.

Q. In other words, he told your husband he was only going four miles on the road?

A. Yes.

Q. Did he direct your husband when to stop?

A. Yes, when we came to a street he said, "This is where I get off."

Q. Your husband stopped the car?

A. Yes.

Q. Now, Mrs. Agnew, I want you to look around the court room and see if you can identify the person—withdraw that question. Mrs. Agnew, did you notice the scratches?

A. When he got out of the car I did.

Q. What were they like?

A. He was scratched pretty badly on the face, and, he only hesitated about a minute or two, and left and went down the road.

Q. Do you see the man that was picked up by you and your husband in this court room today?

A. Yes, I do.

THE PROSECUTOR: Mr. Auld, will you stand up, please?

(The defendant stands.)

Q. Is that the man you picked up?

A. Yes.

Q. And that was the defendant?

A. Yes, sir.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mrs. Agnew, do you want us to understand that you did not observe the scratches on this man's

face until after he called your husband's attention to it?

A. My husband took notice of them first, and I didn't, because I don't take notice of anybody getting in the car. When I saw this man I didn't pay any attention, and then when he directed my husband's attention, then I did look around then.

Q. I understand you did not observe the scratches on this man's face until after he called your husband's attention to them; is that correct?

A. That is right.

Q. And you were sitting right alongside of your husband while he was driving down the Pike?

A. Yes.

Q. Your husband stopped near the Circle to talk about a minute to this individual, found out where he was going, and invited him to take a ride. Where were you looking when that was happening?

A. I was looking out at them.

Q. At him?

A. Yes.

Q. And between this man and you there was your husband, and he was talking to him; isn't that correct?

A. Yes, that's right.

Q. You mean to say you didn't then observe any scratches on his face?

A. Maybe I did and don't recall it, until he drew our attention to it. Then when he got out of the car, I took notice of him again.

Q. When he came around to your side of the car and when you opened the door, or he did, and your seat was pulled forward for him to get in, you didn't then observe these scratches?

A. No, because I was stooped over so he could get in.

Q. You didn't observe them?
A. No.
Q. So that, as I understand it, Mrs. Agnew, while he was talking to your husband you didn't see his face, at least you didn't see the scratches on his face?
A. No, not until I turned around ——
Q. Well, then ——

THE PROSECUTOR: Just a minute. May I have the answer read?

(Answer read.)

Q. You mean, when you turned around while he was talking to your husband?
A. Yes.
Q. Did you see the scratches then?
A. Yes, I did, because he was drawing our attention to his face, and I turned around to see his face.
Q. He didn't call your attention to it until he had gotten in the car?
A. Yes.
Q. Is that correct?
A. That's right.
Q. Then, I am correct when I say that you did not see the scratches on his face while he was talking to your husband on the outside of the car?
A. I didn't take that much notice of him.
Q. Did you see any scratches on his face?
A. Well, not then, not until he got in the car.
Q. Then he came around to your side of the car?
A. That's right.
Q. He got in the car and you did not, up to that time, see any scratches on his face?
A. No, because when he was getting in the car, I

moved the seat forward and stooped over so he could get in.

Q. So you didn't have an opportunity to observe this man in the position you were in when he got in the automobile?

A. No.

Q. So he got in your car and was sitting directly in back of you?

A. Yes, he was sitting in the back seat.

Q. In back of you, isn't that right?

A. That's right.

Q. What did you have to do to look at this man?

A. I turned around to look at him.

Q. How far back—in his position in the car in back of you, how far would you have to turn to look back?

A. I turned around like that (indicating) and looked at him.

Q. And by turning as you have on the stand, you say you had an opportunity to look at this man?

A. Yes.

Q. How many times did you do that?

A. I turned around once, and we were talking there all the time.

Q. While you were talking, did you turn around?

A. Yes, I did.

Q. How many times did you turn around, about, from the time he got in your car until you let him out; how many times did you look around at this man?

A. About twice.

Q. Then, when you got down toward his destination, I assume that you had to lean forward again so he could get out?

A. That's right.

Q. When he thanked you and your husband,

where was he, on your side or your husband's side of the car?

A. My side.

Q. How long did he stand there?

A. He stood there at the car for a minute and thanked us for the ride.

Q. And then you went on your way?

A. That's right.

Q. And you now say that you had a man alongside of your husband's car, who you say was scratched; that you didn't have then time to observe the scratches on his face, that he came around to your side, you leaned forward, and he then went in the back of your car, and you took two glances at that individual, took another look when he got out of the car, and now today you say that this is the man—having made those observations—that this is the man that was in your car on that day?

A. That's right.

MR. PALESE: That is all.

THE PROSECUTOR: That's all. Thank you a lot, Mrs. Agnew.

HARRY NORTON, sworn.

BY THE PROSECUTOR:

Q. Officer Norton, is it?

A. Yes.

Q. You are a member of what police department?

A. Mt. Ephraim Police Department.

Q. And as a result of something that was said to the Police Department, of the Borough of Mt. Ephraim—strike that. Are you the officer who had the defendant arrested?

A. Yes, sir.

Q. When was that?

A. The night of August 21st, 1945.

Q. At what time, sir?

A. Ten minutes past eleven.

Q. In the evening?

A. P. M.

Q. P. M. And where, sir?

A. On the Black Horse Pike at Berwick Avenue, in Haddon Township.

Q. What township?

A. Haddon Township.

Q. After you apprehended him, where did you take him?

A. To the Mt. Ephraim Police Station.

Q. Did you question him?

A. I did, sir.

Q. Did you ask him who he was?

A. I did.

Q. Did he give you a response?

A. He did.

Q. What did he say to you?

A. His name was Jackson.

Q. What did you then say to him?

A. "Where do you live?"

Q. Did he tell you his address?

A. He said, "Up the street."

Q. What was the next question you asked him?

A. I asked him who he knew on that street.

Q. Did he tell you?

A. He told me, no one.

Q. What question did you ask him after that?

A. When he—at the completion of the questions, his answer, "No one," he then made an assertion to me, after which I told him we better take a police car and come to the police station down at the Hall, and talk it over.

Q. Did you take him in?

A. I did.

Q. Then what happened?

A. After we arrived at the police station, I took the gentleman inside and began to search him. While questioning him I had marked him as the man we were looking for, from the description we had received from the police fliers that had been sent around. And while searching him I came across a discharge paper with the name "Howard Auld" on it. I asked him, "Is that your name?" He told me, "You ought to know. You have been looking for me for three days."

Q. What did you do after that?

A. I continued searching him. I found a discharge button, small change, a wallet, and several other articles. I also requested the Director of Public Safety to contact Chief Doran, of the Camden County Detective Bureau.

Q. Did you notice his face or hands when you had him under arrest that night?

A. Yes, I did.

Q. Was there anything noticeable on the face?

A. At the time I noticed scratches, but not to any extent, ordinary.

Q. What day was that you had him arrested?

A. Tuesday night, the 21st day of August, 1945, 11:10 P. M.

Q. Did you notice his hands?

A. Yes, sir.

Q. Were there any scratches on his hands?

A. Yes, sir.

Q. And his face?

A. A few on his face, but not noticeable too much.

Q. On his neck, were there any?

A. I didn't notice his neck.

Q. What did you do with the prisoner?

A. Held him in custody in the Mt. Ephraim Police Station until the arrival of Chief Doran at 11:50 P. M. that night.

Q. And is the defendant here, sitting between these two gentlemen, the man you arrested that night?

A. That is the gentleman I had in the station at Mt. Ephraim.

THE PROSECUTOR: Indicating the defendant, Howard Auld. Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Did you make any notes of this conversation you had with Mr. Auld on this day?

A. Yes, sir.

Q. Do you have them with you?

A. Yes, sir.

Q. Will you produce them, please?

A. Yes, sir.

Q. What do you have there with respect to your conversation you had with Mr. Auld?

A. At which point?

Q. After you arrested him. I assume your notes start from the time you took him into custody.

A. They do.

Q. What is the first thing you have there as to your conversation with him, that you have in your notes?

A. I asked him what his name was. "Jackson," he said.

Q. Just a moment. Do I understand that language you have there, "I asked him what his name was" ——

A. Do you want me to use my exact statement?

Q. I want you to use what you have on your notes. I want you to read your notes.

A. That's what I was doing.

Q. What do you have about the first question?

A. "I asked him what his name was."

Q. What next do you have?

A. "Jackson, he said."

Q. Now, do you have anything there as to what papers you found in his possession?

A. I have.

Q. They were what?

A. He had in his possession—do you want the other things or just the papers?

Q. I am just interested in the discharge; he had that?

A. He did.

Q. What did you do with that after you found it on his person?

A. I turned it over to Chief Doran, of the Detective Bureau.

Q. Why did you do that?

A. Because I turned over everything to him, with the papers. I turned over everything to him.

Q. You didn't return the discharge paper to him after you had taken it from him?

A. I did not.

HELEN ANDERSON, sworn.

BY THE PROSECUTOR:

Q. Where do you live, Mrs. Anderson?
A. 15 Apple Avenue, Bellmawr.
Q. You know the defendant, Howard Auld?
A. Yes, sir.
Q. Do you know this gentleman here, Mr. Hulse?
A. Yes, sir.
Q. Did you attend the party at the Bellmawr fire hall on V-J Night?
A. Yes, sir.
Q. Did you know the dead girl, Rita McDade?
A. Yes, sir.
Q. Did you see her at the fire hall on the night of August 14?
A. Yes, sir.
Q. Last year. How do you know that?
A. Because she came to me.
Q. What do you mean, came to you?
A. Well, just before they closed the fire department she came over and sat down alongside of me.
Q. She sat alongside of you?
A. That's right.
Q. What did you do when she sat alongside of you?
A. Put my hand in her lap, and was talking to her.
Q. Did you see the defendant, Howard Auld, then?
A. Yes, sir.
Q. How was he dressed, if you remember?
A. I was not much interested in anything but the hat and the confetti on his shoulder.

Q. What kind of a hat did he have on?
A. A red hat.
Q. Did the red hat have anything in it?
A. No, sir.
Q. Then what happened.
A. The place was closed.
Q. Who closed the place?
A. The mayor of our town.
Q. Then what happened?
A. And then we all went outside and congregated in quite a bunch.
Q. A lot of talking outside of the fire hall?
A. Quite a lot.
Q. Did you see the defendant, Howard Auld, and Rita McDade outside the fire hall?
A. Yes, sir.
Q. Did you see them together?
A. Not just exactly together, Rita was standing alongside of another fellow when I saw her, and she was alongside of me then.
Q. You had known her, had you not, before this?
A. Yes, sir.
Q. Was your husband at this party, this one at the fire hall?
A. He was the bartender.
Q. After the fire hall was closed, where did you go?
A. I just didn't go along with the rest. I waited until my husband had cleaned up the fire department, along with two other couple, making six of us in all.
Q. Do you know where Rita McDade, the dead girl, went?

MR. PALESE: I object, if she didn't know.

THE WITNESS: Only one thing I can say ——

THE COURT: Just a minute, I will sustain the objection.

Q. Did Rita McDade get in your car?
A. No, sir.
Q. Do you know whose car she got in?
A. No, sir.
Q. Did you see her get in a car?
A. No, sir.
Q. You don't know where she went?
A. Just walked about fifteen steps when I lost sight of her.
Q. Did you see where Mr. Auld went to?
A. They went, the bunch together, I couldn't tell you, about ten steps as far as my eyesight carried.
Q. Where did you and your husband and the other people go?
A. About fifteen minutes after the fire house was closed we went to some people on Anderson Avenue by the name of DeFalcas, Mr. and Mrs. DeFalcas.
Q. What time did you arrive there, about?
A. Approximately about twelve-thirty.
Q. How long did you stay there?
A. Just a short while, I mean to say a short while would be not more than fifteen or twenty minutes.
Q. Did you leave the place?
A. Yes, sir.
Q. Did your husband leave with you?
A. Yes.
Q. Where did you and your husband go?
A. To my home.
Q. How far is your home away from the DeFalcas' home?
A. I should judge two and a half blocks.

Q. Do you know what time it was you arrived at your home with your husband?

A. Approximately about one o'clock.

Q. Did you subsequently leave your home?

A. Yes, I did.

Q. What's the name of the street you live on?

A. Apple Avenue.

Q. That runs perpendicular to the White Horse Pike?

A. Right.

Q. What time was it you left your home?

A. Between the hours of two and three.

Q. Who was with you when you left?

A. I had another party with me, a man and a woman.

Q. Where were they going?

A. To take the man and woman home.

Q. Where did they live?

A. They lived over by the railroad, I think they call it Railroad Avenue.

Q. You drove out of Apple Avenue?

A. That's right.

Q. And made a left-hand turn on the Black Horse Pike?

A. That's right.

Q. And this was about what time?

A. Between the hours of two and three.

Q. On the morning of what?

A. That was V-J Night, that would be the 15th.

Q. As you were traveling on the Black Horse Pike what, if anything happened?

A. Well, as I was traveling, I had just turned the corner, which would mean I was driving ten feet from where I turned from the Black Horse Pike, I saw Howard Auld walking along the pike.

Q. In which direction?

A. Going towards his home, in other words, Browning Road.

Q. How did you know it was Howard Auld?

A. I knew it was him, because I had been with him earlier in the evening.

Q. How far away from your car was he when you saw him?

A. I should say on the average of about six feet.

Q. Is there any lighting at this particular section of the road?

A. As I was driving towards Browning Road the light was over my head on the right-hand side of the road.

Q. Did it reflect any illumination on the defendant, Howard Auld?

A. The lighting system goes right across the street, not straight down.

Q. After you saw Mr. Auld did you recognize him?

A. Yes, sir.

Q. What did you do?

A. I stopped the car and was going to pick him up.

Q. What happened after that?

A. Well, I seen he was filled with blood.

Q. What do you mean, filled with blood?

A. Face, his back, I mean he was everything, this part of him, I could see nothing but blood.

Q. What did you do after that?

A. After I started the car, I said to the people ——

Q. Don't tell us what you said. What did you do?

A. I started the car and stopped it again.

Q. Yes.

A. And I was still going to pick him up, but when I looked twice I thought he is too bloody to get in my car, and I drove on.

Q. What attracted your attention to him as he was walking down the road?

A. To me I thought he had been in some kind of an accident because he was gimpy.

Q. What do you mean, gimpy?

A. His legs didn't seem to stand under him properly.

Q. Did you notice anything about him other than being filled with blood?

A. Yes, sir, he had no hat on his head.

Q. What else, if anything?

A. That's practically about all I could notice then.

Q. Did you see his face?

A. Yes.

Q. Did you see his hands?

A. No, I didn't see his hands then.

Q. Did you notice anything about his face?

A. Yes, it was very much smeared with blood.

Q. Anything else?

A. That's about all I can see then.

Q. How many times did you look at him?

A. I really took two good looks at him that night.

Q. Did he look at you?

A. Yes, sir.

Q. Did he speak to you?

A. No, sir.

Q. Does he know you?

A. Yes, sir.

Q. Did he see you earlier in evening?

A. Yes, sir.

Q. You drove the people home?

A. Yes, sir.

Q. Then you went home?

A. That's right.

Q. Did you go to the fire hall that same day?

A. On the 15th I went back about one o'clock in the afternoon.

Q. Did you see Mr. Auld then?
A. Not just then.
Q. Did you see him on the 15th at all?
A. Yes, sir.
Q. What time did you see him on the 15th?
A. Approximately around six o'clock.
Q. Where did you see him on the 15th?
A. Standing on the inside of the bar in the fire hall.
Q. Bellmawr?
A. Bellmawr.
Q. Did you talk to him?
A. Yes, sir.
Q. Who was with you when you talked to him?
A. My husband.
Q. What was the conversation?
A. Well, I wanted to tell my husband, my husband said I was fantastic ——
Q. Tell us exactly what you did, not what you said.

MR. PALESE: And by whom.

Q. By you or your husband in the presence of the defendant, tell all that was said by you or your husband in the presence of the defendant.
A. I picked his hand up.
Q. Why did you pick his hands up?
A. Because I wanted to show my husband what I had seen the night before, and I wanted to attract my husband's attention to the face.
Q. Did you actually pick his hands up?
A. I definitely did, and laid them on top of mine.
Q. Showed them to your husband?
A. Yes.

Q. What else did you say or do in the presence of the defendant?

A. I said to my husband, to call his attention, "Look at these ungodly sized hands", and my husband looked down, and he said, "What blackberry patch have you been into?"

Q. Who did he say that to?

A. My husband said to Mr. Auld.

Q. What did Mr. Auld say?

A. He didn't answer, just drank part of his beer and went out.

Q. Did you notice his face?

A. That's when I really saw the digs.

Q. Can you describe them to us?

A. Yes, sir, they were wider than a scratch, and very much made into the flesh.

Q. Did you see his neck?

A. No, sir.

Q. His hands have any scratches on?

A. Definitely, very wide.

Q. Can you describe the scratches on his hands?

A. Yes as though they were down clawed, is the only way I could describe them.

Q. Did you see his arms?

A. No, sir.

Q. Why?

A. He had shirt sleeves.

Q. Are you certain that this was the night of August 15, 1945, at 6:30 in the evening, at the Bellmawr Fire Hall?

A. Yes, sir.

MR. PALESE: I object to the form of the question.

THE COURT: Yes, the form of the question is objectionable.

Q. What night was it you had this conversation between your husband and Mr. Auld?

A. That would be on the day after V-J Day, which would be the 15th.

Q. What time?

A. Six o'clock.

Q. Where?

A. That evening.

Q. Yes, where was it?

A. In the fire hall.

Q. Is there any question in your mind but that the man you saw walking down the road between two-thirty and three o'clock in the morning on the 15th day of August, on the Black Horse Pike is the man sitting over there charged with this murder?

MR. PALESE: I object to the form of the question.

THE COURT: Sustained.

Q. Is there any question in your mind but that he is the man?

MR. PALESE: I object.

THE COURT: Sustained.

Q. Do you see the man in the court room today that you saw walking down the road between two-thirty and three o'clock on the morning of August 15, 1945?

A. Yes, sir.

Q. Will you indicate that man?

A. That man is the second man sitting at the table there, not the one this end.

THE PROSECUTOR: For the purpose of the record, referring to the defendant.

THE COURT: Stand up, Mr. Auld.

(The defendant rises.)

Q. Is that him?
A. That's him.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mrs. Anderson, you knew Howard before this day?
A. Yes, sir.
Q. How long have you known him?
A. I think when I first met the fellow, he was on furlough.
Q. When was that?
A. It seemed to me either a week or two before that night.
Q. You had known him but a short time before V-J Day?
A. That is right.
Q. Where did you meet him?
A. Where did I meet him?
Q. Yes.
A. In Henny Delano's taproom.
Q. Now, Margaret McDade, did you know her before V-J Night?
A. Yes, sir, I met her on her vacation.
Q. When was that?

A. It seemed to be two weeks or so before her death.

Q. Where did you meet her?

A. I met her in the Marilene Inn, that is Mary's.

Q. Is that where you met her?

A. Yes.

Q. That is where she was spending her vacation?

A. That is right.

Q. Is that a hotel?

A. No, it is a taproom.

Q. Does it have rooms for rent?

A. No.

Q. How did you know she was living there and spending her vacation there?

A. Because it so happens that this tavern lady is a friend of mine.

Q. Yes, and did she tell you this young lady was spending her vacation there?

A. I know she was staying there.

Q. What is that?

A. I know she stayed there.

Q. How do you know?

A. Because I was in Rita's company practically all the time she was on her vacation.

Q. You say you were in her company all the time?

A. Not all the time, but I spent a lot of time.

Q. Where did she go? Did she go there all the time?

A. No, sir.

Q. Where?

A. She was generally at the swimming hole.

THE PROSECUTOR: May I have the purpose of this cross-examination?

THE COURT: I will allow it.

Q. Now, then, you saw Rita, as I understand it, at the Fire Hall on the evening of V-J Night?

A. That is right.

Q. What time was it, Mrs. Anderson, when you first saw her?

A. When Rita first came in, I should say it was between eleven and eleven fifteen.

Q. She came in by herself?

A. To me, it looked to me as if she was by herself. She came alone to me.

Q. She came over to where you were in the Fire Hall.

A. Yes.

Q. Sat down next to you, or did you find a place where you both could sit?

A. No, there was a stool vacant on my lefthand side, and she sat there.

Q. You talked to her a while, and the place had to close?

A. Yes, sir.

Q. Then, you say Margaret went outside?

A. Yes, sir.

Q. You went outside?

A. Yes.

Q. Was she outside with a boy?

A. No, she was outside with all of us.

Q. Didn't I understand you to say she was standing alongside of a boy when you got there?

A. She was standing alongside of a fellow, and he was standing with her.

Q. Who was the fellow she was standing with?

A. A fellow I never saw before.

Q. A boy by the name of Jimmy?

A. No, sir.

Q. Was she talking to this boy?

A. No, sir. She was waiting for us.

Q. She went outside to wait for you?

A. That is right.

Q. You had not planned to go out with Margaret, because, as I understand it, you and your husband and some other people were to clean up the Fire Hall?

A. No, indeed. I had planned to go out with them.

Q. But not until you had cleaned up the Fire Hall?

A. That is right. I was going later.

Q. Was Margaret to wait on the outside until the work was done?

A. She started to, but I told her to go on, that I would be a little late.

Q. Did you know where she was going to?

A. Yes, sir.

Q. Was that because of the invitation that everybody had at the Fire Hall?

A. Yes, sir.

Q. You didn't go direct to the Creek home after you had gotten through with your work?

A. I didn't get to the Creek home.

Q. You didn't get to the Creek home?

A. That's right.

Q. You went to some other place and then finally were taking some people home?

A. That is right.

Q. Where were you to meet Margaret?

A. Beg pardon?

Q. Where were you to meet Margaret?

A. I was to go along to the party later.

Q. Well, where?

A. I was to meet Margaret over to Creek's.

Q. Over to the Creek's?

A. Yes, sir.

Q. You didn't get there?

A. That is right.

Q. You, then, say you got on the Black Horse Pike. Now, Apple Avenue runs at right angles to the Black Horse Pike, or is there a little slant as it hits the Black Horse Pike?

A. No, I could explain that for you. Apple Avenue goes right into the Black Horse Pike.

Q. It comes in on the left-hand side, as you go down toward Browning Road?

A. That is right.

Q. That is the first street following the ditch or the creek—following the creek between Bellmawr and Haddon Heights?

A. No, Henderson Avenue comes first.

Q. It is the second street?

A. The second street.

Q. How far is Apple Avenue from Browning Road?

A. I should say about two blocks. They are not cut-through streets.

Q. You had to come out Apple Avenue and make a left-hand turn to go onto the Black Horse Pike to Browning Road?

A. Yes, sir.

Q. You say you had seen Howard when you got to Browning Road?

A. I saw Howard after I had turned from Apple Avenue onto the Black Horse Pike.

Q. Then, I understood you to say it was a light, an overhead light, at Browning Road that permitted you to observe Mr. Auld? Am I mistaken about that?

A. The light is on Browning Road.

Q. That is about two squares from Apple Avenue?

A. No, sir, the light is about ten feet back of Apple Avenue.

Q. Is that the light you had—does that light light up Browning Road, too?

A. No, sir, that is what I am speaking of. It is near Browning Road.

Q. That is what I am trying to get straightened out. You talked about Browning Road in your direct examination. The light you have reference to is the light on Apple Avenue.

A. No, sir, it is on the Black Horse Pike.

Q. Where Apple Avenue comes into the Black Horse Pike.

A. It is near Apple Avenue. It is up a ways.

Q. How far?

A. I should say—I am no judge of measurements, so, to my idea, it would be as far as from here to you.

Q. From Browning Road?

A. That is right.

Q. Now, is that where you say you first saw Howard Auld?

A. Yes, sir.

Q. You had then turned out and had gone from the distance where you are to where I am, when you say you saw a man there, and you got within five or six feet of him, and you think it was Howard Auld?

A. That is right.

Q. Now, you were driving down, or were you just in low gear?

A. I had my car in low gear.

Q. And had you turned into the Black Horse Pike? I mean, you had made your left-hand turn to go over to the right-hand side of the Pike?

A. No, I saw Mr. Auld—when I saw Mr. Auld I wasn't altogether on the right-hand side, I was more in the center of the road.

Q. You were more than six feet?

A. As I told you, I am not a good judge in the

matter of measurement. It was from the center of the road.

Q. Had you recognized him when you made your turn?

A. I saw his back, but not clear until I was directly alongside of him.

Q. At that time you stopped your car?

A. Yes, sir.

Q. Did you talk to him?

A. No, sir.

Q. You took a look at him?

A. Yes, sir.

Q. And then you started off again?

A. Yes, sir.

Q. How far did you go down the Pike before you say you stopped the car?

A. I didn't go that far. I went merely—started my car and thought better I should take him home. I didn't drive that far. When I say my car didn't roll three feet—on the impulse of the moment, when I thought I should take him home.

Q. Mrs. Anderson, you say you had an opportunity of observing him when he was walking?

A. Yes, sir.

Q. Would you say he was wobbly?

A. Yes, walked, wobbling.

Q. What do you mean?

A. It was just like somebody that is injured, walked.

Q. Was he staggering?

A. No.

Q. Was he having difficulty in walking?

A. Well, I might use the words "slouch walk", as if he was slumping, as if it was too much trouble for him to walk.

Q. Did he continue to walk that way all the time you observed him?

A. Yes, sir.

Q. You had seen him walk on other occasions, had you not?

A. Yes, sir.

Q. Did he walk differently on that occasion than what you had observed prior to that time?

A. Yes, sir.

Q. So much that it attracted your attention as to the manner in which he was walking?

A. Yes, sir.

Q. You would not say he was staggering?

A. No, sir.

Q. But, he was having difficulty in walking?

A. That is right.

Q. How far did you see him walking that way, Mrs. Anderson, after you had gone by, or was it just a glance?

A. It was not a glance, because my eye stayed on him until he crossed Brown Avenue. That is where the big department store is. My eyes stayed on him for that time.

Q. That would be for a distance of how far, would you say, your eyes had been on him?

A. That was practically half a square.

Q. Did he change any during that time?

A. No, sir, he kept on walking.

MR. PALESE: That is all.

THE PROSECUTOR: I think that is all. Thank you a lot, Mrs. Anderson.

JOSEPH ANDERSON, sworn.

BY THE PROSECUTOR:

Q. Mr. Anderson, you are the husband of the woman who just testified?

A. Yes, sir.

Q. And were you at the Fire Hall on the night of August the 14th, 1945?

A. Yes.

Q. Referred to as V-J Night?

A. That is right.

Q. Did you see Margaret McDade, the dead girl, there that night?

A. Yes, I did.

Q. Where was she when you first saw her?

A. Sitting beside my wife.

Q. Was anyone with her?

A. No, not at the time.

Q. Did you see Mr. Auld there that night?

A. Yes, I did.

Q. What time did the place close?

A. Somewhere around eleven o'clock the Mayor closed it up.

Q. Now, after you closed the place up, did you next see Mr. Auld?

A. The day of the 15th, around six to six-thirty.

Q. Where did you see him?

A. At the Fire House.

Q. The Bellmawr Fire House?

A. Yes.

Q. The same place you had been the night before?

A. Yes, sir.

Q. What time was it that you saw him?

A. Somewhere in the neighborhood of six to six-thirty.

Q. Who was with you when you saw him?

A. My wife.

Q. Did you have a conversation with the defendant, Mr. Auld?

A. My wife brought out a conversation to Mr. Auld.

Q. What did your wife do in your presence and in the presence of Mr. Auld?

A. In regard to the man's hands, because she had told me about the boy the night before.

Q. Don't tell us what she said. What did she do on the night of the 15th?

A. She showed me the man's hands. They were so big, and they were scratched.

Q. What do you mean, scratched?

A. I don't know. They just seemed to be scratched up. I passed a remark as I gave him a glass of beer

---

THE COURT: Not what you remarked.

Q. What did you say to Mr. Auld when you gave him the glass of beer?

A. I passed a remark that that was a briar patch you went through.

Q. What did he say?

A. He didn't say anything.

Q. What did he do?

A. He passed a remark and went out.

Q. Did you notice his face?

A. Yes, it was scratched.

Q. Could you estimate the number of scratches?

A. No, I could not estimate the number.

Q. What night was this that you are referring to?

A. That was the day after V-J Day, the 15th.
Q. What time?
A. Around six to six-thirty.
Q. You could not see his arm?
A. No, I couldn't.
Q. Why?
A. He had a shirt on that night.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Anderson, did the scratches seem to you scratches you would get from coming, from being in a briar patch? I think that was the remark.
A. Yes.
Q. Why did you make that remark?
A. Because the man was scratched.
Q. Well, did the scratches resemble briar patch scratches?
A. I don't know. It would be a very big one.
Q. What is that?
A. It would be a very big briar patch.
Q. That is what you thought it resembled?
A. That is right.

MR. PALESE: That is all.

THE COURT: We will recess now, gentlemen, until 10 o'clock tomorrow morning.

(At this point a recess was taken until Thursday, March 14, 1946, at 10 o'clock A. M.)

March 14, 1946.

FOURTH DAY.

(Trial of the cause resumed at 10:00 o'clock a. m., on the above date in the presence of the defendant and counsel for the respective parties.)

THE CASE FOR THE STATE (Continued).

WILLA STOERRLE, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Willa Stoerrle.
Q. How do you spell your last name?
A. S-t-o-e-r-r-l-e.
Q. Where do you live?
A. 801 Black Horse Pike, Haddon Heights.
Q. With respect to the pumping station referred to in this matter how far away from it do you live?
A. 123 yards.

MR. PALESE: I am having trouble hearing you. Will you talk a little louder.

THE WITNESS: 123 yards.

Q. How do you know it's 123 yards?
A. I walked it and measured it by feet.
Q. Would you say that you live half a block in Maple Avenue?

MR. PALESE: I object.

THE COURT: It is leading, Prosecutor. The present question now, I take it, is intended to establish the direction from the pumping station, not the distance.

MR. PALESE: I object to the form of the question, the question would not elicit such an answer.

THE PROSECUTOR: I will withdraw the question.

THE COURT: The question is withdrawn.

Q. I show you exhibit marked S-4 in evidence, and ask you whether or not you can indicate thereon about where you live.

THE COURT: Will you please raise your voice a little?

A. This is the building in which I live.

THE COURT: The witness is now indicating a structure in the exhibit, and says that this is the building in which I live. I think that is what she just said.

MR. PALESE: Her house?

THE WITNESS: That's right.

THE COURT: Keep your voice up, please, when you speak.

MR. PALESE: If that is the purpose, then I think the witness had better indicate that the exhibit also shows other than what the purposes of the exhibit was, and that is to show the location of the sewage disposal plant. That was the purpose of the exhibit. The prosecutor is endeavoring to avail himself of other things that appear on the exhibit, which has not been identified, if I understand the exhibit. That's the reason I couldn't understand the question, because I knew no exhibit had been put in which indicated a house. The purposes of the exhibit was to show the pumping station. Now the prosecutor, as I said before, is attempting to avail himself of other things which may appear on the exhibit but have not been explained, and has this witness say that this house or that house is my house. If that's the purpose of it then I have no objection, but I think we ought to know that before the witness says I live here or live there.

THE PROSECUTOR: I believe I am entitled to the exhibit, referring to S-4, as it is in evidence, and I think I am entitled to refer to it in anything that appears thereon. The only thing I am asking this witness is where she lives, and if she can indicate on the exhibit her home, because it appears thereon. If it doesn't appear, she can't mark it on the exhibit. If her house appears on there I see no objection to

her marking it on the exhibit, that's where I live, and that's the only purpose.

MR. PALESE: That's the objection I make, if your Honor please.

THE COURT: Counsel's objection is predicated on the fact that up until this moment there is no indication that a house does appear in the exhibit.

THE PROSECUTOR: I will withdraw all the questions.

Q. Mrs. Stoerrle, I show you exhibit marked S-4 for identification, and ask you whether or not that picture or exhibit has on it or shows in it the place where you reside in Haddon Heights?

A. Yes.

Q. Will you indicate on the exhibit by taking this pen and placing a cross in ink indicating thereon where you live?

(The witness complies.)

THE PROSECUTOR: The witness for the purposes of the record places a cross in ink on Exhibit S-4 in evidence, indicating the place where she resides.

Q. Now, Mrs. Stoerrle, in which direction would that be from the pumping station with respect to the Black Horse Pike, would it be east of the pumping station or west of the pumping station?

A. West of the pumping station.

Q. West of the pumping station?

A. Yes.

Q. I gather then, that you are closer to the Black Horse Pike than the pumping station?

A. I am.

MR. PALESE: I object.

THE COURT: It is leading, Prosecutor.

THE PROSECUTOR: I will withdraw the question.

Q. Mrs. Stoerrle, where were you on the night of August 14, 1945?

A. I was at home.

Q. What time did you leave your home?

A. That was in the early part of the evening I went to Philadelphia.

Q. Who did you go to Philadelphia with?

A. My daughter and her girl friend.

Q. What time did you arrive in Philadelphia?

A. Around nine o'clok at night.

Q. What time did you return home?

A. I got home around quarter after one, 1:20, something like that.

Q. Who came home with you?

A. My daughter and the young lady we went with, she went home. She lives across the street.

Q. What time did you commence to dress in order to retire?

A. Around one-thirty.

Q. With respect to Maple Avenue where is the bedroom in your home located?

A. It's located on Maple Avenue.

Q. Facing Maple Avenue?

A. That's right.

Q. On the first, second, or third floor?

A. First floor.

Q. Can you describe the premises in which you reside?

A. There's three rooms on that side of the street.

Q. When you say that side, what do you mean?

A. Maple Avenue side. That's my own living room, my bedroom, and a kitchen in the back apartment.

Q. On the first floor?

A. That's right.

Q. What is on the second floor?

A. The second floor has two apartments, and they both consist of three rooms and the same condition exists on the Maple Avenue side.

Q. You only occupy the first floor?

A. That's right.

Q. What time did you start to get undressed to go to bed?

A. Around one-thirty, I think.

Q. Do you know what time your daughter started to undress in order to retire?

A. Yes, I do. I called to her, and I was already in bed myself, and told her to hurry, it was twenty of two.

Q. You entered the bedroom. Did you get in bed?

A. Yes.

Q. Did your daughter get in bed?

A. Yes, sir.

Q. What happened next?

A. Then we had pulled out the light, and we had been lying there for just a few minutes, not talking, when suddenly we heard a scream.

Q. Can you describe to us the scream that you heard?

A. Only that it was terrifying enough we didn't dare go out and look, because we were alone.

Q. Can you tell us whether it was a man's scream or a woman's scream?

A. It was definitely a woman's scream.

Q. What reaction did you have to it?

MR. PALESE: I object, if your Honor please.

THE COURT: Sustained.

Q. After you heard the scream, what did you do?

A. My daughter and I discussed it for a few minutes, and then we decided it was best not to bother.

THE PROSECUTOR: May I have the exact answer, Mr. Stenographer?

(Answer repeated.)

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

CHARLOTTE STOERRLE, sworn.

BY THE PROSECUTOR:

Q. Miss Stoerrle, I show you what has been marked in evidence as S-4, and there appears thereon a cross mark made in ink. I ask you whether or not, or what, if anything, does that depict?

A. That's where I live.

Q. Where you live?

A. Yes.

Q. Do you know how far away from the pumping station located on Maple Avenue that your home is located?

A. 123 yards.

Q. How do you know that, Charlotte?

A. My mother and I walked it off.

Q. Where had you gone on the night of August 14, 1945?

A. To Philadelphia.

Q. With whom?

A. My girl friend, my mother and myself.

Q. What time did you return?

A. About a quarter after one.

Q. Beg pardon?

A. Quarter after one, around that time.

Q. Where is the bedroom in your home located?

A. It faces Maple Avenue.

Q. Do you occupy that bedroom with your mother?

A. Yes.

Q. Are there twin beds in the room, or is it a single large bed?

A. It's a single bed.

Q. After you returned home and commenced to undress in order to retire, did you go to sleep?

A. Not right away.

Q. You got in bed?

A. Yes.

Q. With your mother?

A. Yes.

Q. And about what time would you say that was?

A. I was in the bathroom, and my mother called to me "Come on in, it's twenty of two, it's about time we got to bed."

Q. Did you go to bed?

A. Yes.

Q. Did you go to sleep right away?

A. No, we laid there for a couple of minutes.

Q. While you were lying in bed at the hour stated by you, what if anything happened?

A. There was a scream.

Q. What kind of a scream?

A. It was shrill, and agonizing, I would say, but I mean we were sort of scared so we didn't bother with it.

Q. Could you distinguish whether it was a man's scream or a woman's scream?

A. It was a woman's scream.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. With respect to the width of this room which you are in now, how far is your home, using this as a means of whether it's once, twice, or three or four times from the pumping station?

A. From the back of the house I would say it's the length of this room and one-half again.

Q. And that is what you say would be 123 yards?

A. I am not positive, because I ——

Q. You said you measured it, you said you and your mother measured it, and it was 123 yards.

A. We stepped it off, that's not acurate.

Q. There are three feet in a yard, is that correct?

A. Yes.

Q. So that would be about 375 feet?

A. Yes.

Q. That's a little more than what we would know as a city block, is that correct?

A. Yes.

Q. Is that how far your home is from the pumping station?

A. I suppose so.

Q. Yet you say it's only one and a half times the length of this room?

A. I can't tell you. It's a lot different between this room and the street.

Q. Were the windows open in your home?

A. No, they were shut.

Q. How many windows do you have in your bedroom?

A. Two.

Q. Do the windows face Maple Avenue or face towards the river, as we may say?

A. They face Maple Avenue.

Q. Your house faces Maple Avenue, does it not?

A. Yes.

Q. So that the room in which you and your mother were occupying had no windows facing the pumping station?

A. Well, it's facing Maple Avenue, I mean, the windows are on Maple Avenue, but the back of the house is the only one that has a window facing the pumping station, and the windows were open.

Q. Please answer my question: In this bedroom where you and your mother were sleeping, it had windows in the room that were facing Maple Avenue, isn't that correct?

A. Yes.

Q. As I understand there were no windows in your bedroom overlooking, or that you could see the pumping station?

A. No.

Q. How large are these windows in your bedroom?

A. They are pretty large, I don't know exactly.

Q. What did you do, if anything after you heard the scream?

A. Well, we laid there, and as my mother said ——

Q. No, what did you do? What did you do about it after you heard the scream?

A. What did I do?

Q. Yes.

A. I talked it over with my mother.

Q. When was the first time that you told anyone that on this evening you had heard the scream of a woman?

A. I don't know when it was, but we were up looking over the pumping station, and there was a man there, and we talked about it between us, and the man said that we should report it.

Q. Please answer my question.

THE PROSECUTOR: That's the answer.

Q. When was the first time you told anyone?

THE COURT: She said to a man at the pumping station.

Q. When was it?

A. I couldn't say exactly.

Q. With respect to when you heard the scream, was it a day, two days, a week, afterwards, or how long?

A. The girl had already been found, and I guess it was the day after that. I am not positive, I couldn't say.

Q. The day after?

A. Yes.

Q. But up until that time you had not said anything about it?

A. I had talked it over with my girl friends.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. Just a moment. Who was this man that you told about what you had heard, do you know?

A. I don't know. I saw him here the other day.

Q. Do you see him here today? Look around, Charlotte. Do you see the man here today?

A. No.

THE PROSECUTOR: That is all.

THE PROSECUTOR: If your Honor please, I forgot to ask this witness one question on direct examination.

THE COURT: You may recall her.

WILLA STOERRLE, recalled.

BY THE PROSECUTOR:

Q. Mrs. Stoerrle, I forgot to ask you whether the windows were open or closed on this particular morning?

A. They were both open.
Q. What is the size of the window?
A. The standard size windows.
Q. Standard size?
A. Yes, sir.
Q. Was the window open from the bottom and the top or just from the bottom?

MR. PALESE: I object, if your Honor please.

THE COURT: Sustained.

THE PROSECUTOR: I will withdraw it.

Q. Describe to the members of the jury and his Honor the Judge the manner in which the windows were open.
A. The windows, both of them, were open from the bottom half way up.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

THE PROSECUTOR: That is all, thank you.

MARY SUTTON, sworn.

BY THE PROSECUTOR:

Q. Mrs. Sutton, what is your full name?
A. Mary Sutton.

Q. Mary Sutton?

A. That is right.

Q. I show you what has been marked in evidence as Exhibit S-18 and ask you whether or not you can identify that picture?

A. I do.

Q. What does that picture portray?

A. A girl by the name of Rita McDade, Margaret.

Q. Rita?

A. Margaret.

Q. McDade?

A. Yes.

Q. Where did you meet her?

A. She came in my place. I have the Marlyn Inn.

Q. When did she come to your place?

A. Approximately around two years ago I first met her.

Q. What did she come there for, do you know?

A. Well, nothing in particular, I guess. I have the Marlyn Inn.

Q. Did you see the girl whose photograph I have just shown you immediately prior to August 14, 1945?

A. Oh, yes.

Q. Under what circumstances?

A. Well, she came in with her sister, that is all, just customers.

Q. How long was that before August 14th?

A. I said I knew her approximately about two years.

Q. What I am trying to get, Mrs. Sutton, at any time did she spend a vacation in your place?

A. Yes.

Q. When was that?

A. I think it was the latter part of August.

Q. Of what year?

A. Last year.
Q. I beg your pardon?
A. Last year.
Q. 1945?
A. Yes.
Q. That couldn't have been, could it?

MR. PALESE: I didn't hear the question. I beg your pardon?

THE PROSECUTOR: She said the latter part of August.

THE WITNESS: No ——

MR. PALESE: Just a minute. Will you read that question, Mr. Stenographer?

(The following question was read by the stenographer: "Q. That couldn't have been, could it?")

MR. PALESE: I object to it, if your Honor please. There was some noise ——

THE COURT: The witness has said that the deceased spent her vacation the latter part of August at her place.

MR. PALESE: The Prosecutor said, "It couldn't have been," so I object to the question. It is leading, and it is an effort to straighten out the witness on an answer that I am assuming the Prosecutor didn't want. It is not responsive to the question.

THE COURT: All the testimony thus far in the case indicates, Mr. Palese, that Rita Margaret McDade was dead after the 19th of August, 1945.

MR. PALESE: That doesn't prevent this witness—. If your Honor please, we have got to take the testimony of this witness, and if she is wrong then, of course, it is the weight that the jury is going to place on her testimony. The Prosecutor can't ——

THE COURT: By that do I take it that you mean, Mr. Palese, if the witness says something which she later says is wrong she cannot change that testimony?

MR. PALESE: No, if your Honor please, I don't mean that.

THE COURT: That is the effect of your statement.

MR. PALESE: I don't mean that. If this witness has made a mistake it is on her part to try and correct it. It isn't on the part of the Prosecutor to call her attention to the fact that she has made a mistake. It isn't the Prosecutor's province. It is this witness's province. If she thinks that she has made a mistake she can rectify it, but surely the Prosecutor, knowing that probably the answer that this witness has given is incorrect, cannot call her attention to the fact that her answer is incorrect.

THE COURT: Why can't he?

MR. PALESE: Because he is leading.

THE COURT: The objection will be sustained because the question is leading.

BY THE PROSECUTOR:

Q. Mrs. Sutton, when was it that Rita McDade spent her vacation with you?

A. It was 1944 instead of 1945.

Q. Why did you say 1945?

MR. PALESE: I object to that, if your Honor please.

A. I don't know why I said it.

THE PROSECUTOR: I will withdraw it.

Q. What part of 1944?

A. The latter part of August.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Do you have rooms in your place that you rent out?

A. No, positively no.

Q. You say this young lady did occupy a room in your place of business for two weeks?

A. Not two weeks, one week.

Q. One week? And you only knew her as a customer frequenting your place?

A. That is right.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. And as a result of her spending her vacation with you, Mrs. Sutton, you became very friendly with her?

A. Yes.

Q. Is your place of business located near a lake?

A. Yes, we have two pools on the place.

Q. Two pools?

A. Yes.

THE PROSECUTOR: That is all, Mrs. Sutton, thank you.

CHARLES ABEL, sworn.

BY THE PROSECUTOR:

Q. Mr. Abel, where do you live?

A. 120 7th Avenue, Haddon Heights.

Q. What is your occupation?

A. Railroad crossing watchman.

Q. I didn't quite understand you.

A. Railroad crossing watchman.

Q. When was it that you went to the vicinity of the pumping station located on Maple Avenue in Haddon Heights?

A. On the morning of August 22nd, 1945.

Q. What time did you arrive there?

A. About 6:20 A. M.

Q. What did you do when you arrived there?

A. I looked for a pocketbook that was supposed to have belonged to Miss McDade.

Q. Did you find the pocketbook?

A. Yes, sir, I did.

Q. I show you what has been marked S-10 for identification and ask you whether or not that is the pocketbook which you found?

A. That is the pocketbook I found.

Q. Where did you find it with respect to the pumping station?

A. The distance from the pumping station—Well, the distance from the pumping station to where I picked the pocketbook up was from 300 to 350 feet, I would say.

Q. In which direction from the pumping station?

A. Towards the south.

Q. Towards the south?

A. Yes, sir.

Q. Is there a creek located in that vicinity?

A. Right in back of there.

Q. What did you do with it when you found it?

A. I was going through the grass when I kicked some grass right near a tree, and I saw this thing move, and I kicked again and I reached down and I saw that that was the pocketbook. I immediately picked the pocketbook up, in the company of Chief Kayser and Sergeant Paul Heistand of the Haddon Heights Police Department who had asked me to go along to help them, and I picked the pocketbook up with my right hand. I immediately held it up in the air and I said, "Here you are, boys."

MR. PALESE: I object, if your Honor please, as to what he said.

THE COURT: That will be stricken, "he picked it up and held it in the right hand."

BY THE PROSECUTOR:

Q. Whom did you give it to?

MR. PALESE: If your Honor please, I object to the other answer as not being responsive because the Prosecutor assumes the same attitude because he is asking the identical question that elicited the answer that this man has given.

THE PROSECUTOR: I understand the Court ruled in favor of Mr. Palese and the balance of the answer was stricken.

MR. PALESE: I am asking for the entire answer to be stricken.

THE COURT: I will deny the motion and strike that part of the answer in which the witness stated what he said.

MR. PALESE: If your Honor please, the question was, "To whom did you give the pocketbook?" and he started off by saying that he took a walk and he kicked something and he picked something up and he held it in his hand. Then he said something. Then the very next question that the Prosecutor, before I made my objection and I was on my feet, then asked the witness, "whom did you give it to?" It is the very question, if your Honor please, that elicited the answer which I think is not responsive to the question, and the Prosecutor thinks the same thing.

THE COURT: The interruption by counsel was predicated first upon the fact that the witness testified to something that he said?

MR. PALESE: That is correct.

THE COURT: That interrupted the witness in the giving of the answer.

MR. PALESE: The Prosecutor doesn't think so, if your Honor please, because he asked the same question again.

THE PROSECUTOR: Please don't speak for me.

MR. PALESE: I am not speaking for you. I am speaking for the question that you asked.

THE COURT: You just said, Mr. Palese, that the Prosecutor doesn't think so.

MR. PALESE: Will your Honor just bear with me for a moment? Mr. Stenographer, please read the question that was propounded by the Prosecutor before the witness started to answer and then please read the second question that he asked.

(The following questions were read by the stenographer: "Q. What did you do with it when you found?" "Q. Whom did you give it to?")

MR. PALESE: If your Honor please, he asked a question, he gets an answer, and then I objected to it. Then while I am on my feet the Prosecutor asks the identical question.

THE COURT: You say that they are identical questions?

MR. PALESE: They are.

THE COURT: I will deny your motion. That part of the answer in which the witness testified to what he said will be stricken. Now, Mr. Stenographer, will you read to the witness the answer as he had given it up to the point of the objection by defense counsel?

(The following answer was read by the stenographer: "A. I was going through the grass when I kicked some grass right near a tree, and I saw this thing move, and I kicked again and I reached down and I saw that that was the pocketbook. I immediately picked the pocketbook up, in the company of Chief Kayser and Sergeant Paul Heistand of the Haddon Heights Police Department who had asked me to go along to help them, and I picked the pocketbook up with my right hand. I immediately held it up in the air and I said, 'Here you are, boys.' ")

BY THE COURT:

Q. From that point, "I immediately held it up in the air," continue with your answer.

MR. PALESE: If your Honor please, there is another question pending. How can the witness continue with another question when there is another question?

THE COURT: Because, Mr. Palese, the question was asked before he finished the answer.

MR. PALESE: Does the Prosecutor withdraw the question?

THE PROSECUTOR: I will withdraw the question.

THE COURT: The question is withdrawn.

BY THE PROSECUTOR:

Q. To whom did you give the pocketbook?

THE COURT: The question is withdrawn, Prosecutor, and the witness is answering a pending question.

THE PROSECUTOR: He is answering the pending question?

THE COURT: That is right.

THE PROSECUTOR: I will withdraw the last question.

THE COURT: The question is, "What did you do with it when you found it?"

THE WITNESS: I gave the pocketbook to Chief Kayser.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

CAPTAIN JAMES J. MULLIGAN, recalled.

BY THE PROSECUTOR:

Q. What is your name?
A. James Mulligan.
Q. Do you have a middle initial?
A. Yes, sir, James J.
Q. Do you have an official position in the County of Camden?
A. Yes, sir.
Q. What is it?
A. Captain of County Detectives.
Q. How long have you been a County Detective, Captain?
A. Going on 13 years, sir.
Q. As such I show you what has been marked for identification S-10 and ask you whether or not you recognize it?
A. Yes, sir.
Q. From whom did you obtain the pocketbook?
A. Chief Kayser of the Haddon Heights Police Department.
Q. When was it, Captain?
A. August 22nd.
Q. Where were you when you received it from Chief Kayser?
A. The Haddon Heights Police Station.
Q. And you then took it into your possession?
A. Yes, sir.
Q. Has it been in your possession ever since excepting in court here?
A. Yes, sir.

THE PROSECUTOR: I now offer the pocketbook in evidence.

MR. PALESE: Is that with the contents?

THE PROSECUTOR: I will come to the contents in just a moment.

MR. PALESE: If your Honor please, the pocketbook has some contents. I think I am entitled to know whether the offer is for the pocketbook itself or the pocketbook and the contents.

THE COURT: What is the offer?

THE PROSECUTOR: The offer is the pocketbook and its contents, if the Court please.

MR. PALESE: I object, if your Honor please, because there is no testimony on the part of Captain Mulligan that the contents in the pocketbook were in the pocketbook when they were turned over to him by the Chief of Police.

THE PROSECUTOR: I will withdraw the offer at this time.

Q. Captain, when you received from Chief Kayser the pocketbook what did it have in it?

A. There was a dress in there, a slip, a brassiere, a pair of stockings, two pairs of garters, a change purse with a dollar bill, a cigarette case, a make-up case, one bracelet, handkerchief, a broken piece of mirror, and there was a breastpin on the dress, but I took it off and put it in the pocketbook when I brought the dress to the State Police in Trenton.

Q. From the contents of the pocketbook you took the dress out?

A. The dress and the slip, sir.

Q. The dress and a slip?

A. Yes.

Q. They were given to Trooper Brady?

MR. PALESE: I object to that, if your Honor please.

THE COURT: It is leading, Prosecutor.

Q. To whom did you give that, Captain?

A. Trooper Brady of the State Police Department.

Q. Outside of the dress and the slip, all the other contents of the bag have been in your possession ever since they were turned over to you?

A. Yes, sir.

Q. Outside of the time they have been in court here?

A. That is right.

THE PROSECUTOR: I now offer the pocketbook and the contents in evidence, excluding the slip and the dress, which I understand have already been in evidence. If not we will take them in their turn.

MR. PALESE: If your Honor please, let the Captain tell us what is in there. The Captain doesn't know or do I know what is in this pocketbook. Let the Captain look at it and see if they are the articles that were then in the pocketbook when delivered to him.

A. Yes, sir, all except this is one I didn't name, a piece of Waltham watchcase, a broken piece of

Waltham watchcase. That is the only thing I didn't mark down. That was in there at that time.

THE PROSECUTOR: I offer the pocketbook and the contents in evidence at this time, if the Court please.

THE COURT: Let it be marked as a single exhibit, S-10 in evidence. No objection, with the contents as checked by Captain Mulligan.

Q. Captain, did you go to the scene of this crime?

A. I did go to the scene, yes, sir.

Q. When did you go?

A. I went to the scene of the crime on Monday, August 20th.

Q. With whom did you go?

A. Well, that was just a routine check before the defendant was arrested.

Q. Now, did you go to the scene of the crime after the defendant was apprehended?

A. Yes, sir.

Q. Who went with you?

A. Detective Dube, Detective Mathis, Detective Bennie, Detective Wojtkowiak; Chief Auletto, of Bellmawr, Officer Norton, of Haddon Heights, and another special officer from Haddon Heights, went to the scene on the morning of the 22nd.

Q. Was the defendant with you?

A. Yes, sir.

Q. Why did you go?

MR. PALESE: I object to why he went.

THE COURT: The objection is sustained.

Q. At the scene, what, if anything, did the defendant do or say?

A. The defendant went with us to show where he had throwed this pocketbook the day the crime was committed.

Q. On that occasion, did you find it?

A. No, I did not, sir.

Q. Did you subsequently return to the scene?

A. I did, the next day; that is, the same day, with Chief Kayser, of Haddon Heights.

Q. When you say two o'clock, you mean two o'clock in the morning?

MR. PALESE: I object.

THE PROSECUTOR: I wanted to straighten it out.

THE COURT: I think the witness said at two o'clock in the morning.

MR. PALESE: You see the position I am in? The Prosecutor didn't hear it, and I didn't, either.

THE COURT: Prosecutor, it is a matter which is leading. It is a matter on which the witness has already testified.

Q. When did you next return? At what time of the day, Captain?

A. About eleven thirty that same morning.

Q. Who went with you?

A. Detective Dube and Chief Kayser.

Q. Did you go to any particular locality?

A. We went all over the scene with Howard Auld, who had brought us there early on the same morn-

ing, where he said he had throwed the pocketbook. Chief Kayser said the pocketbook was found at the exact same spot.

MR. PALESE: I object.

THE COURT: May I have the answer read?

(The foregoing answer was read as follows: "We went all over the scene with Howard Auld, who had brought us there early on the same morning, where he said he had throwed the pocketbook. Chief Kayser said the pocketbook was found at the exact same spot.")

THE COURT: The part of the answer where Chief Kayser said it was found will be stricken.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

THE PROSECUTOR: Thank you, Captain.

WINFRID L. DUBE, recalled.

THE PROSECUTOR: Have you been sworn?

THE COURT: Yes.

BY THE PROSECUTOR:

Q. What is your occupation?
A. County Detective in the Prosecutor's Office.

Q. How long have you been a County Detective assigned to the Prosecutor's Office?

A. It will be nine years in August, rather, the first of July.

Q. What were you before that, Mr. Dube?

A. A State policeman.

Q. As such County Detective, were you present when the defendant, Howard Auld, was brought to the office of the Prosecutor?

A. Yes, sir.

Q. When was that?

A. It was around eleven thirty, August the 21st, Tuesday night.

Q. Did you speak with him?

A. I did, sir.

Q. Do you remember asking him any questions?

A. Captain Mulligan and I talked to him for about twenty minutes in the front office.

Q. Can you recall at this time any particular question that you asked him?

A. We asked him the general questions concerning this crime, and he admitted the crime, and I asked him in particular how often that cesspool was cleaned, the cistern down in Haddon Heights where the body had been found.

Q. What did he say to you?

A. About once a year.

Q. Now, Mr. Dube, did you go to the scene of the crime?

A. Yes, sir, I did.

Q. When?

A. Sunday afternoon following the finding of the body, on the 19th.

Q. Did you subsequently go to the scene of the crime again?

A. We were there every day for the next two or three days, Prosecutor.

Q. Do you remember accompanying Captain Mulligan?

A. When do you mean, Prosecutor?

Q. When you went with the defendant.

A. That was on the morning of the 22nd, yes, sir, about two thirty in the morning.

Q. What, if anything, did the defendant do or say at the scene?

A. On this early Sunday or Monday morning, he took us down there to show us where he had thrown this pocketbook containing the clothes of the dead girl, and it was near the creek or the lake south of where the pumping station is. We had him in our search for about an hour, with flashlights; it was so dark, we could not find anything. We returned with him to the Prosecutor's office.

Q. Did you return later that morning?

A. The following morning at eleven thirty or noontime, we went out, Captain Mulligan and I went down and received the pocketbook from Chief Kayser.

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

LAWRENCE T. DORAN, recalled.

BY THE PROSECUTOR:

Q. What is your full name?

A. Lawrence T. Doran, D-o-r-a-n.

Q. How long have you been connected with the Prosecutor's office as County Detective, and Second?

A. Thirty-five years past.

Q. As the result of a telephone call you received on August the 19th, 1945, what did you do?

A. I received a telephone call and I went to the pumping station on Maple Avenue, in Haddon Heights.

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

A. I saw the nude body of a girl lying at the bottom of this well, and several people around it.

Q. I show you what has been marked in evidence as S-5, and ask you whether or not that photograph correctly and accurately portrays the condition of the body when you first saw it at the bottom of the well?

A. It does.

Q. Now, what did you do next, Chief?

A. I talked to the Chief of Police of Haddon Heights and the Fire Chief and made arrangements with them for supervising the removal of the body from the well.

Q. Were you there when the body was removed?

A. I was.

Q. Now, after the body was removed, what did you do?

A. I talked to the officers when I first arrived and to the two boys that found the body, and to Officer

Heistand. He had found a lot of articles there, consisting of a pair of shoes, a bracelet, a hat with a feather in it, and a pair of panties.

MR. PALESE: I object to that part when he said the officer said he had found these articles. That is the word I thought he used.

THE COURT: Repeat the answer.

(The foregoing answer was read as follows: "I talked to the officers when I first arrived and to the two boys that found the body, and to Officer Heistand. He had found a lot of articles there, consisting of a pair of shoes, a bracelet, a hat with a feather in it, and a pair of panties.")

MR. PALESE: I withdraw the objection. I lost the other word in there.

Q. Did Officer Heistand give you these various articles?

A. He did.

Q. Chief, I show you what has been marked for identification as S-11, and ask you whether or not they were the shoes that were given to you by Officer Heistand?

A. They are.

Q. Since the receipt of the said shoes by you, in whose custody have they been?

A. They have been in my custody continuously until I brought them into the court room on Monday.

THE PROSECUTOR: I now offer the shoes in evidence.

THE COURT: They will be admitted without objection and marked Exhibit S-11.

Q. Now, Chief, what else was turned over to you?

A. He turned over to me a red hat with a feather in it. The feather wasn't in the hat at the time. It was lying near—I don't know where it was lying, but it was found very near where the hat was found.

Q. Sergeant Heistand gave the hat and feather to you?

A. Yes.

Q. I show you what has been marked for identification S-12 and ask you whether or not that is the hat and feather that were given to you by Sergeant Heistand.

A. Yes.

Q. In whose custody has it been since the receipt of same by you?

A. Mine.

THE PROSECUTOR: I now offer the hat and feather into evidence.

MR. PALESE: I object to the feather. There is no testimony in this case that the feather was either in the possession of the dead girl or it was a feather that this defendant may have had or owned that would make it evidential.

THE COURT: We will recess for five minutes. The jury may leave the box.

Volume II

AFTER RECESS.

THE COURT: Objection overruled.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: Exception allowed.

THE COURT: It will be admitted in evidence and marked Exhibit S-12.

(Received and marked Exhibit S-12.)

BY THE PROSECUTOR:

Q. Chief, I show you what has been marked for identification as S-13, and ask you whether you recognize it?

A. I do.

Q. And from whom did you obtain it?

A. Sergeant Heistand.

Q. Since the same has come into your custody, where has it been?

A. In my possession until it was brought in the court room here.

THE PROSECUTOR: I offer S-13 in evidence.

THE COURT: It will be admitted without objection, and marked as Exhibit S-13.

Q. I show you what has been marked for identification as S-14, and ask you whether you recognize it?

A. Yes, sir.

Q. From whom did you obtain it?

A. Sergeant Heistand.

Q. Sergeant Heistand?

A. Yes.

Q. Since you obtained it from him in whose custody has it been?

A. In my possession ever since until I brought it into the court room.

THE PROSECUTOR: I offer S-14 for identification in evidence.

THE COURT: It will be admitted without objection and marked Exhibit S-14.

Q. I show you what purports to be a red hat with some lettering on it, and ask you whether or not you can identify it?

A. This hat was given to me by Officer Auletto of Bellmawr.

Q. When, Chief, about?

A. About, I think it was three or four days after the arrest of Auld.

Q. Since you received it from Chief Auletto of Bellmawr in whose custody has it been?

A. My possession ever since.

THE PROSECUTOR: I ask that it be marked for identification.

THE COURT: It will be marked S-19, for identification.

(Received and marked S-19 for identification.)

Q. I show you what purports to be a red hat with some lettering on it, and ask you whether or not you recognize it?

A. I do.

Q. From whom did you receive it?

A. This witness, Hulse, that was on the stand here, he marked it with his own initials.

Q. When did it come to you, about?

A. He gave it to me on the 21st, 8-21-45.

Q. Since the receipt of the same by you in whose custody has it been?

A. It has been in my custody ever since.

THE PROSECUTOR: Have you any objection to my offering that, Mr. Palese, the one of Hulse?

MR. PALESE: My objection is that to whom are they attributing these exhibits? If they just want them for having found them in Haddon Heights, I have no objection. I am wondering what the purpose of this hat is in this case. As I understand I see no evidence in this case that it was in the possession of the defendant, because I am assuming that your Honor permitted the feather, I didn't see it in the testimony, I hoped your Honor would call it to my attention when you said you thought it was in the testimony, but I think we ought to have some connection with the hats. The feather connection, as I take it, was in the possession of the defendant. There's no such testimony here about this hat. Was it either in the possession of the defendant, or in the possession of the dead girl? As I view the testimony ——

THE COURT: He asks the purpose for which you offer these two hats.

THE PROSECUTOR: This particular hat was given to the chief by the witness Hulse. That's the only purpose of this. It was received and marked in, and has been in the possession of the Chief ever since. This has no important purpose, the hat received from Miss Hulse. That's why I asked Mr. Palese about it.

THE COURT: I will hear you at side-bar.

(At side-bar.)

THE PROSECUTOR: If your Honor please, if I recall the testimony, the witness's name doesn't come to me ——

THE COURT: Fritzsche.

THE PROSECUTOR: The Fritzsche hat was given to Officer Auletto. I have the hat given us by Officer Auletto, and I would like to continue the chain.

THE COURT: This objection of counsel that he makes now is not predicated upon failure to identify it, it's predicated upon the question of its importance in the case.

THE PROSECUTOR: You mean Mr. Hulse's hat?

THE COURT: Yes.

THE PROSECUTOR: The only importance in the case, I think it was Mrs. Delano who testified

that she went upstairs and got some celebration hats, brought them downstairs, put them on the table in the kitchen. She said she thinks that three of them, she gave three of them out, or two persons took all three. You remember she said, "I didn't give them, they just came in and took them." Auld took one, and asked for another one. Whether he got it or not, I don't know, I don't think anyone knows, but evidently this hat was obtained during the investigation from Mr. Auletto. We want to account for the three hats, that's the only reason.

THE COURT: And that is material for what reason?

THE PROSECUTOR: It's really not material except I want to carry out my chain of proof, and to prove the finding and the gathering of these three hats which were given out at the celebration.

MR. PALESE: He says it is not material.

THE COURT: There is in my mind a connection which may make it material.

MR. PALESE: The prosecutor has just remarked it is not material, and your Honor indicates the thought it is material. Surely if it's the purpose of presenting evidence in court whether it is evidence shown in your Honor's mind. The prosecutor is presenting this case, and he has just stated to your Honor it is not material.

THE PROSECUTOR: There is testimony of three hats, the finding of the hat at the scene of the crime, which hat was found at the scene of the

crime, who it belonged to, who was wearing it, the one with the feather, and it is in evidence. It does become material in that respect.

MR. PALESE: Two people couldn't be wearing three hats.

THE COURT: That's the reason why I think it may be material to establish Auld's presence at the place where the crime is admitted to have been committed, and that it was he, and not Hulse or Mrs. Fritzsche, because they have accounted for their hats by producing them when demanded.

MR. PALESE: That's inculcating other individuals. Fritzsche and Hulse are not being tried.

THE COURT: If there were more than three hats perhaps it would not be a complete demonstration, and hence would have no probative value, but since as Mrs. Delano testified there were three hats, that Auld, Mrs. Fritzsche and Hulse were the three that got them, and that one hat was found at the scene of the crime, it is in my opinion material to show where the other two hats came from.

MR. PALESE: It is not material, because there is no evidence here that the defendant was seen with the hat that was found at the scene of the crime. He had a red hat on. There is no one says this particular hat which you now offer as an exhibit is the hat.

THE PROSECUTOR: The one found at the scene of the crime is in evidence.

THE COURT: I will overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Yes.

(Exception noted.)

THE COURT: This is the hat produced by Mr. Hulse?

THE PROSECUTOR: That's right.

(After return to the court room.)

THE COURT: The objection will be overruled and an exception allowed, and S-20 for identification will be marked in evidence as Exhibit S-20.

THE PROSECUTOR: Will you please step down one-half a moment, please.

PATRICK AULETTO, sworn.

BY THE PROSECUTOR:

Q. Chief Auletto, I show you what has been marked for identification S-19, and ask you whether or not you can recognize it?

A. This is the hat I put in a brown paper bag and turned over to Chief Doran.

Q. From whom did you get it?
A. From Mrs. Fritzsche, of Bellmawr.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Did you put your initials on the hat?
A. Not on the hat, no, sir.
Q. What is the difference between that hat and the other hat that has been marked Exhibit S-20?
A. This hat here I put in a brown paper bag, and turned it over to Chief Doran.
Q. What markings or anything about it are on that hat that made you certain it is the hat that you turned over to Chief Doran?
A. Very clean, it was very clean when I got it.
Q. Is that the only means of identifying the hat, that it is clean?
A. That's right.
Q. And that it is the hat that you turned over to Chief Doran?
A. That's right.
Q. Are there any other marks on this hat that permit you to identify it as the hat that you turned over to the Chief?
A. No, sir.

MR. PALESE: That's all.

LAWRENCE T. DORAN, resumed.

BY THE PROSECUTOR:

Q. When you received this red hat from Chief Auletto of Bellmawr, was it in a bag?

A. This bag.

Q. That bag?

A. Yes.

Q. What color is that bag?

A. Brown.

Q. Does the bag have anything on it you remember?

A. There is writing here on it.

Q. Has it been in that brown bag ever since you received it?

A. Yes.

THE PROSECUTOR: The witness is holding in his hand a brown bag.

Q. It has been in your custody ever since?

A. That's right.

Q. Until today?

A. Yes, sir.

Q. And brought into the court room?

A. Yes, sir. I don't think the writing on the bag, it's figures, has any bearing on the case itself.

THE PROSECUTOR: I offer Exhibit S-19 for identification in evidence.

MR. PALESE: I object as to the materiality of this hat, because I am assuming this is the hat of Mrs. Fritzsche.

THE COURT: The objection will be noted, and the reasons in support of the objection, it will be overruled, and an exception allowed.

(Exception noted.)

THE COURT: The exhibit will be marked S-19 in evidence.

Q. Did you go to the hospital with the body of the dead girl?

A. Yes, followed it up after they left the scene, I followed it to the hospital.

Q. About what time was it you arrived at the Cooper Hospital?

A. I should judge it must have been around six or seven o'clock, somewhere around there. I was there on three occasions that night, Prosecutor.

Q. Three occasions?

A. Three different times, yes.

Q. What was the reason for going to the hospital?

MR. PALESE: I object to any reason.

THE COURT: Sustained.

Q. As I understand, you have received from Officer Heistand some hair?

A. Yes.

Q. You have that with you?

A. Yes.

THE PROSECUTOR: I ask that it be marked for identification, if the Court please.

(Received and marked Exhibit S-21, for identification.)

Q. When did Sergeant Heistand give you the strands of hair?

A. While they were making arrangements to remove the body from the well.

Q. When was that?

A. That was on the afternoon of the 19th of August, about three-thirty.

Q. Since the receipt of Exhibit S-21 by you in whose possession has it been?

A. It has been in the locker in the Prosecutor's office ever since.

Q. Until it was brought here this morning?

A. Yes.

THE PROSECUTOR: I offer the strands of hair in evidence.

MR. PALESE: May I cross-examine the Chief?

BY MR. PALESE:

Q. Who else has access to the safe at the Prosecutor's office where this hair was kept?

A. Nobody outside of the office. Where that was kept, Wojtkowiak was with me that day, and it's been locked up under his and my care ever since.

Q. When you say locked up, do you mean a separate compartment, or do you mean in the safe in general?

A. No, the detective's locker.

Q. In whose locker?

A. Wojtkowiak's locker until the other day. He

is deceased, and I had to go in and take it out and bring it into court.

Q. As I understand, Chief, this hair, or this exhibit, was turned over to you and Detective Wojtkowiak, and you then turned it over to him and he put it in his locker?

A. Wojtkowiak was with me at the time I received it at the scene of the crime. I told him to take care of it. He locked it in his locker, and since that time he died, and I went into the locker and brought it here now from his locker and brought it here.

Q. You still don't answer my question. It was turned over to you in Haddon Heights, it was turned over to Detective Wojtkowiak?

A. That's right.

Q. And he had it in his possession and brought it to the Prosecutor's office?

A. Yes, sir.

Q. And he then put it in his locker?

A. Yes, sir.

Q. You had not seen it from the moment it was turned over to Detective Wojtkowiak until you went in his drawer and found this exhibit?

A. No, that's not right. We have saw it several times since then during the investigation. It was out during the investigation.

Q. After the investigation was over it was then given back to Wojtkowiak to put it in his private locker?

A. That's right.

Q. And it has been in the locker as far as you know until you opened it?

A. Yes.

Q. You don't know who has been in that locker,

or what has happened to it since that time, which has not been in your presence?

A. No, it has been in his possession, but on account of his death I brought it in here.

BY THE PROSECUTOR:

Q. When he received it was it received in your presence?

A. Yes.

Q. And when it was put in his locker was it put in in your presence?

MR. PALESE: That is objected to as leading.

THE COURT: It is leading.

Q. Who was present when County Detective Casimer Wojtkowiak put this exhibit in his locker?

A. Prosecutor, that was out two or three times during the investigation. He was there all the time and had charge of it, and locked it up, but I couldn't tell you who was there each time he locked it up.

Q. When he first locked it up?

A. When he first locked it up I was with him, but it was brought out later and shown to witnesses, and compared with her hair, and everything, it was brought out several times, and I can't tell you when he locked it up the last time who was there.

Q. Not the last time?

A. No.

Q. You are the Chief of County Detectives?

A. Yes.

Q. You have supervision of all the men in the office?

A. That's right.

Q. Could any stranger have gotten into the locker?

A. Not to my knowledge.

MR. PALESE: I object.

THE COURT: Sustained.

THE PROSECUTOR: Do you object to the strands of hair being offered in evidence?

MR. PALESE: I do now.

THE PROSECUTOR: All right, I will withdraw the offer.

BY THE PROSECUTOR:

Q. Now, Chief, you received a telephone call from the Mt. Ephraim Police Department?

A. I did.

Q. When was that?

A. That was on the evening of the 21st of August.

Q. About what time was it?

A. I received that call about 11:30 P. M.

Q. As a result of that call, what did you do?

A. I went to the Mt. Ephraim Police Station.

Q. When you arrived at the Mt. Ephraim Police Station, who was there?

A. I saw this defendant there in the custody of two police officers by the name of Norton and Vogt.

Q. What did you then do?

A. I questioned him as to who he was. They had determined that because they had found his discharge papers on him.

Q. Did you then take the defendant in your custody?

A. I did.

Q. Where did you take him?

A. To the Prosecutor's office, here in Camden.

Q. What time was that?

A. I would say we arrived here somewhere around about twenty minutes after twelve, A. M.

Q. In what part of the Prosecutor's office did you take him?

A. The front office.

Q. When you say "the front office" ——

A. Federal Street.

Q. Federal Street?

A. Yes.

Q. What did you then do?

A. We talked to him for a while, and I made some effort to get a stenographer, and I left him in the custody of Detective Dube and Captain Mulligan. They talked to him while I was arranging some affairs.

Q. Did the court stenographer then come?

A. He did.

Q. At what time?

A. He got there—we started the statement at three o'clock, 3 A. M.

Q. On the morning of what?

A. August 22nd.

Q. Who was present when the statement was taken?

A. I think there was the stenographer, myself, Captain Mulligan, and I think Dube was in the room.

Q. Who took the statement?

A. Mr. William B. MacDonald, the court stenographer.

New Jersey State Library

Q. What did the statement consist of; that is, the manner in which the examination took place?

A. I warned him first, and then asked him if he cared to tell me how this girl received these injuries which caused her death, and he said, "Yes, I will tell you."

Q. Did you ask him questions?

A. Not at that time. I just got his consent to make a statement and then I waited until Mr. MacDonald came in.

Q. What did your examination consist of; questions and answers?

A. Questions and answers.

Q. Then how did Mr. MacDonald take it down?

A. He took them down in shorthand.

Q. Shorthand?

A. Yes.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Then after the statement was had, I suppose it was transcribed, was it not?

A. I presume, because I got a copy.

Q. After you got the copy of the questions and the answers, did you give the defendant an opportunity to look at it and see whether it was correct or not?

A. I did not.

Q. That is not customary, is it, in the Prosecutor's office?

A. It is not.

Q. And you asked the questions and he answered them, you say?

A. That is right.

MR. PALESE: That is all.

WILLIAM B. MacDONALD, sworn.

DIRECT EXAMINATION.

BY THE PROSECUTOR:

Q. Mr. MacDonald, what is your official position in Camden County?

A. Official Court Stenographer.

Q. As such, did you have occasion to take a stenographic statement from the defendant, Howard Auld?

A. I did.

Q. When was that statement taken?

A. On August 22, 1945.

Q. What time, sir?

A. Three o'clock in the morning.

Q. Who was present?

A. The defendant, Chief Doran, Captain Mulligan, Detective Dube, and Officer Patrick Auletto.

Q. In what manner did you take the statement?

A. Question and answer.

Q. That was the manner in which the statement was taken?

A. Yes, sir.

Q. Did you take it in longhand or did you take it in shorthand?

A. Shorthand.

Q. Do you have with you today the original shorthand notes that you took?

A. I do.

Q. Will you read to his Honor and the members of the jury the statement made by the defendant on the morning of August 22, 1945, at about three o'clock in the morning, in the presence of Chief

Doran, Captain Mulligan, Detective Dube, and Patrolman Patrick Auletto, of Bellmawr?

MR. PALESE: If your Honor please, I object to the introduction of this statement or confession, because it is our contention in this matter that the defendant, Howard Auld, on the 27th day of July, 1945 ——

THE PROSECUTOR: Now, if your Honor please, I ask that this be at side bar.

THE COURT: We will hear it at side bar, gentlemen.

(The rest of the statement and the following discussion took place at side bar, not in the hearing and presence of the jury.)

MR. PALESE: (Continuing) —that the defendant, Howard Auld, on the 27th day of July, 1945, had been declared and proved insane by the Board of Doctors of the Mason General Hospital, which we have the record here, and which we will, on this application, offer to your Honor in that respect. It is our contention that when a person as this defendant has once been declared and proved insane, that the presumption of the law is that that person is still insane until such time as there has been evidence shown to the contrary.

Now, it is our contention, if we show that to your Honor, and I say we have the records of the hospital that can demonstrate that fact, unless evidence can be shown to your Honor before this confession is admitted in evidence that there has been a re-

turn to reason, that this confession cannot be used at this time.

THE COURT: I will overrule your motion.

MR. PALESE: Will your Honor permit me, by consent of the Prosecutor, I want to offer as part of this argument the record of the Mason General Hospital, which, of course, shows that this man had been declared insane on the 27th day of July, 1945, so that your Honor may have the record here before you in order to pass upon this motion. In other words, it seems to me that we ought to stop now and be permitted to offer that in evidence, which we have here in my file now, so that your Honor can meet that problem. I have it and I would like to offer it to your Honor and the jury that on that day he was declared insane.

THE PROSECUTOR: I would object to the use of the record at this time on this motion.

MR. PALESE: Then, if your Honor please, if he objects to it, I would like to have now—you and I have agreed that these records can go in.

THE PROSECUTOR: When?

MR. PALESE: If your Honor please, I will ask that the matter be held up, if that is his attitude now, until I get Captain Lawrence, of the Mason General Hospital, and put the record in.

THE COURT: You have made an offer of proof in support of your contention?

MR. PALESE: That is correct.

THE COURT: The purpose of which is to establish that on July 27th the defendant was declared insane?

THE PROSECUTOR: May I change the date to the 29th? He is wrong.

MR. PALESE: My record says the 27th.

THE COURT: All right. The jury may be excused until 1:30. We will pass upon your offer of proof at 1:30.

AFTERNOON SESSION.

(The following discussion took place at side bar, not in the hearing and presence of the jury.)

THE COURT: I will permit the offer of any testimony tending to show that on the morning of August 22nd, at the time the confession that is offered in evidence was made by the defendant, Howard Auld, he was insane. That will be out of the presence of the jury.

MR. PALESE: If your Honor please, he has it here. He has a copy of it, and I have a copy of what I want to offer.

THE COURT: Show me what you want to offer.

MR. PALESE: If your Honor please, what has happened in this matter, with the consent and the acquiescence of the Prosecutor, we dispatched a letter to the Mason General Hospital in New York and asked them to ask the hospital authorities to send us the photostatic copy of the records of the hospital with respect to the care and treatment of the defendant, Howard Auld, and as the result of that request, there were two photostatic copies sent of the record, one copy of which I delivered to the Prosecutor, and which, after the same had been examined by him, I was advised that there would be no objection to the introduction of the record, or a photostatic copy of the record.

THE PROSECUTOR: That is true, if the Court please. I made that statement to Mr. Palese, but I would like to add that I was under the impression that that was to take place during the course of the trial, particularly during the defense. I did not anticipate that the agreement which we made, or where we came to some agreement, that the record as obtained by both of us would have been produced on a motion to prevent the reading of the confession by the defendant.

MR. PALESE: Do I take from that that you are now saying I cannot offer it on this application?

THE PROSECUTOR: I am not saying that, Mr. Palese. I just asked for your indulgence to add that statement on the record. I did not want it to appear as if I had failed to live up to my agreement with you.

MR. PALESE: Now do I take it that I am per-

mitted to offer this on behalf of my application that I am making to the Court now?

THE PROSECUTOR: That would be for the Court. The Court has asked you, if I understand, to submit proof.

MR. PALESE: As a part of that, I want to submit the photostatic copy of the record of the Mason General Hospital.

THE COURT: Where is the agreement that you had with the Prosecutor?

MR. PALESE: What do you mean, Judge?

THE COURT: Was it by stipulation?

MR. PALESE: The Prosecutor is here. It is up to me to put this in. If he objects, I have to do something.

THE COURT: There are two ways of making such an agreement, are there not, Mr. Palese; one by stipulation, where we would have a writing that would indicate what the agreement was. Is there such a stipulation?

MR. PALESE: In writing?

THE COURT: Yes.

MR. PALESE: No.

THE COURT: You say that there was a verbal agreement between you and the Prosecutor that

these photostatic copies of the hospital record pertaining to Howard Auld would be admitted in evidence?

MR. PALESE: That is right.

THE PROSECUTOR: Then I may add, if the Court please, the record that is in Mr. Palese's hands is not the only record upon which there was some agreement.

MR. PALESE: That is right.

THE PROSECUTOR: We have another record upon which there was some agreement.

MR. PALESE: That is right. Where am I, Mr. Prosecutor?

THE COURT: You are in this position, Mr. Palese: that the nature of your agreement is an issue whether or not it was limited to an agreement that will permit these photostatic copies to be introduced in evidence during the defendant's case or whether it extends its use for the purposes that you now offer it.

MR. PALESE: Who can answer that question but the Prosecutor?

THE PROSECUTOR: I have already answered it.

MR. PALESE: Then, if Your Honor please, I now offer in evidence, which I say by consent of the Prosecutor, a photostatic copy of the records of the

Mason General Hospital, and I have no objection to comply with my other agreement that I made with the Prosecutor, and I will also offer in evidence a photostatic copy of all the medical records of this defendant on behalf of this application.

THE COURT: It is offered ——

MR. PALESE: To establish the fact that on July 27, 1945, the defendant, Howard Auld, by the Army Service Forces at the Mason General Hospital in Brentwood, New York, was discharged upon a diagnosis of "psychosis unclassified active symptoms in remission", which we contend is a diagnosis and finding that Howard Auld was declared insane on that day.

THE COURT: Is this the testimony upon which you rely in support of your contention that he was insane to the point that he could not make an admissible confession on August 22nd in the early hours of the morning?

MR. PALESE: If Your Honor please, my contention is that having been declared insane on the 27th of July, 1945, that that insanity continues, and the presumption is that it continues until there is evidence to rebut that presumpion that he has returned to reason, and that by reason of the fact that the insanity from which he was suffering on the 27th of July, 1945, was continuing, that on the day that he made his confession he was still insane, because of the presumption that followed the insanity on July 27, 1945.

THE COURT: Was there a declaration by any

judicial or other body having the power in the premises that he was insane?

MR. PALESE: Yes, the Mason General Hospital —a medical board convened at the Mason General Hospital according to certain authority of the War Department, pursuant to paragraph so-and-so, and the Board met at the Mason General Hospital at 0900, which I presume is 9 o'clock, on the 27th day of July and proceeded with the examination of Howard Auld, ASN, 20 so-and-so and so-and-so, who entered the current period of active hospital military service on so-and-so. After a thorough examination of the soldier and all available records (see Exhibit A), the Board finds the following diagnosis: "Psychosis unclassified; active symptoms in remission."

So that we say it is a finding of a board and that at that time he was declared insane.

THE PROSECUTOR: May I ask Mr. Palese what he understands "active symptoms in remission" means?

MR. PALESE: That is for the Court.

THE PROSECUTOR: I would like to present testimony on that.

MR. PALESE: I say that it means that the man was insane at the time on July 27, 1945.

THE PROSECUTOR: May I also quote from the same record, for which there was an agreement outlined by me that at the time of his ——

MR. PALESE: It isn't in evidence now.

THE COURT: I haven't passed on it.

THE PROSECUTOR: The Judge is the one who determines whether or not ——

MR. PALESE: If Your Honor please, how can he quote from it if it is not in?

THE PROSECUTOR: You just quoted from it.

MR. PALESE: If it is not in evidence.

THE COURT: How can I decide whether it is evidential if I don't know what is in it, Mr. Palese? Am I to pass on the admissibility of a document without knowing what it contains?

MR. PALESE: If Your Honor please, not when the Prosecutor and the defendant consent to it being admitted, it is not up to the Court as to whether or not it is admissible.

THE COURT: There is still the question as to whether or not that consent extended to the purpose for which you are now offering it.

MR. PALESE: Can we have it decided?

THE PROSECUTOR: Why don't you want me to read the other letter?

MR. PALESE: Are they in or aren't they in?

THE PROSECUTOR: Why don't you want me

to quote from this record prior to the Court making its ruling?

THE COURT: The question now, Mr. Prosecutor, is: do you concede that your agreement extends to this point?

THE PROSECUTOR: No, sir.

MR. PALESE: Then you won't permit me to use this on this application?

THE PROSECUTOR: So that you may be clear and I may be clear, and so that the Judge may get the true facts, I repeat, for the purpose of the record, my agreement in so far as the records of the hospital are concerned, the photostatic copies of the same records at the Lyons Hospital in New Jersey were to be admitted during the progress of the case, particularly when the defense was produced. My agreement did not extend to the introduction into evidence, by virtue of the agreement, upon this motion to have excluded the confession of the defendant.

MR. PALESE: I asked you whether or not we would have to bring the doctors over from New York. You went into your office. You prepared a letter that made it possible for us to get these records.

THE PROSECUTOR: That is correct, sir.

MR. PALESE: I went and got Mr. Auld to sign them. There wasn't a thing said when I was to use it. The thing was to get the information at the

Mason General Hospital. I sent for them. I asked them to send us two copies. I came to your office. I gave you a copy. You looked at it. You went over it in two days' time. Then you told me that you would have no objection. Am I to take it from that that we were limited to one thing? I took it that I could use it in the trial of this case. Why do you say now that you limit it to the question of a defense? What difference does it make how it is used? If it is evidential in the case, what difference does it make when I avail myself of the opportunity to use the records, when you said that they could be used if I would give you a copy of it?

As a matter of fact, you went so far as to use a copy of it to argue to the jury in your opening. Now you say that is only for a matter of defense, and you know and I know, Mr. Prosecutor, that I am not going to disagree with you on this, but you know that there wasn't a single thought as to when I was to use them. As a matter of fact, I didn't know then how I would use them. I did not know what was in the record, with the exception I had seen them and you had seen them, and you prepared the letter in your office. Now when they come in you say that is your understanding. If it is true, and you now say that is your understanding, then I am going to ask Your Honor, I think in all justification I am justified—I am now saying to His Honor that if that is so, I want the opportunity on this application to get Captain Lawrence over here, so he can identify these records and so that we can present them to the Court, because of a misunderstanding which I don't think, when we are dealing with a murder case, that when the prosecutor and the attorney for the defen-

dant have a misunderstanding, that that poor fellow out there should suffer by it.

THE COURT: Your request, then, in the alternative, is that you have an opportunity to offer Captain Lawrence's testimony himself?

MR. PALESE: In view of the misunderstanding that the Prosecutor now says he finds himself in.

THE PROSECUTOR: I have absolutely no objection whatsoever that can be conceived by the human mind to have Dr. Lawrence here to testify, because he is present at this very, very moment.

THE COURT: Very well.

(Before the Court without the jury.)

THE COURT: You may step down, Mr. MacDonald.

MR. PALESE: Your Honor will hear this without the jury?

THE COURT: Yes.

CAPTAIN HOMER E. LAWRENCE, sworn.

BY MR. PALESE:

Q. Captain, on the 27th of July, 1945, where were you stationed?

A. Mason General Hospital, Brentwood, New York.

Q. How long had you been stationed at that hospital?

A. Since October, 1944.

Q. And on July 27, 1945, were you a member of a medical board that convened at the Mason General Hospital to consider the matter of Howard Auld?

A. I was.

Q. And how many doctors comprised the board?

A. Two others besides myself.

Q. And after you had convened on that day, was there a record made of the results of the hearing?

A. Yes.

Q. And you have the proceedings of the Board of Officers, Doctor, with you?

A. Yes.

Q. Now, Doctor, as I understand it, you were a member of the Board, weren't you?

A. That is right.

Q. Were you what is known as the reporter?

A. That is right.

Q. That means what?

A. I was a junior member of the Board.

Q. Is that a designation you get by being a junior member of the Board?

A. That is right.

Q. After the Board had considered and examined the soldier, and had considered all the available records, what diagnosis was made of his condition?

A. The diagnosis was psychosis unclassified, active symptoms in remission.

Q. That was on the 27th of July, 1945?

A. That is right.

Q. Captain, I show you a photostatic copy of the records of the Board, and ask you whether or not they were—I think they were made in your office

—they are copies of the records appearing in the files, with respect to Howard Auld?

A. Well, there are several things. One of the things in here is the enlistment record, which has nothing to do with the Board.

Q. Doctor, what is there with respect to the Board?

A. There is here a certificate of disability for discharge.

Q. Now, Doctor, can you tear it out of there, so that we may ——

THE PROSECUTOR: By the doctor tearing it out, if Your Honor please, at this stage, my agreement was the doctor should testify. If this is going to be introduced as a matter of record, under our alleged agreement, aren't we circumventing what was decided in chambers?

THE COURT: The doctor has been asked to withdraw the certificate of disability discharge.

THE WITNESS: There is here a certificate of disability for discharge, a copy of the proceedings of the Board of Officers. The rest of the matter is administrative material. It does not concern the medical disposition board.

MR. PALESE: If Your Honor please, for the purpose of this application, I am asking to be offered in evidence what the doctor has taken as applying to Mr. Auld, but not the administrative part. I offer it in evidence.

THE PROSECUTOR: May I have that statement read again?

(The statement was read as follows: "If Your Honor please, for the purpose of this application, I am asking to be offered in evidence what the doctor has taken as applying to Mr. Auld, but not the administrative part. I offer it in evidence.")

THE PROSECUTOR: I object. If we are going to have it, let us have the whole thing.

MR. PALESE: Do you want the whole thing in?

THE PROSECUTOR: No, I don't. Don't you put words on the record that I am not saying.

THE COURT: The witness has testified the items in the photostatic papers submitted to him referring to the medical disposition were a certificate of disability for discharge and a copy of the medical proceedings. The rest are administrative records which have nothing to do with the medical inquiry.

THE PROSECUTOR: But they are important to the issue.

THE COURT: No. What are you asking to be heard on?

MR. PALESE: If Your Honor please, I will offer in evidence the entire record that Captain Lawrence is holding in his hand, including the medical record and the administrative records.

THE PROSECUTOR: I will withdraw any objection that I had to the introduction of this record into the record, although it was not my agreement. I shall withdraw every objection I had to them.

THE COURT: They will be admitted.

MR. PALESE: Take the witness.

THE COURT: Let them be marked as a single exhibit D-1. Cross-examine.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Captain, what the record amounts to is an Army classification, is that true?

A. I don't know what you mean by that, sir.

Q. A classification for disability purposes.

A. Well, according to Army regulations, a patient in our hospital is seen by a board of medical officers. The board of medical officers make a diagnosis and recommend a disposition.

Q. As a result of which, a classification is made?

A. As a result of which, the patient is given further hospitalization or he is discharged in care of his relatives, or he is discharged in his own care, or he is sent back to duty, or he is discharged administratively.

Q. How was this patient discharged?

A. He was discharged ——

MR. PALESE: Just a minute. All we are concerned with is the diagnosis, the mental diagnosis, and that is what we are concerned with in this case, and not how he was discharged. My contention is that the diagnosis means something, and that is what we are presenting to Your Honor. On that day a diagnosis was made by this medical board, and that diagnosis was one of insanity.

THE PROSECUTOR: There are other questions attached to the exhibit.

MR. PALESE: I object.

THE COURT: I overrule your objection.

MR. PALESE: Allow me an exception?

THE COURT: Exception allowed.
Repeat the question.

(At this point, question repeated as follows: "How was this patient discharged?")

A. The patient was discharged in his own care.

Q. There was no provision made for any supervisory care of this defendant?

MR. PALESE: I object. That doesn't have anything to do with the diagnosis.

THE PROSECUTOR: It is in ——

THE COURT: Let counsel object, Prosecutor.

MR. PALESE: (Continuing) I object, if Your Honor please. It has not any bearing on the issue made by this Board.

THE COURT: The objection is overruled.

MR. PALESE: Allow me an exception?

THE COURT: Exception allowed.

A. That is right.

Q. Doctor, attached to the exhibit is a report concerning the defendant in this case by Captain William N. Leyton. Will you take that in your hand, please? Do you have it, Captain?

A. Yes.

Q. Would you kindly read it?

MR. PALESE: I object, if Your Honor please, because this is a statement made by Captain Leyton on the 24th of August, two days after this confession was taken, and we are not interested as to his sanity or insanity on the 24th of August.

THE COURT: Now, what we are interested in, is it not, Mr. Palese, is his state of mind in the early morning of August 22nd?

MR. PALESE: That is correct.

THE COURT: Do you now contend that as a matter of relevancy, there can be given no effect or probative value to a medical opinion made on August 24th?

MR. PALESE: Absolutely. As to the sanity of this individual, I say that any medical report that was made on the 24th of August, two days after the matter is involved, has no bearing as to whether or not the insanity that we say continued from the 27th of July up until the time when this alleged confession was taken from the defendant.

THE COURT: Pursuing the reason implicit in your argument, Mr. Palese, would you say that if such an examination had been made the instant

after the confession was completed, that it would be of no probative value?

MR. PALESE: If Your Honor please, I don't like to ——

THE PROSECUTOR: I would like to interrupt. This has nothing to do with August the 24th. This is the doctor's report who treated Mr. Auld while he was at the hospital, and it was submitted to the Board upon his application for discharge. The letter happens to be dated the 24th of August, but it is for the period while Mr. Auld was in the hospital.

MR. PALESE: That is right, but who is going to say that this is a report which was not made on the 24th of August? Going back to Your Honor's question, I want to answer Your Honor, if I can. I think Your Honor is slicing the bread rather thin when you say, "Suppose it was taken immediately after the confession?" I don't know the reason of insanity. I think I have read something about it. There are lucid periods, periods of reasoning, and then the person goes back. I can't answer that question. But I can answer Your Honor. First, I say if a person is sane on the 24th of August, we are not dealing with that date. Now, this letter that is attached to the file Your Honor has got to read into it, if you want to, that he may have seen —he could not have seen this man, because this man left the hospital on the 30th of July. He could not have seen him. The only time he could have seen this man would be the time between the 27th and 29th of July, bcause he never went back. How can Dr. Leyton make a report of sanity or insanity on the 24th of August when he didn't see the man?

THE COURT: That is not in consideration of what I conceive to be the substantial point involved.

Now, do we not have a technical point here presented, Mr. Palese, that we are arguing about? Don't we have the document already admitted into evidence?

MR. PALESE: I have no—in other words, if they are contending that this man was sane on the 24th of August, I am only concerned ——

THE COURT: I understand your objection. Your objection was to what it contained because it bears the date, August the 24th; this document is already in evidence, offered by you.

MR. PALESE: If Your Honor please, it can't be of any value to the Court in consequence of the record. As Captain Lawrence has said, this man appeared on the 27th of July.

THE COURT: Why, then, would it have been submitted if it can't be of any value?

MR. PALESE: Because I am keeping my bargain with the Prosecutor in which I told him of the record. I don't think it has any value. As a matter of fact, I spoke to the Prosecutor about it. I am sure if it had not been for this particular application where I wanted to keep my bargain, the only exception I had was where we were putting in the record this letter along with the other letters, which are not part of the record. They are opinions of doctors who treated this man, but in order to keep my bargain, I had everything put in. That is why I attempted to have the doctor segregate the record.

The Prosecutor said, put them all in. And now, Your Honor is meeting ——

THE COURT: On that point, the document to which the Prosecutor called attention on this record, is that part of the medical proceeding or the administrative proceeding?

THE WITNESS: The letter of Captain Leyton?

THE COURT: Yes.

THE WITNESS: The letter of Captain Leyton is neither a part of the medical proceedings nor the administrative matter.

Q. When was that received by the Board that was sitting in the matter?

A. It was not. The letter was not present at the time the Board met.

THE COURT: I will permit it to be read. Overrule your objection.

MR. PALESE: Allow me an exception?

THE COURT: Exception is allowed.

MR. PALESE: May I make this further thought, if Your Honor please? You will bear with me. The Captain has just said this letter never came into existence until after the 24th of August. It was not considered by the Board. Now, how can Your Honor even express the thought that you may have an opportunity to consider this letter under the present application being made?

THE COURT: Because it is a document in evidence, Mr. Palese.

THE PROSECUTOR: Read the letter.

A. "ARMY SERVICE FORCES
SECOND SERVICE COMMAND
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK

24 August, 1945

STATEMENT REGARDING AULD, HOWARD, PVT. ARMY SERIAL NO. 20224275

On 29 May, 1945, Howard Auld, because of his ability to conduct himself without supervision in a normal manner was transferred to an open ward, of which I was in charge.

He was pleasant, cooperative, mixed well with the other patients. He tended mostly to be rather quiet and retiring in manner. He spoke always in a relevant and coherent manner, and at no time were any overt symptoms of psychosis elicited.

At times, he appeared moderately preoccupied, and when questioned he expressed bitterness toward the Army, claiming that he had gotten a poor deal.

He took part in all ward activities, attended to his various ward details without any complaints and was respectful to all ward personnel.

Because of his exemplary conduct and his ability to care for himself, without need of supervision, he was given frequent passes, from which he returned without any untoward incident.

On 16 July, 1945, he passed from my care to that of Captain Podolnick.

(s) William L. Leyton
Capt., MC."

Q. Now, Captain, do you have in the file all the exhibits—rather, a certificate signed by the defendant, Howard Auld, and, Captain,—may I show it to the witness; I can't read it. It is a photostatic copy.

THE COURT: Yes.

(Paper handed to witness.)

THE WITNESS: Barahal.

Q. Do you have it in your hand?

A. Yes. It is not signed by the defendant, however.

Q. It is still part of the exhibit which is in evidence.

THE COURT: All right.

Q. Go ahead and read it.

A. "ARMY SERVICE FORCES
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK

25 July

CERTIFICATE

AULD, HOWARD, PVT. 20224275
Name Rank A.S.M.

I certify that the above soldier is considered mentally competent for the purpose of signing commercial papers.

Signed H. S. Barahal
Name
Capt. MC
Grade and Title"

MR. PALESE: Captain, you gave us the date?

THE WITNESS: 25 July.

Q. Will you take from the exhibit, Captain, an affidavit alleged to have been signed by the defendant?

A. Yes.

Q. Will you read it, please?

A. "ARMY SERVICE FORCES
SECOND SERVICE COMMAND
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK
AFFIDAVIT

I, Howard Auld, Private, Army Serial No. 20224275, have been informed that I am about to be released from Mason General Hospital and medically discharged from the military service.

I have been apprised of my right to further care in a veterans' administration facility.

I do not wish to avail myself of this right at the present time.

I do desire to be discharged into my own care.

Signed Howard Auld

Subscribed and sworn to before me this 27 day of July, 1945.

William F. Cattell
Authority: VETERANS
ADMINISTRATION"

BY THE PROSECUTOR:

Q. Doctor, would you take your exhibit in your hand concerning the proceedings of the board of officers, and would you read that?

A. "Army Service Forces, Mason General Hospi-

tal, Brentwood, New York. Proceedings of Board of Officers. Convened at Mason General Hospital, per paragraph

12th S. O. 95, Hq. 1263 Rd SCU, Mason General Hospital, dated 19th of April, 1945, pursuant to paragraph 1B, AR 600-500, dated 7th of August, 1942.

DETAIL FOR THE BOARD

H. S. Barahal, Captain, M.C.

Alice E. Rost, Captain, M.C.

H. E. Lawrence, Captain, M.C.

The Board met at Mason General Hospital, Brentwood, New York, at 0900 on 27th July, 1945, and proceeded with the examination of: Auld, Howard, A.S.N. 20224275, Private, C.C., age 25 2/12, who entered current period of active military service on the 8th of July, 1940, and was admitted to this hospital on 7th of May, 1945.

After a thorough examination of the folder and all available records (see Exhibit A), the Board finds the following diagnosis: 35. Psychosis, unclassified (active symptoms in remission)".

Q. Will you explain to the Court exactly what active symptoms in remission means?

A. It means that the apparent signs and symptoms of the illness were not in evidence at the time of the Board.

Q. You mean, Doctor ——

MR. PALESE: He means to say exactly what he said.

Q. I take it then, Doctor, does that mean at the time this matter was presented to the Board he showed no active symptoms of insanity which would prevent him from distinguishing between what was right and what was wrong?

MR. PALESE: I object. Let the doctor explain what he has started to explain.

THE COURT: I will allow the question.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted.)

THE WITNESS: May I have the question?

(Question repeated.)

A. The Board does not determine whether a man is sane or insane, nor does it determine whether or not he knows the difference between right and wrong. The Board determines whether or not he can be released without danger to himself, or others, in their opinion.

Q. What was your opinion, then, Doctor, as to whether he could be released without injury to himself or to other people?

MR. PALESE: I object to that as not proper cross-examination. If the prosecutor wants to make him his own witness in that respect, all right.

THE PROSECUTOR: All right, I will make him my witness.

THE COURT: I will sustain the objection.

Q. You were a member of the Board, were you, Doctor?

A. I was.

Q. He was under your direct supervision for some period of time?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Will you continue reading the proceedings of the Board of Officers?

A. "The Board is of the opinion after consideration of the above, that:

1. Condition was incurred in line of duty and did not exist prior to entry upon active duty.

2. Condition was not due to his own misconduct, and was due to causes incident to the service.

3. Subject soldier, if discharged from the military service, can be released from military control, without further supervisory care.

The Board, therefore, recommends that Private Howard Auld be discharged from the military service to his own care under the provisions of A. R. 615-561.

Signed H. S. Barahal, Captain, M.C., President
E. ROST, Captain, M.C. Member
H. E. Lawrence, Captain, M.C., Recorder.

Approved 1st of August, 1945, for the Commanding Officer, Matthew Stockson, Captain, M.A., Adjutant."

Q. Do you want to read the medical history?

A. "Exhibit A.," that refers to Howard Auld, Private, medical history of the case.

Family history: No known neuropsychiatric determinants.

Previous personal history (Information obtained from the patient) Born 19th May, 1920, in Philadelphia, Pa. No early neurotic tendencies. Usual childhood diseases without complications; blood

poisoning following the extraction of a tooth. Completed the 8th grade at the age of sixteen, mingled well with other pupils and was athletic. Worked as a plumber's helper and as a truck driver prior to his enlistment. No sexual deviations or civil delinquencies.

Military History: Enlisted 8 July, 1940, and was inducted 15 September, 1940. Overseas in late 1942, to Australia and later was in many months of combat in New Guinea and some in the Philipines. According to his service record he is entitled to wear four battle stars. According to his own statement he worked chiefly in scouting and patrolling, spending much time behind enemy lines. States he was dropped in the Hollandia area twenty days prior to the invasion and that, with two other men, he observed the activity of the enemy and signalled by radio the departure of three thousand Japanese marines, enabling the Hollandia landing to be made with the loss of but one man. His statement that he received the Distinguished Service Cross for this is not confirmed by his service record. His records lists five periods of A.W.O.L., varying from two to twenty-six days in 1941, 1942, and 1943. Three summary and Special Courts-Martial. In March, 1943, was given a General Court-Martial for desertion to avoid hazardous duty. Was sentenced to seven years at hard labor, loss of all pay, and a dishonorable discharge. In September, 1943, after he had served one hundred and forty-nine days the confinement was suspended, and the Dishonorable Discharge suspended.

History of Present Condition: The patient was first admitted to the 27th general hospital in March, 1945, from the casual camp where he had been violently homicidal against a sergeant with whom he

had had an argument. After a few days in the hospital he calmed down and seemed strange but not entirely abnormal. On 24 March, 1945, was discharged to a replacement depot in the hope that he would be rotated back to the States soon. Was readmitted to the 27th General Hospital the same day in a confused, excited state. Restraint and sedation was necessary and he was described as grossly psychotic. Was evacuated to the Zone of Interior with the diagnosis of Psychosis, unclassified. Admitted to Mason General Hospital 7 May, 1945.

Mental Status on Admission: In the admitting ward patient was in good contact, answered questions readily but was rather belligerent. Stated that he would never carry out an order again. On the closed ward was neat in appearance, resentful, inappropriate in some of his emotional responses and remained very belligerent. In good contact, well oriented, denied any ideas of reference, persecution or hallucinations.

Physical Examination: Physical and nurological examinations reveal no abnormalities. Laboratory studies including chest x-ray, malarial smear, stool examination, serology, urinalysis, blood count within normal limits. Stool examination showed the presence of hookworm ova which disappeared under treatment.

Treatment and Clinical Course: Patient made a satisfactory adjustment on the closed ward. For the past six weeks has been on an open ward where he has been seclusive and slightly retarded but got along well with other patients and with the ward personnel. Has been out on passes, returning promptly. Sleeps well, eats well, spends a great deal of time in the occupational therapy shop; has no interest in athletics. Shows some diminished affec-

tive resonance; dreams about combat occasionally; bites fingernails moderately and is irritated by noises. Still feels that he has been badly treated in the Army in that he was promised his court martial sentence would be remitted and it has been only suspended. Feels that he can no longer do duty in the Army, being too irritated by its discipline.

Staff Conference: This twenty-five year old private made a fairly adequate adjustment prior to service. He has been in the Army five years, two and one-half years of which were spent overseas in the Pacific area with twenty-four months of combat. His service record shows several AWOLs with one General Court-Martial sentence which was later suspended, after he had served 149 days. He was hospitalized in March, 1945, because of an acutely disturbed episode, subsequently improved, and an attempt was made to return him to duty, but the same day he became confused, excited, required restraint and sedation. He has a complete amnesia for this episode.

Since coming to this hospital he has on occasion, shown a somewhat surly and belligerent attitude, but, for the most part, adjusted well. For the past few weeks, has shown little evidence of abnormal behavior, except for somewhat inappropriate emotional responses. He is still very tense, however, and under pressure shows a facial tic. There is no evidence of any delusional or hallucinatory experiences. It is the opinion of the staff conference that this patient is still too emotionally unstable to warrant a return to duty.

Diagnosis: 35. Psychosis, unclassified (active symptoms in remission), manifested by excitement, confusion and threatening attitude.

External Precipitating Stress: Severe (two and one-half years overseas in Southwest Pacific Theatre of Operations, with twenty-four months of combat duty).

Predisposition: None evident.

Disability: Present; Marked for military service.

Future: Minimal for civilian life."

Q. What does the last sentence mean, minimal for civilian life?

A. It means in the opinion of the Board his illness should not cause him much disability in civilian life.

Q. I understand you to say that the Board did not decide whether he was insane or sane?

A. That you notice does not appear in here.

Q. If I understand, you said the Board does not decide that?

A. That's my understanding.

Q. Therefore, no adjudication was made as to his sanity or insanity?

A. It's my understanding that sanity or insanity can be determined only by a court, and as far as I know, no medical board at our hospital determined sanity or insanity.

THE PROSECUTOR: That's all I have, Doctor.

BY MR. PALESE:

Q. What is psychosis, is that synonymous with insanity?

A. It's my understanding that psychosis is a type of mental illness, and I don't understand it as being synonymous with insanity.

Q. Would you say, Doctor, it is not synonymous with insanity, the word psychosis?

A. It's not my understanding that they are synonymous.

Q. When you say a person has psychosis, what do you mean by that?

THE PROSECUTOR: Are you cross-examining your own witness?

THE COURT: I will permit it.

MR. PALESE: Will you repeat the question?

(Question repeated.)

A. Psychosis refers to mental illness.

Q. To what extent, Doctor?

A. To the extent that in some aspects of the patient's behavior, that is in his general behavior, and his attitude and his speech, in his emotional responses, or in his thinking, or in his contact with his environment, his irritation, in respect to at least one of those phases of his existence he is out of contact with reality.

Q. You were on this board, were you not?

A. Yes.

Q. When you made the diagnosis of psychosis, upon what facts was it based, on his mental condition?

A. Based on the records we received from the hospital overseas, and the records of our own hospital as reported by various doctors who saw him during his stay there, and on our own observations of the Board.

Q. I take it, Doctor, then you say he did have a mental disturbance?

A. By that diagnosis the Board indicated that he

had had a mental illness to the best of their opinion, the apparent symptoms of which were not present at that time.

Q. But they were present on the 27th of July, 1945, were they not?

A. I think I covered that when I indicated what was meant by active symptoms in remission.

Q. He was allowed disability, was he not?

A. Yes.

Q. For what?

A. On this diagnosis.

Q. Do I understand that he did have a disability, a mental disability on the 27th of July, 1945, because of the diagnosis that was made?

A. If I may read from the staff conference note, it says "It is the opinion of the staff conference this patient is still too emotionally unstable to warrant a return to duty."

Q. Doctor, that means what? Does that mean a mental impairment?

A. And also you will note that the Board indicated that they felt for military service marked, for civilian life minimal, and those two things indicating the Board's feeling that in general the stress of military life is more severe than that of civilian life.

Q. Doctor, and did he have a mental impairment on the 27th of July, 1945, when he was considered by the Board and a diagnosis of psychosis made, for which he was given disability?

A. By the term "active symptoms in remission," the Board intends to indicate that the outward evidences of the mental illness were not present.

Q. Doctor, he was given a disability.

THE PROSECUTOR: Does Mr. Palese want to cross-examine the witness?

MR. PALESE: I am not going to cross-examine the witness.

THE PROSECUTOR: That is what you are doing, Mr. Palese.

MR. PALESE: I am not cross-examining the witness.

THE PROSECUTOR: I am addressing the Court, and I ask if Mr. Palese wants to declare this witness hostile and determine whether or not he wants to cross-examine. He has answered the same question three times, and I think it is repetitious at this time. If he is a little bit despaired by the nature of the answers given ——

THE COURT: If you will pick out any one of those factors on which you think the question is objectionable and urge it, Mr. Prosecutor, maybe I can rule on it.

THE PROSECUTOR: I urge one now, if Your Honor please; the last one, where it appears to have all the earmarks of a question of cross-examination of this witness.

THE COURT: It is a leading question. I will sustain the objection on that basis.

BY MR. PALESE:

Q. Doctor, the diagnosis of psychosis, does it mean a mental impairment?

THE PROSECUTOR: I object to that on the

ground that it is repetitious and has been answered two or three times.

THE COURT: It is repetitious, but I will allow it.

MR. PALESE: Will the Prosecutor give me the answer? If it is repetitious, what is the answer? Let him enlighten us by telling us what the answer has been on other occasions.

THE COURT: The Prosecutor isn't under oath.

MR. PALESE: If Your Honor please, Your Honor is agreeing with the Prosecutor that it is repetitious.

THE COURT: Yes, the question was asked before.

MR. PALESE: I say it is not. In what way is it repetitious?

THE COURT: Because it was asked before.

MR. PALESE: I say it hasn't been. Does Your Honor say it is?

THE COURT: Read the question.

(The following question was read by the stenographer: "Doctor, the diagnosis of psychosis doesn't mean a mental impairment?")

BY THE COURT:

Q. Answer the question.

A. The diagnosis is not simply psychosis. The

diagnosis is "psychosis unclassified, active symptoms in remission."

BY MR. PALESE:

Q. Doctor, will you please answer my question? Does the psychosis, a diagnosis of psychosis, mean a mental impairment? That was the question I asked you.

A. What do you mean by "impairment"?

Q. Mental disturbance.

A. The diagnosis of psychosis means mental disturbance.

Q. In this case you say it does not have that significance.

A. The diagnosis in this case was "psychosis, unclassified (active symptoms in remission)".

Q. It doesn't have that significance?

A. I feel that I have said several times what the diagnosis indicates. The diagnosis "psychosis, unclassified (active symptoms in remission)" indicates that in the opinion of the Board the patient had had a mental illness and outwardly manifested symptoms and signs which were no longer evident.

Q. Then, Doctor, do I take it from your definition that you have just stated, that on July 27th, 1945, all of the disturbance that had been complained of had been removed?

A. That is right.

Q. And that he had no mental disturbance on the 27th of July, 1945?

A. That was the opinion of the Board.

Q. Was he granted disability?

THE PROSECUTOR: That has been answered and I object.

THE COURT: I will allow it.

A. He was given a certificate of disability for discharge.

BY MR. PALESE:

Q. Of how much?

A. How much disability?

Q. Yes.

A. I don't know. That is determined by the Veterans' Administration.

Q. Then, Doctor, do I understand that your Board granted the disability but not the extent of disability; is that correct?

A. That is right.

Q. The disability that was granted to Mr. Auld was upon what facts? What disability, I mean, or factors of disability?

A. On the basis that the patient had had a psychotic episode and that it was felt that military life constituted too much stress to make it safe to return him to it.

Q. And that is the disability that you folks found?

A. Yes.

Q. And acknowledged by a diagnosis of psychosis, unclassified?

THE PROSECUTOR: And the other part. It is not a correct statement of the testimony or the report.

MR. PALESE: The doctor will take care of himself.

THE PROSECUTOR: No, I am taking care of

this, too. It is my job. I object to the question, if the Court please.

THE COURT: Objection overruled.

A. The diagnosis was "psychosis, unclassified (active symptoms in remission)".

MR. PALESE: That is all.

THE PROSECUTOR: No questions.

THE COURT: Do you have any further testimony, Mr. Palese?

MR. PALESE: No.

THE PROSECUTOR: Then, on the basis of that, if Your Honor please, the State has no testimony to present on the motion, I suppose it is, at this time.

THE COURT: The objection to the admission of the confession on the ground that the defendant, in the early morning of August 22, 1945, was insane, is overruled. The confession will be admitted in evidence.

We will recess for five minutes.

AFTER RECESS.

(The Jury returned to the court room and the following testimony was presented in the presence and hearing of the jury.)

WILLIAM B. MacDONALD, recalled.

DIRECT EXAMINATION (resumed).

BY THE PROSECUTOR:

Q. Mr. MacDonald, on the 22nd day of August, 1945, at 3 o'clock in the morning, in the Prosecutor's office, did you take a stenographic statement made by the defendant, Howard Auld, in this case?

A. I did.

Q. Who was present?

A. The defendant, Chief Doran, Captain Mulligan, Detective Dube, and Patrick Auletto, of Bellmawr.

Q. You are the official court stenographer?

A. I am.

Q. Will you read the statement made by Mr. Auld at that time?

A. "Howard Auld examined by Chief Doran:

"HOWARD AULD, examined.

BY CHIEF DORAN:

Q. What is your name?
A. Howard Auld.
Q. How old are you?
A. 25.
Q. Where do you live?
A. Bellmawr, New Jersey.
Q. Howard Auld, you are in the Prosecutor's office of Camden County. My name is Lawrence T. Doran, Chief of County Detectives. That man sitting over there is Captain Mulligan, Captain of the County Detectives. This is Detective Dube, of the County Detective force, and this is Patrick Auletto, patrolman of Bellmawr. Howard Auld, you are now under arrest. You are charged with the murder of Margaret McDade, whose body was found on Sunday, August 19, 1945, nude and dead in a well at the pumping station of the disposal plant on Maple Avenue, Haddon Heights. I am going to ask you to tell me if you know how she received the injuries which caused her death, but before you answer any questions I want you to understand that whatever statement you make to me must be a voluntary statement on your part, that is, it must be of your own free will and with an understanding that it can and will be used against you in court. Now, under those circumstances do you care to tell me just what took place on the evening of August 14th, up until the time you were arrested? Do you care to tell me just what took place?
A. I will tell you, sir.

Q. Can you tell me were you home on the evening of the 14th? Did you eat your supper at home?

A. Yes.

Q. After you ate your supper at home, where did you go?

A. Stayed home until around 8 o'clock.

Q. Then where did you go?

A. Over to the fire hall.

Q. Had you stopped any place before you went to the fire hall?

A. Yes.

Q. Where?

A. Henney's Cafe.

Q. Who was with you at that time?

A. Nobody.

Q. Were you by yourself?

A. Yes.

Q. Was Henney's Cafe where you received this red hat that you wore?

A. Yes.

Q. Who else received those little red hats besides yourself?

A. Another guy by the name of George Hulse.

Q. Was there a woman also got one?

A. I don't know that.

Q. How many were given out, to the best of your knowledge, there at Henney's Cafe?

A. Ten or eleven.

Q. From there where did you go?

A. Over to the fire hall.

Q. What time would you say you arrived at the fire hall?

A. About 9:30.

Q. About what?

A. About 9.30.

Q. Had you been drinking anything before you reached the fire hall?

A. Yes.

Q. Where?

A. Henney's.

Q. When you reached the fire hall were a lot of local people gathered there to celebrate?

A. Yes.

Q. Did you join in the celebration?

A. Yes.

Q. How long had you been in the Bellmawr fire hall before you met Margaret McDade?

A. It was closing when I met her.

Q. What time would you say that was, to the best of your knowledge?

A. About 10 o'clock, I guess.

Q. Had you known her previously?

A. Yes.

Q. How long?

A. I had seen her here and there in other places.

Q. Around Bellmawr?

A. Yes.

Q. You say you saw her then at closing time?

A. Yes.

Q. Was she by herself then?

A. Yes, as far as I know.

Q. Did you have a conversation with her?

A. Yes.

Q. What was the nature of that conversation?

A. Just a plain ordinary conversation.

Q. I mean were any suggestions made or anything to go anywhere?

A. Only to go up to Creek's house.

Q. Mrs. Creek's residence, is that right?

A. Yes.

Q. Do the Creeks live on Anderson Avenue at Bellmawr?

A. Yes.

Q. And that is where you went after you left the Bellmawr fire hall?

A. Yes.

Q. Did Margaret McDade in your company come from the fire hall to the Creeks' home?

A. No.

Q. Who did you come over there with?

A. I came over in a different car.

Q. Had you any conversation about meeting her over there or anything?

A. No.

Q. Before you left the fire hall?

A. No

Q. When you arrived at the Creek home, was she there ahead of you?

A. I was there ahead of her.

Q. Did you have something to drink at the Creek residence?

A. Yes.

Q. Did you talk to her there?

A. Yes.

Q. Did you have something to drink with her?

A. Yes.

Q. What was the nature of the conversation between you and her at that time?

A. Everything in general.

Q. Did you talk about going anywhere?

A. Yes.

Q. What was the nature of it?

A. Going to go for a walk, to sober up a bit.

Q. And did you leave the Creeks' home and take a walk with her?

A. Yes.

Q. What time would you say that was?

A. 12:30, one o'clock.

Q. When you left the Creeks' home, what route did you take to get to Maple Avenue?

A. Down Anderson Avenue, down to the Black Horse Pike.

Q. Down or up?

A. Up.

Q. Up the Black Horse Pike to Maple Avenue?

A. Yes.

Q. When you came up the Black Horse Pike to Maple Avenue did you turn east on Maple Avenue?

A. Yes.

Q. How far did you go in there before you and she stopped?

A. About 300 yards.

Q. What happened there?

A. Nothing much.

Q. What?

A. Nothing much. Had a few kisses.

Q. Well, there was something happened there, wasn't there?

A. That's all, quite a few kisses.

Q. And where did that occur, in the bushes or out on the road?

A. Well, in the bushes and out on the road.

Q. Finally did you get into the bushes?

A. Yes.

Q. What took place in the bushes, off the road?

A. I tried to have intercourse with her but I guess she was too little or something.

Q. You mean to say your private parts were too large for hers, is that what you mean?

A. Yes.

Q. And did she complain about that?

A. Yes.

Q. To what extent, did she holler?

A. Yes.

Q. Did you have the intercourse with her?

A. No.

Q. What happened after that?

A. Well, when she hollered, I don't know, it happened all of a sudden, and I grabbed her by the neck and choked her.

Q. After you choked her, did you hit her?

A. Yes, I hit her.

Q. How many times?

A. Twice.

Q. What part of her body?

A. In the face.

Q. And did that knock her out?

A. I don't know.

Q. Was she unconscious?

A. I guess she was.

Q. After you knocked her out and you say you guess she was unconscious, what did you do then?

A. I took her clothes off.

Q. You took all her clothes off?

A. Yes.

Q. After you took her clothes off, what did you do with the body?

A. Carried it through the brushes.

Q. To where?

A. To the well and dumped her in.

Q. When you went through the brush, when you carried her, did that path lead over along the fence of the pumping station?

A. Yes.

Q. And then did that path lead down into the front of the pumping station?

A. Yes.

Q. The gate leading in there was unlocked, wasn't it?

A. Yes.

Q. And all you had to do was just push it open after you raised the catch on it, is that right?

A. Yes.

Q. I understand that that station has a building in the back of it, a little building, and the front is where the entrance to the well is, and I understand, from what I have seen, there is an iron cover over that well, a heavy iron door?

A. Yes.

Q. Was that door down when you got there that night?

A. Yes.

Q. What did you do?

A. Lifted the door up.

Q. And what did you do with her body?

A. Dropped it in.

Q. You say you carried her from the first place that you were in the bushes. Is that where you left her shoes? Is that where you first were?

A. Yes.

Q. You say you carried her from that point over to the well at the disposal pumping station. Did you carry her on your shoulder?

A. Yes.

Q. When you dropped her in that well, did you drop her from your shoulder?

A. Yes.

Q. And did you put the lid down afterwards?

A. Yes.

Q. After you dropped her in the well, what did you do then?

A. Went back and got the clothes and took them down to the creek and tossed them in the bushes.

Q. Why did you take the clothes off her?

A. I don't know.

Q. Was it to keep from identifying her?

A. No, just one of them things, I guess.

Q. When did you undress her, Howard, before you started to have intercourse or attempted to have intercourse with her or after you had beaten her?

A. After I beat her.

Q. Then you had struck her and thought she was unconscious when you took the clothes off her?

A. Yes.

Q. But you cannot explain why you took the clothes off her?

A. No, I cannot.

Q. Did you remove anything else off her?

A. No.

Q. Did you take her shoes off?

A. No.

Q. Did you take the bracelet off her arm?

A. Yes, I put them in my pocket.

Q. How many bracelets did you remove from her arm?

A. Two.

Q. How many did she have on?

A. Two.

Q. What?

A. Two.

Q. Three?

A. Two.

Q. And you say you removed those two and put them in your pocket?

A. No, into her pocket.

Q. Into her pocketbook?

A. Yes.

Q. You say after you threw her in this well you

returned back to the place where you had assaulted her and took the clothes. Did you take her pocketbook at that same time?

A. Yes.

Q. And when you disposed of the clothes, did you dispose of the pocketbook too?

A. Yes.

Q. Tonight you went down there with these officers here present and you showed them about the location where you threw them, didn't you?

A. Yes.

Q. The brush is so thick and it was so dark that they couldn't locate them tonight?

A. That's right.

Q. But you showed them about the spot where they were thrown?

A. Yes.

Q. When you arrived at this place on Maple Avenue—I am speaking of the bushes where you first went—was that right off the road or in back a little?

A. Right off the road.

Q. I show you a photograph and ask you does that resemble the place where you took her in?

A. Yes.

Q. Does that resemble it?

A. It looks like it.

(Photograph marked Exhibit A, 8-22-'45, WBM.)

Q. I am showing you a photograph and ask you if you know what that is?

A. All I know it is the sewage disposal plant.

Q. Is that the place where you took Margaret McDade's body and disposed of it in there?

A. Yes.

Q. Is that the well there where you threw her in, the well in front of that building (indicating on photograph)?

A. Yes.

(Photograph marked Exhibit B, 8-22-'45, WBM.)

Q. I show you a photograph and ask you if you can identify that, what it is.

A. It's a well, I guess.

Q. Can you tell me by looking at it if that is the well that you put her in?

A. Yes, that looks like it.

Q. That is a photograph of the top of the well, is that right?

A. Yes.

(Photograph Marked Exhibit C, 8-22-'45, WBM.)

Q. You have known Margaret McDade for some time, haven't you?

A. About five weeks.

Q. I am showing you a photograph and ask you if that is a photograph of Margaret McDade?

A. That looks like her.

Q. Does it resemble her?

A. Yes.

Q. You say that looks like the girl you took from the Creeks' home that night for a walk?

A. Yes.

Q. And you say that looks like the girl you threw into the well?

A. Yes.

(Photograph marked Exhibit D, 8-22-'45, WBM.)

Q. Howard, was this girl dead when you threw her into the well?

A. As far as I know, she was.

Q. You thought she was?

A. Yes.

Q. After you threw her into the well and disposed of her clothes in the brush, where did you go then?

A. I went home.

Q. And you stayed there all night?

A. Yes.

Q. What did you do the next day?

A. Got up and walked around for a while.

Q. Were you at the fire hall on Wednesday night?

A. Yes.

Q. At the fire hall did a woman remark to you anything about marks on you, or anything?

A. I don't remember.

Q. Did any woman ask you something about the scratches?

A. I don't remember that either.

Q. You don't remember it?

A. No.

Q. When you attempted to have intercourse with this girl did she put up a fight and scratch you in any way?

A. Yes.

Q. And is that when you hit her?

A. Yes.

Q. How did you get her into the bushes?

A. Carried her in.

Q. Off the road?

A. Yes.

Q. She didn't want to go?

A. Yes, she wanted to go.

Q. Why did you carry her in if she wanted to go?

A. I said, "Shall I carry you in?"

Q. What did she say?

A. "O.K."

Q. How long had you been in the bushes before the trouble started which made you strike her?

A. About twenty minutes.

Q. Had you attempted to have intercourse with her?

A. Yes, she let me try it.

Q. Then why did she put up the fight?

A. Well, when I tried it again she put up the fight.

Q. Did she bleed?

A. I guess she did.

Q. Where from, her private parts?

A. I suppose so. I don't know.

Q. Did you see any blood?

A. No.

Q. Was there any blood on her clothes?

A. I don't think so.

Q. Did you see her underpanties?

A. No.

Q. Who took them off?

A. She did.

Q. But you removed the clothes after you thought you had knocked her unconscious, is that right?

A. Yes.

Q. After you had thrown her clothes away you started down the Black Horse Pike, did you?

A. Yes.

Q. In what direction, towards your home?

A. Yes.

Q. Was there any blood on your shirt?

A. Not that I know of. I didn't see any.

Q. Where is the shirt now?

A. In the bottom of the Delaware River.

Q. What color shirt was it?
A. White.
Q. Why did you throw it in the river?
A. I don't know. I just threw it in the river.
Q. If there was no blood on it or anything, why did you throw it away?
A. I just threw it away. There was a little bit of blood, I guess.
Q. When you woke up the next day, at your home, did you find blood on your shirt?
A. Yes.
Q. And is that the reason you disposed of it?
A. Yes.
Q. Where did you dispose of it?
A. In the Delaware River.
Q. Off the bridge?
A. Yes.
Q. When was that?
A. The next night.
Q. That would be Wednesday night?
A. Yes.
Q. Was that after you left the fire hall on Wednesday night or before you went there?
A. After.
Q. Where was this shirt that you found the blood on, while you were at the fire hall?
A. Up at my house.
Q. Did you go back to your home to get it?
A. Yes.
Q. And you came up here in the middle of the night and threw it off?
A. Yes.
Q. What time would you say?
A. One o'clock.
Q. That would be one o'clock in the morning of Thursday, wouldn't it?

A. Yes.

Q. Was there blood on any other of your clothes that you disposed of?

A. On my pants.

Q. And what kind of pants did you have on?

A. Khaki.

Q. And you disposed of them in the same manner you did the shirt?

A. Yes.

Q. And at the same time?

A. Yes.

Q. And you claim it was about one o'clock on Thursday morning, off the bridge up here?

A. Yes.

Q. Was there blood on your underclothes too?

A. No.

Q. After you struck her was she bleeding in the face?

A. I don't know.

Q. Did you see any blood?

A. No.

Q. But you figured she was unconscious?

A. Uh, huh.

Q. And then after you struck her is when you took the clothes off her?

A. Yes.

Q. Before you threw her into the well?

A. Yes.

Q. And you claim you came back where you had struck her and got the clothes and took them down and threw them in the brush at the same point that you showed the police this morning?

A. Yes.

Q. You showed the police this morning the location where you threw the clothes, is that right?

A. Yes.

Q. Now, did she scream before you hit her or after you hit her?

A. Before I hit her.

Q. Is that what made you hit her?

A. Yes.

Q. And you say you hit her how many times?

A. Twice.

Q. And you say you struck her in some part of the face?

A. Uh, huh.

Q. How long would you say you were in those bushes before you threw her into the well?

A. About an hour.

Q. Did you know these people, the Creeks, where you were at the party?

A. Yes.

Q. You knew them for some time?

A. Yes.

Q. Did you see any friends that came down from Philadelphia with Margaret McDade?

A. No.

Q. You didn't see them?

A. No.

Q. After she screamed and you struck her a couple of times, did you attempt then to have intercourse with her, after you thought you knocked her unconscious?

A. No.

Q. Then the only thing you did after that was to strip the clothes off her and carry her over your shoulder over to this well and throw her in it?

A. Yes.

Q. Did she scratch you in any way while fighting?

A. Yes.

Q. To prevent you from having intercourse with her?

A. I couldn't get it in the first time.

Q. You say you couldn't get it into her the first time?

A. And I tried the second.

Q. And that is when she put up the battle?

A. Yes.

Q. Did she plead with you not to do it?

A. No, she was just hollering, that was all.

Q. And when she hollered, you struck her?

A. Yes.

Q. And then you say you struck her again?

A. Yes.

Q. And tore her clothes off and disposed of the body in the well, is that right?

A. Yes.

Q. Is this statement true?

A. Yes.

Q. And you have made it of your own free will?

A. Yes.

Q. Has anybody in this room threatened you or promised you anything to make a statement?

A. No.

Q. And this statement is true?

A. Yes.

Q. Has anybody at all here threatened you?

A. No.

Q. Or promised you anything?

A. No.

Q. And this statement is true?

A. Yes."

THE PROSECUTOR: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

THE PROSECUTOR: If your Honor please, in order to make certain, I would like to have five minutes in order to determine whether all my exhibits have been marked in evidence, and if they have, I might state at this time, subject to a change of mind, the State would rest.

THE COURT: We will recess for five minutes. The jury may leave the box.

AFTER RECESS.

THE PROSECUTOR: The State offers into evidence Exhibits A and C referred to in the confession read by Mr. Macdonald in evidence. I understand Mr. Palese has no objection.

THE COURT: They will be admitted and marked Exhibits S-22 and S-23.

(Received and marked Exhibits S-22 and S-23.)

THE PROSECUTOR: The State rests.

THE CASE FOR THE DEFENDANT.

MARY ELIZABETH CATHERS, sworn.

BY MR. PALESE:

Q. What is your name?

A. Mary Elizabeth Cathers.

Q. Miss Cathers, in January, 1945, where were you stationed?

A. Stationed at the 27th General Hospital in Hollandia, Dutch New Guinea.

Q. What were your duties at that time?

A. My duties as a Red Cross worker with the hospital staff at that time were mainly in charge of psychiatric wards as far as Red Cross activities go. We had five of the wards at that time, and we took care of the social service and recreational work in the psychiatric wards.

Q. Did your duties bring you in contact with the patients in the wards?

A. They did.

Q. When did you first meet the defendant, Howard Auld?

A. Auld came to us I believe it was about this time last year, if I remember correctly, in March.

Q. When you first observed him, in what ward was he in the hospital?

A. He was in the psychiatric section in the locked ward. He had come to us in a confused state, and we at that time handled the neuropsychiatric cases for the base through the area. Any patient who had been tried, or had stood court martial, or was waiting for it, who they thought might be a neuropsy-

chiatric patient, was sent to our hospital, and Private Auld came to us on that basis.

Q. When you first saw Mr. Auld was it in the hospital?

A. It was in the hospital in a private locked room inside the locked ward.

Q. When you speak of a locked ward, you mean a cell that's locked, or what do you mean by that?

A. Our service at that time ——

THE PROSECUTOR: I object. Is this girl a nurse?

THE COURT: Evidently not.

MR. PALESE: I am not trying to qualify her as a nurse.

THE COURT: Do you want an offer of proof as to what he intends to prove by this witness?

THE PROSECUTOR: I would certainly like to have something.

(At side-bar.)

THE PROSECUTOR: I ask for an offer of proof, what he intends to prove.

MR. PALESE: I am not going to tell you what I am going to prove by this witness. You can object to my questions when I propound them to her. He is not entitled to know what this witness is going to testify to. Let him interpose his objections as I ask the questions. Why should I tell him what this witness is going to testify to?

(Upon return to the court room):

BY MR. PALESE:

Q. When you first saw Mr. Auld, where was he?

THE PROSECUTOR: I object to it as incompetent, immaterial and irrelevant.

THE COURT: Sustained.

MR. PALESE: What do I understand by that, can I not ask this witness where she saw this defendant? That's all my question was, and the Court sustained the objection. I had asked this witness where she first saw the defendant.

THE COURT: The objection was interposed as irrelevant and immaterial.

MR. PALESE: We are dealing with the mentality of this defendant, and I am going to establish the behavior and conduct of this defendant before the date of ——

THE COURT: If you are going to tell us what you want to establish by this witness, we will do so at side-bar.

MR. PALESE: I am not going to tell your Honor or the Prosecutor what this witness will testify, or what she is going to testify to. The Prosecutor has not told me when his witnesses got on the stand what his witnesses were going to testify to. I have never heard anything that counsel for the defendant must apprise the prosecutor in advance of what

his witness is going to testify to. I don't know what the practice is, I probably have missed it in my days, to have the prosecutor ask me at side-bar as to what my witness is going to testify to on the stand. The defense in this case is mental deficiency, and I have a right to bring a witness here to show the conduct and behavior of this defendant at any time prior to this date in question.

THE COURT: The objection is sustained.

Q. Where did you see him, and when did you see the defendant?

THE PROSECUTOR: I object unless the time and place is fixed.

MR. PALESE: I can't fix it, the witness must fix it.

THE PROSECUTOR: I object on the further ground that it is incompetent, immaterial and irrelevant.

THE COURT: Sustained.

Q. Under what circumstances and when did you see the defendant, Howard Auld ——

THE PROSECUTION: I object to the question on the ground that it is incompetent, immaterial and irrelevant.

THE COURT: Sustained.

Q. Did you see Howard Auld while he was confined in a hospital in Hollandia?

THE PROSECUTOR: I object to it, on the ground that it is incompetent, immaterial, irrelevant and leading.

THE COURT: Sustained.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted.)

Q. Under what circumstances did you see the defendant when he was confined in the hospital in Hollandia?

THE PROSECUTOR: I object to that on the ground it is absolutely leading, based upon a false premise, and on the further ground it is irrelevant, immaterial and incompetent.

THE COURT: Sustained.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted.)

Q. Did you see the defendant, Howard Auld, confined in a hospital in Hollandia?

THE PROSECUTOR: That's leading, and I object to it, and on the further ground that it is incompetent, irrelevant, and immaterial.

THE COURT: Sustained.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted.)

Q. When was the first time that you saw the defendant, Howard Auld?

THE PROSECUTOR: I object to that on the ground that it is incompetent, immaterial and irrelevant and I have asked for an offer of proof.

THE COURT: Sustained.

MR. PALESE: I would like to know what the Prosecutor means by an offer of proof so I may be guided, if your Honor please. Is that part of the reason for the objection being sustained by your Honor?

THE COURT: Yes, Mr. Palese?

MR. PALESE: Because he doesn't know what this witness is going to testify to?

THE COURT: No, Mr. Palese.

MR. PALESE: Exception.

(Exception noted.)

Q. Did you see Mr. Auld in Hollandia?

THE PROSECUTOR: I object to that, on the ground that it's indefinite, vague, too remote, and on

the further ground it's incompetent, immaterial, irrelevant, and I have asked for an offer of proof, which I have thus far not received.

THE COURT: Sustained.

MR. PALESE: Will your Honor enlighten counsel? The Prosecutor asked for an offer of proof, does your Honor take that into consideration as part of the objection?

THE COURT: Yes.

MR. PALESE: Do I understand your Honor to mean by that that I will have to disclose to the Prosecutor the testimony that this witness will give?

THE COURT: No, that is not what you are to understand.

MR. PALESE: Then what am I to understand as the reason for your Honor's sustaining the objection?

THE COURT: If you retire to side-bar perhaps we can establish it out of the presence of the jury.

(Side-bar.)

THE COURT: The Prosecutor has asked for an offer of proof, which entitles him to a statement from you of what you intend to show by this witness, not what she will testify to.

(After unreported colloquy.)

MR. PALESE: The purpose of this girl is to testify as to her observations of the conduct, behavior of this defendant when he was confined in a hospital in Hollandia.

(Upon return to the court room.)

THE COURT: Will you repeat the question?

(Question repeated.)

THE COURT: Objection overruled.

THE PROSECUTOR: On the ground that an offer of proof has been submitted?

THE COURT: The objection is overruled.

A. Yes, I did see Private Auld in Hollandia.
Q. Can you tell us when it was?
A. Yes, it was in March of last year.
Q. When was it you saw him?
A. In one of the psychiatric closed wards, in a closed, locked room. By closed ward I mean a locked room.
Q. When you speak of a locked room, will you describe it to us, if you will?
A. The ward building consisted of a cement floor and tin roof, and just wire on the sides, and we had no walls or anything like that, just wire, and these doors were locked, and then inside the ward we had about six or seven locked rooms within that locked ward, and they, of course, had the metal doors, the same as the others.

THE PROSECUTOR: I object to the use of any

medical term by this woman, she is not competent to so state.

THE COURT: Will you read the answer?

(Answer repeated.)

THE PROSECUTOR: I will withdraw the objection.

Q. With respect to this room or rooms you have described, where did you see Mr. Auld?

A. Inside one of the small rooms within the ward.

Q. And for how long a period was he confined in that room or ward?

A. It depended. He was in and out in the room itself, and on to the lower ward. I don't mean to use a medical term, Mr. Prosecutor, but there were times ——

THE PROSECUTOR: You answer the question, you don't talk to me or anyone else, you just answer the question under the direction of the court.

THE WITNESS: There were times when he was out of the locked ward, and other times when he was in the locked room, depending on his condition at the time.

Q. When he was let out of the locked room did you have an opportunity to observe him?

A. I observed him every day whether he was in the locked room or not.

Q. I don't want any medical opinion from you, but please tell us your observations of his behavior and conduct on those occasions.

THE PROSECUTOR: I object to any observations made by her; if the Court please, it is immaterial, incompetent, and irrelevant, and she is not qualified to state.

THE COURT: Overruled.

A. His condition at various times when I have seen him?

Q. Yes.

A. Some days he was calm enough to be allowed by the Major, who was our chief of the psychiatric section, to accompany me on my ward rounds. Other days he was put in the locked room in a maniacal or wild, I guess you would call it, state.

Q. What did you do about him when he was in that room that you can tell us, what you saw, and what you observed, what did you see when he was in this locked room? How did he behave himself?

A. After one of these so-called attacks, as it were ——

THE PROSECUTOR: I object to it, and ask that it be stricken. That's a presumption.

THE COURT: It will be stricken. The expression she called attacks will be stricken. Counsel in his question has asked you what you saw, what were your observations of his actions.

A. He tried to get out of the room by beating on the wire enclosure, the wire wall there. I have seen him do that on occasions.

Q. What else did you see him do?

A. As far as his disturbed state?

Q. Yes, I mean his behavior and his conduct.

A. In trying to get out is the main thing. Of course, he was very noisy in beating on the enclosure until he would be given a sedative or something to quiet him.

Q. Were you present at any time when sedatives were administered to Mr. Auld?

A. I was.

THE PROSECUTOR: I object to that, how does she know what was administered?

THE COURT: I will permit it.

BY MR. PALESE:

Q. What was your connection with the psychiatric ward?

A. I was a Red Cross worker to whom the psychiatric wards were assigned. We were very short of a nursing staff and ward men because that was still during combat.

THE PROSECUTOR: I object to that. The question has been answered and she is volunteering answers at this time with no question pending.

THE COURT: The question has not been answered yet, Prosecutor. That was all preliminary.

THE PROSECUTOR: Then I move that it be stricken as being unresponsive.

THE COURT: Let us hear the rest of the answer. Read the answer, Mr. Stenographer.

(The following answer was read by the stenog-

rapher: "What was your connection with the psychiatric ward?")

THE WITNESS (Continuing): My duties were to take care of both the social case work and the recreation work on the wards. Now, those were the duties assigned by the Red Cross. The duties assigned by the psychiatrist himself were to take the patients to the evacuation depots, to see that they were in the ambulance, especially the restraint cases and see that they were properly put aboard the ship. That was assigned by the psychiatric service.

Q. How long was it that Mr. Auld remained in the hospital while you were there?

A. Well, if I remember correctly, I believe he left around the last of April. I took him to the ship and I remember his leaving. Of course, in between times he was discharged from the hospital for four hours. He was gone and he came and I had him readmitted.

Q. Where was it on that occasion that you found him?

A. He was sent to the replacement depot, which was sixteen miles away, to be sent home on rotation, and he was released from us at eight o'clock in the morning and was taken down there by ambulance to the replacement depot.

BY THE COURT:

Q. Do you know that date?

A. I am sorry, sir, I don't, and at about twelve o'clock he walked in and he had walked the sixteen miles, according to him, to say that he was going

back in the jungle and to give me his valuables, his money, his papers, and the pictures that he had.

BY MR. PALESE:

Q. That is when he came in and that is what he said to you?

A. That is what he said to me.

THE PROSECUTOR: I move that that be stricken as self-serving at that time.

THE COURT: I will allow it.

BY MR. PALESE:

Q. After he said that to you what happened to Mr. Auld?

A. I took him back over to the psychiatric ward and consulted the major and had him readmitted to the hospital.

Q. Did he remain in the hospital then?

A. He remained in the hospital until he was evacuated. He was in a private room then.

Q. When you say evacuated, do you mean the time he got on the ship to come back here to America?

A. Yes.

Q. Describe to us that day when I understand you escorted him to the ship; is that correct?

A. Yes.

Q. What was his condition, behavior, and conduct, on that day?

A. I went on the ward early, I believe about six-thirty in the morning, and as I said before, the patients were given ——

Q. Just confine your testimony to this day with this Auld.

A. He was given medication, of course, before he would go on the ship, you see. I went on the ward early in the morning and then I came back about nine o'clock and he was unconscious but was restrained; that is, he was lying on the litter, tied down to the litter.

Q. Where was he when you say he was tied down on a litter? When he was being put on the ship or while he was in the hospital?

A. The patients were tied on the litters before they left the hospital for the ambulance ride, from the hospital to the ship.

Q. While being transported, you say, from the hospital to the ship he was restrained, is that what you say?

A. Yes, sir.

Q. By being tied to a litter?

A. Yes, sir.

Q. In what way was he tied?

A. The strips that were used were narrow muslin strips, I imagine about two and a half inches wide, and the patients were laid on the canvas litters and their ankles were tied, their wrists were tied, their chests were restrained to the litter.

Q. Then in that position they were placed in an ambulance? Is that what you say?

A. Yes, sir.

Q. Do I understand that you had charge of the ambulance which carried Mr. Auld to the ship?

A. Yes, sir.

Q. Did you accompany him in the ambulance?

A. Yes, sir.

Q. What happened to Mr. Auld when you got to the ship?

A. He was put aboard. He wasn't conscious.

Q. What is that?

A. He wasn't conscious. He was put aboard the ship.

Q. Was he able to talk to you?

A. No, sir.

Q. Were you present when he left the hospital and did you observe any medicines being administered to him before he was strapped on this litter?

A. Yes, sir.

Q. Where was he when the medicine was administered to him?

A. In the ward.

Q. From the time that you observed him that day until the time that you left him at the boat, did he say anything to you?

A. I saw him earlier in the morning before he had had his medication and I told him he was going home and he seemed very confused in ——

THE PROSECUTOR: I object to that. That is a characterization and a presumption.

BY MR. PALESE:

Q. You can't give us your opinion. All you can tell is how he behaved himself on that morning.

A. I am sorry. I don't know how to explain it. I can't say that he acted confused.

BY THE COURT:

Q. You saw what he did, didn't you, Miss?

A. I beg your pardon?

Q. You saw what he did. Was he combing his hair, for instance?

A. No, he was sitting on the edge of the cot with his hands hanging down just sort of looking into space, and I advised him that he was going home.

BY MR. PALESE:

Q. Did he talk to you?
A. Yes.
Q. Did he converse with you?
A. Not very much.
Q. Did he give any response to your questions?
A. A little.
Q. Were they intelligent answers to your questions?

THE PROSECUTOR: I object to that.

THE COURT: Objection sustained.

BY MR. PALESE:

Q. That you say was early morning and when was it that you first saw him strapped on this litter?

THE PROSECUTOR: I object to that. It has been answered.

THE COURT: Objection overruled.

(The following question was read by the stenographer: "That you say was early morning and when was it that you first saw him strapped on this litter?")

A. I believe that was almost nine o'clock.
Q. Morning or evening?

A. Morning.

Q. When was it that you left him at the ship?

A. Well, we drove in ambulances and it was fifteen miles, I imagine about an hour and a half later.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. You are a social worker, are you not?

A. My classification with the Red Cross is Hospital Staff Aide Social Case Work.

Q. Social case work; is that right?

A. Yes.

Q. You aren't a nurse?

A. No, sir.

Q. You know nothing of medicine, the profession of medicine, is that right?

A. No, sir.

Q. Do you know how many people were evacuated that day from that particular base?

A. All I had were my own patients. I don't know how many were evacuated.

Q. How many did you have?

A. I would say approximately sixteen.

Q. How many?

A. Approximately sixteen.

Q. Do you remember the names of some of them?

A. In that particular shipment?

Q. Yes, that shipment.

A. If you will give me a minute, I may be able to think of them.

Q. I will tell you. Take a look at this list and see if you can find some of them.

A. Yes, I can.

Q. How many are on that list? You count how many are on that list.

A. Of my patients?

Q. Count them to yourself and then tell the Court how many patients you find on that list.

A. Of my patients?

Q. The number that were evacuated that day.

MR. PALESE: If Your Honor please, this witness has said she had sixteen patients of her own. Does the question apply to sixteen?

BY THE COURT:

Q. When you say sixteen patients, you mean ——

A. Approximately sixteen patients.

Q. You mean in the performance of extra duty that had been assigned to you because of the shortage of help, is that it?

A. Yes.

Q. Were there sixteen in the truck or ambulance that you drove?

A. I didn't drive the ambulance, sir. There are four litters to each ambulance.

Q. And you were in charge of four ambulances, is that it?

A. Yes.

Q. Do you know where the evacuation plant was?

A. Yes.

Q. Where the ship was tied in?

A. Yes.

Q. Where was that?

A. Dock 9.

Q. Where?

A. Hollandia, Dutch New Guinea.

Q. Do you know how many men were taken aboard that ship that day?

A. No.

Q. Would it be in the hundreds, from what you saw?

A. Yes.

Q. When you say "strapped to the litter," do you mean that straps were used?

A. Muslin strips of light sheets torn up for some of the patients.

Q. What kind of terrain was it that the ambulances had to travel over to get from the hospital to the dock?

A. Dirt road.

Q. Was it pretty rough?

A. Well, of course, we went on the main road. It wasn't so awful.

Q. Was it the intention to restrain the patients who were tied with muslin from movement or to aid them in not falling when making the trip?

A. No, it was to restrain them from moving, because some of the patients were restrained, you see, and some weren't.

Q. With muslin strips?

A. Yes, sir, that was up to the discretion of the psychiatrist.

BY THE PROSECUTOR:

Q. Do I understand you to say correctly, it was over a hundred?

A. Well, our hospital wasn't the only one that evacuated.

Q. I know that. You say there were over a hundred that were evacuated that day from this particular dock?

A. Oh, yes.

Q. More than that, wasn't there?

A. Yes.

Q. How many more?

A. I don't know. I was concerned mainly with my own patients, and then I went back to the hospital as soon as they were aboard.

Q. You don't know Mr. Auld's condition on the night of August 14, 1945?

MR. PALESE: Objected to, if Your Honor please.

Q. Or the early morning of August 15, 1945? Do you?

MR. PALESE: I object, if Your Honor please.

THE COURT: Objection sustained.

THE PROSECUTOR: That is all.

THE WITNESS: I was in France.

THE PROSECUTOR: That is all.

THE COURT: We will recess until tomorrow morning at 10 o'clock.

(At this point, a recess was taken until Friday, March 15, 1946, at 10 o'clock A. M.)

March 15, 1946.

FIFTH DAY.

(Trial of the cause resumed at 10:00 o'clock A. M., on the above date, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.)

(Side bar):

THE COURT: It has been called to the attention of the Court by the Deputy Sheriff that a communication was just received by him, informing him that the sister of Juror No. 6—his name is Frank Shaffer—died suddenly last night. In the opinion of the Court, that is a condition arising during the course of this trial, which justifies his being excused from further service, and the thirteenth juror empanelled at the beginning of the trial, under the provisions of Section 2: 91 A-1 of the Revised Statutes, will be placed in the position of the excused juror.

(Upon return to the court room.)

THE COURT: Juror No. 13, Alternate Juror No. 1, will take the position vacated by the excused juror, No. 6, in the box.

HARRY OTTO FRANKS, sworn.

BY MR. PALESE:

Q. Mr. Franks, in January of 1945, were you in the military service of the United States?

A. I was, sir.

Q. In January of 1945, where were you stationed?

A. I was stationed in the Philippines.

Q. Later, were you at any time confined in the hospital in Hollandia in Dutch New Guinea?

A. Yes, sir.

Q. When was it, Mr. Franks, that you were confined in the hospital?

A. From January the 7th, 1945, until March.

Q. While you were in the hospital at Hollandia, did you see the defendant, Howard Auld?

A. I did, sir.

Q. And where was he when you first saw him in the hospital?

A. He was in the same ward I was in.

Q. How close was his bed to your bed?

A. Right across the aisle, about six feet.

Q. About six feet?

A. Yes.

Q. Were you a bed patient, or a so-called walking patient?

A. A bed patient, sir.

Q. During the time that you were in the same ward in which Auld was in, did you have the opportunity of observing his behavior and his conduct?

A. I did.

Q. Tell us, if you will, what you observed about his behavior and his conduct while in the hospital.

A. At times he used to be moody, depressed, and other times he used to be belligerent and resentful.

Q. In what manner do you say he was moody? What did you observe about him?

A. He used to be sitting on his bed, and his arms lying at his sides, just staring in front of him.

Q. For what period of time would he assume that position?

A. Sometimes for an hour, two hours.

Q. How long, Mr. Franks, were you in the hospital with him?

A. Approximately a month and a half.

Q. Did you have the opportunity of talking to him?

A. I did, sir.

Q. Tell us, if you will, what occurred when you talked to him.

A. Well, I used to talk to him as we did overseas for companionship, and how he felt, but the answers I got, they were—once I asked him how he felt, and he said he had to get up in the morning and plant potatoes because he liked corn on the cob.

Q. Can you relate to us any other occasions of talks with Mr. Auld?

A. He used to be very resentful towards the doctor.

Q. In what manner was he resentful towards the doctor?

A. He was very belligerent in regards to the treatment he used to get for his malaria.

Q. What happened?

A. He used to argue.

Q. About what?

A. As I heard it, it was that the doctor wanted to give him atabrine, and Mr. Auld said the doctor told him atabrine would not take any effect on him,

and he had to have quinine, so he refused to take the atabrine.

Q. What else did you observe about him when he was in the hospital?

A. He used to walk off and not come back for hours. After I asked him where he had been, "Buddies, buddies," that is all I could get out of him. He never gave me a story where he has been, or what he has done, but always seemed to be looking for somebody.

Q. Can you tell us anything else about your observations or talks with Auld while he was in the hospital?

A. I remember on one occasion I sent him to the Post Exchange—that's where we buy whatever we want we can't get in the Army—and asked him to get me a couple of cans of tomatoes. Four hours after he came back with two stones and a piece of wood, and said that's all he had.

Q. Can you tell us any other instances as to his behavior and his conduct?

A. Not that I know of. He walked off, and he walked around, and the doctor asked him to stay in the hospital, which he refused to do, and sometimes he comes back, but he had a lot of trouble with the nurses.

MR. PALESE: Take the witness.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. You stated, Mr. Franks, that he had a very belligerent attitude?

A. At times, yes, sir.

Q. Did you know him in 1941?

A. I did not, sir.

Q. Did you know him in the month of May, 1941?

A. No, sir.

Q. Did you know him in the month of September, 1941?

A. No, sir.

Q. Did you know him in the month of November, 1942?

A. No.

MR. PALESE: I object to that; it is not proper cross-examination. Mr. Franks is here to testify as to a period since January of 1945, while the defendant was confined in this hospital.

THE PROSECUTOR: I am trying to find out if he knew him before that time.

THE COURT: The answer was "No."

Q. Did you know him in March of 1943?

MR. PALESE: I object, if Your Honor please, as immaterial and incompetent.

THE COURT: I will allow the question.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted for the defendant.)

MR. PALESE: Now, will you repeat the question?

(Question repeated as follows: "Did you know him in March of 1943?")

A. No, sir.

Q. Therefore, between April of 1941, and about July of 1943, you don't know what kind of attitude he had?

A. No.

MR. PALESE: Just a minute ——

THE COURT: The witness has answered the question.

MR. PALESE: If he didn't know the man, how could he know what his attitude was?

Q. Did you know his attitude prior to the time you met him?

A. No, sir.

Q. When you say he would not take atabrine, did he ask for quinine?

A. Yes, sir.

Q. Then he knew the difference between atabrine and quinine?

MR. PALESE: The answer speaks for itself. All the witness can testify is what he heard the defendant say, and so I object to the question.

THE COURT: Sustained.

Q. You said he was resentful?

A. Yes, sir.

Q. In what respect and towards whom?

A. Towards the doctor.

Q. Anyone else?
A. The nurses.
Q. Anyone else?
A. Everybody; it all depends how he felt.
Q. Wasn't he resentful against the entire army?
A. Absolutely.
Q. Did he tell you he was never going to take an order from anyone?
A. No, sir.
Q. You never heard him say that?
A. No, sir.
Q. Of course, you don't know his condition on July 27, 1945?

MR. PALESE: I object to it as not proper cross-examination.

THE COURT: Sustained.

THE PROSECUTOR: No further questions.

MR. PALESE: That's all.

JENNIE AULD, sworn.

BY MR. PALESE:

Q. Mrs. Auld, you are the mother of Howard Auld?
A. Yes, sir.

MR. PALESE: You will have to talk loud enough, so the members of the jury can hear you.

Q. Was your son, during his childhood days, subject to any illness?

A. He had convulsions, nervous convulsions.

Q. When was it, Mrs. Auld, that he was subject to nervous convulsions?

A. From the time he was one year of age until he was ten.

Q. How frequent were the convulsions?

A. I would say about three times a year.

Q. Was medical care required at the time of the seizures?

A. Yes, sir.

Q. Will you describe to us in your way what you observed at the time of the nervous convulsions?

A. Well, he would be unconscious, and blue in the face, and, of course, his hands and his muscles moved, but after that, after, I would say, maybe half an hour, he would come out of it.

MR. PALESE: You will have to keep your voice up louder.

THE WITNESS: He would be blue in the face, and his hands would be blue, and he did shake a good bit in these convulsions.

Q. Mrs. Auld, what did you observe about your son after he was discharged from the Army on July 30th, I think it is, of 1945?

A. Well, he was very nervous, and very restless, and he didn't sleep at night very good, and he talked in his sleep, and he couldn't sit still any length of time, even hardly to eat his meals.

Q. How long did that condition exist after his discharge?

A. He was only home about two weeks.

Q. In that period of time, how frequently would you observe this condition that you have just related to us?

A. He was never still, he couldn't sit still. He didn't sit still five minutes at a time.

MR. PALESE: Take the witness.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. This defendant is your son, is he not, Mrs. Auld?

A. That is right.

THE PROSECUTOR: I have no further questions.

FLORENCE HULSE, sworn.

BY MR. PALESE:

Q. Mrs. Hulse, on the evening of August 14th, or the early morning of August the 15th, 1945, were you at the Creek's home?

A. Yes, sir.

Q. What time was it you were at the Creek home?

A. We arrived there approximately midnight.

Q. Was the defendant, Howard Auld, and Margaret McDade there at that time, or did they come after you had arrived?

A. No, we all arrived together.

Q. Where did you and Howard Auld and Margaret McDade go upon arrival at the Creek home?

A. There was so much confusion in getting the party together, I asked Mrs. Creek if she wanted me to assist at the bar with her daughter, and I took the bar over and saw that all the guests had something to drink, and Howard and Miss McDade were at the bar with me.

Q. What did you observe Howard and Margaret doing when they were at the end of the bar?

A. They were conversing, well, the usual procedure of petting; I mean, not to any great extent, understand, but they were ——

Q. We don't know the usual procedure; please tell us what you saw.

A. They weren't going to extremes.

Q. What did you see?

A. Well, Mr. Auld, on two occasions, or three, put his arm around Miss McDade and said something to her.

Q. What was Miss McDade doing?

A. She was standing, just standing there and talking back.

Q. Later on, did you have a conversation with Miss McDade, or Rita, as we call her?

A. Yes, I had a conversation with her when Auld left and joined Officer Auletto and my husband and several others at the bar, and we were speaking of Howard, and where she had met him before. She said she had met him in Abe's, I believe, and at a swimming hole, or swimming pool, some place there in Bellmawr. I don't know anything about the locality, and she expressed her opinion. It was necessary for me to open a fresh bottle of Prince George liquor. They had consumed the other bottle, and I got the bottle on the bar, since I was the bar-

tender, and looked around for something to open it with, and Mr. Auld reached over and took his hand and took the cap off the bottle without removing the sticker on it, and she said, "What a big hunk of man!"

Q. After you heard that, what, if anything, did you do with respect to Margaret McDade?

A. Well, Howard joined us at the bar again, and we were discussing the subject of, particularly, silk stockings, and a party of folks came in, elderly folks, and sat down along the wall, so I went over and asked them what they wanted to drink, since there were several things to drink, and they said, "Beer." I immediately got eight glasses of beer and served these folks, and when I came back Howard wasn't there. I didn't inquire where he was again, because I thought he had gone to the bathroom, and, well, in just a few minutes' time Miss McDade expressed that she was going to take a walk with Howard.

Q. After she said that, what, if anything, did you or she do; I mean, with respect to Miss McDade?

A. I said to her, I said, "Take a walk with Howard?" She said, "Yes." I said, "Well, don't you know that Howard hasn't been out with a girl since he has been discharged from the Army?" I said, "My husband told me that." And she said, "Yes, that's the guy I'm looking for, that's just the guy I'm looking for."

Q. Did you go anywhere with her after she said that?

A. Then I said to her, "Aren't you here with someone else, aren't you here with Jimmy?" who I had figured had ——

THE PROSECUTOR: I move that be stricken, what she figured. All we want is what you said to her.

Q. I understood that Jimmy had ——

THE PROSECUTOR: I move that be stricken.

THE COURT: It will be stricken.

Q. Tell us what you said, not what you thought. What did you tell her about this Jimmy?

A. I told her that Jimmy had brought her to the party.

Q. What did she say?

A. She said, "Oh, yes, I know; pretend that we are going into the bathroom, and then I can go outside."

Q. Did you go to the bathroom with her?

A. I most certainly did, I escorted her up the steps, directly in back of her, to the screen door, where she walked outside and joined Mr. Auld.

MR. PALESE: Take the witness.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Did you make a statement in this matter to Chief Doran?

A. Yes, sir.

Q. It was taken stenographically?

A. Yes, sir.

Q. You told the truth then, didn't you?

A. Yes, sir.

Q. Do you remember this question being asked you, "They were drinking there together?" You made this answer, "They were drinking, yes."

Do you remember that?

MR. PALESE: Is that any different from what she said?

THE PROSECUTOR: That is all right.

MR. PALESE: I appreciate that, if your Honor please, but it is the manner in which the Prosecutor is indicating that she may have said something different in her direct testimony.

THE PROSECUTOR: She did, and I am going to prove it.

MR. PALESE: Now, Mr. Mariano, please, I can hear you if you will talk in a little lower tone.

THE COURT: The Prosecutor's remark will be stricken from the record. Your present objection ——

MR. PALESE: Is that there has been no evidence ——

THE COURT: Is that there is no contradiction between her present testimony here and the question and answer that she has now been asked?

MR. PALESE: That is right.

THE PROSECUTOR: If there is none she can so state.

MR. PALESE: What is the purpose, if your Honor please, because the Prosecutor ——

THE COURT: I will sustain the objection.

BY THE PROSECUTOR:

Q. Do you remember being asked this question, "How long did they remain there, do you know?"

MR. PALESE: If your Honor please, she wasn't asked on direct examination how long the defendant and Miss McDade were there.

THE COURT: I will sustain the objection.

BY THE PROSECUTOR:

Q. Mrs. Hulse, you saw the defendant, Rita McDade, and who else at the party?

A. Officer Oletta, my husband, Mr. Auld's sister, and lots of folks that I never knew before.

Q. You sat at the bar with them?

A. I attended to the bar.

Q. You attended to the bar?

A. Yes, sir.

Q. And they were in your presence?

A. All the time.

Q. At all the time?

A. Yes, sir.

Q. And you said in your direct examination that they were hugging and kissing one another?

A. Hugging each other.

Q. Not kissing?

A. No, hugging.

Q. Did he have his arms around Rita?

A. On two occasions, yes.

Q. Did she have her arms around him?

A. No, sir.

Q. Were you in the discussion that was taking

place between Officer Oletta, yourself, your husband, Rita, and the defendant?

A. No, sir.

Q. But you were there?

A. Yes, sir.

Q. Do you know how long they remained there?

A. One hour.

Q. And you remained there an hour?

A. Of the entire evening?

Q. For the hour that they were there you remained there?

A. Approximately, but, Mr. Prosecutor I was attending to the bar.

Q. There is no question pending. You can make a statement when counsel for the defense asks you. Do you remember Chief Doran asking you this question, "How long did they remain there, do you know?"

A. Yes, sir, I said an hour.

Q. Do you remember making this answer: "Well, like I said, I was busy and served everybody one drink. Everybody that was there got one drink, and after that they were to wait on themselves, and I stood at the end of the bar with Rita and Howard. We were discussing the people that were there, just general conversation, but at no time did he ever make any passes, I mean, putting his arms around her, necking with her, or kissing or anything."

Do you remember making that answer?

A. No, sir, I don't.

Q. You say now that you didn't make that answer?

A. I don't say that I didn't make it. I don't remember.

Q. Oh, you don't remember.

A. That is correct.

Q. Which is it? That you didn't give that answer or that you don't remember?

A. If it is in my testimony I must have given an answer.

Q. Now we have a choice of three. Which is it, Mrs. Hulse?

MR. PALESE: You don't have a choice of anything.

THE COURT: The form of the question is objectionable.

MR. PALESE: If the prosecutor will treat this witness as a witness entitled to all the respect that she is entitled to ——

THE COURT: The form of the question is objectionable.

BY THE PROSECUTOR:

Q. Let me ask you this way, then, Mrs. Hulse: Is it that you don't remember making that answer?

A. To Chief Doran, yes.

Q. You don't remember making it?

A. No.

Q. If you did make it was it wrong?

A. Partly, yes, sir.

Q. What part was wrong?

A. Where they weren't necking at all, I mean that—passes, in my estimation isn't the same as putting his arms around her.

Q. Give me your definition of passes.

A. That isn't my definition of passes, putting his

arm around her. If I said, "Passes,"—I doubt very much if I said "Passes."

Q. You don't remember that?

A. Yes, sir.

Q. But when you made your answer that I have just read to you you said, "But at no time did he make any passes, I mean, putting his arms around her, necking with her, or kissing or anything."

Is that what you meant by "passes" when you gave your answer to Chief Doran?

A. If I used the word, "Passes" evidently that is what I meant.

Q. Which is it, then? That is what I want to get straight.

A. Well, the defendant did have his arms around her on two occasions, so that if I made that testimony I——

Q. You made an error?

A. I made an error, that is correct.

Q. Now, do you know of any other errors that you may have made?

MR. PALESE: I object, if your Honor please. Let us meet them when they appear.

THE COURT: Objection sustained.

BY THE PROSECUTOR:

Q. Do you remember being asked this question by Chief Doran, "How long did they remain there?"

MR. PALESE: I object, if your Honor please. That question has been asked the third time now, and on direct examination there was no testimony asked of this witness, "How long did the defendant

and—I suppose the question meant Margaret McDade—remain there?"

THE COURT: I will overrule the objection now.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. One hour.

Q. Do you remember being asked that question by Chief Doran?

A. Yes, sir.

Q. Do you remember making this answer, "At about one o'clock, I judge it was, there was about eight people came in and I went over and asked them what they would like to drink, and I served them eight beers. Finally, I came back and Howard wasn't at the bar ——

MR. PALESE: If your Honor please, ——

THE PROSECUTOR: This is the answer.

THE COURT: Wait until the answer is finished, Mr. Palese.

BY THE PROSECUTOR:

Q. (Continuing) "So I asked Rita, which I judged in my opinion he was to the bathroom, and Rita turned to me and said, 'Skip, I am going to take a walk with Howard,' and I said to her—I was quite

surprised and I said to her, 'Well, just a short time ago I was told Howard hadn't been out with a girl since he has been out of the Veterans Hospital,' and she said, 'Oh, we will be right back. We are only going to take a walk.'

I said, 'You are with someone here, aren't you?' She said, 'Yes, that is why I am asking you to walk out and pretend we are going to the bathroom.' "

Is that the answer that you gave to the previous question asked you by Chief Doran?

MR. PALESE: I object to the question.

THE COURT: Objection sustained.

THE PROSECUTOR: That was the answer she gave to the previous question.

THE COURT: I sustain the objection.

BY THE PROSECUTOR:

Q. Do you remember what answer you gave to that question?

A. Yes, sir.

Q. What was it?

MR. PALESE: I object.

THE COURT: Objection sustained.

Q. Of course, you remember seeing Howard at the fire hall on Wednesday, don't you?

MR. PALESE: I object, if your Honor please, as not proper cross-examination.

BY THE PROSECUTOR:

Q. Did you see Howard at the fire hall on Wednesday evening, August 15, 1945?

MR. PALESE: I object, if your Honor please, as not proper cross-examination.

THE COURT: I sustain the objection.

BY THE PROSECUTOR:

Q. Were you the woman that found the bloody pants in your bathroom basket?

MR. PALESE: I object, if your Honor please, and the prosecutor knows that that isn't a proper question. I haven't asked this woman about anything that happened at the Creek home.

THE COURT: Objection sustained.

Q. Why did you say to Rita that Howard hadn't been out with a girl since he was released from the army?

A. Because she told me she was going out together with him. That was her own expression.

Q. Why didn't you stop her from going out then?

A. I tried. Of course, she wasn't even a friend of mine.

Q. Oh, she wasn't a friend of yours?

A. I had just met her that evening.

Q. You didn't know anything about her?

A. Not a thing.

Q. Why didn't you stop her from going out, then?

A. That wasn't my place to stop her.

MR. PALESE: Just a minute. All this witness can say is what she did, if your Honor please. Why she didn't try to do that is a conclusion, I am assuming. All this witness can testify to is what she said and what she did.

THE PROSECUTOR: I will withdraw the question.

BY THE PROSECUTOR:

Q. Do you remember being asked the question as to what took place just before Rita left to take a walk with Howard, by Chief Doran?

A. Yes, sir.

Q. Do you remember what answer you gave?

A. Yes, sir.

Q. What was it?

A. That she was going—she said, "Skip, I am going to take a walk with Howard." This is the answer that I gave Chief Doran, understand.

Q. That is right.

A. "I am going to take a walk with Howard." Of course, I was surprised and she——

Q. Is this the answer you gave to Chief Doran?

A. Yes.

Q. All right.

A. I said to her, "Don't you know that Howard has not been out with a woman, from what I understand, I was told, since he has been out of the Veterans Hospital?"

Q. That is all you said?

A. Oh, no. Then I said, "Anyway, aren't you here with Jimmy?"

Q. Yes.

A. She said, "Yes, but that is why I am telling you. Pretend we are going to the bathroom."

Q. That is all there was to your answer?

A. There may be a few more words. Then I walked up to the bathroom with her, supposedly to the bathroom with her.

Q. Then in your answer to the question to Chief Doran you didn't tell him in answering the question any of the matters that you have added to that answer here today, have you?

MR. PALESE: If your Honor please, the question doesn't call for the information that she has given here today as to giving her reasons why she made that remark. That is the question that was asked this woman. I object to it, if your Honor please.

THE COURT: Objection sustained.

Q. Do you remember Chief Doran asking you this question? "Q. You have told us all that took place?" Do you remember being asked that question by Chief Doran?

A. Yes, sir, that I remembered that night.

BY MR. PALESE:

Q. Just answer that yes or no, if you will.

A. Yes, sir.

BY THE PROSECUTOR:

Q. Do you remember giving this answer ——

MR. PALESE: If your Honor please, I am going to object now before the Prosecutor makes his

speech. The way to contradict a witness is to read the answer first, and "Did you say this?" if it is in contradiction of something that the witness may have said on direct examination. He says, "Did you make this answer to the question?" And then wants the witness to give the answer, and I object to it.

THE COURT: Objection sustained.

THE PROSECUTOR: If your Honor please, I don't take it in the inverse order. I ask if this question was asked and I wait for a response to that and then I ask if this answer wasn't given. I cannot ask her—I cannot put the answer first before the question is propounded.

THE COURT: The ruling is predicated upon the fact that there is nothing implied in the question which indicates a contradictory answer having been given by the witness under oath today on the stand.

THE PROSECUTOR: May I have that repeated again?

(The following was read by the stenographer: "The ruling is predicated upon the fact that there is nothing implied in the question which indicates a contradictory answer having been given by the witness under oath today on the stand.")

THE PROSECUTOR: That is all.

MR. PALESE: That is all.

DORIS HILDEN, sworn.

BY MR. PALESE:

Q. What is your full name?
A. My middle name?
Q. You will have to talk loud enough so that this last juror can hear you.
A. Doris Mildred Hilden.
Q. I haven't heard it.
A. Doris Mildred Hilden.
Q. Was the lady on the stand your mother?
A. Yes.
Q. On the evening of August 14, 1945, do you remember seeing the defendant at your home in Blackwood?
A. Yes.
Q. Can you tell us what time it was that you saw him there?
A. About nine o'clock.
Q. Who was with him at the time?
A. My stepfather.
Q. Where was it that you first saw the defendant?
A. At the corner.
Q. After you saw him on the corner where did you go with the defendant?
A. He took my sisters to the drug store and bought them ice cream and I got my brother and my stepfather and Howard and we went home.
Q. Did Howard go with you to your home?
A. Yes.
Q. When you got home what did you see the defendant doing in your home?
A. He was drinking whisky and rum.

Q. Do you know how many glasses of whisky and rum he had that you saw?

A. I seen him drink three.

Q. You mean three whiskies and three rums or three all together?

A. Three all together.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

(Prosecutor places water glass at the side of the witness stand.)

MR. PALESE: Why do you do that, Mr. Prosecutor?

THE PROSECUTOR: I am going to use it.

MR. PALESE: Well, hold it in your hand.

THE PROSECUTOR: I don't want to have to get up again.

MR. PALESE: You will have to.

Q. How old are you?

A. Almost 17.

Q. And you are married?

A. No.

Q. Is Hilden your first father's name?

A. Yes.

Q. You say that Mr. Auld had glasses of whiskey with rum chasers?

A. Well, he had three glasses but I don't know

whether it was whiskey that I seen. I don't know whether it was whiskey or rum.

Q. You know what a chaser is?

A. Yes.

Q. What is it?

A. They serve a chaser when you get whiskey in a saloon.

Q. First he had whiskey?

A. Yes.

Q. Was it as big a glass as that? (Indicating)

MR. PALESE: I object.

THE COURT: Sustain the objection.

Q. How big was the glass that he took a drink from?

A. About six ounces.

Q. Was it a tumbler?

A. Tumbler? I don't know, a glass.

Q. How do you know it was six ounces?

A. My grandmother has a saloon and I know the size of glasses.

Q. How big about, could you indicate, would a six ounce glass be?

A. I imagine about this big (indicating), and that round (indicating).

Q. About the size of this glass (indicating a water tumbler)?

A. That might be a little bit bigger.

Q. Well, take a look at this and see if you can give us some idea.

A. This (indicating) looks fatter and a little rounder here (indicating).

Q. Very much so ——

MR. PALESE: I didn't hear that answer.

THE COURT: This looks fatter, it is a little rounder.

Q. What do you mean, it looks fatter?

A. It is bigger around here (indicating). The glass they were drinking out of was smaller.

Q. It held six ounces?

A. Yes.

Q. After he drank, did your stepfather have a drink, too?

A. Well, first, why when Howard came in, why my father brought the bottle back and told him to help himself, and my father went upstairs. He was not in the kitchen while Howard was drinking.

Q. Then he drank one six ounce glass. What kind of whiskey was it, do you remember?

A. I don't remember. It had a dark label.

Q. After he drank the first six ounce glass of whiskey, he then took a rum or brandy chaser?

MR. PALESE: She didn't say that. She said he had three drinks altogether.

THE COURT: On direct examination the witness said he drank whiskey and rum. On cross-examination she says she did not know whether he drank rum or not.

Q. Well the chaser, whether it was rum or some other beverage, would that be taken after he drank the six ounce glass of whiskey?

A. He was just drinking whiskey and rum. I don't know whether he drank it as a chaser or not.

Q. You said you were there with him.

A. I was sitting there but I didn't just stare at him.

Q. You did see him drink three?

A. I saw him pour three tumblerfuls.

Q. Out of the whiskey bottle?

A. No, he had whiskey and he had rum.

Q. And rum?

A. Yes.

Q. Was the rum used as a chaser?

MR. PALESE: How can this witness testify to that?

THE PROSECUTOR: She knows what a chaser is. Her grandmother or somebody was in the saloon business.

MR. PALESE: I object. All she can testify to is what she saw.

THE PROSECUTOR: All right. I will withdraw the question.

Q. After drinking the six ounce glass of whiskey, would he then take the rum and put it in another glass and drink a little of the rum?

A. No, he didn't do that.

Q. When did he drink the rum, after drinking the whiskey?

A. I think he did. I think he had the rum after he drank the whiskey.

Q. I understand now, that you saw him drink one tumbler first, or a six ounce glass of whiskey, and he would take a rum chaser after that?

MR. PALESE: I object to the question.

Q. He did drink rum?

A. Yes.

Q. Later on he drank another six ounce glass of whiskey?

A. Yes.

Q. And then did he drink rum after that or some other beverage?

A. I didn't see him, I only saw him have three.

Q. How many times did he drink rum?

A. Just one time that I remember.

Q. Was that after the first drink of whiskey, the second drink or the third?

A. After the first drink of whiskey.

Q. After the first whiskey?

A. Yes.

Q. Then he drank two more six ounce glasses of whiskey but no more rum?

MR. PALESE: I object to that. That is not what she said.

THE PROSECUTOR: I am trying to straighten it out.

MR. PALESE: You are not to straighten anything out.

THE PROSECUTOR: I am trying to straighten myself out.

THE COURT: Sustain the objection.

Q. How many times did he drink rum?

A. Once.

Q. When was that with respect to the first, second or third glass of whiskey?

A. After the first whiskey.

Q. Therefore, he drank no other rum after the first glass of whiskey?

MR. PALESE: I object to the form of the question, therefore he did this or therefore he did that.

THE COURT: I overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed. Repeat the question.

(Exception noted for defendant.)

(Question repeated.)

Q. Is that right?

A. Yes, he had one whiskey and then a rum and didn't have any more rum.

Q. What time did you come in the house?

A. It was after nine when we got in the house.

Q. How much after?

A. I imagine about quarter after nine.

Q. Quarter after?

A. Yes.

Q. What time did your stepfather and mother and Mr. Auld leave?

MR. PALESE: I object to that as not proper cross-examination.

THE COURT: I will hear you, Mr. Palese.

MR. PALESE: It is not proper cross-examina-

tion and there has nothing been said about the mother leaving with them.

THE PROSECUTOR: I withdraw the mother part. I will withdraw the question.

Q. What time did your stepfather and Mr. Auld leave?

MR. PALESE: That's different.

THE PROSECUTOR: All right, Mr. Palese.

A. It was about ten of ten.
Q. Ten of ten?
A. About that.
Q. How much time elapsed from the time your stepfather, from the time Mr. Auld came in to your home and the time he left?

MR. PALESE: Now, if your Honor please, how much time elapsed, does that mean how long he was there?

THE COURT: That's what it means.

MR. PALESE: As for this witness—if counsel is a little curious ——

THE PROSECUTOR: I am not curious on that, Mr. Palese.

MR. PALESE: Mr. Mariano, please.

THE COURT: Just a minute. How long was Mr. Auld in the house from the time he came in until he left with your stepfather.

A. Thirty-five minutes.

Q. And in that thirty-five minutes he drank eighteen ounces of whiskey plus some rum?

MR. PALESE: I object. The witness did not say that. She told about the six ounce glass and said that he had some whiskey and rum. She hasn't said eighteen ounces.

Q. How many ounces of whiskey did Mr. Auld drink during those thirty-five minutes?

A. I was only there part of the time and only seen him drink twelve ounces and then I went upstairs to put the baby to bed.

Q. Now, he drank twelve ounces?

A. Of whiskey.

Q. Of whiskey. He didn't drink three glasses of whiskey did he?

MR. PALESE: I object. This witness has never stated that.

THE COURT: Sustain the objection.

Q. How big was the glass that he had the rum in?

A. That was just a little smaller. It was smaller at the bottom.

Q. About how many ounces would you say?

A. Oh, I guess about five, I believe.

Q. Five. Now, when Mr. Auld left at ten minutes of ten, he left with your stepfather?

A. And myself.

Q. And you?

A. Yes.

Q. And where were these drinks taken?

A. What do you mean?

Q. What part of the house?

A. In the kitchen.

Q. Mr. Auld walked from the kitchen to the front door of the house with you and your stepfather and walked out in the street?

MR. PALESE: I object. It is not proper cross-examination.

THE COURT: Sustain the objection.

Q. Where did he go after he left the kitchen?

A. In ——

MR. PALESE: I object as not proper cross-examination.

THE COURT: Sustain the objection.

Q. You left with Mr. Auld and your stepfather?

MR. PALESE: I object.

THE COURT: That testimony is already in, Prosecutor.

Q. How did Mr. Auld get out of the house?

MR. PALESE: I object. That is not proper cross-examination.

THE COURT: Sustain the objection.

Q. Where was your stepfather when the drinking was taking place?

MR. PALESE: I object to that.

THE COURT: Overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed. Repeat the question.

(Exception noted for defendant.)

("Q. Where was your stepfather when the drinking was taking place?")

A. When he went —— When they came in, as I told you, he got the two bottles out and went upstairs and then when he came down, why, he left.
Q. How long was he upstairs?

MR. PALESE: I object.

THE COURT: Sustain the objection.

Q. How long were you in Mr. Auld's presence in the kitchen?

MR. PALESE: She has answered that, thirty-five minutes.

THE COURT: I will allow it.

A. I guess about fifteen or twenty minutes.
Q. During that time, as I understand it, in your presence he had two glasses of whiskey and one of rum?
A. Yes.

THE PROSECUTOR: That's all.

MR. PALESE: That's all.

THE COURT: We will recess for fifteen minutes.

AFTER RECESS.

MR. PALESE: Now, if your Honor please, by consent I would like to offer in evidence a photostatic copy of the records in the Mason General Hospital regarding the defendant, Howard Auld.

THE PROSECUTOR: If the Court pleases, this exhibit is in evidence.

MR. PALESE: Not before the jury.

THE PROSECUTOR: Not before the jury. Well, I have no objection except that I think perhaps it might be better to call the person whom we have agreed upon and have him introduce this record, and he could be submitted to examination, either direct examination or cross-examination, if it is desired.

MR. PALESE: Now, unless we want to go to sidebar —— We thrashed this out yesterday and it was to be introduced into evidence without any strings. It did have strings then. Maybe you are right and maybe I was wrong, but we jumped that hurdle yesterday.

THE COURT: It being an exhibit that will be submitted with consent, it does not require any witness through whom its competency would be established.

MR. PALESE: That's right.

THE COURT: The offer now is of this, these documentary proofs as an exhibit with the consent of the Prosecutor.

THE PROSECUTOR: Does your Honor understand my position?

THE COURT: Yes, I do.

THE PROSECUTOR: I have no objection whatsoever, excepting that it should at least be read to the jury. The man who brought them here should testify concerning them. We are not just going to present to the jury a bare record such as we have here, because we are in this position, we have had testimony concerning the same out of the presence of the jury. It just seems to me that throwing in the bare record does not give the jury the benefit of understanding and knowing and hearing what is really in the record.

THE COURT: That is a matter for disposition or treatment later.

MR. PALESE: The jury will know, Mr. Prosecutor, what is in these records.

THE PROSECUTOR: I want them to know, Mr. Palese.

THE COURT: I take it that the offer is with consent.

THE PROSECUTOR: That is right, sir.

THE COURT: It will be admitted in evidence in the cause and marked Exhibit D-1.

MR. PALESE: Will your Honor bear with me just a minute.

THE COURT: Yes.

MR. PALESE: If your Honor please, this is the exhibit that I would like to offer in evidence on behalf of the defendant.

THE COURT: It will be admitted.

MR. PALESE: If your Honor please, by consent we have had photostatic copies made of medical records of this defendant, Howard Auld, as found in the office of the Veterans' Bureau, I think, at the Lyons Hospital in Somerville, New Jersey, I think, and I would like to have them offered in evidence. There are forty-nine sheets to the exhibit, numbered from one to forty-nine consecutively.

THE PROSECUTOR: I have no objection. This is in pursuance to my agreement but I would like to have on the record, for the benefit of the jury, the purpose for the introduction of the exhibits.

MR. PALESE: To avoid the necessity of bringing someone in authority from the two hospitals to establish the records sufficiently to permit them to

be introduced in evidence, save the time of bringing all the individuals in that would make it possible for the introduction of the documents in evidence.

THE PROSECUTOR: There isn't any additional reason? Does counsel for the defendant now say that the only reason for the introduction of these exhibits by agreement is to avoid the necessity of having various persons come from the Veterans' Administration and the hospitals, to avoid the necessity of their coming here. If that is it, I have absolutely no other statement to make.

MR. PALESE: That is the purpose.

THE PROSECUTOR: That is the sole purpose for which this is being done, for which the exhibits are admitted into evidence.

MR. PALESE: Whatever the contents of the documents are we may use.

THE PROSECUTOR: Mr. Palese, is it for the purpose of establishing the defense in the matter? We won't play with words.

MR. PALESE: If your Honor please, it is not my desire to play with words. We have agreed that these documents shall be admitted in evidence. The Prosecutor knows that when they are evidence counsel can make whatever use he wants of them and the Prosecutor can make whatever use he may want of them. They are in evidence the same as any other exhibit for whatever use insofar as the case is concerned. And we are entitled to use the records as evidence in this case. I don't know what

the Prosecutor has in mind, not to establish my defense. They are evidence in the case. If they play some part in the case why then we would want to use them and the Prosecutor may want to use them too.

THE PROSECUTOR: Then the purpose, as I understand it for the introduction into evidence of these exhibits is to establish a defense of insanity at the time of the commission of this crime, is that it?

MR. PALESE: If your Honor please, I don't have to answer that question and I don't think it is fair for the Prosecutor to ask such a question. They are admitted as evidence. I can use them as I want to and he can use them as he wants to.

THE COURT: That is, if they are permitted to be marked by consent.

MR. PALESE: As evidence, that's right.

THE COURT: The disjunction is complete, Mr. Prosecutor, I can't conceive of one more conclusively clear. Either you consent or you do not consent.

THE PROSECUTOR: I consent.

THE COURT: They will be admitted and marked Exhibit D-2, as one exhibit, forty-nine photostatic documentary sheets.

HOWARD AULD, sworn.

BY MR. PALESE:

Q. Mr. Auld, how old are you?
A. I will be 26 in May.
Q. You will have to talk loud enough so the members of the jury can hear you. How far did you go with your schooling?
A. Eight years.
Q. And what school did you go to?
A. Bellmawr school.
Q. And did you graduate from the grammar school?
A. Yes, sir.
Q. How old were you when you graduated?
A. Sixteen, sir.
Q. After you graduated from school, did you do any kind of work?
A. Odds and ends.
Q. What kind of odds and ends did you do?
A. Plumber's helper, I was farming and so forth, like that.
Q. When did you enlist in the National Guard?
A. July 8, 1940.
Q. And after you enlisted in the Guards, were you called into service?
A. September 16, 1940.
Q. And after you were called into service, where did you go?
A. Fort Dix.
Q. And you say that was in September of 1940?
A. Yes, sir.
Q. And how long did you remain in Fort Dix?
A. Until January 1942.

Q. From Dix where did you go?

A. Camp Clayborne, Louisiana.

Q. And were you in Camp Clayborne any length of time?

A. I think it was about 40 days.

Q. And from there where did you go?

A. Fort Lewis, Washington.

Q. Is that the State of Washington?

A. Yes, sir.

Q. When was it that you went overseas?

A. In April 1942.

Q. April when?

A. 1942.

Q. April of 1942?

A. Yes, sir.

Q. And in what outfit were you in in Fort Lewis, Washington?

A. I was with the—which one do you mean, sir?

Q. What outfit were you in, what regiment or group of men?

A. 114th Infantry Service Company.

Q. From the State of Washington, where did you go?

A. To my embarkation point and overseas.

Q. Where did you land overseas, if you know?

A. Melbourne, Australia.

Q. How long were you in Melbourne, Australia?

A. About four months.

Q. And from Melbourne, Australia, where did you go?

A. That is a military secret.

Q. What do you mean by that?

A. I am under oath with the Army.

Q. You say what?

A. From where we went from there, I was attached to the 186th Infantry, to go overseas. From

there I was transferred to a new outfit which was still attached, mail reference only.

Q. You say it is still a military secret?

A. Until the President says that the emergency is over.

Q. To not disclose that information?

A. What outfit I was in.

Q. Why won't you disclose what outfit you were in?

A. Because I am under oath.

Q. Under oath to do what?

A. Not to disclose my outfit.

Q. You mean as to the outfit you were in or where you were on the other side?

A. Where I was on the other side.

Q. After you left Australia, can you tell us where you went from there?

A. I went to Port Moresby, British, New Guinea.

Q. What, if anything, did you do at Port Moresby?

A. I learned what I was supposed to do in the way of figuring out positions and so forth of the enemy. I took my paratroop training, commando training and ranger training.

Q. Do you know, Mr. Auld, how long you were in training for those duties?

A. I was in training about three months.

Q. At the completion of the training, where from Port Moresby did you go?

A. Never completed training.

Q. Sir?

A. Never completed training.

Q. You never completed what?

A. Training.

Q. You did not complete your training?

A. No.

Q. Before your training was completed, what happened?

A. We was taken off our training.

Q. The jurors are having trouble hearing you.

A. We was taken off our training schedule. It was at the time the Japs was 35 miles from Port Moresby, and our job was to cut the supply line over the Owen-Stanley range.

Q. You participated in that, you say?

A. Yes, sir.

Q. After that mission was over, what did you do?

A. We was at Buna, sir.

Q. What part, if anything, did you play at Buna?

A. That's where this here complication—I was in combat 51 days. I was Court Martialed for deserting hazardous duty.

Q. You say that you were in combat for 51 days before the occurrence of the charges?

A. Yes, sir.

Q. And where were you taken for the charges, for your trial of the charges?

A. 1400 miles behind our lines, sir, Brisbane, Australia.

Q. How long were you away from your outfit as a result of the trial or Court Martial?

A. Three days to the day.

Q. At the end of the three days, what happened?

A. I volunteered for hazardous duty.

Q. And you then went out again?

A. That's right, sir.

Q. Where did you go?

A. Well, that's still a military secret, where we went that time.

Q. That is also something you cannot tell us, you say?

A. That's correct.

Q. Because you say the war is not over yet?

A. The emergency is not over.

Q. The emergency is not over yet? What can you tell us, Mr. Auld, after you say you served the three days, as to your military service, what can you tell me?

A. I can tell you what I did.

Q. Tell us that, if you will.

A. What I was supposed to do, anyway.

Q. What did you do and what were you supposed to do?

A. Well, if I would take off by air sometimes and I would go by PT boats, sometimes I would go by subs, destroyers, and paddle off the coast or jump out by air.

Q. When you say jump out by air, what do you mean by that?

A. Paratroop train.

Q. And were those missions or jumps in combat?

A. 80 of them, sir.

Q. How many combat jumps did you make out of planes?

A. 80, sir.

Q. And when you made the jumps, where would you go or where would you land and what were your duties following these jumps from the planes?

A. To locate the stuff of the enemy, to locate the pillboxes on the beaches, also dumps, gas dumps, to notify the aircraft where they were at through pictures, or let them know through the nighttime on special reasons.

Q. How many men approximately would participate in such a mission?

A. Three, sir.

Q. You and two others?

A. Yes, sir.

Q. And how long would the missions be?

A. Anywheres from D minus 20 to D minus 5.

Q. That does not mean very much to us, Mr. Auld. What do those figures mean?

A. D minus 20 would mean 20 days before D day.

Q. What does that mean?

A. 20 days before the initial landing.

Q. And the three men would be behind enemy lines for 20 days before men came in, is that what you are trying to tell us?

A. Yes.

Q. How would you get your food to carry on with?

A. We would have to live on native food, sir.

Q. How did you get back to your outfit?

A. We would wait until the initial landing, turn the facts over to the commander of the beachhead and get back the best way we can.

Q. On any of these missions did anything happen to you?

A. It was in February of 1945.

Q. What happened in February of 1945?

A. At Samboanga, Mindanao, Philippine Islands.

Q. What happened in February of 1945?

A. I was doing my duty, what I was told to do and American bombers came overhead and started bombing, and I was about 50 feet, 60 feet, 50 or 60 feet away from where a 500-pound bomb exploded.

Q. And at that particular time were you behind the enemy lines?

A. Yes, sir.

Q. Mr. Auld, can you tell us whether or not it was an enemy bomb or was it a bomb of the Americans?

A. American force.

Q. Had the three men been given any information about the time they would come over?

A. No, sir.

Q. Did you expect the bomb at that time?

A. No, sir.

Q. Following these experiences you say you were about 50 feet from this explosion?

A. Yes, sir.

Q. What, if anything, happened to you as the result of being there at the time of the explosion?

A. Well, everything to me is a blank from February until May.

Q. Do you mean February of what year?

A. 1945.

Q. Until May of 1945?

A. That's correct, sir.

Q. Do you know what happened to you following the explosion of the bomb?

A. No, sir.

Q. Do you know whether you were confined in a hospital?

A. No, sir, not that I know of, only when I got to Mason General Hospital. I came out of it at Mason General.

Q. Do you know how you got from your station or place in the Pacific to Mason General Hospital?

A. No, sir.

Q. What is the first thing you remember with respect to the Mason General Hospital in New York?

A. Well, I was drinking a bottle of milk and I said, "Oh, boy, milk!" And I started drinking two more quarts.

Q. Do you know how long you had been in Mason General Hospital before you had that experience?

A. No, sir.

Q. Do you know how long you had been in the Mason General Hospital before you saw your mother and father?

A. No, sir.

Q. Do you remember seeing your mother and father in the Mason General Hospital?

A. Yes, sir.

Q. Were they the first persons that you recognized?

A. Yes, sir.

Q. What can you tell us, Mr. Auld, of your stay in the Mason General Hospital? I mean where were you and what was done while you were there?

A. When I came out of this here daze I was in, I was in a locked ward.

Q. Is that where you were when you first saw your mother and father?

A. Yes, sir.

Q. Do you know how long it was that you were in this locked ward?

A. I will say they told me I was in there ——

THE PROSECUTOR: No.

Q. No, you cannot tell what someone else told you. How long do you remember that you were in this locked ward?

A. About 14 days.

BY MR. PALESE:

Q. At the expiration of the fourteen days that you were in this locked ward, were you permitted to leave the room?

A. We were permitted to go out at games, and stuff like that.

Q. Did you participate in the activities there at the hospital?

A. No, sir.

Q. Why didn't you participate in the games?

A. I never seemed to have any interest in athletics.

Q. How did you spend your time after you were permitted to leave this locked room in the hospital?

A. In the occupational therapy.

Q. Doing what?

A. Making rugs, mugs, and things like that.

Q. How long did you stay being occupied there in the occupational therapy, for what period of time?

A. All morning or all afternoon.

Q. What was the first time, Mr. Auld, after you had gotten in the Mason General Hospital, you were permitted to come home on furlough?

A. I would say about two or three weeks after I got out of the closed ward.

Q. And the stay of your furloughs were how long?

A. Seventy-two hours.

Q. Then you returned?

A. Yes, sir.

Q. Were you discharged from the Mason General Hospital?

A. Yes, sir.

Q. Do you know when it was you were discharged?

A. On July 30th, sir.

Q. Were you given a medical discharge?

A. Certified disability discharge.

Q. In the certified disability discharge which you got, was there anything said about the extent of the disability?

THE PROSECUTOR: I object to that; the Army doesn't give that. That's a matter for the Veterans' Administration to give.

THE COURT: I will allow the question.

A. In the discharge papers.

Q. Did you get a disability medical discharge; I don't mean your honorable discharge; I mean when you were discharged, were you allowed any disability?

THE PROSECUTOR: I object to the question as leading.

THE COURT: Overruled.

A. I was given fifty per cent disability discharge.

Q. I show you an honorable discharge under the hand and seal of the Colonel of the Medical Corps, dated July 30th, 1945, and ask you if that is the discharge that you were given as a result of your service in the United States Army.

A. Yes, sir.

MR. PALESE: I would like to offer in evidence the honorable discharge of Howard Auld, of the Army of the United States of America, dated July 30th, 1945.

THE COURT: It will be admitted and marked Exhibit D-3.

(Received and marked Exhibit D-3.)

THE PROSECUTOR: There is something else goes with it; how about the other part?

MR. PALESE: Let me do what I want.

THE COURT: Mr. Palese is entitled to his own

discretion in the order of the presentation of his exhibits.

Q. After your discharge on July 30th, 1945, from the Mason General Hospital, where did you go?
A. I went to my home, sir.
Q. Where was that?
A. On Browning Lane, in Bellmawr.
Q. Who lives at that address?
A. My mother and my father and my sister, my brother-in-law and brother.
Q. Tell us, if you will, how you felt after you arrived at your home in Bellmawr after July 30th, 1945.
A. I was still nervous, jumpy, couldn't sit still, from traveling so much, being on the move all the time.

THE PROSECUTOR: I move that be stricken.

THE COURT: I deny the motion.

THE WITNESS: And being on the move all the time, I had to keep on the move myself, being used to it.

Q. Tell us, if you will, how you felt, not the reasons for it. How did you feel?
A. I felt pretty good, I guess.
Q. What's that?
A. Fairly good, I suppose.
Q. Do you remember V-J Day?
A. Yes, sir.
Q. Do you know the date that we celebrated?
A. July 14th.
Q. What?

New Jersey State Library

A. August 14th, sir.

Q. On that day, do you know what time it was you got up in the morning?

A. I would say about six o'clock, sir.

Q. About six o'clock?

A. Yes.

Q. Do you remember meeting Mr. Hulse on that day?

A. Yes, sir.

Q. Where was it you met Mr. Hulse?

A. At my home, sir.

Q. And tell us, if you will, what you did after you met Mr. Hulse on August the 14th, 1945.

A. It was around ten o'clock in the morning, sir, that I met him at my house. We got a bus and went to Camden.

Q. You have got to keep your voice up; they are having trouble back there again.

A. We got on a bus, and we went to Camden; I don't know the street we got off at, I don't know Camden, anyhow; I got off in Camden and went up to the Harley-Davidson shop. It was somewhere in Camden, I don't know where it is.

MR. PALESE: I didn't hear a word you said when you raised your hand.

THE COURT: Repeat the answer that was disturbed.

(Complete answer repeated.)

THE WITNESS: I don't know what street it is in.

Q. From there, where did you go?

A. We went down and had a few drinks on the

corner. I don't know what street it's on; I know Mt. Ephraim is all I know, where the busses run up and down. We had about three drinks, beer, whiskey chasers. From there we went over and took another bus, and come over here to Broadway, I don't know what Broadway, Broadway and what I couldn't tell you. We had some more. We were supposed to go to Philadelphia, but we changed our minds and turned around and come home.

Q. And went back where?

A. We stopped off at home. We went to Abe's to figure on this here deal we were supposed to be making.

Q. And you were in Abe's for some time?

A. About thirty-five minutes.

Q. From Abe's, where did you go, anywhere?

A. We went down to Mr. Hulse's home.

Q. Where was Mr. Hulse living at that time.

A. In Blackwood.

Q. Do you know what time it was you got down to Mr. Hulse's home?

A. No, I don't.

Q. Did you do anything when you got to Hulse's home?

A. We had a few drinks. I ate supper there, and Mr. and Mrs. Hulse come up to my house after we had done eating supper.

Q. Mr. and Mrs. Hulse and you left their home and went to your home in Bellmawr?

A. Yes, sir.

Q. Do you know what time it was you got to your home that evening in Bellmawr?

A. I would say it was about quarter to seven.

Q. Quarter to seven?

A. Yes.

Q. Do you know how long you stayed in your home before you went out?

A. We was drinking beer there. It was after we heard over the radio that the Japs had surrendered.

Q. Do you know what time that was?

A. The Japs surrendered at 7:02.

Q. What?

A. The Japs surrendered at 7.2.

Q. After you had heard the information, what did you do?

A. Went down to Henny's and had a few drinks.

Q. You have got to keep your voice up if you want this jury to hear what you are saying on the stand.

A. We went down to Henny's and had a few drinks, and went over to the Fire Hall and got on the fire engine and rode around town.

Q. After you rode around town, where did you go?

A. We stopped off at the Fire Hall, or come back to the Fire Hall, and come back over home, and then we went over to Henny's.

Q. And do you know what time it was you went into Henny's again?

A. No, I don't.

Q. Do you know what time it was you left Henny's?

A. No, we left Henny's to go down to Hulse's; she was talking about her rings, and we left there to go down to Blackwood to get her rings.

Q. You left Henny's place to go down to Blackwood to look for some rings.

A. Yes, sir.

Q. You did go to Blackwood?

A. Yes, sir.

Q. Who went with you?

A. Mr. Hulse.

Q. And how long were you in Mr. Hulse's home on that occasion?

A. I was there about thirty-five minutes.

Q. Did you do anything while you were in the house?

A. Yes.

Q. What did you do?

A. Mr. Hulse got out a bottle of Gallagher & Burton and a bottle of rum, and I had two whiskeys and one glass of rum.

Q. After you had partaken of that, where did you and Mr. Hulse go?

A. We come back to Henny's.

Q. How did you get back from Blackwood to Henny's Cafe?

A. There was no busses, so we had to thumb a ride.

Q. Were you successful in thumbing a ride?

A. Yes, sir.

Q. Were you able to get in Henny's again?

A. Yes, sir.

Q. You remained there until when?

A. Until around ten thirty, I would think.

Q. From Henny's place, where did you go?

A. Over to the Fire Hall.

(At this point a noon recess was taken until 1:30 o'clock P. M.)

AFTERNOON SESSION.

HOWARD AULD, recalled.

DIRECT EXAMINATION (resumed).

BY MR. PALESE:

Q. Mr. Auld, I think when we recessed this morning I asked you where you went after you had been to Henny's place after you had come back from Blackwood.

A. Over to the fire hall in Bellmawr.

Q. The fire hall?

A. Yes.

Q. While you were at the fire hall did you meet Margaret McDade or as we know her, Rita McDade?

A. I don't remember if I did.

Q. Did you see her that evening?

A. Yes, sir.

Q. Where did you first meet Rita McDade, or Margaret McDade?

A. Up at the Creek house.

Q. At the Creek house?

A. Yes.

Q. Do you remember talking to her in front of the fire house?

A. No, I don't.

Q. How did you get to the Creek home?

A. By car.

Q. Was Margaret McDade in the same automobile that you were in?

A. I won't say that she was.

Q. You will have to talk a little louder so that the jury can hear you.

A. I wouldn't say that she was because I don't know.

Q. How long had you been at the Creek home before you met Margaret McDade?

A. About five minutes.

Q. Where was she when you first met her?

A. At the bar.

Q. Did you talk to her?

A. Yes.

Q. How long did you continue to talk to her?

A. I would say about twenty minutes.

Q. Did you eventually go out with her?

A. Yes.

Q. What were the circumstances under which you and Margaret left the Creek home?

A. We was hugging and kissing there for a while.

Q. Mr. Auld, you have got to keep your voice up so that the jury can hear you. Talk slowly and loudly so that they can hear you.

A. We was hugging and kissing for a while and she said she would like to go for a walk.

Q. Yes.

A. So I said, "Well, I will go out first and you can follow me."

Q. Was that all that was said before you started to go out?

A. Yes, sir.

Q. Then did you meet her outside?

A. Yes, sir.

Q. Then where did you and Margaret go?

A. We went down to Anderson Avenue to the Black Horse Pike and turned left to Maple Avenue, down the Black Horse Pike, that is, to Maple Avenue.

Q. You say a couple of words and you drop your

voice. You came out Anderson Avenue to the Black Horse Pike?

A. Yes, sir.

Q. Then where did you go after you got on to the Black Horse Pike?

A. We turned left.

Q. Into what street?

A. On the Black Horse Pike.

Q. Turning off the Black Horse Pike you turned into what street?

A. We turned into Maple Avenue.

Q. Did anything happen as you were walking up Maple Avenue?

A. We was hugging and kissing.

Q. Then what happened?

A. We went in about 300 yards up to where this pumping station is supposed to be.

Q. When you got to the pumping station then what happened?

A. We started kissing and hugging and she started kidding, "Well, I can't go in there." She started kidding she couldn't go into the bushes, so I said, "Well, I will carry you in," so I carried her in.

Q. Mr. Auld, please keep your voice up a little more. Maybe you are talking too fast for us. Talk a little slower and keep your voice up. You were joking and kidding, you say?

A. Yes.

Q. She wanted to be carried?

THE PROSECUTOR: No, I object to that, Mr. Palese. I object to the question.

THE COURT: It is leading and will be stricken. Read the last answer, Mr. Stenographer.

(The following answer was read by the stenographer: "We started kissing and hugging and she started kidding, 'Well, I can't go in there.' She started kidding she couldn't go into the bushes, so I said, 'Well, I will carry you in,' so I carried her in.")

MR. PALESE: If your Honor please, I was trying to pick it up.

BY MR. PALESE:

Q. Did you carry her in the bushes?
A. Yes.
Q. Then when you got into the bushes what happened?
A. We started loving and kissing and she took her pants down. I don't know if she took them off or not. I am not sure.

THE PROSECUTOR: I am sorry. I would like to have that answer.

(The following answer was read by the stenographer: "We started loving and kissing and she took her pants down. I don't know if she took them off or not. I am not sure.")

Q. Then what happened?
A. We went into the act of intercourse.
Q. What?
A. We went into the act of intercourse.
Q. What position did she take for the act of intercourse?
A. She was laying on the bottom.
Q. What position did you take?
A. I was laying on top.

Q. You then say you went into the act of intercourse?

A. That is right.

Q. Then what happened after you went into the act of intercourse?

A. Well, we was there for a few minutes, I would say thirty seconds, and she hollered, but she didn't say, "Get off," so she started scratching me and I hit her.

Q. When she scratched you in what position were you in?

A. I was laying on top of her.

Q. After she hollered and you say you struck her, then what did you do?

A. I got up.

Q. Then what did you do?

A. I got up and I said, "Well, come on, let us go back to the party," so she didn't get up, so I went back and felt her pulse and I thought she was dead, and I begin to take her clothes off.

Q. What is the very last remark you made?

A. I begun to take her clothes off.

Q. You say you felt her pulse?

A. Yes.

Q. What did you observe when you felt her pulse?

A. No pulse beat.

Q. Then after that you say you started to take her clothes off?

A. Yes.

Q. Do you know why you did that?

A. No, I don't.

Q. Then what happened?

A. I remember faintly picking her up and putting her on my shoulder, but I don't know what I did with the body.

Q. You then ——

THE COURT: Repeat the answer, Mr. Stenographer.

(The following answer was read by the stenographer: "I remember faintly picking her up and putting her on my shoulder, but I don't know what I did with the body.")

BY MR. PALESE:

Q. Tell us, if you will, what you remember from that point on.

A. I don't remember nothing until the next morning.

Q. Where were you the next morning?

A. In my home.

Q. What did you do at that time?

A. I got up and ate breakfast and I think I went out for a walk.

Q. Do you remember seeing anyone on the Black Horse Pike after you had left the body?

A. No, I haven't.

Q. I say, do you remember seeing anyone?

A. No.

Q. Do you remember anyone stopping to talk to you on the Black Horse Pike?

A. No, I don't.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. Mr. Auld, so that we can understand, you remember everything that happened in the bushes, the attempt to have intercourse, the scream, the

scratches, the feeling of the pulse, the undressing of the body ——

A. Faintly undressing the body.

Q. What is that?

A. I remember faintly undressing the body.

Q. Just faintly?

A. That is right.

Q. What part is it that you remember faintly?

MR. PALESE: If your Honor please, I now ask that the question—I now make an objection to the question as to the form of the question. The prosecutor says, "Am I to understand or are we to understand" or something of that character, and I object to the form of the question.

THE PROSECUTOR: I will withdraw the question.

MR. PALESE: All right.

Q. Is your testimony that you remember walking into the bushes?

A. That is right.

Q. Do you remember her laying down on the ground or the bushes?

A. Yes, sir.

Q. You remember attempting to have intercourse with her?

A. Having intercourse.

Q. I beg your pardon?

A. Having intercourse.

Q. Attempting to have intercourse with her?

A. Having intercourse.

Q. Having intercourse?

A. Don't holler at me. Just take it easy, will you?

Q. All right.
A. Is he allowed to holler at me that way?
Q. You remember that, don't you?
A. Yes.
Q. You remember her screaming, don't you?
A. Yes.
Q. And you remember ——
A. Not screaming, hollering.
Q. Hollering, and you remember her scratching you, don't you?
A. That is right.
Q. And you remember your hitting her on the jaw, don't you?
A. Right.
Q. Then you remember feeling her pulse, don't you?
A. That is right.
Q. Then you remember undressing her, don't you?
A. Faintly.
Q. Faintly? In other words, you remember faintly undressing her?
A. That is right.
Q. Then do you remember taking her body away?
A. Only faintly putting it on my shoulder.
Q. I beg your pardon?
A. I faintly remember putting it on my shoulder.
Q. You remember putting her on your shoulder?
A. Faintly.
Q. Faintly? Do you remember faintly walking down the road with her?
A. No.
Q. Do you remember walking towards the pumping station?
A. No.
Q. Do you remember taking the bracelet off her arm?

A. No.

Q. Do you remember taking her shoes off?

A. No.

Q. Do you remember taking her dress off?

A. Yes, faintly.

Q. Faintly? Do you remember faintly taking off her stockings?

A. Faintly.

Q. Do you remember faintly taking off her brassiere?

A. Yes, faintly.

Q. Do you remember faintly taking off her slip?

A. Yes.

Q. Do you remember faintly completely undressing her?

A. Yes.

Q. And you remember faintly taking her body towards the well?

A. Not towards the well, I don't know.

Q. Toward the pumping station?

A. I remember faintly putting her on my shoulder.

Q. Then do you remember walking down to the pumping station?

A. No.

Q. Do you remember faintly lifting the lid?

A. No.

Q. Do you remember faintly dumping her off your shoulder?

A. No, I don't.

Q. You don't remember that?

A. No.

Q. Do you remember going back into the bushes after you had dumped her body in the well?

A. I don't.

Q. How did you know that the well was there?

A. Well, when I was a kid about twelve or fourteen I used to play around there.

Q. What else did you do there?

A. Just play around there. That was my area of playing.

Q. You knew the well was there, didn't you?

A. Slightly.

Q. Is that why you went to the well?

A. No.

Q. You knew its location, didn't you?

A. I knew it was on Maple Avenue.

Q. Why did you walk from the bushes down Maple Avenue to the pumping station with the body on your shoulder?

A. As I say, I faintly remember putting her on my shoulder. That is all I can remember.

Q. Then why did you walk down Maple Avenue to the pumping station?

MR. PALESE: If your Honor please, he hasn't said that. He hasn't said that in his testimony.

(The following question was read by the stenographer: "Then why did you walk down Maple Avenue to the pumping station?")

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

(Question repeated as follows: "Then why did you walk down Maple Avenue to the pumping station?")

A. Because I was looking for a spot to have intercourse.

Q. Looking for a spot to do what?

A. To have intercourse.

Q. That is after you had punched her in the jaw and knocked her unconscious that I am talking about?

A. Will you repeat the question?

THE COURT: Repeat the question?

(Question repeated as follows: "Why did you walk down Maple Avenue toward the pump?")

A. After—which way?

Q. From the bushes, where you told us you took her to have intercourse with this girl.

A. I don't remember that part.

Q. You remember faintly dropping her body in the well?

A. No.

Q. You remember faintly putting her on your shoulder?

A. Faintly.

Q. Do you remember going back to the spot after you had dropped her body in the well?

A. I do not, no.

Q. Do you remember throwing her pocketbook into the creek?

A. I do not.

Q. Do you remember where you threw her shoes?

A. No.

Q. You don't remember faintly?

A. No.

Q. Not at all?

A. No.

Q. Do you remember who took her pants off?

A. As I say, I think she took them off, but I am not sure.

Q. But you are not sure, but you remember taking everything else off, don't you?

A. Faintly.

Q. Faintly?

A. Yes.

Q. What did you do with the bracelets after you took them off her arm?

A. I never knew she had any bracelets on her arm.

Q. Pardon me?

A. I never knew she had any bracelets on her arm.

Q. You didn't put them in her pocketbook?

A. No.

Q. You didn't?

A. How should I know?

Q. You were there.

A. But I don't remember that part.

Q. You don't remember it even faintly?

A. No.

Q. Do you remember showing the County Detectives where you threw the pocketbook?

A. No, I don't.

Q. You don't remember going to the scene of the crime on August 22nd, 1945?

A. No.

Q. You don't remember going back again in the early morning of August 22nd, 1945?

A. No, I don't.

Q. You don't remember that?

A. I do not.

Q. Do you remember seeing this man (indicating Detective Dube)?

A. I have seen him around here, yes.

Q. When did you see him before you saw him here in court?

A. Up in the jail.

Q. Before that, where did you see him?

A. The night ——

Q. The night you were arrested.

MR. PALESE: Just a minute. Let the witness answer the question.

THE COURT: Let him answer, Mr. Prosecutor. Repeat the question and the answer as far as it has gone.

(Question and answer repeated as follows: "Q. Before that, where did you see him? A. The night ——")

A. The following day that I was arrested.

Q. Where did they take you when you were arrested?

A. Down to your office.

Q. From my office, where did you go?

A. Back up to my cell in the jail.

Q. You didn't go down to the pumping station and the bushes?

A. I did not.

Q. Is Captain Mulligan here? Do you know Jim Mulligan?

A. I have seen him around yes.

Q. When did you see him after you were arrested?

A. The night I was arrested.

Q. The night you were arrested?

A. The next morning.

Q. The next morning. You don't remember go-

ing down with him and showing Captain Mulligan where you threw the pocketbook?

A. I do not.

Q. Do you remember being arrested near Mt. Ephraim?

A. Slightly.

Q. Pardon me?

A. Slightly.

Q. Where did they take you after you were arrested?

A. To the Camden County Jail.

Q. At the time you were picked up by the two officers in Mt. Ephraim, where did they take you?

A. To the Camden County Jail.

Q. Did you go to the Borough Hall or the Borough Police Department in Mt. Ephraim?

A. I don't remember that.

Q. How's that?

A. I couldn't tell you that.

Q. You remember coming to the County Jail?

A. Yes.

Q. Where did they take you after they brought you to the County Jail?

A. Up to the jail.

Q. You were not taken in the office?

A. No, I don't think so.

Q. Do you remember Chief Doran?

A. I seen him the next day.

Q. The next day.

A. That's right.

Q. Do you remember being interrogated at three o'clock in the morning immediately after you were arrested? I take it, then, you don't remember giving any statement to Mr. MacDonald, the court stenographer?

MR. PALESE: I object to the form of the question.

THE COURT: You have two questions.

Q. Do you remember making a statement?

MR. PALESE: Just a minute. Is the question withdrawn?

THE PROSECUTOR: I withdraw the preceding question.

Q. Do you remember making a statement to Mr. MacDonald, the court stenographer?

A. The next morning.

Q. What time was that?

A. I would say about nine o'clock.

Q. Five o'clock?

A. Nine o'clock in the morning.

Q. Then it was taken the next morning; then I have been wrong when I say the next day; what time was it you were arrested in the evening?

MR. PALESE: I object.

A. I don't know.

THE PROSECUTOR: Withdraw the question.

Q. What time were you arrested that evening?

A. I don't know, because I don't have a watch and I am not a good judger of time.

Q. Was it before twelve o'clock?

A. I don't know.

Q. But you do know that the next morning you made a statement?

A. Yes.

Q. And it was made at five o'clock in the morning?

THE COURT: Nine o'clock.

A. Nine o'clock.

Q. Nine. You are sure it was nine o'clock in the morning; you are absolutely sure it was nine?

A. That's right.

Q. Who was present when the statement was made?

MR. PALESE: If he knows.

Q. If you know.

A. Well, Jim Mulligan was one, that's all I know.

Q. Did you recognize Mr. MacDonald, who testified in this case?

A. No, I don't see him.

Q. You didn't see him?

THE COURT: He said he "don't" see him.

Q. The man who read the statement here in court.

A. Yes.

Q. Was he the man that took your statement?

A. I don't know.

Q. Who else besides Captain Mulligan was there?

A. I told you once before, I don't know them.

Q. You don't know who else was there?

A. Just what I said, I don't know who was there besides him.

Q. Do you remember this man (indicating Detective Dube)?

A. I seen him the following night after I was arrested.

Q. The following night?

A. Yes.

Q. Now, Mr. Auld, did I understand you correctly to say that you made eighty combat jumps?

A. Correctly.

Q. Now, when was the first one you made?

A. I would say May of 1942—or May of '43.

Q. And where were you located when you made your first combat jump?

A. I said I was under orders to not disclose places where I have jumped, or any other reason. I can tell you places I jumped in New Guinea or the Philippines, but beyond that, it is beyond my control.

Q. You said your first combat jump was made in May of 1943?

A. May, 1943.

Q. About that, there is no question?

A. That's correct.

Q. When was it that you received the general court martial and a dishonorable discharge and were sentenced to seven years in prison?

A. April.

Q. What year?

A. 1943.

Q. Now, how many days did you spend in jail?

A. To my recollection?

Q. Yes.

A. I spent three days in the stockade in Buna.

Q. What was your total incarceration from the sentence received in April, 1943?

A. That was March.

Q. March, 1943. What was the total time you spent in jail under your court martial?

A. Three days.

Q. Three days, sir?

A. Yes.

Q. I show you what has been marked in evidence D-1, and ask you to look that over and tell me what that is.

A. Part of my service record.

Q. May I direct your ——

A. That's part of my service record, just a record.

THE PROSECUTOR: You let me have that.

MR. PALESE: Now, Mr. Prosecutor, that isn't fair.

THE PROSECUTOR: The defendant made gestures toward me.

THE COURT: Just a minute, Prosecutor. You are to ask questions, Mr. Prosecutor, and you are to answer them, Mr. Auld.

THE WITNESS: He doesn't have to talk to me in that manner.

THE COURT: I don't understand what you mean by "manner".

THE WITNESS: He doesn't have to holler at me.

THE COURT: Is he hollering at you?

THE WITNESS: Yes.

THE COURT: All right. Will you please, Mr. Prosecutor, talk up so the witness can understand you and hear you, but without hollering?

THE PROSECUTOR: I will try.

Q. Mr. Auld, I show you what constitutes part of your service record, and ask you to take a look at the last sentence you received for some infraction of Army rules or regulations.

A. Yes.

Q. What does it say there?

A. 14th of April, 1945; 9th of September, 1943.

Q. What does it say next?

A. 149 days.

Q. What does that mean?

A. That means—let me explain what that means.

Q. You explain it.

A. In February of—December of 1942—I was on the line after fifty-one days' combat ——

MR. PALESE: Talk louder. The jury is having a hard time hearing you. Talk slowly and loud.

A. In December, 1945, I was, after fifty-one days' combat, we was laying under a barrage of artillery and mortar fire. We was under it for six hours, and I got up and got out under the barrage and went behind and started sniping. Now, if my lieutenant, my platoon lieutenant, had lived through this, he would have ——

THE PROSECUTOR: I object to this.

THE COURT: What happened, not about what

your lieutenant would tell. What happened, not what the lieutenant would say.

A. If he were here ——

THE PROSECUTOR: I move that that be stricken.

THE COURT: You are here, and you tell us what happened.

A. I went behind the lines. I was sniping, three of us; there was three together, we always hung together. There was a battalion of men in there, in that area being shelled at the time, and after my platoon got into the thick of it ——

Q. Did you say you were wounded?

A. No.

THE COURT: No.

MR. PALESE: If Your Honor please, I don't blame this witness, with the Prosecutor getting up and running.

THE COURT: Let the witness finish his answer.

THE PROSECUTOR: I thought I heard him say that.

THE COURT: We have been here a long enough time not to be concerned about losing seconds or minutes. Give him time to finish.

THE PROSECUTOR: All right.

A. I went behind the lines, sniping, and when I came back out I was sent to Brisbane, which is fourteen hundred miles behind our line. I was court martialed for desertion of hazardous duty, to wit, hazardous duty, if you want to call it that, hazardous duty, to wit, hazardous duty, whatever you want to make it.

MR. PALESE: I am having difficulty hearing. Will you repeat the last part, please?

(The latter part of the answer repeated.)

Q. Is that your explanation of the 149 days which appears on your service record?

A. To my knowledge, I did three days in the stockade, and then I volunteered for hazardous duty to reinstate myself, which I did, and got an honorable discharge from the United States Army.

THE COURT: That is not the question. You have testified that your first combat jump was in May, 1943.

THE WITNESS: That is my first combat jump.

THE COURT: Your attention has been called to the fact that the service record you have shows you were committed for some infraction on April the 14th, 1943, and that you were 149 days in custody.

THE WITNESS: I was three days in custody.

THE COURT: And where were those three days?

THE WITNESS: In the stockade, the regimental stockade in Brisbane, Australia.

THE COURT: In Brisbane?

THE WITNESS: Australia.

THE COURT: Didn't you say Buna?

THE WITNESS: That was where the battle was taking place.

THE COURT: Where were you in the stockade?

THE WITNESS: In Brisbane.

THE COURT: Didn't you say you were in the stockade at Buna?

MR. PALESE: No, if Your Honor please, he didn't say that.

THE COURT: Mr. Stenographer, will you refer to that part of the examination to which, in answer to a question, he said he spent three days in the stockade?

(Questions and answers repeated as follows:
"Q. And how many days did you spend in jail?"
"A. To my recollection?"
"Q. Yes."
"A. I spent three days in the stockade at Buna.")

THE WITNESS: I meant to say Brisbane.

Q. In other words, it is not Buna now, but in Brisbane?

MR. PALESE: No, he said he made a mistake. I object to the question.

THE COURT: The objection is sustained as to form.

Q. I show you what has been marked in evidence by agreement, and which is part of the record in this case, military history ——

MR. PALESE: If Your Honor please, I object to that part of the question which states "It has been put in by consent." It is in evidence. I ask that that part be stricken from the question.

THE COURT: The question is objectionable in the form in which it is put, and the objection will be sustained.

Q. Will you read, Mr. Auld, this part of the exhibit concerning your general court martial in April of 1943?

MR. PALESE: If Your Honor please, I object to that. This is a record that was made by some other person. The only way the attention of the witness can be called is whether or not it is correct, or not. The witness has said he was in the stockade for three days. Now, counsel is endeavoring to show him a record which is in evidence, made by some other person. The only thing that this witness can say is whether or not it is correct or isn't correct, as to whatever may be in that exhibit that he has in his hand.

THE COURT: I do not think that the ground you allege, Mr. Palese, is sustainable.

MR. PALESE: If Your Honor please, I can make myself ——

THE COURT: (Continuing) * * * but, I don't think the witness can be compelled to read it himself, Mr. Prosecutor, but if you want to read it to him from the record, that is something else again.

THE PROSECUTOR: That was the difficulty of introducing that into evidence without oral testimony.

THE COURT: There is no difficulty.

MR. PALESE: There is no difficulty here.

THE PROSECUTOR: All right. I will read it to the witness. (Reading)

"Three summary and special court martials. In March of 1943 was given a general court martial for desertion to avoid hazardous duty, was sentenced to seven years of hard labor, loss of all pay, and dishonorable discharge ——

THE WITNESS: I still did three months, three weeks, or three days—three days, I said.

(Prosecutor continues to read)

"In September of 1943, after he had served 149 days, the confinement was suspended and dishonorable discharge suspended."

Q. Is that a true statement, or isn't it?

A. I put three days in the stockade at Buna, and I wasn't—my court martial wasn't suspended until September. I was in action without insurance, on my own responsibility, after volunteering for hazardous duty.

Q. Let me read it to you again. Perhaps, I didn't read it right.

A. You read it right. I listened to you.

Q. Did I read it right? "In September, 1943, after he had served 149 days ——"

MR. PALESE: Make it a little louder when you say "suspended".

THE WITNESS: I didn't serve ——

MR. PALESE: If Your Honor please, I object, that is the exact question of the Prosecutor before. It is not a proper question at this time. He is asking the same identical question.

THE COURT: The question has not been completed, Mr. Palese, but it obviously is a re-reading of the same question. There is no completed question pending, Mr. Prosecutor.

Q. What part of May was it when you made your first jump, combat jump?

A. May the 17th, 1943.

Q. And what outfit were you with then?

A. That is a military secret.

Q. That is a military secret?

A. Correct.

Q. Would you know what G-2 means?

A. Yes, I know what G-2 means.

Q. What does it mean?

A. Intelligence.

Q. Do you know what G-1 means?

A. Yes, Intelligence.

Q. G-1?

A. Intelligence.

Q. G-2?

A. Intelligence.

Q. G-3?

A. It is all Intelligence, all G's.

Q. G-4?

A. Intelligence.

Q. Which of the G's, 1, 2, 3 or 4, are sworn to secrecy, if at all?

A. I wasn't attached to G-1, 2, 3, or 4.

Q. I am asking which of the G's, 1, 2, 3, or 4, are not allowed to divulge any information?

A. I would not say.

Q. Do you know?

A. No, I don't.

Q. Did you ever hear of G-2?

A. Yes.

Q. That is Intelligence?

A. That is correct.

Q. Is that right?

A. Yes.

Q. You were not attached to G-2?

A. I was not. I was attached to Washington, the War Department.

Q. What?

A. I was attached to Washington, War Department. That is where my records go to.

Q. You were attached to Washington, in the War Department?

A. No, this outfit I was in, and I can't give you the name of the outfit, because I am under oath until the emergency is over.

Q. Who ascribed the oath to you?

A. Archbald Roosevelt.

Q. When?

A. In September, 1942.

Q. September of 1942. Where were you located, then?

A. That is a military secret.

Q. And the outfit that you were assigned to is also a military secret?

A. That is correct.

Q. Now, after you made your first jump how long did you stay behind the enemy lines?

A. To tell you the truth—now, look, to go into that matter will take hours.

Q. I am going to stay here for two weeks to get it out.

A. Well, you ain't going to get it out of me, because I am under oath. I told you that I will tell you where I was in New Guinea or the Philippines, but anything else goes out.

Q. How long did you stay behind the line when you made your first jump?

A. It is none of your affair.

Q. It is none of my affair?

A. Correct. I am under oath, and I am going to stay under that oath until the emergency is over.

THE PROSECUTOR: I think that is a problem we have to decide. It is not asking for the divulgence of any secrets. I could add something, but I do not want to prejudice the case of the defendant in any way. I think I am entitled to that. It is not a military secret.

THE COURT: The answer has been given, Mr. Prosecutor: "It is none of your affair," that was the answer that the witness gave, as I heard it.

Q. After you were released on September the 9th, 1943, after allegedly having served 149 days ——

MR. PALESE: I object.

THE PROSECUTOR: Let me finish, will you, Mr. Palese?

Q. (Continuing) —is there any secret as to what happened after that?

MR. PALESE: I object. There is no testimony in this case he served 149 days.

THE COURT: The objection is overruled.

MR. PALESE: Allow me an exception.

THE COURT: Exception will be allowed.

Q. There is evidence ——

A. There is not evidence. I served three days in the stockade at Brisbane.

Q. When was your first jump after September the 9th of 1943?

A. September 10th, 1943.

Q. How long did you remain behind the enemy lines on that occasion?

A. That is a military secret.

Q. When after May 2nd did you make your second combat jump?

A. Do you mean September 10th or May 2nd?

Q. After May 17th of 1943?

A. I made one in June.

Q. When was the third?

A. I made five in July.

Q. Five of them in July?

A. That's right.

Q. When did you make your 7th or 8th one?

A. I made four in August.
Q. Four in August?
A. That's right.
Q. Of 1943?
A. Yes.
Q. How many in September?
A. I made three in September.
Q. How many in October?
A. I didn't make any that month.
Q. How many in November?
A. Eleven.
Q. Eleven?
A. That was the most jumps I ever made in my life.
Q. Eleven combat jumps?
A. That's right.
Q. How many in December of 1943?
A. Six.
Q. How many in January of 1944?
A. Well, that's hard to say.
Q. Well, how many do you think?
A. I stopped counting them after I got that.
Q. You did what?
A. I stopped counting them after I got that but I know I have had 80 combat jumps.
Q. When did you make your last one?
A. In February of 1945.
Q. How long would you usually remain behind the enemy lines when you made your jump?
A. On the New Guinea coast and the Philippines I made them D minus 20 and D minus 5.
Q. That would be 15 days?
A. D minus 20 or D minus 5.
Q. How many is that?
A. 20 days before the initial landing and D minus 5 is 5 days before the initial landing.

Q. You would remain behind the lines from 5 to 20 days, do I understand?

A. That's right.

Q. Then you would meet the landing party?

A. That's correct.

Q. At the bridgehead, and how long did you rest up after that?

A. One or two days.

Q. Then you would make another jump?

A. No, not all the time jumps.

Q. If you made 80 combat jumps and you remained behind the enemy lines on an average of 5 to 20 days, how much time is that sum in its entirety?

A. About three years.

Q. And how long were you in the Army?

A. Five.

Q. Five, and of the five years in the Army how much of it did you spend in jail?

A. One year.

Q. One year? So you had three years making jumps, one year in the jail, and you were in the Army for a total of four and half years, is that right?

A. No.

Q. That is wrong? Well, you tell me, then.

MR. PALESE: Tell you what?

THE PROSECUTOR: The consumption of time.

A. I put three years overseas, from April 1942 to April 1945, correct? I had two years left. I put 17 days in the brigs, so far and so on, and the total amount of days I put in the brig were my estimation in the brig itself, I put 52 days in the brig.

Q. Mr. Auld, I take from Exhibit D-1 the sheet

which was included in the said exhibit, entitled "Enlisted Record and Report of Separation, Honorable Discharge," and ask you whether or not this is correct: 329 days lost under AW No. 107, inactive service, ERC, 9/July '40 to 15/September, inclusive. Is that statement correct?

A. That is bad time. Don't forget, you may do three months in the stockade and the company commander may have released in his own care. I did 52 days in the stockade.

Q. Well, in 1941 how many days did you serve?

A. I didn't serve any in 1941.

Q. How many, Mr. Auld?

A. None.

Q. How many in 1942?

A. 1942? Yes, I did serve time in 1942. I had four months of restriction to camp, Fort Dix.

Q. How many times in 1942?

A. Once.

Q. Can you remember 1941?

THE COURT: Repeat the question, Mr. Stenographer.

(Question repeated.)

A. I think I did 30 days, I am not sure, restriction of quarters.

Q. Were you not sentenced to 60 days in 1941?

A. It could be. I don't remember.

Q. What is that?

A. I don't remember, to tell you the truth.

Q. And again in 1941 were you not confined for 17 days?

A. Right.

Q. What is that?

A. Right.

Q. And in 1942 were you not confined for 59 days?

A. At my barracks, yes.

Q. And in 1943 were you not confined for 149 days?

A. Three days.

Q. Is that the time that you received the sentence which we referred to?

A. Yes, sir.

Q. Now then, when did you join the army?

A. July, 1940.

Q. July?

A. The National Guards.

Q. When you entered in the United States Army in this war. I don't mean the Guards.

A. We were Federalized 1940, September 16th.

Q. And you were finally discharged when?

A. July 30, 1945.

Q. From September 1940 to July 1945 is what period of time?

A. It would be five years and 22 days.

Q. Isn't it less than five years?

A. Well, from July—five years.

Q. From July to July would be five years, wouldn't it?

A. That's right.

Q. It is five years and one month or two months about?

A. 22 days.

Q. Assuming that you spent one year of it in confinement, assuming that you spent a year of it in confinement ——

THE PROSECUTOR: I will withdraw it.

Q. How long did you remain at Camp Dix?

A. September 1940 to January 1942.
Q. When were you shipped back from overseas?
A. That I couldn't tell you.
Q. What was that?
A. That I couldn't tell you.
Q. Well, about when was it?
A. I don't know.
Q. You don't know?
A. I was in a blank stage.

BY THE PROSECUTOR:

Q. How long did you remain in Louisiana?
A. Fifteen days.
Q. How long did you remain in Washington?
A. I was there about twenty days.
Q. Twenty days?
A. Yes.
Q. Then you shipped for overseas?
A. Volunteered for overseas.
Q. About when was that?
A. That would be in April of 1942.
Q. Assuming that you returned in April of 1945, how long did you remain overseas?
A. Thirty-six months.
Q. Did I understand you correctly to state that the average length of time behind enemy lines after a combat jump would be anywhere between five and twenty days, is that right?
A. Close to that, yes.
Q. While you were overseas you made eighty of them?
A. That's correct.
Q. And the first one was made in May of 1943, and the last one in February of 1945?

MR. PALESE: I object to the question as being repetitious. I think we have had that two or three times.

THE COURT: I will allow it.

MR. PALESE: Exception.

THE COURT: Yes.

(Exception noted for defendant.)

A. That's right.

Q. That would cover a period of twenty-three months?

A. That's correct.

Q. And in that twenty-three months you made what you referred to as eighty combat jumps?

A. Yes.

Q. Every time you made a jump did you give the commanding officer who was landing on the beach your papers?

A. Yes, no, I would give the commanding officer, the commander of the beachhead.

Q. And that would have on it the time that you made your jump, how long you remained behind?

A. Correct, no, how long I would remain behind the lines.

Q. No.

A. No.

Q. What would it contain?

A. It would contain ration dumps of the enemy, supply dumps, that is, gasoline dumps, pillboxes, mined fields, and so forth.

Q. Would it contain the time that you landed?

A. No, sir.

Q. Wouldn't it contain your routine as to what you did?

A. Only that I landed.

Q. That you landed?

A. Yes.

Q. Was there any record made when you jumped out of the plane to make a landing?

A. Not that I know of.

Q. There would be no record kept as to how long you remained behind the enemy lines?

A. In the War Department, maybe, yes.

Q. You would submit that information to your commanding officer, wouldn't you?

A. No.

Q. Would your superior officer submit it to the commanding officer?

MR. PALESE: I object, this witness can't tell what his commanding officer would do with the information.

THE COURT: Sustained.

Q. How many times would you land from the submarine?

A. That's a military secret.

Q. How many times would you land from the PT boats?

A. That's still a military secret.

Q. How many times would you land in an airplane?

A. Eighty.

Q. But you can't tell how many times from a submarine?

A. No.

Q. You can't tell how many times from a P-T boat?

A. No.

Q. Was it usual for submarines or P-T boats to transport troops?

A. Three.

Q. Would it be usual?

A. Sometimes, yes.

Q. Was this number of landings made from submarines and P-T boats, in addition to the eighty combat jumps that you made?

A. Correct.

Q. Beg pardon?

A. That's right.

Q. Is that right?

A. Yes.

Q. How many landings did you make from submarines?

A. Wouldn't you like to know?

(Audible snickering in the court room.)

THE COURT: Just a minute. If there happens to be anyone in this court room who thinks that anything that is being conducted here is funny, please stand up. The next stupid titter that I hear the court room will be cleared.

Q. Is that your answer to me, Mr. Auld?

A. That's the answer I'm going to make, anyhow.

Q. How many did you make from P-T boats?

A. I cannot tell you.

Q. Would you tell me if you knew?

A. I know, but I won't tell you.

Q. Just won't tell me?

A. That's correct, I am under oath, as I said before.

Q. You are under oath to tell the truth here, too.

MR. PALESE: I object to that.

THE COURT: It will be stricken.

Q. After you were discharged from the Mason Brentwood Hospital, New York, you went to work, didn't you?

A. For about three days.

Q. For whom?

A. I don't know the guy's name.

(At this point a recess of five minutes was taken.)

AFTER RECESS.

Q. I understand, Mr. Auld, you started out as a member of the 114th Infantry?

A. Correct.

Q. Then you were transferred to the 186th Infantry?

A. That's right.

Q. What were you transferred to from the 186th Infantry?

A. That's a military secret.

Q. Was it the 11th Airborne Division?

A. No.

Q. Do you know what Airborne division was assigned to the South Pacific?

A. 11th Airborne.

Q. Were you a member of the 11th Airborne Division?

A. I was not.

Q. Where did you get your training for jumping purposes?

A. My first jump was a combat jump.

Q. Your first jump was combat?

A. I never took paratroop training. I don't rate the combat paratroop wings, I don't rate the infantry combat badge.

Q. Maybe I misunderstood you. Did you have a course of training at Port Moresby for paratroop, commando and ranger?

A. Yes, but we never took paratroop training.

Q. How long did that period of training at Port Moresby last?

A. Three months.

Q. But you never took paratroop training?

A. That is correct, we were meant to stay on the ground.

Q. Your course lasted three months at Port Moresby?

A. That's correct.

Q. You went through certain stages of training, did you not?

A. Commando training, ranger training, yes.

Q. Not paratroop training?

A. Not at all.

Q. Therefore, you do not know what the A B C D stages are?

A. Not of paratroop training.

Q. Therefore, you did not go through the stages of the physical training necessary?

A. I did not.

Q. You did not go through the training necessary and known as landing trainor?

A. No.

Q. Then you did not go through the stages of the tower jump?

A. I did not.

MR. PALESE: I object, he said he had no paratroop training.

THE COURT: I will allow it, this is cross-examination.

Q. Therefore, you did not go through the last stages of actual plane jumping?

A. No, my first jump was a combat jump.

Q. And you did not go through the stages of five actual plane jumps, in order to qualify as a paratrooper?

A. I did not qualify as a paratrooper.

Q. And you never qualified as a paratrooper?

A. No.

Q. Now, then, when you would get on the plane there would be what is known as a jump master?

A. No, I would get on a bomber.

Q. A bomber?

A. A Mitchell Bomber, a Liberator, a Flying Fortress, I would jump from the altitude of 5,000 feet.

Q. Was that unusual?

MR. PALESE: What was unusual?

BY THE PROSECUTOR:

Q. To make the jumps from the planes described by you?

MR. PALESE: I object, if your Honor please, to whether it was unusual. That is what he said he did.

THE COURT: I sustain the objection.

Q. Well, when you made your jump would somebody in the plane have three rosters of every man, his name, his serial number, and his rank?

MR. PALESE: I object, if your Honor please. This man can't tell what the pilot or the co-pilot or the navigator or the officer in charge of the plane did. We are not responsible for what they did.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. No, I would say no, because I don't know what the pilot had.

Q. I mean, the man that was the head of the plane other than the navigator or the pilot.

A. The pilot is the head of the plane.

Q. Would anybody in the plane have this roster containing the names, serial number, and rank of every man?

A. That is not for me to know.

Q. How is that?

A. That is not for me to know.

Q. After you would jump wouldn't the jump master then check over the men who landed behind him?

A. We never had a jump master.

Q. You never had a jump master? Then you never had a battalion commander to whom the jump master would give the roster then; is that right?

A. I was under G H Q orders.

Q. What was that?

A. I was under G H Q orders.

Q. General headquarters orders?

A. That is right.

Q. You were responsible to no one?

A. Responsible to my sergeant.

Q. Your sergeant? Would he go on these jumps with you?

A. Correct.

Q. Wouldn't he be known as the jump master or the platoon leader?

A. No, not at certain reasons. We would scatter sometimes.

Q. Would he not have your name and address and serial number and rank on a piece of paper?

A. We would have our serial number and rank on a dog tag under our arm with a piece of adhesive tape.

Q. Wouldn't he then after the jump was made round up the men that jumped with him and check off the list?

A. Sometimes no.

Q. Sometimes yes?

A. There was only three men.

Q. Well, would he do that?

A. He never carried a list with him.

Q. You just said sometimes he would carry a list. Would he carry during eighty of these jumps, would he ever carry such a list?

A. He never carried a list with him.

Q. He never carried a list with him? Therefore, nowhere would there be any record of any of your jumps?

MR. PALESE: I object, if your Honor please. How can this man answer that question?

THE COURT: To his knowledge.

MR. PALESE: If your Honor please, how would he know? How can this man tell whether the pilot or the sergeant or any person made a record and submitted it to Washington? That is the question that this man is being asked. How can he answer it?

THE COURT: With the qualification that it is limited to his own knowledge I will allow the question.

BY THE PROSECUTOR:

Q. To your own knowledge.

A. I wouldn't know.

Q. You wouldn't know?

A. No.

Q. Have you ever been convicted of crime?

A. What kind of crime?

Q. Outside of the army.

A. Yes.

Q. What crime were you convicted of?

MR. PALESE: I object, if your Honor please as this man cannot tell the crime. There is a record here.

THE COURT: Objection sustained as to the form of the question.

Q. Were you on October 1, 1936, convicted of the crime of breaking, entering, and larceny, in the Special Sessions Court of Camden County?

A. Breaking and entering, yes.

Q. You were?

A. Yes.

Q. What was your sentence?

A. Six months suspended sentence.

Q. Were you ever convicted in the Camden County Special Sessions Court in the month of May, 1939, of the charge of breaking and entering?

A. Yes.

Q. What was your sentence?

A. A year and a half to three.

Q. Where?

A. Trenton State Penitentiary.

Q. Were you ever convicted of the crime of larceny in Gloucester, N. J., on August 3, of 1938?

MR. PALESE: You mean Gloucester County?

THE PROSECUTOR: Mr. Palese, it just says Gloucester.

Q. Gloucester County?

A. No.

Q. Gloucester City?

MR. PALESE: I object, if your Honor please. There is no record of a conviction in Gloucester City.

THE COURT: Objection sustained.

THE PROSECUTOR: I am asking him.

MR. PALESE: I am objecting.

THE COURT: Objection sustained.

BY THE PROSECUTOR:

Q. When were you arrested for this crime, Mr. Auld?

MR. PALESE: What crime?

THE PROSECUTOR: The crime for which he is being tried today. I am sorry. I stopped that line of questioning. I have to get a record, if the Court please.

Q. For the crime which you are standing trial today.

A. August 21, I believe.

Q. When was that, sir?

A. August 21, I think.

Q. About what time?

A. I don't know.

Q. Was it morning, afternoon, or night?

A. It was in the night.

Q. Night-time?

A. Yes.

Q. Do you remember when you were examined by three doctors?

A. No.

Q. Don't you remember being examined on August 22, 1945, at three o'clock in the afternoon in my office?

MR. PALESE: I object, if your Honor please.

A. I don't.

MR. PALESE: It is immaterial and incompetent when he was examined by doctors in the Prosecutor's office.

THE COURT: I will overrule the objection.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

(The following question was read by the stenographer: "Don't you remember being examined on August 22, 1945, at three o'clock in the afternoon in my office?")

A. No.
Q. Would you say that you were not examined?

MR. PALESE: I object, if your Honor please. He says he doesn't remember.

THE COURT: This is a test of his recollection. I will overrule the objection.

MR. PALESE: If your Honor please, if a person says, "I don't remember," how can the question, "Would you say this?" or "Would you say that?" be of value? What more can a person say than, "I don't remember?"

THE COURT: That then raises the question of whether or not the witness does or does not remember.

MR. PALESE: Yes, but, if your Honor please, the next question was, "Would you say that you weren't examined?" How can he answer that question when he does not remember?

THE COURT: I will allow the question.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

(The following question was read by the stenographer: "Would you say that you were not examined?")

A. That is hard to say whether I wasn't or whether I was.

Q. Do you remember being examined on August 31, 1945?

A. Yes.

Q. Can you tell me why it is you can remember being examined on August 31, 1945, and not remember being examined on August 22, 1945?

MR. PALESE: I object, if your Honor please, to the form of the question, "Why you can't remember this or you can't remember that."

THE COURT: I will sustain the objection as to the form of the question.

BY THE PROSECUTOR:

Q. I understand you to say you do remember August 31, 1945?

A. Yes.

Q. Where did that examination take place?

A. In your office.

Q. Why can't you remember the 22nd of August, 1945?

MR. PALESE: I object, if your Honor please, to the form of the question, "Why can't you remember?" He says he doesn't remember.

THE COURT: I will overrule the objection.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. I don't know why. It is just one of those things I can't remember.

Q. You don't remember being questioned by the doctors?

A. I don't.

Q. You don't remember giving a statement as to how the crime happened?

A. I don't.

Q. You don't remember giving them a statement as to what school you went to?

A. I don't.

Q. You don't remember telling them about your record?

MR. PALESE: I object, if your Honor please. It is immaterial and incompetent as to what he told the doctors.

THE COURT: I sustain the objection as being carried to a point beyond necessity.

Q. Do you remember giving the doctors the information requested on August 31, 1945?

MR. PALESE: I object, if your Honor please.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. Will you repeat that?

(The following question was read by the stenographer: "Do you remember giving the doctors the information requested on August 31, 1945?")

A. To a certain extent.
Q. How much?
A. To a certain extent.
Q. Well, can you remember now what you told them?

MR. PALESE: If your Honor please ——

A. No, I cannot.

MR. PALESE: Just a minute, Mr. Auld. If your Honor please, I object to the question asked in the manner in which it has been asked, "Do you remember what you told the doctor?" If it is for the purpose of contradicting, then the Prosecutor knows well how to present that matter. How can we be asked what we told the doctor?

THE COURT: I sustain the objection.

Q. Who was present when the examination on August 31, 1945, took place?

A. Well, that is hard to say. I don't know who was present.

Q. Was your father there?

A. No.

Q. I beg your pardon?

A. No.

Q. Are you sure of that?

A. Positive.

Q. Do you remember seeing this gentleman there (indicating Dr. Spradley), on August 31, 1945?

A. I don't know if I do or not.

Q. You don't know if you do or not? Do you ever remember making a statement that you had received the Distinguished Service Medal for your services?

MR. PALESE: I object, if your Honor please.

A. I do not.

MR. PALESE: As immaterial. What of it if this man did make such a statement? He hasn't said it on direct examination. He hasn't been asked on direct examination nor has he been asked on cross-

examination whether or not he ever received a Distinguished Service Cross. How can he be questioned or asked the question, "Did you ever say that to anyone?"

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception.

THE COURT: Exception allowed.

(The following question and answer were read by the stenographer: "You don't know if you do or not? Do you ever remember making a statement that you had received the Distinguished Service Medal for your services? A. I do not.")

A. No.

Q. Do you remember making a statement concerning injuries received, such as bayonet wounds on both arms?

A. Yes.

Q. Do you remember stating as to how those wounds were attended to?

A. Yes.

Q. How?

A. I sewed them up myself.

Q. Explain to his Honor and the gentlemen of the jury how you attended to them yourself.

A. Well, I had some sulfanilamide powder.

MR. PALESE: Please keep your voice up, Mr. Auld.

A. I had some sulfanilamide powder, that is a sulfa drug powder, and I sprinkled that on and I

took a needle and a piece of thread, a plain piece of black thread that we carry with us, and I sewed them up.

BY THE PROSECUTOR:

Q. Did you use your right arm to sew your left arm and your left arm to sew your right arm?

A. No, I sewed my left arm and my buddy, James Brennan, sewed my right arm.

Q. When did you tell the doctor that during the examination?

MR. PALESE: If your Honor please, what is there in this case about whether he told a doctor that he had been wounded in the line of duty? I know that in criminal cases the prosecutor has wide latitude on cross-examination, but there is a limit, if your Honor please. What difference does it make in this case in the matter which is now being presented that this man was wounded and he attempted to attend to his own wound himself? Where is the materiality and the competency of such testimony in this case, even though it may come with the defendant on the stand and the wide latitude that is allowed in criminal cases on cross-examination?

THE COURT: I will allow the question.

MR. PALESE: Will your Honor grant me an exception.

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. I think it was August 31.
Q. You say you think you told the doctors that on August 31?
A. I think.
Q. You think? You aren't certain?
A. I am not certain. It could just as well have been on the 22nd, too.

MR. PALESE: I object if your Honor please.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. It could have been in March or April or July.
Q. You remember saying that, don't you?
A. Yes, but I don't know when.
Q. And you remember saying that you had a knee injury?
A. Correct.

MR. PALESE: Just a minute. I object, on the same grounds, that it is immaterial and incompetent.

THE COURT: The objection will be overruled and an exception allowed.

Q. Did you answer that?
A. Yes.
Q. When was it you made that statement?

A. I wouldn't say.

Q. Was it during your examination on August 22nd, 1945, or your examination on August 31st, 1945?

A. I wouldn't say on that, sir.

Q. But you are certain that you did say it?

A. I think so.

Q. Now, have you ever received the Purple Heart?

A. No.

Q. No. Do you remember taking the trip across the Delaware River Bridge on the night of Wednesday, August 15th, 1945?

A. No.

Q. Do you remember being at the Fire Hall in the early evening of August 15th, 1945?

A. I do not.

Q. Do you remember going home and getting your bloody shirt and your bloody pants, putting them in the suitcase and taking them and dropping them off the Delaware River Bridge?

A. No.

Q. Do you remember Mrs. Anderson asking about your hands in the Fire Hall on the night of August 15th, 1945?

A. No.

Q. Do you remember talking to Mrs. Hulse at the Fire Hall on Wednesday evening, August 15th, 1945?

A. I don't.

Q. Not even faintly?

A. Not even faintly.

MR. PALESE: I object to the form of that question.

THE COURT: Sustain the objection.

Q. Do you remember being picked up in an automobile at Fairview Circle on Thursday morning, August the 16th, 1945?

A. I never saw those people in my life before.

Q. You never saw those people in your life?

A. No.

Q. You don't remember telling them how you got your scratches?

A. I do not.

Q. Do you remember telling them you had been in a fight with some British sailors?

A. I said before I never seen them in my life before.

Q. Did you ever tell anybody else you had been in a fight with British sailors?

A. No.

Q. Do you know how your shorts got into the Hulse home?

A. I do not.

Q. In other words, Mr. Auld, you remember everything that happened in this case commencing the night of August 14th, 1945, up to and including throwing the body across your shoulder, but after that you don't remember anything?

MR. PALESE: I object. He only remembers what he is testifying to.

THE COURT: Sustain the objection.

Q. Do you remember anything after you threw her body across your shoulders?

A. About two weeks later.

Q. Two weeks later?

A. About seventeen days later.

Q. And then when you made your statement to Bill MacDonald you didn't realize what you were saying?

MR. PALESE: I object to the form of the question.

THE COURT: Objection sustained.

A. No.

MR. PALESE: No. There is no question pending. I ask that that answer be stricken.

THE COURT: It will be stricken.

Q. You don't remember being examined by the doctors?

A. No.

Q. You don't remember seeing scratches on your hands?

A. No.

Q. You don't remember seeing scratches on your face?

A. No.

Q. You don't remember coming down the Black Horse Pike covered with blood?

A. No.

Q. You don't remember going to Baltimore?

A. No.

Q. You don't remember going to your brother's place?

A. No.

Q. Do you remember being released from the hospital?

MR. PALESE: What hospital?

THE PROSECUTOR: In New York.

A. Which one?
Q. Mason, Brentwood.
A. You mean Mason General Hospital?
Q. Yes.
A. Yes.
Q. When was that?
A. On July 30th.
Q. July 30th of what year?
A. 1945.

MR. PALESE: Mr. Auld, please keep your voice up. We want these gentlemen to hear it.

A. 1945.
Q. And you remember while you were there your mother and father came to see you?
A. They were the first people I seen.
Q. What recommendation was made for you for civilian life?

MR. PALESE: I object.

Q. If you know.

MR. PALESE: If Your Honor please, how can this man tell what some other individual recommended, unless he was told?

THE COURT: Ask that question, Mr. Prosecutor: was he told there was a recommendation made?

Q. Were you told what you would be available for in civilian life?

MR. PALESE: I object. What materiality would that have in this case as to what availability this man would have in civilian life, on his trial in this case?

THE COURT: I will overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed.

A. Will you please read that question to me?

(The question was repeated as follows: "Were you told what you would be available for in civilian life?")

THE COURT: Fix a time.

Q. When you were discharged, July 30th, 1945.

A. I don't seem to remember; it's been so long.

Q. This is part of the exhibit, I believe. I don't want to use that unless it is part of the exhibit, if the Court pleases. I show you page 20 of Exhibit D-2 in evidence, and ask you whether or not that is the recommendation made by the Army as to your availability for civilian conversion, on the bottom.

A. It doesn't have nothing written on the back.

Q. On the bottom.

A. It don't have nothing written on the back to prove this is evidence.

Q. It comes out of this (indicating). It is in evidence.

A. I don't see nothing to prove it.

Q. Just take it and read it. It is in evidence. You don't have to worry about that, Mr. Auld.

A. You want me to read my Army qualifications?
Q. Down at the bottom.

MR. PALESE: Before he reads it, I want to enter an objection.

THE COURT: Sustain the objection.

A. Well, ——

MR. PALESE: Don't read it. There is no question pending.

Q. Were you told by the Board that you were qualified, in civilian life, to become a policeman?
A. No.
Q. Or a forester?
A. No.
Q. You were not told that?
A. Not by the Board.
Q. By whom were you told?
A. By that paper there.
Q. By this paper?
A. That's correct.
Q. Where does this come from?
A. From my Army qualification paper.
Q. Your Army qualification?
A. Yes.
Q. Doesn't it have under here (indicating) "Civilian conversion, policeman or forester"?
A. That's right.
Q. That was given to you by the Army?
A. That's correct.
Q. Doesn't that mean that you were available, in civilian life, to become a policeman or a forester?

MR. PALESE: If Your Honor please, I object.

THE PROSECUTOR: I am only asking if it says that.

MR. PALESE: If Your Honor please, the Prosecutor knows it is in the record, it is in the record.

THE COURT: I haven't heard, Mr. Palese, an objection made to the question.

MR. PALESE: Excuse me. Will you read the question, please?

(Question was repeated as follows: "Doesn't that mean that you were available, in civilian life, to become a policeman or a forester?")

MR. PALESE: I object as to what it means.

THE COURT: I sustain the objection.

Q. Weren't you a chauffeur in the Army?
A. That's correct.
Q. Is that correct?
A. I was a chauffeur in a way, yes.
Q. And weren't you an amphibious truck driver?
A. Attached.
Q. Pardon me?
A. Attached.
Q. What do you mean?
A. Attached for military reasons. I was a chauffeur in 1940.
Q. How long were you a chauffeur in the Army?
A. From July 8th to April, 1942.
Q. July 8th to April, 1942. July of what, 1940?

A. Yes.

Q. To April, 1942?

A. That's right.

Q. How long were you attached to a company as an amphibious truck operator?

A. Three months.

Q. What?

A. Three months.

Q. Three months. You had no direct connection with the Army Intelligence, did you, Mr. Auld?

A. I think I told you, I had an order to go under that I obey, Mr. Prosecutor. I don't think it is right to ask me military secrets, even if the emergency isn't over yet.

Q. Even if the emergency *is* over?

A. The emergency isn't over. It hasn't been called off by the President yet, is that right?

Q. I don't know; you are not asking me questions, Mr. Auld.

THE COURT: Just a minute. There is a gentleman down there, with glasses. Take him out. You —take him outside.

THE PROSECUTOR: Will you repeat my question, please?

(Question repeated as follows: "You had no direct connection with the Army Intelligence, did you, Mr. Auld?")

A. As I said before, I am under an order. I cannot—I am under an order, I cannot say.

Q. Who was present in the Creek cellar, that is, when you were speaking with the dead girl?

A. My sister, Mrs. Hulse, and Policeman Auletto.

THE PROSECUTOR: Just a minute. Stand up, please. (Gentleman stands up.) This gentleman here?

A. Yes.

Q. Who else?

A. That is all I know of.

Q. Was Officer Auletto there when you arrived?

A. No.

Q. How long were you there alone before he came in?

A. What do you mean, "alone"?

Q. When he wasn't there?

A. There was lots of people there. I wasn't alone.

Q. When you went into the place, was Officer Auletto there?

A. I am not sure whether he was there when I went in, or not.

Q. You are not sure whether he came in after you?

A. No, but I know he came in later. I don't know if he was in there or not.

Q. How long were you there in the presence of Officer Auletto?

A. About two minutes.

Q. Then you left?

A. To the bathroom.

Q. Did you come back?

A. No.

Q. When you came back, you went to the basement again?

A. Oh, yes.

Q. Was Officer Auletto there?

A. Off to the side.

Q. He was still there?

A. Yes.

Q. And did you then talk to Officer Auletto when you came back from the bathroom?

A. No.

Q. How far away from him were you when you came back from the bathroom?

A. Well, that is hard to say. I would not say—I would not want to say. I would not say how far. I am not very good at distance.

Q. Well, is it a big basement?

A. Well, I would not say that.

Q. A small basement?

A. I was under the influence of liquor, you know. I would say, about ten feet.

Q. When you came back from the bathroom, how long did you stay there?

A. About fifteen minutes.

Q. In that fifteen minutes, did you have a conversation with Officer Auletto at all?

A. No.

Q. Did you converse with him that night at all, in the Creek cellar?

A. No.

Q. Didn't you tell him about the business you were going in?

A. No.

Q. You and Hulse did not discuss with him your business proposition?

A. Not in the Creek home.

Q. Where did you discuss it with him?

A. I don't even remember discussing that with him.

Q. Would you say you didn't discuss it with him at the Creek home?

A. No.

Q. You may have discussed it with him, but now you don't remember?

A. Well, that is hard to say.

Q. It is hard to say?

A. Yes.

THE PROSECUTOR: Will Your Honor bear with me one half moment, please?

Q. Did I understand you to say, Mr. Auld, that the dead girl said, "I can't go into the bushes," and you said, "I will carry you in"?

A. That is right.

Q. That is right?

A. That is right.

Q. So you carried her in?

A. Right.

Q. But you don't remember whether you took off her pants or not?

A. She pulled down her pants, but I don't remember whether she took them off or not.

Q. I understand she was willing to have intercourse?

A. Yes.

Q. Why did you punch her on the face?

A. Of course, she scratched me.

Q. Because she scratched you and because she was hollering?

A. She—we were having—in the act of intercourse—and when she said—she was hollering, but she didn't say "Get off," she didn't say, "Stop."

Q. She said, "get off"? ——

THE COURT: She didn't say that.

A. No, she didn't say—she didn't say "Stop", and right then, at that moment, she scratched me.

Q. What did you do when she scratched you?

A. I hit her.
Q. With what?
A. My fist.
Q. Where did you hit her?
A. I would not know.
Q. How many times did you hit her?
A. Twice; I don't know.
Q. Don't you remember where you hit her, what part of her body, her face or body?
A. I don't know.
Q. What scared you more, the screaming or the scratches?
A. I would say the scratches.
Q. The scratches. Now, if she was satisfied to have intercourse, why would she scratch you?

MR. PALESE: I object.

THE COURT: The objection is sustained.

Q. Why did you have to hit her if she was satisfied to have intercourse?

MR. PALESE: I object.

THE COURT: The objection is sustained.

Q. Why did she scratch you?

MR. PALESE. I object.

THE COURT: The objection is sustained.

Q. Why did you hit her?
A. Because she scratched me.

Q. Then, I understand you laid around a little while?

A. What?

Q. After you hit her and knocked her unconscious, you stayed around a little while?

MR. PALESE: I object, if Your Honor please. There is no testimony in this case that she was knocked unconscious.

THE COURT: The objection is overruled.

MR. PALESE: Allow me an exception?

THE COURT: An exception is allowed.

A. Say that again.

Q. After you hit her, and she was unconscious, you stayed around a little while?

MR. PALESE: I object. That is the same question. There is nothing in this case to show that this girl was knocked unconscious as a result of any striking.

THE COURT: The objection is overruled.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: Exception is allowed.
Repeat the question.

(Question repeated as follows: "After you hit her, and she was unconscious, you stayed around a little while?")

A. Around where?

Q. Where she was lying in the brushes.

A. I got up, and I got down to the pavement, and I said ——

MR. PALESE: Mr. Auld, please talk a little louder.

A. I got up, and I said, "Let's go back to the party." She didn't get up. I felt her pulse. There was no pulse beat I could feel. There was a lot, after that, of excitement, in which I thought she was dead. I started to taking her clothes off. I remember faintly putting her on my shoulder, but what I did with the body I cannot tell. I don't know myself.

Q. Why did you put her body across your shoulder?

A. I don't know.

Q. After you dumped her body in, you came back to the place, didn't you?

MR. PALESE: I object. The witness has not said he dumped the body.

THE COURT: The objection is overruled.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: Exception allowed. Read the question.

(Question repeated as follows: "After you dumped her body in, you came back to the place, didn't you?")

A. As I said before, I put her body on my shoulder. I know faintly—I faintly remember that, but where I put her body, I don't know.

Q. Did you then go back to the place where you had been in the bushes with her?

A. No.

Q. Where did you go?

A. I went back—I suppose I went back home.

Q. Didn't you go back and pick up her clothes and put them in the pocketbook?

A. I don't remember.

Q. But you do remember, when you were all confused, that that well was located on Maple Avenue?

A. No.

Q. Well, you said that.

A. I don't know.

Q. How did you know it was there?

A. Well, when I played around there when I was fourteen and fifteen and twelve, I know it was there then.

Q. After you walked her down to Maple Avenue and went in the gate, you lifted the lid and you dumped her body in the well that was there?

A. No.

MR. PALESE: I object. Where is there any testimony in this case that would warrant the Prosecutor, in so far as the testimony is concerned, in asking such a question?

THE COURT: That testimony is contained in the statement that was given by the witness.

MR. PALESE: That may be so, not in the style that he has propounded it.

Q. Do you remember closing the lid?

A. As I said before, I remember faintly about putting her on my shoulder. From then on, I don't know nothing until the next morning.

Q. Until the next morning? What time the next morning?

A. Well, I would not tell you what time, but I know I was home.

Q. You don't remember anything at all the next morning. Is that your statement?

A. Yes.

Q. What time did you get up the next morning?

A. I would say about six o'clock.

Q. What time had you had your breakfast?

A. I never eat breakfast in the morning.

Q. What did you do then on Wednesday morning?

A. Walked around, I suppose.

Q. Do you remember getting up? You remember that, don't you?

A. Yes, I remember.

Q. Do you remember what you did during the morning, after you got up?

A. No.

THE COURT: The witness nods "No." Speak your answer, please.

A. No.

Q. Well, you said you don't remember anything until the next morning, is that right?

A. Yes.

Q. Now, then, when did you start to forget something, the next day?

A. The next day, I got up. But I remember that particularly I was getting terrific headaches, and everything started going off again.

Q. You remember having a headache?

A. That is all.

Q. That is all, nothing else?

A. Yes.

Q. After you remember you had a headache, what was the next thing you remember?

A. I don't remember nothing until I was in the jail here, in myself.

Q. Therefore, from Wednesday morning, when you remember waking up with a headache, which is August 15th, 1945, you don't remember anything from that moment up until the time you were brought into the Camden County Jail on the evening of August 21st, 1945?

A. I don't remember nothing until three weeks after I was picked up, the end of the month, two weeks.

Q. In other words, two weeks after you were picked up now?

A. Something like that.

Q. When would that be?

A. Well, all I can remember is I asked a man upstairs, "What am I doing in jail?" He told me.

Q. Who did you ask?

A. I asked a man upstairs.

Q. Would you recognize him if you saw him?

A. Yes.

Q. What time of the day would that be that you asked that man that?

A. Well, I wouldn't know that.

Q. Now you say that was two weeks after you were in jail?

A. Yes.

Q. Did you have any visitors during these two weeks that you speak of?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Do you remember receiving any money from your brother-in-law?

A. No, I don't.

Q. Do you remember him coming up and speaking to you?

A. No, I don't.

Q. You don't remember carrying on a conversation with him?

A. I do not.

Q. You don't remember being brought down from the County Jail to be examined?

A. I don't.

Q. You don't remember being examined later on?

A. I do not.

Q. What is the first thing you do remember?

A. Bars in front of me.

Q. When was that?

A. Around the first of September.

Q. The first of September? And would that be two weeks after August 21st or 22nd, 1945?

MR. PALESE: If your Honor please, it would be the first of September, the number of days from the 14th. I object to the question.

THE COURT: The objection is sustained.

Q. Don't you remember having visitors in the County Jail?

A. I do not.

Q. Do you remember talking to them at all?

A. I don't.

Q. Do you remember receiving a letter from any friend?

A. I do not.

Q. Would you say that you did not receive a letter?

A. I would say that I did not.

Q. You don't remember receiving any letters from anybody after the first of September?

A. Around the 7th of the month I do.

Q. From whom did you receive a letter?

A. My mother.

Q. Who else?

A. That's all.

Q. No one else?

A. No.

Q. Did you receive a letter from Mr. and Mrs. Hulse?

A. No.

Q. You did not?

A. I did not.

Q. Why, do you know?

MR. PALESE: I object to "why."

THE COURT: The objection is sustained.

Q. Do you remember when you were brought into the Prosecutor's office speaking with Mr. Dube here?

A. I have seen him around, that's all, I have seen him.

Q. The night you were arrested I am referring to.

A. No.

Q. Do you remember saying to him, "I think they clean the cesspool out once a year."?

A. No, I don't remember saying that.

Q. Don't you remember saying to Mr. Dube, when you were going into the Prosecutor's office, that the

reason you threw the clothes away was to prevent identification?

A. I do not.

Q. When you woke up on the morning of August 15, 1945, did you see your shirt?

A. I don't remember.

Q. Did you see your pants?

A. Don't remember that.

Q. You don't remember going home from the firehouse on Wednesday evening, 1945, and getting your pants and your shirt and putting them in a suitcase?

A. As I said before, Mr. Prosecutor, I don't remember nothing until the first of September.

Q. You don't remember anything until the first of September?

A. That's right.

Q. You remember eventually making a statement to Mr. Macdonald and to Chief Doran, don't you?

A. No, sir, I don't.

Q. You don't remember that at all?

A. I do not.

Q. Well, you remember saying earlier the only one there was Captain Mulligan?

A. I have seen Mulligan around, that's all I said.

Q. Didn't you say earlier that you saw him around when you were making this statement?

A. I did not.

Q. You now say you did not say that?

A. That's right.

Q. I take it, therefore, you do not remember making this statement at all?

A. Correct.

THE PROSECUTOR: If your Honor please, subject to the procurement of another record which I have sent for, I do not have many more questions

to ask this witness and I understand we are going to recess until Monday.

THE COURT: I would like to complete the testimony of this witness now.

THE PROSECUTOR: I cannot get the record. I have sent for it and it should be here but I cannot get it here today. That would be, perhaps, the only question, subject to, perhaps, one or two more.

THE COURT: The record could only be admissible in rebuttal, could it not, Mr. Prosecutor?

THE PROSECUTOR: Well, that is strictly true but you can get it in on cross-examination if he admits it, but I have the wrong city and I think if I had the right city and the right county he would admit it and then it would not be necessary on rebuttal. I could produce it on rebuttal. I will lay the foundation for the question.

MR. PALESE: Now, if your Honor please, I would like to hear the question at side bar, if the Prosecutor is as hazy about the question ——

THE PROSECUTOR: I am not hazy about the question, Mr. Palese.

THE COURT: The remark will be stricken from the record and the rejoinder from the Prosecutor will also be stricken from the record. Do you have any re-direct examination, Mr. Palese?

MR. PALESE: No.

(At this point a recess was taken.)

AFTER RECESS.

Q. Mr. Auld, when you were released from the hospital in New York, your memory was all right then, wasn't it?

A. In a way it was and in a way it wasn't.

Q. Which way was it and which way wasn't it?

A. When I left the hospital I had a terrific headache and couldn't remember things I would do an hour before. I told them that at the hospital and that I wanted to stay in the hospital for a few more weeks' stay.

Q. And they didn't let you stay?

A. That's right.

Q. You signed some papers up there, didn't you, when you were released?

A. Did I?

Q. What?

A. I don't remember if I did or not.

Q. You don't remember now signing papers? I show you Exhibit D-1 marked in evidence and ask you to take a look at the affidavit and see if that is not your signature?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. And that was taken before a notary public attached to the Veterans' Administration?

A. I wouldn't say it was taken before a notary public because I was not told there was a notary public in there at the time I signed it.

Q. You were not told?

A. No.

Q. Do you remember being told there was not a notary public in there?

A. I wasn't told that.

Q. You remember that you were not told there was a notary public there when you signed it?

A. That's correct.

Q. Well, is the man connected with the Veterans' Administration, whose name appears on there as the person who has authority to take your affidavit?

A. It's in print. It isn't in writing.

Q. I beg pardon?

A. It's in print. It isn't in writing.

Q. His name is not in writing?

A. It has to be in writing, the authority.

Q. The authority has to be in writing?

A. That's right.

Q. Is that right?

A. Correct.

Q. But you do remember signing that affidavit?

A. Yes.

Q. You do remember signing that?

A. Yes.

Q. Who did you tell that you wanted to stay for two more weeks?

A. I told the Board.

Q. You told the Board?

A. I did.

Q. You read the affidavit before you signed it?

A. No, I didn't.

Q. I beg pardon?

A. I didn't.

Q. Why didn't you?

A. Well, sometimes you don't read things and sometimes you read things, and that's one of the things I didn't read.

Q. And this affidavit is one of the things that you did not read?

A. That's correct.

Q. Do you remember what you did read?
A. My discharge papers.
Q. Your discharge papers?
A. Yes.
Q. Didn't you receive another paper also?
A. My qualification papers.
Q. Is this what you call your qualification paper that was given to you?
A. That's right, yes.
Q. This is it? (Indicating.)
A. Yes.
Q. And you read this?
A. Yes, after I got home.
Q. After you got home? Oh, you didn't read it up there, you read it after you got home?
A. That's right.
Q. Did you go before the Board personally?
A. Yes.
Q. And do you remember Captain Lawrence being there?
A. There were so many captains and majors up there, I don't remember many of them myself. I don't remember nobody by their names. They don't introduce you by their names when you are on the Board.
Q. You saw a Captain Lawrence in the court room here, didn't you?
A. Yes.
Q. Do you remember seeing him at the Board?
A. No, I don't.
Q. Would you say that he was not at the Board?
A. I wouldn't say so, no.

MR. PALESE: I object, if your Honor please, to the form of the question. How could he answer that question when he says he doesn't know the man?

THE COURT: I will allow it, Mr. Palese, and allow an exception.

(Exception noted for defendant.)

THE WITNESS: I wouldn't say so.

Q. He might have been on the Board but you just don't remember?

A. That's correct.

Q. Do you remember being treated by Captain Layton?

A. No, I was treated by Captain Totoa.

THE COURT: How do you spell it?

THE WITNESS: T-o-t-o-a.

Q. Do you remember what period of time he treated you?

A. Yes, when I was in the locked ward.

Q. I beg pardon?

A. In the locked ward.

Q. How long?

A. I don't know how long I was in the locked ward. I told you that. That's been coming down here left and right.

Q. What?

A. That I don't know, how long I was in the locked ward. He treated me for a week that I know of in the locked ward.

Q. He treated you for a week that you know of in the locked room?

A. In the locked ward, with a lock and key, like upstairs.

Q. And after you got out of the locked room, who treated you?

A. Captain—I just forget his name.

Q. Pollonick?

A. I have forgotten the name.

BY THE PROSECUTOR:

Q. You don't remember Captain Leyton treating you after you got out of the locked room?

A. As I said before, it's been a long time, I don't remember a thing.

Q. You don't remember names?

A. No.

Q. How do you know the name of the doctor that treated you when you were in the locked room?

A. That's a hard one to explain. When I came out of the spell I was in ——

MR. PALESE: Please talk louder, I can't keep asking you to do it all the time.

THE WITNESS: When I come out of the spell I was in to see the doctor that was around in the ward taking care of it.

Q. When was it you came out of this alleged spell?

A. Somewhere in May.

Q. What part of May?

A. I would say around the 14th.

Q. 14th of May?

A. Yes.

Q. Do you know when it was you arrived at Mason General?

A. I do not.

Q. After you got out of the locked room did you participate in the ward activities?

A. Only in the occupational therapy.

Q. After you got out of the locked room you had many passes?

A. Two.

Q. For what period of time?

A. Seventy-two hours.

Q. You would return promptly?

A. Yes.

Q. Immediately prior to your discharge do you know which doctor took care of the ward, or the room that you were in?

A. As I said before, I forget the names.

Q. Forget the names?

A. The names of the doctors, nurses, and the ward boys that took care of it.

Q. You got along all right with the other patients there, did you not?

A. Yes, sir.

Q. You treated everybody with courtesy, did you not?

A. Yes.

Q. At the time you expressed resentment towards the Army?

A. Correct.

Q. You were very resentful towards the Army, were you not?

A. Correct.

Q. You complied with all the ward regulations, did you not?

A. Correct.

Q. And after that period you went before the board on July 27, 1945?

A. I won't say what date it was.

Q. Don't you remember being before the Board?

A. Yes, but I don't know what date.

Q. How many days before you were released permanently?

A. That's a long time ago, I have forgotten.

Q. How's that?

A. That has been a long time ago, I have forgotten.

Q. What would you say, two or three days?

A. I won't say for sure.

Q. There was nothing wrong with you prior to your release, was there?

MR. PALESE: What do you mean, wrong what, what do you mean by that? I object to the question as not being a proper and clear question.

THE COURT: Sustained.

Q. You understood your surroundings in the ward there, did you not, prior to your release?

A. Sometimes.

Q. Immediately prior to your release you knew where you were?

A. Sometimes, yes.

Q. You knew with whom you were talking?

A. Not all the time.

Q. Not all the time?

A. No.

Q. Sometimes you did, and sometimes you didn't, is that it?

A. That's correct.

MR. PALESE: I don't want to tell the Prosecutor where to stand, but I think if the Prosecutor was over there the witness would try to talk to him.

THE COURT: It might assist, Prosecutor, if the witness' voice was thrown in that general direction, rather than where you are standing.

Q. Mr. Auld, for what charge were you sentenced and confined for sixty days in 1941, by the Army?

A. That was 1940, wasn't it?

Q. 1941.

A. I think it was drunk and disorderly.

Q. How about again in 1941, the latter part of 1941, where you were sentenced and in confinement for a period of seventeen days?

A. Restriction of quarters for seventeen days.

Q. Why were you restricted to quarters?

A. I don't know that one.

Q. Is that when you took the truck, or something?

A. No.

Q. When was that, was that it?

A. The truck never left the reservation.

Q. I am not asking you that, your counsel can bring that out, I am not asking you that. I am only asking you for what you were sentenced and confined. I have called to your mind that truck.

A. This is the way it goes. I was supposed to have a truck, the number of which I have forgotten, an Army truck, a 4 by 4 Chevrolet ton and a half, and the truck was in my name. I went AWOL to Texas. The truck disappeared. I was blamed for the truck, for the taking of the truck, but it never left the reservation.

Q. How many days confinement did you get for that?

A. I would say I was in confinement in the stockade, the regimental stockade, I was in about eighteen or nineteen days.

Q. You remember when you were in the regi-

mental stockade on confinement from November 17, 1942, to December 14, 1942, or a period of fifty-nine days. What was that for?

A. Say that again, will you?

THE COURT: Repeat the question, Mr. Stenographer.

(Question repeated.)

A. There's no such a sentence as forty-nine days in the Army.

Q. You were confined for forty-nine days. I am asking you why you were sentenced.

A. There is no such confinement as forty-nine days. It has got to be an even number, or anything up to sixty, thirty.

Q. How about the three days you were talking about?

A. I volunteered for hazardous duty.

Q. Is that why the three days?

A. That's correct.

Q. How about the seventeen days from 9-5-41 to 9-21-41 that you were confined?

A. That was for drunk and disorderely.

Q. You did seventeen days?

A. Yes, in the barracks, doing duty, for the day, restricted to barracks.

Q. How many times were you absent without leave in the Army?

A. I would say three.

Q. Was the first one in 1941?

A. Yes.

Q. And wasn't the second one for two days on April 9th and 10th, 1942, for two days?

A. Two days? When was that?

Q. April 9th and 10th of 1942.

A. 1942 for two days?

Q. Yes.

A. You wouldn't mean April 9, 10, and 11, 1943, for three days, would you?

Q. No, I don't mean that, that's not in your record. I am talking about 4-9-1942 to 4-10-1942, which is two days.

A. No.

Q. Do you remember four days 7-9-42 to 7-12-42?

A. What do you mean 7-12-1942?

Q. I think that's July 9 and July 12, inclusive, when you were AWOL for four days.

A. In Melbourne, Australia?

Q. It might be, I don't know where you were at that time.

A. Drunk and disorderly.

Q. Do you remember AWOL for seven days from August 22, to August 28, 1942, when you were AWOL for seven days?

A. No, I don't.

Q. Don't remember that. Do you remember January 11, of 1942, to February 5, 1943, when you were absent without leave, which is a period of twenty-six days?

A. No, I was in Buna at that time.

Q. Weren't you in Australia during that time, these twenty-six days?

A. I was in Buna, and I went to Australia, and for three days I was in Australia for Court Martial.

Q. And these twenty-six days, were you in Australia for some of them?

A. No.

Q. In this particular period of AWOL for twenty-six days?

A. I don't know what you are talking about, to tell you the truth.

Q. Your service record shows that you were AWOL from the 11th of January, 1943, to the 5th day of February, 1943?

A. I don't see how ——

MR. PALESE: If your Honor please, the Prosecutor has been referring to this piece of paper that is in his hand as a service record. It is not a service record. It is information that was obtained for the purpose of presenting this man's petition to the Board. Now, let the Prosecutor call it data compiled by some medical officer which has been admitted in evidence—I have no objection, if your Honor please—but don't let the Prosecutor say that it is his service record. It is not his service record. It is information that was obtained by Captain Lawrence as to this man's service record so that he could present his claim to the medical board, and let it be given with that understanding and not referred to as the service record of this defendant.

THE PROSECUTOR: This exhibit is marked D-1. And I read therefrom the top of it, "An abstract of service record and data for form 40." If that is not a service record I don't know.

MR. PALESE: An abstract.

THE COURT: Refer to it as it is captioned, Prosecutor.

Q. The abstract of service record and data for Form No. 40, shows that you were AWOL from the

11th day of January, 1943, to the 5th day of February, 1943, or a period of twenty-six days.

A. No.

Q. Is that correct?

A. No.

Q. It isn't correct? All right. Then I don't suppose that it is correct that you were AWOL from the 22nd day of August, 1942, to the 28th day of August, 1942, or a period of seven days?

MR. PALESE: I object, if your Honor please.

THE COURT: Objection sustained.

BY THE PROSECUTOR:

Q. Well, is this correct, that the abstract of service record shows that you were AWOL from the 9th of April, 1941, to the 13th of April, 1941, or a period of five days?

A. Yes.

Q. That is correct? Your abstract of service record shows that you were AWOL from April 9, 1942, to the 10th of April, 1942, or a period of two days; is that correct?

A. No.

Q. Your abstract of service record shows that you were AWOL from the 9th day of July, 1942, to the 12th day of July, 1922, or a period of four days; is that correct?

A. No.

Q. Your abstract of your service record further shows that you were AWOL from the 22nd day of August, 1942, to the 28th day of August, 1942, or a period of seven days; is that correct?

A. No.

Q. Your abstract of your service record further shows that you were AWOL from the 11th day of January, 1943, to the 5th day of February, 1943, or a period of twenty-six days; is that correct?

A. No.

Q. Your abstract of your service record further shows a sentence and confinement for a period of from April 13, 1941, to the 12th day of June, 1941, or a period of sixty days; is that correct?

A. What?

(Question repeated.)

A. Right.

Q. Your abstract of your service record further shows under record and sentences a confinement from the 5th day of September, 1941, to the 21st day of September, 1941, you were confined for a period of seventeen days; is that correct?

MR. PALESE: I object, if your Honor please. That has been answered three times. It is repetitious.

THE COURT: Objection sustained.

Q. Your abstract of your service record further shows under the heading of record of sentences and confinement that from the 17th day of October, 1942, to the 14th day of December, 1942, or a period of fifty-nine days you were confined; is that correct?

MR. PALESE: I object, if your Honor please. It is repetitious. That has been answered two or three times.

THE COURT: I don't recall that question, Mr. Palese. I will allow it because I don't recall it.

Q. Is that correct?

A. Say that again.

(Question repeated.)

A. No.

Q. The record taken from the abstract of your service record under the heading of record of sentences and confinement shows that on the 14th day of April, 1943, to the 9th day of September, 1943, or a period of 149 days you were confined.

A. Three days.

Q. Is that correct, or isn't it?

A. No.

MR. PALESE: Just a minute. I object to that, if your Honor please. He has gone over that three or four times.

THE COURT: He has answered that. Objection sustained.

THE PROSECUTOR: If your Honor please, my cross-examination is finished as of this time with the possible exception that by Monday I may have something further. In the event that there isn't anything further then I would say that at this moment I am finished with the cross-examination.

MR. PALESE: If your Honor please, of course, I do not want to deprive the Prosecutor of the opportunity of continuing. Is he through with this witness? Unless he shows to your Honor he wants to

continue, I have no objection, but I think the way in which he puts it is unusual, to say the least.

THE PROSECUTOR: All right. I would like to continue but I am physically unable to continue at this time.

THE COURT: Under those circumstances we will recess until Monday morning at ten o'clock.

(At this point a recess was taken until Monday, March 18, 1946, at 10 o'clock A. M.)

March 18, 1946.

SIXTH DAY.

(Trial of the cause resumed at 10:00 o'clock A. M., on the above date, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.)

HOWARD AULD, resumed.

BY THE PROSECUTOR:

Q. Mr. Auld, the night you were arrested, at about 11:30, on the night of August 21, 1945, did you tell Officer Norton, of Mt. Ephraim, that, "You ought to know me, you have been looking for me for three days"?

A. I don't remember that I did.

Q. Do you remember on the 22nd day of August, 1945, as you were examined by Dr. Spradley, Dr. Yaskin, Dr. Wilson, in the presence of Chief Doran, Detective Dube, and Captain Mulligan and myself, when you said that you had gone around the court house three times trying to give yourself up?

A. No, I don't.

Q. How many times would you say you gave in-

formation to the commander of the beachhead after you had been dropped behind the enemy lines?

A. Four.

Q. Four. Can you tell us where you went or where you were assigned after you left Australia immediately after you arrived there?

A. Will you say that again, please?

THE COURT: Let the stenographer read it.

(Question read.)

A. No, I can't.

Q. Pardon me?

A. No, I can't.

Q. Did you go to Port Moresby?

A. Not after I arrived in Melbourne, no.

Q. Where did you go after you arrived in Melbourne?

A. That's a military secret.

Q. Do you remember your counsel asking you where did you go after you went to Port Moresby?

A. After I went to Australia I went to another place.

Q. You went to another place?

A. That's right.

Q. Now, I understand that you arrived in Australia and went somewhere to some place which you refuse to disclose and from there you went to Port Moresby?

MR. PALESE: If your Honor please, it is not that he refuses to disclose. He is acting in accordance with an oath he took when he became a member of the armed forces and that is why he has not disclosed the place where he was. I don't think the

Prosecutor should characterize it. We know why the witness won't tell, he says he can't tell because of an oath that he took when he became a member of the armed forces of the United States of America.

THE PROSECUTOR: I will change the word refuse.

Q. You don't desire to tell us.

MR. PALESE: I object to that, if your Honor please. That is not the explanation for this witness not telling. It is not that he desires not to tell, or refuses, he was sworn to certain things when he became a member of the forces, and he is saying that is the reason why he cannot divulge the places where he was stationed.

THE PROSECUTOR: Well, for whatever reason. I put the word refuse in, if the Court pleases, because that's the word that came into my mind. If Mr. Palese wants to call it something else I will change it to suit him.

MR. PALESE: I don't want to call it anything but what the witness says it is.

THE PROSECUTOR: I will withdraw the question.

Q. Can you tell us where you went after—withdraw that and repeat my previous question, will you, please, Mr. Stenographer.

(Question repeated as follows: "Now, I understand that you arrived in Australia and went some-

where to some place which you refuse to disclose and from there you went to Port Moresby?")

MR. PALESE: That's the question I object to, if your Honor please, for the reasons which I have stated.

Q. After you arrived in Australia and you went to a place which you can't disclose to us, where did you go after that?

A. I went to Port Moresby.

Q. Do you remember when your counsel asked you on direct examination this question, "After you left Australia, can you tell us where you went from there?" Do you remember that question being asked of you by your counsel?

A. No, I don't.

Q. Do you remember making this answer, "I went to Port Moresby, British New Guinea?"

A. After that I went to this other place.

Q. You didn't say that in your direct examination, did you?

A. I did.

Q. What was that answer?

A. I did.

Q. Now, Mr. Auld, do you remember saying to Dr. Yaskin, Dr. Wilson, Dr. Spradley, Chief Doran, Captain Mulligan, Detective Dube, and myself, "The nearest house was fifty feet away. I was hurting her. I got off, then I tried once more. At this point she was objecting violently."

Do you remember saying that to those gentlemen I have just named?

A. No, I don't.

Q. Now, where were you when this 500 pound

bomb was dropped from an American plane, where were you located?

A. I was in Samboanga, Mindanao, Philippines.

Q. When the bomb was dropped or was about to drop, where were you?

A. I was on the ground.

Q. What island?

A. Samboanga, Mindanao.

Q. Mindanao?

A. Mindanao.

Q. What part, any particular part?

A. I was on the southeast corner, I would say.

Q. Pardon me?

A. It was on ——

MR. PALESE: Mr. Auld, you will have to speak up louder.

THE COURT: "On the southeast corner, I would say."

Q. Isn't that a military secret?

A. No.

MR. PALESE: I object.

THE COURT: I will overrule the objection.

A. No, it is not.

Q. It is not. How do you know it was a 500-pound bomb?

A. Well, you can usually count them when they come out of a Liberator.

Q. Were you standing up when the bomb dropped?

A. I was laying down.

Q. In a foxhole?

A. On the ground.

Q. On the ground?

A. Not in a foxhole.

Q. On the ground. What was the nature of the terrain, that is, of the ground there where you were lying?

A. Pretty jungle, pretty thick jungle.

Q. Was the ground hard?

A. No, it was mostly low.

Q. Was it sand or dirt?

A. Mud, I would say.

Q. Mud. And did the bomb explode in the surface or did it explode before it hit the surface?

A. I couldn't say that.

Q. What angle were you to the bomb when it exploded?

A. It exploded on my right side.

Q. On the right side. Were you facing the explosion then?

A. No, I wouldn't say.

Q. You didn't see the bomb explode?

A. I don't remember having seen it.

Q. You don't know whether the bomb detonated as it entered the surface of the ground or before?

A. No.

Q. You don't know. Did you run away afterwards?

A. I don't know. I don't remember anything after that.

Q. You remember before that, don't you?

A. To some extent.

Q. Who was with you?

A. I was by myself.

Q. Now, Mr. Auld, in May, 1943, how much did you weigh?

A. 190 pounds.

Q. And how tall were you?

A. I was about 6-1.

Q. 6-1?

A. Yes.

Q. What course of training did you receive as a commando?

A. Well, I went—they had a ——

Q. What do you call the first stage?

A. Well, every time that we were, we had to run every time we come out and run to the mess hall and back. We went through rigid training.

Q. What was it called?

A. Basic training.

Q. As a commando?

A. Correct.

Q. Did it have any alphabetical significance attached to it?

A. No, not that.

Q. It wasn't stage 1, 2, 3, 4, A, B, C, or D?

A. No.

Q. What would you call the first stage of your training as a commando?

A. Basic training.

Q. Basic training. How long did it last?

A. Well, we were supposed to go to school for eight months. We had three months during this rigid training.

Q. How long did your basic training as a commando last?

A. As I say, we were supposed to go for eight months. We lasted three months and couldn't finish the course.

Q. What was the next stage of your training as commando?

A. In the three months we went over an obstacle

course thirteen and a half miles long. We had to do it mostly double time over ——

Q. Over what?

A. Over the obstacle course thirteen and a half miles long.

Q. How many times did you do that?

A. We did it twice.

Q. Was that the basic training?

A. Well, in the first basic training, we walked over it, and we were sent through it with packs on, and at the time there wasn't enough troops there and when we volunteered for something hazardous, and we were volunteering half the time.

Q. How long did the basic training that you received as a commando last?

A. As I said before, we only had three months of our eight months period.

Q. How long did your basic training as a ranger last as commando?

A. Commando and ranger is the same thing.

Q. The same thing?

A. Yes, sir.

Q. Where did you take your training as a commando or ranger?

A. In Port Moresby.

Q. Port Moresby?

A. Right.

Q. A record was made of that, wasn't it?

MR. PALESE: If your Honor please, how can this witness tell whether or not any record was made by his officers, unless he was there and would know?

THE COURT: I will allow it, Mr. Palese.

A. I won't say there was any record made.

Q. Pardon me?

A. I wouldn't say there was any record made.

Q. You wouldn't say there was any record made?

A. I would not.

Q. You don't know?

A. I don't know.

Q. But you were there for ——

A. Three months.

Q. Now, as basic training of a commando don't you take training as a paratrooper, too?

A. Sometimes.

Q. Did you?

A. No.

Q. Do you remember saying, to Dr. Yaskin, in particular, that you had received the purple heart?

A. I do not.

Q. Do you remember saying to Dr. Yaskin that the thread you used to sew your arms was white?

A. No, I don't.

Q. I take it you don't remember anything you told Dr. Yaskin then?

MR. PALESE: If your Honor please, I object.

THE COURT: I will allow it.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed.

A. I don't know and I don't know what you are talking about.

Q. Will you read the question?

(Question read.)

A. I don't remember.

THE PROSECUTOR: That's all, if your Honor please.

THE COURT: Any re-direct?

MR. PALESE: That's all.

JAMES J. WAYGOOD, sworn.

BY MR. PALESE:

Q. Dr. Waygood, what is your profession?

A. Physician.

Q. And you are a graduate of what institution?

A. University of Pennsylvania, 1919.

Q. And since 1919 have you practiced your profession?

A. Continuously.

Q. And during that time have you been associated or connected with any institution or institutions in Philadelphia?

A. I was connected in the 20's with the Department of Mental and Nervous Diseases of the Pennsylvania Hospital, Philadelphia, at 44th and Market Streets. And since that time have continued in the practice of neurology and psychiatry. I have been on the staffs of various hospitals. At present I am associate neurologist at Temple University Hospital and Medical School, psychiatrist at the Germantown Hospital and neurologist and psychiatrist at St.

Christopher's Hospital. I have had as part of my private practice a small hospital of my own since 1928.

Q. Doctor, have you specialized in any branch of medicine during that time?

A. In neurology and psychiatry since 1921.

Q. Doctor, at my request, have you examined the defendant in this case?

A. Yes, sir.

Q. And the examination was made where?

A. It was made in the prison here on the 1st of November and again on the 19th of January.

Q. Doctor, I am going to propound to you a hypothetical question which will disclose the facts that have been established in this case.

Doctor, let us assume that we have a person presently twenty-five years of age, a male, whose previous history indicates that up until he was ten years of age he was subjected to frequent seizures or fits and convulsions, was very irritable from that time on, was employed at odd jobs until he enlisted in the State Guard in 1940; at that time he had completed eighth grade at the age of sixteen years and had worked as a plumber's helper and truck driver prior to his enlistment; after his enlistment in July, 1940, he went overseas in 1942, going first to Australia and later on was engaged in many months of combat duty in New Guinea, and some in the Philippines; he worked chiefly as a scout and patrolman, spending most of his time behind the enemy lines. He was dropped in the Hollandia area twenty days prior to the invasion sometime in January, 1945. After he had been dropped behind the enemy lines, a 500 pound bomb burst near the defendant. From that time on he did not seem himself.

In March, 1945, he was admitted to the 27th Gen-

eral Hospital Casual Camp where he had been violently homicidal against a sergeant with whom he had had an argument. After a few days in the hospital he calmed down, seemed strange, but not entirely normal. On March 24, 1945, he was discharged to a replacement depot in the hope that he would be rotated back to the United States. The same day he was readmitted to the 27th General Hospital in a confused state, excited state, restraint and sedatives administered, and was described as grossly psychotic. He was evacuated to the zone of the interior with the diagnosis of psychosis unclassified. He was sent to the United States and admitted to the Mason General Hospital on May 7, 1945; that he had a complete lack of memory of the trip from Hollandia to the Mason General Hospital; in the admitting ward in the Mason General Hospital was in good contact, answered questions, but was rather belligerent. Was placed in a closed ward, was neat in appearance, resentful, inappropriate in some of his emotional responses and remained very belligerent; made a satisfactory adjustment in the closed ward, thereafter was seclusive and slightly retarded, but got along well with the other patients and with the ward personnel. He showed some diminished effective resonance, dreamed about combat occasionally, bit his fingernails and was easily irritated by noises; always felt that he had been badly treated in the Army in that he was promised his court-martial sentence would be remitted and it was only suspended; had a feeling that he could not do Army duty because the discipline irritated it. He had been in the army five years, about three months of which was spent overseas in the Pacific area, with about two and a half years of combat duty. He was put in the hospital in 1945 because of an acutely disturbed

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episode, subsequently improved and returned to duty, but the same day became confused and excited. He has a complete amnesia for this period.

While in the hospital, he had on occasions shown a somewhat surly, belligerent attitude. Improved, however, except for a somewhat inappropriate emotional responses; always very tense and under pressure showed a facial tic. A diagnosis of psychosis unclassified, made (active symptoms in remission) manifest by excitement, confusion, and a threatening attitude, caused by severe two and a half years overseas in Southwest Pacific theatre of operations.

On July 27, 1945, was awarded fifty per cent disability upon a diagnosis of psychosis unclassified, active symptoms in remission.

On August 14, 1945, he started out about ten o'clock with a man by the name of Hulse, went to Camden, had some drinks, whisky and beer, and about two o'clock went to Abe's Browning Lane Inn, where he had more drinks, then went to Hulse's home about five or six o'clock in the evening, had something to eat and then, in company with Hulse, went to—went back to his home in Bellmawr, arriving there about seven o'clock. He heard the news about the termination of the war and he and Hulse went to the fire house, boarded a fire truck, made the rounds of the town. He then went to Henny's Cafe where he had more drinks and remained there until about eleven o'clock then he joined the crowd in the fire hall. The party at the fire hall broke up about that time and they were all invited over to the Creek home to complete the celebration. He left Henny's Cafe about nine o'clock, and accompanied Hulse to his home in Blackwood to check on some jewelry. At Hulse's home he had several drinks, whisky with rum chasers, using water glasses for that purpose.

He returned to the fire hall and later went to Creek's home. He had met Margaret McDade at the Creek's home. He went there in an automobile and upon arriving at the Creek home he met Margaret McDade. He was seen at the end of the bar hugging and kissing Margaret. About one o'clock he and Margaret decided to leave the Creek's home to take a walk. They took this walk, went up the Black Horse Pike and into Maple Avenue, and after they had got in the bushes he was engaged in the act of sexual intercourse with Margaret McDade. She hollered and scratched his face. He struck the girl, got up and asked her to go back to the party. She did not get up, so he went and felt her pulse and thought she was dead.

Doctor, also in March of 1945, the defendant was confined in the psychiatric section in the locked ward after having arrived in a confused state. He was confined in a private locked room inside the locked ward. He would be in and out of the locked section depending on his condition, some days he was calm enough to be allowed to accompany the social worker in the ward rounds, other days he would be placed in the locked room in a maniacal or wild state. He would try to get out of the room by beating on the wire enclosure. This he was observed doing on several occasions. This he continued to do until he was given a sedative or something to quiet him. Defendant left the hospital in the latter part of April, 1945. During his stay in the hospital he was discharged, but was readmitted in the psychiatric ward and stated that he had walked sixteen miles and wanted his valuables, his money and papers so that he could go back in the jungle. At six-thirty on the day he was evacuated, he was given medication, was unconscious but not restrained, that is, he was

lying on a litter, tied down to the litter with narrow muslin strips, with his ankles and wrists tied, his chest also was restrained to the litter, and in that fashion he was taken in an ambulance to the ship.

The journey home he was not conscious, not talking that morning, was seen sitting on the edge of the cot with his hands hanging down, it just looked as though he was looking into space. While confined in the hospital when asked how he felt, he answered that he had to get up in the morning to plant potatoes because he liked corn on the cob. He was resentful toward the doctors, very belligerent in regard to his medical treatment, refused to take atabrine and requested quinine. Always seemed as though he was looking for someone. On one occasion he was sent to the PX to get two cans of tomatoes and, after four hours, came back with two stones and a piece of wood. Always in trouble with the nurses.

When he had these seizures or fits and convulsions in his childhood days he would be unconscious, get blue in the face. This would be for about one-half hour after an attack. After his discharge in July, 1945, he was very nervous, very restless, and didn't sleep at nights very good, talked in his sleep, and he could not sit any length of time, could not sit still for more than five minutes.

On May 7, 1945, while confined in the Mason General Hospital, he was put in a closed ward for observation for a few days, and at that time his attending doctor made a diagnosis of psychosis unclassified, acute schizophrenic reaction. On March 24, 1945, he was discharged from the 21st Replacement Depot for early rotation quota, the attending physician had a history that this defendant was anxious to get in the jungle to look for three of his

detachment enlisted men who were lost. Upon his arrival at the replacement depot he was called by an officer whom he failed to salute. He walked out of the depot, everything went blank and he wandered back to the hospital in a confused state. He wanted to rest so that he could take his jungle trip. He was grossly psychotic and it was then believed that rehabilitation for further duty was impossible. He was ordered back to the States for further neuropsychiatric observation and treatment, and a diagnosis was made of psychosis unclassified, manifested by dream-like state, belligerent, resentful behavoir, inappropriate actions and mild confusion. That he lost his memory on several occasions and had no explanations when he was admitted to the hospital in New York for his being in the hospital. He had complete amnesia for his trip from Hollandia to the Mason General Hospital, until he saw his mother and father in the hospital in New York. He is entitled to four bronze battle stars, the Philippine Liberation ribbon and the Pacific Campaign ribbon.

Doctor, keeping all those facts, if you possibly can, in mind, what is your opinion as to the mental status of the defendant at the time he was having sexual intercourse with Margaret McDade, was scratched by Margaret McDade, and then felt her pulse and thought she was dead?

THE PROSECUTOR: I object to the question.

THE COURT: I will overrule your objection.

A. Accepting that his history, that historical background, and taking into consideration the excitement of the day, his activities of the day, and the excitement of the moment, I would think it very

probable he was not in his right mind at some time during the occurrence of this evening's events.

THE PROSECUTOR: Will you let me have the last part of that?

(Last part of the answer repeated.)

A. (Continuing) And that would include the last moment which you have recited.

Q. What do you mean by that, Doctor, the last moment that I have recited?

A. At the time of his relations with this girl.

Q. Is that the moment that you speak of, Doctor?

A. I would include that time, yes, sir.

Q. You say that at that time, Doctor, his mental status was what?

A. My interpretation would be that there was a certain amount of confusion, and perhaps panic state, I believe panic state developed at that time, so that he no longer knew clearly what he was doing.

Q. Doctor, assuming that the facts, as hereinbefore stated, and that the legal definition of insanity is the ability to appreciate the moral nature and character of an alleged criminal act, in other words, an inability at the time of the commission of the act on the part of the actor to distinguish between rightness and wrongness of the act alleged to have been criminal, would you say that this man was sane or insane at the time of the commission of the alleged criminal act, keeping in mind the stability and the prior episodes of the defendant?

A. Keeping in mind his past history, the events of the day leading up to that particular moment, I would say that he was insane at that time.

Q. Can you elaborate a little more on your answer?

A. I have been given the history of a man who has always been unstable from childhood on. He was a trouble-maker in the Army. He underwent some pretty harrowing experiences, and eventually broke down under those experiences, and was hospitalized, and for a considerable period of time he was considered insane by Army physicians. He was kept in locked rooms and locked wards, and finally but two weeks before V-J Day he was discharged by the Army with the symptoms only in remission; that is, not active at that time. Given the excitement of that day, and his activities during that day, I can believe it very probable that during the darkness and the excitement of his relations with this girl, that he no longer was clear as to what he was doing.

I could believe it probable that at the time he felt this girl's pulse and believed her to be dead, that he from then on was in a panic state that no longer allowed him to think properly and clearly, and at that time we could consider his mental state no longer normal and could use the term "insane."

MR. PALESE: Take the witness.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. You mean, insane after the actual accomplishment and perpetration of the crime, don't you?

MR. PALESE: What crime?

THE PROSECUTOR: The crime of murder, which this man stands charged with.

MR. PALESE: That is not his testimony, by any means.

THE PROSECUTOR: Oh, yes, it is, the very last part.

MR. PALESE: I object to the form of the question.

THE COURT: Will you repeat the question?

(Question repeated.)

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception is allowed.

(Exception is noted for the defendant.)

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

Q. Didn't you say, Doctor, that after he felt her pulse, and determined in his mind that she was dead, that he became panicky, and he didn't know what to do after that, and after that period he was insane?

A. I think ——

Q. Did you say that?

MR. PALESE: He is saying that ——

THE COURT: Will you let me hear the question, Mr. Stenographer?

(Question repeated.)

A. I think that ——

BY THE COURT:

Q. Didn't you say that on your direct examination, the question is.

A. I think that's practically what I said.

BY THE PROSECUTOR:

Q. In your opinion, Doctor, would you say that the defendant knew what he was doing on the night of the crime when he was standing at the bar with his arms around the deceased girl, as put to you in the hypothetical question?

A. I would not be sure in that, although he probably did at that time.

Q. In your opinion, Doctor, did the defendant know what he was doing when he arranged to take a walk with the dead girl?

A. He probably did.

Q. In your opinion, Doctor, did he know what he was doing when he picked Rita up and carried her in the bushes?

A. He probably did, or possibly did.

Q. In your opinion, Doctor, did he know what he was doing when he was in the act of having the alleged intercourse with her?

A. He possibly did.

Q. In your opinion, Doctor, did the defendant know why she screamed?

A. I don't know.

Q. In your opinion, Doctor, would the defendant understand why she scratched him?

A. I don't know.

Q. In your opinion, Doctor, did the defendant

realize and understand that by the act of his striking her on the jaw with his fist on two occasions, that he would stop her screaming and stop her scratching him?

A. At some point there, his excitement and panic increased. I don't know the exact point, but I think his behavior then and afterwards shows that he no longer reasoned clearly.

Q. After he had struck her?

A. I don't know the time.

Q. You would not say, then, it was either before or after he struck her?

A. I can't say exactly.

Q. You can't say exactly. You heard the legal definition of insanity given to you in one of the prior questions, did you not, Doctor?

A. Yes.

Q. And that purports to be this: that he is able to distinguish between right and wrong at the time of the perpetration of the crime.

MR. PALESE: I think we ought to know what the Prosecutor means by the crime in this particular case. There are two acts in this crime that they are attempting to establish. One is that there was an attempt to commit rape, and in attempting to do that this girl was killed. There are two component factors in the crime. It isn't a case of committing robbery, or things of that kind, which you can call a crime. There are two component factors which must be present in this case: one is that there was an attempt to perpetrate or to commit rape, No. 1, and, secondly, that in that attempt to commit rape or to perpetrate rape, this girl was killed, so I think it's not fair to this doctor, when we have two component parts of what I think the crime is, not what

the Prosecutor is saying in his question what the crime is. I think we ought to have that, and I think the Doctor is entitled to it.

When the question was first propounded to the Doctor, he used the word "crime," but to this doctor, that doesn't mean anything. At least, it should not mean anything; he is a medical man, and he is not a lawyer. In the crime that this defendant is being charged with, I say that there are two component parts, two things, two acts that have to be committed by this defendant, and I think that the doctor ought to be given the benefit of those component parts for this question that is being asked.

THE COURT: Do you object, Mr. Palese?

MR. PALESE: Yes, I object.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

THE COURT: Now, Mr. Stenographer, will you repeat the question?

(Question repeated.)

Q. Do you understand that to be the legal definition of insanity?

A. To distinguish between right and wrong?

Q. That's right, sir.

A. I accept that understanding.

Q. Can you tell us, Doctor, when the defendant was incapable of distinguishing between right and wrong in this particular case, based upon the hypothetical question?

A. I feel that it is not possible to fix the time exactly. I think that all the circumstances can lead us to believe, given the history that he has had in the past, his hospitalization, his hospital record, that all the circumstances of the evening give us the right to believe he was not in his right mind.

Q. At what stage?

A. The exact time I am not willing to state.

Q. But, Doctor, didn't you state just a little while back, it was your opinion that at the time she screamed, that he understood the meaning of that?

A. I think I said "possible."

Q. And that he knew that by striking her he would stop her screaming and scratching; didn't you say that?

A. I doubt if I made a certain statement about that.

Q. Didn't you say it was possible?

A. It is possible that he knew; it was possible, I accept that, possible.

Q. And that he also knew what he was doing when he picked her up and carried her across to the bushes, you said that just a little while back, is that right?

A. Possible.

Q. In your opinion, Doctor, you feel that he could distinguish between what was right and what was wrong at the time he struck her on the jaw to stop her screaming and scratching?

A. I am not willing to say "Yes" or "No" to that. At some point there I feel this man lost his reasoning ability.

Q. And that was afterwards, after he felt her pulse?

A. I suggest the feeling of the pulse and believing it was absent was a critical point in the occurrence.

THE PROSECUTOR: Doctor, that's all I have.

BY THE COURT:

Q. Doctor, in these same circumstances would an entirely reasonable man engaged in the act of intercourse, if the girl started screaming and scratching him not suffer some impairment of his reasoning faculties?

A. I think I would have to say some might and some might not, your Honor.

THE COURT: That is all.

MR. PALESE: That is all, doctor.

DR. CALVIN S. DRAYER, sworn.

BY MR. PALESE:

Q. Doctor, what is your profession?

A. A physician.

Q. You are a graduate of what institution?

A. Washington University Medical School, St. Louis, 1931.

Q. Since 1931 have you practiced your profession?

A. Only since 1938. I was in training between those intervening years.

Q. From 1931 to 1938 did you specialize in any branch of medicine?

A. I took specialized training in neurology and psychiatry.

Q. And that special training was taken where, doctor?

A. Chiefly in Philadelphia.

Q. Were you associated or connected with any hospitals in Philadelphia?

A. The training was taken at the Department of Mental and Nervous Diseases of the Pennsylvania Hospital.

Q. After you had completed your training, doctor, in 1938 did you practice privately or what did you do?

A. I operated a psychiatric clinic in Harrisburg for two years, and then returned to Philadelphia.

Q. And when did you return to Philadelphia?

A. 1940.

Q. Then what did you do in 1940?

A. I was chiefly engaged then in research and clinical work at the Jefferson Hospital.

Q. Your clincial and research work was in what regard?

A. In neurology and psychiatry.

Q. Doctor, did you go into the service?

A. January 12, 1942.

Q. Upon your enlistment in the service what were your activities and where were you?

A. I filled a number of psychiatric positions, the first two being in this country at training camps, Camp Lee and Camp Pickett. I was then sent overseas at the time of invasion of Africa where I became psychiatrist to a number of successive hospi-

tals, and in July of 1944, I became psychiatric consultant to the surgeon to the Fifth Army.

Q. That was where, doctor?

A. In Italy.

Q. When was it, doctor, that you went to Africa?

A. That was in November of 1942.

Q. Doctor, you say that you were there in charge of a psychiatric hospital or hospitals?

A. I was on the psychiatric service of three hospitals at different periods during those suceeding months. There was a considerable shift of personnel.

Q. Your rank, doctor, in the army was what?

A. I left the army as a Lieutenant Colonel.

Q. Doctor, during your stay in Africa and in Italy did you have the opportunity of observing soldiers who had come under your care?

THE PROSECUTOR: I object to the question, if your Honor please, as incompetent, immaterial and irrelevant.

THE COURT: This is still on the qualification on the witness?

MR. PALESE: Yes, I am trying to get ——

THE PROSECUTOR: I will withdraw the objection if it is on qualification.

Q. Doctor, you did have the opportunity of observing soldiers that came under your care in Africa and in Italy?

A. I did.

Q. How many of the soldiers would you estimate came under your care and treatment while in Africa and in Italy?

A. Under my personal care I suppose I might say 500. That is only an estimate. I have no exact records at all.

Q. They were psychiatric cases, doctor?

A. Yes.

Q. Doctor, have you had the opportunity of examining the defendant here?

A. I have.

Q. When was the examination made?

A. On the 19th of January in the prison in this building.

Q. Doctor, you will have to bear with me. I will have to read this hypothetical question to you again. Doctor, in this case I am going to ask you to assume the facts as having been disclosed in the case and facts upon which you may base your opinion in this case. Doctor, it has been established that the defendant is 25 years of age, who has had a previous history that up until he was ten he was subjected to frequent seizures of fits and convulsions, was very irritable from that time on, that he was employed as a plumber's helper and truck driver prior to his enlistment in the National Guards. After his enlistment in July of 1940, he went overseas in 1942, going first to Australia, and later was engaged in many months of combat duty in New Guinea and some in the Philippines. He worked chiefly as scout and patrolman, spending most of his time behind the enemy lines. On one of the times that he was dropped behind the enemy lines he was exposed to the bursting of a 500 pound bomb, which burst near the men, and from that time on he did not seem himself.

In March of 1945, he was admitted to the 27th General Hospital, where he had been violently homicidal against a sergeant with whom he had an

argument. After a few days in the hospital he calmed down, seemed strange, but not entirely abnormal. On March 24, 1945, he was discharged to a replacement depot in the hope that he would be rotated back to the United States. The same day he was readmitted to the 27th General Hospital in a confused state, excited state, restraint and sedatives were administered, and was described as grossly psychotic. He was evacuated to the zone of the interior with a diagnosis of psychosis, unclassified. He was sent to the United States and admitted to the Mason General Hospital on May 7, 1945, that he had a complete lack of memory of the trip from Hollandia to the Mason General Hospital. In the admitting ward in the Mason General Hospital he was in good contact, answered questions but was rather belligerent. He was placed in a closed ward, was neat in appearance, resentful, inappropriate in some of his emotional responses and remained very belligerent. He made a satisfactory adjustment in the closed ward, thereafter was seclusive and slightly retarded, but got along well with other patients and with the ward personnel; he showed some diminished effective resonance, dreamed about combat occasionally, bit his fingernails, and was easily irritated by noises. He always thought that he had been badly treated in the army in that he was promised his court martial sentence would be remitted and it was only suspended; had feeling that he could not do army duty because the discipline irritated him. He was in the army about five years, about three years of which he spent overseas in the Pacific area, with about two and a half years of combat duty. He was put in the hospital in 1945, because of an acutely disturbed episode, subsequently improved and returned to duty, but the same day be-

came confused, excited, and readmitted to the hospital. He has a complete amnesia for this period.

While in the hospital he has on occasions shown a somewhat surly and belligerent attitude, improved, however, except for a somewhat inappropriate emotional responses; always very tense and under pressure showed a facial tic. A diagnosis of psychosis, unclassified, made (active symptom in remission) manifested by excitement, confusion and threatening attitude, caused by severe two and one-half years overseas in Southwest Pacific theatre of operations with twenty-four months of combat duty. On July 27th, 1945, he was awarded 50 per cent disability by Board of Officers, Mason General Hospital, upon a diagnosis of psychosis, unclassified (active symptoms in remission).

On August 14th, 1945, he started out about 10 o'clock in the morning with a man by the name of Hulse. He went to Camden and had some drinks, whiskey and beer, and about two o'clock went to Abe's Browning Lane Inn, where he had more drinks, and then went to Hulse's home about five or six o'clock in the evening and had something to eat and then in company with Hulse went to his home in Bellmawr, arriving there about seven o'clock. He heard the news about the termination of the war and he and Hulse went to the fire house, boarded a fire truck and made the rounds of the town. He then went to Henney's Cafe where he had some more drinks and remained there until about 11 o'clock when he joined the crowd in the fire hall. The party at the fire hall broke up about that time, and they were all invited over to Creek's home to complete the celebration. In the meantime he had left Henney's cafe about nine o'clock and accompanied Hulse to his home in Blackwood to check

on some jewelry. At the Hulse home he had several drinks of whiskey with rum chasers, using water glasses for that purpose. He returned to the fire hall and later went to the Creek's home. At the Creek home he met a young lady by the name of Margaret McDade. In the basement of the home he was seen at the end of the bar drinking, hugging and kissing Margaret. About one o'clock he and Margaret decided to leave the Creek's home and take a walk. They walked from the Creek home up a public highway known as the Black Horse Pike, then turned into Maple Avenue. When they had got some distance up Maple Avenue he carried the girl into the bushes and he was there engaged in the act of sexual intercourse with Margaret McDade. She hollered and scratched his face. He struck the girl and got up and asked her to go back to the party. She didn't get up, so he went and felt her pulse and thought that she was dead.

Doctor, to those facts also keep in mind, if you can, that in March of 1945, when the defendant was confined in the psychiatric section of the hospital in Hollandia he was confined in a locked ward, after having arrived in a confused state, and confined in a private locked room inside the locked ward. He would be in and out of the locked section, depending on his condition. Some days he was calm enough to be allowed to accompany the social worker in the ward rounds. Other days he would be placed in the locked room in a maniacal or wild state. He would try to get out of the room by beating on the wire enclosure. This he was observed doing on several occasions. This he continued to do until he was given a sedative or something to quiet him. The defendant left the hospital the latter part of April 1945. During his stay in the hospital he was discharged

and was readmitted in the psychiatric ward and stated that he had walked 16 miles and wanted his valuables, his money and papers, so that he could go back in the jungle. At 6:30 on the day that he was evacuated from the hospital, he was given medication, was unconscious but not restrained; that is, he was lying on a litter, held down to the litter, with narrow muslin strips, with his ankles and wrists tied. His chest was also restrained to the litter, and in that fashion he was taken in an ambulance to the ship. On the journey he was not conscious, not talking. That morning he was seen sitting on the edge of the cot with his hands hanging down. He just looked as though he was looking into space. While confined in the hospital, when asked how he felt, he answered that he had to get up in the morning and plant potatoes because he liked corn on the cob. He was resentful toward the doctors, very belligerent in regards to his medical treatment, refused to take atabrine and requested quinine. He always seemed as though he was looking for someone. On one occasion he was sent to the PX to get two cans of tomatoes, and after four hours came back with two stones and a piece of wood. He was always in trouble with the nurses. When he had seizures of fits and convulsions he would be unconscious, get blue in the face, and this would be for about one-half hour after the attack. After his discharge in July 1945, he was very nervous, very restless, and he didn't sleep at nights so very good, talked in his sleep, and he could not sit any length of time. He could not sit still for more than five minutes.

On May 7th, 1945, while confined in the Mason General Hospital, he was put in a closed ward for observation for a few days, and at that time his attending doctor made a diagnosis of psychosis, un-

classified, acute schezophrenic reaction. On March 24, 1945, when he was discharged to the 21st Replacement Depot for early rotation quota, the attending physician had a history that the defendant was anxious to get in the jungle to look for three of his detached enlisted men who were lost. Upon his arrival at the Replacement Depot he was called by an officer whom he failed to salute. He walked out of the Depot, everything went blank, and he wandered back to the hospital in a confused state. He then wanted to rest so that he could take his jungle trip. He was grossly psychotic, and it was then believed that rehabilitation for further duty was impossible. He was ordered back to the States for further neuropsychiatric observation and treatment, and a diagnosis of psychosis, unclassified, manifested by dream-like state, belligerent, resentful behavior, in appropriate actions and mild confusion, that he lost his memory on several occasions and had no explanation for his confinement in the hospital. He had a complete amnesia for his trip from Hollandia to the Mason General Hospital. He is entitled to wear, doctor, four Bronze Battle Stars, Philippine Liberation Ribbon, and the Pacific Campaign Ribbon.

Now, doctor, keeping all those facts before you, what is your opinion as to the mental status of the defendant on the evening of August 14th and the early morning of August 15, 1945?

A. Excepting these facts as given, it seems to me that during that night and early morning he was for part of the time confused and unable to distinguish between right and wrong.

Q. Doctor, can you place the time that in your opinion he was in that confused state, with these facts that you have before you?

A. It must be admitted that that is very difficult to do. It is my opinion, however, that we can put that time at the moment when he found or when be believed that the girl was dead. Now, may I amplify that?

Q. Yes, doctor.

A. In regard to the previous episode, to me it seems to be the act of an unstable person who has reacted badly in the past to authority and to opposition, that he entered a relationship with this girl and at a point of considerable excitement finds himself physically attacked. It would be surprising to me that such a person as the prisoner would react otherwise. He reacts to this type of stimulant impulsively, and I would regard his blow to the jaw as a burst of anger which was not clearly designed to accomplish any purpose except to respond to the attack which he himself was undergoing.

Q. Doctor, what is your opinion as to the mental stability prior to the evening of August 14, 1945, from the facts that have been disclosed to you in the hypothetical question?

A. I have no reason to disagree with the army diagnosis and with the records as to him having had periods of psychiatric excitement during which he certainly required confinement and during which he had to be regarded as irresponsible.

Q. Doctor, I think you have pretty well answered the question, but, Doctor, assuming the facts that have heretofore been stated to you and the legal definition of insanity is the ability to appreciate the moral nature and character of an alleged criminal act, in other words, the inability at the time of the commission of an act on the part of the actor to distinguish between the rightness and wrongness of the act alleged to have been criminal, would you say

that this man was sane or insane at the time of the commission of the alleged criminal act, keeping in mind the stability of the prior episodes of the defendant?

A. May I ask what act you refer to?

Q. Take the whole picture, Doctor, of the acts of that evening.

A. Yes, I would regard him as insane within the legal definition of insanity.

Q. Doctor, can you tell us when was the first time of the bringing in of the insanity, if you can, from the facts you have presented to you?

A. I have already testified that it was at the moment he regarded the girl as dead, but I must qualify that by saying that a burst of anger happened, and that is often one of the signs under the legal definition of insanity.

Q. By the "burst of anger," you mean what?

A. The outburst which was expressed physically by the blow to the jaw.

Q. And following the scratching of his face, you say that that was one of the things that follows on down to the period of insanity; is that what I understood you to say?

A. Well, I don't feel I am qualified as a doctor to draw that line too fine. The whole question is whether we are satisfied. The legal definition of insanity has never been clear, as far as I am concerned.

Q. Do I take it that that would be the beginning point under all the facts that you have before you?

A. I think we have a right, in drawing an analogy, to feel it was the first time, considering everything shown by the prior episodes; from that we can say that this was the beginning of things that went on to lead him into a state of mind where it leads to loss of control, as it has in the past.

MR. PALESE: Cross-examine.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. So that I can get you clear, you understood the legal definition of insanity as given by Mr. Palese. Do I understand you to say that this man's insanity period, or his inability to distinguish what is right and what is wrong, commenced after his outburst of anger, manifested by his striking her on the jaw?

A. That is why I am sure as to the time.

Q. So, Doctor, if the alleged crime had been performed before he struck her on the jaw, then he could distinguish between right and wrong, could he not?

MR. PALESE: I object to the form of the question.

THE COURT: Overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed. Repeat the question.

(Question repeated.)

A. I do not think he was any more able to do it at that time than the average person would have been.

THE COURT: Would he be the same as the average person, Doctor?

THE WITNESS: I would say less able than the average person.

Q. Is every outburst of anger insanity?

A. It is one of the grounds for making the legal definition.

Q. What is that?

A. It is one of the grounds for making the legal definition.

Q. What is your opinion?

A. I think it is a matter of degree.

Q. Degree?

A. Right.

Q. Therefore, every outburst of anger is not insanity?

A. That is right.

Q. Would your opinion be changed, Doctor, as to his insanity at the moment he struck her and afterwards—be changed any by the fact that the defendant himself admitted, on the 22nd day of August, 1945, that the reason he struck her on the jaw was to silence her screaming and scratching?

A. No, my opinion would not change, because I do not think he was in a position to have thought that clearly.

Q. Do you think your opinion would be changed any when he stayed around a few minutes after having struck her on the jaw ——

THE COURT: Just a minute, Prosecutor; I would like to clear something up. May I have the last answer, please?

(Answer read as follows: "No, my opinion would not change, because I do not think he was in a position to have thought that clearly.")

THE COURT: Do I understand it now, Doctor, that from these hypothetical facts that have been

proposed to you, that you would set your opinion now against his own statement on the 22nd of August as to the condition of his own mind?

THE WITNESS: Yes, sir.

Q. In other words, you substitute your opinion, your own opinion, which is opposite to that of the frame of mind expressed by the defendant himself?

A. May I qualify that——

MR. PALESE: Just a minute. All this doctor can testify to is as to the facts in the hypothetical question. He is not substituting his mind for that of the defendant. The only facts that can be put to the doctor are as to what the defendant may or may not have done or said. There is no substituting his mind.

THE COURT: I understood the doctor to say that that is just what has been done, Mr. Palese.

MR. PALESE: I think the doctor can be asked —I think he can ask him a question that assuming the defendant has said this or that, what is your opinion, but the doctor is not substituting his mind for the mind of the defendant. Now, he didn't substitute his own state of mind for that of the defendant. Now, the only thing, if the Court pleases, that this doctor can testify to are the facts in this case as they have been proposed to him.

Whether the defendant said and did this or that, I think, irrespective of that fact, he can give an opinion of the man's sanity. That is not substituting his mind for the mind of the defendant. The doctor

has before him some facts, and all he can testify to is his opinion on those facts. That is not substituting his own mind for the mind of the defendant, and I object to the question.

THE COURT: We have a question pending.

(Question read as follows: "In other words, you substitute your opinion, your own opinion, which is opposite to that of the frame of mind expressed by the defendant himself?")

MR. PALESE: I object to the question, because the doctor is not substituting his own mind for the frame of mind expressed by the defendant.

THE COURT: I will sustain the objection as to the form of the question.

Q. Would your opinion be the same, Doctor, where the defendant himself had admitted that he struck her on the jaw for the purpose of preventing her from screaming and scratching him?

MR. PALESE: If Your Honor please, they are not the facts in this case. The facts in this case are that she hollered and scratched his face. She hollered and he struck her.

THE PROSECUTOR: I will substitute "holler" for "scream."

MR. PALESE: I say they are not the facts in the case. The facts are, as I have them, were that they were in the act of intercourse and she hollered, she scratched his face and he struck her.

THE PROSECUTOR: That, of course, is ——

THE COURT: Just a minute. Are they the only facts in the case?

MR. PALESE: At the present time.

THE COURT: What did the statement that was read into the evidence say? Do we have that testimony?

THE PROSECUTOR: Does the Court have it?

THE COURT: No.

THE PROSECUTOR: It is page 388. I direct Your Honor's attention to a particular place.

THE COURT: Yes.

THE PROSECUTOR: I think, if the Court pleases, page 393, towards the bottom, from there on, I think Your Honor will find what you are seeking.

THE COURT: Question: "Now, did she scream before you hit her?" You have your notes and the testimony, Mr. Palese?

MR. PALESE: No.

THE COURT: I will overrule the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed.

THE PROSECUTOR: Repeat the question please.

(Question repeated as follows: "Would your opinion be the same, Doctor, where the defendant himself had admitted that he struck her on the jaw for the purpose of preventing her from screaming and scratching him?")

MR. PALESE: If Your Honor please, I say that is not part of the testimony, and I ask that my objection and my reason be noted.

THE COURT: Your reason will be noted, your objection overruled, and an exception allowed.

THE WITNESS: Then my previous answer isn't part of the record?

THE COURT: Read the question again.

(Question read as follows: "Would your opinion be the same, Doctor, where the defendant himself had admitted that he struck her on the jaw for the purpose of preventing her from screaming and scratching him?")

A. Essentially, my answer would be the same; I must modify it, however.

Q. Would your opinion be the same, Doctor, if the defendant admits, had admitted, or did admit, that after he felt her pulse and thought she was dead, that he completely undressed her?

A. That would not change my opinion.

Q. Would it change your opinion, Doctor, if the defendant had admitted that the reason he dis-

posed of the body was to conceal the commission of the crime?

MR. PALESE: I object to that. That isn't in the evidence.

THE COURT: Sustain the objection.

Q. Would your opinion be the same, Doctor, if the defendant admitted that he disposed of his pants and his shirt, which were full of blood, by taking them and dropping them from the Delaware River Bridge to conceal the commission of a crime and any evidence?

MR. PALESE: I object.

THE COURT: Overrule the objection.

MR. PALESE: Those facts are not in this case.

A. That would not change my opinion.

Q. Well, Doctor, would your opinion—what is your opinion of the mental status as to ability to distinguish between what was right and what was wrong on the night of the crime when Howard Auld and this dead girl were standing at the Creek's bar in the cellar with his arms around her?

A. From a legal standpoint, I would regard him as sane.

Q. How about when he left to take a walk?

A. Sane.

Q. How about when he picked her up and carried her into the bushes?

A. Sane.

Q. And how about when he was supposed to be in the alleged act of intercourse?

A. Excited, but sane.

Q. How about if he knew why she screamed and scratched him?

A. That is the point when I can no longer be as positive in the answer.

THE PROSECUTOR: I have no further questions.

BY MR. PALESE:

Q. Doctor, you were asked the question—I don't know whether you heard it or not—you were asked the question as to what your opinion was as to the mental status of the defendant.

THE PROSECUTOR: Yes, I did ——

MR. PALESE: Please let me ask the question.

Q. The question was asked here, Doctor, what was your opinion as to the mental status of this defendant on the evening of August 14th, 1945, when he was hugging and kissing the girl, not with respect to insanity or sanity, what was his mental condition?

THE PROSECUTOR: I object. What I asked him was as to the ability to distinguish between right and wrong. if you will listen to the question as it was asked.

MR. PALESE: Oh, well, I can ask a question.

Q. Doctor, what is your opinion as to the mental status of the defendant on August the 14th, 1945, when he was hugging and kissing the girl?

A. He was moderately intoxicated, I believe, but as far as we can judge from the evidence, he was able to judge between right and wrong, able to distinguish between right and wrong.

Q. We are not getting into sanity or insanity; I want to ask another question; that is, if you can tell from the facts before you ——

THE PROSECUTOR: I object.

THE COURT: Sustain the objection.

MR. PALESE: It hasn't been asked, and I am trying to clear up. The Prosecutor asked him whether he was sane or insane, and I want to know his mental status.

THE COURT: I will sustain the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed.

MR. PALESE: Do I understand your Honor will not let me prove what the mental condition of this defendant was prior to the time he took a walk?

THE COURT: I sustained the objection.

MR. PALESE: I wanted to be sure you know what my question was.

THE COURT: You stated your position on the record. Do you want to enlarge it?

MR. PALESE: I want to. I want to prove by this witness, from the facts in the hypothetical question, whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.

THE COURT: It will be noted on the record.

MR. PALESE: That's all, Doctor.

THE COURT: We will recess for five minutes.

(At this point, a recess of five minutes was taken.)

AFTER RECESS.

MR. PALESE: If your Honor please, for the record, I am just a little concerned as to whether or not I asked for an exception to your Honor's ruling as to the testimony that has been offered to prove by the last question, and I would like to have an exception noted upon the record.

THE COURT: The exception will be noted.

(Exception noted for the defendant.)

MR. PALESE: If your Honor please, with that, the defendant's case is rested.

THE COURT: The defendant has rested. It is now 12 o'clock. You have rebuttal, I presume, Prosecutor?

THE PROSECUTOR: Yes.

THE COURT: We will recess now until one-thirty, at which time the Prosecutor will be ready to go on with his rebuttal.

THE PROSECUTOR: I will, sir.

(At this point a luncheon recess was taken until 1:30 o'clock P. M.)

AFTER RECESS.

STATE'S REBUTTAL.

PATRICK AULETTO, recalled.

BY THE PROSECUTOR:

Q. What is your full name?

A. Patrick Auletto.

Q. Of what police department are you a member?

A. Bellmawr.

Q. Do you hold any rank in the police department?

A. Patrolman.

Q. Do you remember seeing the defendant, Howard Auld, on the night of August 14th, 1945?

A. Yes, sir.

MR. PALESE: I object as not proper rebuttal.

THE COURT: The question of materiality is raised by Mr. Palese's objection, Prosecutor.

THE PROSECUTOR: It was only a preliminary question to rebut what has been brought out on Mr. Palese.

Q. Did you see the defendant, Howard Auld, in cross-examination. I will withdraw the question, the Creek's cellar on the late evening of August 14th, 1945?

A. Yes, sir.

Q. Was he there when you arrived at the Creek home, or did he come after?

MR. PALESE: I object as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. He was there before I got there.

Q. What time did you arrive there?

MR. PALESE: I object to that as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. About ten after eleven.

Q. When you arrived, where did you go with respect to the cellar?

A. At the little bar down in the basement.

Q. Where did you go on your entrance there?

MR. PALESE: I object to it as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. Where did I go?

Q. Where did you go?

A. Down in the basement when I arrived at the house.

Q. Where did you sit?

A. Didn't sit, I stood at the little bar there.

Q. Who was alongside of you?

MR. PALESE: I object to it as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

A. Skippy was there on my right, Mr. Auld next him, and Mr. Auld's sister following down the line.

Q. Was Mr. Auld seated or was he standing up?

MR. PALESE: I object to that as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: This is a rebuttal witness. I am assuming that he is there to rebut something that the defendant said or did.

THE COURT: I think the defendant said that as far as he could recall, Officer Auletto was in the house when he arrived.

MR. PALESE: That is correct. What is there to rebut there?

THE COURT: The officer said that he wasn't in the house when the defendant arrived, but that he was there first.

MR. PALESE: Can't he answer that question without all this preliminary testimony to rebut the testimony of the defendant? That's what a rebuttal witness is. Did you hear that, or did you see that, or other testimony? We have had a lot of preliminary questions, which, of course, I contend are not proper rebuttal, and I think this is one of the questions.

THE COURT: I think it is proper rebuttal. Overruled.

MR. PALESE: Exception.

THE COURT: Exception noted.

(Exception noted for the defendant.)

A. Can I have the question, please?

(Question repeated.)

A. Standing up.
Q. Did you speak with Mr. Auld?
A. Yes, sir.
Q. What did you speak about?

MR. PALESE: I object, if your Honor please, as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

A. Mr. Auld and Skippy, that I call that guy "Skippy," told me they were going into the wholesale sea food business, and we talked of that for quite a stretch.

Q. How long were you in Mr. Auld's presence in the Creek cellar?

A. About an hour, half an hour.

Q. Who left first, you or Mr. Auld?

A. I missed Mr. Auld before I left; I don't know where he went.

Q. After you missed him, did he ever come back again prior to your leaving the Creek cellar?

A. Not while I was there.

Q. What time did you leave the Creek cellar?

A. I left approximately two-thirty.

Q. While he was in your presence, did you have an opportunity to observe his conduct and behavior and demeanor?

A. He was standing right there with me.

Q. What did you observe about him?

A. He was just talking, that was all.

Q. Was he sober or drunk?

A. Not drunk that I could see, no, sir.

Q. Did you at any time while he was in your presence, see him put his arms around the dead girl?

A. I didn't see the dead girl there at the bar; I would not know her.

Q. You wouldn't know her?

A. No, sir.

Q. Did you see him put his arms around any girl while you were there?

A. Not that I know of, no, sir.

Q. Did you see him hugging and kissing a girl while you were there?

A. No, sir.

Q. I understand he was standing up alongside of you?

A. That bar is about six or seven feet long, and I think we took the whole length of the bar.

Q. Who is the "Skippy" referred to by you?

A. A young man that lives in Blackwood, Hulse.

Q. When did you next see the defendant?

A. The night he was arrested.

Q. Where?

A. Up here at the Court House, in the Prosecutor's office.

Q. What time?

A. Right around midnight.

Q. Were you present when the statement was taken from the defendant?

A. Yes, I was, sir.

Q. Did you hear Chief Doran ask him questions?

A. Yes, sir.

Q. Did you hear the defendant give the responses?

MR. PALESE: I object, if the Court please, as not proper rebuttal.

THE COURT: Overrule the objection.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

THE PROSECUTOR: Repeat the question.

(Question repeated.)

A. Not all of it, sir.

Q. Why didn't you hear all of it?

MR. PALESE: I object.

THE COURT: Sustained.

Q. Were you there while the entire statement was taken?

A. No, sir.
Q. Did you leave?
A. I didn't leave, no, sir.
Q. Were you in the room at all times?
A. No, not in the room at all times, no, sir.
Q. You didn't hear him give some responses?

MR. PALESE: I object, if your Honor please.

THE COURT: Sustained.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. You had been drinking that night, too, hadn't you?
A. Yes, sir.
Q. Rather heavily?
A. No, sir.
Q. Where had you been drinking?
A. Right there at the bar at ten o'clock.
Q. Is that when you first started?
A. At the Fire Hall.
Q. When did you first start drinking that night?
A. Ten o'clock I had one glass of beer, at ten o'clock.
Q. Did you have any other drink until you got to the Creek home?
A. No, sir, I was out closing other saloons by orders of the Mayor.
Q. After you had completed that job, did you have any drinks at the Creek home?
A. I went back to the Fire House first.

Q. After you had been to the Fire Hall?

A. That was closed; we went to the Creek home then.

Q. Did you have any drinks there?

A. Yes, sir.

Q. How many drinks did you have?

A. Four or five beers.

MR. PALESE: That is all.

THE PROSECUTOR: That's all. Thanks a whole lot.

HOMER E. LAWRENCE, recalled.

BY THE PROSECUTOR:

Q. What is your full name?

A. Homer E. Lawrence.

Q. On July 27th, 1945, where were you stationed?

A. Mason General Hospital, Brentwood, New York.

Q. How long had you been stationed there?

A. Since October, 1944.

Q. In what capacity?

A. Ward Officer on psychiatric service.

Q. Were you a member of the Medical Board that convened at the hospital in August to discuss and determine the matter of Howard Auld?

A. I was.

Q. How many doctors comprised the Board besides yourself?

A. Two others.

Q. At any time, doctor, while you were at the Mason General Hospital, did the defendant, Howard Auld, come under your jurisdiction or supervision?

A. No.

Q. When did you first come in contact with the defendant?

A. Approximately one week prior to the convention of the Board.

Q. How many times in that week did you see the defendant?

A. As I recall it, three times; once for half an hour to an hour, and twice for a briefing talk.

Q. Briefing prior to the presentment of his case to the Board?

A. Yes.

Q. Did the defendant personally appear before the Board?

A. Yes.

Q. In that week, Doctor, did you have an opportunity to observe the conduct, behavior and the manner of actions of the defendant, Howard Auld?

A. Only during my conversations with him.

Q. During your conversations, what did you notice about him?

A. My own personal observations were limited to a description of some diminishing affected resonance, which means that his emotional responses to things pleasant, things unpleasant, seemed a little less intense than the average person, and the fact that he bit his finger nails moderately, and felt that he had been badly treated by the Army, felt that he could no longer do duty in the Army because of being irritated by its discipline.

Q. Did you talk to him on the 20th of July, 1945?

A. I can't answer that; I don't know.

Q. I show you Exhibit D-1, marked in evidence, and I direct your attention to the statement made by you concerning the defendant, Howard Auld.

A. It was about that time.

Q. Would you read the statement, Doctor?

A. The first talk with this patient was on the 20th of July, 1945. Do you want me to read it all?

Q. Yes, sir.

A. "Army Service Forces, Second Service Command, Mason General Hospital, Brentwood, New York, 24th August, 1945. Statement regarding Auld, Howard, Private, ASN 20224275.

"My first contact with this patient was on 20th July, 1945, when I interviewed him for the purpose of presenting his case to a Board of Medical Officers. For this purpose, account was taken of his overseas record, information supplied by other medical officers, information obtained from his service record, and from personal interviews.

"During my contact with him he was quiet, friendly and pleasant. He got along well with other patients, and the Army personnel. He expressed bitterness and resentment toward the Army, for what he considered lack of proper recognition for his performance in it, but never appeared inappropriate in his emotional responses. His stories of his adventures as a paratrooper at times appeared exaggerated. He was not exceptionally irritable or combative, complied with ward regulations, and it was not anticipated that he was in any way dangerous either to himself or to other people.

"My contact with above named patient extended

from the above date until he was seen by a Board of Officers on 27th July, 1945.

"Signed, H. E. Lawrence,
Captain, M. C."

Q. You have the exhibit marked D-1 in evidence, Captain, before you, and I direct your attention to that part of the diagnosis. Would you read that for the jury.

A. Diagnosis, psychosis, unclassified (active symptoms in remission) manifested by excitement, confusion, and a threatening attitude.

Q. Now, Doctor, would you explain to the Court and the members of the jury exactly what is the meaning of "active symptoms in remission"?

MR. PALESE: If your Honor please, if he made that diagnosis, then, yes, but if not, then I object to the style of the question as to what it means in this report.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. The diagnosis psychosis unclassified (active symptoms in remission) is used in the Army with reference to a mental illness, the outward evident signs and symptoms of which are no longer present.

Q. In other words, the symptoms were not present?

A. That is right.

Q. Now, Doctor, directing your attention to D-1 under the heading of disability, would you read that to the jury?

A. Disability present marked for military service, future minimal for civilian life.

Q. Would you explain that, Doctor?

MR. PALESE: I object to that, if your Honor please, unless it was made by this witness.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. That was to indicate that the Board's opinion was that for most men military life constitutes much greater stress than civilian life. The Board was of the opinion that this patient was not able to continue with military life but that he probably would have little, if any, difficulty in civilian life.

Q. As a member of the Board, Doctor, was there any finding made as to his sanity or insanity?

A. That subject was not brought up.

Q. The subject was not brought up?

A. No.

Q. Was this patient allowed to go home without any supervisory care?

A. Yes, he was.

Q. Doctor, in your opinion was he capable of understanding the difference between what was

right and what was wrong upon his release from the institution?

MR. PALESE: When was that?

THE PROSECUTOR: July 27, 1945.

A. Your Honor, do I have to answer that question?

BY THE COURT:

Q. Do you have an opinion on that point, Doctor?
A. Yes. I believe he was able to distinguish between what was right and what was wrong.

BY THE PROSECUTOR:

Q. In your opinion, Doctor, at the time of his release on July 27, 1945, could he have been released without any fear of injury to himself or to other people?

MR. PALESE: I object, if your Honor please, as not proper rebuttal.

THE COURT: I sustain the objection.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Doctor, what is a psychosis?
A. Psychosis is a mental illness.
Q. Sir?

A. Psychosis is a mental illness.

Q. Manifested in what way?

A. Manifested by variations from the normal or from the expected in one's behavior or in one's attitude or in one's speech, in one's emotional responses, or in one's thinking or in one's contact with his environment, his orientation manifested by variations in one or more of those things.

Q. Doctor, with respect to the defendant, Howard Auld, in what manner was the psychosis manifested to you?

A. The psychosis was not manifested in the Mason General Hospital. That is why the active symptoms in remission portion of the diagnosis.

Q. From the history that you had obtained with respect to Mr. Auld, what were the symptoms that manifested a psychosis?

A. He came to us with the diagnosis of "psychosis, unclassified," and in the record from the previous hospital he had been described as violently homicidal on his first admission and it said that he had calmed down but seemed strange, not entirely normal, and it was said that he was readmitted the same day in a confused, excited state requiring restraint and segregation, and he was described here as grossly psychotic.

Q. Were they the symptoms upon which you made a diagnosis of his phychosis?

A. Together with the fact that the psychiatrist overseas had made a diagnosis of psychosis.

Q. Doctor, were they a part of the basic factors that you used for your diagnosis of psychosis?

A. These things?

Q. What is that?

A. These descriptions that I have read to you?

Q. That is correct, that he had been homicidal as

to his sergeant, that he had been in a confused state, that he had dreamlike states, and that he was belligerent. Those factors were used by you; isn't that correct?

A. Those were part of it.

Q. What part, Doctor, was furnished by your observation of the defendant for this diagnosis of psychosis?

A. The part furnished by us was the "active symptoms in remission" part.

Q. Doctor, when he came to the Mason General Hospital he was still in a loss of memory state, was he not?

A. I don't know.

Q. If you had that history would that help you in your diagnosis?

A. No.

Q. Would that be another factor in your diagnosis of psychosis if he had a complete loss of memory from the time he left in Hollandia until he arrived at the Mason General Hospital in New York?

A. It might be.

Q. Wouldn't it be a factor, Doctor?

A. It might be.

Q. Why do you say, "It might be"?

A. Because it might not also. There are other causes of loss of memory besides psychosis.

Q. I appreciate that, Doctor, but that is one of the factors of psychosis?

A. In some psychoses.

Q. In some psychoses loss of memory is an important factor?

A. Yes.

Q. Doctor, did you know that when he got to the Mason General Hospital he had to be confined in a closed ward?

A. Yes, I knew that.

Q. How long was he confined in a closed ward?

A. Approximately a month.

Q. And that indicates what, Doctor, where a patient is locked up in a closed ward for one month?

A. It indicates that his attitudes or his behavior or his interest or his health do not qualify him for transfer to an open ward or it may indicate that the ward officer never got around to transferring him to an open ward.

Q. You mean he would be kept in a closed ward for one month before the officer came around to transfer him? It may mean that, too?

A. It may mean that.

Q. Does it mean that the symptoms were present and active at the time, the symptoms of psychosis, I mean, Doctor?

A. Not necessarily. It may mean that.

Q. It may mean that?

A. Yes.

Q. While he is in that state of mind you say he is kept in a locked ward?

A. Yes.

Q. So that he won't mingle with the other patients?

A. There are other patients in the ward, too.

Q. I appreciate that. But they are all in the locked ward?

A. Yes.

Q. Doctor, does your record show the reason why he was placed in a locked ward, the records that you have there or the history that you got?

A. The information that I have here does not state here.

Q. It does not say that? Does it tell you his condition while he was in the locked ward?

A. Yes, he was described as in good contact, answering questions readily but rather belligerent, stating he would never carry out an order again. He was described as neat in appearance, resentful, unappropriate in some of his emotional responses, well oriented, denying any ideas or reference to persecution or hallucinations.

Q. Is that the reason why, Doctor, after having read that, is that the reason why he was put in a closed ward?

A. Well, when a patient comes to our hospital from overseas they come usually in pretty large groups. A doctor sits down with their overseas record with the patient and he has only a few moments to spend with the patient. One of the things he decides is what type of ward the patient should go in. Whoever talked to him at the time he came in there felt that he wasn't suitable for an open ward or felt that he had to be observed longer before he could be put in an open ward and assigned him to a closed ward.

Q. Doctor, when this patient came to you from Hollandia he came to you with a classification of psychosis, did he not?

THE PROSECUTOR: Unclassified.

MR. PALESE: No, he did not.

THE COURT: I will allow the question.

A. The transfer diagnosis—that is, the diagnosis with which he was sent from the zone of the interior as I have it, was psychosis, unclassified.

Q. Doctor, I show you sheet 43 of what has been marked D-2, and ask you what the classification of

Howard Auld is, the first classification there, Doctor?

A. This says just simply psychosis.

Q. That is right, and that is the shipping order, isn't it, Doctor, that those boys are shipped over from the other side for treatment in this country?

A. That is right, it is an evacuation order.

Q. That is the slip or the memorandum that the Mason General Hospital obtained with this soldier?

A. We also get their hospital record.

Q. Doctor, let us take one at a time. That is the shipping order that you folks get for the soldier?

A. Yes, we got this.

Q. That doesn't say "Unclassified," does it?

A. No.

Q. It says, "Psychosis"?

A. That is right.

Q. Now, Doctor, you had this man in your charge in order to present his matter to the medical board, isn't that correct?

A. I had no jurisdiction over him. I talked to him on three occasions.

Q. But this was a case that was assigned to you to gather information and then present it to the medical board?

A. It wasn't assigned to me. I undertook it.

Q. You undertook the presentment of this case to the Board?

A. That is right.

Q. And you also were a member of the Board?

A. That is right.

Q. Doctor, after you had gathered all of the data and history and had observed this man on three occasions you then presented the matter to the Board and the defendant presented himself to the Board?

A. That is true.

Q. Isn't it true, Doctor, that as the result of the information that you had obtained from his prior history and from your observation of the defendant that this defendant was medically discharged?

A. That is right.

Q. What was the reason for his medical discharge, Doctor?

A. Psychosis, unclassified, active symptoms in remission.

Q. Is that a disability, Doctor? If you say that the symptoms were active in remission, which you say means they had cleared away, then he was perfectly all right, wasn't he?

A. That is considered by the Board to be a disability for military life.

Q. What was there, Doctor that he couldn't do in military life that he could do in civilian life?

A. Military life is considered to be considerably more stress than civilian life.

Q. In what way, Doctor?

A. Emotionally.

Q. Is that the phase that Mr. Auld was in stability?

A. I don't know what you mean by that question, sir.

Q. You just answered the other question, Doctor. I thought you said his stability—what was the word the doctor used?

(The following answer was read by the stenographer: "Military life is considered to be considerably more stress than civilian life.")

Q. What stress is there, Doctor, in military life that he would not be subjected to in civilian life?

A. There is the stress of being away from home,

the stress of lack of freedom, the stress of having to take orders, the stress of having to eat what is put before you and many others.

Q. The ability to resist that stress, you say, was not present in Mr. Auld?

A. I did not say that it was or was not, but the board felt that military life, the disability for military life was much greater than the disability for civilian life.

Q. Doctor, did you share the opinion of your two colleagues on the Board that this man was not fit for military service because of the exposure to the strain and the stresses of military life?

A. That is right.

Q. Therefore, there was something missing in this individual, the ability to resist the strain and stress of military life?

A. That is right.

Q. And is that for which he was medically discharged?

A. That is right.

Q. Doctor, if he was met in civilian life with the stress and strain to which he would be exposed to in military life, wouldn't that affect him or was he free from such exposures?

A. I don't know anything about his civilian life.

Q. You have attempted, Doctor, to say that the stress of being away from home was more than what this man could resist?

THE PROSECUTOR: That is incorrect, and I object. He said considerably more than that. Mr. Palese just picks out one of the examples given.

MR. PALESE: I am going to take every one of them. I am going to go one by one.

THE PROSECUTOR: That is very fine, Mr. Palese, but I object to the question on the ground that that is not the answer which has been given by this witness.

THE COURT: Objection overruled.

(The following question was read by the stenographer: "You have attempted, Doctor, to say that the stress of being away from home was more than what this man could resist?")

A. I did not say that.

Q. Was that one of the factors, Doctor?

A. That is one of them.

Q. That is one, and the fact that he would have to eat the foods that were presented before him was another?

A. Yes.

Q. And that he couldn't stand discipline? Was that another factor?

A. Discipline is another factor.

Q. Doctor, they are the three that I remember. Are there any other factors that made up this disability, away from home and the discipline and having to eat what is presented before him?

A. There are many other factors. I couldn't name them all. They vary from person to person or circumstance to circumstance.

Q. Doctor, you were on the Board. You had examined this man. You had presented his matter to the Board and you voted with the Board to medically discharge this soldier; isn't that correct?

A. That is right.

Q. I am asking you the basis upon which you individually voted to medically discharge this boy. That is the question I want you to answer.

A. On the basis that he had had a psychosis, unclassified, with active symptoms in remission and that the stress of military life is greater than that in civilian life.

Q. Is that all, Doctor?

A. That is all.

Q. Doctor, when a person is classified with a diagnosis of psychosis, unclassified (active symptoms in remission) that person could go back into a state of psychosis upon exposure to strain and stress, could he not?

A. Yes.

Q. And he would be a fit subject or a fit individual to go back into that state of psychosis by reason of exposure to stress and strain?

A. Yes.

Q. And the probabilities are that he would go back, wouldn't it, Doctor, to the state of psychosis upon exposure to stress and strain?

A. I can't say the probabilities are that. It depends upon what the stress and strain is, how long it lasts. It depends upon the individual.

Q. We are talking about Mr. Auld, Doctor, but you are of the opinion on the 27th of July, 1945, that if Mr. Auld was exposed to the stress and strain of Army life that he would go back into a state of psychosis?

A. We were of the opinion that there was a risk of that.

Q. What is that?

A. We were of the opinion that that was the risk.

Q. As a result of that opinion that there was a risk of him going back into a state of psychosis he was medically discharged from the Army?

A. Yes.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. Doctor, did you say what his mental status was on his admission to the institution?

A. In the admitting report he was described as being in good contact, answering questions readily, being rather belligerent, and stating that he would never carry out an order again.

BY THE COURT:

Q. Doctor, would the fact that on July 27, 1945, this defendant had served in the Armed services for over a period of four years have any bearing upon your considerations in the Board?

A. No.

Q. Would the fact of the length of his service overseas have any bearing upon your considerations on the Board?

MR. PALESE: If your Honor please, I don't like to object to your Honor's asking questions, but I think your Honor doesn't have the right to ask questions that the Prosecutor wouldn't have the right to ask. We are dealing now with a rebuttal witness, and I say that that question, if your Honor please, is not a proper rebuttal question.

THE COURT: An exception will be noted to the objection.

(Exception noted for defendant.)

(The following question was read by the stenographer: "Would the fact of the length of his ser-

vice overseas have any bearing upon your considerations on the Board?")

A. Well, we took that into consideration as part of the stress that produced the illness. I think we indicated that we considered the stress severe.

THE COURT: That is all. We will take a recess for five minutes.

THE PROSECUTOR: I understand by agreement with Mr. Palese Mr. Macdonald is to read a letter aloud to the jury.

THE COURT: A part of Exhibit D-1 will be read into the record so the jury can hear it. Will you take the stand?

(Letter read by Mr. Macdonald as follows:

"ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, New York

24 August 1945

STATEMENT REGARDING AULD, Howard, Pvt. ASN 20 224 275

On 29 May 1945, Howard AULD, because of his ability to conduct himself without supervision in a normal manner, was transferred to an open ward, of which I was in charge.

He was pleasant, co-operative, mixed well with the other patients. He tended mostly to be rather quiet and retiring in manner. He spoke always in a relevant and coherent manner, and at no time were any overt symptoms of psychosis elicited.

At times, he appeared moderately preoccupied,

and when questioned, he expressed bitterness towards the Army, claiming that he had gotten a poor deal.

He took part in all ward activities, attended to his various ward details without any complaints and was respectful to all ward personnel.

Because of his exemplary conduct, and his ability to care for himself, without need of supervision, he was given frequent passes, from which he returned without any untoward incident.

On 16 July 1945, he passed from my care to that of Captain Podolnick.

(Signed) William M. Leyton,
Capt., M. C."

CAPTAIN AARON PODOLNICK, sworn.

BY THE PROSECUTOR:

Q. What is your full name?
A. Aaron Podolnick.
Q. What is your rank in the Army?
A. Captain.
Q. What is your branch?
A. Medical Corps.
Q. Are you a member of the medical profession, doctor?
A. I am.
Q. I show you what has been marked in evidence as Exhibit D-1 and ask you whether or not you can tell us when you first came in contact with the defendant, Howard Auld?

A. I took charge of the ward in which the defendant was a patient on the 16th of July, 1945.

Q. And was the defendant, Mr. Auld, then under your supervision?

A. He was.

Q. Did you talk to him?

A. I did speak with him, yes.

Q. And how long were you in charge of the ward in which Howard Auld was located?

A. I had charge of the ward for a period of several months, I couldn't say exactly but he had come under my care for two weeks and he was discharged.

Q. For two weeks prior to his discharge he was under your supervision?

A. Yes, sir.

Q. Did you observe him daily?

A. About daily, except for week-ends and other days I might have had the day off.

Q. Can you describe his action and manner while he was under your observation?

A. I saw him principally during the morning, my morning rounds when I went around to speak to each patient and see how they felt. When I saw him in the morning, I was not able to observe anything unusual about him. He was friendly and cooperative. He got into no difficulty at all while I had him.

Q. Did he show any unusual mental trend?

A. Not that I could observe.

Q. Did you elicit anything like that from him?

A. No, I was not able to.

Q. While he was under your observation was his case prepared for presentation to the Medical Board Officers?

A. It was.

Q. Doctor, when he was discharged what have you to say about his actions?

A. He seemed very much like anyone that was going to get a discharge. As far as I can recall he was quite pleased about getting out of the hospital and out of the Army.

Q. Did he show any abnormal activities insofar as mental trend is concerned?

A. I don't recall him showing any.

Q. Now, doctor, did Howard Auld, the defendant in this case, ever tell you that he did not want to be released from the hospital?

A. I don't recall him ever saying that to me.

Q. If he had said it, it would have come to your attention, wouldn't it?

MR. PALESE: I object.

THE COURT: Sustain the objection.

Q. Doctor, in your opinion, from your observation during the two weeks period immediately prior to his discharge, would you say he was able to distinguish between what was right and what was wrong?

A. Yes, I would.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Doctor, how many patients did you have in your ward for the two weeks prior to July 27th, 1945?

A. I can only make a rough guess at that because the population of the ward varied from day to day. Sometimes twenty patients would come in, and sometimes ten or fifteen patients would go out. I would say it ranged between thirty and fifty.

Q. And you would make the rounds, every morning, as you say?

A. That's right.

Q. You wouldn't sit down and confer and make observations of the individuals every morning, would you?

A. With some of them, we couldn't do that every day.

Q. With respect to the defendant here, did you at any time sit down and talk to him in order to observe his demeanor and conduct and behavior?

A. No, I didn't. That was taken care of by Captain Lawrence who presented him before the Board.

Q. What you did was to make the rounds and say good-morning to the patient?

A. And investigated each patient as I saw him every morning.

Q. What investigation did you ever make during the two weeks that Mr. Auld was there when you went around in the mornings?

A. None seemed to be necessary.

Q. Because when you came by he didn't show any behavior that would warrant investigation of his behavior and you went on your way?

A. That's right.

Q. In other words, because he didn't want to fight you or become belligerent with you then, you wouldn't make any investigation?

A. There are a few other things besides those.

Q. How many times, Captain, would you say that you saw Mr. Auld during that two week period?

A. Approximately ten times, I would say.

Q. And what happened to the other four days?

A. That's just an approximation. It may have been twelve or it may have been nine. I was off duty two or three days during that period.

Q. Was he given any passes to go home during those two weeks?

A. He was not, because he was supposed to go before the Board. When a patient is about to be Boarded he does not get a pass and when he has been Boarded he does not get a pass, and these two weeks were right before and right after he went before the Board.

Q. Then, doctor, as I understand your testimony, you saw this man about ten times when you were going around the ward and all you said to him was, "Good-morning" and "How do you feel"?

A. That's right.

Q. You didn't see any behavior or conduct on his part that would warrant investigation?

A. No.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. Doctor, had anything unusual been performed by this defendant, you would have received a report concerning the same, would you not?

MR. PALESE: I object.

THE COURT: I will allow it. Read the question.

(Question read as follows: "Q. Doctor, had anything unusual been performed by this defendant,

you would have received a report concerning the same, would you not?")

MR. PALESE: I object, if your Honor please.

THE COURT: Sustain the objection.

Q. Did you receive any reports from anyone during this two weeks' period as to any unusual behavior by this defendant?

MR. PALESE: I object.

THE COURT: I overrule the objection.

A. Well, the entire ward worked as a unit, the doctors, the nurses and the corpsmen, and information about patients is passed on from one to another, and I didn't get any information about the patient which would lead me to speak to him further or investigate him.

THE PROSECUTOR: That's all.

MR. PALESE: That's all.

H. EDWARD YASKIN, sworn.

BY THE PROSECUTOR:

Q. What is your name?
A. H. Edward Yaskin.
Q. What is your profession?
A. Physician.
Q. Of what institution are you a graduate, Doctor?
A. Jefferson Medical College.
Q. When did you graduate?
A. 1935.
Q. Since 1935, have you practiced your profession?
A. Yes, sir.
Q. Where, Doctor?
A. I practiced my profession since 1932 in New York and in Camden, New Jersey.
Q. And besides Jefferson Medical School, are you a graduate of any other institutions?
A. I attended Columbia University, Graduate School of Medicine.
Q. Any other institutions, Doctor?
A. No.
Q. Are you connected with any medical institutions?
A. Yes, sir.
Q. What are they?
A. I am connected with Jefferson Medical College, also connected with the Camden County Men-

tal Institution, and the Camden County General Hospital, and the Philadelphia Psychiatric Hospital.

Q. Your connection with these various institutions has been in what capacity?

A. Either in neurology or psychiatry.

Q. What is psychiatry, Doctor?

A. Psychiatry is a profession that deals with the study of the deficiency and abnormality of the mind and personality.

Q. Since 1935, have you specialized in this particular branch of your profession?

A. Since 1936.

Q. Since 1936, I am sorry. You have specialized since 1936?

A. Yes.

Q. You have testified in Court, Doctor, on previous occasions?

A. Yes.

Q. What is your connection with the Camden County Mental Institution?

A. I am Psychiatric Director of the Camden County Mental Institution.

Q. Will you speak louder, Doctor?

(The answer is repeated as follows: "I am Psychiatric Director of the Camden County Mental Institution.")

Q. Do you have any connection with the United States Army?

A. No, sir, but I am a designated neuro-psychiatrist of the Veterans' Administration.

Q. How long have you acted in that capacity?

A. Since 1945.

Q. Are you engaged in that capacity at the present time?

A. Yes, sir.

Q. Where is your office located?

A. In Camden.

Q. Now, Doctor, did you have occasion to examine the defendant, Howard Auld, in this matter?

A. Yes, sir.

Q. Can you tell us when it was that you examined the defendant?

A. I examined him on two occasions; on August 22nd, 1945, and on August 31st, 1945.

Q. With respect to the examination performed on August 22nd, 1945, what time of the day was it?

A. The examination began at 3 P. M., and concluded at 5 o'clock that evening.

Q. Who was present when you examined the defendant at that time, Doctor?

A. J. B. Spradley, Doctor George Wilson, yourself, and, I think, Chief of County Detectives Doran.

Q. Was the defendant present?

A. Yes, of course, he was there.

Q. What did your examination consist of?

A. The examination in the form of a psychiatric examination and a neurological examination, also.

Q. Well, with respect to the psychiatric examination, what did that consist of?

A. It consisted in examining the mentality and observing the behavior, and arriving at a conclusion as to the state of sanity.

Q. The state of sanity with respect to what time?

A. The time of the examination.

Q. What did your other examination consist of?

A. The neurological examination consisted of an effort to determine whether he had any disease of the central nervous system.

Q. Will you state, Doctor—strike that—in the con-

duct of your examination, Doctor, did it become necessary to speak to the defendant?

A. Of course.

Q. Do you have your notes made at the examination, Doctor?

A. Yes.

Q. Will you take them in your hand, please. (Witness complies.) Will you now, please, Doctor, tell us what the defendant, Howard Auld, said to you at the examination conducted on August 22nd, 1945?

A. Shall I read the entire examination?

Q. You read it, Doctor.

MR. PALESE: Doctor, what are you reading from?

THE WITNESS: I am reading from my typewritten form.

MR. PALESE: Where are your original notes?

THE WITNESS: They are here, also.

MR. PALESE: I would like for you to use your written notes, if I may.

THE WITNESS: These were transcribed from my longhand notes, and they were approved by me as being correct.

MR. PALESE: I will object to the doctor reading from any typewritten notes, if he has some longhand notes that he says he made at the time of the examination.

THE PROSECUTOR: Does Mr. Palese want me to prove the typewritten notes?

MR. PALESE: I don't want you to prove anything. I want the doctor to use the notes he made.

Q. Can you read from the notes you made?
A. Yes, sir.
Q. Read them, Doctor.
A. "Patient Howard Auld said he was twenty-five, and single. He said he was born in Philadelphia, May 19, 1920; that he ——"

THE PROSECUTOR: A little louder, Doctor, please.

A. (Continuing) "That he reached the eighth grade in Grammar School, but he left school at the age of sixteen, and that before he entered the service, he drove a bulldozer truck, and he did plumbing, or assisted in plumbing, and also other laboring work, which wasn't too clear in his mind. At the age of sixteen he was arrested for breaking and entering, and he served two years, two months. I think this occurred in Delaware.

"In 1938, at the age of eighteen, he was arrested for stealing manhole covers, which he sold for scrap, and he was sent to Ancora at that time. At the age of nineteen, he was arrested for breaking and entering."

MR. PALESE: I object to this testimony. The Prosecutor could not get this in in his testimony and he is now endeavoring to get it through Doctor Yaskin.

THE COURT: I will hear you at side bar on the propriety of this, gentlemen.

(At side bar.)

MR. PALESE: If your Honor please, this is rebuttal testimony, and the only rebuttal testimony that the State can put in is in so far as the mental status of this defendant is concerned. Now, I don't think we ought to be a part of anything—that the Prosecutor ought to be able to send a doctor into the jail upon the theory he is going to make a mental examination and then elicit from him a history and a statement that they cannot get in this case, even if they wanted to,—I mean, being arrested for manhole covers or being arrested down in Delaware, that they can't get out as their part of the case. Surely, a medical doctor who is on the stand in rebuttal as to the mental condition of the defendant, either at the time of the examination or at the time of the commission of the crime, should not be permitted to read into the record anything that he got from this defendant as to having been arrested or as to what he may have done down in Delaware, or some other place.

Now, I say this is getting in, as I said to your Honor, what they could not get in if the Prosecutor would attempt to get it in this case: that this young man had been arrested in Delaware.

THE COURT: Can we concede, Prosecutor, that if the issue of sanity were not raised, that this statement attributed to the defendant in his examination could not be admitted in evidence?

THE PROSECUTOR: I would rather not concede that at this moment, until your Honor hears

it. As I understand the posture, it is this: the defendant, in cross-examination, has said that he does not remember the details of the examination or the examination itself on August 22nd, 1945. He does not remember Dr. Yaskin; does not remember Dr. Spradley; does not remember Dr. Wilson; does not remember Chief Doran, Mr. Dube, Captain Mulligan, or myself.

Now, under that posture, to show that he knew what he was doing on the 22nd of August, I should be allowed at this time to prove what he said to the doctors.

THE COURT: Anything further, Mr. Palese?

MR. PALESE: If your Honor please, the argument is so far—I don't think it requires any answer. The mere fact that this defendant said he doesn't remember, then the only thing that Dr. Yaskin can testify to as to his examination is as to whether or not this boy was or was not sane at the time of the examination. That is the only rebuttal testimony that your Honor can hear; that is the only testimony that we have put in that would warrant the Prosecutor bringing in that testimony.

Now, they come in and bring Dr. Yaskin, who goes in there and gets a history ——

THE COURT: But the defendant, on cross-examination, Mr. Palese, said, when he was asked about the examination of August 22nd, he said that he didn't remember such an examination having been given to him.

MR. PALESE: Granted. It doesn't open the door.

THE COURT: Now, the Prosecutor says that if for no other reason, this testimony is admissible to show whether or not his state of mind at that time was such that his present contention that he does not remember is credible.

MR. PALESE: If your Honor please, what difference does it make, whether he remembers he was examined or not? In other words, that hasn't any part in this case. Here is a man that says, "I don't remember whether I was examined by Dr. Yaskin or not." That doesn't open the door to get in testimony they could not get in as part of their case; that is, getting in arrests of this boy in Delaware or in Gloucester City. That was a subterfuge to get Dr. Yaskin to testify because the defendant says, "I don't remember being examined in the jail," and use that testimony.

THE COURT: Don't you think the test of believability of the statement that he doesn't remember such an examination would extend to a determination of what he said and did at the time of the examination?

MR. PALESE: No, if your Honor please; the only test that I want is whether this man was sane.

THE COURT: We are speaking now about his credibility.

MR. PALESE: Well, the credibility—in other words, this man says, "I don't remember being examined." Now, the only testimony the Prosecutor can bring in is the fact he was examined by Dr. Yaskin. That he has a perfect right to do. I do

not think they can go any further in the effort to get into the record anything that Dr. Yaskin has asked this man as part of history, in order to establish this man is not telling the truth or to attack his credibility, if he says he doesn't remember having been examined by Dr. Yaskin.

Now, this man doesn't know Dr. Yaskin. There may have been twenty people up there for that examination, of this man. There isn't anything in the testimony now that the doctor said to him, "I am Dr. Yaskin and I want to examine you."

THE PROSECUTOR: This was not taken in the jail.

MR. PALESE: I don't know where it was taken. I don't care where it was taken. It might have been taken in your office, which was probably worse than being in the jail. So, I say to your Honor, I don't believe that if your Honor permits this testimony, that it can be, by the slightest stretch of any imagination, considered to attack the credibility of Mr. Auld when he said, "I don't remember being examined by Dr. Yaskin," and if that is not so, you then can bring in in rebuttal, if your Honor permits this—you can bring in any testimony in rebuttal, because the defendant's condition and veracity is also on trial, and if you can, in rebuttal, show that the defendant Auld, every time he himself said he wasn't in Camden, and you bring in a person who said that he was in Camden because he talked to him, you then can go further and say that he did such-and-such a thing.

THE COURT: The veracity of that argument, Mr. Palese, is predicated upon a statement of the witness that he didn't have such an examination.

MR. PALESE: Suppose he said that he didn't remember an examination by Dr. Yaskin?

THE COURT: Query on another issue, but that is not a matter in which the Prosecutor is urging the propriety of his question now.

MR. PALESE: You say "Query?"

THE COURT: Yes.

MR. PALESE: There can't be any question that he says that he doesn't remember the examination of Dr. Yaskin. Then, how can Dr. Yaskin come into court and offer any evidence? If this man had been asked if he had been convicted of this crime or that crime, then, maybe, if the Prosecutor would not avail himself of the opportunity, he could establish or probably ask Dr. Yaskin: did he say that he had been convicted of crime? But here is a psychiatrist that is upon the stand, and upon what your Honor and upon what the Prosecutor says, in order to attack this man's credibility, that he says "I don't remember being examined by Dr. Yaskin," and in that posture they are trying to bring in facts that they could not prove in the case, if they wanted to. They could not prove this man had been arrested for stealing manhole covers, nor could they prove he was arrested in Delaware.

THE COURT: The fact that the matter is not admissible in direct examination does not make it inadmissible in rebuttal.

MR. PALESE: Unless he did, and the issue is pertinent to the trial of the case. In other words,

if there is something pertinent to the case and the defendant denies it, then unquestionably the Prosecutor has a right, in rebuttal, to rebut it, but that is not this case. In this case the defendant says, "I don't remember being examined by Dr. Yaskin." Now, the only thing that Dr. Yaskin can come in and say, "Yes, I examined this man." That is the only thing he can rebut, that he examined this man on the 22nd of August, 1945, in the Prosecutor's office.

Now, he has rebutted what the defendant says when he says "I don't remember being examined by him." I don't think they can go any further as to what this defendant, if it is not at issue, did or didn't say to Dr. Yaskin. I say that the door can't be opened.

If your Honor please, if the Prosecutor's office can open the door just because a man says only, "I don't remember about anything" ——

THE COURT: He has also said, Mr. Palese, as I recall his testimony on the stand, that after faintly remembering undressing the girl and throwing her body over his shoulder, he then remembers nothing at all until about September the first.

MR. PALESE: That is correct.

THE COURT: He doesn't remember anything at all until September first, when he was in the jail and saw bars in front of him. Now, isn't it an issue of the believability of that testimony, giving some light to it by evidence as to what he did and said during that time? That is my question.

MR. PALESE: Your Honor, please, if that is true, then, your Honor, the Prosecutor could bring

everybody in the jail that has talked to this fellow. That is not an issue here. In other words, the issue here is: did he talk to Yaskin; did Yaskin examine him; not what he may or may not have said to the doctor. If the testimony showed that he said he had not thrown this girl into the cistern, then I agree with your Honor that that might be pertinent, but, surely, the history that was given by this man would not be pertinent here on rebuttal testimony, and the only thing the State can do now is to rebut what the defendant has said or what he has done with respect to this case. They can't come in and bring in, as I said two or three times before, irrelevant or incompetent testimony upon the subterfuge that defendant said, "I don't remember being examined by Dr. Yaskin." That is what he said: "Don't remember."

Now, Doctor Yaskin said yes, he examined him. Now, that rebuts what the defendant has said.

THE COURT: That does not tend to show that the defendant does not remember. That tends to show that if he had said there was no such examination, then there was no statement that the Prosecutor seeks to rebut.

MR. PALESE: Being examined by Dr. Yaskin.

THE COURT: It is your contention that his recollection cannot be tested by inquiring into the things he said at the time of the alleged examination or the things that he did.

MR. PALESE: If your Honor please, so that we do not misunderstand each other, I am not arguing with your Honor, but if Dr. Yaskin was asked a

pertinent question such as "Did he say to you that he had not thrown this body into the cistern?", then, I say that is pertinent and relevant, because he says he don't remember, and further, if he is asked: "Did he say to you that he carried the woman?" and he says he don't remember that, and if he is asked: "Did he say to you that he didn't strike the woman?", that, of course, could be in rebuttal, but I don't think that a doctor, an examining doctor, can be permitted to come into court and in rebuttal tell a story that a man had told him that he had been arrested in Gloucester City, that he had been arrested in Delaware, that he had taken some culverts, and then go on to a number of things that in all probability the Prosecutor might be ready to prove.

Of course, that will have to be met when the time comes. I say that the remarks he has made are irrelevant and incompetent and have no place in this case, and that because, as I said before, the Prosecutor could not prove those facts before.

THE COURT: Then, the foundation required to be laid in order to justify the admission of this testimony in rebuttal, according to the nature of your argument, would have to contemplate the asking of specific questions and statements of the witness.

MR. PALESE: That has always been my understanding of rebuttal. I have never seen rebuttal testimony go in in this fashion; I have never seen rebuttal testimony going in in this way. My understanding is that he should ask him if he heard defendant say this or that. As a matter of fact, the questions are read verbatim from the testimony of the defendant. That is the reason I objected. We

are dealing with a mental case, and it may be the Prosecutor is justified. I didn't raise any objection to the qualifying of the witness, I mean Dr. Yaskin's qualifications. I think that unquestionably, no matter how narrow the rebuttal testimony may be, in order for the jury to have an opportunity of weighing the testimony of the rebuttal witness, that they ought to have an opportunity of noting the qualifications of the witness, but when we get to rebuttal testimony, my understanding of rebuttal testimony is to show, did he say so-and-so and this to you, and quote the required testimony that you want to rebut.

Now, that is rebutting his testimony. When you get to a mental situation, then, again, I think the Prosecutor is justified and warranted in giving the qualification of their testimony, and also the Prosecutor ought to say whether or not the person was or was not mentally deficient or insane. That is the mental angle of it. But it is not the rebuttal feature like Mr. Auld when he said, "I don't remember."

THE COURT: It seems to me to give effect to the reasoning upon which you support your argument would be to put a premium on the device of saying, "I don't remember," instead of saying such-and-such, or I didn't say such-and-such. But if the witness, on cross-examination in answer to a question, says "I don't remember," then it forecloses the opportunity to rebut his testimony.

MR. PALESE: If your Honor please, it does not foreclose it. As I said, I don't want to prolong this matter. I say this: that if this man had told Dr. Yaskin he had thrown the body into the cistern,

then he has a right to put that in, but I say he has no right to get into the case another fact that this man had been arrested, something, as I said to your Honor, they could not prove in their case. So, I say that if you widen the evidence by permitting this testimony to go in, what you are doing is that you are permitting testimony that the State could not get in.

THE COURT: It is no objection to testimony in rebuttal that it is not admissible in the main case.

MR. PALESE: Then, the Prosecutor asked this man if he had been arrested in Gloucester City. I objected, and your Honor sustained my objection. Now, they come right back and let the doctor testify.

THE COURT: The thing may not be admissible for one reason and it may be admissible for another, may it not?

MR. PALESE: It might be admissible whether this fellow stood mute in the jail, when the doctor talked to him, but surely on the theory of contradicting him, that is what rebuttal testimony is for, to contradict him, when he said he wasn't examined by Dr. Yaskin. Now, that is the only contradiction that your Honor is confronted with now. This man said he didn't remember that he was examined by Dr. Yaskin.

THE COURT: No, this may be indulged further to determine the credibility of the statement: "I don't remember."

MR. PALESE: If your Honor please, that is the problem the State has. This man said that he wasn't examined by Dr. Yaskin, and Dr. Yaskin came in and said that he had examined the man on the 22nd of August. Now, why should the State be permitted to bring in this history that this man gave to Dr. Yaskin?

THE COURT: Because whether he did remember it is a pertinent matter for inquiry.

MR. PALESE: No.

THE COURT: Excuse me, Mr. Palese. The problem of the Court now is to decide whether or not the credibility of his statement "I don't remember" supports the admission of statement made by the witness at the time of the examination which he denied remembering taking place. Is there anything further you want to add on the record? I am not going to rule now. I am going to make a little inquiry of my own.

(At side bar.)

MR. PALESE: If your Honor please, the witness, Yaskin, is on the stand to rebut the testimony of the defendant that he did not remember being examined by Dr. Yaskin, and for that purpose the witness started to give some statements or remarks that were made by the defendant to him, I think on August 22nd, 1945, if that is the date of the examination, and in that statement the witness started to state that the defendant had been locked up for stealing manhole covers and that he had been arrested in the State of Delaware, when I interrupted

the witness and your Honor said then that you would hear us at side bar.

I object to the doctor being permitted to testify as to what the defendant stated to him, in so far as any arrests, which is as far as he has gone, which he may have been subjected to to rebut the testimony of "I don't remember."

If your Honor please, my motion, of course, is that this testimony given by the doctor should be stricken. Secondly, in view of the character of the testimony that the doctor gave, it seems to me that your Honor ought to call the attention of the jury to expunge from the record; and, thirdly, I then come to the point, I don't think your Honor can expunge that from the record, being testimony that was very dangerous and harmful to the defendant, and if your Honor allows my motion that the testimony was not evidential, then I am going to ask for a mistrial, because of the harmful, dangerous testimony that has gone before the jury, testimony that the doctors should not have put in. All of it comes upon the basis as to whether or not this testimony is relevant or irrelevant as elicited from the witness on the stand.

THE COURT: Anything further, Prosecutor?

THE PROSECUTOR: The only thing I would like to say, it will affect the credibility of the defendant as to the history given to the doctor during the examination, and I believe I am entitled to have it stated at this time, when the doctor obtained the evidence as to insanity or sanity, which is the defense in this matter, either to affect his credibility, or either attacking or affecting his credibility, the

fact that he did not remember being examined on the 22nd of August, 1945.

THE COURT: I will deny the motion and allow you an exception.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

(Upon return to the court room.)

(The Doctor's answer as previously given as far as he had gone was read.)

THE COURT: Continue with your answer, Doctor.

THE WITNESS: On July 8th, 1940, he enlisted in the National Guards. He was at Fort Dix for nine months. He was then on maneuvers in the Carolinas for three months. He returned to Fort Dix for a month. He was shipped to Camp Claiborne, Louisiana, and from this place was sent to Fort Lewis, Washington. He thereafter was shipped to the Pacific in April, 1942.

BY THE PROSECUTOR:

Q. Did he tell you where he had been while he was in the Pacific?

MR. PALESE: I object to it as not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

A. He recites the following localities where he served: Melbourne Bay, Australia; Buna, Salmuara, Hollandia, Biak, Mindanao, Linguyen Gulf, and Luzon, and finally, in Mindanao. He stated while in Hollandia he received bayonet scratch wounds on the arms. He was in the hospital at this time. While on Mindanao he states he was thirty feet away when a 500-pound bomb exploded. This occurred in February, 1945. The only thing he remembers is the explosion, and thereafter he states he had an amnesia until he found himself at the Mason General Hospital, Brentwood, New York. When he recovered consciousness, it was May, 1945. He states he was told that he was first taken to Hollandia after the explosion and given insulin treatment. He left Hollandia for the States April the 4th, 1945. He does not recall the trip back to the United States. He states he was told that he was returned in a hospital ship.

In the Mason General Hospital he received fifteen electric shock treatments. He states that he regained an awakeness of his environment while receiving a course of shock treatments. In the hospital he would have episodes of fogginess and "my mind would go blank"; "I walked around at times in a fog." He states that these episodes lasted anywhere from half an hour to a number of hours.

On July 30th, 1945, he received a disability dis-

charge and left the Mason General Hospital to return home.

Q. Did he next state about matters concerning his activity while in the Army?

MR. PALESE: I object; I make the same objection: not proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. On direct questioning, he stated that he was in difficulties while in the Army because of misbehavior. In May, 1940, he went A.W.O.L. three days. He was sentenced to five days in the "brig." In September, 1940, he went A.W.O.L. for thirty days. He states that he was almost constantly drunk during that time, and that he would consume anywhere from three to four quarts of alcohol in twenty-four hours. When he returned he was sentenced to four months in the "brig." He continued the periodic alcohol indulgence while in the Pacific. At one time he stated he distilled about thirty gallons of crude alcohol a week from dehydrated potatoes. He sold this alcohol to other soldiers. He states he drank very little of this distilled alcohol which he made. He indulged in this enterprise for a period of three or four months.

His duties in the Pacific was the infiltration with a small group of men behind the Jap lines in order to secure information as to the Jap troops' move-

ments. He volunteered for this work. He stated that while in the Mason General Hospital he would get episodes wherein he thought he could hear bombs exploding and airplanes dive-bombing. These phenomena were usually associated with his episodes of fogginess.

Q. Did he then tell you, on August 22nd, 1945, during the examination, what he did when he was released from the hospital?

MR. PALESE: I object, and make the same objection.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. When he came home from the hospital, he did nothing for a week. Then he secured a job with a contractor in Bellmawr, New Jersey. He started this job on August the 5th, and worked for one week, and then he quit. Then he said, "I couldn't take it. If I worked too long, I felt foggy." He made forty dollars that week as a carpenter's helper. On Monday, August 13th, he went to Philadelphia and attended a movie. The name of the movie was, he thought, "Laddie and Lassie"; he could not recall the exact title. After the movie he walked around and had a few drinks of beer in Philadelphia, and finally got home from Philadelphia at eleven-thirty at night and went to bed.

Q. Did you next ask him about his activities on August the 14th, 1945?

MR. PALESE: I make the same objection as not being proper rebuttal.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

A. He stated that he lounged around the house the following day, Tuesday. At two minutes after seven that night,—he was very explicit about this time—he left the house, and went to Henney's Cafe at Bellmawr. He remained there two hours drinking beer alone. He then went to the Fire House in the town and had more beer with the crowd which was celebrating in that place. He remained there until eleven-thirty at night.

From the Fire Hall he was invited to another party at the home of Mrs. Dorothy Creek. He feels it took him about five minutes by car to get to the Creek home. At the Fire Hall he met Rita. He did not know her second name. He states he had met Rita about five weeks before at the Marlyn Inn, but he had not seen her since that time.

When he got to the Creek home he again met Rita, who apparently came to the party in another car. They had beers at the Creek party. At twelve-thirty that morning he left the Creek home, and took a walk with Rita. Auld at this point tried to say he didn't know what happened, but after pointed questions he related the following story: When they left the house he asked her to have intercourse with him and she consented. They

walked for about two blocks and they went into shrubbery about six feet off the sidewalk. The nearest house he felt was fifty feet away. When intercourse was attempted he found he was unable to make penetration and was mechanically hurting her. He stopped the relationship and then tried to resume intercourse once more. At this point the girl objected violently. He says he tried to persuade her for five minutes. Thereupon she began to scream and she scratched his face. He became frightened that someone would hear her scream and he struck her twice on the jaw. She went limp. At this point the patient showed a conscious effort to simulate forgetfulness, but after more direct questioning he remembered the details of this act very vividly.

MR. PALESE: If your Honor please, I am assuming the doctor is now talking parenthetically.

THE PROSECUTOR: That is right.

MR. PALESE: I object. I asked the doctor when he started to read his notes, and I permitted him to do that, but I now say the doctor is paraphrasing his opinion as to what this man was or was not doing.

BY MR. PALESE:

Q. Isn't that true, Doctor?
A. I will delete all opinions hereafter.

MR. PALESE: I will ask that that be stricken, if your Honor please.

THE COURT: It will be stricken.

THE PROSECUTOR: I have no objection to it being stricken.

BY THE PROSECUTOR:

Q. Go on.

A. He said he became very frightened after feeling her pulse and realizing she was unconscious. He stayed with her for about a half an hour and then decided to hide her and any evidence which might give a clue. He took her clothes off and a bracelet and put them in her bag and walked about a hundred yards away and threw the articles into the bushes near a creek. When asked why he didn't throw the articles into the water he states, "I don't know why." He then took the body after raising a cover from a culvert, which he knew was in the neighborhood, and he threw her body into the culvert. He thereupon replaced the cover to the culvert. At this point he was asked if he realized what he had done and he said that he did. When asked his reaction he answered, "I felt sorry for both of us after it happened. I realized I had committed murder."

On direct questioning he admitted that the purpose in taking the clothes and disposing of the body in the culvert was to secrete the body and try to conceal the evidence of his crime. He went home and put his clothes, which were bloody, into a bag and went to bed.

Q. Did he tell you what he did the next morning?

MR. PALESE: I object, if your Honor please, as not proper rebuttal.

THE COURT: Objection overruled.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. The next morning and day he spent fooling around the house. That night he went to the firehouse where he met Skip and his wife. A remark was made about the scratches on his face. This upset him, and he went home. The next morning he decided that he would go to Baltimore. He took the bag with his bloody clothes with him, thinking that he would dispose of it along the way. For some reason he was afraid to dispose of the package and returned to Philadelphia. He then decided to walk from Philadelphia to Camden over the bridge, and while on the bridge he threw the package with his bloody clothes into the Delaware River. He then decided to go to Morristown, New Jersey, to stay with his brother. He stayed in his brother's house and loafed around until Tuesday when he decided to return home. While returning home he was arrested on the Black Horse Pike by the Mt. Ephraim police.

MR. PALESE: If your Honor please, I now object to all of this testimony the Doctor has given and I want to make a general objection to all the testimony that it was not proper rebuttal.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception to all of the testimony?

THE COURT: Exception allowed.

(Exception noted for defendant.)

BY THE PROSECUTOR:

Q. Now, Doctor, what did your neuropsychiatric examination consist of?

A. Well, during the historical recital of the facts by the patient, and of course, during the questioning of the patient by myself, that made up the major portion of the psychiatric examination. During all this time and during this recital and during his answers to my questions and the questions of Dr. Spradley and Dr. Wilson I was determining his attitude and general behavior, his stream of thought, whether or not he had any abnormal mental viewpoint and any delusions or hallucinations and also whether the memory patterns were intact. I also determined whether he was oriented as to present place and time. I was also observing his judgment and his insight, and of course, my conclusions based on all these facts were that by his own admission he knew the difference between right and wrong at the time of the charged act. He stated that it is punishable. He demonstrated good insight into the entire situation which confronted him, although throughout the interview he attempted to avoid discussing painful points which came up, yet on prodding, on questioning he could remember these points, so that there was no lapse of memory at any time, by his own statement, and I felt that at the first examination that there was no evidence of any psychiatric mental state.

Q. Either on the 22nd day of August, 1945, or the early morning of August 15, 1945?

A. There was no question ——

MR. PALESE: I object to that, if your Honor please.

THE COURT: Objection sustained.

BY THE PROSECUTOR:

Q. Doctor, by reason of the history obtained by you from the defendant and your examination, what is your opinion as to the mental status of the defendant concerning his ability and capability to distinguish between what was right and what was wrong on the early morning of August 15, 1945?

A. I feel that during that time he was capable of judging between right and wrong.

Q. Doctor, did you re-examine the defendant on August 13, 1945?

A. August 13?

Q. 31, pardon me?

A. Yes, sir.

Q. What time, sir?

A. At 2:30 P. M.

Q. Who was present when that examination took place?

A. Dr. Spradley, Dr. Wilson, yourself, and I believe Chief Doran of the County Detectives were present at that examination. Incidentally, Mr. Auld's father was examined and was questioned before we resumed the second examination of Mr. Auld on that day.

Q. Did the defendant during the examination of August 31, 1945, make a recitation of any facts to you?

A. Yes, sir.

Q. What on this occasion did he say to you concerning his actions?

MR. PALESE: If your Honor please, I object to the question because it is not proper rebuttal.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. The patient was more belligerent today and antagonistic because he was told that we wanted the truth in order to be better able to judge his mental state. He admitted that he had failed to tell us the true facts concerning his court-martial experiences in the Army. He became very upset and belligerent and said, "What do you want with my Army records? I am a civilian now."

Q. What else did he say to you?

MR. PALESE: I make the same objection, if your Honor please.

THE COURT: Objection overruled; exception allowed.

(Exception noted for defendant.)

A. On direct questioning he stated that he had six different court martials. Three were summary court martials, two were special, and one was a general court martial. In his third court martial in Australia he was charged with desertion and was sentenced to seven years together with a dishon-

orable discharge. He explains this by saying, "I was drinking. I didn't know what I was doing. My company was supposed to go to New Guinea, and I got drunk and missed going with them." He states he served three days of this sentence and then by volunteering for hazardous duty behind the enemy lines his dishonorable discharge and seven-year sentence were lifted. When questioned about the statement that he had been given the Purple Heart he stated that this was true. He says, "It was given to me in the field by my commanding officer." He goes on to state that a piece of shrapnel struck him in the left knee. He refused hospitalization. He goes on to say he was awarded the Purple Heart immediately by his officer. When questioned about the fact that it is not officially recorded he states, "My commanding officer got killed and I guess he didn't have time to write it up."

He further states that this medal has been lost, that the Japs got it at Biak when he sustained his wound. When questioned about the scars on his forearm he states he was struck with a bayonet in the right forearm, and also in the left forearm by a Japanese sword. These wounds were received in one action. On questioning how they were taken care of he again states that he did not report his wounds but sewed them up himself. He stitched them with a thread and needle. He recalls that the thread was white. In other words, he stitched the right wound with his left hand and the left wound with his right hand. When questioned about how he took care of the shrapnel wound in his left knee he states he also took care of it himself. He was then questioned about the statement he had made that he had received shock therapy. He became extremely annoyed and belligerent and said, "They

told me what I got. I don't know what treatment I got." He wanted to leave the examining room and return to his cell, but he was persuaded to go on with the interview. He states he got to the Mason General Hospital on May 7, 1945 and was kept in a closed ward until May 29 or 30. On that day he was transferred to the open ward. In the open ward he had many privileges. He was allowed to walk through on the hospital grounds and visit various departments. On further direct questioning he states that he recalls having an argument with the sergeant in Australia, that he was sent to the 27th General Hospital in Hollandia. From Hollandia he was sent to the Mason General Hospital. Suddenly he recalled that he had told us last week that he did not recall crossing the Pacific and he said, "I don't remember this trip. All I tell you is what I was told."

On direct questioning he also states that he had refused the Distinguished Service Cross for his work in Hollandia behind the enemy lines. He states he had also refused a Silver Star and a Bronze Star awarded to him. He explains this by saying, "I was sent to fight a war, not to get medals."

After being in the open ward for three weeks at the Mason General Hospital he was allowed to have week-end furloughs.

Q. Doctor, the last paragraph, may I point it out to you, read that.

A. Yes. After being in the open ward for three weeks at the Mason General Hospital he was allowed to have week-end furloughs. The boy states since his first furlough, which occurred around June 16, he came home to Bellmawr every week when he was off up until July 30, when he was finally discharged. I think the rest is irrelevant.

Q. Doctor, at the end of the second examination you formulated an opinion as to the capability of the defendant to distinguish between what was right and what was wrong. Did this tend to confirm or reject the opinion that you have had as a result of your first examination?

A. It confirmed the opinion of my first examination.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Doctor, who asked you to interrogate the defendant with respect to the Purple Heart?

A. No one.

Q. Where did you get the information that he had said he had a Purple Heart?

A. The patient had volunteered that information.

Q. When?

A. During the first examination.

Q. Then why did you interrogate him the second time about it?

A. Because there are certain facts which came into my possession which indicated that he had not been awarded that medal.

Q. Who gave you the facts? That is what I want to know. Who gave you the facts that you could go back and interrogate the defendant with respect to the Purple Heart?

A. There was a form sent to me from the Prosecutor's office.

Q. What was it, Doctor?

A. It was just a recital of this man's Army history, apparently.

Q. What was it, Doctor, that you got from the

Prosecutor's office? What was on it? Do you have it in your file?

A. Yes.

Q. What was on the memo that prompted you to interrogate him about the Purple Heart?

A. Shall I read the whole thing, sir?

Q. Yes.

A. "August 23, 1945. This date instructed by Chief Doran to proceed to Mason General Hospital, Brentwood, Long Island, and check on the record of one Howard Auld. Proceeded to the above hospital and interviewed Colonel Cleve S. Odom, Major Benjamin Simon, and 2nd Lieutenant S. Fargione.

"Auld was admitted to the hospital in March of this year, having been sent there from a hospital in New Guinea. I learned upon Auld's arrival he was perfectly normal, that he was very belligerent, having just been the recipient of a general court martial at which time he was found guilty and given a dishonorable discharge. After doing 149 days he was restored to his company, after which he had an argument with a sergeant and became violently enraged and was placed in confinement and shipped back to the States, arriving at the Brentwood Hospital."

Q. I am talking about the service cross, Doctor. Let us forget about this.

A. You told me to read the whole thing.

Q. Read the section in there with reference to the Distinguished Service Medal. That is what we are talking about, Doctor.

THE PROSECUTOR: Does Mr. Palese desire ——

MR. PALESE: I don't desire anything, Mr. Prosecutor. The doctor understands my question. Let him answer it.

THE PROSECUTOR: The question is being answered.

THE COURT: The witness' attention is now drawn to the reference in that information about the Distinguished Service Cross?

MR. PALESE: That is correct. That was the question that I propounded to the doctor.

THE COURT: I think the original question referred to the Purple Heart, Mr. Palese.

MR. PALESE: I beg your pardon.

THE COURT: You are calling his attention to the reference to the Purple Heart.

MR. PALESE: That is right, that made him go back to the defendant to interrogate him about it.

THE PROSECUTOR: If your Honor please, I understand that what Mr. Palese asked him was to read the memo from the note which he got from the Prosecutor's office.

MR. PALESE: With respect to the Purple Heart.

THE PROSECUTOR: Oh, just with respect to the Purple Heart. That is all right.

A. His record was that he did not receive the Purple Heart nor did he receive the Distinguished Service Cross.

Q. That came to you, Doctor, from the Prosecutor's office?

A. That is right.

Q. So that when you went back on the 31st of August you didn't go there as a psychiatrist, did you? You went there as a detective to check on whether or not he was telling the truth with respect to the Purple Heart?

A. That isn't so.

Q. You interrogated him about the matter, didn't you?

A. I interrogated him about the matter because I wanted to prove a certain psychiatric point to myself as to this man's truthfulness.

Q. It proved what to you, Doctor?

A. That this man wasn't truthful, that he was a pathologic story teller.

Q. That didn't mean anything to you, did it, that he was a story teller?

A. It meant a good deal to me, psychiatrically.

Q. Doctor, did you, after you had examined this man on the 22nd of August take time out to check the records in the Mason General Hospital?

A. No, sir.

Q. Did you take time out before you made your diagnosis to check the medical records at the Lyons Hospital?

A. No, sir.

Q. Would that have helped you in making your diagnosis?

A. No, sir.

Q. You mean to say that if you had information that this man had amnesia from the time he left Hollandia to the time he landed in the Mason General Hospital, and that if you had information that when he was in the hospital in Hollandia that he would wander out into the jungle and come back in a confused state, and if you had information

that while he was in Hollandia he was in a locked ward and that while he was in the locked ward he clawed on the screen to get out that that wouldn't have helped you in your diagnosis?

A. Not in my diagnosis of his mental state as he was on August 22, 1945.

Q. It would have helped you, Doctor, to make a diagnosis, wouldn't it, as to his prior mental condition?

A. It would help me decide his prior mental condition but it wouldn't help me decide his present mental condition as on the day I examined him.

Q. You mean to say, Doctor, because you talked to this man and he answered these questions that that was the only purpose that you were there for and that that was the only reason and the only fact that you had to form a diagnosis?

A. The interview and the examination were the only facts I needed as a psychiatrist to come to a conclusion on that day.

Q. And even though he may have been psychotic before that day that that wouldn't have helped you?

A. That wouldn't have helped me reach an opinion as to his mental status as of the day I examined him.

Q. Doctor, the Prosecutor has asked you as to what his mental condition was on the 15th of August, not what it was on the 22nd of August, and you have said that he was mentally sound on the 15th of August, 1945?

A. I said that he could distinguish the difference between right and wrong.

Q. Did he have any mental deficiencies on that day?

A. None that I knew of.

Q. In order to formulate that opinion, Doctor,

his background would have been very helpful and beneficial to you, wouldn't it?

A. The most important things in formulating my opinion were his own actions and his own statements.

Q. Suppose you had the hospital records, Doctor, of his treatments at the Mason General Hospital and of his conduct and behavior while he was confined in the Hospital at Hollandia. Wouldn't that have helped you to formulate an opinion as to his mental condition on the evening of August 14 and the early morning of August 15?

A. Not necessarily.

Q. Doctor, once a person is psychotic what are the probabilities of him going back into that psychotic state?

A. There is always a probability.

Q. So that then you were interested, I suppose, to know what strain and stress he was under on the evening of August 14 and 15?

A. That is right.

Q. Now, if he had been psychotic and was mentally deficient prior to that time, the probabilities would have been that strain and stress would have some effect upon him?

A. Possibly.

Q. Now, Doctor, you say "possibly", would it have been probably?

A. Possibly.

Q. Why do you say possibly?

A. He might have—he might not have any reaction to stress and strain, and then again he may.

Q. Is that why you say it is possible he might not and he may have it?

A. That is right.

Q. Is it unusual for a person to have had a psy-

chotic episode or an amnesia during a trip from Hollandia to the Mason General Hospital to get some stress and strain and bring him back into a psychotic state?

A. Nothing is unusual.

Q. What is that?

A. Nothing is unusual in psychiatry.

Q. Would you say it was probable for a person who has been subjected to that condition that any strain or effort might bring him back into a psychotic stage?

A. That probably remains.

Q. All right. If he does come back to a psychotic state, then, would you say he is sane or insane?

A. Will you read that question again?

Q. Maybe I didn't put it properly. In other words, when he goes into a psychotic state caused by any strain or stress, what is his mental condition under those circumstances?

A. Well, I mean you have told me. You said he goes into a psychotic stage. If he is psychotic, he is psychotic.

Q. If he is psychotic, what is his mental condition? When a person is psychotic or has an episode of psychosis, what is his condition?

A. It can be any number of symptoms or signs in the whole spectrum of psychiatry.

Q. Well, is he sane or insane?

A. Well, if a man is insane, he is insane.

Q. How can you determine that?

A. By that what do you mean?

Q. At that particular time.

A. If you examine a man.

Q. And if the examination, Doctor, shows that he has a psychotic episode, would you say that he is sane or insane?

A. Well, if my examination revealed to me that he was psychotic, he is insane.

Q. He is insane?

A. Yes.

Q. Doctor, in this case we do have a diagnosis made by a doctor here that he was in a psychotic state when he was admitted to the hospital in Hollandia after having been exposed to this bursting bomb. Would you say at that time, he was sane or insane?

A. If a diagnosis was made, he was psychotic or insane.

Q. That is right. Now, Doctor, once a person has a diagnosis of psychosis, what does that mean?

A. He is suffering from a mental disturbance at that time.

Q. If a diagnosis of psychosis is made in Hollandia in February of 1945 and if a diagnosis of psychosis is made upon his admission to the hospital in New York, on May 7, 1945, and if a diagnosis of psychosis is made on the 27th of July with symptoms in remission ——

THE PROSECUTOR: Thank you, Mr. Palese.

Q. What do you say as to the mental condition of that individual on the 27th of July, 1945?

A. It would depend on the findings of the psychiatric examination.

Q. Doctor, I want you to take those because they are diagnoses that were made. They were made because he was belligerent, he was resentful, he was dreaming about combat duty, he was surly, he would not take any discipline, and as a result of those factors a diagnosis of psychosis unclassified was made?

A. I would accept, I would accept this last finding

which I understand was psychosis in remission. That means that the man had no active symptoms.

Q. Doctor, we are going to go over it step by step. The first diagnosis was made in Hollandia, and that was psychosis unclassified without any symptoms in remission. At that time what would you say his mental state or status was?

A. I would assume the psychiatric examination and observations were verified, and I would assume he had a psychosis.

Q. He was insane?

A. Yes.

Q. Doctor, psychosis and insanity are synonymous, in psychiatry?

A. Yes.

Q. When you say a person has a psychosis, you say he is insane, is that correct?

A. That is right.

Q. When you have a diagnosis of phychosis, you have a diagnosis of insanity?

A. Are you talking about legal insanity?

Q. Well, now, I am going to get to that.

A. If you are talking about legal insanity, that is very important.

Q. We will forget legal insanity for the moment. You answer me and tell me whether psychosis and insanity are synonymous?

A. They are not synonymous all the time.

Q. What do you mean?

A. You may have a psychosis and have a lucid interval.

Q. What is that?

A. You can have a psychosis and a lucid interval.

Q. If you don't have lucid intervals—where a person has a diagnosis of psychosis or of insanity, he may have lucid intervals?

A. Yes.

Q. When he has a lucid interval, he is not insane?

A. Yes.

Q. When you make a diagnosis that he is insane it is because you don't have a lucid interval at that time?

A. Yes, sir.

Q. So that, Doctor, when the diagnosis of psychosis unclassified was made, does that mean anything to you, Doctor, other than the type or character of the insanity, the word "unclassified"?

A. Unclassified means to me they weren't sure in their own mind as to what type of psychosis he may have had.

Q. You mean they were unsatisfied as to the type of psychosis?

A. Yes. Unclassified means that.

Q. So they weren't satisfied as to the classification of the insanity?

A. As to the psychosis.

Q. I don't want to play with words but when they made use of the word "psychosis unclassified," that means they could not determine the class of insanity?

A. That is right.

Q. That is all that "unclassified" means?

A. Yes.

Q. Are there different types?

A. Yes.

Q. There is a toxic type?

A. Yes.

Q. There is a functional psychosis that you can't put your finger on the cause?

A. There are many other types, also.

Q. There are three types of psychosis: the toxic type, the functional type, and then there is a third

type you can't put your finger on as to the classification of it. Am I correct in that, or incorrect?

A. I won't agree with that interpretation.

Q. What are the three?

A. I don't think there are three.

Q. How many?

A. There are psychosis of organic mental disease; they are functional, they are toxic, they are the phychosis of mental deficiency; there is a hysterical psychosis; there is the epileptic psychosis, and there is the psychopathic personality.

Q. The epileptic psychosis is functional?

A. Organic.

Q. I beg your pardon. With toxic psychosis, you can find the reason for the psychosis?

A. Yes.

Q. Now, Doctor, we have this individual, Mr. Auld, in Hollandia. He has a diagnosis of psychosis unclassified, which, as you state, means that the type of psychosis wasn't determined, and then he comes to the hospital in New York, the Mason General Hospital, Doctor, and upon his admission at the hospital in New York, a diagnosis of psychosis unclassified is made, manifested by a dream-like state, from belligerent and wanting to go back to combat.

Now, at that time, Doctor, what would your opinion be as to the mental condition with that diagnosis?

A. I can only accept the diagnosis.

Q. I want you to, Doctor, because that is the case.

A. If they got a diagnosis of psychosis, I would accept it.

Q. As insanity?

A. Yes.

Q. Then, Doctor, coming to the time of his dis-

charge, and then it is psychosis unclassified, active symptoms in remission—now, does that mean the lucid interval you are speaking of?

A. That means no symptoms of psychosis at that time.

Q. At that time. But, Doctor, you are dealing with an individual who has a probability of going "off the beam," as it is sometimes said, under stress and strain?

A. Do you want me to answer that?

Q. Yes.

A. Yes.

Q. And anything, Doctor, isn't that correct, anything can set that individual "off the beam"?

A. Not anything; a particular set of circumstances.

Q. When he is set "off the beam," he goes back into his insanity or his psychosis?

A. If he goes off and he becomes insane, he is insane.

Q. Now, Doctor, in this case we have the facts that the defendant was engaged in the act of intercourse with a young girl, and that while he was so engaged, she hollered and scratched his face. Would you say that was sufficient stress and strain to set him "off the beam"?

A. I do not.

Q. You do not? You do not think that was sufficient stress and strain to do anything to this young man, who had had two prior diagnoses of insanity?

A. That is right.

Q. You do not think, Doctor, that was sufficient strain and stress to bring him back into his insane status?

A. I do not.

MR. PALESE: That is all.

THE COURT: We will recess until tomorrow morning at 10 o'clock.

(At this point a recess was taken until Tuesday morning, March 19, 1946, at 10 o'clock A. M.)

March 19, 1946.

SEVENTH DAY.

(Trial of the cause resumed, pursuant to adjournment, at 10 o'clock A. M., in the presence of the defendant and counsel for the respective parties.)

JAMES B. SPRADLEY, sworn.

BY THE PROSECUTOR:

Q. What is your full name, Doctor?
A. James B. Spradley.
Q. Are you a member of the medical profession?
A. I am, sir.
Q. What institutions are you a graduate of, Doctor?
A. The Medical Department of the University of Texas, 1918.

Q. Since 1918, have you been practicing medicine?

A. I have, sir.

Q. Have you specialized in any particular branch of the medical science?

A. Most of my life has been devoted to the study and treatment of nervous and mental diseases.

Q. Which is referred to as psychiatry?

A. Neurology and psychiatry, yes, sir.

Q. Are you connected with any institutions?

A. At the present time I am Medical Director of the Trenton State Hospital, Consulting Psychiatrist to the Mercer Hospital, the Consulting Psychiatrist of the State Selective Service System.

Q. Did you say you were Clinical Director of the New Jersey State Hospital?

A. Medical Director.

Q. How long have you served in that capacity, Doctor?

A. I have been with the Trenton State Hospital since 1927, in various activities. I have been the Medical Director for some two years.

Q. As the Medical Director of the State institution, how many people, would you say, come under your jurisdiction in one year for some mental disorder?

A. We admit about a thousand patients a year.

Q. Did you have occasion to examine the defendant, Howard Auld?

A. I did, sir.

Q. When was that examination conducted?

A. I examined him the first time August 22nd, 1945, and the second time on August 31st, 1945.

Q. Concerning the examination on August 22nd, 1945, where was that examination conducted?

A. In the Prosecutor's office in this court room.

Q. In the presence of whom?

A. Dr. Wilson, Dr. Yaskin, yourself, Chief Doran,

and an officer from the jail, and, I think, Detective Dube.

Q. What did your examination consist of?

A. A physical and neurological examination to determine the physical and nervous condition of the individual, and a mental examination to determine the functions of this man's mind at that time.

Q. At what time are you referring to, Doctor?

A. At the time of the examination, and to form an opinion as to his previous mental status.

Q. In conducting your examination, Doctor, was it necessary for you to obtain a history from the patient?

A. Quite necessary.

Q. In obtaining the history, was that conducted in the manner of a question and answer form?

A. Yes, we questioned this young man on his previous life and background and experiences, and so on.

Q. In obtaining the history from the defendant, which was part of your examination to make the determination necessary, did he tell you as to how this crime happened?

A. He did, sir.

Q. Did he give you all the details?

A. Quite complete.

Q. Now, Doctor, as a result of the history given to you by the defendant, and the examination conducted by you, what was your conclusion as to his capability of distinguishing between what was right and what was wrong, in so far as the 22nd day of August, 1945, was concerned?

A. On August 22nd, 1945, this man showed no evidence of mental abnormality.

Q. Was he capable, Doctor, in your opinion, of determining what was right and what was wrong?

A. He was.

Q. With respect to the examination conducted on August 31st, 1945, you followed the same general pattern as conducted on August 22nd, 1945?

A. It was. We had received some additional information about this man's Army record. There were some discrepancies in his statement about his Army service and the record, and we gave him the opportunity to clarify that.

MR. PALESE: I object to that, and ask that it be stricken. How does this doctor know there was any discrepancy in his Army record?

THE COURT: I will overrule the objection.

MR. PALESE: Exception.

THE COURT: Exception allowed.

(Exception noted for the defendant.)

Q. As a result of your examination conducted on August 31st, 1945, Doctor, what was your conclusion, your opinion, as to his condition in so far as being capable of distinguishing between what was right and what was wrong, on August 31st, 1945?

A. I was of the same opinion; that this man showed no mental abnormalities, and was able to distinguish between right and wrong.

Q. In your opinion, would you say, on August 22nd, 1945, that he was in a state of amnesia?

A. On August the 22nd, no, sir, he was not.

Q. Would you say he was in a state of amnesia on August the 31st, 1945?

A. He was not.

Q. With respect to August the 14th, 1945, and the early morning of August 15th, did the defendant give you a statement as to the manner in which the crime was committed?

A. He did.

Q. As a result of the statement given to you, and your examination of the detailed statement as to the commission of the crime, and the recitation of his activities during the commission of the crime, prior and during and afterwards, is it your opinion, at the time the crime was committed, that this defendant had the ability and was capable of distinguishing between what was right and what was wrong?

MR. PALESE: I object as to the form of the question.

THE COURT: Sustained.

Q. Let us assume that the following set of facts are true: that the defendant was a person of the age of twenty-five years, finished eighth grade in school at sixteen years, worked at various jobs, had previously been convicted of several crimes, joined the National Guard in 1940, became Federalized in September, 1940, and after several periods of training in various parts of America, finally, in April of 1942, arrived in Australia.

During his stay in the Army he was court-martialed on several occasions. Subsequently, about April of 1945 he arrived at the Mason General Hospital in New York, was kept in a closed ward for a short period of time, but upon his arrival at the Mason General Hospital his mental status was as follows: "In the Admitting Ward patient was in

New Jersey State Library

good contact, answered questions readily, but was rather belligerent. Stated that he would never carry out an order again. He was neat in appearance, resentful, inappropriate in some of his emotional responses, and remained very belligerent. In good contact, well oriented, denied any ideas of reference, persecution or hallucinations."

That during his stay at the Mason General Hospital he was treated by several physicians, who found that his conduct was exemplary; he was able to take care of himself without any need of supervision; that he was given several passes, from which he returned promptly and without incident; that he took part in all the ward activities, attended to his various ward details without any complaint, and was respectful to all ward personnel. He showed no unusual mental trends, nor were any elicited, and that upon his discharge on July 22nd, 1945, he showed no abnormal activity or thought content. That also during his stay at the hospital he was pleasant, friendly, quiet, that he told stories of adventures as a paratrooper which at times seemed exaggerated. He was not excessively irritable or combative, and complied with all the rules and regulations; that he was no way dangerous either to himself or to other persons; that he presented himself to the Medical Board at the Mason General Hospital on July 27th, 1945, and that he received his discharge, and that the disability found by the Board was as follows: "Marked for military service. Future—minimal for civilian life."

That the diagnosis of the Board of Medical Examiners at the Mason General Hospital was "psychosis, unclassified, active symptoms in remission," manifested by excitement, confusion, and threatening attitude. That upon his discharge he returned

home and worked for a week as a carpenter's helper and made something like forty dollars. That on August 14th, 1945, he awakened, made a trip to Camden or Philadelphia, and had a few drinks and returned to Blackwood. At 7:02, heard news announced of the fact that the war with Japan had terminated; started to celebrate at various places in Bellmawr and its vicinity. Arrived at the Bellmawr Fire Hall, had a few drinks, where he met the decedent on the outside; then went to a house party in Haddon Heights, after having been invited by Miss or Mrs. Creek. That he stood at the bar in the cellar located in the house, in the presence of "Skippy," her husband, defendant's sister, a police officer by the name of Auletto, at which time Officer Auletto did not see him hugging and kissing the decedent, and at which time he discussed the possibility of entering some kind of business, and that he generally talked about topics of the day.

That at about 1:30, on the early morning of August 15th, 1945, he was seen leaving the front of the premises in company with the decedent; that he walked several hundred feet to a street called Maple Avenue, down Maple Avenue, during which journey he was hugging and kissing the decedent, when he finally came to a spot on Maple Avenue some sixty or seventy feet away from the pumping station where there was located a sanitary well or cistern, which pumping station and sanitary well he knew were in that location. That the decedent stated that she did not want to go into the bushes, but that he picked her up and carried her in. He put her down on the ground; that he attempted or actually entered into the actual act of intercourse. That she screamed or hollered and scratched him on the face and the hands. That in order to prevent her from screaming so that

a possible occupant of a house some fifty feet away would not hear the screaming or hollering of the decedent, he grabbed her by the throat, choked her, and struck her on the chin or face or jaw on two occasions, and that she went limp. That several minutes thereafter he felt her pulse and determined in his own mind that she was either unconscious or dead, and proceeded to completely undress the young girl. That he put her clothing in a pocketbook she carried, and that he took off her bracelets and put them in the pocketbook. That he took the pocketbook and walked some two hundred feet towards a creek, and that he threw the pocketbook into the bushes, and that he came back, picked up the nude body, threw it across his right or left shoulder, carried her from the bushes, some sixty or seventy feet away from the pumping station down further on Maple Avenue, opened the wire door, and opened a 176-pound steel lid to the cistern, dumped her off his shoulder into the well, closed the cistern, and then went about his business.

That the defendant, in testifying in this case, states that he remembers every fact and circumstance surrounding the commission of this crime, including the throwing over his shoulder of the nude, unconscious or dead body of the decedent. That after he closed the lid, he started to walk down or up the Black Horse Pike towards his home; that he was seen between 2:30 A. M. and 3:30 A. M. on the morning of August 15th, 1945, by Mrs. Anderson; that he was completely covered with blood. That he was under a light so that she could recognize him. That he got up the next morning, remembers getting up the next morning with a headache. Stayed around all that day, and that night of August 15th, 1945, at 6:30 in the evening, went to the Fire Hall in Bell-

mawr and was seen by Mrs. Anderson, who thereupon interrogated him as to the scratches on his hands and face, at which time he made no response. Upon being asked as to what shrub he had been in, he told Mr. Anderson—he grunted—and went about his business.

That later that evening, and early in the morning of August 16th, 1945, he took his bloody pants and his bloody shirt, put them in a suitcase, and walked across the Delaware River Bridge and threw them off the bridge into the Delaware River. That subsequently his bloody shorts were found in the home of a friend of his who attended these various parties with him.

MR. PALESE: I don't want to interrupt, but there is no testimony in this case that there was a pair of trousers found in the Hulse home. All Mr. Hulse says was that it looked like some things that Mr. Auld had been wearing. I wish that the Prosecutor would put the testimony in, and not his testimony. They are the facts that were testified to.

THE PROSECUTOR: I will agree with Mr. Palese on that.

THE COURT: Let it be stricken: that part of the statement which includes a reference to the shorts, and characterizing them as the defendant's will be stricken.

Q. (Continuing) Subsequently, a pair of light khaki shorts were found in the Hulse home, filled with what appeared to be blood. That Mr. Hulse, who had been on a business or pleasure trip with the defendant, had seen the very shorts on the de-

fendant when he went to bed during a trip to the seashore.

MR. PALESE: I object to that. There isn't any testimony of his having seen a pair of shorts on Mr. Auld.

THE COURT: I recall no testimony in which a positive statement linking these shorts with those found in the Hulse home given by the witness.

THE PROSECUTOR: I will withdraw it, then, that part of the question.

THE COURT: That part of the question in which a reference is made to the shorts as being the same shorts that Mr. Hulse saw on the pleasure trip, will be stricken.

MR. PALESE: If Your Honor please, that's the second time in succession the Prosecutor has made a statement, and when his attention is called to it, he very quickly withdraws it. I think he ought to be told about that by Your Honor. He knows there is no such testimony in this case, but he can make an impression upon this jury, and immediately when his attention is called to it, say "I will withdraw." He knows that isn't proper.

THE COURT: Counsel suggests, Mr. Prosecutor, that two references as facts which are not facts in the case have occurred.

THE PROSECUTOR: I am sure that it wasn't done purposely, if the Court please.

THE COURT: We will concede that, but the purpose for which I am directing your attention is that it will not be done again.

A. (Continuing) That on Thursday morning, August 16, 1945, at 10:30 the defendant was seen and picked up by Mr. and Mrs. Agnew, at which time he was full of scratches on the face, that he volunteered the explanation that he had been in a fight with some British sailors, accounting for the scratches on the face, that he was left off in Bellmawr or four miles from the Fairview Circle, that on the night of August 21, 1945, at about 11:30 in the evening he was arrested by Officer Norton and another police officer of the Borough of Mt. Ephraim, that he was taken to the station house, that he was asked his name and that he gave a fictitious name, that the defendant then stated, "You ought to know me. I am the person you have been looking for for three days," that subsequently he was taken to the Prosecutor's office, that subsequently in the early morning of August 22 he was taken to the Prosecutor's office and turned over to Chief Doran, that Detective Dube and Captain Mulligan of the Camden County Detective force then took the defendant to the scene of the crime, and the defendant pointed out to them where he had thrown the pocketbook containing the clothing of the deceased, that on the next morning on the return of Detective Dube and Captain Mulligan to the spot indicated by the defendant there was found some forty feet away from the creek the pocketbook referred to by the defendant, that at three o'clock in the morning of August 22, 1945, in the presence of Captain Mulligan, Chief Doran, Officer Auletto, and William Macdonald that the defendant made a full disclosure of all of

the facts concerning the commission of the crime and his activity and his own admission that he had committed the crime. He also recited his actions after the commission of the crime, that he subsequently said that he wanted to dispose of the body and the clothes in order to conceal the commission of the crime, that at three o'clock in the afternoon of August 22, 1945, in the presence of yourself, Dr. Wilson, Dr. Yaskin, Chief Doran, and myself that he subjected himself to a mental examination, that he stated to you essentially the same facts and circumstances contained in his confession made on August 22, 1945, which confession was made at three o'clock in the morning, that during his examination by the doctors and yourself he stated that he was sorry for the both of them, that he realized that he had committed murder and he realized the possible penalty that the act might entail, but that he subsequently testified during the course of the trial that he had no recollection of his arrest or confession or examination and that he did not remember anything until about September 1, 1945, that he had during his examination on August 22, 1945, at three o'clock in the afternoon given you a history and detailed account of the commission of the crime and that later on August 31, 1945, another examination was conducted, at which time he made a statement to you and those present which was essentially the same as contained in the confession made on August 22, 1945, at three o'clock in the morning.

Doctor, assuming all of these facts to be true would you say that it is your opinion that the defendant was capable of understanding the difference between what was right and what was wrong at the time of the commission of the crime; to wit, between

1:30 and 2:30 on the early morning of August 15, 1945?

MR. PALESE: I object, if your Honor please. There are so many misstatements in what the Prosecutor has said to the doctor that I just don't know where to start.

THE PROSECUTOR: That is argumentative, and I move that it be stricken.

THE COURT: That part of the reason will be stricken.

MR. PALESE: First he states, and there is no testimony in this case, that he choked this girl because he did not want anyone in the vicinity to hear her scream. There is no such testimony in this case. She hollered and he punched her. That is No. 1.

Secondly, there is no testimony in this case employing the language that the Prosecutor has used in his question that he determined in his own mind that she was unconscious or dead. The testimony in this case is that he felt her pulse and thought that she was dead. There is also testimony in this case that he thought she was unconscious, but there is no testimony that he said he felt her pulse and made up his mind to determine whether or not she was alive or dead.

There is no testimony in the case that he walked with this pocketbook in his hand for 200 feet and threw it away. The testimony is that it was found at a certain place, but no testimony from anyone that the defendant walked a distance of 200 feet with the pocketbook.

There is no testimony in this case that he picked

the body up. The testimony is that he put the girl on his shoulder. The Prosecutor says he picked her up from the ground. That might be characterizing what he did, but the testimony is that he put this body on his shoulder. There is no testimony in this case that he had to open the door at the pumping station. The testimony is that he carried her over there and no testimony that he had to open a door in order to get in the area with this body.

There is no testimony in the case on the part of Mr. Agnew that his face was full of scratches. He said that he had scratches on his face. The Prosecutor inserts the words "full of scratches," which I say are not in this case.

The Prosecutor characterizes the fact that when he got to the police station he gave a fictitious name. That is not the testimony. He gave a name of Anderson, and that is what the Prosecutor ought to use in his question and not that it was a fictitious name, because in a hypothetical question the testimony is to be used and not characterized by the person propounding the question. Now, the testimony in this case is that when the officers went with Mr. Auld and he indicated a spot the pocketbook wasn't found, and that the following morning they went there and they found the pocketbook. The Prosecutor says in his question that it was found at the place where the defendant suggested, and that is not the fact in this case. He has used on two occasions the words that Dr. Spradley was given essentially the same facts. That means nothing in a hypothetical question. They are some of the things I was able to catch as the Prosecutor was propounding his hypothetical question.

THE COURT: I will overrule the objection with that part of the question in which reference is made

about the striking to prevent screaming so that someone in a house fifty feet away will be stricken. The question will stand with that elision.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

BY THE PROSECUTOR:

Q. Doctor, with that elision made by the Judge would you answer the question?

A. It was my opinion at the time of my examinations and my opinion now that this man was fully capable of distinguishing between right and wrong, that he had full knowledge and realization of what he did on the night of August 15 or the morning of August 15 at the time of the commission of this crime, before, during, and after.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Doctor, in order to determine the mental status of this defendant either on the 22nd of August when you examined him and again on the 31st of August, did you have before you any information or data as to the medical status of this defendant prior to your examination of this defendant and your examination on August 22?

A. On August 22, the only information I had was that which was given to me by Mr. Auld.

Q. Doctor, don't you think that the medical records of the Mason General Hospital and the medical records at the Lyons Hospital concerning the mental behavior and conduct of this defendant prior to August 14 and 15 would have been helpful to you?

A. It wouldn't have been helpful to me in determining his condition at the time of my examination. I was the one to determine that. The records of what had happened previously was not important as to his condition at the time I saw him, and I wasn't particularly concerned about his condition during the time he was in the Southwest Pacific with relation to his condition on August 22. However, I did obtain from him a history that he had been in the hospital, that he was in the Mason Hospital and that he had been released and the date of his release. I had that information.

Q. Did you have the information, Doctor, that he had had a diagnosis of psychosis?

A. Not at that time. I assumed that he had a diagnosis of psychosis or he would not have been in a neuropsychiatric hospital.

Q. Then you did know that he had had a diagnosis of psychosis?

A. I didn't know it. I assumed it.

Q. You assumed it?

A. Yes.

Q. That diagnosis, Doctor, meant what to you at the time the diagnosis was made? I mean, his mental status at the time the diagnosis was made?

A. I didn't know what diagnosis had been made. I didn't know what his condition had been.

Q. Assuming, Doctor, it was a diagnosis of psychosis, what did that indicate to you?

A. That indicated to me that some time in the past that this man had gone through an unstable

period to the point that the Army doctors had hospitalized him for study or treatment.

Q. Doctor, you don't make a diagnosis of psychosis until after a person has been observed and treated; isn't that correct?

A. You can't make a diagnosis of psychosis without seeing your patient or without being given the necessary information.

Q. Doctor, in this particular case after Mr. Auld had been observed and treated at the Mason General Hospital and a diagnosis of psychosis unclassified was made at first?

A. I learned that later, yes.

Q. What is that?

A. I learned that later, yes.

Q. Wasn't that necessary information for you, Doctor, to determine the mental status of this man on August 14 and 15?

A. This man was released from the Mason General Hospital. Now, it is quite obvious that his mental condition was satisfactory or he would not have been released. I know the Mason General Hospital. I had that information. He had been released. He was in his own custody. He was normal mentally at the time I saw him. He gave me a very clear account of his behavior and his conduct and what had happened to him in the interval between.

Q. Doctor, if you will answer my question ——

THE PROSECUTOR: Leave the doctor finish.

MR. PALESE: I am going to stop him right now because he isn't answering my question.

(The following question was read by the stenographer: "Wasn't that necessary information for you,

Doctor, to determine the mental status of this man on August 14, and 15?")

Q. Now you can answer that question, Doctor, without going into a history. Can you answer that question?

A. Not with a simple yes or no because it has to be qualified.

Q. Doctor, I am asking you wouldn't it have been helpful to you to have gotten a complete record of this man's stay in the Mason General Hospital?

A. I did get that.

Q. When did you get it?

A. Some time in between August 22 and August 31—that is when I came back down to see this man again, because the Army records of this man were not exactly the same as the information that Mr. Auld had given me on the first occasion, and I was interested in knowing if Mr. Auld was confused about it or he was misleading me or what the situation was, so with that information I came back and had another talk with Mr. Auld and he admitted that the information, certain parts of it that he had given us previously was wrong.

Q. Well, now, Doctor, why do you insist on not answering my question?

THE PROSECUTOR: I object to the characterization.

MR. PALESE: I ——

THE PROSECUTOR: Just one moment. Extend me the courtesy of addressing the Court. I object to the question and the remark made by Mr. Palese, and ask it be stricken from the record.

MR. PALESE: I ask that the Doctor's answer be stricken as not being responsive.

THE COURT: I will overrule the motion to strike the answer.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: Exception will be allowed.

(Exception noted for the defendant.)

Q. Doctor, will you please answer my question and not wander off ——

THE PROSECUTOR: I move ——

MR. PALESE: You have done that twice on me.

THE COURT: All right, Prosecutor.

THE PROSECUTOR: I still insist I am entitled to some courtesy. I ask that the phrase or word used by Mr. Palese, if I can have it from the record, be stricken.

THE COURT: It will be stricken.

Q. Doctor, will you please answer my question? Would it have been helpful to you, in August, on August 22nd, 1945, when you were making a diagnosis of the mental status of this defendant, to have had before you the record, the medical record, of his stay in the hospital in Hollandia and the hospital at Mason—at Brentwood, New York?

A. It would not have been necessary to any degree. It would have been academic, of academic interest to me, and I did obtain it later.

Q. Doctor, you say it would have been of academic interest to you to know that this man had had a diagnosis of psychosis made, that would have only been of academic interest?

A. So far as his condition of August 22nd and of August 14th was concerned, because I obtained from Mr. Auld himself the information which I required to base an opinion upon his mental state. I was getting my information directly from Mr. Auld. I did not need the hospital record.

Q. Doctor, would it have been of any help to you to know that when he was exposed to the exploding of a bomb while in New Guinea that he was taken to a hospital and had a complete amnesia for some period of time?

A. Mr. Auld told me that.

Q. You had that information?

A. Yes.

Q. Was it of any help to you that when he was in the hospital in Hollandia, that he had wandered off two or three times in a confused state?

A. Not at all.

Q. That would not have been of any help?

A. Not at all.

Q. Would it have been of any help to know that while he was confined in the hospital at Hollandia, when he was sent to the PX to get some tomatoes, he came back with stones and sticks?

A. No, it would not have been of any help.

Q. What does that indicate?

A. That indicates at the time that occurred in April, 1945, this man was in a disturbed state.

Q. Do I take it, Doctor, once a man gets into a

disturbed mental state, that when he is released, he is cured? Is that what we understand, that once a man has been treated in a mental institution and is discharged, he is cured of his mental deficiency?

A. It depends a great deal upon the hospital. It is quite well known that a patient is not released anywhere from a neuro-psychiatric hospital who is not in condition to look after himself. This man was released. That was the significant point.

Q. You know he was released with a disability?

A. Yes.

Q. Does that mean, Doctor, he was mentally disabled at that time?

A. No.

Q. What did he get a disability for?

A. He was given a disability because of his service. It may have been mental, it may have been physical, and it may have been the mere fact that he had had an experience, and the Army anticipated that, at least for a time, he might have some difficulty in full adjustment. They classified that as minimal, which, in their opinion, is very little. They made certain recommendations as to the type of employment.

Q. What was the recommendation they made here? It was to act as a policeman, wasn't it?

A. Or as a forester. To me that showed that the man's mental state was quite good, for they would not recommend a man to be a policeman if there was any mental disorder at the time they made the recommendation.

Q. Doctor, the mental disorder of this man, as testified to by Dr. Lawrence, was that he could not resist the strain and stress of military life, and his symptoms, he said, were that he could not resist staying away from home and being subjected to

discipline. Naturally, they were symptoms that Dr. Lawrence testified to. Do they mean anything to you?

A. They weren't symptoms. The doctor testified that the stress and strain of army life is much greater than that of civilian life. This man had already demonstrated he did not adjust to any military routine and the Army did not wish to put him back into the Army for combat service. They released him into civilian life. I think they very properly did that.

Q. Doctor, when he was released with a diagnosis of psychosis unclassified, active symptoms in remission, does that mean he was cured of his mental deficiencies, or mental disturbances?

A. That meant at that time they could find no evidence of anything mentally wrong with that individual. His symptoms were in remission. In other words, they had disappeared or gone.

Q. Doctor, when a person is subjected to a psychotic episode, a person who has had a period of amnesia for some time, a person who has had a period of amnesia from the time he left the hospital at Hollandia until the time he arrived at the Mason General Hospital at New York, a person who was required to remain in a locked cell for a period of months, during a period of observation when he was in the hospital at New York, a person who was belligerent and surly, a person who dreamed of combat duty, would you say, those symptoms not being present or active on July 22nd, 1945, that that person was cured of the mental difficulty that he had that brought about this episode?

A. He was very definitely cured of those symptoms, because they weren't present.

Q. But, having once been subjected, Doctor, to

this episode, aren't the probabilities of recurrence present?

A. The probability is particularly present if you put him back in the position of stress and strain similar to that which preceded the original condition. For that reason, the Army would not send this man back into combat duty, because they did not think he could stand up under the stress and strain, because he has already broken down under that condition.

Q. Doctor, I understand you to say, the only stress and strain that would bring about a recurrence of the episode is the strain that would occur in the life of the Army.

A. That is the stress and strain that brought about the episode in this case.

Q. Do I understand you to say, Doctor, they are the only stress and strain that would bring about a recurrence of the symptoms?

A. When an individual knows what the reactions of an individual are going to be to specific stress and strain, that is something, naturally, but whether they would, we can't accept it.

Q. So you could not tell, Doctor, after a person who has been subjected to the episode I have described to you, as to when and under what circumstances he may have a recurrence of that psychotic episode?

A. Certainly not.

Q. You can't tell what stress or strain he would have to subject himself to in order to bring about a recurrence of the symptoms?

A. Certainly not.

Q. Any stress or strain could bring about a recurrence?

A. No, sir, very definitely, no.

Q. Doctor, you just recently read in the papers where a soldier waiting to come back to America

THE PROSECUTOR: Just one moment. That is improper, if the Court please.

THE COURT: Just a minute. With respect to what, Mr. Palese?

MR. PALESE: As to any stress or strain which can bring about a recurrence of the psychotic episode.

THE PROSECUTOR: Read in the papers.

MR. PALESE: Yes, I will show him the paper.

THE PROSECUTOR: I will withdraw the objection.

Q. (Continuing) Doctor, a soldier who has been subjected to the strain of combat duty, would not he be subjected to an episode, even waiting to come home?

A. Any soldier?

Q. Yes, any soldier who has been subjected to combat duty, three years of combat duty, could not he be subjected to the strain and disorder of coming home, and could not that strain and disorder be a preceding factor to an episode?

A. You mean any certain individual?

Q. Yes.

A. It might be in certain individuals. The threshold of stability of certain individuals varies.

Q. How do you measure, Doctor, the threshold of stability of Mr. Auld?

A: I had only one measuring gauge: the fact this man was in combat duty, according to his own statement, behind enemy lines, and had eighty jumps from an airplane, and further in time he stayed up under it for three years before he had an episode of instability, I could say that threshold was extremely high.

Q. That depends on his resistance. Once that resistance is broken down, as it was in Mr. Auld, then, the probability of the amount of stress and strain is lower; is that correct?

A. Possibly. That is something we do not know until this man has another episode.

Q. Now, Doctor, what is the period called of amnesia; I mean, the period where you have a loss of memory? What is that period called?

A. Amnesia.

Q. Isn't that period called the fugue? That word is foreign, is it not?

A. Well, the fugue is the cloudy state. It is not necessarily the same as amnesia.

Q. That is the state where an individual can't remember what happened?

A. That is true, a temporary state. It lasts only for a matter of minutes, or, at the most, hours.

Q. Doctor, during that period, or during the period of amnesia, doesn't the patient carry on his usual work in the same manner that he did, that he would have if he was not in a period of amnesia?

A. He would, but he would not have any recollection or memory of anything that happened before he went into his amnesic state.

Q. There is a beginning point where he loses his memory?

A. When he loses his memory.

Q. That is the beginning point?

A. That is the beginning point, and from that point, once he is in an amnesic state, he has nothing —no memory of what went on. He would not know his name, his parents, or anything about that. His period would be limited to the beginning of the amnesic state. It is more or less an interlude within the life of an individual. A person who has a state of amnesia would have no memory of anything that happened before he went into the amnesic state. He can't remember what his current experiences were. Then, when he comes out of his amnesia, he remembers nothing that happened before he went into it, but he remembers anything that happened during the period of his amnesia.

Q. Doctor, what I am trying to get is, during the period he had this amnesia, he conducts himself in somewhat a normal manner?

A. Yes.

Q. He can walk the streets?

A. Oh, yes.

Q. Be confined in a hospital for a certain length of time?

A. That is right.

Q. He conducts himself in the same manner that a person would conduct himself, if normal?

A. Yes, with the exception that he has got no memory which goes back before the period of amnesia. Therefore, he could not react perfectly normal, because he has no memory of his background. He is unable to wake up, and his difficulties, amnesic difficulties, are that he does not know his name or where he came from. He has no recollection of anything that happened. He can be entirely normal; he can carry in a more or less automatic state.

Q. Doctor, I do not think you understand my question. Assuming that you went into a state of amnesia on Monday and you did not come out of that state until Saturday, between Monday and Saturday, would he naturally conduct himself in a normal manner? Would he be able to go to the moving pictures or attend shows during that period, and beyond that, take on Sunday, he would not have any recollection of what happened in that period?

A. That is quite true, but the point I am ——

Q. That is the question I am trying to ask in my lay way.

A. That is true, but during the period he was amnesic, he could not tell you anything that happened prior to Sunday, before he went into it.

Q. I am trying to get at that. I say, during that period he could conduct himself in a more or less normal way?

A. More or less normal, yes.

MR. PALESE: That is all.

BY THE PROSECUTOR:

Q. Doctor, let me understand. I don't quite understand the last part. When a person goes into a state of amnesia, you say he could not remember anything that happened prior to his going into the state of amnesia, and during the actual amnesia, when he goes into the state of amnesia, he has a loss of memory, he knows nothing.

A. He has no mind of what happened before. What happens in his amnesic state, he remembers what happened in his amnesia while he is in the amnesia. When he comes out from the amnesia, he

picks up and carries on, but he doesn't remember what happened in that period before. You can't be amnesic and remember what happened before you came into it. You can remember what happened after the amnesia, after you come out.

THE COURT: Would you remember your parents and where you lived?

THE WITNESS: No, sir. It would be entirely different, like a natural Dr. Jekyll and Mr. Hyde.

Q. A person could not give you a recitation of facts and circumstances before he went into the state of amnesia?

A. Certainly not.

Q. Therefore, in this case, the crime happened on the early morning of August 14th, 1945, and it is alleged that this defendant stayed in a state of amnesia until September first. Could he, on August 22nd, 1945, tell you what happened on August 14th or 15th, 1945?

A. No, and at the same time tell you what happened prior to that period. It would have to be one or the other. He can't have memory for both.

Q. And, therefore, if he told you what happened on the 14th of August, 1945, or the early morning of August 15th, 1945, he certainly was not in a state of amnesia on August 22nd, 1945, when he made the recitation to you?

MR. PALESE: I object.

THE COURT: The objection is sustained.

Q. Would you say, Doctor, under what you your-

self said, on August 22nd, 1945, the defendant was in a state of amnesia?

MR. PALESE: I object to "what you yourself said." I don't know what he said.

THE COURT: As to the form of the question, I will sustain the objection.

Q. Let us assume, Doctor, that a person is in a state of amnesia on August 22nd, 1945. Could that person, while in the state of amnesia, tell you what he did on, say, August 14th, 1945, or the early morning of August 15th, 1945?

A. He could not, and at the same time have memory of what happened prior to that period.

THE PROSECUTOR: That is all.

Now, if your Honor please, I have but one more witness, from the Adjutant General's Department of the United States Army, and I would like to talk to the Court about it.

THE COURT: We will recess for five minutes. The jury may leave the box.

AFTER RECESS.

JOSEPH J. FITZGERALD, sworn.

BY THE PROSECUTOR:

Q. Mr. Fitzgerald, what is your full name?

A. Joseph J. Fitzgerald.

Q. And where do you live?

A. In Washington, D. C.

Q. What is your occupation?

A. I am Administrative Assistant to the Director of the Records Division of the Adjutant General's Office, War Department.

Q. What are your duties?

A. My duties are to assist the Director, who is a Colonel, in the proper functioning of the records of administration, Custodian of the Records of Administration.

Q. As custodian of the records, do you have under your immediate supervision the original service records of the various members of the armed forces of America?

A. All the men who have been separated from the Service.

Q. Do you have in your immediate custody and in your possession now the original service records of the defendant, Howard Auld, Serial No. 20224275?

A. I do, sir.

Q. Will you take those original records in your hand, Mr. Fitzgerald? You have made a search of those records?

A. I had a search made for those records. Those records were on file in our records depot in St. Louis, Missouri. That's where the records, the perma-

nent file of the records, are, which is under our jurisdiction.

Q. This service record that you have in your hand, does that follow the soldier during the course of his stay in the service?

A. Yes, sir.

Q. Does it go to the various parts of the country and the world, where he may be stationed?

A. Yes.

Q. And various notations are made, are they not?

A. Yes, sir.

Q. I want you to take that service record, Mr. Fitzgerald, and make a search of the same, and tell his Honor and the Court whether or not this defendant, whose serial number I have given you, received any rating of a specialist in the Army.

MR. PALESE: I object. The witness has testified that these records are not kept by him, and that they are records that have been forwarded to him from St. Louis. That is the testimony that he has just given on the stand.

THE COURT: I will sustain the objection on the ground that the record, whatever it is, speaks for itself.

THE PROSECUTOR: If your Honor please, these being the original records of the service of this defendant in the armed forces, I offer the record in evidence.

MR. PALESE: I object to it as not proper rebuttal.

THE COURT: Are you offering the record itself?

THE PROSECUTOR: That is the difficulty; these are the original records, and I would like to use them in rebuttal.

THE COURT: Are you offering the original records which the witness has in his hand?

THE PROSECUTOR: I do, sir.

MR. PALESE: I object as not proper rebuttal.

THE COURT: What is the basis of your objection, Mr. Palese?

MR. PALESE: There are two reasons: one I advanced; it would not be proper rebuttal, as the record has not been satisfactorily established; one, because he has already testified that he is the custodian of the records, that the records came to him from their office in St. Louis, and he is in Washington, D. C. That's No. 1. No. 2, that it is not proper rebuttal. This witness is a rebuttal witness, and if they want to rebut certain things, then it can be done in an orderly way, and not by the introduction of records which we haven't seen, and which we don't know anything about.

THE COURT: Do you want to examine the records?

MR. PALESE: No, I do not, if your Honor please, unless it is offered in evidence.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

THE PROSECUTOR: Do I understand, if the Court please ——

MR. PALESE: No understanding; the Court has ruled on your offer.

THE COURT: It will be admitted in evidence, the record.

THE PROSECUTOR: I would like to state to the Court, with the permission of Mr. Palese ——

MR. PALESE: I don't want any statement. Counsel has made the offer, and your Honor has overruled my objection, and has allowed me an exception, and I don't think there is anything else to be said.

THE PROSECUTOR: I still have the right, as a Prosecutor and as an attorney, to address the Court, regardless of what you might say.

MR. PALESE: I object to anything the Prosecutor might say as to his understanding.

THE PROSECUTOR: Mr. Palese doesn't know what I am going to say.

MR. PALESE: I am not going to wait until you say it, and then say you were sorry you said it.

THE PROSECUTOR: I won't be sorry, Mr. Palese.

MR. PALESE: I object to any remarks that the Prosecutor may make with respect to this exhibit which your Honor has now allowed to be admitted in evidence.

THE COURT: It has not been marked in evidence yet.

THE PROSECUTOR: That's what I was trying to get into, if the Court please. The thing I would like to say to the Court is this: under the rules of the War Department, this record is not allowed to leave this gentleman's hands. That's what I am trying to get to, Mr. Palese.

MR. PALESE: Then I object.

THE PROSECUTOR: The records are in the custody of the Court, asked for by the Court, and that's the only way they could have gotten here.

THE COURT: You have something in your hands, Prosecutor, that looks like a photostat.

THE PROSECUTOR: It is, if the Court please.

THE COURT: Please hand it to the witness, and ask him whether it is a photostat of these original records.

Q. Would you compare it, Mr. Witness, the photostatic copies which I have just handed you, and state to the Court and jury whether they are an exact accurate copy of the original records which you also hold in your hand?

A. These are photostatic copies of the service record.

THE PROSECUTOR: If your Honor please, I would like to offer the photostats in evidence, to take the place of the original, which cannot be left with the Court nor with the jury, in view of the rules and regulations of the War Department.

MR. PALESE: I object to it, if your Honor please.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

THE COURT: The photostats will be admitted in place of the original records, and marked as one exhibit, S-24.

(Received and marked Exhibit S-24.)

Q. Will you turn to that part of the service record of the defendant which states, or has anything in it, concerning the actual time spent in confinement by the defendant?

MR. PALESE: I object to that, because he is now reading a record, I am assuming, made by some individual, not by the witness on the stand.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

A. Will you repeat that?

(Question repeated.)

MR. PALESE: With this witness, if your Honor please, here is a problem we have now, as he is not the person who made it. Your Honor well knows that a person may come into this court and be sentenced for two years to five years in State's prison, and only serve twenty days and get out. A record may show, and will show, he may have gotten five years, and that's the difficulty we get into with this witness, and I object to him being permitted to testify. The records are in, and if the Prosecutor wants to avail himself of it, that's as far as the Prosecutor can go, and not ask this witness what those records may or may not state.

THE COURT: Overruled.

MR. PALESE: Exception.

THE COURT: Exception granted.

(Exception noted for the defendant.)

A. Page 7, of the Service Record, shows a total of 329 days.

BY THE PROSECUTOR:

Q. Now, Mr. Fitzgerald, will you turn to that part of the record concerning the confinement of the defendant about the month of April, 1943?

A. That is contained on that page 7.

Q. Under what heading?

A. "The time actually in confinement on the sentence or while awaiting trial and disposition of case, if trial resulted in conviction." It shows from 14 April, 1943, to September 9, 1943, a total of 149 days.

Q. Will you turn to the record, Mr. Fitzgerald under the heading of "Special Rating," and tell his Honor and the members of the jury what special rating, if any, the defendant received during his stay in the Army?

MR. PALESE: If your Honor please, I object. The record speaks for itself.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor grant me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. Page 5 of the service record under "Special Ratings," shows "Class 6, qualification Chauffeur."

BY MR. PALESE:

Q. Will you please read it all, Mr. Fitzgerald? Don't just stop. Please read it all. What does it

show there for the period which he was a chauffeur? Will you please read what it has there, Mr. Fitzgerald?

A. That is what I am doing.

Q. You stopped after you said "Chauffeur."

A. "Class 6, Qualification, chauffeur, from—" I really need a magnifying glass to read this.

Q. I can read it here.

A. I can't make this date out.

BY THE PROSECUTOR:

Q. I just sent for a magnifying glass that might help you. Would you speak a little louder, Mr. Fitzgerald? Some of the jurors are having a little difficulty hearing you. Do you think this will help you (handing witness a magnifying glass)?

A. "Class 6, Qualification, chauffeur, from 9-7-40 to—that is blank. Below that it says, "Disrated 4-4-41." I imagine that is April 4, 1941. "Authority CO. Ord. No. 9," and alongside of "Disrated" under "Authority" is O No. 6.

Q. Is that all it has, Mr. Fitzgerald?

A. Yes.

Q. Will you take a look at the record, Mr. Fitzgerald, and tell his Honor and the members of the jury whether it discloses the fact that the defendant received any wounds during his stay in the Army as the result of combat duty?

MR. PALESE: If your Honor please, the testimony in the case is that he was wounded but he made no report to his commanding officer, so of course it would not be in the record.

THE COURT: Objection overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Exception allowed.

(Exception noted for defendant.)

MR. PALESE: If your Honor please, and for the added reason that it is not proper rebuttal.

THE COURT: The additional reason will be noted.

MR. PALESE: Will your Honor allow me an exception, for the record.

THE COURT: Exception allowed.

(Exception noted for defendant.)

A. Form 535 shows under "Wounds received in action"—that is item No. 34 on this form, "Wounds received in received in action, none."

Q. Will you take a look at the record, Mr. Fitzgerald, and tell us whether it shows, and explain to the jury whether it shows defendant ever having received any training whatsoever as a commando or ranger?

A. That is not in the record.

Q. You say it is not in the record?

A. It is not in the record. That would not necessarily be recorded in the record.

Q. Will you turn to the record, Mr. Fitzgerald, and tell us whether or not it shows or is there any record made of the defendant ever having made any landings from submarines or P-T boats?

MR. PALESE: If your Honor please, let us find out whether it would show in the record first. You see, if your Honor please, they are asking the question in a roundabout way. We are dealing with a record of this defendant. As the witness has just stated his training would not be listed in the service record. Now the Prosecutor says it isn't there. It couldn't be there if it isn't listed. I think if this man knows—this man is only the custodian of the records and all he can say is as to what the record may be. Whether or not they are noted is, of course, a question that we are concerned with.

THE PROSECUTOR: That is all I am interested in.

BY THE COURT:

Q. Is there any provision in the forms that you have for the notation of second operation?

A. No, sir.

THE COURT: I will sustain the objection.

BY THE PROSECUTOR:

Q. Is there anything in the record indicating that the defendant made any landings from any submarines or P-T boats?

MR. PALESE: I object, if your Honor please, because ——

THE COURT: Objection sustained.

THE PROSECUTOR: I am only asking the witness, if the Court please, what the record discloses.

THE COURT: I sustain the objection.

BY THE PROSECUTOR:

Q. Is there anything disclosed in the record, Mr. Fitzgerald, to the effect that the defendant, Howard Auld, during his stay in the Army was in the vicinity of a 500-pound bomb dropped by an American plane within thirty feet of him?

MR. PALESE: If your Honor please, I object to that unless this witness can say whether that would or would not be noted.

THE COURT: Objection sustained.

THE PROSECUTOR: If I asked him whether it would or would not be noted I may go amiss of the record and that is what Mr. Palese objects to. I am only asking him what appears in the record. I am not asking this witness's opinion on anything.

THE COURT: I sustain the objection.

Q. Does the record show as to what various organizations of the Army he was assigned or attached to during his term as a soldier?

A. Yes, sir.

Q. Would you read that to us, Mr. Fitzgerald?

A. He was attached to the 114th Infantry—assigned, I should say, to the 114th Infantry service stationed at Fort Dix, New Jersey, on September 16, 1940. That is the date assigned. Then he was with that same organization at Camp Clayborn, Louisiana, on January 16, 1942, and service company, 114th Infantry, Fort Lewis, Washington. I can't make the

date out on that, even with the help of the glasses. Then Company E, 186 Infantry, station Fort Lewis, Washington, April 18, 1942; headquarters company, 1st Battalion, 186th Infantry, APO 41, September 5, 1942; Company B, 162nd Infantry, APO 41, date not shown; Headquarters Company, 1st Battalion, 162nd Infantry, APO 41, date not shown. That is on page 5 of the service record under the heading "Original assignments and organizations to which subsequently assigned during this enlistment period. Then there is a continuation sheet which shows Headquarters, Headquarters Company, 854, APO 924, from December 29, 1943, to January 10, 1944; 283 Replacement Company, APO 923, 19 July, 1944, to 30 July, 1944; Mason General Hospital, Brentwood, New York, under from May 7, 1945. Then below that are some other notations, "Organizations to which assigned, headquarters, Headquarters Company 854, and in parenthesis, D E M L, end of parenthesis, APO 924, 10 January, 1944; Detachment Headquarters, Company in parentheses D E M L, end of parentheses, Base 7, USASUS, APO 924, 1 June, 1944; 464, capital A capital T capital C, APO 704, 14 September, 1944.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Fitzgerald, your office is in Washington, D. C.?

A. Yes, sir.

Q. Have these records that you have been testifying from today ever been in your office in Washington, D. C.?

A. Yes, sir.

Q. When were they sent from your office to St. Louis?

A. I am afraid I can't answer that. Your Honor, can I make a little explanation about the adjutant general's office?

Q. I haven't heard, Mr. Fitzgerald, what you have asked the Court.

THE COURT: The answer is, "I am afraid I can't answer that. Your Honor may I make a statement about the adjutant general's office?"

Q. You mean you aren't permitted to give us that information?

A. I don't have that information. I would like to explain the system that is in effect and the reason that these records are filed in St. Louis.

Q. Mr. Fitzgerald, if you will just answer my question I think that that is all I want. Do you know when it was that these records left your office in Washington to be sent to St. Louis? Approximately when was it?

A. I can give you an approximate date. If I can find the date of discharge, I would say approximately ten days after the man is separated from service.

Q. Mr. Auld was separated from service on the 30th of July, 1945?

A. On the 30th of July? My estimate is approximately ten days after separation from service.

Q. So that these records that you have been testifying to have been out of your physical possession since about the middle of August, 1945? That is your best guess; is that right?

A. No, sir, they aren't out of our physical possession.

Q. They left your office, did they not, in Washington, D. C.? That is where you are located?

A. Yes, sir.

Q. And they were mailed or taken to an office in St. Louis?

A. To the adjutant general's office, in St. Louis.

Q. I say, they were taken to an office in St. Louis?

A. To the adjutant general's office in St. Louis.

Q. You didn't accompany these records, did you?

A. No, sir.

Q. Have you been in St. Louis since these records have been sent from Washington to St. Louis? I am talking about the middle of August, 1945.

A. No, sir. I would like to make a correction. When these records first went to Washington they went to High Point, North Carolina. That was before our St. Louis office was open.

Q. So that they first left your office and went to South Carolina?

A. North Carolina.

Q. You didn't accompany the record, did you?

A. No, sir.

Q. Then by some means they were taken from North Carolina to your office in St. Louis?

A. Yes, sir. The entire office was moved to St. Louis.

Q. You don't have charge of that office, do you?

A. Yes, sir.

Q. You mean, through Washington?

A. Yes, sir.

Q. You mean you operate that office by being in Washington?

A. Yes, sir.

Q. How do you know, Mr. Fitzgerald, that the record that you have been testifying from is the

record that was sent from your office to North Carolina, and then from North Carolina to St. Louis?

A. That is the only way the record could get out to St. Louis.

Q. What is that?

A. That is the only way the record could get to St. Louis.

Q. You mean, by you taking it there?

A. No, sir.

Q. By some other person taking it there?

A. No, sir.

Q. How does it get from Washington to St. Louis?

A. When the man is separated from service his service record is forwarded either from the separation center or from the hospital in which the man is separated to Washington.

Q. That comes into your office?

A. It comes into the adjutant general's office.

Q. That is your office?

A. That is the office that I am in, yes, sir.

Q. That is right.

THE PROSECUTOR: Just a moment. Why not let the witness finish, Mr. Palese? He is giving you an answer to the question.

A. And then we had certain records in Washington while a man is in service. This record accompanies the man from the date of induction or enlistment until he is separated. We have other records in Washington, such as the enlistment paper or the induction paper, the report of physical examination at the time the man went into the service, and when the man is separated this record comes to Washington. It is joined with the other records and then they are sent to our office in St. Louis.

Our office in St. Louis services the records of men who have separated from service. The office in Washington services the records of men who are still in the service. The office in St. Louis is a branch office of the adjutant general's office and the adjutant general is the custodian of all Army records.

Q. Mr. Fitzgerald, we are talking about the record you have in your hand. How did that record get from your office in Washington, D. C., to your St. Louis office?

A. It went from Washington, D. C., to High Point, North Carolina, by express.

Q. Now, you have answered it.

A. (Continuing) And the records of men being separated today go by express, twice a week, from Washington to St. Louis, a whole car load.

Q. After it leaves your office by express and goes to St. Louis, did you have custody or possession of the record?

A. Yes, sir. The adjutant is still custodian of the records.

Q. You know what custody of a record is, don't you, Mr. Fitzgerald?

A. The adjutant general's office, that is, part of the adjutant general's office. I work for the adjutant general.

Q. I appreciate—we do appreciate that you work for the adjutant general. Was that record that you had before you in your custody in your office in St. Louis. I am talking about physical custody, not actual.

A. Yes, in the physical custody of the adjutant general of the army.

Q. I am talking to you as an individual. Was it in your individual custody? You are here in court with it.

A. I would not say it is in my physical possession, but I am representing the adjutant general's office.

MR. PALESE: It took a long time to get it.

THE PROSECUTOR: May I have that last part read?

("A. I would not say it is in my physical possession, but I am representing the adjutant general's office.")

MR. PALESE: That is all.

THE PROSECUTOR: The state rests, if the Court please.

MR. PALESE: The defendant has no rebuttal.

THE COURT: The State rests. There being no further sur rebuttal, the case is closed.
We will recess. The jury may leave the box.

(In Chambers):

THE COURT: We will now recess until nine o'clock tomorrow morning and the Prosecutor will open.

EXCEPTIONS TO PROSECUTOR'S SUMMATION.

During the course of the Prosecutor's summation, the following occurred:

THE PROSECUTOR (Addressing the jury): Gentlemen of the jury, we have this man's complete service record, complete from the time he entered the Army, in whatever country and under whatever officer he served, until the day he was discharged. You remember Mr. Fitzgerald, when he said, under, I think, it was heading No. 6, "number of days actually spent in confinement," and, if I know any of the English language, that is a term easily understood, even by a child in grammar school, number of days actually spent in confinement, commencing the 14th day of April, 1943, and being discharged on the 9th day of September, 1943, in actual confinement for a period of 149 days, and this great American hero would have you believe that during that time he was making 80 combat parachute jumps. It is preposterous. It is a fabricated story and, if you are not convinced that that individual is trying to shirk the responsibility he is under, let me ask you this, as man to man: Read this record, read that record and show me and convince yourselves that he was wounded, that he was bayonetted in both arms by two Japanese. Why, gentlemen of the jury, that is an insult to your intelligence and it is an insult to mine. You mean to tell me that he was wounded, this great American hero? Why, it isn't even shown in the records. What do you think? If that is not sufficient, show me in the record where he made landings from

submarines, show me in the record where he made landings from P-T boats. Show me in that record where he was landed from some destroyer.

MR. PALESE: If your Honor please, I do not want to interrupt the Prosecutor. The witness says on the stand that he does not know whether or not that would be in the record.

THE COURT: The argument the Prosecutor draws from that fact is legitimate, Mr. Palese.

MR. PALESE: If your Honor please, I object to the inference, in view of the testimony that is in this case.

THE COURT: The objection will be noted, overruled and an exception allowed.

THE PROSECUTOR: Could a man survive and would a man be injured to a degree that would be noticeable externally, if he were within 30 feet of a 500 pound bomb when it exploded? Certainly not. I doubt whether he would be here today to tell the story. You visualize, use your imaginative powers, use your common experience, use anything, and then determine whether or not a man who has been within 30 feet of a bursting 500 pound bomb suffered no injuries.

MR. PALESE: If your Honor please, that is not the testimony. 50 feet is the testimony.

THE PROSECUTOR: I disagree with Mr. Palese. It is 30 feet, and I do not want any more interruptions.

THE COURT: Is it on the basis of what is in the record?

THE PROSECUTOR: Absolutely, 30 feet, from Dr. Yaskin's testimony.

MR. PALESE: If your Honor please, I object to that, because the testimony of Mr. Auld, the defendant in this case, is 50 feet.

THE COURT: The objection will be noted.

MR. PALESE: I am now requesting your Honor to ask the Prosecutor to withdraw that remark from the jury.

THE COURT: I will deny the motion.

MR. PALESE: May I have an exception?

THE COURT: An exception will be noted.

THE PROSECUTOR: If this young woman were willing to submit, as this defendant would say to you now, where did all the blood come from, how were the pants full of blood, dress, slip, his own shirt, his own pants all full of blood? It just seems to me, gentlemen of the jury, that instinct knows what he is attempting to say could not possibly be the situation. We have evidence to the contrary.

MR. PALESE: If your Honor please, I am requesting your Honor to tell this jury that Dr. Read did not testify that this girl had been raped. Dr. Read used that expression and then later on stated that he could not tell whether or not this girl had

been raped but it indicated to him there had been an act of intercourse.

THE COURT: I will deny your request, as a matter wholly within the province of the jury.

MR. PALESE: Secondly, I am asking your Honor to tell this jury that when the Prosecutor talked about this girl, that he had reference to the testimony of Dr. Read, who testified that upon the autopsy there was evidence of an old laceration in the hymen, that was in all probability due to sexual intercourse. I am requesting your Honor to so tell the jury.

THE COURT: I will deny the request.

MR. PALESE: Your Honor will allow me an exception?

THE COURT: An exception is allowed.

CHARGE OF THE COURT.

SHEEHAN, J.:

Gentlemen of the jury, the orderly procedure by which, in this State of New Jersey, criminal causes are moved has witnessed the apprehension of the defendant, Howard Auld, his arraignment and detention, his subsequent indictment by the Grand Jury of this county, and for the past eight days the trial upon the charge laid in this indictment. The trial itself consisted in the presentation of testimony by the State in support of the allegation in the indictment and by the defendant in support of his plea of innocence which was entered thereto. There remains to complete the cycle of due process, the rendition of a verdict, upon the issue thus drawn, by you, a jury of this defendant's peers. However, before your deliberations begin it is the duty of the Court to lay down for your guidance the principles of law applicable to the case.

This indictment charges that the defendant committed the crime of murder, which is the unlawful killing by a person of sound memory and discretion of any reasonable creature in being, with malice aforethought, either expressed or implied.

The indictment itself reads as follows:

"The grand inquest of the State of New Jersey and for the body of the County of Camden, upon their respective oath, present that Howard Auld late of the Borough of Haddon Heights, in the said County of Camden, on the fifteenth day of August in the year of our Lord one thousand nine hundred and forty-five at the Borough aforesaid in the County aforesaid, and within the jurisdiction of this Court,

in and upon one Margaret McDade, in the peace of God and this State then and there being, willfully, feloniously and of his malice aforethought did make an assault, and her, the said Margaret McDade, then and there willfully, feloniously and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same."

The mere fact that an indictment has been exhibited against the defendant is no earnest of his guilt. It merely contains the accusation upon which the defendant must stand trial. In the determination of all questions of fact the sole responsibility is with the jury. You are the sole judges of the evidence, of the weight of the evidence and the credibility of the witnesses. In this function, that is, the weighing and evaluating of the testimony, you may be guided by the demeanor of the witnesses on the stand, their frankness or evasion, their willingness or reluctance to answer, their bias or their fairness, their opportunity to observe and know the facts, their capacity to remember them, the consistency or inconsistency of their testimony as a whole, and, above all, the interest that each may have in the outcome of the case.

In this most important sphere, that is the weighing and the evaluating of the testimony, you members of the jury yield neither to the arguments of counsel representing the defendant or the State, except as those arguments may appeal to your own sense of reason and your appreciation of the probabilities, nor to any references for that matter that may be contained in the Court's treatment of the testimony, if they conflict with your finding and assignment of credibility and weight. Any com-

ment that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. Again, such facts as I may advert to should not alone be considered by you, but consideration must be given to all the facts in the case. Similarly it is your recollection of what the witnesses said that prevails to the exclusion of the recollection of either counsel or the Court.

In this, as in every criminal case, the defendant is presumed to be innocent until he is proved to be guilty. The burden of proving the guilt of the defendant in a criminal case is upon the State, and always upon the State. That burden never shifts but remains upon the shoulders of the State throughout the entire case. That burden is the burden of proving to you beyond a reasonable doubt that the defendant is guilty of the crime charged. If there be a reasonable doubt whether the defendant is guilty, he is to be declared not guilty.

Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of 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. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

But if, after canvassing all the evidence, giving the accused the benefit of reasonable doubt, you are led to the conclusion that he is guilty, you should so declare by your verdict.

To make out a case of guilt the State must establish, by evidence beyond reasonable doubt, first that Margaret Rita McDade was killed and that her death resulted from a felonious attack upon her by another. The fact of her death is not in dispute in the light of the testimony of her sister and father that it was her body which they identified as that of the dead girl seen by them in the Cooper Hospital morgue on or about August 20, 1945.

That it was a felonious attack which caused the death is contended by the State in virtue of the testimony of Camden County Coroner Edward Gardner, who said that when he saw the body on Sunday afternoon, August 19, 1945, after it had been raised from the pumping station cistern where it was found, he observed abrasions of the face, thighs, and a good bit of the body, "numerous abrasions and lacerations of the body," the most prominent of which was a cut completely through the left side of her lower lip with an abrasion about two and a half to three inches long.

On this point the circumstances of the place and condition of the deceased girl's body when discovered must be taken into consideration also. She had been stripped even to the ornamental jewelry that she had on and dropped in such manner that her head was immersed in the filth and offal gathered near the bottom of the tank, which is fourteen and a half feet deep. That she was thus plunged head foremost into this mass of waste is especially noteworthy in the light of Dr. Read's testimony that none of the physical external injuries that he ob-

served in the performance of a post-mortem examination, the same day the body was discovered, were in themselves the efficient and producing cause of the unfortunate girl's death, but that she died of suffocation. Virtually every one of the many police officers whose duty it was to take part in the investigation immediately following the discovery of the body, testified that as they viewed it before removal, the head, shoulders and part of one arm were mired and invisible, as shown on Exhibit S-5, the photograph taken by the witness Saltzman.

It was further indicated by Dr. Read's testimony that the decomposition apparent at the time of the post-mortem was much greater on that part of her body with a fairly sharp line indicating the difference between the head and upper shoulders and the rest of the body. Finally the doctor testified to the finding of the foreign body susceptible to handling in the bronchus, the mucous membrane of which was discolored with a brown stain, indicating that though the deceased girl may have been unconscious, she was still capable of breathing when her head was submerged.

From this evidence you may conclude, if you see fit, that the deceased girl did meet her death from injuries feloniously inflicted.

Next, in order to justify a verdict of guilt, the State must establish by the evidence beyond a reasonable doubt that the death was caused by the act of the defendant, Howard Auld. In view of the fact that here, as so frequently is the case, the commission of the alleged crime and its discovery were not contemporaneous but were separated by a lapse of approximately five days, your deliberations on this point might sensibly and properly begin at the moment of the discovery of the body which, according

to the testimony of the State's witnesses, happened by merest chance.

Two youngsters, residents of the community of Haddon Heights, about 2:30 on a Sunday afternoon stroll, in response to the prompting of curiosity, went to the pumping station and, noticing the gate ajar, one of them, Richard Marr, walked in and, yielding to an impulse, raised the lid of the cistern enclosed therein, to meet the shocking sight that is depicted by the exhibit referred to previously. He called his companion, looked again and then went to the home of one Mr. Blyth who was standing in his backyard, a distance of 100 feet from the pumping station, told him what they had seen, took him back, raised the lid for him, whereupon he notified the local police by telephone from the home of a neighbor. Immediately there was set in motion the machinery by which the following evidence was obtained and produced in court.

Chief Kayser, Sergeant Heistand and Officer Shaw, of the Haddon Heights police, arrived at the scene within a few minutes, after first having called Chief Doran of the Prosecutor's office. Upon arrival Sergeant Heistand commenced a search of the immediate area in which persons other than the police authorities took part. The witness William Butler was one of this group. He walked along Maple Avenue and noticed a little path beaten in the weeds that grew across the pavement. As he looked he saw two shoes and, searching further in, saw a little red novelty hat upon a small bank and beside it a red feather. Mr. Butler called to the police officers and pointed out the objects he had spied. The Sergeant picked them up, handed them to Chief Kayser and continued their search, uncovering an artificial flower made of dressgoods material and a

small metal bracelet and a pair of bloody pants. Each of these objects, upon proper identification and accounting for their custody, was admitted into evidence. Sergeant Heistand further testified that for quite a space the weeds had been trampled down, looking like a skirmish had taken place, some few feet beyond the point at which the bloody pants were found.

By this time, which according to the testimony of Mr. Butler was about 3:15 or 3:30, the county detectives were present on the scene and all of these articles were given to either Chief Doran or Captain Mulligan. Chief Doran then ordered the removal of the body, which was taken into the pumping station, examined by Coroner Gardner and from there taken by him to the Cooper Hospital. Chief Doran followed the body to the hospital, where the autopsy was started by Dr. Read. As has been testified to and as the photographs show, the body had been absolutely denuded and it offering no external evidences indicating identity, the doctor's examination comprehended the development of all such data as might be of assistance in determining who she was. This accounts for the meticulous detail observed by Dr. Read in his examination and for the voluminous notes that he made, the benefit of which was utilized in his testimony.

At this point the investigation of the police authorities is at an impasse, and remains so until the next evening, Monday, August 20th, when a young woman and a man, on arriving at the hospital, went to the morgue and identified the body of their sister and daughter, Margaret McDade. From that point was developed the information that resulted in the arrest of the defendant, Howard Auld, in scarcely more than twenty-four hours' time.

This sister, Mrs. Halpin, testified that the deceased girl lived with her and that, on the morning of Tuesday, August 14th, she had left home for work, wearing the clothes which are the exhibits in this case, having expressed the intention of going down to Jersey for a swim at a pool which, it has been testified to by Mrs. Sutton, is located on property where she owns and operates an inn. The testimony discloses that August 14th was the date on which the surrender of the Japanese and the cessation of hostilities was proclaimed and has been referred to throughout as V-J Day.

Having finished work at 8 P. M., Margaret in the company of a fellow worker, the witness Anna Rust, and two sailors, left Philadelphia by bus which brought them to Browning Road and Black Horse Pike in Bellmawr, New Jersey. There they got off, walked past the firehouse to a little taproom and had a drink. From there they went to Mrs. Sutton's, who was even then closing her establishment. This was about 11 o'clock and Miss Rust, observing that she knew no one in Bellmawr, asked what time the next bus left for Philadelphia. Upon being informed, she, Margaret and the two sailors walked back to the firehouse where, a celebration being in progress among the people of the community, Margaret met some friends. She, Margaret, decided to remain, entered the firehouse and her friend left for Philadelphia.

It is at this point and time generally, the firehouse at Bellmawr, at some minutes past 11 P. M., that the paths of the dead girl and the defendant crossed. Concerning the exact place and time there is some variance in the testimony, some of the witnesses saying in the firehouse, others outside the firehouse, but the defendant himself said on the

stand it was not there and then at all but later when those in the firehouse had been transported by car to the home of a Mr. and Mrs. Creek that he met Margaret for the first time. On this point Mr. Creek testified that he drove his car in which both the defendant and the deceased girl were occupants on the back seat. Whatever the place and time of the original meeting, the testimony is clear that Auld and the dead girl were together in a group before the bar in the Creek home that included also Mr. and Mrs. Hulse, Officer Auletto, the defendant's niece and, behind the bar, from time to time, Mr. and Mrs. Creek. The extent of his acquaintance with the dead girl before this night, according to the defendant, was that he had seen her a few times around Bellmawr.

As they stood before the bar Mr. Hulse testified that the defendant and the girl were "loving it up." His wife's testimony, however, was that the extent of this was limited to the defendant's putting his arms around Margaret two or three times and his saying something to her. Then both Margaret and the defendant left. The manner of their leaving is told in conflicting testimony by Mrs. Hulse for the defendant and by Mr. Creek in the State's case. Mrs. Hulse said that she left with Margaret on the pretense of retiring to the bathroom, after which the dead girl went outside and joined Auld. Mr. Creek said that he, standing behind the bar, which was directly in front of the stairway, saw the dead girl and the defendant walk up the steps together, one behind the other, since they were not wide enough to accommodate more than one person, and that they returned no more that evening. In either event the last person with whom Margaret was seen alive was the defendant, Howard Auld, some-

time after one o'clock on the morning of August 15, 1945.

The defendant, however, was next seen within the hour by the witness Mrs. Anderson, herself a resident of Bellmawr, who knew the defendant and had been one of the group at the firehall who remained behind to straighten up when the crowd left for Creeks. Mrs. Anderson had gone from the firehouse to another home in the community, thence to her own house on Apple Avenue, from where she was driving her guests to Railroad Avenue, also in Bellmawr but on the opposite side of the Black Horse Pike. To do this she had driven out to the pike and was just turning left from Apple Avenue when, under the full glare of an overhead light, she saw the defendant walking in the direction toward Browning Road from the pumping station, the same way in which she was going. She stopped about six feet away from the defendant, looked at him, he looked at her and he was filled with blood. His face, his back, everything, she could see nothing but blood. She started the car, stopped again, took another good look, debating an offer of assistance, and decided that he was too bloody to get into the car. She watched him until he crossed Brown Avenue, a distance of practically half a square, which he traveled in a slouched walk as if he was slumping.

This same Mrs. Anderson gives the next testimony concerning the defendant. At 6 o'clock in the evening of that same day Mrs. Anderson and her husband, seeing Auld at the firehouse, drinking beer, approached him together. She picked up his hands and laid them on top of her own, showed them to her husband and said, "Look at these ungodly-sized hands." Her husband, looking at Auld's hands,

said to him, "What blackberry patch have you been into?" and Mr. Auld said nothing but walked out without finishing his beer. As they had stood there Mrs. Anderson observed the digs in his face, wider than a scratch and very much into the flesh, and his hands. His hands she said were, in the only way she could describe them, "down clawed."

Again on the same evening and still in the firehouse, about 11 P. M., Mr. Hulse saw the defendant, observed the scratches on his face and on one of his hands, asked Auld where he had got them and was told by the defendant that he was in a fight with a British sailor in Camden. This was in the presence of Hulse's wife and immediately, upon Hulse's turning toward the bar after asking the defendant if he would have a drink with him, the defendant left. Hulse said when he turned around the defendant was gone.

So far as the direct testimony in the case is concerned, Auld was next seen at the Fairview circle where the Black Horse Pike begins, standing at the curbing at about 10 o'clock the following morning, Thursday, August 16th. Mr. and Mrs. Agnew testified that he, Mr. Agnew, seeing a man in soldier's uniform, stopped and asked him if he wanted a lift. As he, Mr. Agnew, spoke to the soldier, he noticed that there were distinguishable scratches on his face. No reference was made to them by the driver or his wife but, after an exchange of conversation concerning V-J Day, and the possibilities of his getting out of the Army, the passenger volunteered this remark, "I guess you notice my face all scratches," to which the witness Agnew replied, "Yes, I do. What happened?" And the answer was given, "We were down in Baltimore and there were about thirty British sailors bragging about winning the war, and

ten of us worked on them." The witness, in characterizing these marks, said they were more than scratches, more like gouges. During the course of the ride, the passenger said he was only going about four miles down the road and indicated an intersection along the Black Horse Pike at Bellmawr as the place where he wished to be let out. Both Mr. and Mrs. Agnew positively and unequivocally identified their soldier passenger as the defendant, Howard Auld.

Thus it may be observed that on each one of the four occasions that he was seen within the day and a half following the alleged commission of the crime, mention was made, either by himself or the persons to whom he spoke, of the scratches or gouges on his face. Thereafter he was not seen again until a week following the crime, Tuesday, August 21st, at 11 P. M. The only accounting for his whereabouts in the meantime given by the defendant was vouchsafed in his statement to Dr. Yaskin in which he said he had gone to Morristown, New Jersey, and stayed at his brother's home there.

In any case, Officer Norton, of the Mt. Ephraim police, testified that he approached the defendant walking along the Black Horse Pike in Mt. Ephraim, stopped him, asked him who he was, to which the defendant replied that his name was Jackson. He was asked where he lived, to which he answered, "Up the street." Norton then took him to the police station and after obtaining from him his discharge papers again asked who he was, and the defendant replied, "You ought to know. You have been looking for me for three days." At this time Norton testified there were still some evidences of scratches on his face and hands. After the arrival of Chief Doran the defendant was taken to the

Prosecutor's office where, in answer to general questions, he admitted the crime, saying that the cistern where the body had been found was cleaned about once a year.

Then in company with Captain Mulligan and Detective Dube, he went to the creek south of the pumping station, to direct them in the search for the girl's pocketbook, which he had stated he had thrown away at about that spot. In the dark the search was unavailing but at 6:10 in the morning, it was found by the witness Charles Abel who had taken part in the search for it with Chief Kayser and Sergeant Heistand. Upon examination it was disclosed that the pocketbook contained a dress, slip, brassiere, a pair of stockings, a pair of garters and other articles, all identified as being worn by or carried by the dead girl on Tuesday, August 14th.

He was again brought back to the Prosecutor's office, where he made a statement which was taken stenographically by William B. Macdonald, the Official Court Stenographer of this county. In this statement the defendant said that he met the dead girl at the Bellmawr firehall late in the evening of August 14th, just as it was about closing, that he engaged in a plain, ordinary conversation with her, before the group left for the Creek home, that upon arrival at the latter place, in different cars, they had something to drink, again engaged in a conversation about everything in general, resulting finally in mentioning "going to go for a walk to sober up a bit." He said they walked down Anderson Avenue to the Black Horse Pike, up the Black Horse Pike to Maple Avenue, turning east and walking in for a distance of about 300 yards. There they stopped and, according to his statement, had a "few kisses," after which he carried her into the brush and tried

to have intercourse with her. She hollered, put up a fight and scratched him, whereupon he grabbed her by the neck and choked her. He said he then hit her twice because she was screaming. Figuring that she was unconscious, he then took off her clothes, picked her up, threw her over his shoulder and carried the nude girl along the fence, through the gate to the cistern at the pumping station. He lifted the 170 pound cover of the tank and dropped her down from his shoulder, closed the lid over and returned to gather up her clothes, put them in her pocketbook, took them down to the creek and tossed them in the bushes.

In this statement the defendant also categorically denies that he had intercourse with the dead girl, twice saying that on his trying or attempting to do so she "hollered" and that she put up a fight and scratched him, and it was not until the third reference to it was made that he said, "She let me try it" and put up the fight when he tried it again. After having thrown the girl into the well and disposed of her clothes, he went to his home. The next evening he went to the fire hall, at which time the incidents to which Hulse and Mr. and Mrs. Anderson testified are alleged to have occurred. After leaving the fire hall, according to this statement, the defendant went back to his home, took his bloody shirt and pants, came up to Camden and in the middle of the night walked up on the Delaware River Bridge and threw them into the river.

Thus it is, from all the pertinent testimony, that you will resolve the fact of whether or not Miss McDade's death was caused by the act of the defendant. This resume of the testimony, I repeat, is not in anywise to be interpreted as limiting or binding you in your deliberations, but is suggested merely

as a guide which in your own good judgment you may disregard in part or in whole. If you find that the defendant, Howard Auld, did not commit the felonious act, your inquiry need go no further and you should return a verdict of not guilty. But if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.

All murder is presumed in the law to be murder in the second degree and it is the duty of the State to overcome the presumption in order to make out a case of murder in the first degree. In this case the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing its case within a statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape, shall be murder in the first degree. The requirement that proof be beyond a reasonable doubt extends also to this necessary element in this case. The crime of rape consists of having unlawful carnal knowledge of a woman without her free and conscious consent. Consent has been defined as voluntary concurrence in or compliance by one person with what is proposed or done by another. Hence it has its origin in and proceeds from the mind or the will and cannot be apprehended by any sense faculty. No one can look into a person's mind and ascertain from such inspection whether or not consent in a particular case is given or withheld. Nevertheless it can generally and reliably be inferred from the acts and conduct of the person; so, on this point you may consider any proven facts of time, place, persons or circumstance which might rea-

sonably support the inference you finally make. As I view such evidence in the case it conveniently divides itself into two classes, one negative and the other positive. In the first classification might be considered the fact that nowhere in the case is there any indication that the dead girl and the defendant were on terms of the slightest intimacy prior to August 14th, and that on this very occasion they were in each other's company at most a matter of a few hours, during which their conversation concerned itself with things in general.

In the second category there is the testimony of Mrs. Stoerrle and her daughter that at some time after 1:30 that morning they heard the shrill, agonizing scream of a woman, terrifying enough that they didn't dare go out and look because they were alone; the fact that the ground for quite some space around where some of the belongings of the dead girl were found was trampled as if there had been a skirmish; that her clothing, dress, slip and panties were multi-stained with blood; the fact that her lower lip was cut completely through in a wound about two and a half to three inches in length; that there were abrasions on the lower part of her thighs and on the inner aspect of the left middle thigh. That her private parts were bruised and torn and that the hymen itself was freshly lacerated; the fact that she was five feet two inches in height, weighing in life 105 pounds, and that though the defendant is over six feet tall, weighing 190 pounds, he was clawed and gouged, hands and face, in such a fashion that as he was leaving the scene of the crime his face was filled with blood; that these gouges were plainly distinguishable the next day and on Thursday morning, and were somewhat evident one week later when he was arrested. To this

may reasonably be added the statements of the defendant himself that she scratched and fought him and resisted violently. To be sure, one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, "I did not consent," would be if she were here.

The defendant's testimony on this point, given on the stand, differing from what he said in his statement and in his declarations to the doctors, was just such a verbal averment. He testified that after he carried the girl into the bushes he went into the act of intercourse with her. During the commission of the act he testified she hollered and scratched him and, in order that you may have the benefit of his exact words, I will read from the printed record. On direct examination by his own counsel, he said, "Well, we was there for a few minutes, I would say thirty seconds, and she hollered, but she didn't say to get off, so she started scratching me and I hit her." And on cross-examination, "She—we were having—in the act of intercourse—and when she said—she was hollering and she didn't say get off, she didn't say stop." "No, she didn't say—she didn't say stop and right then, at that moment, she scratched me." That is the direct testimony from the only person who can give such testimony. Do you believe this? Do you believe that she said to him, "Let's go for a walk?" Do you believe that suddenly, in the performance of an act of voluntary intercourse, she started to scream and scratch and fight violently? If you do, then the dead girl did consent and the contention that her death resulted from the perpetration of a rape has not been proven.

Returning now to a consideration of the story told by the defendant on this point in his statement, we find that in answer to the specific question, "Did you have intercourse with her?" he said, "No," but did say that in attempting to have intercourse with her she was too little and began to holler, and that when she did he grabbed her by the neck, choked her and hit her twice in the face. I quote again from the testimony, "You say you couldn't get it into her the first time? A. And I tried the second. Q. And that is when she put up the battle? A. Yes." If, from the testimony, you infer that the dead girl in the first instance consented to the act of intercourse but that at any stage during the preparatory acts withdrew that consent, by word or act, and the defendant failed or refused to respect that withdrawal, but sought forcibly to carry out his intention to complete the act against her will, then such a finding would justify your determination that his completion of the act of intercourse by such force was rape.

Similarly is it that the failure to complete the act of intercourse by force would not vitiate the contention of the State if you find that at any time after the intention was formed by the defendant to have intercourse forcibly with the dead girl against her will, he performed any act toward the commission of the crime. And this even if an original consent had been given by her but was withdrawn before the formation of such intent and the performance of such forcible act toward the commission of the crime.

As the Court is able to discern the pattern of the defense, it consists in mutually repugnant defenses, either one of which, however, is, if believed, sufficient to justify a verdict of not guilty. The first

consists in the denial that he either did or attempted to rape the dead girl and the second that he was at the time of the commission of the crime insane.

The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is no available means of judgment that will permit a reasonable man to maintain with infallible certainty that this or that witness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, of some which provide a better divination of the truth than others. One of these is expressed in the evidential maximum known to the law, false in one thing, false in all things. Therefore, nothing is to be implied from this instruction which would accord to this maxim any effect beyond its value as a rule by which the probative force of testimony may be weighed, and the rule does not rise to the dignity of an inflexible legal principle to be applied in all cases. If, however, you are convinced that a willful, knowing or intentional attempt has been made to mislead you in a material fact by any witness, then you can reject all the testimony of that witness.

At this point also should effect be given to the

testimony that was produced by the State showing that the defendant had on two prior occasions been convicted of crime. The offer and reception of this testimony was made and permitted under the provisions of an act of the legislature, made a part of the Evidence Act, which reads as follows, "For the purpose of affecting the credibility of any witness, his conviction of crime may be shown by examination or otherwise." Thus I charge you that this evidence shall be considered by you for the purpose of affecting your belief in the defendant's story and shall not be considered as substantive proof that he committed the crime charged in this indictment.

If, after giving the accused the benefit of reasonable doubt, you are convinced that he killed Margaret Rita McDade in the perpetration of a rape or in the attempt to perpetrate a rape, then he is guilty of murder in the first degree, even though the killing be unintentional.

This brings us to the consideration of the affirmative defense proposed by the defendant that, if he did kill her, he was insane and under the law blameless. You begin your deliberations on this point with the presumption that every man is presumed not only to be sane but to be responsible for the performance of his acts, and the burden rests upon the defendant in this case to establish by a preponderance of the testimony that at the time of the commission of the act he was not sane.

To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason from a disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know

that what he was doing was wrong. If an accused has sufficient mind to know the difference between right and wrong with respect to the act he is doing, and to control his conduct under ordinary circumstances, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistible impulse. Capacity and reason sufficient to enable the accused to distinguish between right and wrong was adopted as the test of insanity in criminal cases by our courts as early as 1846.

In attempting to discharge this burden imposed by the law the defendant offered in his behalf, among other witnesses, two experts and testimony of a psychotic episode or episodes in the service. Dr. Waygood, the first psychiatrist, testified in answer to a hypothetical question, based upon the facts as testified to in the defendant's case, "I would think it very probable he was not in his right mind at some time during the occurrence of this evening's events, and that would include the last moment which you have recited," referring to the defendant's statement that he was having sexual intercourse with the dead girl when he was scratched by her. On cross-examination the doctor said that the defendant probably knew what he was doing at the moment that he carried the girl into the bushes and that he probably knew what he was doing when he was engaged in the alleged act of intercourse, and that it was not possible for him to fix the time exactly, that he was not willing to state the exact time that the defendant reached the point when, in his opinion, he did not know right from wrong, and that he would not say yes or no to the question whether or not the defendant could distinguish between what was right and what was wrong at the time he

struck her on the jaw to stop her screaming and scratching.

The second, Dr. Dreher, testified that the defendant was for part of the time during the night and early morning in question confused and unable to distinguish between right and wrong, but that it was very difficult to fix the time at which that confusion existed, but that it was his opinion that he could put that time at the moment when the defendant found or believed that the girl was dead, and in amplification of that opinion he said he regarded the defendant's striking of the girl as a burst of anger not clearly designed to accomplish any purpose but to defend himself. On cross-examination he testified that the defendant was sane when he picked the girl up and carried her into the bushes, when he was in the alleged act of intercourse, but that he could not longer be as positive in his answer if the defendant knew why the girl screamed and scratched him.

Both Dr. Waygood and Dr. Dreher said that such opinions as they did express were predicated upon the truth of every factor contained in the hypothetical question proposed to them, including the fact that during many months of combat in New Guinea and in the Philippines the defendant spent most of his time behind the enemy lines on patrol and scout activities, on one of which, after having been dropped, presumably by plane, he was exposed to the bursting of a 500-pound bomb nearby, from which time on he did not seem himself. Therefore the validity of such opinions and their probative value may be weighed by you in accordance with your belief or disbelief of the existence of any of the factors entering into the formation of those opinions.

In rebuttal the State produced, in addition to the two Army doctors, who said that on July 27, 1945, he had no symptoms of psychosis, two eminently qualified neurologists and psychiatrists, Dr. Yaskin and Dr. Spradley, who examined the defendant twice, the first time on August 22nd, the day of his arrest, and again on August 31st. Both of them unequivocally and without qualification said that on each occasion that they saw the defendant he was sane and capable of knowing the difference between right and wrong, and that in their opinion before, during and after the commission of the act which resulted in the death of Margaret Rita McDade, the defendant, Howard Auld, knew what he was doing and was able to distinguish right from wrong.

With respect to this phase of the proofs, as I have said, the presumption is that the defendant is capable of knowing the difference between right and wrong and it is the defendant's burden to overcome this presumption by clear and satisfying proof. So that, if in considering this point you find that the defendant has borne the burden imposed upon him, your verdict should be not guilty, but if on the contrary you feel that the defendant has not borne that burden, this defense cannot prevail.

At this point, with respect to expert testimony, I charge you that it stands in no more favored position than any other testimony insofar as your prerogative to accept it or reject it entirely, according to your own good judgment, is concerned. I also charge you that in dealing with such a defense you ought to use great caution not to give immunity to persons who commit crime when they are merely morally depraved. You should discriminate between conditions of the mind merely blunted by fa-

miliarity with wickedness and yet capable of understanding the nature and consequences of a criminal act, and such a prostration or condition of the faculties as renders a man incapable of knowing right from wrong.

It is also my duty to remind you, gentlemen, that outbursts of ungovernable passion do not excuse a man for any acts of atrocity he may commit under their influence; on the contrary, they aggravate his guilt. Men are bound to control their passions; and if they suffer them to run away with their reason and senses, they ought to suffer for it. One of the very objects of having laws to govern us, is to protect us from the fury of ungovernable passion—whether that be anger, hate, envy, jealousy, or any other of the malignant passions, a man is equally culpable for suffering himself to be goaded on by any of them to the commission of crimes at which humanity shudders.

With these instructions I have completed what I conceive to be the principles of law that must govern you in your deliberations and in the rendering of your verdict, which can be only one of five possible verdicts.

First, not guilty.

Second, not guilty by reason of insanity, in which case you will be required further to state in your verdict whether or not such insanity does continue.

Third, guilty of murder in the second degree.

Fourth, guilty of murder in the first degree with recommendation of imprisonment at hard labor for life, or

Fifth, guilty of murder in the first degree.

The requests to charge will be denied.

The clerk will draw the names of the twelve

jurors who will deliberate on this case, the first of whom drawn will be the foreman.

(Jurors drawn by the clerk.)

The jury may retire.

DEFENDANT'S EXCEPTIONS.

MR. PALESE: If your Honor please, I would like to take a general exception to your Honor's charge.

Secondly, your Honor in toto forgot to refer to the witness Mrs. Hulse who testified on behalf of the defendant, also to the witness Mrs. Auld who testified on behalf of the defendant.

I would also like to take exception to your Honor's refusal to charge requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34.

THE COURT: An exception specifically to each request will be allowed and a general exception to the charge.

DEFENDANT'S REQUESTS TO CHARGE.

1. The defendant is at all times presumed by the law to be innocent. To convict, the State must rebut that presumption of innocence and convince the jury beyond a reasonable doubt that he is guilty. That the presumption of innocence continues in favor of the defendant throughout the entire trial, step by step, and remains with him unless and until the jury have reached a verdict of conviction, on consideration of all the evidence, beyond a reasonable doubt.

2. If it is established that murder has been committed by this defendant, the presumption is that it is murder in the second degree. If the defendant seeks to reduce it to a lower grade of homicide he must establish that by evidence in your minds to your satisfaction, and if the State demands a verdict of murder in the first degree the burden is upon the State to establish it beyond a reasonable doubt.

3. All murders are presumed to be murders in the second degree. It is not only incumbent upon the State to prove beyond a reasonable doubt the guilt of the defendant, but the same obligation of proving beyond reasonable doubt such facts and circumstances as would warrant the jury in returning a verdict of greater than second degree murder is likewise upon the State.

4. That the defendant is legally presumed to be innocent unless and until his guilt is proved beyond a reasonable doubt, after consideration by the jury of all of the evidence. The benefit of the reasonable

doubt always goes to the defendant and is always applied in his favor in every fact necessary to prove his guilt or the degree of his guilt. The State must bear the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden never shifts. The burden extends to each and every element necessary to be proved to establish the guilt of the defendant, and the defendant is entitled to the benefit of such reasonable doubt on the whole case.

5. There are two degrees of murder, first and second, and they are distinguished by our statute 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 arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree; and the jury before whom any person indicted for murder shall be tried, shall if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree.

There is a further distinction between first and second degree murder with respect to the imposition of the punishment. In cases of conviction of first degree murder, the power and authority to impose the punishment rests with the jury. It is you, in such case, who determine whether the defendant shall be put to death or imprisonment at hard labor for life, and the statute defines your power and authority 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 its verdict and as a part thereof, upon

and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

6. Every person convicted of murder in the first degree shall suffer death unless the jury shall, by their verdict and as part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

7. That the jury are the sole judges of the facts, the weight of the testimony and the credibility of the witnesses.

8. That the jury are the sole judges of the evidence. They are to determine what the evidence is by and for themselves.

9. That the defendant is entitled to have the jury consider all the facts in evidence, even if he does not deny those which concern his own acts. The presumption of innocence continues unless and until the jury have agreed upon a verdict of conviction on consideration of all of the evidence, and that beyond a reasonable doubt.

10. The mere fact that an indictment has been found by the Grand Jury should have no effect upon your consideration of the facts in this case. The indictment has no probative force whatsoever and raises no presumption of guilt of any kind or description. You must remember that the Grand Jury which heard the indictment heard only one side of the case and the only thing the Grand Jury decided

by indicting was that this case should be brought to trial before you.

11. That the defendant is legally presumed to be innocent unless and until his guilt is proved beyond a reasonable doubt, after consideration by the jury of all the evidence. The benefit of the reasonable doubt always goes to the defendant and is always applied in his favor on every fact necessary to prove his guilt.

12. That the State must bear the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden never shifts. The burden extends to each and every element necessary to be proved to establish the guilt of the defendant, and the defendant is entitled to the benefit of such reasonable doubt on the whole case.

13. That the defendant is entitled to the benefit of the reasonable doubt on the evidence presented or lack of evidence.

14. The defendant is indicted for murder. It is your duty to decide his guilt and to decide the degree thereof if you find him guilty of murder.

15. I charge you that the State has cast upon its shoulders the burden of proving, beyond a reasonable doubt, not only that this defendant committed a murder, but if it is sought to convict in the first degree the State has the burden of proving the additional facts which would make the murder a first degree murder.

16. If a murder is proved to your satisfaction to have been committed by the defendant and no more,

you should not return a verdict of greater than second degree murder, because all murders are presumed to be murders of the second degree until the State affirmatively shows, beyond a reasonable doubt, the facts which entitle it to a verdict of guilty of murder in the first degree.

17. If you find that the defendant is criminally responsible for his alleged act and committed the murder, the murder is presumed to be a murder in the second degree, unless a specific intent to kill on the part of the defendant be present, and if that element is not present, your verdict should be no greater than that of murder in the second degree.

18. If the evidence is sufficient to satisfy you that defendant's mental defectiveness and intelligence, at the time of the homicide was such as to render him incapable of forming a specific intent to kill, which is one of the essential elements and ingredients of murder in the first degree, the defendant is not entitled to an acquittal, but his offense will be murder in the second degree.

19. If at the time of the homicide, the defendant was so feeble-minded that his faculties were prostrated rendering him incapable of forming a specific intent to kill with its wilful, deliberate and premeditated character, then, although it is no defense or justification, his offense would be murder in the second degree.

20. That the testimony in this case does not show that the murder was committed in the perpetrating or attempting to perpetrate rape, and therefore his offense is murder in the second degree.

21. I charge you that if after considering all the evidence you find the defendant guilty of murder in the first degree, under your oaths as jurors you may at the time of rendering your verdict recommend imprisonment to hard labor for life.

22. One of the defendant's defenses is that at the time of the commission of the alleged crime he was unable to comprehend the moral nature and character of his act. If this be true, I charge you his acquittal should follow and such a finding in your verdict should be, in such case, not guilty.

23. Insanity, under our law, is neither a physician's, neurologist's nor psychiatrist's definition of insanity, but is the inability, through mental disease or disability, to distinguish between right and wrong as to the alleged criminal act at the time of the commission of same.

24. Insanity, under this definition I have given you, is a complete defense to any criminal responsibility whatever in connection with the alleged criminal act and if you find the defense sustained your verdict should be not guilty.

25. Although the State must prove the guilt of the defendant beyond a reasonable doubt, it is sufficient if the defendant establishes his insanity to the jury by a clear preponderance of the proof only and if he has done so you should acquit him and your verdict should be that of not guilty.

26. If you find the defendant insane under the definition that I have given you, you will disregard any-

thing I may have said as to the degrees of murder and you must find a verdict of not guilty.

27. I charge you that the state of mind relevant to your inquiry as to the defendant's sanity is that state of mind which existed at the time of the commission of the alleged criminal act and that whether the insanity be of a temporary or permanent character, if you find it existed at that time your verdict must be that of not guilty.

28. I charge you that you may consider the fact that defendant having been insane once, or several times before, may render it more probable that the defendant was insane at the time of the homicide, if there is any direct proof that he was insane at the time of the commission of the crime. Insanity before the commission of the crime proves nothing where the State has shown a subsequent return to reason. Former insanity increases the probability that defendant was insane if there is any independent evidence that he was insane at the time of the commission of the crime.

29. If it has been proven to your satisfaction that the defendant has been once insane, the presumption is, that he continues so until the contrary is shown, that is, if there is no period of lucid intervals since the time of the insanity proved, you must find him still insane, and insane at the time of the commission of the homicide.

30. The evidence of insanity is before you, and it is your peculiar province to judge of its weight and the results to which it leads.

31. If, in your opinion, it is clearly proved that the defendant, at the time of the homicide, was unconscious that what he did was wrong, and that he ought not to do it, you must acquit him on the ground of insanity.

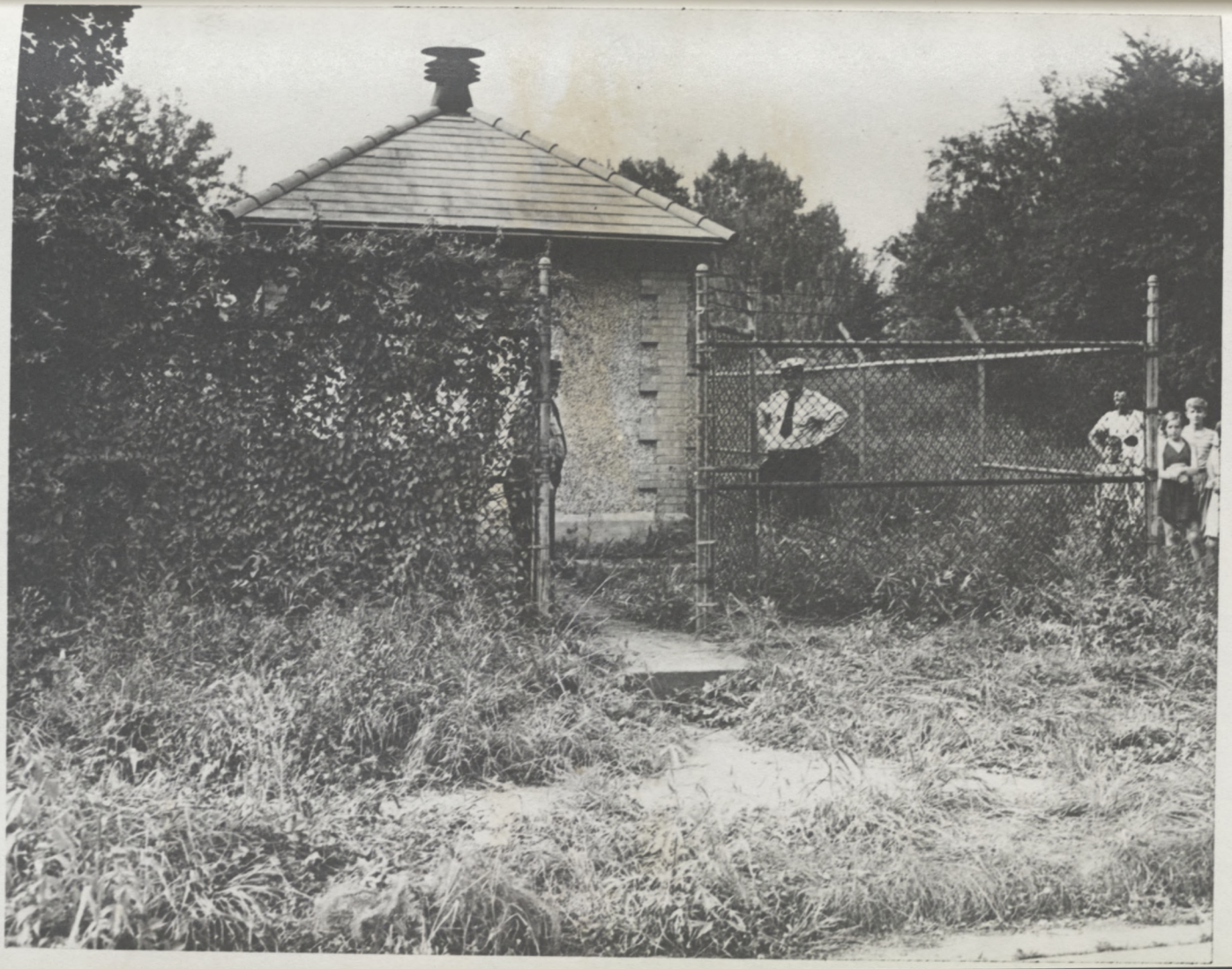
32. I charge you that if the State is to prevail in its contention that the defendant committed murder in perpetrating or attempting to perpetrate rape, it must be established by evidence beyond a reasonable doubt. You must find that the defendant had sexual intercourse with Rita McDade forcibly and against her will. If it was a voluntary act on her part, then you cannot convict defendant of murder in the first degree.

33. I charge you that if the defendant had been declared and proven insane prior to the commission of the homicide, the presumption is, that he continues so until the contrary is shown.

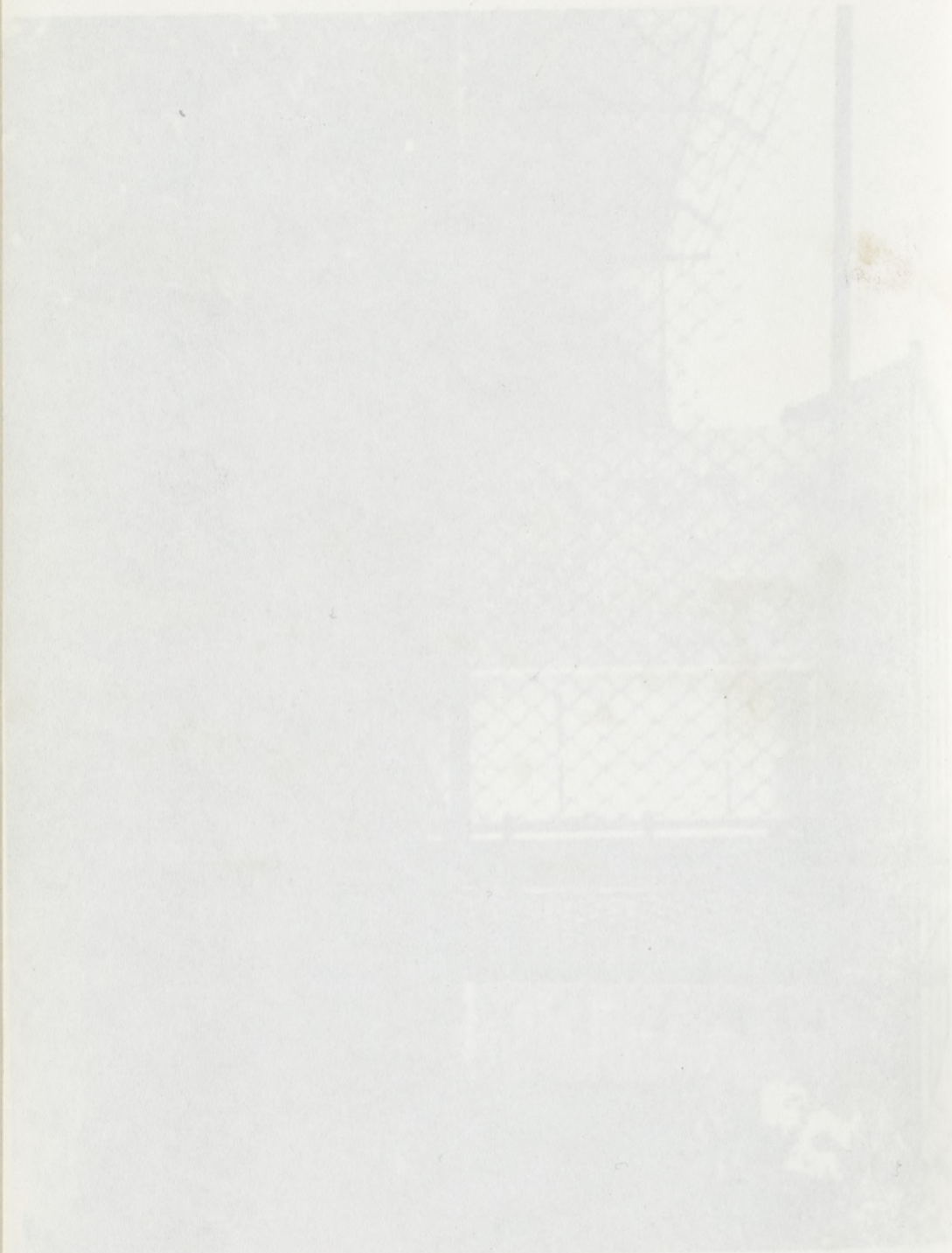
34. The evidence that has been offered and accepted in this case on behalf of the State and the defendant is for the purpose of proving the guilt or innocence of the defendant in accordance with the rules of law which I have heretofore given you. The same evidence, however, as offered by either the State or the defendant may be used and considered by you not only for the purpose of determining the guilt or innocence of the defendant, but, in case of first degree conviction, the punishment to be inflicted upon this defendant. You have been instructed as to the requirements for legal insanity in New Jersey. If you should find that this defendant was legally sane on August 15th, 1945, the time when the homicide is alleged to have been committed by

the defendant, but you should also from this same evidence find that he suffered from some mental irregularity or abnormality short of legal insanity, you are justified in giving this due consideration in determining the punishment to be inflicted.

In other words, if you find that the evidence falls short of establishing insanity as defined by New Jersey law, you are not obliged to disregard or discard said evidence for all purposes and you are entitled to consider said evidence, in case of a first degree conviction, in selecting the punishment under the authority vested in you as previously explained.



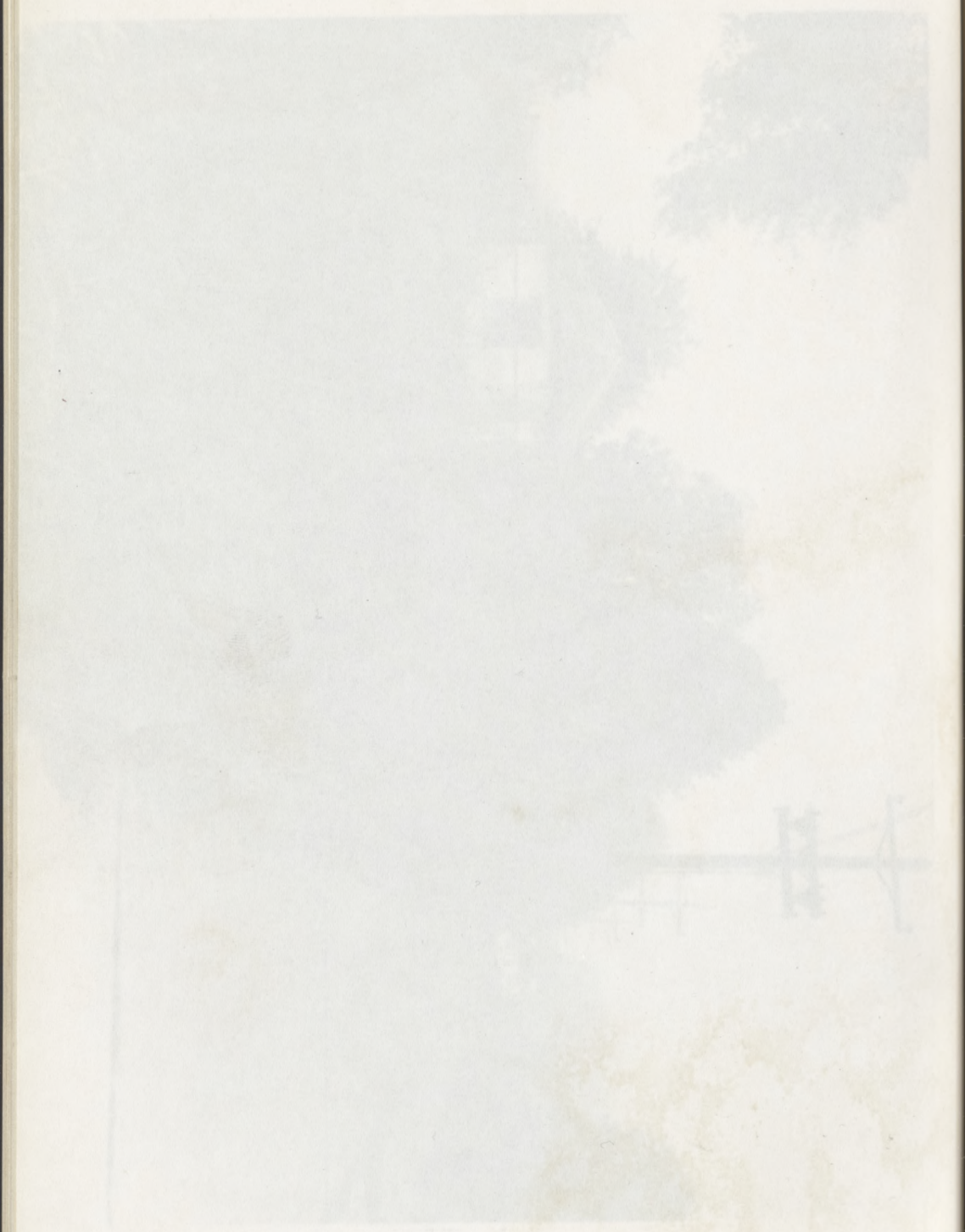






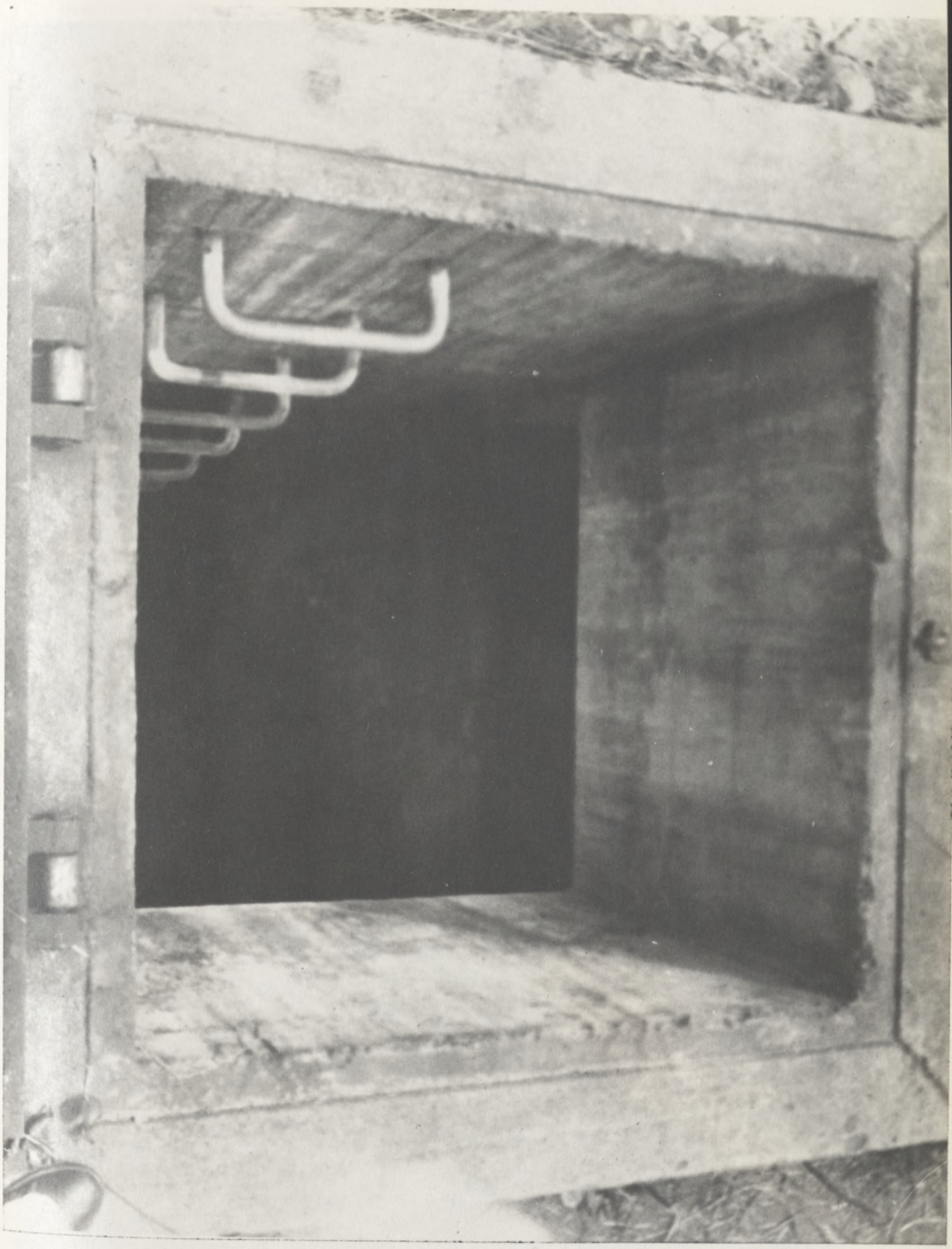


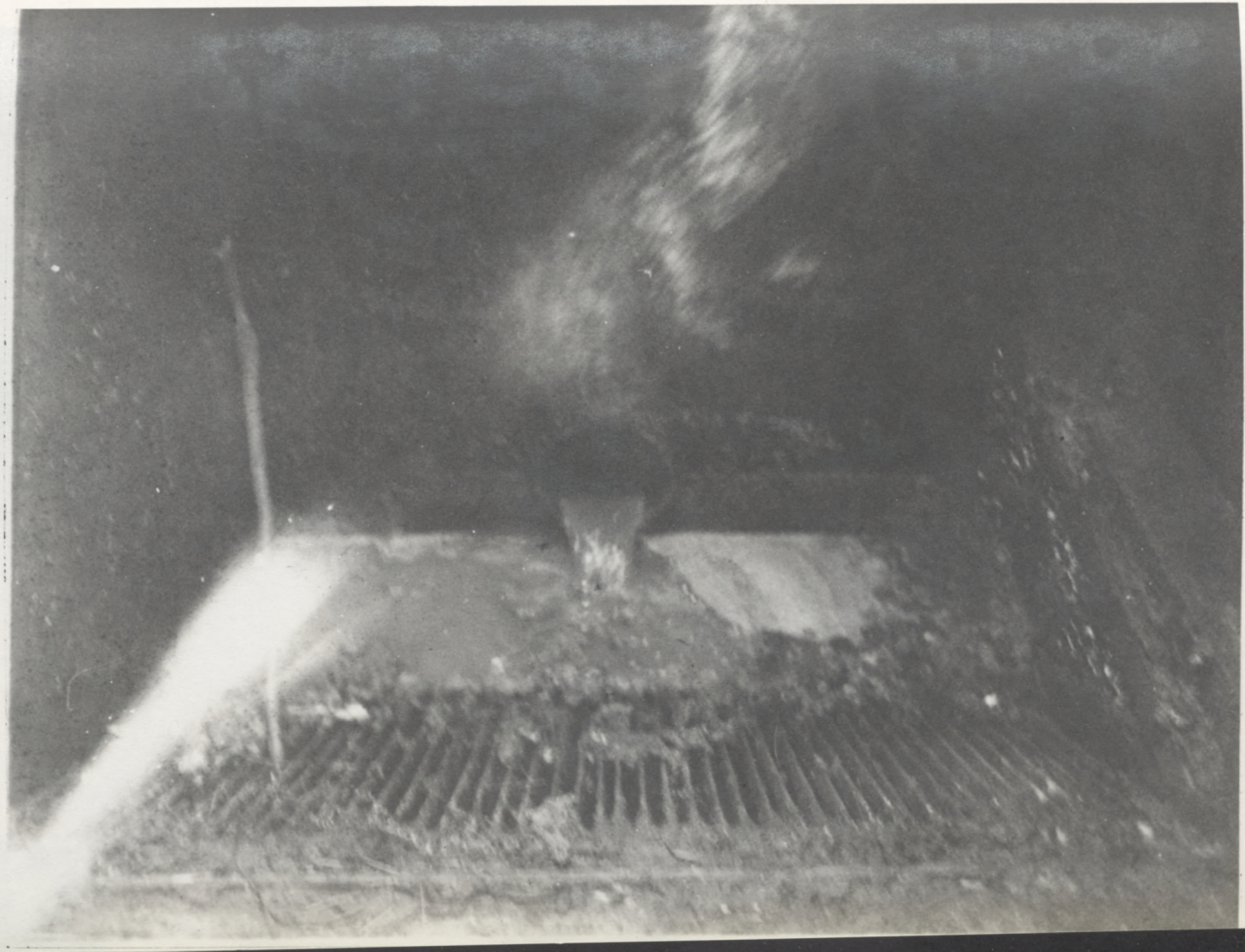














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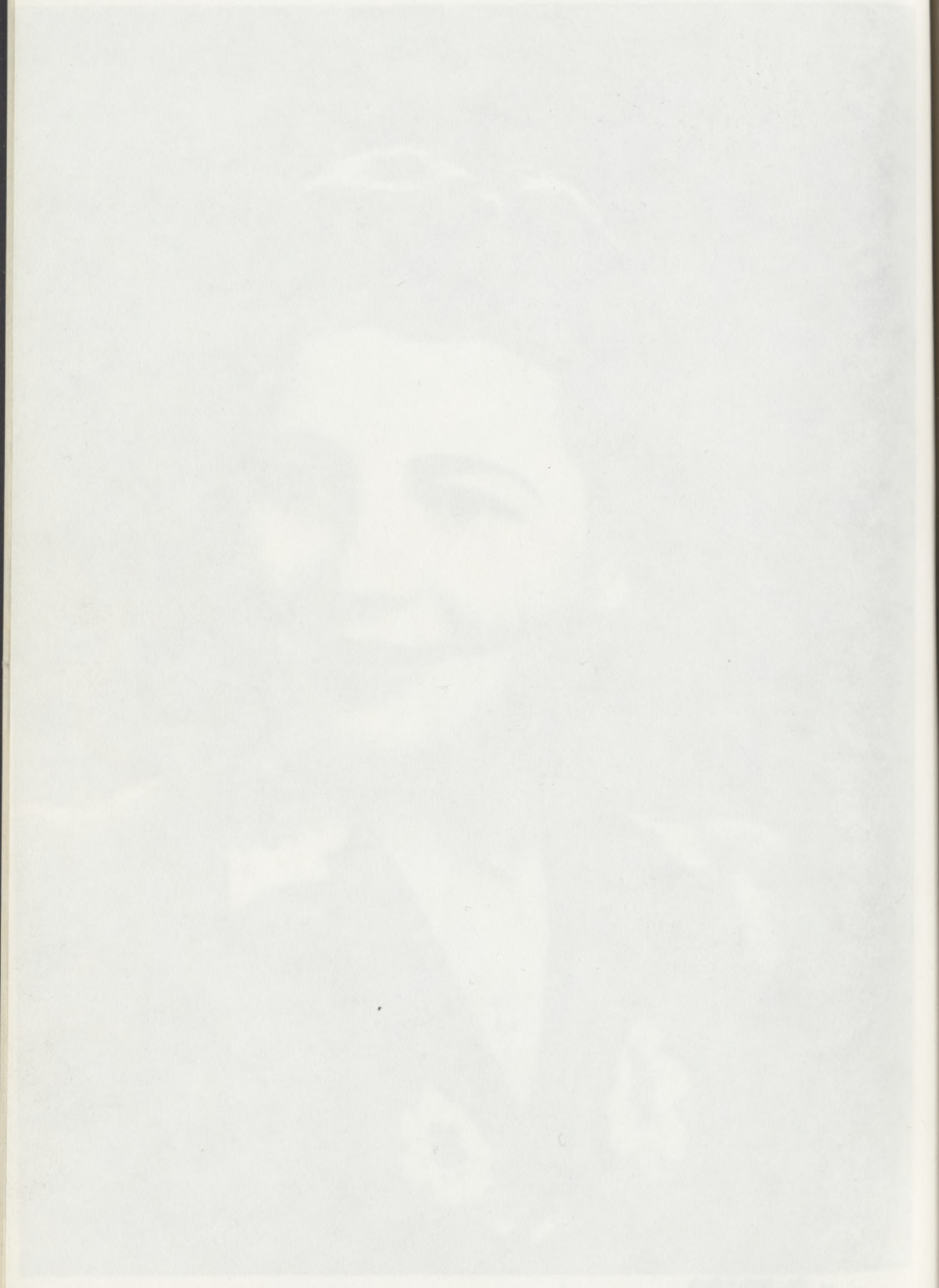









NATIONAL GUARD

AULD 20224275
(Last name) (Army serial No.)

Howard NMI
(First name) (Middle initial)

Infantry
(Arm or service for which enlisted or inducted)

Color or race White

(PLACE X IN BOX INDICATING COMPONENT)

☐ Regular Army. ☒ National Guard of the United States.

Army of United States:

☐ For Regular Army units.

☒ For National Guard units.

☐ Selective Service and Training.

☐ Regular Army Reserve—Active duty.

☐ Enlisted Reserve Corps—Active duty.

SERVICE RECORD

covering period

From 9 July, 19 40, to ____, 19 ____

Active duty 16 Sept 40

For instructions see AR 345-125

W. D., A. G. O. Form No. 24
(March 1, 1941)

EXHIBIT S-24 (sheet 1)(p.769)

DUPLICATE

IMMUNIZATION REGISTER[1]

SURNAME	CHRISTIAN NAME	ARMY SERIAL NO.
AULD	HOWARD	NMI 20224275

RANK	COMPANY	REG'T OR STAFF CORPS
Pvt.		

Entered service 9 July, 1940

At Camden N.J.

Date of birth 19 May, 1920

SMALLPOX VACCINATION

DATE	RESULT[8]	INITIALS OF MED. OFFICER
7-9-40	Immune	
6-20-42	Immune	

TYPHOID VACCINATION

DATES OF ADMINISTRATION (DAY, MONTH, AND YEAR)			INITIALS OF MED. OFFICER
FIRST	SECOND	THIRD	
7-9-40	comp	July 15-44. Stem	H Blomstein
7-2-42	comp		

OTHER VACCINATIONS

KIND	DATES OF ADMINISTRATION (DAY, MONTH, AND YEAR)			INITIALS OF MED. OFFICER
	FIRST	SECOND	THIRD	
Tetanus	8-7-41	Stem. July 15-44		H Blomstein
	6-20-42			

DIPHTHERIA SUSCEPTIBILITY TEST (SCHICK)

DATE	RESULT[9]	INITIALS OF MED. OFFICER
Cholera	0.5 C - 11-15-44 Pres. ~~5-9-42~~	
Typhus	5-10-42	

CARRIER EXAMINATIONS

DATE	PARASITE EXAMINED FOR	KIND OF[10] SPECIMEN	POSITIVE OR NEGATIVE
Typhus	11-15-44	11-22-44	11-24-44 - Pmk
	Blood type		"A"

REMARKS

STATION OR COMMAND

3—8711

1

DRAFT RECORD

(This draft record will be filled out only in case the man enters the service through induction by draft or selective service)

Serial No. ..... Order No. .....

Date of order to report for military duty .....

Date ordered to report .....

Date actually reported .....

Inducted by local board .....
(Designation of local board)

Entrained for post, camp, station .....
(Date)

Arrived at .....
(Date)

RECORDS OF IMMUNIZATION

(See par. 6, AR 40-215, for details relative to immunization records)

SMALLPOX VACCINATION

Date	Result [1]
7-9-40	Immune
6-20-42	Immune

TYPHOID VACCINATIONS

7-9-40	Completed
7-2-42	Completed

OTHER VACCINATIONS

Kind	Date
Tet. Tox. Completed	8-7-41
Act TT	6-20-42

DIPHTHERIA SUSCEPTIBILITY TEST—SCHICK

Date	Result [2]
5-3-42	Cholera Comp
5-10-42	Typhus Comp

CARRIER EXAMINATIONS

(See AR 40-310)

Date	Parasite examined for	Kind of specimen [3]	Positive or negative
Blood type A.			

[1] Record as vaccinia, vaccinoid, or immune reaction.
[2] Record as positive, positive combined, negative-pseudo or negative.
[3] Record as feces, urine, sputum, blood, etc.

ENLISTMENT RECORD

Auld Howard — 20224275
(Last name) (First name) (Middle initial) (Army serial No.)

Born 5 19 20 Phila. Penna.
(Month, day, and year) (City or town) (State or country)

Height 6 ft. — in. Weight 200 lb. Eyes Blue Hair Blond

Complexion Fair Size of gas mask #3 Size of shoe 11 E

Married or single Single Occupation Truck Driver

EDUCATIONAL QUALIFICATIONS

Years in: Grammar school 8 High school 0 College or university 0

Graduate work — Specialized in —

Speaks *English, ~~French, Spanish,~~ German.

OCCUPATIONAL QUALIFICATIONS

Truck Driver $ 35 —
(Main occupation) (Weekly wages)

Years 5 as *apprentice, journeyman, expert.

Just what did he do? Drove 2 Ton Truck

Tractor Operator $ 28.00
(Next best occupation) (Weekly wages)

Years 2 as *~~apprentice~~, journeyman, ~~expert~~

Just what did he do? Tractor Operator in CCC

HOME ADDRESS AND NEAREST RELATIVE

Home address Black Horse Pike.
(Number and street or rural route; if none, so state)

Bellmawr N. J.
(City, town, or post office) (State or country)

Name and address of nearest relative Jennie Auld
(Name)

Mother Black Horse Pike
(Relationship) (Number and street or rural route; if none, so state)

Bellmawr N. J.
(City, town, or post office) (State or country)

Person to be notified in case of emergency Jennie Auld
(Name)

Mother — Blk. Hrs. Pike.
(Relationship; if friend, so state) (Number and street or rural route; if none, so state)

Bellmawr N. J.
(City, town, or post office) (State or country)

DESIGNATION OF BENEFICIARY

(To be entered only from W. D., A. G. O. Form No. 21 or 41)

Jennie Auld - Mother
(Name and degree of relationship of beneficiary)

Black Horse Pike — Bellmawr - N.J.
(Address)

Clarence Auld - Father
(Name and degree of relationship of alternate beneficiary)

Black Horse Pike - Bellmawr - N.J.
(Address)

Mrs. Barbara Gilman Sister
(Name and degree of relationship of alternate beneficiary)

Navy Yard, Manila, P.I.
(Address)

CURRENT ENLISTMENT

(See "Remarks—Financial" (par. 3a, AR 345-125))

Age at enlistment 20 years 4 months.

Accepted for service at Camden, N.J., Induction

Enlisted at Camden, N.J. on the

9 day of July, 1940

in grade of Pvt. by 1st Lt. Vexil D. Weisgerber

for Service Co. 114th Infantry
(Company, regiment, arm, or service)

to serve (3) three years.
(Words and figures)

Completed 0 years 0 months 0 days for longevity pay,

at enlistment. Has over years' service. [illegible]
(Initials of officer)

Physical defects at enlistment None

* Strike out words not applicable.

3—8855

MILITARY QUALIFICATIONS

Served as _____ (Highest grade held) in the United States Army in the World War

Holds commission as _____ (Grade) (Section) in the Officers' Reserve Corps

Graduate of _____ (Noncommissioned officers' or special service school)

ARMY SPECIALTY

Specialty	*Rating, with date	*Rerating, with date
Rifleman 745	Ex 6-13-42	
DRIVER 345	G 11 JAN 43	

* Ex=Excellent; VG=Very good; G=Good; F=Fair.

SPECIAL DUTY

As	At	From	To	Authority

ARTICLES OF WAR

(Read to soldier as required by the 110th Article of War)

Date	Initials	Date	Initials
9/18/40	V.P.W.	MAY 7 1943	Gum
3/5/41	W.P.W.		
9-10-41			
1-15-41			

SEX MORALITY See Page 15

Course completed (see AR 40-235) 9/19/40, 19 40

QUALIFICATION IN ARMS

(Special qualifications attained in the use of the various arms and additional compensation therefor)

Qualified as _____ (Grade designation), 19____

Compensation $_____ per month. Aggregate or final score _____

Order publishing fact of qualification _____ (Number) (Source) (Date)

Qualified as _____ (Grade designation), 19____

Compensation $_____ per month. Aggregate or final score _____

Order publishing fact of qualification _____ (Number) (Source) (Date)

Qualified as _____ (Grade designation), 19____

Compensation $_____ per month. Aggregate or final score _____

Order publishing fact of qualification _____ (Number) (Source) (Date)

Qualified as _____ (Grade designation), 19____

Compensation $_____ per month. Aggregate or final score _____

Order publishing fact of qualification _____ (Number) (Source) (Date)

Qualified as _____ (Grade designation), 19____

Compensation $_____ per month. Aggregate or final score _____

Order publishing fact of qualification _____ (Number) (Source) (Date)

MILITARY QUALIFICATIONS

Served as _____ in the United States Army in the World War
(Highest grade held)

Holds commission as _____ in the Officers' Reserve Corps
(Grade) (Section)

Graduate of _____
(Noncommissioned officers' or special service school)

ARMY SPECIALTY

Specialty	*Rating, with date	*Rerating, with date
Rifleman 745	Ey 6-13-42	
DRIVER 345	G 11 JAN 43	

* Ex=Excellent; VG=Very good; G=Good; F=Fair.

SPECIAL DUTY

As	At	From	To	Authority

ARTICLES OF WAR
(Read to soldier as required by the 110th Article of War)

Date	Initials	Date	Initials
9/18/40	V.D.W.	SEP 15 '42	Gum
3/5/41	W.D.W.	MAY 7 1943	Gum
9-10-41	Gum	MAY 2 1944	Gum
1-15-41	Gum		

SEX MORALITY See Page 15

Course completed (see AR 40-235) 9/19/40, 19 40

QUALIFICATION IN ARMS
(Special qualifications attained in the use of the various arms and additional compensation therefor)

Qualified as _____, _____, 19____
(Grade designation)
Compensation $_____ per month. Aggregate or final score _____
Order publishing fact of qualification _____
(Number) (Source) (Date)

Qualified as _____, _____, 19____
(Grade designation)
Compensation $_____ per month. Aggregate or final score _____
Order publishing fact of qualification _____
(Number) (Source) (Date)

Qualified as _____, _____, 19____
(Grade designation)
Compensation $_____ per month. Aggregate or final score _____
Order publishing fact of qualification _____
(Number) (Source) (Date)

Qualified as _____, _____, 19____
(Grade designation)
Compensation $_____ per month. Aggregate or final score _____
Order publishing fact of qualification _____
(Number) (Source) (Date)

Qualified as _____, _____, 19____
(Grade designation)
Compensation $_____ per month. Aggregate or final score _____
Order publishing fact of qualification _____
(Number) (Source) (Date)

MILITARY RECORD

APPOINTMENT, PROMOTION, OR REDUCTION, WITH AUTHORITY THEREFOR

Grade	Date	Authority	Initials
Pvt 1/c	2/5/41	C.O. #4	
Pvt	4/14/41	CO #9 4/18/41	TDH

SPECIALIST RATINGS

Class	Qualification	From	To	Authority	Initials
6th	Chf Cl.	9/14/40		CO ORD #9 9/14/40	VDH
	Discharged	4/4/41		O #6	

ORGANIZATIONS TO WHICH ATTACHED

Organization	From	To
HQ Co 1st Bn 162nd Inf	MAY 13/43	6-16-43
Co B, 162d Inf	6-17-43	
Det of Pats 4th Gen Hosp APO 927	Mar 15/43	29 Dec/43
FOURTH REPLACEMENT DEPOT A.P.O. No 708	29 Dec 43	10 Jan 44

ORIGINAL ASSIGNMENT AND ORGANIZATIONS TO WHICH SUBSEQUENTLY ASSIGNED DURING THIS ENLISTMENT PERIOD

Assigned to company, regiment, arm, or service	Station	Date
114th Inf Serv. Co.	Fort Dix N.J.	9/16/40
Serv Co 114 Inf	Camp Claiborne La	1-11-41
Service Co. 114 Inf	Fort Lewis, Wash	4-18-42
Co E 186 Inf.	Ft. Lewis, Wash	4-18-42
Hq Co, 1st Bn, 186th Inf	APO 41	9-5-42
Co. B, 162nd INF	APO 41	
Hq Co 1st Bn 162nd Inf	APO 41	

INSERT ADDED 24 JAN 44

1

31

Milit ary Record
INSERT TO SERVICE RECORD

REMARKS ~~ADMINISTRATIVE~~ Continued

Part of Ser Red of AULD, Horald NMI
20224275

ORGANIZATIONS TO WHICH ATTACHED

Organization	From	to
Hq + Hq Co, BS4, APO 924	29 DEC 43	10 JAN 44
283 REPL CO, APO 923	19 July 44	30 Jul 44
Mason Gen Hosp. Brentwood, N.Y.	7 May 45	

ORGANIZATIONS TO WHICH ASSIGNED

Organizations	From	~~To~~
Hq + Hq Co, BS4 (DEML) APO 924		10 JAN 44
2nd HQ CO (DEML) BASE 7, USASOS	APO 924	1 JUN 44
464 A.T.C.	APO 704	14 Sept 44

W. D., A. G. O. Form No. 24-3
May 1, 1937

3—8855

EXHIBIT S-24 (sheet 2)(p. 776)

FURLOUGHS

From DEC 22/40 to DEC 26/40
Authority AR 615-275
Extended _____ per _____
(Number of days)
Rejoined DEC 27/40

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

From _____ to _____
Authority _____
Extended _____ per _____
(Number of days)
Rejoined _____

See Page 15

FOREIGN SERVICE

Left United States for duty in _____
From _____ on _____, 19__
Arrived at _____ on _____, 19__
Left New Guinea for the United States on _____, 19__
Arrived at Seattle on 28 April, 1945

Left United States for duty in _____
From _____ on _____, 19__
Arrived at _____ on _____, 19__
Left _____ for the United States on _____, 19__
Arrived at _____ on _____, 19__

MEDALS, DECORATIONS, AND CITATIONS

Name of decoration	Authority and date
AMER. DEF. SERV. MED	P 4 Sec I WD Circ 44, 1942
Asiatic Pacific Ribbon	
Phillipine Liberation	
4 Battle Stars	

3—8855

TIME LOST PRIOR TO THE NORMAL DATE OF EXPIRATION OF TERM OF ENLISTMENT TO BE MADE GOOD UNDER 107th ARTICLE OF WAR:

(a) Absence without proper authority or in desertion.

From	To	Days
Apr 9, 1941	Apr. 13, 1941	5
APR 9, 1942	APR. 10, 1942	2
June 4/42	June 12/42	9
Aug 21/42	Aug 28/42	7
JAN 11/43	FEB 6/43	26
		44

(b) Time actually in confinement under sentence or while awaiting trial and disposition of case, if trial resulted in conviction.

From	To	Days
Oct 13/41	June 12/41	60
SEPT 5/41	Sept - 21 - 41	17
Oct 17/42	Dec 14/42	59
14 Apr 43	Sept 9/43	149
		285

(c) Unable to perform duty through the intemperate use of drugs or alcoholic liquor or through disease or injury the result of his own misconduct.

From	To	Days

ABSENCE SUBSEQUENT TO THE NORMAL DATE OF EXPIRATION OF TERM OF ENLISTMENT

(a) Absence without proper authority or in desertion.

From	To	Days

(b) Time actually in confinement under sentence or while awaiting trial and disposition of case, if trial resulted in conviction.

From	To	Days

(c) Unable to perform duty through the intemperate use of drugs or alcoholic liquor or through disease or injury the result of his own misconduct.

From	To	Days

RECORD OF TRIALS BY COURTS MARTIAL

SUMMARY C. M., 96 (No.) A. W. DEC 1, 1940 (Date of offense) DRUNK (Synopsis of specifications) AND DISORDERLY

Sentence announced and adjudged DECEMBER 19, 1940

Sentence as approved FORFEIT $14.00 PAY

Approved DECEMBER 19, 1940

I certify the above is correct.

[signature] Captain 114th INF
(Name, grade, and organization)

Unexecuted portion of confinement and forfeiture remitted per

Released from confinement , 19

(Name, grade, and organization)

SPECL #8 C. M., 94th 61st (No.) A. W. APR 8 1941 (Date of offense) LARCENY (Synopsis of specifications) AUTOMOBILE. AWOL APR 9/41 TO APR 13/41 INCL.

Sentence announced and adjudged SEPT 5, 1941

Sentence as approved TO BE CONF AT HARD LABOR FOR 4 MOS AND TO FORF $20 PER MO FOR 4 MOS

Approved SEPT 8, 1941

I certify the above is correct.

[signature] 1ST LT 114TH INF
(Name, grade, and organization)

Unexecuted portion of confinement and ~~forfeiture~~ remitted per Spec CO #13 [illegible]

Released from confinement Sept - 22nd, 1941

1st Lt 114th Inf
(Name, grade, and organization)

Sum C. M., 61st (No.) A. W. July 9, 1942 (Date of offense) awol (Synopsis of specifications) 0600 hrs July 9/42 to 2210 hrs July 13/42

Sentence announced and adjudged July 17, 1942

Sentence as approved To forf $30.66 of his [illegible]

Approved July 18, 1942

I certify the above is correct.

Charles B. Thomas 1st Lt 186 Inf
(Name, grade, and organization)

Unexecuted portion of confinement and forfeiture remitted per Adj

Released from confinement , 19

(Name, grade, and organization)

Special C. M. 61st 19th, 96th (No.) A. W. Aug 21, 1942 (Date of offense) AWOL 3300 hrs (Synopsis of specifications) Aug 21/42 to 1000 hrs Aug 22/42, 1800 hrs Aug 22/42 to 1345 hrs Aug 29/42. Broke restriction Aug 22/42. Disobeyed lawful order tr N.C.D.

Sentence announced and adjudged Oct 17, 1942

Sentence as approved Conf at h/c 3 mos + 24 days + forf $40.00 for 3 mos + $32.00 for one mo

Approved Oct 20, 1942

I certify the above is correct.

[signature] Edgar W. Martin 1st Lt, 186 Inf, Pers off.
(Name, grade, and organization)

Unexecuted portion of confinement ~~and forfeiture~~ remitted per SCO # 128

Released from confinement Dec 14, 1942

Edgar W Martin 1st Lt, 186 Inf, Pers off.
(Name, grade, and organization)

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General C. M., 58th A. W. 11 Jan, 1943 Deserted & remained absent in desertion until apprehended 6 Feb 43.
(No.) (Date of offense) (Synopsis of specifications)

Sentence announced and adjudged 14 April, 1943

Sentence as approved

Approved , 19

I certify the above is correct.

(Name, grade, and organization)

Unexecuted portion of confinement and forfeiture remitted per

Released from confinement , 19

(Name, grade, and organization)

General C. M., 61st A. W. 11 Jan, 1943 AWOL 11 Jan 43 to 5 Feb 43 incl. with intent to avoid hazardous duty in combat zone
(No.) (Date of offense) (Synopsis of specifications)

Sentence announced and adjudged 14 April, 1944

Sentence as approved To forf all pay & alws due or to become d. & conf at H/L seven (7) yrs. D.D. suspended.

Approved 4 May, 1943

Edgar W. Martin
1st Lt, 186 Inf Pers. O.

I certify the above is correct.

(Name, grade, and organization)

Unexecuted portion of confinement and forfeiture remitted per GENCMO # 33 HQ 4 SEP 1

Released from confinement [illegible] Inf 19

(Name, grade, and organization)

C. M., A. W. , 19
(No.) (Date of offense) (Synopsis of specifications)

Sentence announced and adjudged , 19

Sentence as approved

Approved , 19

I certify the above is correct.

(Name, grade, and organization)

Unexecuted portion of confinement and forfeiture remitted per

Released from confinement , 19

(Name, grade, and organization)

CLASS E ALLOTMENTS

Class E allotments of pay authorized as follows:

$15.00 per month for - months, commencing , 1943

and expiring ETS , 19 , in favor of Mrs. [illegible] B. Auld for the purpose of support

Discontinued , 19 , reason

W. D., A. G. O. Form No. 30, mailed to Finance Officer, U. S. Army, Washington, D. C., , 19 , by
(Name and grade of forwarding officer)

Acknowledgment of discontinuance received , 19

1

30

$_____ per month for _____ months, commencing _____, 19____

and expiring _____, 19____, in favor of _____

_____ for the purpose of _____

Discontinued _____, 19____, reason _____

W. D., A. G. O. Form No. 30, mailed to Finance Officer, U. S. Army, Washington,

D. C., _____, 19____, by _____
(Name and grade of forwarding officer)

Acknowledgment of discontinuance received _____, 19____

$_____ per month for _____ months, commencing _____, 19____

and expiring _____, 19____, in favor of _____

_____ for the purpose of _____

Discontinued _____, 19____, reason _____

W. D., A. G. O. Form No. 30, mailed to Finance Officer, U. S. Army, Washington,

D. C., _____, 19____, by _____
(Name and grade of forwarding officer)

Acknowledgment of discontinuance received _____, 19____

~~GOVERNMENT INSURANCE~~ Nat'l Serv Life Ins.

Deduction of pay for Government insurance authorized as follows:

Class D insurance deduction of $_____ per month for _____ months, NSL

commencing _____, 19____, and expiring _____, 19____

for payment of monthly premium on $_____ Discontinued _____, 19____

reason _____ W. D., A. G. O. Form No. 30, mailed to

Veterans' Administration, Washington, D. C., on _____, 19____

by _____
(Name and grade of forwarding officer)

Deduction of pay for ~~Government~~ insurance authorized as follows:

Class D insurance deduction of $ 2.64 per month for 60 months,

commencing [illegible] 42, and expiring Dec 31, 1946

for payment of monthly premium on $ 4000 Discontinued July 31, 1942

reason [illegible] W. D., A. G. O. Form No. 30, mailed to

Veterans' Administration, Washington D. C., on Aug 27, 1942

by Edgar J Martin, 2nd Lt Inf.
(Name and grade of forwarding officer)

Deduction of pay for ~~Government~~ insurance authorized as follows: NSL

Class D insurance deduction of $ 6.90 per month for Indef. months,

commencing 1 March, 1944 and expiring E.T.S., 19____

for payment of monthly premium on $ 10,000 Discontinued _____, 19____

reason _____ W. D., A. G. O. Form No. 30, mailed to

Veterans' Administration, Washington, D. C., on _____, 19____

by _____
(Name and grade of forwarding officer)

DISCHARGED

8855

DEPOSITS

Date	Amount		Total amount		Name and grade of finance officer accepting deposit	Initials
	Dol.	Ct.	Dol.	Ct.		

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

_____ and _____/100 Dollars.

PAY DETAINED BY COURTS MARTIAL ENTERED ON PAY ROLL

Month	Amount		Vou. No.	Name and grade of finance officer	Accounts for
	Dol.	Ct.			
_____, 19____					
_____, 19____					
_____, 19____					
_____, 19____					

3 Y-10

ALLOTMENTS

ials

"CLASS "F" DEDS": $_____

PER MONTH FROM_____ 19____

DISCONTINUED_____ 19____

"CLASS "A" PAY RESERVATION": $_____

PER MONTH FROM_____ 19____

DISCONTINUED_____ 19____

"CLASS "N" DEDUCTIONS": $ 6.70

PER MONTH FROM March 19 44

DISCONTINUED_____ 19____

"CLASS "E" ALLOTMENTS": $_____

PER MONTH FROM_____ 19____

DISCONTINUED_____ 19____

"CLASS "_" ALLOTMENTS": $_____

PER MONTH FROM_____ 19____

DISCONTINUED_____ 19____

"CLASS "_" ALLOTMENTS": $_____

PER MONTH FROM_____ 19____

DISCONTINUED_____ 19____

_____ and ____/100 Dollars.

_____ and ____/100 Dollars.

_____ and ____/100 Dollars

_____ and ____/100 Dollars.

* Initials of organization commander.

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REMARKS—FINANCIAL

Under this heading will be shown all financial matters not entered elsewhere such as stoppages for loss of or damage to Government property, amounts due on account of partial payments, overpayments, etc.

Enlistment allowance of $

for the grade of

paid by

on , 19

Entitled to travel pay to Camden - N.J.
(Place at which accepted for previous enlistment)

Received no travel pay upon discharge on , 19 to reenlist.

Date	Description and amount due U. S. or soldier	Roll on which collected
12/1/40	FORFEYT $14.00 of His PAY SUMMARY COURT MARTIAL	JAN. /41
	DUE LAUNDRY P.L F.S.H.T. 1100 Due US $6.00 refund of (Increased) cost of subsistance Due US $30.57 for T fr San Antonio Tex to Phil, Pa and $.75 fr Phila. Pa to Wrightstown N.J. Due US MR GPLD $.71 To forfeit $20.00 of his pay for 4 mos	MAR/41
	DUE US MR GPLD $0.14 Due QM Ldry $1.00	DEC PAID JAN PAID FEB 28 PAID
	Due Q.M.Ldry Camp Claiborne La $1.50 for Feb/42	JAN 31 1942
	Due QM Ldry Fort Lewis Wash $3.00 for Mo Mar/42 Apr/42 Awol APR 9/42 TO APR 10/42 INCL Trfd as Pvt fr Pvt Serv Co. 1, 4th Inf Ft Lewis Wash Apr 18/42	APR 30 1942
	Due U.S. $5.00 part pmt May-42	MAY 31 1942
		JUN 42

		collected
7/18/42	To forf $30.66 of pay per Sum C/M #235 dated July 17/42 Hq 186 Inf	July/42
8-27-42	AWOL to Ves FR Aug 2 - 28/42 incl.	
	Due U.S. GPL or D $12.13	
11-1-42	Due U.S. GPL or D $0.19	
10-20-42	To forf $40.00 per mo for 3 mos + $32.00 for one mo per SCM #106, Hq 186 Inf, APO 41, dated Oct 20/42	
~~[illegible]~~	Conf. 17 Oct 42 To 14 Dec 42 Total 59 days.	
1-11-43	~~Duty to~~ AWOL Jan 11 - Feb	
1-22-43	~~AWOL to Dec~~ 5/43 incl.	
	Due U.S. GPL or D $23.31	
14 Apr 43	Due U.S. $3.00 mon Alws in Lieu of subs Furn. by A.H. Miller, Maj F.D., Vou #54273, Feb Accts FY 1943. 2M 7 P411-A0502-23.	
	Due U.S. $9.27 mon Alws in Lieu of subs Furn by A.H. Miller, Maj F.D., Vou # 50124, Feb Accts FY 1943. 2M 7 P411-A0502-23	
	Due U.S. $20.97 For T fr Brisbane, Qld To Townsville 2nd Fur on T/R WO 30613-30614 by W.F. Petteys Capt R.To. FD 34 P434 or A0425-23.	
12 May 43	To forf all pay & alws due or to become due for (2) seven yrs per Gen C/M #23, Hq 41st Inf Div 4 May 43. Conf Fr 14 Apr 43 To 9 Sept 43 Total 149 days	
20 Oct 43	Unex port of Sent by Gen CM O #23 HQ 41st Inf Div 4 May 43 to Suspended per Gen CM O #33 HQ 41st Inf Div 10 Sept 43. Comp 3 yr serv for long 8 Mar 43 Pay ~~Oct 4/43~~ 28 May 1943	
Oct 25/43	Due U.S. Port Pmt $50.00 Oct/43	

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EXHIBIT S-24 (sheet 17)(p.785)

INSERT Auld, Howard 20224275

REMARKS—FINANCIAL—Continued

Date	Description and amount due U. S. or soldier	Roll on which collected
Dec/43	Due U.S. Part Pay 32.28	
	accts G.A. Wersonne Capt FD	
Jan/44	Due U S Pt Pmt 69.56	
	accts G A Wersonne Capt FD	JSSL
	LAST PAID TO INCLUDE FEB 29 1944	
	LAST PAID TO INCLUDE MAR 31 1944	
3 Apr 44	Cl "N" Allot $70 per Mo	
	For Ind Per Fr 1 Mar 44	
	Not ded on Prior P/R	JM
	LAST PAID TO INCLUDE APR 30 1944	
11 MAY 44	~~DUE SOL $521.46 amt under~~	
	~~PAID 4/11 BY R.T. FEE CAPT FD~~	
	~~$2490 a/c FOR FY 1944 BEING~~	
	~~FOR C.M.P. INCORRECTLY DED~~	JM.
31 MAY 44	WD AGO FORM 28 RE-ISSUED	
	LAST PAID TO INCLUDE MAY 31 1944	
	LAST PAID TO INCLUDE JUN 30 1944	
17 JULY 44	DUE U.S. PART PAYMENT	
	$25.82 JULY/44 A/C	
	E.F. ARMSTRONG CAPT FD	JM
28 July 44	WDAGO FORM 28 REISSUED	
	Last Ad to incl 31 Oct/44	
	Last Ad to incl 30 Nov/44	
	Last Ad to incl 31 Jan/45	
	LAST PAID TO INCL 31 MAY 45	
28 JUN 45	DUE US PAY in gr of Pvt 3 yrs	
	serv with FSP fr Dec 1/44	
	to Jan 31/45 incl. Erron pd	
	on May 45 payroll Vou	
	#3055 Jun 45 a/c CR Forsberg	
	Maj FD. Due EM $6 20 per	
	mo for mos of Dec 44 and	
	Jan 45 incl for Cl N almt	
	Erron ded on May 45	
	payroll Vou #3055 Jun	
	45 a/c CR Forsberg Maj F	
	EM was pd twice for m	
	of Dec 44 and Jan 45.	
	~~LAST PAID 31 MAY 1945~~	JRS
	~~C. R. Forsberg MAJ FD~~	

4 July 45 (Insert added)

REMARKS—FINANCIAL—Continued

Date	Description and amount due U. S. or soldier	Roll on which collected

SEXUALITY
DATE INITIALS
MAY 20 1943 HO

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REMARKS—ADMINISTRATIVE

For this heading will be shown all administrative matter not shown elsewhere and not of a character authorizing pay. Show wounds, battles, engagements, etc., and such other entries not set forth elsewhere as may be required to make soldier's ... record complete.

Inducted into the active military service of the United States at

Camden on Sept. 16, 1940.
(Place)

pursuant to the Presidential order of August 31, 1940.

Socks - 10 1/2

Soldier issued (1) Copy FM 21-100 Soldiers Hand Book

Religion - Protestant

SERVICE PERIOD GOVERNED BY SERV. EXT. ACT OF 1941

Blood Type = A

Shoe Size - 11E

Gas Mask Size - 3

Chest X-Ray Jan 4-42 Phila, N.T. Negative

Sex Morality course completed 4-17-42

This soldier is not favorably considered for Good Conduct medal sept 7/42.

WD Cir 7, 1943 read and explained

Sex Morality Course Completed Oct 1942

Left New Guinea for duty in Australia Sept 29/43.

Arrived Oct 3/43.

Auth. ASIATIC PACIFIC THEATRE Medal & Ribbon. W.D. Cir 1 JAN 1 1942.

Hq & Hq Co Base Sect 4 USASOS disc per GO 65 Hq USASOS 4 May 44 & merged with Hq Base 7 USASOS. Effective 1 Jun 44.

SOL EXAMINED & FOUND UNFIT FOR DUTY IN TROPICAL AREA 10 MAY 44

REMARKS—ADMINISTRATIVE—Continued

Clothing Ration Book issued K9766

JUN 3 1944

~~NOT~~ considered for Good Conduct Medal

~~MERITORIOUS~~ while on duty at DET H&C BASET

~~FAVORABLY~~ for Period 29 DEC 43 to 12 JUN 44

Entered Luzon 11 JAN 45

ENTITLED TO WEAR SIX (6)

SERVICE BARS

Insert to S/R AULD Howard (nmi) 20224275

INDORSEMENTS

These indorsements are filled out in all cases when a soldier deserts or is transferred from one company or detachment to another company or detachment and in all changes of station except with an organization.
These indorsements will not be used when a soldier is only attached to another organization for either rations or quarters or both.

1st Ind.

Service Company, 114th INFANTRY, FORT DIX, N.J. MAY 26th, 19 41.

To C.O. 185TH SERV. UNIT, FT. SAM HOUSTON, TEX.

This soldier was ~~transferred to~~ APPREHENDED By: YOUR COMMAND

~~per~~ ON

and left this organization APRIL 9th, 19 41

He was last paid to include MARCH 31st, 19 41

by J. B. CROWLEY, Lt. Colonel, F. D.
(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state

NOTHING.

*Due soldier at date of APPREHENSION:

CURRENT PAY.

This soldier †has / †has not a Class E allotment running which has been deducted from his pay to include NONE, 19

This soldier has authorized a Class D deduction for Government insurance which has been deducted from his pay to include NONE, 19

His character is Good (GD)

Efficiency rating as soldier Excellent (EX)

I have personally verified all entries in this indorsement.

Anthony E. Pepe
(Name)

ANTHONY E. PEPE, 2nd Lt. 114th INFANTRY
PERSONNEL (Grade and organization) OFFICER.

This soldier reported ____, 19

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.
†Strike out words not applicable.

3—8855

EXHIBIT S-24 (sheet 22)(p 790)

2d Ind.

1857th Serv. Unit, Hqrs. FSHT

Ft Sam Houston, Texas June 19 1941

To C.O., Service Co 114th Infantry, Ft. Dix N.J.

This soldier was ~~transferred~~ Rlvd Fr Attchd to June 17, 1941

per Par 5, So # 137, Hq FSHT dtd 6/14/41

and left this organization June 17 1941

He was last paid to include March 30, 1941

by J. B. Crowley, Lt. Col. F.D.

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state Due Pl. FSHT, $1.00

* Due soldier at date of Rlvd fr. Attchd - Acc'd pay + Allws.

This soldier †~~has~~ †has not a Class E allotment running which has been deducted from his pay to include None, 19

This soldier has not authorized a Class ~~D~~ N deduction for Government insurance which has been deducted from his pay to include —, 19

His character is Poor

Efficiency rating as soldier No Observation

I have personally verified all entries in this indorsement.

Hampus E. Roos

HAMPUS E. ROOS, Capt. Inf.

(Grade and organization)

This soldier reported June 14, 19

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

†Strike out words not applicable.

3d Ind.

CO Service Co 114th Infantry
Fortlewis Washington April 18, 1942

To CO 186th Inf. Fortlewis, Wash

This soldier was transferred to YOUR COMMAND

per BO 92 Hq 44th Inf Div April 26, 1942

and left this organization April 18, 1942

He was last paid to include March 31, 1942

by H. L. Hall, Major, FD
(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state Due QMLdry Fortlewis Wash. $3.00 AWOL APR 9/42 TO APR 10/42 INCL

* Due soldier at date of TRANSFER CURRENT PAY + BONUS ($30. Base pay)

This soldier ~~has~~ / has not a Class E allotment running which has been deducted from his pay to include ——, 19

This soldier has authorized a Class D deduction for Government insurance which has been deducted from his pay to include March 31, 1942

His character is Excellent

Efficiency rating as soldier Satisfactory

I have personally verified all entries in this indorsement.

Francis E Mitchell
FRANCIS E Mitchell (Name)
2nd Lt. 114 Inf Asst Adjutant
(Grade and organization)

This soldier reported 4-18, 1942

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.
†Strike out words not applicable.

3—8855

4th Ind.

Hq 186th Inf, APO #41

August 22, 1942

To Adjutant General

This soldier ~~was transferred to~~ Deserted

~~per~~ At APO #41 Ewm

and left this organization ~~Aug 22~~ Aug 21, 1942

He was last paid to include July 31, 1942

by R. F. Olson, Lt Col F.D.

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state GPL or D $12.13

Charge of desertion set aside as erroneously made per par 2, SO 212, Hq 41st Inf Div, 13 Oct 42.

Tried by SCM #106, Hq 186 Inf, 20 Oct 42 for AWOL only. Sentenced to conf at H/L 3 mos & 24 days & forf $40.00 for 3 mos & $32.00 for one mo.

* Due soldier at date of Des - Acctd Pay & Alws

This soldier ~~has~~ †has not a Class E allotment running which has been deducted from his pay to include ....., 19...

This soldier has not authorized a Class N deduction for Government insurance which has been deducted from his pay to include ~~July 31~~, ~~1942~~

His character is Poor Ewm

Efficiency rating as soldier Unsatisfactory Ewm

I have personally verified all entries in this indorsement.

Edgar W Meat

(Name)

2 Lt, 186th Inf, Asst Adj

(Grade and organization)

This soldier reported ....., 19...

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.
†Strike out words not applicable.

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EXHIBIT S-24 (sheet 25)(p.793)

5th Ind.

HQ. 186TH INF. APO #41

September 8, 1942

To HQ Co, 1st Bn, 186th Inf.

This soldier was transferred to your command

Trf per Memo #3 Sept 5, 1942

and left this organization Sept 6, 1942

He was last paid to include July 31, 1942

by R. F. OLSON Lt. Col. F.D.

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state Due U.S. G.P.L. or D

$12.13

* Due soldier at date of Acctd pay & allow.

This soldier ~~has~~ †has not a Class E allotment running which has been deducted from his pay to include ....., 19...

This soldier has Not authorized a Class D deduction for Government insurance which has been deducted from his pay to include ....., 19...

His character is Fair Ewm

Efficiency rating as soldier Unsatisfactory Ewm

I have personally verified all entries in this indorsement.

Edgar W. Martin

EDGAR W. MARTIN 2nd Lt.

(Name)

ASS'T. ADJUTANT, 186TH INF.

(Grade and organization)

This soldier reported 6 Sept, 1942

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

†Strike out words not applicable.

3—8855

6th Ind.

Hq 186th Inf. APO #41

Feb 12, 1943

To The Adjutant General

This soldier ~~was transferred to~~ Deserted

per At APO #41

and left this organization Jan 11, 1943

He was last paid to include July 31, 1942

by K. F. Olson Lt Col F.D.

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state G Pb or D $35.63. To Forf $40.00 per mo for 3 mos & $32.00 per Mo for 1 mo per Sp C/M #106, Hq 186th Inf, APO #41, Oct 20/42.

Tried by Gen CM #23, Hq 41st Div, 4 May 4 for AWOL only. Sentenced to Conf at H/L and forf all pay + alws for seven (7) years.

*Due soldier at date of Des - Nothing

This soldier †~~has~~ †has not a Class E allotment running which has been deducted from his pay to include , 19

This soldier has ~~authorized~~ Not a Class D deduction for Government insurance which has been deducted from his pay to include , 19

His character is Poor Ewm

Efficiency rating as soldier Unsatisfactory Ewm

I have personally verified all entries in this indorsement.

Edgar W. Martin (Name)

Edgar W. Martin

1st Lt, 186th Inf, Pers O.

(Grade and organization)

This soldier reported , 19

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

†Strike out words not applicable.

7th Ind.

Hq 186th Inf - APO #41

MAY 17 '43, 19

To C.O. 162d Inf - APO #41 ATCHD

This soldier was transferred to Yr Comd

per SO #79 Hq 41st Inf Div - 3 May 43

and left this organization SO 89 Hq 41ST INF DIV MAY 24/43 17 APR 43, 19 43

He was last paid to include 31 July, 19 42

by R. F. Olson - 1st Co, F.D.
(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state

DUE U.S.: GPLorD $1[illegible].13. GPLorD $0.19. To forf $40.00 of pay per mo for 3 mos & $32.00 of pay per mo for 1 mo per Specl CMØ #105, Hq 186 Inf, APO #41, Oct 20/42. AWOL Jan11 -Feb 5/43 incl. GPLorD $23.31. Due US $3.00 Mon allws in lieu of subs furn by AH Miller, Maj, FD. Vou #34 873 Feb accts FY 1943. Due US $9.87 mon allws in lieu of subs furn by AH Miller, Maj, FD. Vou #50134 Feb accts FY1943. M 7 P411-A0503-23. Due US $20.97 for T furn Fr Brisbane, Qld to Townsville, Qld furn on T/R #4 30613-14 by WFPettys, Capt, RTO FD 34 P434-03 A 0425-23. Trfd in Gr fr Co E this regt per T/M #3, Sept 5/42. AWOL Aug 31-Sep 3/42, incl. Chg of Des set aside as erron made per par 2, SO #212, Hq 41st Inf Div APO #41, Oct 13/42. To Forf ALL pay & allws due or to become due & to be conf at H/L for 7 yrs per GCM #23 Hq 41st Inf Div, APO #41, 4 May 43.

Sol Not Favorably Considered for Good Conduct Medal - 17 May 43

* Due soldier at date of Trfd - Record Pay & Allow Nothing

This soldier [has / has not] a Class E allotment running which has been deducted from his pay to include ....., 19....

This soldier has Not authorized a Class D deduction for Government insurance which has been deducted from his pay to include ....., 19....

His character is General Prisoner

Efficiency rating as soldier General Prisoner

I have personally verified all entries in this indorsement.

Edgar W. Martin
EDGAR W. MARTIN, 1st Lt.
(Name)
ASST. ADJUTANT, 186TH INF.
(Grade and organization)

This soldier reported ....., 19....

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

6TH Ind.

HQ 162ND INF 41ST INF DIV. APO 41

NOV 16, 1943

To CO. DET OF PATIENTS, 4TH GEN HOSP APO 927

This soldier was transferred to YOUR COMMAND

per USAFOT REG 60-85 aug 13/42 and left this organization NOV. 16, 1943

He was last paid to include JULY 31, 1942

by R. F. OLSON 1T Col FD

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state AWOL FR 8/22 TO 28/42 INCL DUE USGPLD $12.13 DUE USGPLD $0.19 TO FORF $40.00 PER MO FOR 3 MOS + 32.¢ FOR ONE MO PER SEN ¶106 HQ 186 INF APO 41, DATED OCT 20/42 AWOL 1-11 TO 2-5-43 INCL. DUE US GPLD $23.31 DUE US $3.00 MON ALWS IN LIEU OF SUBS FURN BY AH MILLER, MAJ. FD VOU. #54273, FEB ACCTS FY 1943. 2M7 P411-A0502-23, DUE US $9.27 MON ALWS IN LIEU OF SUBS FURN BY A.H MILLER MAJ FD VOU # 50124, FEB ACCTS FY 1943 2M7 P411-A0502-23 DUE US. $20.97 FOR TOUR ~~BRISBANE~~ APO 923 TO APO 922 FOR UNTIR WOS 30613-30614 BY WF PETTUS CAPT RTD FD 34 P434-02 A0425-23 - TO FORF ALL PAY + ALWS DUE OR TO BECOME DUE FOR (7) SEVEN YRS PER GEN O/M # 23, ~~HQ~~ HQ 41ST INF DIV 4 MAY 43. UNVR. PORT OF SENT BY GEN O/M O# 23 HQ 41ST INF DIV 4/MAY 43 IS SUSPENDED PER GEN O/M O# 33 HQ 41ST INF DIV 10 SEPT/43 COMP 3 YRS FOR LONG PAY OCT 7/42 - DUE US PART PMT $50.00 OCT/43

* Due soldier at date of TRF ACCRUED PAY + ALWS

This soldier ~~has~~ †has not a Class E allotment running which has been deducted from his pay to include _____, 19____

This soldier has authorized a Class D deduction for Government insurance which has been deducted from his pay to include NONE, 19____

His character is Good Man

Efficiency rating as soldier Satisfactory Man

I have personally verified all entries in this indorsement.

Rudell Madeira Jr.

(Name)

_____

(Grade and organization)

This soldier reported _____, 19____, _____

(Organization to which transferred)

and was assigned to _____ (see page 5).

*Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

†Strike out words not applicable.

W. D., A. G. O. Form No. 24-2 3—8855

May 1, 1927

EXHIBIT S-24 (sheet 29)(p.797)

4th General Hosp.

30 Dec, 1943

To C.O. 4th Repl. Dep. APO 703

This soldier was transferred to your command

per USASOS Reg. 50-25 and left this organization 29 Dec, 1943

He was last paid to include 31 July, 1942

by R.F. Olson Lt. Col FD.

(Name and grade of finance officer or agent officer, if any)

Due United States; if nothing, so state See Remarks

Financial

* Due soldier at date of trfr: A P+A.

This soldier † ~~has~~ † has not a Class E allotment running which has been deducted from his pay to include ——, 19.....

This soldier has NOT authorized a Class N deduction for Government insurance which has been deducted from his pay to include ——, 19.....

His character is Unknown

Efficiency rating as soldier Unknown

I have personally verified all entries in this indorsement.

John Hahn

(Name)

Two Gr USA

(Grade and organization)

This soldier reported ....., 19....., ...

(Organization to which transferred)

and was assigned to ..... (see page 5).

* Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

† Strike out words not applicable.

3—62726

EXHIBIT S-24 (sheet 30)(p.798)

(No.) (Date of Offense)

10th Ind.

Hq, 4th Repl Depot, USASOS, APO 703

10 Jan, 1944

TO C.O. Hq & Hq Co, Base Sec 4, APO 924

This Sol trfd to your command per Par 22, SO 8, this Hq, cs. and left this orgn 10 Jan, 1944

Last Pd to Inel 31 July, 1942 by R. F. Olson, Lt Col. FD

Due U.S; if nothing, so state SEE REMARKS FINANCIAL

Due Sol at date of Transfer, Accrued Pay & Allowances

Sol has not Cl-F ded ded to None
Sol has not Cl-E almt ded to None
Sol has not Cl-N almt ded to None
Sol has not Cl-B almt ded to None
His character is Not Known
His eff ratg as sol is Not known
I have personally verified all entries in this Ind.

Stephen T. Kean
STEPHEN T. KEAN
1ST LT., A.G.D.
PERSONNEL OFFICER

This Sol reported 10 JAN 44, 19

EXHIBIT S-24 (sheet 31)(p.799)

11th Ind.

Det Hq Co Base 7, USASOS

APO 924 17 July 19 44

CO 464th Amph Truck Co, APO 322

His soldier was transferred to Your Command

per par 2 dtd 6 Jul 44 and left this organization Base 7 17 Jul 19 44

He was last paid to include 30 June 19 44

by R. T. FEE Capt FD
(Name and grade of disbursing officer or agent officer, if any)

Due United States; if nothing, so state DUE U.S. PART PMT $25.82 JULY/44 A/F E.F. ARMSTRONG CAPT FD JM

Insert to S/R AULD Howard (nmi) 20224275

†Due soldier at date of trfr: Accrued Pay & Alws

This soldier ‡~~has~~ has not a Class F {A / B} deduction which has been deducted from his pay to include None 19

This soldier ‡~~has~~ has not a Class B allotment running which has been deducted from his pay to include None 19

This soldier ‡~~has~~ has not a Class E allotment running which has been deducted from his pay to include None 19

This soldier has authorized a Class {P / N} deduction for Government insurance which has been deducted from his pay to include 30 June 19 44

His character is EXCELLENT JM

Efficiency rating as soldier EXCELLENT JM

I have personally verified all entries in this indorsement.

T J Moore

THOMAS J. MOORE, 2nd Lt, AUS, Adj.
(Grade and organization)

This soldier reported 19
(Organization to which transferred)
and was assigned to (see page 4)

†Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.
‡Strike out words not applicable.

*W. D., A. G. O. Form No. 24-2 16—36425—1
19 July 1943

*This form supersedes W. D., A. G. O. Form No. 24-2, 1 May 1937, which may be used until existing stocks are exhausted.

EXHIBIT S-24 (sheet 32)(p.800)

INSERT TO SERVICE RECORD

12 Ind.

464 Amph. Tk. Company Base
M APO 70, 1945

To 27TH General Hospital APO 565

This soldier was transferred to your Command
per SO 77 par 6 and left this organization 8 Feb, 1945

He was last paid to include 31 Jan, 1945

by JE. MARLAIS MAJ F.D
(Name and grade of disbursing officer or agent officer, if any)

Due United States; if nothing, so state NOTHING

†Due soldier at date of TRFD: Accrued Pay + Allws.

This soldier ‡has not a class F {A / B} deduction which has been deducted from his pay to include NONE, 19

This soldier ‡has not a Class B allotment running which has been deducted from his pay to include NONE, 19

This soldier ‡has not a Class E allotment running which has been deducted from his pay to include NONE, 19

This soldier has authorized a Class {N} deduction for Government insurance which has been deducted from his pay to include 31 Jan, 1945

His character is Good

Efficiency rating as soldier Satisfactory

I have personally verified all entries in this indorsement.

Lloyd E. Rinehart 1st Lt. C.C.
(Name)
464th Amph. Truck Co.
(Grade and organization)

This soldier reported ....., 19 ....., ...
(Organization to which transferred)
and was assigned to ..... (see page 4)

†Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

‡Strike out words not applicable.

*W. D., A. G. O. Form No. 24-2
19 July, 1943

*This form supersedes W. D., A. G. O. Form No. 24-2, 1 May, 1937, which may be used until existing stocks are exhausted.

EXHIBIT S-24 (sheet 33)(p. 807)

FINAL INDORSEMENT

_____
(Company or detachment)

_____
(Place)

_____, 19....

To The Adjutant General:

_____
(Last name) (First name) (Middle initial) (Army serial No.)

_____ _____
(Grade) (Organization)

was separated from the service by reason of _____

_____ on _____
(Date)

at _____ authority _____
(Place)

Retained in service _____ days to make good time lost (A. W. 107).

Absent from duty _____ days subsequent to normal date of expiration of term of enlistment.

Retained in service _____ days for convenience of the Government on account of

_____

His character is _____

Efficiency rating as soldier _____

*Final statement furnished. *Paid on final pay roll.
*Discharge certificate furnished. W. D., A. G. O. Form No. 55, 56, 57.

Due United States: if nothing, so state _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

†Due soldier at date of _____

_____

_____

_____

_____

Address furnished for future reference: _____
(Number and street or rural route)

_____
(City, town, or post office) (State or country)

Signature of soldier:

_____

I have verified the foregoing entries.

Name signed _____

Name typed or printed _____

_____
(Grade and organization)

---

*Strike out words and figures not applicable.
†Here enter any amounts due soldier and not paid to date, such as monetary allowance in lieu of quarters and subsistence; if nothing, so state.

DISCHARGED

ENLISTED RECORD AND REPORT OF SEPARATION
HONORABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
Auld Howard	20224275	Pvt	TC	NG

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
464th Amph Truck Company Base H	30 Jul 45	Mason GH Brentwood NY

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
Black Horse Pike Bellmawr NJ	19 May 20	Philadelphia Pa

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND.
See 9	Blue	Blonde	6'0"	200 LBS.	0

18. RACE			19. MARITAL STATUS			20. U.S. CITIZEN	
WHITE X	NEGRO	OTHER (specify)	SINGLE X	MARRIED	OTHER (specify)	YES X	NO

21. CIVILIAN OCCUPATION AND NO.: Truck Driver

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
	9 Jul 40	16 Sep 40	Camden NJ

SELECTIVE SERVICE DATA	26. REGISTERED	27. LOCAL S.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
	YES NO X			See 9

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.: Driver 345

31. MILITARY QUALIFICATION AND DATE (I.e., infantry, aviation and marksmanship badges, etc.): None

32. BATTLES AND CAMPAIGNS: Philippine Island Campaign

33. DECORATIONS AND CITATIONS: American Defense Service Ribbon; Asiatic Pacific Campaign Ribbon with 4 Bronze Battle Stars; Philippine Liberation Ribbon

34. WOUNDS RECEIVED IN ACTION: None

35. LATEST IMMUNIZATION DATES

SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
20Jun42	2Jul42	20Jun42	

37. TOTAL LENGTH OF SERVICE

CONTINENTAL SERVICE			FOREIGN SERVICE		
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS
1	[redacted]	17	3	0	6

38. HIGHEST GRADE HELD: Pfc

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
22 Apr 42	APTO	13 May 42
Unknown	US	28 Apr 45

39. PRIOR SERVICE: None

40. REASON AND AUTHORITY FOR SEPARATION: Certificate of Disability for Discharge AR 615-361

41. SERVICE SCHOOLS ATTENDED: None

42. EDUCATION (Years)

Grammar	High School	College
8	0	0

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
4	1	23	$ 300	$ 100	None	$ 6.85	205.15 CR FORSBERG Maj FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D. C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None	Allotment	Direct to V. A.				Continue	Continue Only	Discontinue
X			X		30 Jun 45	31 Jul 45	$ 6.70	X		

54. RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

Lapel Button issued.
Three hundred twenty-nine (329) days lost under AW #107.
Inactive Service ERC 9 Jul 40 to 15 Sep 40 incl.

Psychosis, unclassified

56. SIGNATURE OF PERSON BEING SEPARATED: Howard Auld

57. PERSONNEL OFFICER (Type name, grade and organization - signature): T R SCHOLL, Capt MAC
CO Det of Patients/mmh

WD AGO FORM 53-55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

2. FINAL INDORSEMENT COPY (Affixed to final indorsement page of Service Record)

EXHIBIT S-24 (sheet 35)(p.803)

Initials	Name, grade, and organization (Typewritten or printed)
M.F.I.	MAHLON F. IVINS, JR.
VDW	VEXIL D WEISGERBER 1ST LT 114TH INFANTRY
[illegible]	GEORGE W POWELL CAPT. - 114 INF CO. SERVICE COMPANY
[illegible]	WALTER D. FETTERLY CAPTAIN 114th INF. PERSONNEL ADJUTANT
[illegible]	ANTHONY E PAPA 2ND LT 114th INF PERSONNEL OFFICER
[illegible]	HAMPUS E ROOS CAPT. INF.
[illegible]	
[illegible]	Francis E. Mitchell 2nd Lt., 114th Infantry, Personnel Officer
Cmt	Charles M. Thomas 1st Lt 186th Inf
Ewm	Edgar W. Martin 2nd Lt, 186 Inf, Asst Adj
Nam	WARD A. MADEIRA JR. 2ND LT. 162 INF.
JORP	JOHN F.R. PACKARD, Capt OMP Asst Adj. Hq Base Sect 4
JM.	THOMAS J. MOORE, 2nd Lt., AUS, Asst. Adj. William W. Costello Capt CE, Comdg 464 ATC
[illegible]	Lloyd E. Rinehart, 1st Lt. C.E.
[illegible]	T R SCHOLL, Capt. MAC

U. S. GOVERNMENT PRINTING OFFICE : 1940—O 235299

EXHIBIT S-24 (sheet 36)(p 804)

EXHIBIT S-24 (sheet 37)(p.805)

TAG

ALLOTMENT ~~DISCONT~~INUANCE

NOTICE UPON DISCHARGE OR RELEASE FROM ACTIVE DUTY

No. B 652964

LAST NAME - FIRST NAME - MIDDLE INITIAL	DATE OF BIRTH, IF AVAILABLE	REASON FOR SEPARATION	DATE OF SEPARATION	ARMY SERIAL NUMBER
AULD HOWARD		DISCHARGE	30 JUL 45	20224275

ENTER IN THE SPACE PROVIDED BELOW EACH ALLOWANCE OR ALLOTMENT NOW IN EFFECT

ALLOTMENT	AMOUNT (1)	EFFECTIVE DATE MONTH AND YEAR (First Deduction)	FINAL DEDUCTION MADE FOR MONTH OF
N	$ 6.70	MAR 44	JUN 45
D	$		
E	$ (1) (2) (3)		
F	$		

(NO ENTRY HERE)

PERMANENT ADDRESS FOR MAILING PURPOSES

BLACK HORSE PIKE BELLMAWR NJ

FAMILY ALLOWANCE APPLICATION NUMBER, IF IN SERVICE RECORD

X-

VETERANS ADMINISTRATION NUMBER (No Entry Here)

N-

NAME AND LOCATION OF ORGANIZATION EFFECTING DISCHARGE OR RELEASE

MASON GH BRENTWOOD NY

ENTER NAMES OF "E" ALLOTTEES, IF IN SERVICE RECORD

(1)

(2)

(3)

TYPED NAME, GRADE, AND TITLE OF PERSONNEL OR DISBURSING OFFICER EFFECTING DISCONTINUANCE (No Signature Necessary)

T R SCHOLL CAPT MAC CO DET OF PTS

(Make No Entry Here) OC

W. D., A. G. O. Form No. 30-S
1 September 1944
This form supersedes W. D., A. G. O. Form No. 30-S, 1 July 1944, which may be used until existing stocks are exhausted.
6 PARTS

To: THE ADJUTANT GENERAL'S OFFICE, WASHINGTON 25, D. C.

(Folded and inserted in the service record in cases of enlisted personnel)

[illegible] (Revised)

DOP I, Auld, Howard 20224275 AUS Pvt.
(Name and Army Serial Number) (Component) (Grade)

464th Amph Truck Co. APO 70 (Give organization and APO)
being first duly sworn according to law, do depose and say that —

1. (a) I was inducted on _____ at Local SS Board at _____.
   (b) I was accepted for enlistment at _____.
   I enlisted on 8 Jul 1940 at Camden, New Jersey.
2. My present grade is Pvt.; date of present grade _____.
3. I have had over four years of service.
4. I have authorized the following deductions from my pay:
   Class B (Bonds) $_____ Beginning _____ Ending _____.
   Class N (Insurance) $6.70 Beginning _____ Ending _____.
   Class F (Family Alws) $_____ Beginning _____ Ending _____.
   Class E (Allotment) $_____ Beginning _____ Ending _____.
5. My Soldiers Deposits deposited with Finance Officer are (dates and amounts): None
6. I was last paid in full to include the last day of Nov. 1944.
7. I have received the following partial payments since last paid in full (amounts and months) P/P None
8. I have served, since date of last payment, outside the continental limits of the United States from Dec. 1944 28April 1945.
9. I am indebted to the United States in the following amounts:
   (a) Lost property $_____. (b) Company fund $_____. (c) Laundry $_____.
   (d) Court-martial fines $_____. (e) Other _____.
10. I am entitled to (flying, parachutist, glider) pay as prescribed by law and regulations from _____ 19__ to _____ 19__. I was removed from (flying, jumping, glider) status on _____ 19__.
11. I am entitled to (Expert, Combat) infantry pay from (Give date from which pay is due) _____. (Answer "None" unless an order was issued by your organization authorizing you to receive this pay.)
12. Total amount of days I have lost under AW 107 is unknown.
    I have been AWOL since date of last payment in full (Give inclusive dates): none.
13. Remarks (enter other pertinent data not shown above). _____

Section 35 (A) of the Criminal Code (18 U.S.C. 83) makes it a criminal offense, punishable by a maximum of 10 years' imprisonment, $10,000 fine, or both, to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any department or agency of the United States.

I do solemnly swear that the above answers to questions propounded are true and correct in all respects

Howard Auld
Howard Auld

I certify that the service record of the above-named enlisted man has not been received at this station.

SUBSCRIBED AND SWORN TO BEFORE ME AT MASON GENERAL HOSPITAL, BRENTWOOD, NY THIS 29 day of May 1945.

_____

_____

EXHIBIT S-24 (sheet 38)(p.806)

Dec 44)
RD Form #116

ENLISTMENT RECORD 20224275

AULD, HOWARD
(Name) (ASN)

te of Birth 19 May 1920

ace of Birth

me Address Black Horse Pike
(Number and Street)

BELLMARR, N.J.
City or Town) (State)

rson to be notified in case of
ergency.

Mrs. Jennie Auld
(Name)

Mother
elationship) (Number and Street)

(City or Town) (State)

e at enlistment
*induction ____ yrs ____ mos.

nlisted
nducted at
(City or Town)

16 Sept 1940
(State) (Date)

resent Grade pvt.

FOREIGN SERVICE

eft U.S. for duty in
rom ____ on Apr. 1942
rrived ____ on

Time lost prior to the normal date of expiration of term of enlistment to be made good under 107th AW.

(a) Absence without proper authority.

From	To	Days

(b) Time actually in confinement under sentence or while awaiting trial and disposition of case, if trial resulted in conviction.

From	To	Days

(c) Unable to perform duty through the intemperate use of drugs or alcoholic liquor or through disease or injury the result of his own misconduct.

From	To	Days

ORGANIZATIONS TO WHICH ATTACHED

Organization	From	To
21Rd APO 320	24 MAR 45	27 MAR 45

ORIGINAL ASSIGNMENT AND ORGANIZATIONS TO WHICH SUBSEQUENTLY ASSIGNED DURING THIS ENLISTMENT PERIOD

Asgd to company, regt. arm, or service.	Sta	Date
464 Amph. Tnk Co		
APO 70		
T.C.		

276-H

Incl 1

EXHIBIT D-1 (sheet 1)(p.807)

C
C
C
C

21 RD 175 24 Feb 45

1st Ind

21st Repl Depot, APO 320

27 MAR 45

TO: Det. of Pats. 27 Gen Hosp APO 515

This Sol trfd to YOUR COMMAND

Per Par ~~USAFFE Rpt~~ 50-25 ~~Hq, 21st Repl~~

~~Depot APO 320~~, dtd 1 NOV 1944

Sol left this Orgn 27 MAR 1945

Bl Last pd to incl 31 JAN. 1945

By SOLDIERS STATMENT.

Due US See Remarks Financial

Da

Allotment Status

Class	Amt Ded	Ded Thru
B		
D		
E		
F		
N	4.70	31JAN45

Due Sol at date of trfr

Accrued Pay and Allowances

His Character is UNKNOWN

EFF rating as Sol is UNKNOWN

I HAVE PERSONALLY VERIFIED ALL ENTRIES IN THIS INDORSEMENT:

B.P. Morelli

B. P. MORELLI, 1st LT., AUS
Personnel Officer

Sol reported 19

EXHIBIT D-1 (sheet 2)(p.808)

INSERT TO SERVICE RECORD
2D INDORSEMENT

DETACHMENT OF PATIENTS
27th GENERAL HOSPITAL, APO 565
26 MAY 1945

TO CO: U.S. ARMY GENERAL HOSPITAL
THIS SOL TRFD TO YOUR COMMAND PER:
EVAC. ORDER W-36 HQ BASE "G" APO
565 DATED 3 APR 1945
LEFT THIS ORGN 3 APR 1945
SOL WAS LAST PAID TO INCLUDE:
31 JAN 1945
BY: UNKNOWN FD.
DUE U.S. see previous indorsement
and remarks financial.
DUE SOL AT DATE OF TRF: accured
pay & alws, see remarks financial.
ALMS & DEDUCTIONS: see pages 9 &
10, remarks financial.
CHARACTER & EFFICIENCY RATING:
UNKNOWN

VERIFIED BY:
H. W. Dodge Jr.
H. W. DODGE, JR.
1st Lt, Med Adm C,
Commanding.

EXHIBIT D-1(sheet 3)(p.809)

"AFFIDAVIT"

"The recitation made herein is true and complete to the best of my knowledge and belief. In the event of overpayment the undersigned agrees to reimburse the government therefor.

Signed Howard Hull
(Signature of Soldier)

Subscribed and Sworn to before me this 24 day of May 1945

(Signature, designation of officer administering oath)

TEMPORARY SERVICE RECORD

OF

AULD 20 424 275
(Last Name) (ASN)

HOWARD
(First Name) (Middle Initial)

T.C.
(Arm or Service)

Color or Race W.

Component

COVERING SERVICE

From 16 Sept 40 19__ to 19__

Mason Gen Hosp. Brentwood, N.Y. 7 may 45

EXHIBIT D-1 (sheet 4)(p.810)

561 (NP)

ARMY SERVICE FORCES
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK

25 July
(Date Boarded)

CERTIFICATE

Arnold Howard Pvt 20224275
Name Rank ASN

I certify that the above soldier/~~officer~~ is considered mentally *competent - ~~incompetent~~ for purpose of signing commercial papers.

H L Barahal
(Name)

Capt. MC.
(Grade and Title)

* Strike out word inapplicable.

Note: This certificate is to be attached to front of WD AGO Form 40.

1 of 2

EXHIBIT D-1 (sheet 5)(p.811)

Pvt. E-6

Part Pmt. $10.00.

TEMPORARY SERVICE RECORD

W. D. FORM # 24

HOLD — 20224225
Last name — Serial Number

HOWARD — WM I
First Name — Initial

REGULAR ARMY ___ OTHER COMP ✓

Date of enlistment 26 Sept 1940 (3)

STATEMENT

The recitation made herein is true to the best of my knowledge and belief. In the event of overpayment, the undersigned agrees to reimburse the government therefor.

Signed Howard Hold

Pvt — 20224225
Rank — Serial Number

All entries contained herein will be verified and appropriate entries will be made in permanent Service Record, WDAGO Form # 24.

Initiated by
DETACHMENT OF PATIENTS
54TH GENERAL HOSPITAL

* * *

54GHDOP 7

Arm or Service TC

Date of birth 19 May 1918

Place inducted Camden, N.J.

Atchd from 464 Amp Trk Co.

APO 70

Next of kin Mother Jennie Auld

Address Black Horse Pike

City, State Gibbsmawr, N. J.

Last pd to incl unknown

Insurance ded "N" 6.70

Cl "E" Almt ___

Dependency ded "F" ___

REMARKS FINANCIAL

Left US for foreign serv 10 Dec 41

*Prior service Nat. Guard.

Due EIP ___ Due CIP ___

Part Pmt $ 10.00 Date 14 Mar 45

Part Pmt $ ___ Date ___

Part Pmt $ ___ Date ___

* 1 July 1940 to 16 Sept 1940.

Date of last promotion ___

Incl 3

RECORD OF TRIALS BY COURTS MARTIAL

____CM, ____AW_____19____

Synopsis of specifications

Sent announced & adjudged ____19____

Sent as approved_____

_____Aproved_____19____

I certify that the above is correct

Released fr conf_____

Sent & forf remitted per_____

REMARKS ADMINISTRATIVE

54th GHDOP 7a

1st Ind.

Detachment of Patients, 54th Geh Hosp APO 565. 3/17/45

TO: Commanding Officer: 464 Amph Lite Co, APO 40

This Soldier was transferred to your command per par 1 SO# 73, Hq, 54th General Hospital, USASOS, APO 565, dated 14 Mar 45 and left this organization 14 Mar 45. He was last paid to incl Unknown 45 by ~~IVAN L. STORBECK, 1st Lt FD~~ ~~SAMUEL DAME, Capt FD~~ Unknown

Due US: See Remarks Financial and/or prior Ind. $10.00 P/P. Auto. Ivan L. Storbeck, Lt FD & D.

Due Sol at date of Transfer: Accrued pay and alws. See Remarks Financial and/or prior Ind.

ALLOTMENT STATUS

Class:	Amount Ded:	Deducted Through:
"B"		
"E"		
"F"		
"N"	6.70	Unknown

Character and Efficiency Rating: Not observed.

I have personally verified all entries in this indorsement.

ROCCO F. VERNILE
Capt., M. A. C.,
CO, Det of Pnts.

EXHIBIT D-1 (sheet 7)(p.813)

X-58 (VA)
Rev 24 Jan 45

ARMY SERVICE FORCES
SECOND SERVICE COMMAND
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK

A F F I D A V I T

I, HOWARD (NMI) HULD, PVT, ASN 20224225
(First Name, Middle Initial, Last Name) (Grade)

have been informed that I am about to be released from Mason General Hospital and medically discharged from the military service.

I have been apprised of my right to further care in a Veterans Administration Facility.

I *~~(do)~~ (do not) wish to avail myself of this right at the present time.

I *(do) (~~do not~~) desire to be discharged into my own care.

*Strike out inapplicable words.

(Signed) Howard Auld

Subscribed and sworn to before me
this 27 day of July 1945.

William J Cottell
AUTHORITY: VETERANS
ADMINISTRATION FORM 4505

Incl 4

EXHIBIT D-1 (sheet 8)(p.814)

CERTIFICATE OF DISABILITY FOR DISCHARGE

REPORT OF BOARD OF MEDICAL OFFICERS (NET UNDER PROVISIONS OF SECTION II, AR 615-360)

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NUMBER	3. GRADE	4. DATE OF BOARD MEETING
Auld, Howard	20,224,275	Pvt	27 July 1945

5. LAST PERMANENT ORGANIZATION (Regiment and Arm or Service)	6. PLACE OF MEETING, (Station or Hospital)
TC	ASF Mason GH, Brentwood, NY

7. AFTER CAREFUL CONSIDERATION OF ALL INFORMATION OBTAINABLE AND A CRITICAL EXAMINATION, WE FIND THIS INDIVIDUAL UNFIT FOR MILITARY SERVICE BECAUSE OF:

35- Psychosis, unclassified, manifested by excitement, confusion and threat ning attitude. (active symptoms in remission.)
External Precipitating Stress: severe, 40 months overseas in the SWP; 24 months combat.
Predisposition: none evident.
Disability: Present; marked for military service.
Future: minimal for civilian life.

GPO - O - 597552

	DATE OF ONSET OF DISEASE OR INJURY	DATE BECAME UNFIT FOR DUTY (Enter One Date)	AGGRAVATED BY ACTIVE SERVICE (1)		INCURRED WHILE AWOL (2)		EXISTED PRIOR TO ENTERING INTO SERVICE (3)		INCIDENT TO SERVICE (4)		INCURRED IN PRIVATE AVOCATION (5)		DUE TO OWN MISCONDUCT (6)		IN LINE OF DUTY (7)	
			YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
a.	March 1945	24 March 1945				X		X	X			X		X	X	
b.																
c.																
d.																

REMARKS (Identify by Box Number)

X-RAY OF CHEST HAS BEEN TAKEN WITHIN 90 DAYS AND REPORT IS FILED IN CURRENT CLINICAL RECORDS

IN ACCORDANCE WITH THESE FINDINGS, WE RECOMMEND THAT INDIVIDUAL BE DISCHARGED

8. PRESIDENT'S SIGNATURE (Sign Original only)	9. RECORDER'S SIGNATURE (Sign Original only)	10. THIRD MEMBER'S SIGNATURE (Not Required)
11. TYPED NAME AND GRADE	12. TYPED NAME AND GRADE	13. TYPED NAME AND GRADE (Required)
H. S. BARAHAL Capt., MC	H. E. LAWRENCE Capt., MC	ALICE E. ROST Capt., MC
APPROVAL C. O. HOSPITAL	APPROVAL: DISCHARGE AUTHORITY	APPROVAL:
14. DATE	15. DATE 27 July 1945	16. DATE
17. SIGNATURE (Sign Original only)	18. SIGNATURE (Sign Original only)	19. SIGNATURE (Sign Original only)
20. TYPED NAME AND GRADE	21. TYPED NAME AND GRADE FOR THE CO: MATHEW STOCKSON Capt., MAC, Adjutant	22. TYPED NAME AND GRADE

TO THE ADJUTANT GENERAL — HEADQUARTERS ASF Mason GH Brentwood NY — DATE 30 Jul 45

23. DATE INDIVIDUAL ENTERED ACTIVE SERVICE	24. PRIOR SERVICE, IF ANY YEARS	MONTHS	25. DATE OF LAST DISCHARGE, IF ANY	26. IF ABSENT FROM UNIT WHEN DISEASE WAS CONTRACTED OR INJURY RECEIVED, STATE CAUSE, PLACE, AND DATE
9 July 1940		7	4 Aug 1938	Not absent

27. DATE INDIVIDUAL WAS DISCHARGED	28. DISCHARGED AT	29. HONORABLY	30. OTHER THAN HONORABLY (blue)	31. HAS INDIVIDUAL MADE PENSION CLAIM? YES	NO	32. WAS INDIVIDUAL BEEN ON FOREIGN DUTY? YES	NO	33. DOES SERVICE RECORD SHOW PARTICIPATION IN ACTION OR IN BATTLES, WOUNDS OR OTHER INJURIES RECEIVED IN SERVICE? YES	NO	NO S/R
30 Jul 45	Brentwood NY	X			X	X		X		

PERMANENT ADDRESS FOR MAILING PURPOSES (OR LEGAL GUARDIAN OR VETERANS' FACILITY IF FURTHER CARE REQUIRED)

34. STREET OR R.F.D. NUMBER, CITY, COUNTY, AND STATE

(OC) Black Horse Pike Bellmawr NJ

INDIVIDUAL WAS GIVEN OPPORTUNITY TO APPLY FOR PENSION — INDIVIDUAL WAS FURNISHED WITH A DISCHARGE CERTIFICATE

35. TYPED NAME AND GRADE OF PERSONNEL OFFICER	36. PERSONNEL OFFICER'S SIGNATURE (This signature on copies two and three will serve as certification of true copy)
T. R. SCHOLL, Cppt. MAC	T R Scholl

INSTRUCTIONS: Prepare original and two copies for: 1. The Adjutant General (in Service Record), 2. The Veterans Administration, 3. Discharging organization

W.D., A.G.O. FORM NO. 80 29 MAY 1944 SUPERSEDES W.D., A.G.O. FORM NO. 80, 21 AUGUST 1943, WHICH WILL NOT BE USED AFTER RECEIPT OF THIS REVISION.

EXHIBIT D-1 (sheet 9)(p.815)

ENLISTED RECORD AND REPORT OF S PARATION
HONORABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
Auld Howard	20224275	Pvt	TC	NG

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
464th Amph Truck Company Base M	30 Jul 45	Mason GH Brentwood NY

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
Black Horse Pike Bellmawr NJ	19 May 20	Philadelphia Pa

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND.
See 9	Blue	Blonde	6'0"	200 LBS.	0

18. RACE			19. MARITAL STATUS			20. U.S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X			X			X		Truck Driver

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
	9 Jul 40	16 Sep 40	Camden NJ

SELECTIVE SERVICE DATA	26. REGISTERED YES	26. REGISTERED NO	27. LOCAL B.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
		X			See 9

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i.e., infantry, aviation and marksmanship badges, etc.)
Driver 345	None

32. BATTLES AND CAMPAIGNS

Philippine Island Campaign

33. DECORATIONS AND CITATIONS

American Defense Service Ribbon; Asiatic Pacific Campaign Ribbon with 4 Bronze Battle Stars; Philippine Liberation Ribbon

34. WOUNDS RECEIVED IN ACTION

None

35. LATEST IMMUNIZATION DATES

SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
20Jun42	2Jul42	20Jun42	

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
22 Apr 42	APTO	13 May 42
Unknown	US	28 Apr 45

37. TOTAL LENGTH OF SERVICE

CONTINENTAL SERVICE			FOREIGN SERVICE		
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS
1	[illegible]	17	3	0	6

38. HIGHEST GRADE HELD

Pfc

39. PRIOR SERVICE

None

40. REASON AND AUTHORITY FOR SEPARATION

Certificate of Disability for Discharge AR 615-361

41. SERVICE SCHOOLS ATTENDED

None

42. EDUCATION (Years)

Grammar	High School	College
8	0	0

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
4	1	23	$ 300	$ 100	None	$ 6.85	205.15 CR FORSBERG Maj FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D. C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None	Allotment	Direct to V.A.				Continue	Continue Only	Discontinue
X			X		30 Jun 45	31 Jul 45	$ 6.70	X		

54.

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

RIGHT THUMB PRINT

Lapel Button issued.
Three hundred twenty-nine (329) days lost under AW #107.
Inactive Service ERC 9 Jul 40 to 15 Sep 40 incl.

Psychosis, unclassified

56. SIGNATURE OF PERSON BEING SEPARATED

Howard Auld.

57. PERSONNEL OFFICER (Type name, grade and organization - signature)

T R SCHOLL, Capt MAC
CO Det of Patients/mmh

T R Scholl

WD AGO FORM 53-55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

3. SERVICE COMMAND COPY

EXHIBIT D-1 (sheet 10)(p.816)

X-364
(DOP)

ABSTRACT OF SERVICE RECORD and DATA FOR FORM NO. 40

Lashmantow
Ons 6-1-45
2SE

(Abstracted from Service Record)

Auld Howard	20224275	Pvt
Last name, First name, Middle initial	ASN	Grade

TC	9 July 1940 Camden, N.J.	11 Jan 1938 to 4 Aug 1938
Br of Serv	Date & Place of Current Enlistment	Prior Service
White	19 May 1920 Phila., Penna.	Single
Race	Date & Place of Birth	Marital Status

This soldier IS / ~~IS NOT~~ a GARRISON / GENERAL prisoner.

Record of AWOLs: 9 Apr 1941 to 13 Apr 1941 5 Days 22 Aug 1942 to 28 Aug 1942 7 Days
9 Apr 1942 to 10 Apr 1942 2 Days 11 Jan 1943 to 5 Feb 1943 26 Days
9 July 1942 to 12 July 1942 4 Days

Record of Sentence & Confinement:
13 Apr 1941 to 12 June 1941 60 Days 17 Oct 1942 to Dec 14 1942 59 Days
5 Sept 1941 to 21 Sept 1941 17 Days 14 Apr 1943 to 9 Sept 1943 149 Days

Individual first came under hospital treatment for present disability:

8 Feb 1945	Apo 565	27th Gen. Hosp.
Date	Place	Name of Hospital

Record of continuous hospitalization:

	Date Entered	Date Discharged	Name and Address of Hospital
1.			
2.			
3.			
4.			
5.	7 May 1945		Mason Gen. Hosp. Brentwood, L.I.

Record ~~WAS~~ / WAS NOT made from a temporary service record.

Typed by IMP Date 26 June 1945

OBTAIN THE FOLLOWING INFORMATION FROM THE PATIENT

Name of Nearest Relative
Address (number & street)
City, State, County

DISPOSITION: [✓] Own Care [ ] Care of Relatives [ ] VAF

WARD 2SE Ward Officer J. Podolnick MC

TM 12-235 Incl 7- (Over)

EXHIBIT D-1 (sheet 11)(p.817)

X-364 (DOP) DATA FOR FORM NO. 40

4. 27 July 45 — Date of Board Meeting

5. Engrs. Unasgd. — Last Permanent Org. (Regiment & Arm or Service)

7. After careful consideration of all information obtainable and a critical examination, we find this individual unfit for military service because of:

35 (1) Psychosis, undassified (active symptoms in remission) ~~manifested by confusion, [illegible]~~ [illegible] [illegible] [illegible] [illegible]

* External Precipitating Stress: ~~[illegible]~~ Severe ~~several~~ 40 months of ~~[illegible]~~ overseas in the SWP 24 months combat

Predisposition: ~~[illegible]~~ None evident

Disability: Present ~~[illegible]~~ for military service

Future ~~[illegible]~~ minimal for civilian life

* Include theatre where manifestations first occurred

Date of Onset of Disease or Injury	Date Became Unfit for Duty (Enter one date)	Aggravated by Active Service (2) Yes	No	Incurred While AWOL (2) Yes	No
March 1945	24 March 45				X

Existed Prior to Entering into Service (3) Yes	No	Incident to Service (4) Yes	No	Incurred in Private Avocation (5) Yes	No	Due to Own Misconduct (6) Yes	No	In Line of Duty (7) Yes	No
	X	X			X		X	X	

REMARKS: (Identify by box number)

H. A. Barchard, Capt. — PRESIDENT

H. E. Lawrence, Capt. — RECORDER

Alice E. Rost, Capt. — THIRD MEMBER

EXHIBIT D-1 (sheet 12)(p.818)

COPY sa

ARMY SERVICE FORCES
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK HEL/so

PROCEEDINGS OF BOARD OF OFFICERS

Convened at Mason General Hospital per paragraph 12, SO 95, Hq. 1263rd SCU, Mason General Hospital, dated 19 April 1945, pursuant to paragraph 1b, AR 600-500, dated 7 August 1942.

DETAIL FOR THE BOARD

H. S. BARAHAL, Capt., MC
ALICE E. ROST, Capt., MC
H. E. LAWRENCE, Capt., MC

The Board met at Mason General Hospital, Brentwood, N. Y. at 0900 on 27 July 1945, and proceeded with the examination of: AULD, Howard, ASN 20 224 275, Pvt., TC, age 25 2/12, who entered current period of active military service on 8 July 1940, and was admitted to this hospital on 7 May 1945.

After a thorough examination of the soldier and all available records, (See Exhibit "A"), the board finds the following diagnosis: 35. Psychosis, unclassified (active symptoms in remission).

The board is of the opinion after consideration of the above, that:

1. Condition was incurred in line of duty and did not exist prior to entry upon active duty.

2. Condition was not due to his own misconduct, and was due to causes incident to the service.

3. Subject soldier, if discharged from the military service, can be released from military control without further supervisory care.

The board, therefore, recommends that Pvt. Howard AULD be discharged from the military service to his own care under the provisions of AR 615-361.

H. S. BARAHAL	ALICE E. ROST	H. E. LAWRENCE
Capt., MC	Capt., MC	Capt., MC
PRESIDENT	MEMBER	RECORDER

1 August 1945
For the Commanding Officer:
Approved: MATHEW STOCKSON
Capt., MAC
ADJUTANT

Proceedings of B/O AULD, Howard Pvt.

Exhibit "A"

MEDICAL HISTORY OF THE CASE

Family History: No known neuropsychiatric determinants.

Previous Personal History: (Information obtained from the patient.) Born 19 May 1920 in Philadelphia, Pennsylvania. No early neurotic tendencies. Usual childhood diseases without complications; "blood poisoning" following the extraction of a tooth. Completed the eighth grade at the age of sixteen, mingled well with other pupils and was athletic. Worked as a plumber's helper and as a truck driver prior to his enlistment. No sexual deviations or civil delinquencies.

Military History: Enlisted 8 July 1940 and was inducted 16 September 1940. Overseas in late 1942 to Australia and later was in many months of combat in New Guinea and some in the Phillipines. According to his service record, he is entitled to wear four battle stars. According to his own statement he worked chiefly in scouting and patrolling, spending much time behind enemy lines. States he was dropped in the Hollandia area twenty days prior to the invasion and that, with two other men, he observed the activities of the enemy and signaled by radio, the departure of three thousand Japanese marines, enabling the Hollandia landing to be made with the loss of but one man. His statement that he received the Distinguished Service Cross for this is not confirmed by his service record. His record lists five periods of AWOL, varying from two to twenty-six days, in 1941, 1942 and 1945. Three Summary and Special Courts-Martial. In March 1945 was given a General Court-Martial for desertion to avoid hazardous duty. Was sentenced to seven years of hard labor, loss of all pay and a Dishonorable Discharge. In September 1945 after he had served one hundred and forty-nine days the confinement was suspended, and the Dishonorable Discharge suspended.

History of Present Condition: The patient was first admitted to the 27th General Hospital in March 1945 from the casual camp where he had been violently homicidal against a sergeant with whom he had had an argument. After a few days in the hospital he calmed down and seemed strange but not entirely abnormal. On 24 March 1945 was discharged to a Replacement Depot in the hope that he would be rotated back to the States soon. Was readmitted to the 27th General Hospital the same day in a confused, excited state. Restraint and sedation was necessary and he was described as grossly psychotic. Was evacuated to the Zone of Interior with the diagnosis of Psychosis, unclassified. Admitted to Mason General Hospital 7 May 1945.

Mental Status on Admission: In the admitting ward patient was in good contact, answered questions readily but was rather belligerent. Stated that he would never carry out an order again. On the closed ward was neat in appearance, resentful, inappropriate in some of his emotional

Exhibit "A"

Mental Status on Admission, cont'd: responses and remained very belligerent. In good contact, well oriented, denied any ideas of reference, persecution or hallucinations.

Physical Examination: Physical and neurological examinations reveal no abnormalities. Laboratory studies including chest x-ray, malarial smear, stool examination, serology, urinalysis, blood count within normal limits. Stool examination showed the presence of hookworm ova which disappeared under treatment.

Treatment and Clinical Course: Patient made a satisfactory adjustment on the closed ward. For the past six weeks has been on an open ward where he has been seclusive and slightly retarded but got along well with other patients and with the ward personnel. Has been out on passes, returning promptly. Sleeps well, eats well, spends a great deal of time in the Occupational Therapy shop; has no interest in athletics. Shows some diminished affective resonance; dreams about combat occasionally; bites fingernails moderately and is irritated by noises. Still feels that he has been badly treated in the Army in that he was promised his court-martial sentence would be remitted and it has been only suspended. Feels that he can no longer do duty in the Army, being too irritated by its discipline.

Staff Conference: This twenty-five year old private made a fairly adequate adjustment prior to service. He has been in the Army five years, two and one-half years of which were spent overseas in the Pacific area with twenty-four months of combat. His service record shows several AWOLs with one General Court-Martial sentence which was later suspended, after he had served 149 days. He was hospitalized in March 1945 because of an acutely disturbed episode, subsequently improved, and an attempt was made to return him to duty, but the same day he became confused, excited, required restraint and sedation. He has a complete amnesia for this episode.

Since coming to this hospital, he has, on occasion, shown a somewhat surly and belligerent attitude but, for the most part, adjusted well. For the past few weeks, has shown little evidence of abnormal behavior, except for somewhat inappropriate emotional responses. He is still very tense, however, and under pressure shows a facial tic. There is no evidence pf any delusional or hallucinatory experiences. It is the opinion of the staff conference that this patient is still too emotionally unstable to warrant a return to duty.

Diagnosis: 55. Psychosis, unclassified (active symptoms in remission), manifested by excitement, confusion and threatening attitude.

Proceedings of B/O AULD, Howard Pvt.

Exhibit "A"

External Precipitating Stress; Severe (two and one-half years overseas in Southwest Pacific Theatre of Operations, with twenty-four months of combat duty.)

Predisposition: None evident.

Disability: Present; Marked for military service. Future: Minimal for civilian life.

H. E. LAWRENCE
Capt., MC

COPY

COPY sa

ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, New York

24 August 1945

STATEMENT REGARDING AULD, Howard, Pvt. ASN 20 224 275

On 29 May 1945, Howard AULD, because of his ability to conduct himself without supervision in a normal manner, was transferred to an open ward, of which I was in charge.

He was pleasant, cooperative, mixed well with the other patients. He tended mostly to be rather quiet and retiring in manner. He spoke always in a relevant and coherent manner, and at no time were any overt symptoms of psychosis elicited.

At times, he appeared moderately preoccupied, and when questioned he expressed bitterness towards the Army, claiming that he had gotten a poor deal.

He took part in all ward activities, attended to his various ward details without any complaints and was respectful to all ward personnel

Because of his exemplary conduct, and his ability to care for himself, without need of supervision, he was given frequent passes, from which he returned without any untoward incident.

On 16 July 1945, he passed from my care to that of Captain Podolnick.

/s/ William M. Leyton
WILLIAM M. LEYTON
Capt., MC

COPY

COPY sa

ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, New York

24 August 1945

STATEMENT REGARDING AULD, Howard, Pvt., ASN 20 224 275.

I assumed charge of the ward on which patient AULD resided, on 16 July 1945. Capt. Leyton, who took over another ward, informed me that this patient had made an excellent adjustment.

Until his discharge on 30 July 1945, I observed him daily, and found him pleasant and cooperative. Unusual mental trends were not evident, nor were any elicited. He returned from pass on time, and in good condition.

His case was prepared for presentation before a Board of Medical Officers by Capt. Homer Lawrence.

When discharged, the patient exhibited no abnormal activity or thought content.

/s/ Aaron Podolnick
AARON PODOLNICK
Capt., MC

COPY

C O P Y sa

ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, New York

24 August 1945

STATEMENT REGARDING AULD, Howard, Pvt., ASN 20 224 275.

My first contact with this patient was on 20 July 1945, when I interviewed him for the purpose of presenting his case to a Board of Medical Officers. For this purpose, account was taken of his overseas record, information supplied by other medical officers, information obtained from his service record, and from personal interviews.

During my contact with him, he was quiet, friendly, and pleasa He got along well with other patients, and the ward personnel. He expressed bitterness and resentment toward the Army, for what he considered lack of proper recognition for his performance in it, but never appeared inappropriate in his emotional responses. His storie of his adventures as a paratrooper, at times, appeared exaggerated. He was not excessively irritable or combative, complied with ward regulations, and it was not anticipated that he was in any way dangerous either to himself or to other people.

My contact with above named patient extended from the above date until he was seen by a board of officers on 27 July 1945.

/s/ H. E. Lawrence
H. E. LAWRENCE
Capt., MC

C O P Y

VETERANS ADMINISTRATION
Adjudication Form 553
Form approved by Comptroller
General, U. S., October 13, 1934

FILE No. 4974297
FOR COMPTROLLER GENERAL

DECISION OF QUESTIONS OF FACT AND LAW

ORIGINAL AWARD BRIEF FACE

(Disability—Compensation—Pension—Wartime Service)

Howard Auld (Name of veteran) — Pvt TC (Rank and organization)

Was the disability incurred in or aggravated in line of duty in active military or naval wartime service in the:

(a) Spanish-American War
(b) Philippine Insurrection
(c) Boxer Rebellion
(d) World War Yes II

If claim is for pension on account of service in Philippine Insurrection or Boxer Rebellion, was there actual participation in hostilities?

Date entered service 9-16-40
Date separated 7-30-45
Character of discharge Hon CDD
Date claim filed 7-30-45
Name of disease or injury
Degree of disability 50 % — Effective date thereof 7-31-45
Is disability the result of veteran's own misconduct?
Is disability the result of combat with an enemy of the United States?

Are benefits payable under section 31, title III, Public No. 141, 73d Congress?
Has payee since date claim was filed been in receipt of (a) active-service pay, (b) retirement pay, (c) retainer pay, (d) emergency officer's retirement pay, (e) any other pension? If so, state which, and give date of discontinuance
Is veteran being furnished hospitalization or institutional or domiciliary care by the United States Government or any political subdivision thereof?
Is veteran holding any office, appointive or elective, under the Government of the United States, the municipal government of the District of Columbia, or any corporation, the majority of stock of which is owned by the United States?
Is there any evidence of record indicating that the payee is guilty of any of the forfeiture acts, such as conspiracy, fraud, etc.?
If so, state which act
Is veteran residing beyond the continental limits of the United States?
If veteran is entitled to rates in excess of the amount for total disability, state reason therefor and the particular section and paragraph of the regulations which grants authority for payment of such amount
Is veteran so helpless as to be in need of a nurse or attendant? If so, from what date
Is there any claim of the United States of record in the Veterans Administration subject to recovery or offset? If so, state amount, $, and how to be recovered

NAME	DATE OF BIRTH	DATE OF CLAIM	DATE OF MARRIAGE TO VETERAN	HAS PROOF OF RELATIONSHIP BEEN FILED?
Wife				(Yes or no)
Child No. 1			In custody of	(Yes or no)
Child No. 2				(Yes or no)
Child No. 3				(Yes or no)
Child No. 4				(Yes or no)
Child No. 5				(Yes or no)

Mother (Name) Is she dependent? (Yes or no) Date of dependency
Has proof of relationship been filed? (Yes or no) Date of claim
Father (Name) Is he dependent? (Yes or no) Date of dependency
Has proof of relationship been filed? (Yes or no) Date of claim
If payments are to be made to a fiduciary, give:
(a) Name and designation of fiduciary (b) Name of ward
(c) Date of appointment of fiduciary (d) Name of court or official making appointment

REMARKS: Rtg 8-6-45

Pursuant to the above the claimant is entitled to the following award of {pension / compensation} under the provisions of the {Act of March 20, 1933, Public No. 2, 73d Congress, as amended. / Act of March 28, 1934, Public No. 141, 73d Congress.} Pub 144, 312, 78C
(STRIKE OUT PORTION NOT APPLICABLE)

NAME AND ADDRESS OF PAYEE	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Howard Auld	$ 57.50	7-31-45	
Browning Rd Belmawr N J			

Submitted 8-7-, 1945 By P Barile Title Adj

I, the undersigned, an officer of the Veterans Administration, duly and lawfully authorized to make decisions of questions of fact, and law affecting any claimant to the benefits of title I, section 1 (a) and (b), and section 7 of the act of March 20, 1933, Public No. 2, 73d Congress, as amended, and title III, Public No. 141, 73d Congress, do hereby constitute, in pursuance of such authority, the foregoing statements as my decision of fact and law.

Approved 8-8, 1945 By John J Bibb Title Auth officer

U. S. GOVERNMENT PRINTING OFFICE 16—37171-1

PENSION FIELD AUTHORIZATION ORDER # 659

EXHIBIT D-2 (sheet 1)(p.826)

This Form will not be replaced if lost or destroyed. Save It!

ARMY QUALIFICATION B-gd RECORD
SEPARATION

LAST NAME - FIRST NAME - MIDDLE INITIAL	ARMY SERIAL NUMBER	GRADE	DATE OF ENTRY INTO ACTIVE SERVICE	SEX	DATE OF BIRTH
AULD, HOWARD	20 224 275	Pvt	16 Sept 40	M	19 May 20

PERMANENT ADDRESS FOR MAILING PURPOSES (Street and Number - City - County - State)

Browning Road, Bellmawr, Camden County, New Jersey

CIVILIAN EDUCATION

HIGHEST GRADE COMPLETED	LAST YEAR OF ATTENDANCE	HIGHEST DEGREE RECEIVED	MAJOR COURSE OF STUDY	NAME AND ADDRESS OF LAST SCHOOL ATTENDED
8th	1936	Academic	Academic	Bellmawr, N. J.

OTHER TRAINING OR SCHOOLING

COURSE	NO. HRS.	COURSE	NO. HRS.	COURSE	NO. HRS.	COURSE	NO. HRS.
None							

SERVICE EDUCATION

SERVICE SCHOOL	COURSE	WKS. OR HRS.	RATING	ARMY SPECIALIZED TRAINING PROGRAM				
				INSTITUTION WHERE ENROLLED	CURRICULUM AND TERM (COURSE OF TRAINING PURSUED)	NO. OF WEEKS	GRADUATED YES	GRADUATED NO
None								

CIVILIAN OCCUPATIONS

MAIN OCCUPATION (TITLE) AND SUMMARY: ~~BULLDOZER OPERATOR~~

Operated a tractor with a concave steel scraper blade mounted in front of tractor chasis to level, distribute and push earth; adjusted hand lever to regulate height of scraper blade from the ground. Worked for road building contractor leveling ground before laying of roadbed.

SECONDARY OCCUPATION (TITLE) AND JOB SUMMARY:

NO. OF YEARS	LAST DATE OF EMPLOYMENT	NAME AND ADDRESS OF EMPLOYER
½	1940	Lafferty Contracting Co. Haddon Heights, N. J.

NO. OF YEARS	LAST DATE OF EMPLOYMENT	NAME AND ADDRESS OF EMPLOYER

MILITARY SPECIALTIES

ASSIGNMENTS

YEARS	MONTHS	GRADE	PRINCIPAL DUTY	ARMY CODE NO.
	9	Pfc	Chauffeur	345
2	9	Pvt	Scout	761
	1½	Pvt	~~Amphibian Truck~~ Driver	934

SUMMARY OF MILITARY OCCUPATION AND CIVILIAN CONVERSIONS (Shown by title)

SCOUT: Acted as scout in advance operations for over 2½ years. Saw combat action from Buna to Hollandia. Obtained information concerning strength, disposition and probable intentions of enemy forces, route conditions, locations for bivouac, and terrain features. Read maps, compasses and aerial photographs; made sketches, recorded observations and ~~transmitted information to rear echelons by best means of communicatio~~

SUMMARY OF MILITARY OCCUPATION AND CIVILIAN CONVERSIONS (Shown by title)

available. CIVILIAN CONVERSION: Policeman, Forester

* THIS INFORMATION BASED ON SOLDIER'S STATEMENT. (Indicate by * any items not supported by military records)

DATE OF SEPARATION	SIGNATURE OF SOLDIER	SIGNATURE OF SEPARATION CLASSIFICATION OFFICER
JUN 30 1945	Howard Auld.	Jack W. Fox, 1st Lt, MAC

W.D.,A.G.O. FORM NO. 100 15 July 1944

EXHIBIT D-2 (sheet 2)(p.827)

Form P-80b
Award of Disability Pension
(Service Connected - Area Office)

C-4 974 297
A2-10-24

VETERANS ADMINISTRATION AREA OFFICE #2

August 8, 1945

Mr. Howard Auld
Brooking Rd.
Delmar, N.J.

Dear Sir:

In accordance with the provisions of Public No. 2, 73d Congress, as amended, and the regulations and instructions issued pursuant thereto, you are hereby notified that as a veteran of World War II who was discharged from the military service of the United States on the 30th day of July 1945, you are awarded pension in the amount of $57.50 per month from July 31, 1945 on account of disability resulting from the following conditions held to have been incurred during your war service. NERVOUS CONDITION.

Action on UNKNOWN TOE NAIL CONDITION deferred pending examination of which you will be advised.

The monthly payments pursuant to this award will continue during the period in which you are 50 % disabled subject to the general conditions mentioned on the reverse side of this communication to which your attention is directed. Upon the happening of any of the contingencies mentioned, the Veterans Administration should be promptly notified.

It has been determined that service connection is not shown for the following conditions:

If you are dissatisfied with the findings of the Veterans Administration or the amount of this award, it is your privilege to enter an appeal to the Board of Veterans Appeals, Washington 25, D.C. An appeal must be taken within one year from the date of this letter, and should be forwarded to the office shown below.

All future communications with reference to this case should be addressed to the Veterans Administration Regional Office at Lyons, N. J. , to which your file is being transferred, and must bear the file number C- 4 974 297 as well as your full name and complete rank and organization.

Encl. Forms 1900
119
106

Very truly yours,

CC: Veterans of Foreign Wars
Veterans Administration
Lyons, N. J.

JOS. F. O'HERN
Manager

EXHIBIT D-2 (sheet 3)(p.828)

VETERANS ADMINISTRATION
Adjudication Form 564
Rev. June 1939

RATING SHEET

Date August 6, 1945

Claimant's name: AULD, Howard C- 4 974 297

Occupational determination

Dates enlisted 9-16-40 Dates discharged 7-30-45

Character of discharges Hon. CDD. Dates of last examination Service Records

In stating the ratings below, the effective Administration's Regulations and Instructions applicable shall be followed

Alleged ingrown toe nail, not disclosed on examination prior to separation, the allegation will be surveyed in next future exam.

Fifty percent (50%) from 7-31-45
Incurred in service in the WW II
Regulation 1 (a), Part 1, Paragraph 1 (a)
1844 **PSYCHOSIS, UNCLASSIFIED, ACTIVE SYMPTOMS IN REMISSION, COMPETENT. PRODUCTIVE OF DEFINITE SOCIAL & INDUSTRIAL INCAPACITY.**

In combat.

S C Rosen
S. C. Rosen, Lt. Col., MC.
(Rating Specialist, Medical)

S. B. Christian
S. B. Christian, M.C.
(Rating Specialist, Claims)

(Rating Specialist, Occupational)

Rating Board No. 4 Veterans Administration
AREA OFFICE #2
120 Wall Street
New York 5, N.Y.

38

U. S. GOVERNMENT PRINTING OFFICE 16—34204-1

EXHIBIT D-2 (sheet 4)(p.829)

VETERANS ADMINISTRATION
Form 2507—Rev. Sept. 1948

5

REQUEST FOR PHYSICAL EXAMINATION

For notation of receiving station:

Date of receipt _____

Date exam. ordered _____

Date completed _____

In reply refer to Board 4
C–No. 4 974 297

Name of veteran: AULD, Howard

Address of veteran: Browning Road
Bellmawr, N. J.

It is requested that you arrange for a physical examination of the above-named claimant *(as soon as possible) *(~~Feb. 1946~~ ~~months from this date~~) for Pension R & Pr. 1165 (2)
(Pension, compensation, insurance, etc.)

Type of examination desired G. M. & N. P. with Social Service Report

Diseases or injuries: 1. Service connected PSYCHOSIS, UNCLASSIFIED, ACTIVE SYMPTOMS IN REMISSION, COMPETENT, PRODUCTIVE OF DEFINITE SOCIAL & INDUSTRIAL INCAPACITY.

2. Not service connected --

Rank PVT Organization TC Date entered service 9-16-40

Date of discharge [illegible] Character of discharge Hon. CDD.

(Specify wartime or peacetime service. State if discharged from service in line of duty, or if in receipt of compensation or pension for service-connected disability)

* Strike out words or phrase not applicable.

16—18234-1

EXHIBIT D-2 (sheet 5)(p.830)

6

VETERANS ADMINISTRATION
Adjudication Form 563
Rev. Dec. 1936

RATING WORK SHEET

REGIONAL OFFICE BL

Date AUG - 4 1945

Date of enlistment 9/16/40

C No. 4974297

Date and character of discharge 7/30/45 CDD

Auld, Howard
(Name)

Occupational determination

(Address)

Date of last examination SN

Rate disabling diseases and injuries separately in order of severity. State each diagnosis and effective dates of each rating, employing only official codes designated by effective instructions. 1844

50% from 7/30/45 — 1 1(a) Combat — Psychosis, unclassified, active symptoms in remission, competent. productive of definite social & industrial incapacity

Alleged ingrown toe nail, not disclosed on examination prior to separation, this allegation will be surveyed in next future exam

2507 for 2/46 Gm + NP/SS

[signature] Rating Specialist. — S.B. Carestia Rating Specialist. — Rating Specialist.

NOTE.—If additional space is necessary, use extra work sheets. Reverse side to be used for special remarks or explanatory memorandum concerning above ratings.

15—644

EXHIBIT D-2 (sheet 6)(p.831)

VETERANS ADMINISTRATION
Form 3145
Rev. June 1944

NOTICE OF ASSIGNMENT OF C-NUMBER

AREA OFFICE #2
120 Wall Street
New York 5, N.Y.

August 2, 19 45
12-13-40

FROM: _____
(Field station)

4974297
C-

To: CHIEF CLERK,
VETERANS ADMINISTRATION,
Washington 25, D. C.

Attention: Chief, Index Division.

JURIS: Lyons, N.J.

Name: AULD, Howard
Rank and Org.: Pvt. TC
Born: 5-19-20
Place of birth: Philadelphia, Pa.
Address: Browning Rd., Belmawr, N.J.

All S numbers:	All dates of Enl.:	All dates of Dis.:
20 224 275	9-13-40	7-30-45

C-number was assigned on the records indicated below:

Service and clinical records accompanied by Form 526 ☒ Clinical records without Form 526 ☐. Form 526 without clinical records ☐. Application for hospitalization ☐. Form 357 ☐. Form 579 ☐.

The following is a list of records received in this office from Mason Gen. Hosp.
(Military and Naval Hospital,

_____ at Brentwood, N.Y.
Discharge Center, etc.) (Location)

NUMBER OF RECORDS:

1. 1 physical examination at entrance (Army).
   _____ descriptive sheet in health record (NMS Form H-2).
   _____ descriptive sheet in health record (CG Form 2525-B).
2. 2 clinical records (Army).
   _____ copy of medical record (Navy, Marine, Coast Guard).
3. 1 copy of C. D. D. (AGO Form 40).
   _____ copy of report of Board of Medical Survey (NMS Form M).
   _____ copy of report of Board of Medical Survey (CG).
4. 1 Form 526 ~~or statement in lieu thereof~~ P-22
5. 1 character of discharge. on form 40
6. _____ qualification card (AGO Form 20).

1 Form 100

The original clinical records are described separately below:

Name of Hospital	*Location*	*Register No.*	*Dates of Treatment*
Mason Gen. Hosp.	Brentwood, N.Y.	15230	5-7-45 7-30-45
27th Gen. Hosp.	APO 565	17653	3-24-45 4-3-45

_____
(Signature)

JOS. F. O'HERN Mgr.
(Title)

U. S. GOVERNMENT PRINTING OFFICE 16—87729-4

X-241 (REG)

ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, New York

No Rec Hpp 8

31 July 1945 JCG:amm

SUBJECT: Transmittal of Case Records of:

Last Name - First Name - Middle Initial	Grade	ASN
AULD Howard	Pvt	20 224 275

TO: Veterans Administration 120 Wall St NY 5 NY

1. Transmitted herewith are records pertaining to the above named soldier who (was) ~~(will be)~~ discharged because of disability under the provisions of AR 615-361, on 30 July 1945.

a. [X] Veterans application for disability compensation of pension VA form 526.

b. [ ] Statement to Veterans Administration that man does not wish to file VA Form 526.

c. [X] Photostat of original report of physical examination on entrance into military service.

d. [X] Copy of Certificate of Disability for Discharge WD AGO Form 40.

e. [ ] Veterans Administration Form P-10

f. [X] Copy of Separation Qualification Record WD AGO Form 100.

g. [X] Original clinical records marked: "Loaned to Veterans Administration".

(1) Mason General Hospital, Brentwood, New York Reg No 15230

(2) 27th Gen Hosp APO 565 Bage G Reg No 17 653

(3)

2. Any records subsequently received will be forwarded promptly.

3. Type of discharge is [X] Honorable (White) [ ] Not Honorable (Blue)

For the Commanding Officer:

RECEIVED
AUG 2 1945
AREA OFFICE #2

Signature or stamp of recipient.

Title

By

JOSEPH C. GILLESPIE
2d Lt, MAC
Asst. Registrar.

CERTIFICATE OF DISABILITY FOR DISCHARGE

REPORT OF BOARD OF MEDICAL OFFICERS *(MET UNDER PROVISIONS OF SECTION II, AR 615-360)*

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NUMBER	3. GRADE	4. DATE OF BOARD MEETING
Auld, Howard	20,224,275	Pvt	27 July 1945

5. LAST PERMANENT ORGANIZATION *(Regiment and Arm or Service)*	6. PLACE OF MEETING *(Station or Hospital)*
TC	ASF Mason GH, Brentwood, NY

7. AFTER CAREFUL CONSIDERATION OF ALL INFORMATION OBTAINABLE AND A CRITICAL EXAMINATION, WE FIND THIS INDIVIDUAL UNFIT FOR MILITARY SERVICE BECAUSE OF:

35- Psychosis, unclassified, manifested by excitement, confusion and threatening attitude. (active symptoms in remission.)
External Precipitating Stress: severe, 40 months overseas in the SWP; 24 months combat.
Predisposition: none evident.
Disability: Present; marked for military service.
Future: minimal for civilian life.

GPO - O - 597552

	DATE OF ONSET OF DISEASE OR INJURY	DATE BECAME UNFIT FOR DUTY *(Enter One Date)*	AGGRAVATED BY ACTIVE SERVICE (1)		INCURRED WHILE AWOL (2)		EXISTED PRIOR TO ENTERING INTO SERVICE (3)		INCIDENT TO SERVICE (4)		INCURRED IN PRIVATE AVOCATION (5)		DUE TO OWN MISCONDUCT (6)		IN LINE OF DUTY (7)	
			XXXXXX		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
A.	March 1945	24 March 1945				X		X	X			X		X	X	
B.																
C.																
D.																

REMARKS *(Identify by Box Number)*

X-RAY OF CHEST HAS BEEN TAKEN WITHIN 90 DAYS AND REPORT IS FILED IN CURRENT CLINICAL RECORDS

IN ACCORDANCE WITH THESE FINDINGS, WE RECOMMEND THAT INDIVIDUAL BE DISCHARGED

8. PRESIDENT'S SIGNATURE *(Sign Original only)*	9. RECORDER'S SIGNATURE *(Sign Original only)*	10. THIRD MEMBER'S SIGNATURE *(Not Required)*
11. TYPED NAME AND GRADE H. S. BARAHAL Capt., MC	12. TYPED NAME AND GRADE H. E. LAWRENCE Capt., MC	13. TYPED NAME AND GRADE *(Required)* ALICE E. ROST Capt., MC
APPROVAL C. O. HOSPITAL	APPROVAL: DISCHARGE AUTHORITY	APPROVAL:
14. DATE	15. DATE 27 July 1945	18. DATE
17. SIGNATURE *(Sign Original only)*	16. SIGNATURE *(Sign Original only)*	19. SIGNATURE *(Sign Original only)*
20. TYPED NAME AND GRADE	21. TYPED NAME AND GRADE FOR THE CO: MATHEW STOCKSON Capt., MAC, Adjutant	22. TYPED NAME AND GRADE

TO THE ADJUTANT GENERAL — HEADQUARTERS ASF Mason GH Brentwood NY — DATE 30 Jul 45

23. DATE INDIVIDUAL ENTERED ACTIVE SERVICE	24. PRIOR SERVICE, IF ANY YEARS	MONTHS	25. DATE OF LAST DISCHARGE, IF ANY	26. IF ABSENT FROM UNIT WHEN DISEASE WAS CONTRACTED OR INJURY RECEIVED, STATE CAUSE, PLACE, AND DATE
9 July 1940		7	4 Aug 1938	Not absent

27. DATE INDIVIDUAL WAS DISCHARGED	28. DISCHARGED AT	29. HONORABLY	30. OTHER THAN HONORABLY (blue)	31. HAS INDIVIDUAL MADE PERSION CLAIM? YES	NO	32. HAS INDIVIDUAL BEEN ON FOREIGN DUTY? YES	NO	33. DOES SERVICE RECORD SHOW PARTICIPATION IN ACTION OR IN BATTLES, WOUNDS OR OTHER INJURIES RECEIVED IN SERVICE? YES	NO	NO S/R
30 Jul 45	Brentwood NY	X			X		X	X		

PERMANENT ADDRESS FOR MAILING PURPOSES *(OR LEGAL GUARDIAN OR VETERANS' FACILITY IF FURTHER CARE REQUIRED)*

34. STREET OR R.F.D. NUMBER, CITY, COUNTY, AND STATE

(OC) Black Horse Pike Bellmawr NJ

INDIVIDUAL WAS GIVEN OPPORTUNITY TO APPLY FOR PENSION — INDIVIDUAL WAS FURNISHED WITH A DISCHARGE CERTIFICATE

35. TYPED NAME AND GRADE OF PERSONNEL OFFICER	36. PERSONNEL OFFICER'S SIGNATURE *(This signature on copies two and three will serve as certification of true copy)*
T. R. SCHOLL, Capt. MAC	T R Scholl

INSTRUCTIONS: Prepare original and two copies for: 1. The Adjutant General (in Service Record), 2. The Veterans Administration, 3. Discharging organization

W.D., A.G.O. FORM NO. 53 29 MAY 1944 SUPERSEDES W.D., A.G.O. FORM NO. 53, 21 AUGUST 1943, WHICH WILL NOT BE USED AFTER RECEIPT OF THIS REVISION.

EXHIBIT D-2 (sheet 9)(p.834)

REPORT OF PHYSICAL EXAMINATION OF ENLISTED MAN ON INDUCTION

Under the ~~XXX~~* order* of the President, dated August 31, 1940

Auld (Last name) Howard (First name) (None) (Middle name) 20034275 (Serial number) Race White

Pvt. (Grade) Sor. Co. 114th Infantry (Unit, department, etc.) Camden, N. J. Occupation Truck Driver

Permanent address Black Horse Pike (Street) Bellmawr (City) Gloucester (County) N. J. (State) [Urban [X] [Rural [ ]] English (Native country)

Birthplace Philadelphia (City, town or township) Pennsylvania (County, state or country) Birth date May (Month) 20th (Day) 1920 (Year)

EXAMINATION

1. Eye abnormalities: None
2. Ear, nose, throat abnormalities: None
3. Mouth and gum abnormalities: Normal
4. Teeth: Right (Examiner's) Left

	8	7	~~6~~	5	4	3	2	1		1	2	3	~~4~~	5	~~6~~	7	8
	16	~~15~~	~~14~~	13	12	11	10	9		9	10	11	12	13	~~14~~	15	16

(Strike out those that are missing; circle those that may be restored)

5. Skin: Normal
6. Varicose veins: None
7. Hernia: None
8. Hemorrhoids: None
9. Genitalia: Normal
10. Feet: Normal
11. Musculo-skeletal defects: None
12. Abdominal viscera: Normal
13. Cardiovascular system: Normal
14. Lungs, including X-ray, if made: Normal
15. Nervous system: reflexes, pupillary: Normal patellar: Normal
16. Endocrine disturbances: None
17. Results of laboratory examinations, when made:
18. Remarks on defects not sufficiently described above: Overweight is not excessive as to interfere with military training
19. Summary of defects in order of importance, impression of physical fitness: Overweight will not interfere with physical activity

Vision:
Right eye 20/ 20
Left eye 20/ 30

Hearing:
Right ear 20/20
Left ear 20/20

Height 72 in.
Weight 195 lb.
Girth (at nipples):
Inspiration 42 in.
Expiration 40 in.
Girth (at umbilicus) 34 in.
Posture Good
Frame Medium
Color of hair Brown
Color of eyes Blue
Complexion Fair
Pulse:
Sitting
After exercise
2 min. after exercise
Blood pressure:
Systolic
Diastolic
Urinalysis:
Sp. gr. 1024
Albumin Negative
Sugar Negative
Microscopic
Other data: None

6576

* Strike out word not applicable. † Place "X" in box opposite urban if closed community of 2,500 population or greater, otherwise place "X" in box opposite rural. ‡ When required.

W. D., A. G. O. Form No. 135
August 1, 1940

16 1620

EXHIBIT D-2 (sheet 10)(p.835)

5

We certify that this examination was conducted by the physical examination board appointed by SO 218 H.D.Q. 2nd. Corps Area
(Orders No., Headquarters,

[redacted] 9/13/40 to examine 114th Inf. Camden, N.J.
and date of orders) (Designation of unit)

upon induction; and that to the best of our judgment and belief the above named enlisted member of the unit—

†Is mentally and physically qualified for the active military service of the United States;

†[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

†Strike out findings not applicable *Strike out words not applicable

9/16/40
(Date)

President of board:

6576
(Signature)

Lester R. Wilson, Major, Medical Corps.
(Name and grade typed)

Member of board:

(Signature)

J. Iredell Wyckoff, Capt., DC, Medical Corps.
(Name and grade typed)

Recorder of board:

(Signature)

Watson B. Neiman, Captain, Medical Corps.
(Name and grade typed)

U. S. GOVERNMENT PRINTING OFFICE 16—16220

EXHIBIT D-2 (sheet 11)(p.836)

W. D., A. G. O. Form No. 8-88
1 July 1944
(This form supersedes W. D., M. D. Form No. 88A, 31 May 1939, which will not be used after receipt of this revision.)

a. Hospital			1. Last Name, First Name, Middle Initial			
Mason GH (22KPC)			AUDL, Howard NMI			
b. Ward	c. Religion	d. Prev. Adm.	2. Register No.	3. Army Serial No.	4. Grade	
5SE	C	No	*15230	20,224,275	Pvt	
e. Name and Address of Nearest Relative			5. Organization and Arm or Service (if AAF personnel, see below)*			
Jennie (M) Black Horse Pike Bellmawn, NJ			Engrs Unasgd			
			6. Age	7. Race	8. Length of Service	9. Date of Admission
			24	W	5 Yrs	7 May 45 @ 0930
f. Dis.	Inj.	B/C	g. Admitting Officer	10. Source of Admission		
D			Lt JTC/tv	Trfd fr Seattle POE Via Madigan GH		

* If AAF, indicate pilot, non-pilot flying personnel, ground personnel, or aviation cadet.

11. Final Diagnosis, Additional Diagnoses, Operations, Change of Status

20,224,275 5SE

Audl, Howard NMI

FINAL DIAGNOSIS: Psychosis, unclassified, manifested by excitement, confusion and threatening attitude.

EXTERNAL PRECIPITATING STRESS: Severe - forty months overseas in Southwest Pacific Theatre of Operations, with twenty-four months of combat duty.

PREDISPOSITION: None evident.

DISABILITY: Present: Marked for military service.
Future: Minimal for civilian life.

Specialized Treatment: Psychiatry, Closed Ward

ADDITIONAL DIAGNOSIS: None

Reconditioning Class III

Loaned to Veterans Administration
Date 19

RECEIVED
AUG 2 1945
AREA OFFICE #2

TRANSFER DIAGNOSIS: Confirmed

12. Line of Duty	13. Disposition and Date	14. Signature of Ward Surgeon
Yes	CDD AR615-361 Own Care JUL 30 1945	N. E. Ross Capt MC N. E. Ross, Capt. MC

16—40778-1 ☆ U. S. GOVERNMENT PRINTING OFFICE : 1944

Form 88 B
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

CHIEF COMPLAINT—CONDITION ON ADMISSION—PREVIOUS PERSONAL HISTORY 25 June 1945/afs

Name AULD, Howard Grade Pvt. Ward 28E

Chief complaint:
Patient states he was hospitalized for malaria. See 360th and 27th General Hospital report. At present less tense, appeared stern taciturn, easily irritated but rather polite and cooperative.

General appearance and condition on admission:

Occupation:
Truck driver 2 years averaged $50 a week.

Tropical service:
10 December 1941 to South Pacific. Patient refuses to give place of landing, says military secret. Active combat from Burma to Luzon 40 months.

Habits (alcohol, tobacco, drugs):
Alcohol - none before service, moderately overseas; tobacco - 2 packs a day; drugs - none.

Family history:
Father living and well 60.
Mother living and well 59.
2 brothers, 1 sister. Patient youngest. Congenial family relationships.
No hospitalizations for nervous or mental diseases.

Previous personal history:
Born 19 May 1920 Philadelphia.
Enlisted 8 July 1940, inducted federal service 16 September 1940. No AWOLs or courts-martial.
Completed 8th grade at 16. Worked as plumber's helper for a few years before taking up driving.
No court record. Apparently well adjusted.
Denies neurotic tendencies in childhood and nervousness up to 2 or 3 months before hospitalization.

Injuries:
None.

Venereal disease:
Denied.

M. J. Preble, T/4
Psychiatric Social Worker

(OVER)

16—18815-1

14

Form 55 C-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

PHYSICAL EXAMINATION

Name Auld, Howard Grade PVT Ward SSE

Hair Brown Color eyes - gray Race - W

Height: 6' 2" Normal weight: 235 Present weight: 200 ?

Skin: Two scars - one over flexor surface of rt forearm and other on extensor surface of left forearm as result of knife wounds inflicted in a fist fight. Old appendectomy scar on

Head (including special senses, nose, mouth, throat, and pharynx):

Head, ears - nose, throat - neg -
Pupils react to l + ac - equal, and regular

Neck: no rigidity -
Thyroid not palpable

Thorax: Symmetrical and expansion equal on both sides -

Lungs: Resonant throughout on percussion -
no rale audible on auscultation -

Vascular system (arterial and venous): Pulse - 80 normal in rhythm and quality -
no varicosities

Blood pressure: Systolic 130 ; diastolic 70

Heart: Sounds good quality no murmurs audible, no thrills, no cardiac enlargement present. Apex palpable at left mid-clavicle line at 5th interspace.

(OVER)

16—18816

EXHIBIT D-2 (sheet 14)(p.839)

PHYSICAL EXAMINATION

Abdomen: No mass, rigidity or tenderness elicited on palpation. Liver & spleen not palpable.

Hernia: none elicited

Genito-urinary: neg.

Anus and rectum: neg.

Glandular system (lymphatic and endocrine):
no adenopathy

Bones and joints: good mobility of all joints.
no deformity of bones or muscles.

Muscular system: well developed. no atrophies or paralyses elicited.

Nervous system: 1- Cranial nerves normal
2- Gait normal
3- Coordination - good - Romberg neg.
4- Reflexes ++

Date 8 May, 19 45

Signature J. D. Jones Name (typed) ..... Grade Capt

16—18816

SPECIAL EXAMINATION OR ADDITIONAL DATA

NAME	GRADE	WARD
AULD, Howard	pvt	2 SE

(This sheet to be used for extension from Forms 55B and 55C-1 when the space allotted in the regular form is insufficient. Notation of such extension will be recorded in the regular space provided in the history.)

19 July 1945mg

MENTAL STATUS

Attitude, Appearance and General Behavior: In the admission ward patient was in good contact and answered questions readily but was rather belligerent and for this reason was placed on a closed ward. In a closed ward he was neat in appearance, maintained good contact, remained somewhat hostile at first but later made a good adjustment to be transferred to an open ward where he has been somewhat seclusive, has engaged actively in the Occupational Therapy work but has been little interested in other activities. Has gone out on pass several times and returned promptly.

Speech and Mental Activity: Not a great deal of spontaneity and no pressure to his speech but speaks relevantly, coherently without rambling and circumstantiality.

Emotional Status: Affect is resonant, somewhat diminished but there is no true depression, no elation, appropriate emotional responses to a limited degree can be produced.

Content of Thought: No hallucinations, delusions or ideas of reference. Feels very bitter and hostile towards the Army for what he considers his mistreatment there by. Some combat dreams at times, bites his fingernails, eats fairly well and sleeps fairly well.

Sensorium and Recall: Oriented, precisely, memory is intact except for the second hospitalization overseas. States that at times he has lost his memory for various periods of his life previously but has always recovered it. Insight is lacking, has no idea for any explanation for his hospitalization. Planning for the future is reasonable. Education and handling of his general knowledge suggests he is of average intelligence.

H. E. LAWRENCE
Capt., MC

(Use both sides of this sheet)

WD AGO FORM 1 MAR 1945 8-38 This supersedes WD MD Form 55C-2, 31 May 1939, which may be used until existing stocks are exhausted. 16—43545-1 ☆ U. S. GOVERNMENT PRINTING OFFICE

Temporary
Form 55 C-2

SPECIAL EXAMINATION OR ADDITIONAL DATA

25 June 1945/afs

Name AULD, Howard Grade Pvt. Ward 28E

SOCIAL CASE HISTORY

Patient is the youngest of 4 children. His early history as well as that of his family appears to be negative for neurotic tendencies.

Patient's military history also appears to be free of any conflicts up to a few months before hospitalization. During interview patient appeared stern, easily irritated, rather severe and tense.

He had the childhood diseases, blood poisoning following the extraction of a tooth. He denies any neurotic tendencies. He began biting his nails overseas. Patient completed the 8th grade at 16, was social and athletic. Had no court record and appeared to adjust himself satisfactorily to associates and circumstances. He remained with his family until enlisting for service. His work was unskilled as plumber's helper until he became a truck driver. He enlisted 8 July 1940 and was inducted into federal service 16 September 1940. His basic was at Fort Dix where he was assigned to the 162nd Infantry Company B and has remained in this company throughout his combat. His work was scouting and patrolling. He denies being conscious of any tension and nervousness up until 5 months before his hospitalization. At that time he became violently homicidal against the sergeant when he was returned to duty to a replacement depot for rotation to U.S. he became psychotic and was evacuated.

Margaret J. Preble

M. J. Preble, T/4
Psychiatric Social Worker

(Use both sides of this sheet)

18

Chart

X-41 (OFP)

Temporary
Form 55 D

INITIAL SUMMARY, WORKING DIAGNOSIS, CONTEMPLATED
LABORATORY TESTS, AND CONSULTATIONS

Name AULD, Howard Grade Pvt Ward 5SE

7 May 1945/rl

Transfer diagnosis. Psychosis, unclassified

Initial summary: This soldier did excellent work overseas in the South Pacific and is said to have received a Distinguished Service Cross for his duty in Hollandia. He was originally hospitalized because he became violently homicidal against the Sgt. in the casual camp, but after a few days he calmed down and although he appeared rather strange, he was discharged from the hospital. He was readmitted in a confused state, a few days later. He was described as being belligerent, resentful, inappropriate and in a dream like state. It was finally decided to evacuate him to the ZI for disposition. At present he is in good contact, answers question readily, but rather belligerent. He claims that he will never carry out an order again. Because of this attitude, it is considered desirable to put him on a closed ward for observation for a few days prior to giving him open ward privileges.

Working diagnosis or impression:

IMPRESSION: Psychosis, unclassified, acute schizophrenic reaction, improved. Code:

Contemplated laboratory tests and special examinations:

Blood count
Urinalysis
Serology
Malarial smear
Stool examination
X-ray of chest

D. D. BRUSCA
Capt., MC

(Over)

19

FINAL SUMMARY

AULD, Howard Pvt 2 SE

19 July 1945/mg

Family History: No known neuropsychiatric determinants.

Previous Personal History: (Information obtained from the patient.) Born 19 May 1920 in Philadelphia, Pennsylvania. No early neurotic tendencies. Usual childhood diseases without complications, "blood poisoning" following the extraction of a tooth. Completed the eighth grade at the age of sixteen, mingled well with other pupils and was athletic. Worked as a plumber's helper and as a truck driver prior to his enlistment. No sexual deviations or civil delinquencies.

Military History: Enlisted 8 July 1940 and was inducted 16 September 1940. Overseas in late 1942 to Australia and later was in many months of combat in New Guinea and some in the Phillipines. According to his service record he is entitled to wear four battle stars. According to his own statement he worked chiefly in scouting, patroling, spending much time behind enemy lines. States he was dropped in the Hollandia area twenty days prior to the invasion and that with two other men he observed the activities of the enemy and signaled by radio the departure of three thousand Japanese marines, enabling the Hollandia landing to be made with the loss of but one man. His statement that he received the Distinguished Service Cross for this is not confirmed by his service record. His record lists five periods of AWOL, varying from two to twenty-six days, in 1941, 1942 and 1943. Three Summary and Special Courts-Martial. In March 1943 was given a General Court-Martial for desertion to avoid hazardous duty. Was sentenced to seven years of hard labor, loss of all pay and a Dishonorable Discharge. In September 1943 after he had served one hundred and forty-nine days the confinement was suspended and the Dishonorable Discharge suspended.

History of Present Condition: The patient was first admitted to the 27th General Hospital in March 1945 from the casual camp where he had been violently homocidal against a Sergeant with whom he had had an argument. After a few days in the hospital he calmed down and seemed strange but not entirely abnormal. On 24 March 1945 was discharged to a Replacement Depot in the hope that he would be rotated back to the States soon. Was readmitted to the 27th General Hospital the same day in a confused, excited state. Restraint and sedation was necessary and he was described as grossly psychotic. Was evacuated to the Zone of Interior with the diagnosis of "Psychosis, unclassified." Admitted to Mason General Hospital 7 May 1945.

Mental Status on Admission: In the admitting ward patient was in good contact, answered questions readily but was rather belligerent. Stated that he would never carry out an order again. On the closed ward was neat in appearance, resentful, inappropriate in some of his emotional responses and remained very belligerent. In good contact, well oriented, denied any ideas of reference or persecution or hallucinations.

Physical Examination: Physical and neurological examinations reveal no abnormalities. Laboratory studies including chest x-ray, malaria smear, stool examination, serology, urinalysis, blood count within normal limits. Stool examination showed the presence of hookworm ova which disappeared under treatment.

SPECIAL EXAMINATION OR ADDITIONAL DATA

NAME	GRADE	WARD
AULD, Howard	pvt	2 SE

(This sheet to be used for extension from Forms 55B and 55C-1 when the space allotted in the regular form is insufficient. Notation of such extension will be recorded in the regular space provided in the history.) 19 July 1945/mg

FINAL SUMMARY (cont'd)

Treatment and Clinical Course: Patient made a satisfactory adjustment on the closed ward and for the past six weeks has been on an open ward where he has been seclusive and slightly retarded but got along well with other patients and with the ward personnel and has been out on passes, returning promptly. Sleeps well, eats well, spends a great deal of time in the Occupational Therapy shop, has no interest in athletics. Shows some diminished affective resonance, dreams about combat occasionally, bites fingernails moderately and is irritated by noise. Still feels that he has been badly treated in the Army in that he was promised his court-martial sentence would be remitted and it has been only suspended. Feels that he can no longer do duty in the Army being too irritated by its discipline.

H. E. LAWRENCE
Capt., MC

STAFF CONFERENCE 25 July 1945/ag

This twenty-five year old private made a fairly adequate adjustment prior to service. He has been in the Army five years, about two years being spent overseas in the Pacific area with twenty-four months of combat. His service record shows several AWOLs with one General Court-Martial sentence which was later suspended, after he had served ~~one hundred forty-nine~~ (149) days. He was hospitalized in March 1945 because of an acutely disturbed episode, subsequently improved, and anattempt was made to return him to duty, but the same day he became confused, excited, required restraint and sedation, and he has a complete amnesia for this episode.

Since coming to this hospital, he has, on occasion, shown a somewhat surly and belligerant attitude but, for the most part, adjusted well, and for the past few weeks, has shown little evidence of abnormal behavior, except for somewhat inappropriate emotional responses. He is still very tense, however, and under pressure shows a facial tic. There is no evidence of any delusional or hallucinatory experiences. It is the opinion of the staff conference that this patient is still too emotionally unstable to warrant a return to duty.

(Use both sides of this sheet)

WD AGO FORM 1 MAR 1945 8-38 This supersedes WD MD Form 55C-2, 31 May 1939, which may be used until existing stocks are exhausted. 16—43545-1 ☆ U. S. GOVERNMENT PRINTING OFFICE

21

AULD, Howard pvt. 2 SE

STAFF CONFERENCE (Cont'd)

Diagnosis: 35 Psychosis, unclassified(active symptoms in remission) manifested by excitement, confusion and threatening attitude.

External Precipitating Stress: Severe (forty months overseas in Southwest Pacific Theatre of Operations, with twenty-four months of combat duty).

Predisposition: None evident.

Disability: Present: Marked for military service. Future: Minimal for civilian life.

The board is of the opinion after consideration of the above, that:

1. Condition was incurred in line of duty and did not exist prior to entry upon active duty.
2. Condition was not due to his own misconduct, and was due t to causes incident to the service.
3. Subject soldier, if discharged from the military service. will require no further supervisory care.

The board, therefore, recommends that Private Howard AULD be discharged from the m litary service to his own care under the provisions of AR 615-361.

H. E. LAWRENCE
Capt., MC

-3-

Form 55 F
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

22

PROGRESS NOTES

Name AULD Howard Grade Pvt Ward ~~55E~~ 25

(Complications and changes in diagnosis, with date in each case, should be entered on this sheet)

5/26/45

Pt's attendance regular — works the entire period —. Has made a mug this week. Finished one friend started. Interest stimulated more by glazing of ash tray. Patiently sands & finishes work in good manner. Asked on Friday if "rae" were in shop in morning — that he was asking nurse to come down both in morning & afternoon. Dont think patient is interested because of previous Art interests, "but just likes to work". Pt. does not need constant supervision. 4h 5h

L. A. Allmann, O.T.R.

(Use both sides of this sheet)

16—18818

EXHIBIT D-2 (sheet 22)(p.847)

Form 55 F
Medical Department, U. S. Army
(Revised May 31, 1939)

PROGRESS NOTES

Name Auld, Howard Grade PVT Ward 55E

(Complications and changes in diagnosis, with date in each case, should be entered on this sheet)

12 May '45 neat, resentful, inappropriate and still very belligerent. "I will never carry out an order in the army". Admits having had periods of confusion. Has been a heavy alcoholic but has refused such since having been Court martialed for decoration which on an alcoholic spree. Is in good contact. Well oriented. Fair insight. Poor judgement. Denies ideas of persecution or defense. States he was given a "bad deal" when promised his Court martial sentence would be remitted if he went into combat and found later it was only suspended. No hallucinatory ideas elicited.

J O Jones Capt MC.

20 May 45. Pt expiring satisfactorily. Quiet, pleasant - cooperative. Somewhat seclusive. Neat, clean. C J Buscaglia Capt MC

(Use both sides of this sheet)

16—18818

EXHIBIT D-2 (sheet 23)(p.848)

24

PROGRESS NOTES—Continued

29 May 45. P & shows improvement. Considered suitable for open ward. No passes recommended at this time. History of belligerence while under alcoholic influence. sf 2 S.E.

C J Buscaglia Capt MC

16—18818

EXHIBIT D-2 (sheet 24)(p.849)

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Form 55 F
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

PROGRESS NOTES

Name AULD Howard Grade Pvt Ward 5SE

(Complications and changes in diagnosis, with date in each case, should be entered on this sheet)

5/14/45
Pt. showed interest in clay from first day at shop — but watched from a distance for several days — moving away if asked about work — always friendly. In shy — willing manner started ash tray after several days — not skilled worker, but worked carefully & completed a good piece. Interest increased & in a very enthusiastic manner made mug. Pt. was always trying to get friend to work.
SSR.
E. A. Allinson, O.T.R.

30 May '45 Pt. is secchisme, moderately retarded, gets along well with patients and personell. He appears slightly preoccupied.
J Riegelhaupt

10 June Is showing some improvement — more cheerful, friendly, & mingles more freely
Wm L

20 June 45
Remains well adjust. No active psychotic thinking
Wm L

(Use both sides of this sheet)

16—18813

EXHIBIT D-2 (sheet 25)(p.850)

Form 55 G-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

26

TREATMENT

Name Auld, Howard Grade PVT Ward SSE

Date	
7 May	Routine Admission Orders Capt Buscaglia / W Karpf
8 May	Nembutal 0.1 gm Hs PRn. Capt Ross E.K
29 May	Transfer to 2 S. E.
5 June	Hookworm treatment H Heyton / [illegible]

16—18819 (OVER)

EXHIBIT D-2 (sheet 26)(p.851)

Form 55 H-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

TEMPERATURE—TREATMENT—NURSE'S NOTES

Name Auld, Howard Grade PVT Ward 55E

Date	A.M. T	A.M. P	A.M. R	P.M. T	P.M. P	P.M. R	St	Wt	Medication and Nurse's Notes
7 May					104				Received on Ward from Seattle P.O.E. Showered and made comfortable
7 May							23	00	Patient unable to sleep Ord. Amytal 0.2 gm - EK
									Slept well after medication.
10 May									Quiet. Seclusive. Appears preoccupied. Very cooperative. Congenial when spoken to. V K
14 May									mingles with other patients - plays card frequently - cooperative adjusting well to ward life Friendly - Appears less apprehensive than when he was admitted. J. Cunningham 2nd Lt AUS
17 May									Friendly - appetite good cooperative. E Sp
20 May									Cheerful - participates in activities and does detail well. J. Cunningham 2nd Lt AUS
28 May									Pleasant - very interested in O.T. Shop J. Cunningham 2nd Lt AUS
29 May									Transfer to 2 S E.
29 May									Received as transfer from 55E @ 1210. Open ward agreement signed. ODriscoll

(Over)

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TEMPERATURE—TREATMENT—NURSE'S NOTES

Date	A.M. T	A.M. P	A.M. R	P.M. T	P.M. P	P.M. R	St	Wt	Medication and Nurse's Notes
2 June									Does not mix very much with other patients. Seems rather quiet — M Smith
4 June									Bod. Sulfate 3 [illegible] @ 1900
5 June									Took room treatment this AM.
8 June									Interested in OT work. Does not mix with other pts. very much. Very quiet, but congenial when spoken to K Mahoney 2d Lt.
11 June									One stool spec. negative for hookworm & Trichinus. Quite friendly. Cheerful. More sociable — K Mahoney 2d Lt.
15 June									Moody at times — and impulsive. Cooperative and congenial when addressed. SA Barbushack, 2nd Lt AMC.
16 June									On three day pass 16 June 1200 to 1900 June 1200. Seems more cheerful. Has made some friends with whom he jokes and goes to activities. K. Mahoney 2d Lt.
23 June									On three day pass 23 June 1200 to 26 June '45. Cheerful and sociable. Does details willingly. K. Mahoney 2d Lt.
3 July									Removed from three day pass. B. Luby [illegible]

EXHIBIT D-2 (sheet 28)(p.853)

Form 55 H-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

TEMPERATURE—TREATMENT—NURSE'S NOTES

Name Auld, Howard Grade Pvt Ward 55E

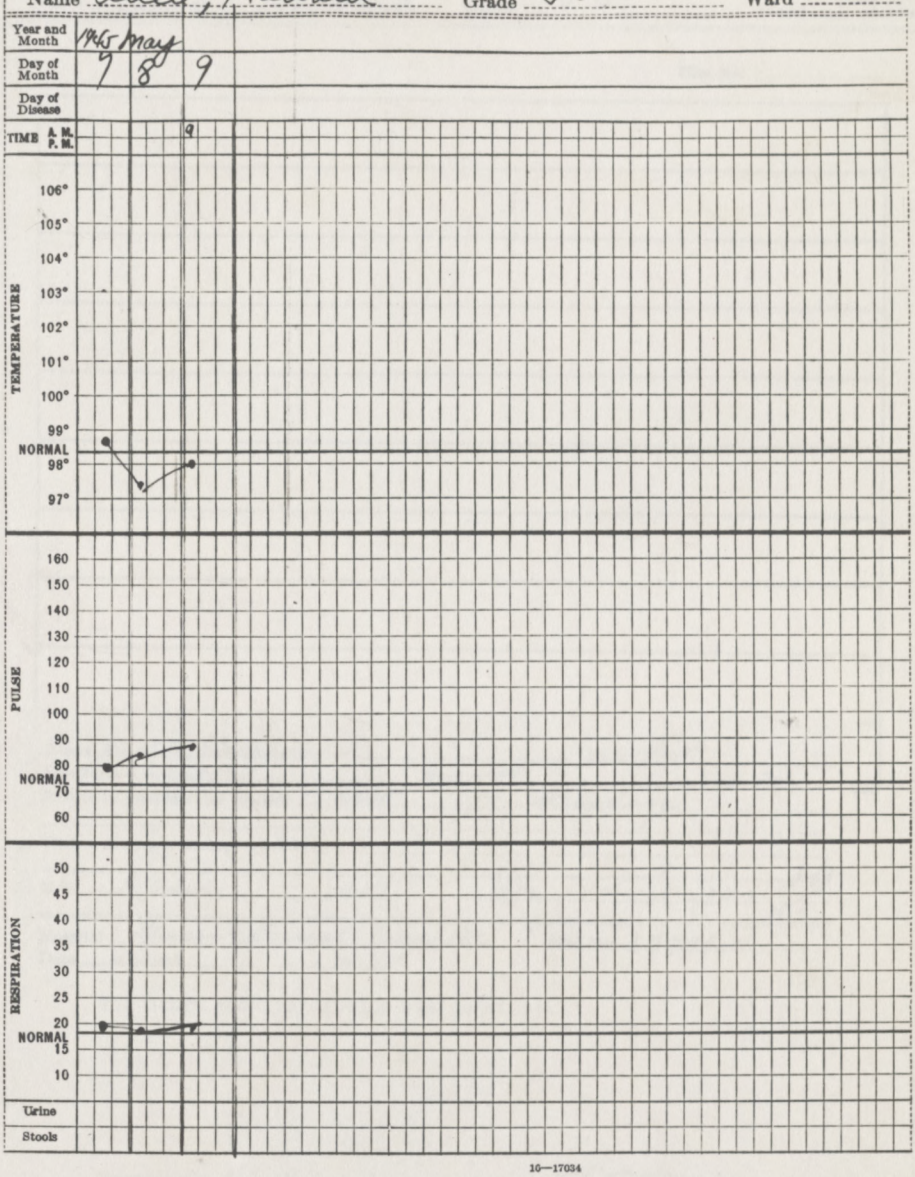
Date	A.M. T	A.M. P	A.M. R	P.M. T	P.M. P	P.M. R	St	Wt	Medication and Nurse's Notes
13 July									Continues to have mood swings - Occassionally very cheerful and extroverted - Sometimes seclusive and withdrawn. Adjusts well to wd. Routine G Diaz 2/Lt

(Over)

Form 55 H-2
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

TEMPERATURE GRAPHIC CHART

Name Auld, Howard Grade Pvt. Ward 5JE



16—17034

EXHIBIT D-2 (sheet 30)(p.855)

31

Form 55 K-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

RADIOLOGIC RECORD

Name Auld, Howard Grade PVT Ward 5 S 15

Film No. .....

Name Auld, Howard Rank Pvt
Serial No. 20232425 Ward 2 SE Age 24
Part to be examined (or treated) Chest for discharge
Clinical diagnosis (include operations) .....
Date 1 June, 1945 Wm M Leyhan 1st Lt M. C.
Hospital Mason General Hospital Film No. 17771 V
Date 4 June, 1945

The heart and lung fields are negative.

Brentwood, L.I., N.Y.
S. THOMAS MILLER, Capt. M. C.

Form 55 K-2
MEDICAL DEPARTMENT, U. S. ARMY
(Revised June 9, 1942)

RADIOLOGIC REPORT

16—16894-2 ☆ GPO

EXHIBIT D-2 (sheet 31)(p.856)

Form 55 L
MEDICAL DEPARTMENT, U.S. ARMY
(Revised May 31, 1939)

LABORATORY REPORTS

Name Auld, Howard Grade Pvt Ward 5-5E

Name Auld, Howard Serial No 20224275 Rank Pvt
Station W.B.G.H. Ward 5E
Examination requested by Lt Leyton M. C.
(Indicate examination requested by check (✓) below)

Character
Color
Occult blood
Mucus
Fat
Parasites or ova NONE FOUND
Reaction
Bile
Pus
Undigested food

Remarks:

Lab.

EDGAR H. BEHM, 1st Lt, MC

W. D., A. G. O. Form No. 8-75
7 June 1944
(Old W. D., M. D. Form No. 55L-6,
9 June 1942) (3) FECES Date JUN 12 1945 M. C.
☆ GPO 16—16972-3

7 June 1944
(Old W. D., M. D. Form No. 55L-6,
9 June 1942) (2) FECES Date JUN 8 1945 M. C.
☆ GPO 16—16972-3

EDGAR H. BEHM, 1st Lt, MC

W. D., A. G. O. Form No. 8-75
7 June 1944
(Old W. D., M. D. Form No. 55L-6,
9 June 1942) (1) FECES Date JUN 7 1945 M. C.
☆ GPO 16—16972-3

9 June 1942)
☆ 16—33304-2 GPO

MEDICAL DEPARTMENT, U. S. ARMY
(Revised June 9, 1942) URINALYSIS Date JUN
☆ GPO 16—16969-2

(Old W. D., M. D. Form No. 55L-6,
9 June 1942) FECES Date
☆ GPO 16—16972-3

Form 55 L-3
MEDICAL DEPARTMENT, U. S. ARMY
(Revised June 9, 1942) SEROLOGY Date M. C.
☆ 16—33304-1 GPO

Form 55 L-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised December 23, 1942) BLOOD Date JUN 1945
16—32174-1 ☆ GPO

16—18814

EXHIBIT D-2 (sheet 32)(p.857)

MGH# 480
(NP)

NEUROPSYCHIATRIC SERVICE
ARMY SERVICE FORCES
MASON GENERAL HOSPITAL
BRENTWOOD, NEW YORK

OPEN WARD AGREEMENT

1. In receiving open ward privileges at Mason General Hospital, I agree to abide by all regulations of the hospital and to do my part in maintaining the hospital as a pleasant and satisfactory place to live, as well as to cooperate fully in my program of treatment.

2. I will at all times assist in keeping my ward, the hospital building and the gounds clean, neat and well policed.

3. I will wear my badge in the prescribed manner at all times when off the ward and will not lend or give it to another patient. I will turn in the badge prior to discharge from the hospital.

4. I will at all times keep myself clean and neat in appearance and will conduct myself in a military manner.

5. I will keep myself properly attired in a buttoned convalescent suit, and will wear shoes which I will keep neat and polished.

6. I will not go to Headquarters, information desk, offices, clinics, barracks, officers and nurses quarters, mess halls, kitchens or other unauthorized places without specific permission.

7. I will not leave the ward for any purpose whatsoever without signing out in the ward book, stating the time and destination, and signing in on return.

8. I will faithfully and regularly attend all reconditioning activities scheduled for me.

9. I will report promptly to my ward for mess at the designated hours and will return to the ward at the time designated for activities on the ward.

10. I will see my visitors only at the regular visiting hours at regularly designated places.

Witnessed Dorothy H. Driscoll Jr. Signed Howard Auld
Ward Officer

Date 29 May 1945 Ward 25E

2 SE 34

ARMY SERVICE FORCES
Second Service Command
MASON GENERAL HOSPITAL
Brentwood, L. I. N. Y.

MGH #504 (Revised) ABSTRACT OF SERVICE RECORD

Auld, Howard MMI	20294275	White
Last name First name, middle initial	Serial No.	Race

RA	TC	Pvt	Single	Steel Worker
Component	Br of Ser	Grade	Martial Status	Occupation

19 May 20 Phila, Pa	8 Jul 40 Unknown
Date & Place of Birth	Date & Place of Current Enlmt

None	Unknown
Prior Service	AGCT Score

Black Horse Lake, Bellawr, New Jersey
Home address

Mother Jennie Auld Black Horse Lake, Bellawr, NJ
Relationship, name & address of person to be notified in emergency

This soldier Is Not IS NOT a GARRISON GENERAL prisoner

Record of AWOLS: None

Record of Sentence & Confinement: None

Individual first came under hosp treatment for present disability:

10 Feb 45		360th Sta Hosp
Date	Place	Name of Hospital

Places and dates of admission and disch pertaining to continous hosp treat:

	Date entered	Date disch	Full name and add of hosp
1.			
2.			
3.			
4.			
5.			

Record was made from a temporary service record: Yes / No

Typed by RSS Date 30 May 45

#169

ARMY SERVICE FORCES
MASON GENERAL HOSPITAL
BRENTWOOD NEW YORK

5 SE

Add 35

REGISTER NO. 15730 DATE 7 May 45

1. I have been informed by the admitting officer that any funds or valuables retained in my possession while I am a patient in this hospital are retained at my own risk, I have also been informed that I may and should, deposit the same with the Custodia Patients Funds and Valuables. I, therefore, deposit the following and consent that any interest accruing therefrom shall be the property of the Hospital Fund, Mason General Hospital.

CASH $ None (List Currency)

VALUABLES (List all other checks and valuables)

None

1 Pouch of Jap Invasion Money
1 Wallet & Papers
1 Partial Plate (Denture
1 English Coin

Howard Fould
Patient's Signature

P Dudley 2nd Lt MAC
Witness

Arnold Howard
Rank, Name, Serial No.
26 22 42 75

2. I have received for delivery to the Custodian Patients Fund and Valuables, all the articles listed in Paragraph 1, above.

Signature, Admitting Officer

3. I have received from the Admitting Officer, whose signature appears above, all the articles listed in paragraph above.

Patients Fund Receipt.

W E Jungen
WALTER E. JUNGEN, 2nd Lt., AUS
Custodian, Patients Funds & Valbs.

EXHIBIT D-2 (sheet 35)(p.860)

WITHDRAWALS MAY BE MADE FROM 0900 A.M. to 1100 A. M, DAILY EXCEPT SUNDAY

SUBSEQUENT DEPOSITS			WITHDRAWALS					
Date	Amount	Signature Custodian	Date	Check No.	Amount		Balance	Patient's Signature
5/11	27.40	[illegible]	5/23	[illegible]	[illegible]	[illegible]	[illegible]	Howard Auld
[illegible]	[illegible]	[illegible]	5/23	Cash	10.	00	17 80	Howard Auld

THIS CERTIFICATE MUST BE PRESENTED WITH EACH TRANSACTION
MGH #169

EXHIBIT D-2 (sheet 36)(p.861)

Form 55 A
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1939)

37

CLINICAL RECORD
BRIEF

Hollandia NP SAM

Register No. 17 653 Hospital 27th General Hospital
Name Auld, Howard Serial No. 20 224 275
Grade Pvt Co. 21st Repl Depot Regt. and Arm or Service APO 320
Age 24 Race W Nativity Pa
Service 6 yrs Date of admission 24 March 1945 1400 hrs. 19
Source of admission Direct
Station APO 565 Base G
Ward 30 Previous admission Yes D
Religion Prot Home address Black Horse Pike, Bellmawr N.J.
Name and address of nearest relative Mother Jennie
Same
EWL/was
(Initials of admitting officer)

Disposition EVACUATE TO US 1-A Date 3 APR 1945 19

Final diagnosis:

PSYCHOSIS, type unclassified, manifested by dreamlike state, belligerent resentful behavior, inappropriate actions and mild confusion

Additional diagnoses (Complications, special treatment and operations):

Line of duty YES
Condition on completion of case NO CHANGE
Transfer diagnosis confirmed or not confirmed
Autopsy

William M. McClements
William M. McClements, Major, M. C.

(11)

EXHIBIT D-2 (sheet 37)(p.862)

AULD, Howard 24 March 1945

P-S-Y-C-H-I-A-T-R-I-C R-E-P-O-R-T

This patient was dishcarged to duty this morning at 0800 hours to the 21st Replacement Depot with a hope that he sould be placed on an early roatation quota and sent back to the U.S. This man claims that he belonged to the 1st Reconnaissance Group and has been in New Guinea since the Buna campaign and has done scouting from that time up to Luzon. He claims that he was dropped by plane into Hollandia area one moth before invasion and stood secluded near the beach and when he saw the Jap Marines leave for Weewak, he signaled our forces at Finchafen to start the invasion. He states he received the Distinguised Service Cross for this feat.

On his previous admission, he was violently homocidal against a sergeant in the Casual Camp whom he had argued with. After a few days, he calmed down, seemed strange but not entirely abnormal. He was very anxious during hisstay to get into the jungle to look for three of the Detachment Enlisted Men who were lost but he was dissuaded on this venture. He seemed perfectly all right when discharged to duty. He went to the 21st Repl Depot and was immediately called by an officer whom he failed to salute. He walked out of theplace, "everything went blank" and wandered back to this hospital. He went immediately to the Red Cross where one of the workers sho knew him took him in tow. She realized he wasconfused and brought him back to the NP Section. He stated he wanted to get away from everything and sleep and rest all by himself. He agreed that he should rest here first and perhaps take his jungle trip a little later.

Thisman is grossly psychotic at the moment and I believe rehabilitation for further duty is impossible. He will be presented before the Disposition Board with the recommendation that he be Evacuated to the United States for further neuropsychiatric observation and treatment.

DIAGNOSIS: PSYCHOSIS, ~~mixed~~ type, UNCLASSIFIED severe, manifested by dreamlike state, belligerent resentful behavior, inappropriate actions and mild confusion LOD: YES

William M. McClements
WILLIAM M. McCLEMENTS
Major, M.C.
Neuropsychiatrist

DENTAL EXAMINATION

Name Arld. Howard Grade Pvt Ward 30

Age 24 Color W Date 25 March, 1945

Referred for:

1. Dental treatment. Routine [/] Emergency [ ]
2. Elimination of dental foci [no]
3. If special examination for focal infection and report only is desired, check here. [no]
4. In hospital for dental treatment only. [no]
5. Probable period of hospitalization—weeks. [1 wk]
6. Infectious lues? [ ]

Medical diagnosis: N. P.

Remarks:

H.C.

Findings: Date 28/3, 1945

Class IV

(WD Form #55 E-4, Dup. 27th GH "C") (Over)

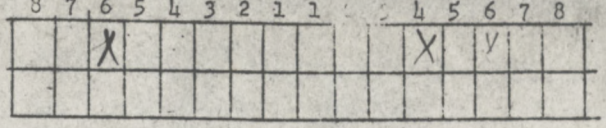
D.C.

EXHIBIT D-2 (sheet 39)(p.864)

REPORT ON DENTAL SURVEY

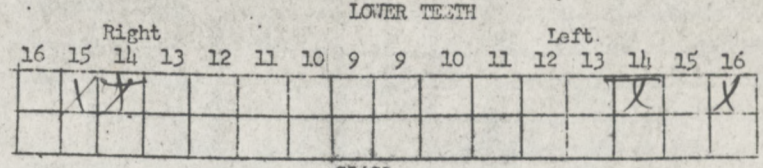
UPPER TEETH

Right 8 7 6 5 4 3 2 1 1 4 5 6 7 8 Left



LOWER TEETH

Right 16 15 14 13 12 11 10 9 9 10 11 12 13 14 15 16 Left



CLASS.....

Occlusion.....

Calculus: Slight.....Medium.....Heavy.....

Peridontoclasia.....

Dental foci suspected: Yes.....No.....

Other conditions:

.....
D.C.

Indicate:

Restorable teeth, carious by ⊡

Nonrestorable teeth, carious by ⊿

Missing natural teeth by ☒

Teeth replaced by denture (Horizontal line)

Teeth replaced by fixed bridge (oval to include abutments)

Form 55 H-1
MEDICAL DEPARTMENT, U. S. ARMY
(Revised May 31, 1930)

TEMPERATURE—TREATMENT—NURSE'S NOTES

Name Arled Grade Ward 20

Date	A.M. T	A.M. P	A.M. R	P.M. T	P.M. P	P.M. R	St	Wt	Medication and Nurse's Notes
24 March				98.4					Adm. to ward ambo @ 1330 - very confused - grain Sod Amytal gr X/1 on adm.
									Sod Amytal gr III @ R.S.
25	98			98					Quiet - cooperative. Na Amytal gr X/11 @ 0945 Suite agitated. Nembutal gr III @ 1800.
									Evening upset. Leg other pt. Restrained. Aspalgum gr 1/30 # @ 2200. Sleep ig.
26 Mar.				97.4					Nembutal gr III @ 0745.
									Agitated.
				99					Sod Amytal gr III @ R.S.
27 Mar.	97.4								Na Amytal gr IX @ 0900
									Helpful & other pts
									Sod Amytal gr IV @ 2400
28 Mar	97			97.4					Cheerful, quiet helpful
									Sod Amytal gr IX @ R.S.
29	97.6								Helpful cheerful
									Sod Amytal gr XX @ R.S.
30	97.4			97.6					Pass visit 1430. Tearful, quiet
									Sod Amytal gr XIII @ R.S.
31/3	97.4								Same. Send to Ward.
									Sod Amytal gr IX R.S.
1 April	97.2			98.4					Irritable & surly. Quiet
									Na Amytal gr XV = 2/100
									Upset. Noisy @ 1930.
									Paraldehyde 3/i Sleeping
2-4	97.6						1000		ROUSING FROM PREVIOUS SEDATION.

10—16396

(Over)

42

DISPOSITION BOARD
27th General Hospital
APO 565

4018	Auld, Howard	20 224 275	Pvt	26 Mar 45
No.	Name	ASN	rank	Date

This patient has been boarded for:

1. Evacuation to the United States
2. Transfer to Base "B"

Code Class No. 1-A

EXHIBIT D-2 (sheet 42)(p.867)

-R-E-S-T-R-I-C-T-E-D

UNITED S .RMY SERVICE OF SUPPLY
ST PACIFIC AREA

HEADQUARTERS BASE G

APO 565
3 April 1945

EVACUATION ORDER)
NO: W-36 27 G.H.)

1. Under the authority of letter, War Department, AG 704.11, Subject: "Procedure for Evacuation of Patients by Water or Air from Overseas Commands" dtd 8 June 1944, Movement Directive 150, Hq USASOS, dtd 26 Feb 45, and Movement order 46, Hq Base G, dtd 2 Apr 45, the following named patients now awaiting evacuation to the UNITED STATES, will be moved on or about 3 April 45, as indicated below.

OFFICER PERSONNEL

CLASS 4

NO.	RANK OR GRADE	NAME	ASN	MOS	ARM OR SERV	DIAGNOSIS
1.	Capt	BARBER, BRUCE P.	0 192 924	NA	SC	Arthritis, severe
2.	Capt	BATTAGLIA, A. J.	0 190 281	NA	TC	Lichen Planus
3.	Capt	FRANSEN, DAVID C.	0 342 167	NA	INF	Post traumatic state
4.	Capt	GOODKIN, SIDNEY	0 410 469	NA	INF	Wound, shrapnel
5.	1stLt	THOMPSON, BIDDLE R.	01 102 978	NA	CE	Acne vulgaris
6.	1stLt	ZELL, WILLIAM Z.	01 309 144	NA	INF	GSW, rt hand
7.	2ndLt	ROY, JOSEPH F.	0 443 157	NA	INF	GSW, rt hand
8.	2ndLt	SHAFER, WILLIS F.	02 036 699	NA	INF	GSW, chest

ENLISTED PERSONNEL

CLASS 1-A

9.	Sgt	BILOTTA, CARMEN A.	37 027 927	NA	INF	Psychoneurosis
10.	Sgt	BURKETT, MELVIN R.	6 892 963	NA	AF	Psychoneurosis
11.	Tec 4	FOWLER, WILLIS E.	14 011 502	NA	QM	Psychosis
12.	Cpl	TAYLOR, BARDSDALE H.	33 079 188	NA	MD	Psychosis
13.	Pfc	BUCKALEW, ELMER C.	38 097 481	NA	INF	Psychosis
14.	Pfc	CARTER, JOHN B.	34 556 301	NA	CE	Psychosis
15.	Pfc	CURTIS, GUS G.	32 907 273	NA	CAV	Psychosis
16.	Pfc	MILHORN, LONNIE H.	34 724 080	NA	INF	Psychosis
17.	Pfc	OLLIAN, ADAM	36 536 198	NA	INF	Psychosis
18.	Pfc	PAPE, FRANK	32 850 649	NA	INF	Psychoneurosis
19.	Pfc	WERNER, JOHN P.	33 142 317	NA	INF	Psychosis
20.	Pvt	AUID, HOWARD	20 224 275	NA	CE	Psychosis
21.	Pvt	GRIFFIN, W. T.	34 961 493	NA	TC	Psychosis
22.	Pvt	SERIO, VINCENT J. JR.	38 852 991	NA	AAA	Psychosis

CLASS 1-C

23.	Tec 4	KUCHEL, EARL B.	39 157 673	NA	FA	Psychoneurosis
24.	Cpl	MAREZ, LEE	39 462 761	NA	INF	Psychoneurosis
25.	Tec 5	BURKE, FRED	20 540 669	NA	INF	Psychoneurosis
26.	Pfc	DUFFANY, BERNEY E.	20 210 594	NA	INF	Psychoneurosis
27.	Pfc	HARRIS, FORREST R.	42 005 855	NA	TC	Post traumatic state
28.	Pfc	LEMLEY, GERALD B.	33 159 421	NA	INF	Psychoneurosis
29.	Pfc	MARIA, TONY	31 204 958	NA	MD	Psychoneurosis
30.	Pfc	NEAL, RAYMOND E.	35 202 782	NA	CE	Psychoneurosis
31.	Pvt	BURT, WILLIAM L.	35 882 836	NA	CE	Psychoneurosis
32.	Pvt	DE ROBERTIS, PHILLIP	31 430 797	NA	SC	Psychoneurosis
33.	Pvt	DOSS, RAY R.	33 528 153	NA	MD	Psychoneurosis
34.	Pvt	ERIKSON, LEO E.	37 582 248	NA	CAV	Psychoneurosis
35.	Pvt	FIGARI, DAVID L.	38 544 252	NA	CAV	Psychoneurosis
36.	Pvt	KURTOVICH, JOE	37 316 336	NA	FA	Psychoneurosis
37.	Pvt	MURPHY, JOHN M.	36 444 862	NA	FA	Psychoneurosis
38.	Pvt	ROBERTSON, MILFORD W.	39 261 374	NA	INF	Psychoneurosis

R-E-S-T-R-I-C-T-E-D

Bs "G" APO 565, Evacuation Order Number: W-36, 27th GH, dtd 3 Apr 45. (Cont'd).

CLASS 4

NO.	RANK OR GRADE	NAME	ASN	MOS	ARM OR SERV	DIAGNOSIS
39.	1/Sgt	LATIMER, JOE W.	14 124 695	NA	QM	Fract CC rt 1 metat
40.	S/Sgt	CARR, JAMES E.	37 045 994	NA	INF	Fract CCC lt scapula
41.	Sgt	ANDERSON, JOHN A.	20 151 822	NA	INF	Dermatitis
42.	Sgt	DARR, GLENN I.	39 004 225	NA	INF	GSW, rt lower leg
43.	Sgt	EDELEN, ROBERT M.	35 697 817	NA	INF	Dermatitis
44.	Sgt	HAUPT, THEODORE N.	35 117 524	NA	TD	Urticaria
45.	Sgt	OWLES, CLIFFORD W.	32 366 400	NA	AF	Trichophytosis
46.	Sgt	TSIGONIS, ANTHONY C.	32 172 247	NA	INF	GSW, pen lt lumb reg
47.	Sgt	ZIEGLER, ROBERT A.	[illegible] 494 242	NA	AAF	Trichophytosis
48.	Cpl	DENHAM, REDDISH	[illegible] 450 522	NA	CA	Eczema
49.	Cpl	HILE, ALBERT J.	030 667	NA	AAF	Dermatitis
50.	Cpl	KLIGERMAN, JOSEPH	[illegible] 342 603	NA	AAF	Pyoderma
51.	Cpl	MILLER, RICHARD W.	[illegible] 247 165	NA	AAF	Dermatitis
52.	Tec 5	BERNO, CHARLES J.	[illegible]0 503 939	NA	INF	GSW, sup iliac spine
53.	Tec 5	BURNS, JOHN M.	16 097 221	NA	SC	Trichophytosis
54.	Tec 5	DENUNZIO, VINCENT J.	32 999 912	NA	CE	Dermatitis
55.	Tec 5	MOTT, L. D.	20 421 697	NA	ORD	Acne vulgaris
56.	Tec 5	MUELLER, ROBERT E.	36 762 354	NA	INF	Spondylolistesis
57.	Tec 5	WALKER, LEROY	34 204 872	NA	INF	Dermatitis
58.	Pfc	AUBRY, WILLIAM K.	32 604 379	NA	INF	Acne vulgaris
59.	Pfc	BOWERS, FLOYD L.	34 368 685	NA	CAV	Fract CCC rt ind fing
60.	Pfc	BURGESON, HOWARD	36 331 653	NA	INF	Amp trau rt hand
61.	Pfc	BUTCHER, PERRY A.	39 826 644	050	AAF	Cystitis
62.	Pfc	CHAMBERS, DANIEL E.	34 809 729	NA	INF	SW lac pen lt calf
63.	Pfc	CHRISTNER, RAYMOND J.	39 464 034	NA	INF	SW lac rt gyrus
64.	Pfc	CLOWER, VERNON E.	34 083 536	NA	MP	Carcinoma
65.	Pfc	DONOVAN, RICHARD R.	33 420 544	NA	INF	Pyodemia
66.	Pfc	DOVE, JOHN	33 902 340	078	CE	Sublaxation
67.	Pfc	ESPINOSA, JESUS J.	36 695 057	NA	INF	Miliaria
68.	Pfc	FERRARI, FRANK A.	39 139 532	NA	INF	Post concussion synd
69.	Pfc	GONZALEZ, PEDRE G.	38 553 861	NA	INF	Fract CCC rt hand
70.	Pfc	HAGAN, IVER A.	37 567 000	NA	INF	Fract CC rt humerus
71.	Pfc	HERENDEEN, DAVID	33 502 061	NA	INF	Trichophytosis
72.	Pfc	HERMANOWSKI, CHESTER	32 295 150	NA	INF	GSW, thru rt hand
73.	Pfc	JAMES, WILLIAM H.	35 491 092	NA	QM	Pyodermia
74.	Pfc	LEVINTON, SOLOMON	12 147 900	NA	QM	Trichophytosis
75.	Pfc	LOPEZ, SANTIAGO L.	38 555 457	NA	INF	Eczema
76.	Pfc	MALLAK, EDWARD	37 161 557	NA	INF	Foreign body rt hip
77.	Pfc	MERRICK, ORVILLE R.	[illegible] 455 291	NA	ORD	Fract SC rt car scaph
78.	Pfc	MILLER, DOUGLAS H.	[illegible] 533 131	NA	INF	Fract CC rt ulnar
79.	Pfc	ORLOSKI, CHARLES J.	[illegible] 351 209	NA	INF	Cystitis
80.	Pfc	PAYNE, CHARLES W.	[illegible] 563 349	NA	INF	SW lt buttocks
81.	Pfc	PEARSON, GEORGE A.	[illegible] 162 798	NA	INF	Trichophytosis
82.	Pfc	ROCHELL, OTTIE	38 413 710	NA	INF	Trichophytosis
83.	Pfc	RODRIGUES, ALFONSO	38 248 805	NA	QM	Trichophytosis
84.	Pfc	SANTA CRUZ, GILBERT S.	20 845 293	NA	INF	SW Perf rt foot
85.	Pfc	SCOTT, MORTON F.	32 954 777	271	TC	Ulcer, pyogenic
86.	Pfc	SHAFER, HOWARD	37 242 976	NA	INF	Ulcer, perf duodenum
87.	Pfc	SLEDGE, JAMES W.	37 258 177	NA	INF	Arthritis
88.	Pfc	TREADWAY, ROBERT F.	35 727 736	NA	MD	Dermatitis
89.	Pfc	VIALPANDO, EMEGDIO	38 006 530	NA	INF	Lichen planus
90.	Pfc	WOTIER, JOSEPH	34 283 910	NA	QM	Urine retention
91.	Pfc	YANKEL, ANTHONY F.	33 167 946	NA	INF	Trichophytosis
92.	Pvt	COCKRELL, JOHN L.	33 750 821	NA	MD	Dermatitis
93.	Pvt	CRISTINA, SAMUEL	31 412 685	NA	CE	Fract old rt elbow
94.	Pvt	DAVIS, ARNETT D.	37 682 548	NA	ORD	Trichophytosis
95.	Pvt	DIVITTORE, EMILIO A.	33 499 755	NA	CE	Impetigo
96.	Pvt	GILLESPIE, TONY I.	36 784 479	1605	INF	Rupture spine
97.	Pvt	HERNANDEZ, REMIGIO	38 556 532	NA	INF	SW left elbow
98.	Pvt	JESKE, ALVIN J.	36 833 263	745	INF	SW thr-thru rt thigh
99.	Pvt	MIXON, ALFRED W.	34 817 316	NA	INF	SW left flank & abdom
100.	Pvt	SJOBLAD, JAMES W.	36 440 276	NA	INF	Dermatitis
101.	Pvt	SMART, ROBERT	34 049 513	NA	AAA	Dermatitis
102.	Pvt	TELLEZ, ALEXANDER D.	39 589 354	NA	INF	Intertrigo
103.	Pvt	WARREN, JOHN P.	39 138 289	NA	CE	Acne vulgaris

R-E-S-T-R-I-C-T-E-D

45

Bs "G" APO 565, Evacuation Or[illegible]ber: W-36, 27 GH, dtd 3 Apr 45. (Cont'd).

IAN PERSONNEL

CLASS 4

NO.	RANK OR GRADE	NAME	ASN	MOS	ARM OR SERV	DIAGNOSIS
104.	1t JG	SEEHORN, DOUGLAS W.	Z-17 338	NA	MM	Cornea, laceration

2. The patients listed above will be moved from present overseas station to a Medical Installation United States to be named by indorsement to this order by the Commanding General of the port at which the patients are debarked.

3. This shipment will be under the control of Commanding General, Army Service Forces from time of departure from overseas station until separated from the services or reassigned by proper authority in the United States.

4. FUNDS: Mov Dir 150, Hq USASOS: Mov Order 46, Hq Base G.

* * * * * *

BY COMMAND OF BRIGADIER GENERAL WALLENDER:

T. Marshall, Jr.

TOM MARSHALL, JR.
Capt, Med Adm C,
Actg Ass't Adj Gen.

SUMM[illegible] BREAKDOWN TABULATION

CLASS	OFF	EM	CIV	TOTAL
1-A		14		14
1-C		16		16
4	8	65	1	74
TOTAL	8	95	1	104

DISTRIBUTION:
Ea O concerned.....(2)
Ea EM concerned.....(1)
CG USASOS, Attn: Chief Surgeon....(5)
CG Inter Sec.....(5)
T.M. Officer, Base G.....(10)
Trans. Surgeon, Base G.....(15)
CG Base G.....(3)
Trans. Commander.....(25)
Medical Center.....(3)

R-E-S-T-R-I-C-T-E-D

HALD HOWARD

Ex 3 46

RECEIVED AUG 2 1945 AREA OFFICE #2

VETERANS ADMINISTRATION
Adjudication Form 526
Revised October 1944

4974297

CLAIM NO. .....

VETERAN'S APPLICATION FOR PENSION OR COMPENSATION FOR DISABILITY RESULTING FROM SERVICE IN THE ACTIVE MILITARY OR NAVAL FORCES OF THE UNITED STATES

PENALTIES PROVIDED IN PUBLIC ACTS COVERING PENSION AND COMPENSATION

The assignment or transfer of any right or interest in any pension is void and has no effect. Any person who shall pledge or receive a pledge covering the transfer of any right or interest in any pension, or who holds the same as collateral security for a debt, shall be guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding $100 and the cost of the prosecution.

Any person who knowingly or willfully makes or aids, or assists in the making or presentation of any false or fraudulent affidavit or writing purporting to be such, concerning any claim for pension, or any person who knowingly certifies that the declarant, affiant, or witness named in such declaration, affidavit, etc., appeared before him and was sworn thereto, when in fact such affiant or witness did not so appear, shall be punished by fine not exceeding $500 or by imprisonment for a term of not more than 5 years.

Any fiduciary or other person having charge and custody in such capacity of the pension of his ward, who shall embezzle the same or fraudulently convert the same to his own use, shall be punished by fine not exceeding $2,000 or imprisonment at hard labor for a term not exceeding 5 years, or both, at the discretion of the court.

That whoever in any claim for benefits makes any sworn statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 2 years, or both.

That if any person entitled to payment of pension, whose right to such payment ceases upon the happening of any contingency, thereafter fraudulently accepts any such payment, he shall be punished by a fine of not more than $2,000 or by imprisonment for not more than 1 year, or both.

While a claimant has a right, if he so desires, to employ a duly recognized pension attorney or pension claim agent to assist him in prosecuting his claim, it is not necessary that he incur this expense, and any attorney or agent so employed may not legally charge any fee other than that allowed and paid by the Veterans Administration.

Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in anywise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under this title, shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

You must furnish all the information required in this application and every question must be answered fully and clearly. Answers must be written in a clear, legible hand or typewritten. If you do not know the answer to any question, say so. If any of the questions are not clear and you desire further information before attempting to answer the question involved, you should write to the Veterans Administration office having jurisdiction over the territory in which you reside for further instructions.

If you need more space to answer any items, attach a piece of plain paper, numbering answers to correspond with the items.

ATTACH TO THIS APPLICATION ANY AFFIDAVITS OR PAPERS WHICH MAY HELP TO SHOW THAT YOU HAVE A DISABILITY, RESULTING FROM MILITARY OR NAVAL SERVICE.

16—86800-3

I hereby make application for compensation or pension based on military or naval service.

1. Last name—First name—Middle name	2. Address (Number, street, city or town, State)
AULD HOWARD (N MI)	BROWNING ROAD. BELLMAWR N.J. RFD

3. Are you a citizen of the United States?	4. Native-born or naturalized?	5. If naturalized, state date and place
YES	NATIVE	

6. Date of birth	7. Place of birth
MAY 19, 1920	PHILADELPHIA PA.

Description as of date of last enlistment

8. Sex	9. Race	10. Height	11. Weight	12. Color eyes	13. Color hair	14. Complexion
MALE	WHITE	74 inches	210 lbs.	GREY	BROWN	RUDDY

15. Mark with a cross (X) branches of service in which you served.

Army	Navy	Marine Corps	Coast Guard	Nurse Corps	Other (specify)
X					

16. Are you registered under Selective Service Act? (Yes or no.) NO

17. Address of draft board with which you registered. (If none, so state.)

18. Home address at time of registration

19. Entered service Date	Place	20. Serial No.	21. Separated from service Date	Place	22. Grade and organization	23. Character and type of discharge
SEPT 16, 1940	CAMDEN NJ	20224275	30 July 1945	MASON GENL HOSPITAL W BRENTWOOD NY	PVT-464. AMP. TRUCK CO	HONORABLE CDD

24. If you served under another name, state name and period of service. NONE

25. If reservist, give periods of active duty and branch of service. NONE

26. State all periods of inactive duty NONE

27. Do answers above cover all periods of your service—active, inactive, or reservist? (Yes or no.) YES

28. Have you ever applied for any of the following benefits? (Yes or no.)

Disability allowance, compensation, or pension	Regular service retirement pay	Emergency officer's retirement pay	Retainer pay	Insurance benefits	Hospital treatment or domiciliary care	U. S. employees' compensation	Civil Service Retirement annuity
NO	NO	NO	NO	NO	NO	NO	NO

29. If any of the answers under item 28 are "yes," answer the following:

Date of application	Claim No.	Office with which filed

30. Have you ever been physically examined for the following? (Yes or no.)

Veterans Administration	Civil Service Commission	Former Pension Bureau	Enlisted Reserve Corps	Officers' Reserve Corps	U. S. Employees Compensation Commission	Other (specify)
NO	NO	NO	NO	NO	NO	

31. If any answers under item 30 are "yes," state date and place of examination.

32. Nature of disease or injury on account of which claim is made and date each began.

SEPT 1940 - INGROWN TOENAIL - NERVOUS CONDITION

33. If you received any treatment while in the service, give name, number or location of hospital, first-aid station, dressing station or infirmary, or the organization to which it was attached, the dates of treatment. and nature of sickness, disease, or injury.

STATION HOSP	RT DIX. NJ	SEPT 1940	INGROWN TOENAIL	NERVOUS	CONDITION
4th GENL HOSP	AUSTRALIA	FEB 1942	HICOUGHS	"	"
5th STATION HOSP	"	SEPT 1942	COLD	"	"
STATION HOSP	NEW GUINEA	FEB 1943	MALARIA	"	"
32 SURGICAL HOSP	AUSTRALIA	OCT 1943	"	"	"
5 STATION HOSP	"	OCT 1943	APPENDIC-ACUTE	"	"

(CONTINUE REMARKS IN BOX 76)

16—36390-8

EXHIBIT D-2 (sheet 47)(p.872)

Names and addresses of all civilian physicians who have treated you for any sickness, disease, or injury, prior to, during, or since your service.

34. NAME	35. PRESENT ADDRESS	36. DISABILITY	37. DATE
	NONE		

Names and addresses of all persons other than physicians who know any facts about any sickness, disease, or injury which you had prior to, during, or since your service.

38. NAME	39. PRESENT ADDRESS	40. DISABILITY	41. DATE
JENNIE HULD	BROWNWARD BELLMAWR NJ	NERVOUS CONDITION	JULY 1945
CLARENCE "	" " "	" "	JULY 1945
BARBARA GILMAN	" " "	" "	JULY 1945

If you served in World War I or II, give the names and addresses of employers and your monthly earnings for the 24 months preceding your entrance into the active military or naval service. If self-employed, so state.

42. EMPLOYER NAME AND ADDRESS	43. OCCUPATION AND EARNINGS	44. DUTIES PERFORMED	45. DATES
ABE MORROW. BLACK HORSE PIKE BELLMAWR NJ	CARE. $15 WK	PARK CARS	1939 TO 1940

46. If you served in World War II, state the following: Highest grade completed in:

GRAMMAR SCHOOL	HIGH SCHOOL	COLLEGE	UNIVERSITY
GRAD(8)	NO	NO	NO

47. State any special study (as business, professional, trade, academic) NONE

48. State where you studied	49. Length of special study	50. Did you graduate from special school?	51. Did you complete special study?
NONE	NO	NO	NO

52. What is your trade or vocation?	53. Are you employed?	54. If employed, state employer's name
NONE.		

55. What is your entire income per month? State sources of your income.

$ NONE

56. What is the value of your estate from all sources?

$ NONE

57. State names and addresses of former employers for last 12 months:

NAME AND ADDRESS OF EMPLOYER	DATES OF EMPLOYMENT BEGINNING	DATES OF EMPLOYMENT ENDING	EARNINGS WEEKLY	EARNINGS MONTHLY	TIME LOST MONTHS	TIME LOST DAYS
(1) US ARMY	SEPT 6 1940		$	$ 50		
(2)						
(3)						

58. Are you being furnished hospitalization or domiciliary care by the United States or any political subdivision thereof? NO	If so, state what institution and address of same

59. Marital status	60. Times married	61. Date, place, and name of spouse of each marriage
SINGLE	NONE	✓

62. Date and place of dissolution of your marriages ✓

63. Times your present wife has been married	64. Date, place and name of spouse of each of her marriages
✓	✓

65. Date and place of dissolution of wife's former marriages ✓

66. Do you live together?	67. If not, state reason and your wife's present address
—	✓

68. Use this space to continue (by box number) remarks for pages 2 and 3. See back for further continuation.

16—86390-3

49

Have you a child or children living under 18 years of age and unmarried or any child of any age who is insane, idiotic, or otherwise permanently helpless? If so, state the following particulars about each child.

69. Full Name of Child	70. Date of Birth Day	Mo.	Year	71. Place of Birth	72. Name and Address of Person With Whom Child Lives
			NONE		

73. State your father's name and address	Date and place of birth	Is he dependent on you for support?
CLARENCE AULD-BROWNING RD BELLMAWR N.J.	HOMER CITY PA.	NO.
74. State your mother's name and address	**Date and place of birth**	**Is she dependent on you for support?**
JENNIE AULD-BROWNING RD BELLMAWR NJ	ALTOONA. PA	NO

75. State full name and complete address of nearest relative at date this claim is filed

JENNIE AULD- (MOTHER) BROWNING ROAD. BELLMAWR. NJ

I Hereby Certify that I *(have read) ~~(have had read to me)~~ all questions and answers thereto embodied in this application; that answers to all above questions are true and complete to the best of my knowledge and belief; that I have submitted all available information and evidence in support of this application, and that the foregoing statements are made as a part thereof with full knowledge of the penalty provided for making a false statement as to a material fact in such application.

Howard Auld.
(Signature of claimant)

Subscribed and sworn to before me this 30th day of July, 19 45

by HOWARD AULD, claimant, to whom the statements herein were fully made known and explained. I certify that the questions and answers thereto have in my presence been *~~(read to)~~ (read by) the claimant.

William J Cattell
Notary Public.

Seal

AUTHORITY: VETERANS ADMINISTRATION FORM 4505

* Delete inapplicable words.

76. Use this space for any remarks (continue items by box number). 16—36290-6

4 GENN HOSP	HUNSTRALIA.	OCT 1943 - APPENDIC OPERATION	NERVOUS CONDITION
4 " "	"	DEC 1943 MALARIA	" "
4 " "	"	JAN 1944 - "	" "
4 " "	"	JAN 1944 - "	" "
89 STATION HOSP	"	MARCH 1944 "	
89 " "	"	APRIL 1944 "	" "
89 " "	"	MAY 1944 "	" "
4 GENN HOSP	NEW GUINEA	JULY 1944 "	" "
361 STATION HOSP	" "	JULY 1944	" "
361 " "	" "	OCT 1944	" "
360 " "	PI	FEB 9 1945 "	" "
27 GENL "	NEW GUINEA	FEB 1945 "	" "
MADIGAN GENL HOSP	WASH	MAY 1945 "	" "
MASON " "	BRENTWOOD NY	MAY 7, 1945 "	

D3
3/15/46

Army of the United States

Honorable Discharge

This is to certify that

HOWARD AULD

20224275, Pvt, 464th Amph Truck Company Base M

Army of the United States

is hereby Honorably Discharged from the military service of the United States of America.

This certificate is awarded as a testimonial of Honest and Faithful Service to this country.

Given at 1263 SCU, Mason General Hospital, Brentwood, New York

Date 30 July 1945

C O [illegible]
Colonel, Medical Corps
Commanding

EXHIBIT D-3 (p. 875)

ENLISTED RECORD AND REPORT OF SEPARATION
HONORABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
Auld Howard	20224275	Pvt	TC	NG

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
464th Amph Truck Company Base M	30 Jul 45	Mason GH Brentwood NY

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
Black Horse Pike Bellmawr NJ	19 May 20	Philadelphia Pa

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND.
See 9	Blue	Blonde	6'0"	200 LBS.	0

18. RACE			19. MARITAL STATUS			20. U.S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X			X			X		Truck Driver

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
	9 Jul 40	16 Sep 40	Camden NJ

SELECTIVE SERVICE DATA	26. REGISTERED YES	26. REGISTERED NO	27. LOCAL S.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
		X			See 9

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i.e., infantry, aviation and marksmanship badges, etc.)
Driver 345	None

32. BATTLES AND CAMPAIGNS

Philippine Island Campaign

33. DECORATIONS AND CITATIONS

American Defense Service Ribbon; Asiatic Pacific Campaign Ribbon with 4 Bronze Battle Stars; Philippine Liberation Ribbon

34. WOUNDS RECEIVED IN ACTION

None

35. LATEST IMMUNIZATION DATES			
SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
20Jun42	2Jul42	20Jun42	

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN		
DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
22 Apr 42	APTO	13 May 42
Unknown	US	28 Apr 45

37. TOTAL LENGTH OF SERVICE						38. HIGHEST GRADE HELD
CONTINENTAL SERVICE			FOREIGN SERVICE			
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS	
1	1	17	3	0	6	Pfc

39. PRIOR SERVICE

None

40. REASON AND AUTHORITY FOR SEPARATION

Certificate of Disability for Discharge AR 615-361

41. SERVICE SCHOOLS ATTENDED

None

42. EDUCATION (Years)		
Grammar	High School	College
8	0	0

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
4	1	23	$ 300	$ 100	None	$ 6.85	106.85 CR FORSBERG Maj FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D. C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None	Allotment	Direct to V.A.				Continue	Continue Only	Discontinue
X			X		30 Jun 45	31 Jul 45	$ 6.70	X		

54. RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

Lapel Button issued.
Three hundred twenty-nine (329) days lost under AW #107.
Inactive Service ERC 9 Jul 40 to 15 Sep 40 incl.

56. SIGNATURE OF PERSON BEING SEPARATED

Howard Auld.

57. PERSONNEL OFFICER (Type name, grade and organization - signature)

T R SCHOLL, Capt MAC
CO Det of Patients/mmh

T R Scholl

WD AGO FORM 53-55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

SPECIFICATION OF CAUSES FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HOWARD AULD,
Plaintiff-in-Error,
vs.
STATE OF NEW JERSEY,
Defendant-in-Error.

Sur Indictment.
On Writ of Error.
Specification of Causes for Reversal.

The plaintiff-in-error specifies the following causes in the record relied upon for reversal of the judgment, all to the manifest injury of plaintiff-in-error.

1. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

> "There are two degrees of murder, first and second, and they are distinguished by our statute as follows: Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree, and the jury before whom any person

indicted for murder shall be tried, shall if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree.

There is a further distinction between first and second degree murder with respect to the imposition of the punishment. In cases of conviction of first degree murder, the power and authority to impose the punishment rests with the jury. It is you, in such case, who determine whether the defendant shall be put to death or imprisonment at hard labor for life, and the statute defines your power and authority 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 its verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.' "

2. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"Every person convicted of murder in the first degree shall suffer death unless the jury shall by their verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

3. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"If the evidence is sufficient to satisfy you that defendant's mental defectiveness and intelligence, at the time of the homicide was such as to render him incapable of forming a specific intent to kill, which is one of the essential elements and ingredients of murder in the first degree, the defendant is not entitled to an acquittal, but his offence will be murder in the second degree."

4. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that if after considering all the evidence you find the defendant guilty of murder in the first degree, under your oaths as jurors you may at the time of rendering your verdict recommend imprisonment to hard labor for life."

5. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"Insanity, under our law, is neither a physicians', neurologist's nor psychiatrist's definition of insanity, but is the inability, through mental disease or disability, to distinguish between right and wrong as to the alleged criminal act at the time of the commission of same."

6. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"Insanity, under this definition I have given you is a complete defense to any criminal responsibility whatever in connection with the

New Jersey State Library

alleged criminal act and if you find the defense sustained your verdict should be not guilty."

7. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that the state of mind relevant to your inquiry as to the defendant's sanity is that state of mind which existed at the time of the commission of the alleged criminal act and that whether the insanity be of a temporary or permanent character, if you find it existed at that time your verdict must be that of not guilty."

8. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that you may consider the fact that defendant having been insane once, or several times before, may render it more probable that the defendant was insane at the time of the homicide, if there is any direct proof that he was insane at the time of the commission of the crime. Insanity before the commission of the crime proves nothing where the State has shown a subsequent return to reason. Former insanity increases the probability that defendant was insane if there is any independent evidence that he was insane at the time of the commission of the crime."

9. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"If it has been proven to your satisfaction that

the defendant has been once insane, the presumption is, that he continues so until the contrary is shown, that is, if there is no period of lucid intervals since the time of the insanity proved, you must find him still insane, and insane at the time of the commission of the homicide."

10. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that if the State is to prevail in its contention that the defendant committed murder in perpetrating or attempting to perpetrate rape, it must be established by evidence beyond a reasonable doubt. You must find that the defendant had sexual intercourse with Rita McDade forcibly and against her will. If it was a voluntary act on her part, then you cannot convict defendant of murder in the first degree."

11. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"The evidence that has been offered and accepted in this case on behalf of the state and the defendant is for the purpose of proving the guilt or innocence of the defendant in accordance with the rules of law which I have heretofore given you. The same evidence, however, as offered by either the state or the defendant may be used and considered by you not only for the purpose of determining the guilt or innocence of the defendant, but, in case of first degree conviction, the punishment to be inflicted upon this defendant. You have been instructed as to the

requirements for legal insanity in New Jersey. If you should find that this defendant was legally sane on August 15th, 1945, the time when the homicide is alleged to have been committed by the defendant, but you should also from this same evidence find that he suffered from some mental irregularity or abnormality short of legal insanity, you are justified in giving this due consideration in determining the punishment to be inflicted.

In other words, if you find that the evidence falls short of establishing insanity as defined by New Jersey Law, you are not obliged to disregard or discard said evidence for all purposes and you are entitled to consider said evidence, in case of first degree conviction, in selecting the punishment under the authority vested in you as previously explained."

12. The trial court erred in that it directed that a plea of not guilty be entered for the defendant below.

13. Because the trial court directed that a plea of not guilty be entered when the defendant below stood mute.

14. Because the trial court before whom issue was joined at and upon the trial of the issue so joined between the State of New Jersey and Howard Auld, in the selection of jurors to be impanelled to try the issue, on its own motion dismissed a juror, Charles Winner, without just cause.

15. That the court before whom issue was joined and upon the trial of the issue so joined between the State of New Jersey and Howard Auld, after two

jurors had been sworn, and were in the jury box, directed that a plea of not guilty be entered, when the defendant stood mute after the reading of the indictment.

16. Because the court, under the circumstances, erred in directing a plea of not guilty to be entered.

17. The trial court erroneously charged the jury as follows:

> "That she was thus plunged head foremost into this mass of waste is especially noteworthy in the light of Dr. Read's testimony that none of the physical external injuries that he observed in the performance of post mortem examination, the same day the body was discovered were in themselves the efficient and producing cause of the unfortunate girl's death, but that she died of suffocation. Virtually every one of the many police officers whose duty it was to take part in the investigation immediately following the discovery of the body, testified that as they viewed it before removal the head, shoulders and part of one arm were mired and invisible, as shown in Exhibit S-5, the photograph taken by the witness, Saltzman."

18. The trial court erroneously charged the jury as follows:

> "Finally the doctor testified to the finding of the foreign body susceptible to handling in the bronchus the mucous membrane of which was discolored with a brown stain, indicating that though the deceased girl may have been unconscious she was still capable of breathing when her head was submerged. From this evidence

you may conclude, if you see fit, that the deceased girl did meet her death from injuries feloniously inflicted."

19. The trial court erroneously charged the jury as follows:

"But, if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.

All murder is presumed in the law to be murder in the second degree, and it is the duty of the State to overcome the presumption in order to make out a case of murder in the first degree. In this case the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing its case within a statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape, shall be murder in the first degree."

20. The trial court erroneously charged the jury as follows:

"In the second category there is the testimony of Mrs. Stoerrle and her daughter that at some time after 1:30 that morning they heard the shrill, agonizing scream of a woman, terrifying enough that they didn't dare go out and look because they were alone."

21. The trial court erroneously charged the jury as follows:

"To be sure, one bit of positive testimony is missing and that is the statement of the girl

herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent', would be if she were here."

22. The trial court erroneously charged the jury as follows:

"As the Court is able to discern the pattern of the defense, it consists in mutually repugnant defenses, either one of which, however, is, if believed, sufficient to justify a verdict of not guilty. The first consists in the denial that he either did or attempted to rape the dead girl and the second that he was at the time of the commission of the crime insane."

23. The trial court erroneously charged the jury as follows:

"The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is not available means of judgment that will permit a reasonable man to maintain with infallible certainty that this or that witness is a liar. But the experience of the years

has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, some of which provide a better divination of the truth than others. One of these is expressed in the evidential maxim known to the law, false in one thing, false in all things."

24. That the trial court erroneously charged the jury as follows:

"Both Dr. Waygood and Dr. Drayer said that such opinions as they did express were predicated upon the truth of every factor contained in the hypothetical question proposed to them, including the fact that during many months of combat in New Guinea and in the Philippines the defendant spent most of his time behind the enemy lines on patrol and scout activities, on one of which, after having been dropped presumably by plane, he was exposed to the bursting of a 500 pound bomb nearby, from which time on he did not seem himself. Therefore, the validity of such opinions and their probative value may be weighed by you in accordance with your belief or disbelief of the existence of any of the factors entering into the formation of those opinions.

In rebuttal the State produced, in addition to the two Army doctors, who said that on July 27th, 1945, he had no symptoms of psychosis, two eminently qualified neurologists and psychiatrists, Dr. Yaskin and Dr. Spradley, who examined the defendant twice, the first time on August 22nd, the day of his arrest, and again on August 31st, 1945. Both of them unequivocally and without qualification said that on each

occasion that they saw the defendant he was sane and capable of knowing the difference between right and wrong and that in their opinion before, during and after the commission of the act which resulted in the death of Margaret Rita McDade, the defendant, Howard Auld, knew what he was doing and was able to distinguish right from wrong."

25. The trial court erred in admitting over the objection of plaintiff-in-error the following question propounded to the witness Joseph J. Fitzgerald.

"Q. Will you turn to that part of the service record of the defendant which states or has anything in it concerning the actual time spent in confinement by the defendant?"

Objection made upon the grounds that he was reading from a record made by some other individual and not by the witness. That the records were not evidential and not proper rebuttal.

26. The trial court upon the trial of the issue so joined erroneously sustained the objection of the Prosecutor of the pleas to a question submitted to the witness, Calvin S. Drayer, by counsel for the defendant below, the question and objection as follows:

"Q. We are not getting into sanity or insanity; I want to ask another question; that is, if you can tell from the facts before you ——

THE PROSECUTOR: I object.

THE COURT: Sustain the objection.

MR. PALESE: It hasn't been asked, and I am trying to clear up. The Prosecutor asked

him whether he was sane or insane, and I want to know his mental status.

THE COURT: I will sustain the objection.

MR. PALESE: May I have an exception.

THE COURT: Exception allowed.

MR. PALESE: Do I understand Your Honor will not let me prove what the mental condition of this defendant was prior to the time he took a walk?

THE COURT: I sustained the objection.

MR. PALESE: I wanted to be sure you knew what my question was.

THE COURT: You stated your position on the record. Do you want to enlarge it?

MR. PALESE: I want to. I want to prove by this witness, from the facts in the hypothetical question whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.

THE COURT: It will be noted on the record."

27. That the court erroneously over objection permitted the service record of the defendant to be offered in evidence in rebuttal, and erroneously permitted the offering in evidence of a photostatic copy of the service record marked Exhibit S-24, over objection.

28. The trial court erroneously charged the jury as follows:

"That her private parts were bruised and torn and that the hymen itself was freshly lacerated, the fact that she was five feet two inches in height, weighing in life 105 pounds, and that though the defendant is over six feet tall, weighing 190 pounds, he was clawed and gouged,

hands and face, in such a fashion that as he was leaving the scene of the crime his face was filled with blood, that these gouges were plainly distinguishable the next day and on Thursday morning, and were somewhat evidenced one week later when he was arrested. To this may reasonably be added the statements of the defendant himself that she scratched and fought him and resisted violently. To be sure, one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent', would be if she were here."

29. The trial court erroneously permitted the state in rebuttal to show that the defendant below had committed other crimes not charged in the indictment for which the defendant was on trial.

30. The trial court erroneously charged the jury as follows:

"If, after giving the accused the benefit of reasonable doubt, you are convinced that he killed Margaret Rita McDade in the perpetration of a rape or in the attempt to perpetrate a rape, then he is guilty of murder in the first degree, even though the killing be unintentional."

31. Because the trial court in one or more things submitted the case to the jury upon a misunderstanding of the law and the evidence.

32. The trial court erred in refusing to strike out the portion of the answer to the question propounded

to Dr. William T. Read, Jr. on objection duly made by counsel for the plaintiff-in-error, to which exception was taken.

The question asked, "You may now go into your diagnosis, the part requested to be stricken, 'that the signs of trauma about the external genitalia make it seem most probable that the woman had been raped.' "

33. The trial court erred in permitting evidence introduced in rebuttal of the witness, H. Edward Yaskin, on the following question, the objection, the argument and answer thereto.

"Q. Can you read from the notes you made?

A. Yes, sir.

Q. Read them, doctor.

A. Patient, Howard Auld, said he was twenty-five, and single. He said he was born in Philadelphia, May 19th, 1920; that he ——

At the age of 16 he was arrested for breaking and entering, and he served two years, two months. I think this occurred in Delaware.

In 1938, at the age of 18, he was arrested for stealing manhole covers, which he sold for scrap, and he was sent to Ancora at that time. At the age of 19, he was arrested for breaking and entering.

MR. PALESE: I object to this testimony. The Prosecutor could not get this in in his testimony and he is now endeavoring to get it through Dr. Yaskin.

THE COURT: I will hear you at side bar on the propriety of this, gentlemen.

(At side bar.)

THE COURT: Excuse me, Mr. Palese, the problem of the Court now is to decide whether

or not the credibility of his statement, 'I don't remember' supports the admission of statement made by the witness at the time of the examination which he denied remembering taking place. Is there anything further you want to add on the record? I am not going to rule now. I am going to make a little inquiry to my own.

THE COURT: I will deny the motion and allow you an exception.

MR. PALESE: Exception.

THE COURT: Exception granted."

34. That the trial court erred in refusing to instruct the jury to disregard argument that,

"If that is not sufficient, show me in the record where he made landings from submarines, show me in the record where he made landings from P. T. Boats, show me where in that record where he was landed from some destroyers.

MR. PALESE: Your Honor, please, I do not want to interrupt the Prosecutor. The witness says on the stand that he does not know whether or not that would be in the record.

THE COURT: The argument the Prosecutor draws from the fact is legitimate, Mr. Palese."

35. The verdict of the jury was clearly against the weight of the evidence produced in the cause at the trial thereof, and was the result of passion, prejudice, mistake and partiality.

36. That the verdict of the jury, namely that of murder in the first degree, was clearly contrary to the weight of the evidence produced, in that the evidence produced a verdict at worst, of no greater than murder in the second degree.

37. That the verdict was contrary to the weight of the evidence in that the preponderance of the evidence clearly indicated that the plaintiff-in-error did not have the mental capabilities to conceive the design to kill, and then to consider and deliberate the question whether to kill or not, and thereafter, to execute the previously formed intention.

38. That the verdict was contrary to the weight of the evidence in that the preponderance of the evidence clearly indicated the insanity, on the part of the plaintiff-in-error, at the time of the commission of the alleged criminal offense.

39. That the verdict was against the weight of the evidence in that there was no evidence of any willful, deliberated or premeditated intent to take life, and the execution of that formed intention.

Respectfully submitted,
ROCCO PALESE,
Attorney for and of Counsel
with Plaintiff-in-Error.

[ENDORSED]

Service of the within Specification of Causes for Reversal is hereby acknowledged this eighth day of May, 1946.
Anthony C. Mitchell,
Assistant Prosecutor for
Prosecutor of the Pleas.

ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HOWARD AULD, Plaintiff-in-Error, vs. STATE OF NEW JERSEY, Defendant-in-Error.	Sur Indictment. On Writ of Error. Assignments of Error.

Plaintiff-in-error, Howard Auld, within thirty days after the return of the Writ of Error in this cause, assigns his error in the record and proceedings aforesaid, and in the matters and things recited and contained in the bill of exceptions in and rendition and giving of the judgment aforesaid, the following errors, to wit:

1. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

> "There are two degrees of murder, first and second, and they are distinguished by our statute as follows: Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy,

shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree, and the jury before whom any person indicted for murder shall be tried, shall if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree.

There is a further distinction between first and second degree murder with respect to the imposition of the punishment. In cases of conviction of first degree murder, the power and authority to impose the punishment rests with the jury. It is you, in such case, who determine whether the defendant shall be put to death or imprisonment at hard labor for life, and the statute defines your power and authority 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 its verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.' "

2. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"Every person convicted of murder in the first degree shall suffer death unless the jury shall, by their verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

3. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

> "If the evidence is sufficient to satisfy you that defendant's mental defectiveness and intelligence, at the time of the homicide was such as to render him incapable of forming a specific intent to kill, which is one of the essential elements and ingredients of murder in the first degree, the defendant is not entitled to an acquittal, but his offence will be murder in the second degree."

4. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

> "I charge you that if after considering all the evidence you find the defendant guilty of murder in the first degree, under your oaths as jurors you may at the time of rendering your verdict recommend imprisonment to hard labor for life."

5. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

> "Insanity, under our law, is neither a physician's, neurologist's nor psychiatrist's definition of insanity, but is the inability, through mental disease or disability, to distinguish between right and wrong as to the alleged criminal act at the time of the commission of same."

6. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"Insanity, under this definition I have given you is a complete defense to any criminal responsibility whatever in connection with the alleged criminal act and if you find the defense sustained your verdict should be not guilty."

7. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that the state of mind relevant to your inquiry as to the defendant's sanity is that state of mind which existed at the time of the commission of the alleged criminal act and that whether the insanity be of a temporary or permanent character, if you find it existed at that time your verdict must be that of not guilty."

8. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that you may consider the fact that defendant having been insane once, or several times before, may render it more probable that the defendant was insane at the time of the homicide, if there is any direct proof that he was insane at the time of the commission of the crime. Insanity before the commission of the crime proves nothing where the State has shown a subsequent return to reason. Former insanity increases the probability that defendant was insane if there is any independent evidence that he was insane at the time of the commission of the crime."

9. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"If it has been proven to your satisfaction that the defendant has been once insane, the presumption is, that he continues so until the contrary is shown, that is, if there is no period of lucid intervals since the time of the insanity proved, you must find him still insane, and insane at the time of the commission of the homicide."

10. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"I charge you that if the State is to prevail in its contention that the defendant committed murder in perpetrating or attempting to perpetrate rape, it must be established by evidence beyond a reasonable doubt. You must find that the defendant had sexual intercourse with Rita McDade forcibly and against her will. If it was a voluntary act on her part, then you cannot convict defendant of murder in the first degree."

11. The trial court erroneously refused to instruct the following request to charge submitted by the plaintiff-in-error,

"The evidence that has been offered and accepted in this case on behalf of the state and the defendant is for the purpose of proving the guilt or innocence of the defendant in accordance with the rules of law which I have heretofore given you. The same evidence however, as offered by either the state or the defendant may be used and considered by you not only for the purpose of determining the guilt or innocence of the defendant, but, in case of first

degree conviction, the punishment to be inflicted upon this defendant. You have been instructed as to the requirements for legal insanity in New Jersey. If you should find that this defendant was legally sane on August 15th, 1945, the time when the homicide is alleged to have been committed by the defendant, but you should also from this same evidence find that he suffered from some mental irregularity or abnormality short of legal insanity, you are justified in giving this due consideration in determining the punishment to be inflicted.

In other words, if you find that the evidence falls short of establishing insanity as defined by New Jersey Law, you are not obliged to disregard or discard said evidence for all purposes and you are entitled to consider said evidence, in case of first degree conviction, in selecting the punishment under the authority vested in you as previously explained."

12. The trial court erred in that it directed that a plea of not guilty be entered for the defendant below.

13. Because the trial court directed that a plea of not guilty be entered when the defendant below stood mute.

14. Because the trial court before whom issue was joined at and upon the trial of the issue so joined between the State of New Jersey and Howard Auld, in the selection of jurors to be impanelled to try the issue, on its own motion dismissed a juror, Charles Winner, without just cause.

15. That the Court before whom issue was joined and upon the trial of the issue so joined between the State of New Jersey and Howard Auld, after two jurors had been sworn, and were in the jury box, directed that a plea of not guilty be entered, when the defendant stood mute after the reading of the indictment.

16. Because the court, under the circumstances, erred in directing a plea of not guilty to be entered.

17. The trial court erroneously charged the jury as follows:

> "That she was thus plunged head foremost into this mass of waste is especially noteworthy in the light of Dr. Read's testimony that none of the physical external injuries that he observed in the performance of a post-mortem examination, the same day the body was discovered were in themselves the efficient and producing cause of the unfortunate girl's death, but that she died of suffocation. Virtually every one of the many police officers whose duty it was to take part in the investigation immediately following the discovery of the body, testified that as they viewed it before removal the head, shoulders and part of one arm were mired and invisible, as shown in Exhibit S-5, the photograph taken by the witness, Saltzman."

18. The trial court erroneously charged the jury as follows:

> "Finally the doctor testified to the finding of the foreign body susceptible to handling in the bronchus the mucous membrane of which was

discolored with a brown stain, indicating that though the deceased girl may have been unconscious she was still capable of breathing when her head was submerged. From this evidence you may conclude, if you see fit, that the deceased girl did meet her death from injuries feloniously inflicted."

19. The trial court erroneously charged the jury as follows:

"But, if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.

All murder is presumed in the law to be murder in the second degree, and it is the duty of the State to overcome the presumption in order to make out a case of murder in the first degree. In this case the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing its case within a statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape, shall be murder in the first degree."

20. The trial court erroneously charged the jury as follows:

"In the second category there is the testimony of Mrs. Stoerrle and her daughter that at some time after 1:30 that morning they heard the shrill, agonizing scream of a woman, terrifying enough that they didn't dare go out and look because they were alone."

21. The trial court erroneously charged the jury as follows:

"To be sure, one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent,' would be if she were here."

22. The trial court erroneously charged the jury as follows:

"As the Court is able to discern the pattern of the defense, it consists in mutually repugnant defenses, either one of which, however, is, if believed, sufficient to justify a verdict of not guilty. The first consists in the denial that he either did or attempted to rape the dead girl and the second that he was at the time of the commission of the crime insane."

23. The trial court erroneously charged the jury as follows:

"The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is not available means of judgment

that will permit a reasonable man to maintain with infallible certainty that this or that witness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, some of which provide a better divination of the truth than others. One of these is expressed in the evidential maxim known to the law, false in one thing, false in all things."

24. That the trial court erroneously charged the jury as follows:

"Both Dr. Waygood and Dr. Drayer said that such opinions as they did express were predicated upon the truth of every factor contained in the hypothetical question proposed to them, including the fact that during many months of combat in New Guinea and in the Philippines the defendant spent most of his time behind the enemy lines on patrol and scout activities, on one of which, after having been dropped presumably by plane, he was exposed to the bursting of a 500 pound bomb nearby, from which time on he did not seem himself. Therefore, the validity of such opinions and their probative value may be weighed by you in accordance with your belief or disbelief of the existence of any of the factors entering into the formation of those opinions.

In rebuttal the State produced, in addition to the two Army doctors, who said that on July 27th, 1945, he had no symptoms of psychosis, two eminently qualified neurologists and psychiatrists, Dr. Yaskin and Dr. Spradley, who examined the defendant twice, the first time on August 22nd, the day of his arrest, and again

on August 31st, 1945. Both of them unequivocally and without qualification said that on each occasion that they saw the defendant he was sane and capable of knowing the difference between right and wrong, and that in their opinion before, during and after the commission of the act which resulted in the death of Margaret Rita McDade, the defendant, Howard Auld, knew what he was doing and was able to distinguish right from wrong.

25. The trial court erred in admitting over the objection of plaintiff-in-error the following question propounded to the witness Joseph J. Fitzgerald:

"Q. Will you turn to that part of the service record of the defendant which states, or has anything in it concerning the actual time spent in confinement by the defendant?"

Objection made upon the grounds that he was reading from a record made by some other individual and not by the witness. That the records were not evidential and not proper rebuttal.

26. The trial court upon the trial of the issue so joined erroneously sustained the objection of the prosecutor of the pleas to a question submitted to the witness, Calvin S. Drayer, by counsel for the defendant below, the question and objection as follows:

"Q. We are no getting into sanity or insanity; I want to ask another question; that is, if you can tell from the facts before you ——

THE PROSECUTOR: I object.

THE COURT: Sustain the objection.

MR. PALESE: It hasn't been asked, and I am trying to clear up. The Prosecutor asked

him whether he was sane or insane, and I want to know his mental status.

THE COURT: I will sustain the objection.

MR. PALESE: May I have an exception?

THE COURT: Exception allowed.

MR. PALESE: Do I understand your Honor will not let me prove what the mental condition of this defendant was prior to the time he took a walk?

THE COURT: I sustained the objection.

MR. PALESE: I wanted to be sure you knew what my question was.

THE COURT: You stated your position on the record. Do you want to enlarge it?

MR. PALESE: I want to. I want to prove by this witness, from the facts in the hypothetical question whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.

THE COURT: It will be noted on the record."

27. That the court erroneously over objection permitted the service record of the defendant to be offered in evidence in rebuttal, and erroneously permitted the offering in evidence of a photostatic copy of the service record marked Exhibit S-24, over objection.

28. The trial court erroneously charged the jury as follows:

"That her private parts were bruised and torn and that the hymen itself was freshly lacerated, the fact that she was five feet two inches in height, weighing in life 105 pounds, and that though the defendant is over six feet tall, weighing 190 pounds, he was clawed and gouged,

hands and face, in such a fashion that as he was leaving the scene of the crime his face was filled with blood, that these gouges were plainly distinguishable the next day and on Thursday morning, and were somewhat evident one week later when he was arrested. To this may reasonably be added the statements of the defendant himself that she scratched and fought him and resisted violently. To be sure, one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent,' would be if she were here."

29. The trial court erroneously permitted the state in rebuttal to show that the defendant below had committed other crimes not charged in the indictment for which the defendant was on trial.

30. The trial court erroneously charged the jury as follows:

"If, after giving the accused the benefit of reasonable doubt, you are convinced that he killed Margaret Rita McDade in the perpetration of a rape or in the attempt to perpetrate a rape, then he is guilty of murder in the first degree, even though the killing be unintentional."

31. Because the trial court in one or more things submitted the case to the jury upon a misunderstanding of the law and the evidence.

32. The trial court erred in refusing to strike out the portion of the answer to the question propounded to Dr. William T. Read, Jr., on objection duly made

by counsel for the plaintiff-in-error, to which exception was taken.

The question asked, "You may now go into your diagnosis, the part requested to be stricken, 'that the signs of trauma about the external genitalia make it seem most probable that the woman had been raped.' "

33. The trial court erred in permitting evidence introduced in rebuttal of the witness, H. Edward Yaskin, on the following question, the objection, the argument and answer thereto:

"Q. Can you read from the notes you made?

A. Yes, sir.

Q. Read them, doctor.

A. Patient, Howard Auld, said he was twenty-five, and single. He said he was born in Philadelphia, May 19th, 1920; that he ——

At the age of 16 he was arrested for breaking and entering, and he served two years, two months. I think this occurred in Delaware.

In 1938, at the age of eighteen, he was arrested for stealing manhole covers, which he sold for scrap, and he was sent to Ancora at that time. At the age of nineteen, he was arrested for breaking and entering.

MR. PALESE: I object to this testimony. The Prosecutor could not get this in in his testimony and he is now endeavoring to get it through Dr. Yaskin.

THE COURT: I will hear you at side bar on the propriety of this, gentlemen.

(At Side Bar.)

THE COURT: Excuse me, Mr. Palese, the problem of the Court now is to decide whether or not the credibility of his statement, 'I don't remember' supports the admission of statement

made by the witness at the time of the examination which he denied remembering taking place. Is there anything further you want to add on the record? I am not going to rule now. I am going to make a little inquiry of my own.

THE COURT: I will deny the motion and allow you an exception.

MR. PALESE: Exception.

THE COURT: Exception granted."

34. That the trial court erred in refusing to instruct the jury to disregard argument that,

"If that is not sufficient, show me in the record where he made landings from submarines, show me in the record where he made landings from P-T boats, show me where in that record where he was landed from some destroyers.

MR. PALESE: Your Honor, please, I do not want to interrupt the Prosecutor. The witness says on the stand that he does not know whether or not that would be in the record.

THE COURT: The argument the Prosecutor draws from the fact is legitimate, Mr. Palese."

Respectfully submitted,
ROCCO PALESE,
Attorney for and of Counsel
with Plaintiff-in-Error.

[ENDORSED]

Service of the within assignment of error is hereby acknowledged this eighth day of May, 1946.

ANTHONY C. MITCHELL,
Asst. Pros. for Prosecutor of
the Pleas.

JOINDER-IN-ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, Defendant-in-Error, vs. HOWARD AULD, Plaintiff-in-Error.	On Error. Joinder-in-Error.

Thereupon the State of New Jersey, defendant-in-error, by Gene R. Mariano, Prosecutor of the Pleas in and for the County of Camden, its attorney, comes into court and says, that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. The State of New Jersey prays that this court may examine the said record and proceedings, the matters assigned for error, and the judgment aforesaid, and that such judgment so given may be affirmed in all things.

GENE R. MARIANO,
Prosecutor of the Pleas in and for the County of Camden,
Attorney for and of Counsel with Defendant-in-Error.

[ENDORSED]

Service of the within Joinder-in-Error is hereby acknowledged this 19th day of June, A. D. 1946.

ROCCO PALESE,
Attorney for and of Counsel with Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
HOWARD AULD,
Plaintiff-in-Error.

ON WRIT OF ERROR.

BRIEF OF DEFENDANT-IN-ERROR.

Plaintiff-in-error was convicted in the Camden County Court of Oyer and Terminer of murder in the first degree, by jury which did not fix the punishment as life imprisonment. The Court imposed the death penalty.

FACTS.

Two (2) youngsters, residents of the community of Haddon Heights, in Camden County, on the 19th day of August, 1945, at 2:30 in the afternoon, in response to an impulse of curiosity, raised the lid of a

cistern to meet the shocking sight that is depicted in Exhibit S-5. (State of the Case, Vol. III, page 760.)

The pumping station is located on Maple Avenue and there is located thereon a cistern. The cistern is ten feet by ten feet square. The depth from the top of the hatch to the inside bottom of the tank is fourteen feet six inches. The opening on the hatch on the left—on the east side of the tank—is three feet by three feet square. (State of the Case, Vol. I, page 127, lines 23 to 27, inclusive; see Exhibit S-7, page 726.) The cleaning platform below the hatch is nine and a half feet below the top of the hatch. The bar screen that rises on the cleaning platform and against the south wall is five feet by five feet. The steel plate door or hatch cover weighs one hundred and seventy pounds. The cleaning platform is five and three-quarters feet by five and one-half feet, concrete construction. The lowest level of the bar screen from the top of the hatch is eleven feet and three-quarter inches. The grating or bar screen is on an angle of forty-five degrees. The lowest part of the screen to the top of the ground is eleven feet, three-quarter inches. (State of the Case, Vol. I, page 127, lines 23 to 40, inclusive; page 128, lines 4 to 22, inclusive.) There is a pipe which carries forth the sewage into the cistern and it is located ten and a half feet below the top of the hatch, or six inches below the bottom of the top screen. The sewage comes out of the pipe and goes onto the screen. (State of the Case, Vol. I, page 128, lines 30 to 40, inclusive.) The influent pipe in the cistern is located above the lowest part of the grating. (See Exhibit S-9, Vol. III, page 764.) The body of the victim was found in the position as portrayed in Exhibit S-5, State of the Case, Vol. III,

page 760. The body was in a twisted position, on its back; the left arm and left shoulder and the head pointed to the left or to the center of the wall, where the raw sewage pours into the well. The end of the body was extending up to a concrete platform over the top of the grating. (State of the Case, Vol. I, page 95, lines 27 to 39, inclusive.) As the raw sewage would come in from the influent pipe it would strike and fall upon the head of the victim. (State of the Case, Vol. I, page 129, lines 13 to 21, inclusive.)

After notification to the Police Department of Haddon Heights a search was commenced of the immediate area, in which persons other than the Police Department took part. There was found two (2) shoes, a red novelty hat, a red feather, artificial flower, small metal bracelets, a pair of bloody pants, dress and everything. The body as found was absolutely denude and stripped, even to the ornamental jewelry, which the victim wore. A pocket-book was also found which contained a slip, brassiere, a pair of stockings, a cigarette case, and etc. All of the above items were identified as being the property of the victim. (State of the Case, Vol. I, pages 94 to 102, inclusive.)

Some distance west of the pumping station weeds had been trampled down looking like a skirmish had taken place. (State of the Case, Vol. I, page 96, lines 35 to 39, inclusive; page 97, lines 4 to 6, inclusive.)

The body was then removed from the cistern and an examination of the same was made on the spot by Coroner Gardner. (State of the Case, Vol. I, page 107, lines 25 and 26.) The examination disclosed an abrasion of the face, thighs, and a good

bit of the body, numerous abrasions and lacerations of the body. The laceration was on the left side of the lower lip. The lip was cut completely through with an abrasion about two and a half to three inches, as portrayed in Exhibit S-17, State of the Case, Vol. III, page 765. (State of the Case, Vol. I, page 107, lines 31 to 39, inclusive.) The lower part of the thighs, left mid thigh and on the inner aspects of the thigh, marks and abrasions. (State of the Case, Vol. I, page 107, lines 37 to 39, inclusive; page 108, lines 4 to 10, inclusive.) The authorities then proceeded to have the body of the victim removed to the Cooper Hospital. (State of the Case, Vol. I, page 107, lines 20 and 21.) At the Cooper Hospital a meticulous autopsy was performed by Doctor William T. Read, Jr., because the absolute nude body offered no evidence as to identity. An external and internal examination was made. (State of the Case, Vol. I, page 204, lines 7 to 10, inclusive.) The external examination revealed laceration and cut on the left side of the lower lip and the left side of the tongue. Bruises and scratch marks of the entire left side of the body. Scratch marks on the inner aspect of her right thigh, just below the external genitalia, or private parts. There was a bruise of the left side of her private parts. There was also a tear with recent hemorrhage noted in the hymen, that is, the membrane which is inside the opening of the genital tract. (State of the Case, Vol. I, page 204, lines 39 and 40; page 205, lines 4 to 16, inclusive.) The internal examination revealed the following. A dirty brown substance lining the surface of the bronchus and the lungs. (State of the Case, Vol. I, page 206, lines 13 to 15, inclusive.) In the bronchus there was found a

small piece of brownous material. (State of the Case, Vol. I, page 206, lines 10 and 11.) The doctor's opinion, based on the internal and external examination, taking into consideration the signs of trauma about the external genitalia, was that the woman had been raped. (State of the Case, Vol. I, page 207, lines 24 to 26, inclusive.) The cause of death was due to suffocation and the contributing causes were multiple contusions, bruises, and lacerations of the body and shock. (State of the Case, Vol. I, page 211, lines 25 to 27, inclusive.) It was the doctor's opinion that the victim was in the state of shock due to the multiple contusions and lacerations, and was probably unconscious, and after her body was dropped into the sewage matter death may not have occurred until suffocation had taken place beneath the surface of the sewage material. (State of the Case, Vol. I, page 207, lines 11 to 26, inclusive.)

The identity of the person murdered was established by the testimony of Mrs. Halpin, sister of the deceased. Witness Halpin also identified all the various articles of clothing as found as being owned by her sister. (State of the Case, Vol. I, page 119 to page 122.)

August 14, 1945 was the date on which the surrender of the Japanese was proclaimed. Margaret McDade, the victim, in company with a fellow employe and several sailors, went to Bellmawr, in Camden County, New Jersey, to celebrate. Margaret McDade, the victim, decided to remain and entered the Bellmawr Fire Hall while her friends left for the City of Philadelphia. (State of the Case, Vol. I, pages 112 to 116, inclusive.) A celebration was in progress at the Bellmawr Fire Hall,

and it was there, about eleven o'clock in the evening, that the paths of the dead girl and the defendant crossed. Whatever the time and place of the original meeting and the means of transportation to the home of Mr. and Mrs. Creek, the testimony is clear that the plaintiff-in-error and the decedent were together before the bar in the Creek home, where all of the celebrants had retired to continue the celebration. In front of the bar, located in the cellar of the Creek home, general conversation took place between the plaintiff-in-error, decedent, Patrick Auletto, Police Officer of the Borough of Bellmawr and witness George R. Hulse. (State of the Case, Vol. I, page 173, lines 8 to 16, inclusive.) Witness George R. Hulse testified that the plaintiff-in-error and decedent were loving it up (State of the Case, Vol. I, page 173, lines 32 to 34, inclusive), however, the witness's wife, Florence Hulse, testified that the extent of this was limited to the defendant putting his arm around the decedent on two or three occasions. (Sate of the Case, Vol. II, page 425, lines 34 to 36, inclusive.) Witness Hulse also testified that he saw the plaintiff-in-error the next evening, August 15, 1945, at about 11 or 11:30 when he had a conversation with him. (State of the Case, Vol. I, page 179, lines 21 to 30, inclusive; page 180, lines 4 to 11, inclusive.) When witness George R. Hulse saw the plaintiff-in-error on the evening of August 15, 1945, he noticed that the defendant had scratches on his jaw and his hands, which scratches he asked the defendant as to how he received them and the defendant replied that he was in a fight with a British sailor in Camden. (State of the Case, Vol. I, page 180, lines 17 to 38, inclusive; page 181, lines 4 to 15, inclusive.) At the time wit-

ness Florence Hulse was with her husband, George R. Hulse, and she noticed the same thing.

Witness George R. Hulse also testified, during the course of the trial, that several days after August 15, 1945, there was found in his home in a receptacle located in the bathroom, a pair of khaki colored shorts stained with blood, which he identified as having seen before and being the property of the plaintiff-in-error. (State of the Case, Vol. I, pages 181 to 183.)

The testimony of Florence Hulse, on behalf of the defendant, is so much at variance with the testimony presented by the State's witnesses that the Court is invited to read the questions and answers as they appear on pages 420 to 434, inclusive, of the State of the Case, Vol. II.

Mr. Creek saw the decedent and the defendant walk up the steps of his cellar together, that is one behind the other, since there was not sufficient space to accommodate more than one person at a time. This was the last time that anyone saw the decedent alive, and he also was the last person who saw the decedent with the defendant, which was sometime after one o'clock on the morning of August 15, 1945. (State of the Case, Vol. I, page 160, lines 21 to 27, inclusive.)

After the defendant and the decedent left the premises of Mr. and Mrs. Creek, the next person who saw the plaintiff-in-error was Mrs. Helen Anderson. After the celebration at the Bellmawr Fire Hall, witnesses Mr. and Mrs. Anderson went to a home on Anderson Avenue to continue the celebration of V-J Day. (State of the Case, Vol. I, page 266, lines 23 to 27, inclusive.) After staying there fifteen or twenty minutes Mr. and Mrs. Anderson

proceeded to their home which was about two and a half blocks away from the De Falcas' home on Anderson Avenue. (State of the Case, Vol. I, page 266, lines 29 to 39, inclusive.) Between the hours of two and three o'clock in the morning of August 15, 1945, witness Mrs. Helen Anderson took a man and woman home, both of whom lived on Railroad Avenue, in the immediate vicinity. (State of the Case, Vol. I, page 267, lines 14 to 23, inclusive.) In the act of taking the people home Mrs. Anderson was traveling on Black Horse Pike and she saw the defendant, Howard Auld, walking along the Black Horse Pike in the direction of his home. (State of the Case, Vol. I, page 267, lines 33 to 39, inclusive; page 268, lines 4 and 5). She knew it was the plaintiff-in-error because she had been with him earlier in the evening and when she saw him he was only six feet away from her. (State of the Case, Vol. I, page 268, lines 6 to 11, inclusive.) By reason of the over-head light she was able to recognize and observe the plaintiff-in-error and was going to stop and pick him up, but when she noticed his condition she hesitated. When she saw him he was full of blood, his face, his back, she couldn't see anything but blood. (State of the Case, Vol. I, page 268, lines 21 to 29, inclusive.) She started the car and hesitated again and had the further opportunity of observing his face and walk and etc. (State of the Case, Vol. I, page 268, lines 30 to 39, inclusive; page 269, lines 4 to 12, inclusive.) As a result of the two opportunities witness Anderson had to observe the plaintiff-in-error, she was able to testify that his face was smeared with blood. (State of the Case, Vol. I, page 269, lines 14 to 20, inclusive.) The same day, that is August 15, 1945, at six o'clock

in the evening, Witness Helen Anderson saw the plaintiff-in-error standing at the bar in the fire hall at Bellmawr and spoke with him. Her husband was with her. (State of the Case, Vol. I, page 270, lines 4 to 18, inclusive.) When she saw the plaintiff-in-error she picked up his hands and put them on top of hers and showed them to her husband, and said, "Look at these ungodly sized hands," and her husband, in the presence of the plaintiff-in-error, said, "What black-berry patch have you been into?" speaking directly to the plaintiff-in-error. At the same time she noticed his face. The defendant did not respond, but drank his beer and left without giving any answer. (State of the Case, Vol. I, page 270, lines 27 to 38, inclusive; page 271, lines 4 to 15, inclusive.) On this occasion she noticed his face and saw the digs which she described as wider than a scratch and very much into the flesh and the hands had very wide scratches, just as though they were down clawed. (State of the Case, Vol. I, page 271, lines 14 to 26, inclusive.)

Witness Joseph Anderson, husband of Witness Helen Anderson, corroborates the testimony of his wife as appears on pages 281 and 282 of the State of the Case, Vol. I.

The defendant is next seen on Thursday, August 16, 1945, about ten thirty in the morning, at the circle in Fairview, at the beginning of the Black Horse Pike in Camden County by Witnesses Harry Agnew and Orilla Agnew. (State of the Case, Vol. I, page 239, lines 31 to 39, inclusive.) Witness Harry Agnew offered to give plaintiff-in-error a lift. Plaintiff-in-error himself approached the witness, Harry Agnew, concerning the scratches on his face. (State of the Case, Vol. I, page 240, lines 21 to 23,

inclusive.) And upon the plaintiff-in-error being asked what happened, he replied that he was in a fight with some British sailors in Baltimore. He described the scratches as being like gouges, and more than scratches, which could be seen without looking very hard. (State of the Case, Vol. I, page 241, lines 7 to 12, inclusive.) The witness, Harry Agnew, positively identified the plaintiff-in-error as the person he picked up on the morning of August 16, 1945. (State of the Case, Vol. I, page 241, lines 16 to 30, inclusive.) Witness Orilla Agnew corroborates the testimony of her husband, Harry Agnew. (State of the Case, Vol. I, pages 251 to 255.)

Mrs. Willa Stoerrle, testifying on behalf of the State, stated that she lived at 801 Black Horse Pike, Haddon Heights, New Jersey, which is one hundred and twenty-three yards from the pumping station as shown in Exhibit S-6, page 761, Vol. III, of the State of the Case, within which pumping station is located the cistern. (State of the Case, Vol. I, page 284, lines 31 to 35, inclusive.) Her home is portrayed in Exhibit S-4 on the left-hand side of the photograph. (State of the Case, Vol. III, page 759; Vol. I, page 287, lines 21 to 26, inclusive.) Upon her arrival home with her daughter, Charlotte, at about 1:20 in the morning of August 15, 1945, they both retired and had just put out the light when they heard a scream which was described as terrifying enough to prevent them from going out and looking around because they were alone. (State of the Case, Vol. I, page 289, lines 20 to 39, inclusive.) It was definitely a woman's scream. (State of the Case, Vol. I, page 290, lines 4 to 6, inclusive.) Mrs. Willa Stoerrle's testimony is corroborated by her

daughter, Charlotte, which appears on pages 290 to 296 of the State of the Case, Vol. I.

The defendant is next seen by Officer Norton of the Mt. Ephraim Police Department, on the night of August 21, 1945, at ten minutes past eleven when plaintiff-in-error was apprehended. Upon being asked his name he replied, "Jackson," and upon the completion of the search made of the plaintiff-in-error at Police Headquarters, it was discovered that the subject apprehended was the much sought after perpetrator of the crime of murder. It was then that the plaintiff-in-error said, "you ought to know me, you have been looking for me for three days." (State of the Case, Vol. I, pages 260 and 261.) At the time of his arrest the scratches were still noticeable on his face and hands. (State of the Case, Vol. I, page 261, lines 29 to 39, inclusive; page 262, lines 4 to 7, inclusive.)

Plaintiff-in-error is then turned over to the County Authorities and brought to the County Prosecutor's Office, located in Camden, accompanied by Chief Doran. The time of their arrival at the Prosecutor's Office was about twenty minutes after twelve on the morning of August 22, 1945. (State of the Case, Vol. II, page 333, lines 10 and 11.) Plaintiff-in-error was then taken by Captain of the County Detectives Mulligan, Detectives Dube, Mathis, Bennie and Wojtkowiak, Chief Auletto of Bellmawr, and Officer Norton of Haddon Heights to the scene of the crime. (State of the Case, Vol. I, page 310, lines 26 to 34, inclusive.) The purpose of going to the scene of the crime, in company with the detectives, was that he (plaintiff-in-error) wanted to show where he had thrown the pocket-book the day the crime was committed.

(State of the Case, Vol. I, page 314, lines 10 to 21, inclusive.) Defendant indicated the spot where he had thrown the pocket-book containing the clothes of the dead girl, but the same could not be found due to darkness. (State of the Case, Vol. I, page 314, lines 10 to 21, inclusive.) The defendant was then returned to the Prosecutor's Office, where, in the meantime, William B. Macdonald, Court Stenographer, had arrived. In the presence of Chief Doran, Captain Mulligan, Detective Dube and Officer Auletto, plaintiff-in-error confessed to the commission of the crime. His confession as produced in evidence commences on page 374 of the State of the Case, and ends on page 391. In view of the fact that plaintiff-in-error's confession can be rightfully termed the core and heart of this case, I would suggest to your Honors that you read the confession which appears on pages 374 to 391, inclusive, of the State of the Case. The State can gain nothing from a detailed exposition of that confession.

The plaintiff-in-error submitted to a neurological and psychiatric examination by Doctors Yaskin and Spradley, the first examination taking place on August 22, 1945, the day of his arrest, and again on August 31, 1945. This is important because the plaintiff-in-error, in testifying, stated that he was in the state of amnesia for a period of time before the commission of the crime, up to and including the first of September, 1945. Yet, during both examinations he was able to give Drs. Yaskin and Spradley detailed facts as to his life and movements before and after the commission of the crime. Also he was able to take the members of the Camden County Detective Force to the scene of the crime

and indicate the spot where the crime had been committed, and where he had thrown the pocket-book, which pocket-book was subsequently found at the spot indicated, and many other details concerning his movements after the commission of the crime and up to and including the first of September, 1945.

POINT I.

The refusal of the Trial Court to charge as requested was not prejudicial error.

The request appears on pages 754 and 755, Vol. III, of the State of the Case, and on page 6 of plaintiff-in-error's brief.

The following request to charge was submitted by the defendant in the case of *State vs. Molnar*, 133 N. J. Law 327, Advanced Sheets 44 Atl. 2nd. 197:

> *"The evidence that has been offered and accepted in this case on behalf of the State and the defendant is for the purpose of proving the guilt or innocence of the defendant in accordance with the rules of law which I have heretofore given you. The same evidence, however, as offered by either the State or the defendant may be used and considered by you not only for the purpose of determining the guilt or innocence of the defendant, but, in case of first degree conviction, the punishment to be inflicted upon this indictment.* You have been instructed as to the requirements for legal insanity in New Jersey. If you should find that

this defendant was legally sane on December 7, 1944, but you should also from this same evidence find that he suffered from some mental irregularity or abnormality short of legal sanity, you are justified in giving this due consideration in determining the punishment to be inflicted.

"In other words, if you find that the evidence falls short of establishing insanity as defined by New Jersey Law, you are not obliged to disregard or discard said evidence for all purposes and you are entitled to consider said evidence, in case of first degree conviction, in selecting the punishment under the authority vested in you as previously explained."

The absolute similarity of the request to charge in the Molnar Case and the instant case is to be noted.

The trial judge in *State vs. Molnar* (Supra) charged so much of the request as is printed in italics and declined to charge the remainder.

It is the remainder of the request to charge in the Molnar Case that the Court of Errors and Appeals said was properly refused by the trial court.

It is contended that the entire request as submitted by plaintiff-in-error does not support the condensed statement as appears on page 8 of the plaintiff-in-error's brief, which is as follows:

"all the testimony legally adduced at the trial should be considered on both issues of guilt and penalty."

An inspection of the entire request, specially that portion not in italics, will demonstrate that the re-

quest had for its purpose the request to charge specifically with regard to the varying phases and effects of insanity upon punishment as contrasted with guilt.

This court in *State vs. Molnar* (Supra) at page 333 stated as follows:

> "To have charged specially with respect to the varying phases and effects of insanity upon punishment as contrasted with guilt would have been confusing and would have tended to produce misapprehension. The defendant was not entitled to have any particular element of evidence emphasized. The statutory direction is that before the jury may recommend a reduction of the death penalty to imprisonment it shall consider all of the evidence, and the jury was so informed. The subject matter was adequately charged. The matter refused was properly refused."

Further, at page 335:

> "The character of the sentence is not an issue for trial. The issue is guilt or innocence, and, as always, only proof relevant to that issue is admissible."

It is contended that the charge of the court to the jury is replete with the statement that they must consider all of the evidence produced during the course of the trial and in arriving at any of the five (5) possible verdicts that the court stated the jury could return. (State of the Case, Vol. III, page 724, lines 9 and 10, and lines 31 and 32; page 725, line 4.)

Finally, it is contended that the requests to

charge was erroneous in part and therefore it was properly refused.

The request is a unit and numbered 34 by plaintiff-in-error, State of the Case, Vol. III, page 754, lines 25 to 39, inclusive, and page 755, lines 4 to 15, inclusive.

> "The request is a unit. If any part of it is unsound, the whole must fall."
>
> *State vs. Harrington,* 87 N. J. Law 713.

> "When a party asks for an instruction to the jury which is partly good and partly bad it is proper to refuse it all together."
>
> *State vs. Reilly,* 89 N. J. Law 627;
>
> *Gardner vs. State,* 55 N. J. Law 17.

> "Refusal to charge request, embracing any improper legal proposition, is not available error."
>
> *State vs. Firth,* 103 N. J. Law 275;
>
> *State vs. Noyes,* 41 N. J. Law 418.

The trial court did, in substance, charge the jury to consider all of the evidence in arriving at any of the five (5) possible verdicts, the fourth one being that of guilty of murder in the 1st degree with a recommendation of imprisonment at hard labor for life.

The trial court properly refused to charge the jury as requested (No. 34) because it was partly bad and under such circumstances is not available for error. This court in *State vs. Molnar* (Supra) having stated that that part of the request not in italics was properly denied.

The instant request therefore, at best, is partly

good and partly bad and the trial court, by virtue of the opinion in *State vs. Molnar* (Supra) properly refused to charge the request in its entirety.

POINT II.

No error was committed by the Trial Court in refusing to charge requests as submitted and as appears on pages 877, 878, and 879, Vol. III, of the State of the Case.

In the main these requests are concerned with the punishment or penalty which can be imposed upon a person convicted of murder in the first degree.

"Where the requested instructions are given in substance, the refusal to charge them as drafted is not error."

State vs. Rusnak, 108 N. J. Law 84;
State vs. Nardello, 108 N. J. Law 148;
State vs. Grosso, 107 N. J. Law 295.

"Requested instructions need not be given as drawn."

State vs. Fisher, 97 N. J. Law 34, affirmed 98 N. J. Law 293.

"Defendant has no right to choose the language the court should use in giving instructions."

State vs. Juliano, 103 N. J. Law 663.

The various degrees of murder was adequately and properly defined in the court's charge in Vol. III, page 736, of the State of the Case.

"But if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.

"All murder is presumed in the law to be murder in the second degree and it is the duty of the State to overcome the presumption in order to make it a case of murder in the first degree.

"In this case, the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing itself within a Statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape shall be murder in the first degree."

In stating the possible verdicts that could be returned by the jury in the instant case the trial court used the following language which is to be found in Vol. III, pages 745 and 746:

"With these instructions I have completed what I conceive to be the principles of law that must govern you in your deliberations and in the rendering of your verdict, which can be only one of five possible verdicts.

First, not guilty.

Second, not guilty by reason of insanity, in which case you will be required further to state in your verdict whether or not such insanity does continue.

Third, guilty of murder in the second degree.

Fourth, guilty of murder in the first degree

with recommendation of imprisonment at hard labor for life, or

Fifth, guilty of murder in the first degree."

Again plaintiff-in-error, under Point II, contends that the trial court should have instructed the jury to consider all of the evidence in determining whether to exercise its statutory and absolute discretionary power in fixing the punishment as life imprisonment.

This point has been discussed under Point I of this brief and there is no necessity of repeating the same.

It is respectfully submitted that the charge of the court was proper and legal in every respect and the refusal of the trial court to charge as requested presents no justification for cause of reversal.

POINT III.

Counsel for plaintiff-in-error alleges that the Trial Court improperly permitted Doctor Read to state that the signs of "Trauma about the external genitalia made it seem most probable that the woman had been raped."

On August 19, 1945, Dr. William T. Read, Jr., performed the post mortem examination upon the body of Rita McDade, the victim. (State of the Case, page 203, lines 30 to 38, inclusive.) During the examination conducted by Dr. Read, particularly of her genitalia, he found the following:

"A definite bruise was noted on the left midside region slightly lateral and anterior.

> Scratch marks were noted on the inner aspect of her right thigh, just below the external genitalia, or her private parts. It was a contusion, that is, a bruise, of the left side of her private parts, and a small tear of the right side of her private parts. There was also a tear with recent hemorrhage noted in the hymen, that is, the membrane which is inside the opening of the genital tract." (State of the Case, Vol. I, page 205, lines 6 to 16, inclusive.)

It was Dr. Read's opinion that in view of the rather severe injury to her private parts that it was most probable that the woman had been raped or rape had been attempted. (State of the Case, Vol. I, page 208, lines 4 to 12, inclusive.)

Again, from the lips of the defendant himself, we find statements indicating either the actual commission of the rape or the attempt to commit the same. (See confession, pages 375 to 390.)

Dr. Read's testimony and opinion is well within the bounds of his knowledge as an expert. It was equally well within his common knowledge or observation.

The answer was competent, based on the post mortem examination performed by the witness, therefore non-examining counsel may not move to strike out the answer.

State vs. D'Adame, 84 N. J. Law 386.

This Court in *State vs. Crivelli,* 89 N. J. Law at page 260, stated they saw no error in allowing the physician who made the post mortem examination to testify that the condition of the brain and the blood lead him to suspect poison.

In an abortion case it was held that an expert might be asked whether spot on inside of uterus of alleged victim might be caused by insertion of catheter, to which the following answer was given:

> "It might be so caused or it might be caused by any instrument having a hard or soft surface that when inserted would make an abrasion."
>
> *State vs. Corson,* 108 N. J. Law 12, affirmed 109 N. J. Law 144.

Counsel for plaintiff-in-error submits no argument in support of his contention that this answer was erroneously admitted, contenting himself with the statement that it was reasonable to suppose that the testimony of Dr. Read would have great weight and a controlling influence with the jury. Was it not in the final analysis for the jury to determine whether the homicide was committed during the perpetration of the crime or rape or attempt to commit rape?

It is contended that the answer given was proper and competent and that the motion to strike the same was rightfully refused and that no prejudicial error was committed.

POINT IV.

The following portion of the Trial Court's charge was not harmful or erroneous.

Plaintiff-in-error extracts from the entire court's charge the following portion and alleges the same to be harmful.

"The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is no available means of judgment that will permit a reasonable man to maintain ness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, some of which provide a better divination of the truth than others. One of these is expressed in the evidential maxim known to law, false in one thing, false in all things."

In doing so plaintiff-in-error incorrectly states the language used in the portion extracted from the court's charge. There was omitted, perhaps by error, certain portions of a sentence. The above is the portion of the court's charge objected to by plaintiff-in-error as appears on pages 21 and 22 of plaintiff-in-error's brief.

The following is the portion of the charge objected to as appears in Vol. III, State of the Case, page 740, at lines 7 to 39, inclusive.

"The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is no available means of judgment that will permit a reasonable man to maintain * * * with infallible certainty that this or that wit * * * ness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, of some which provide a better divination of the truth than others. One of these is expressed in the evidential maxim known to the law, false in one thing, false in all things. Therefore, nothing is to be implied from this instruction which would accord to this maxim any effect beyond its value as a rule by which the probative force of testimony may be weighed, and the rule does not rise to the dignity of an inflexible legal principle to be applied in all cases. If, however, you are convinced that a willful, knowing or intentional attempt has been made to mislead you in a material fact by any witness, then you can reject all the testimony of that witness."

The words within the asterisks are those which were omitted by plaintiff-in-error in reciting the portion of the court's charge objected to. At the outset it may be stated that plaintiff-in-error violates the opinion enunciated in *State vs. Sage*, 99 N. J. Law 229, which declares,

> "It is not permissible to extract a single sentence from the charge and consider it without regard to the context of the charge."

The trial court in its charge to the jury properly and legally expressed and commented upon the evidential maxim known to law as "Falsus in uno, Falsus in omnibus." At the same time the court in its charge also stated as follows:

> "If, however, you (meaning the jury) are convinced that a willful, knowing or intentional attempt has been made to mislead you in a material fact by any witness, then you can reject all the testimony of that witness."

It is contended that the court's charge in this respect was legal and proper.

> "A charge, that the jury may disregard the entire testimony of a witness if they find him lying as to a material fact, is proper."
>
> *State vs. Parks*, 189 Atl. 384, 15 Misc. 178.

> "The maxim, 'falsus in uno, falsus in omnibus' is not a mandatory rule of evidence, but is rather a permissible inference that the jury may or may not draw when convinced that an attempt has been made to mislead them in some material respect."

State vs. Dugan, 84 N. J. Law 603, affirmed 85 N. J. Law 730;
State vs. Sturchio, 127 N. J. Law 366.

"The testimony of a witness allegedly swearing falsely to a material fact may be rejected only when the jury finds he did so willfully or knowingly or intentionally."
State vs. Samuels, 92 N. J. Law 131.

The court's charge in respect to the evidential maxim above quoted contained the necessary elements that the false statement must be made with respect to a material fact and that it must be willful. It was also left to the province of the jury to infer whether an attempt had been made to mislead them in some material respect. Also it was left to the jury whether or not they should reject all of the testimony if they inferred that such an attempt had been made.

"It is always the right and often the duty of the court to comment on the evidence. Comment by the judge as to the force of the evidence and the inferences the court would draw therefrom is not error so long as the right of the jury to decide disputed question is pointed out to them by the court."
State vs. Fuersten, 103 N. J. Law 383;
State vs. Dichter, 95 N. J. Law 203;
State vs. Corrado, 113 N. J. Law 53;
State vs. Swan, 130 N. J. Law 372.

"The comment of the judge expressing his opinion that the story of the defendant was in the court's opinion most improbable, coupled

with the caution that his opinion did not bind the jury, that they were entitled to disregard it, was not in violation of his legal right."

State vs. Heathcoat, 119 N. J. Law 33.

"The court expressed his opinion of the veracity of the witness but coupled it with a warning to the jury to exercise its own judgment."

State vs. Symowitz, 5 Misc. 436, 136 Atl. 805.

The court in its charge stated as follows:

"In this most important sphere, that is the weighing and the evaluating of the testimony, you members of the jury yield neither to the arguments of counsel representing the defendant or the State, except as those arguments may appeal to your own sense of reason, and your appreciation of the probabilities, nor to any references for that matter that may be contained in the Court's treatment of the testimony, if they conflict with your finding and assignment of credibility and weight. Any comment that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. Again, such facts as I may advert to should not alone be considered by you, but consideration must be given to all the facts in the case. Similarly it is your recollection of what the witnesses said that prevails to the exclusion of the recollection of either counsel or the Court." (State of the Case, Vol. III,

page 723, lines 30 to 39, inclusive, and page 724, lines 4 to 13, inclusive.)

In concluding this point it is stated that the trial court legally and properly called to the attention of the jury the evidential maxim "falsus in uno, falsus in omnibus." In addition thereto, it was the right and the duty of the court to comment on the evidence so long as the right of the jury to decide disputed questions is pointed out. Hence, there was no error in this particular portion of the trial court's charge.

POINT V.

It is contended by plaintiff-in-error that error was committed by the Trial Court in ordering a plea of not guilty to be entered under the following circumstances.

After two (2) jurors had been examined on their voir dire and accepted, it was made known to the court that the defendant had not pled to the indictment. It was then stated to the court that Walter Keown, Esq., originally appointed counsel for the plaintiff-in-error, participated in and consented to various steps in the criminal proceedings. Subsequent to the withdrawal of Mr. Keown as attorney for the plaintiff-in-error, with the consent of Supreme Court Justice Donges, Mr. Palese was appointed counsel. After his appointment several motions for adjournment were made by both parties. Motion for struck jury was participated in by Mr. Palese and the defendant; twelve names were

stricken in the presence of the defendant; seventy-six names were served upon the defendant personally. All of these steps were taken during the time that Mr. Palese was counsel for the defendant. (State of the Case, Vol. I, page 46, lines 14 to 39, inclusive.) The State moved the trial of the indictment in the presence of the defendant and his counsel. Several prospective jurors were interrogated on voir dire, some rejected, and some accepted, two (2) of whom were then sitting in the box. All of these steps were participated in and consented to by the defendant. (State of the Case, Vol. I, page 47, lines 7 to 14, inclusive.)

The actual trial of the matter had not commenced and the entire jury, as finally selected, had not been sworn to try the issue. (State of the Case, Vol. I, page 47, lines 14 to 22, inclusive.)

The Court then called the defendant for plea. (State of the Case, Vol. I, page 47, line 24.) After some colloquy that ensued between the Court and counsel for the defendant, now plaintiff-in-error, which appears on pages 47 to 49, inclusive, of the State of the Case, Vol. I, counsel stated that his advice to Mr. Auld, the plaintiff-in-error, was not to plea to the indictment and that he was going to ask and advise the defendant not to plea. (State of the Case, Vol. I, page 48, line 39; page 49, lines 17 and 18.)

The Court then ordered the Prosecutor to read the indictment so that the defendant may plea thereto. (State of the Case, Vol. I, page 50, lines 17 and 18.) After the reading of the indictment to the defendant, and before he could enter a plea, his counsel stated as follows:

> "MR. PALESE: Your Honor please, to that indictment *we now refuse to plead because of*

the progress of the case." (State of the Case, page 50, lines 37 to 39, Vol. I.)

The Court then made the following inquiry:

> "THE COURT: Is there any disability under which the defendant presently stands that requires him to remain mute, Mr. Palese?" (State of the Case, Vol. I, page 51, lines 4 to 6.)

and counsel made the following response:

> "MR. PALESE: None I know of." (State of the Case, Vol. I, page 51, line 8.)

Again the Court inquired as follows:

> "THE COURT: Is it upon advice from you, as his counsel, he stands mute?" (State of the Case, Vol. I, page 51, lines 10 and 11.)

Again counsel replied as follows:

> "MR. PALESE: That is correct." (State of the Case, Vol. I, page 51, line 13.)

The Court then ordered that a plea of not guilty be entered.

> "THE COURT: Under those circumstances, we will direct that a plea of not guilty be entered." (State of the Case, Vol. I, page 51, lines 15 and 16.)

Thus it can be noted that the defendant refused to plea to the indictment because of the advice he received from his counsel.

The record in this case, returned to the Court

under the writ, states that the defendant remained mute upon the advice of his counsel and the trial court ordered the entry of a plea of not guilty. (State of the Case, Vol. I, page 30, lines 30 to 39, inclusive.)

Counsel for plaintiff-in-error cites N. J. S. A. 2:189-5, which provides that:

> "If any person indicted for any offense against this State shall, on being arraigned or called to answer the matter charged in such indictment, stand mute, a jury shall forthwith be impaneled to determine whether the person so standing mute does so obstinately and on purpose or by the providence and act of God. If the verdict of the jury is that such person stands mute by the providence and act of God, the court shall cause him to be remanded to prison and shall not proceed against him until he shall have recovered therefrom, but, if the verdict of the jury is that such person stands mute obstinately and on purpose, the court shall cause to be entered upon the indictment against him the plea of not guilty to be entered, * * * and shall also cause the like plea of not guilty where any person, indicted as aforesaid, shall refuse to plead or answer such indictment, and all cases shall proceed upon the trial in like manner and in all respects as if he had voluntarily pleaded the same plea thereto. * * *"

Counsel loses sight of that section which provides that where any person shall refuse to plea or answer to an indictment, a plea of not guilty shall be

entered by the Court and the case shall proceed to trial.

It will suffice here to say that the record presents the defendant not as standing mute but as refusing to plea to the indictment upon the advice of his counsel, whereupon the Court ordered a plea of not guilty to be entered under the concluding provision of N. J. S. A. 2:189-5 (Supra), viz: * * * "and shall also cause the like plea of not guilty where any person, indicted as aforesaid, shall refuse to plead or answer such indictment, and all cases shall proceed upon the trial in like manner and in all respects as if he had voluntarily pleaded the same plea thereto." * * *

State vs. Savage, 79 N. J. Law 583;
State vs. Noel, 102 N. J. Law 659.

The defendant waived his constitutional right to be arraigned and enter a plea.

The arraignment is best understood as the formal opportunity given the accused to be informed of the nature and the cause of the accusation. When so informed he can enter a plea, and if a plea of not guilty is entered a jury is impaneled when the case is moved.

The opinion in *State vs. O'Toole* contains the following language:

> "The accused in this case, if he had, through his counsel, made known to the court the fact that he had not been arraigned could then have been called to the bar and been informed of the charge as made against him. A plea could then have been entered. Since no objection was made by counsel to the circumstance that he

was not arraigned, we must assume that the defendant, since he did not press his right, was well informed as to the nature and cause of the accusation. Further, we regard the defect in the proceeding, both as to the lack of arraignment and plea, as waived by the participation by the defense counsel in the selection of the jurors, the presentation of testimony and the summation of the case to the jury."

State vs. O'Toole, 115 N. J. Law 205, certiorari denied 296 U. S. 613.

"Defendants withdrew pleas of not guilty for the specific purpose of enabling them to move against the indictment. The court denied such motion, but the not guilty pleas were not reinstated. It was held that the accused waived formal reinstatement of their pleas when they stood trial without objection."

State vs. Profita, 114 N. J. Law 335.

It is, therefore, respectfully contended that the Court's action in entering a plea of not guilty under the circumstances was proper and legal, and that by reason of the participation of the defendant in the proceeding, and his failure to have made known to the Court the fact that he had not been arraigned, when he could have then been called to the bar, constituted a waiver of his privilege in this regard.

POINT VI.

There was no error committed in permitting State's witness Dr. H. Edward Yaskin, in rebuttal, to testify concerning statements made by the plaintiff-in-error during the neurological and psychiatric examinations which took place on August 22, 1945 and August 31, 1945.

The defense of insanity was interposed by the plaintiff-in-error. In substantiation of his defense, the defendant stated, in direct examination, that he remembered everything which took place before and during the commission of the crime and remembered faintly picking the nude body of the victim up and putting her on his shoulder, but doesn't remember what he did with the body. (State of the Case, Vol. II, entire page 470; page 471, lines 4 to 10, inclusive.) It is important to note that plaintiff-in-error, after hitting the victim knocking her unconscious, leaned down and felt the victim's pulse and thought she was dead, after which he commenced to disrobe her. (State of the Case, Vol. II, page 470, lines 20 to 24, inclusive.)

Also on direct examination, the defendant stated that he did not remember anything until the next morning, meaning the morning of the 15th of August, 1945. (State of the Case, Vol. II, page 471, lines 14 to 20, inclusive.) On cross-examination defendant stated that he did not remember going to the scene of the crime and showing the County Detectives where he threw the pocket-book. (State of the Case, Vol. II, page 477, lines 27 to 29, inclusive.) Rather than to burden your Honors with a

selection of various questions and answers on cross-examination of the defendant, it is respectfully requested that the same be read. A reading of the same will conclusively demonstrate that the defendant evaded answering damaging questions on the theory that he did not remember. Particularly is this true with regard to the two examinations conducted by Drs. Yaskin and Spradley, specially with regard to the examination held on August 22, 1945. Needless to state the defendant does not remember ever having made a statement concerning the commission of the crime which is the confession made on the morning of August 22, 1945, several hours after he was arrested on the evening of August 21, 1945. The defendant on cross-examination stated that he did not remember anything after he threw the victim's body across his shoulders until about seventeen days later, which would be approximately September 1, 1945. (State of the Case, Vol. II, page 519, lines 35 to 39, inclusive; page 520, line 4.) Yet, defendant, on cross-examination, states that his convenient lapse of memory lasted from the moment that he faintly remembers putting the body across his shoulder until he got up the next morning. (State of the Case, Vol. II, page 533, lines 5 to 9, inclusive.) Again, on cross-examination, defendant stated that he did not remember anything from the time he woke up with a headache on the morning of August 15, 1945 until the end of the month of August. (State of the Case, Vol. II, page 534, lines 12 to 39, inclusive.)

During the examination conducted by Dr. Yaskin on August 22, 1945, the defendant was able to recite to the doctor a complete history of his life, his service in the Army, also his difficulties concerning mis-

behavior while in the service, his activities after his discharge from the service, his meeting the victim V-J night; the manner in which the crime was committed, the purpose in disrobing the victim and disposing of her body, which was to secrete the body and to try and conceal the evidence of the crime, his going home, putting his bloody clothes in a bag, and going to bed; what he did the next morning, throwing the bag which contained his bloody clothes into the Delaware River, going to Morristown, New Jersey, to see his brother, his returning home and his arrest on Black Horse Pike, Mt. Ephraim, and his prior convictions. All of the above can be found in Vol. III, of the State of the Case, commencing on page 646, line 20, and ending on page 659.

I join with counsel for plaintiff-in-error concerning the accuracy of the statement that during the trial of a person for one crime evidence that he had been guilty of other crimes is immaterial. However, R. S. of 1937, 2:97-13 N. J. S. A., states that prior convictions can be shown for the purpose of effecting the witness's credibility which was done in this case on cross-examination of the defendant.

The sole purpose of Dr. Yaskin's testimony in rebuttal was to refute the defendant's statements on direct and cross-examination that he did not remember being examined on August 22, 1945, in addition to his statement that he did not remember anything from the time he threw the body of the nude victim across his shoulder until September 1, 1945.

Surely, whether he did remember is a pertinent matter for inquiry.

"Contradicting the defendant on rebuttal is not error."

State vs. Simon, 113 N. J. Law 521, affirmed 115 Law 207.

"Permitting the State to rebut is entirely within the discretion of the trial court."

State vs. Landecker, 100 N. J. Law 195, affirmed 103 N. J. Law 716.

"Whether evidence offered is proper rebuttal is within the discretion of the court."

State vs. Mohr, 99 N. J. Law 124.

"Evidence offered in rebuttal is subject to the discretion of the trial court and the court's admission or rejection thereof is reversible only in cases of gross abuse."

State vs. Skillman, 76 N. J. Law 464, affirmed 77 Law 808.

There was no error therefore in permitting witness Dr. Yaskin to testify on rebuttal concerning what the defendant stated to him during the examination held on August 22, 1945. Particularly is this true in view of the fact that the defendant stated on direct examination and cross-examination that he did not remember anything after he threw the nude body across his shoulder until the first of September, 1945.

POINT VI.

Plaintiff-in-error specifies as a cause for reversal the Trial Court's ruling on the objection to the question submitted to witness Doctor Calvin S. Drayer.

Specification of Causes for Reversal No. 26 and Assignment of Error No. 26 is as follows:

"26. The trial court upon the trial of the issue so joined erroneously sustained the objection of the Prosecutor of the pleas to a question submitted to the witness, Calvin S. Drayer, by counsel for the defendant below, the question and objection as follows:

"Q. We are not getting into sanity or insanity; I want to ask another question; that is, if you can tell from the facts before you ——

THE PROSECUTOR: I object.

THE COURT: Sustain the objection.

MR. PALESE: It hasn't been asked, and I am trying to clear up. The Prosecutor asked him whether he was sane or insane, and I want to know his mental status.

THE COURT: I will sustain the objection.

MR. PALESE: May I have an exception.

THE COURT: Exception allowed.

MR. PALESE: Do I understand your Honor will not let me prove what the mental condition of this defendant was prior to the time he took a walk?

THE COURT: I sustained the objection.

MR. PALESE: I wanted to be sure you knew what my question was.

THE COURT: You stated your position on the record. Do you want to enlarge it?

MR. PALESE: I want to. I want to prove by this witness, from the facts in the hypothetical question whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.

THE COURT: It will be noted on the record." (State of the Case, Vol. III, page 887, lines 26 to 38, inclusive, and page 888, lines 4 to 23, inclusive.)

The questions and answers as stated in plaintiff-in-error's brief on page 28 does not correctly present the matter in controversy under this point.

Cross-examination of Dr. Calvin S. Drayer was terminated by the State as appears on page 595 of the State of the Case, line 12.

Council for plaintiff-in-error, on re-direct, then submitted to the witness, Dr. Drayer, the following question:

"Q. Doctor, what is your opinion as to the mental status of the defendant on August the 14th, 1945, when he was hugging and kissing the girl?" (State of the Case, Vol. II, page 596, lines 4 to 6.)

The witness gave the following answer:

"A. He was moderately intoxicated, I believe, but as far as we can judge from the evidence, he was able to judge between right and wrong, able to distinguish between right and wrong." (State of the Case, Vol. II, page 596, lines 7 to 10.)

Counsel for plaintiff-in-error then submitted the following question which was objected to. The Court sustained the objection.

> "Q. We are not getting into sanity or insanity; I want to ask another question; that is, if you can tell from the facts before you ——
>
> THE PROSECUTOR: I object.
>
> THE COURT: Sustain the objection. (State of the Case, Vol. II, page 595, lines 11 to 17, inclusive.)

The obvious attempt of counsel for plaintiff-in-error was to obtain an opinion from the witness as to the mental condition of the defendant before he left with the girl or prior to the time that he started to take a walk. Of course, this period of time was before the crime had been committed.

Continuing:

> "MR. PALESE: Do I understand your Honor will not let me prove what the mental condition of this defendant was prior to the time he took a walk?
>
> THE COURT: I sustained the objection.
>
> MR. PALESE: I wanted to be sure you knew what my question was.
>
> THE COURT: You stated your position on the record. Do you want to enlarge it?
>
> MR. PALESE: I want to. I want to prove by this witness, from the facts in the hypothetical question, whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.
>
> THE COURT: It will be noted on the record.
>
> MR. PALESE: That's all, Doctor." (State

of the Case, Vol. II, page 596, lines 30 to 40, inclusive; page 597, lines 4 to 12, inclusive.)

Obviously the question to which the objection was sustained was argumentative and consisted merely of a statement that counsel for plaintiff-in-error and his witness were not getting into sanity or insanity.

If the purpose of the question was to obtain an opinion as to the mental status of the defendant prior to the time he took a walk or before he left with the girl as stated by counsel for the plaintiff-in-error, then the question had already been answered in this form:

> "A. He was moderately intoxicated, I believe, but as far as we can judge from the evidence, he was able to judge between right and wrong, able to distinguish between right and wrong." (State of the Case, Vol. II, page 596, lines 7 to 10, inclusive.)

It must be called to the Court's attention that the above statement was made by the witness for the defense in response to the question submitted on redirect examination by counsel for the defendant.

Therefore, not only is the question referred to argumentative but it is repetitious and therefore the court's ruling affords no reason for reversal.

POINT VIII.

The Trial Court did not err in permitting witness Joseph J. Fitzgerald, on rebuttal, to testify concerning entries appearing in the original service record of the defendant.

Joseph J. Fitzgerald, Administrative Assistant to the Director of the Records Division of the Adjutant General's Office, War Department, produced the complete service record of the defendant. (State of the Case, page 700, lines 10 to 36, inclusive.) Photostatic copies of the same were offered in evidence on rebuttal. (State of the Case, Vol. III, page 702, lines 4 to 11, inclusive.) The same were objected to as not proper rebuttal. (State of the Case, Vol. III, page 702, line 12.) The witness was asked to turn to various sections of the entire service record and read therefrom anything contained therein concerning the actual time spent in confinement by the defendant. The witness replied that page 7 of the service record shows a total of 329 days. (State of the Case, Vol. III, page 706, lines 36 and 37.) The actual time in confinement about the month of April 1943 was shown to be from the 14th of April to September 9, 1943, a total of 149 days.

Defendant introduced and the same was accepted in evidence, Exhibit D-1, which consists of the service record and hospital record of the defendant. See Exhibit D-1, pages 812 to 825 and Exhibit D-2, pages 826 to 874 and Exhibit D-3, pages 875 to 876.

The Court's attention is called to Exhibit D-1, Sheet 11, page 817, introduced by the defendant

which shows thereon record of A. W. O. L.'s and record of sentences and confinement.

It is contended that the same were proper rebuttal.

> "Contradicting the defendant on rebuttal is not error."
>
> *State vs. Simon* (Supra).

> "Permitting the State to rebut is entirely within the discretion of the trial court."
>
> *State vs. Landecker* (Supra).

> "Whether evidence offered is proper rebuttal is within the discretion of the court."
>
> *State vs. Mohr* (Supra).

> "Evidence offered in rebuttal is subject to the discretion of the trial court and the court's admission or rejection thereof is reversible only in cases of gross abuse."
>
> *State vs. Skillman* (Supra).

It must be kept in mind that the defendant, on direct examination and cross-examination, contended that he made in the neighborhood of eighty (80) combat parachute jumps, spent practically all of his time behind enemy lines, was wounded on both arms by Jap soldiers, that he made landings from P T boats, submarines, and other ships and other matters of such a ridiculous nature that it became the duty of the State to rebut such testimony, hence the introduction of his service record. Defendant's testimony and cross-examination can be found in the State of the Case, beginning at page 451 and ending on page 563, inclusive.

The service record as introduced by the defense and the service record introduced by the State on rebuttal, in most respects contain the same information, particularly with regards to the A. W. O. L.'s, and record of sentence and confinement. Therefore, the court committed no harmful error in permitting the introduction of this testimony.

POINT IX.

The Trial Court did not err in refusing to charge the following requests:

"I charge you that you may consider the fact that the defendant having been insane once, or several times before, may render it more probable that the defendant was insane at the time of the homicide, if there is any direct proof that he was insane at the time of the commission of the crime. Insanity before the commission of the crime proves nothing where the State has shown a subsequent return to reason. Former insanity increases the probability that the defendant was insane if there is any independent evidence that he was insane at the time of the commission of the crime." (State of the Case, Vol. II, page 880, Request #8.)

"If it has been proven to your satisfaction that the defendant has been once insane, the presumption is, that he continue so until the contrary is shown, that is, if there is no period of lucid intervals since the time of the insanity proved, you must find him still insane, and insane at the time of the commission of the homi-

cide." (State of the Case, Vol. II, page 880, Request #9.)

The gist of plaintiff-in-error's requests is that if it had been proven to the satisfaction of the jury that the defendant had once been insane the presumption is that such insanity continues.

It must, of necessity, therefore, be determined whether or not the defendant had in the past been declared insane. It is contended and respectfully submitted that at no time was ever any proof presented that the defendant had been declared insane; insanity being used in its comprehensive meaning. The test in New Jersey for criminal responsibility being; whether the accused can distinguish between right and wrong at the time of the commission of the act.

An attempt is made by plaintiff-in-error to prove by the findings of the Board of Medical Officers attached to the Mason General Hospital, Brentwood, New York, which board consists of three physicians (State of the Case, Vol. II, page 359, line 39 to p. 360, lines 4 to 13, inclusive), that the defendant had previously been declared insane.

The board referred to has no judicial authority to declare a man sane or insane, therefore any such adjudication would avail the defendant of nothing in respect to proving prior insanity.

As a matter of fact it is not the function of the said Board to determine whether a man is sane or insane, nor to determine whether he can distinguish between what is right and what is wrong. (State of the Case, Vol. II, page 366, lines 17 to 27, inclusive.) The Board simply determines whether or not the person can be released from the Army without

danger to himself or others in their opinion. Such was the testimony of Captain Homer E. Lawrence, witness for the defendant and a member of the board which released the defendant from the armed services. (State of the Case, Vol. II, page 361, lines 19 to 24.)

Assuming for the moment that the board referred to is vested with the authority and power to declare a person sane or insane, as a matter of fact, the board did not find the defendant insane on the 27th day of July, 1945. On the contrary the board came to the conclusion that the defendant could be released from the Army without danger to himself or others and under his own care. (State of the Case, Vol. II, page 362, lines 21 to 31, inclusive. See Exhibit D-L, Sheet 8, page 814.)

As a matter of fact Captain H. S. Barahal, President of the Medical Board, certified that the defendant was mentally competent for the purpose of signing commercial papers. (State of the Case, Vol. II, page 358, lines 30 to 38, inclusive. See Exhibit D-I, Sheet 13, page 819, and D-I, Sheet 5, page 811.) Also the defendant himself signed an affidavit that he desired to be discharged under his own care. (State of the Case, Vol. II, page 359, lines 8 to 12, inclusive. See Exhibit D-I, Sheet 8, page 814.)

During the re-direct examination of Captain Lawrence, he stated that the defendant had no mental disturbances on July 27, 1945, and that was the opinion of the board. (State of the Case, page 371, lines 33 to 35.)

The medical board's recommendation in so far as civilian conversion was concerned was that the defendant was available as a policeman or a forester. (See Exhibit D-2, Sheet 2, page 827.) See Exhibit

D-I, Sheet 17, page 823, wherein Captain William M. Leyton, of the Medical Board, stated that the defendant received frequent passes from which he returned without any untoward incident, also Captain Aaron Podlonick, and Captain H. C. Lawrence, to the same effect. (Exhibit D-I, Sheet 18, page 824.)

Dr. Waygood and Dr. Drayer testified on behalf of the Defendant.

The charge of the Court with respect to sanity, insanity and burden of proof was as follows:

> "The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain general reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is no available means of judgment that will permit a reasonable man to maintain with infallible certainty that this or that witness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, of some which provide a better divination of the truth than others. One of these is expressed in the evidential maximum known to the law, false in one thing, false in all things. Therefore, nothing is to be implied from this instruction which would accord

to this maxim any effect beyond its value as a rule by which the probative force of testimony may be weighed, and the rule does not rise to the dignity of an inflexible legal principle to be applied in all cases. If, however, you are convinced that a willful, knowing or intentional attempt has been made to mislead you in a material fact by any witness, then you can reject all the testimony of that witness.

"At this point also should effect be given to the testimony that was produced by the State showing that the defendant had on two prior occasions been convicted of crime. The offer and reception of this testimony was made and permitted under the provisions of an act of legislature, made a part of the Evidence Act, which reads as follows, 'For the purpose of affecting the credibility of any witness, his conviction of crime may be shown by examination or otherwise.' Thus I charge you that this evidence shall be considered by you for the purpose of affecting your belief in the defendant's story and shall not be considered as substantive proof that he committed the crime charged in this indictment.

"If, after giving the accused the benefit of reasonable doubt, you are convinced that he killed Margaret Rita McDade in the perpetration of a rape or in the attempt to perpetrate a rape, then he is guilty of murder in the first degree, even though the killing be unintentional.

"This brings us to the consideration of the affirmative defense proposed by the defendant that, if he did kill her, he was insane and under the law blameless. You begin your delibera-

tions on this point with the presumption that every man is presumed not only to be sane, but to be responsible for the performance of his acts, and the burden rests upon the defendant in this case to establish by a preponderance of the testimony that at the time of the commission of the act he was not sane.

"To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason from a disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong. If an accused has sufficient mind to know the difference between right and wrong with respect to the act he is doing, and to control his conduct under ordinary circumstances, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistible impulse. Capacity and reason sufficient to enable the accused to distinguish between right and wrong was adopted as the test of insanity in criminal cases by our courts as early as 1846.

"In attempting to discharge this burden imposed by the law the defendant offered in his behalf, among other witnesses, two experts and testimony of a psychotic episode or episodes in the service. Dr. Waygood, the first psychiatrist, testified in answer to a hypothetical question, based upon the facts as testified to in the defendant's case, 'I would think it very probable he was not in his right mind at some time during the occurrence of this evening's events, and that

would include the last moment which you have recited,' referring to the defendant's statement that he was having sexual intercourse with the dead girl when he was scratched by her. On cross-examination the doctor said that the defendant probably knew what he was doing at the moment that he carried the girl into the bushes and that he probably knew what he was doing when he was engaged in the alleged act of intercourse, and that it was not possible for him to fix the time exactly, that he was not willing to state the exact time that the defendant reached the point when, in his opinion, he did not know right from wrong, and that he would not say yes or no to the question whether or not the defendant could distinguish between what was right and what was wrong at the time he struck her on the jaw to stop her screaming and scratching.

"The second, Dr. Dreher, testified that the defendant was for part of the time during the night and early morning in question, confused and unable to distinguish between right and wrong, but that it was very difficult to fix the time at which that confusion existed, but that it was his opinion that he could put that time at the moment when the defendant found or believed that the girl was dead, and in amplification of that opinion he said he regarded the defendant's striking of the girl as a burst of anger but clearly designed to accomplish any purpose but to defend himself. On cross-examination he testified that the defendant was sane when he picked the girl up and carried her into the bushes, when he was in the alleged act of

intercourse, but that he could not longer be as positive in his answer if the defendant knew why the girl screamed and scratched him.

"Both Dr. Waygood and Dr. Dreher said that such opinions as they did express were predicated upon the truth of every factor contained in the hypothetical question proposed to them, including the fact that during many months of combat in New Guinea and in the Philippines the defendant spent most of his time behind the enemy lines on patrol and scout activities, on one of which, after having been dropped, presumably by plane, he was exposed to the bursting of a 500-pound bomb nearby, from which time on he did not seem himself. Therefore the validity of such opinions and their probative value may be weighed by you in accordance with your belief or disbelief of the existence of any of the factors entering into the formation of those opinions.

"In rebuttal the State produced, in addition to the two Army doctors, who said that on July 27, 1945, he had no symptoms of psychosis, two eminently qualified neurologists and psychiatrists, Dr. Yaskin and Dr. Spradley, who examined the defendant twice, the first time on August 22nd the day of his arrest, and again on August 31st. Both of them unequivocally and without qualification said that on each occasion that they saw the defendant he was sane and capable of knowing the difference between right and wrong, and that in their opinion before, during and after the commission of the act which resulted in the death of Margaret Rita McDade, the defendant, Howard Auld, knew

what he was doing and was able to distinguish right from wrong.

"With respect to this phase of the proofs, as I have said, the presumption is that the defendant is capable of knowing the difference between right and wrong and it is the defendant's burden to overcome this presumption by clear and satisfying proof. So that, if in considering this point you find the defendant has borne the burden imposed upon him, your verdict should be not guilty, but if on the contrary you feel that the defendant has not borne that burden, this defense cannot prevail." (State of the Case, Vol. III, page 740, commencing on line 7, to page 744, ending with line 30.)

It is submitted sufficient has been shown that the medical board did not find the defendant insane on the 27th day of July, 1945, upon his discharge from the service, and, therefore, the court properly refused to charge the requests.

POINT X.

The Trial Court's recitation of the testimony of Doctor Read was not inaccurate and incorrect.

The testimony of Dr. Read referred to under this point appears in Vol. I, page 207, lines 11 to 26, inclusive, of the State of the Case:

"Q. No. You may now go into your diagnosis.

A. There are notes I made at that time and I will read it, if I may. Due to the absence of

fractures and presence of rather severe congestion of the lungs, liver and spleen, it is felt that the most likely course of events was that the individual was in a state of shock due to the multiple contusions and lacerations and could well have been unconscious due to concussion of the brain which might not leave any anatomic changes to be seen at autopsy. If the body was dropped into the sewage matter, death may not have occurred until suffocation would take place beneath the surface of the sewage material. The signs of trauma about the external genitalia make it seem most probable that the woman had been raped."

Again, in Vol. I, page 209, lines 10 to 21, Dr. Read testified as follows:

"Q. Is there anything else you want to add to your statement, doctor?

A. In my paragraph on the diagnosis I said there was, because of the severe congestion of the lungs, and because I thought the injury not sufficient in itself to have killed her, that she died of suffocation. I should add to that as well the finding of foreign materials, brown material, in her bronchus tubes leading to the lungs indicated she had been submerged before she was dead."

Dr. Read, further on page 211, lines 23 to 27, testified as follows:

"Q. Doctor, in your opinion, what was the cause of death?

A. I think death was probably due to suffoca-

tion, and contributing causes are multiple contusions, bruises, and larcerations of the body and shock."

When, therefore, the trial court charged the jury that the unfortunate girl died of suffocation, it was an accurate and correct recital of the testimony of Dr. Read.

Counsel for the plaintiff-in-error extracts from the court's charge the following two sentences:

> "To be sure one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent', would be if she were here."

The complete portion containing the above two sentences of the court's charge is as follows:

> "In the second category there is the testimony of Mrs. Stoerrle and her daughter that at some time after 1:30 that morning they heard the shrill, agonizing scream of a woman, terrifying enough that they didn't dare go out and look because they were alone; the fact that the ground for quite some space around where some of the belongings of the dead girl were found was trampled as if there had been a skirmish; that her clothing, dress, slip and panties were multi-stained with blood; the fact that her lower lip was cut completely through in a wound about two and a half to three inches in length; that there were abrasions on the lower part of her thighs and on the inner aspect of the left mid-

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dle thigh. That her private parts were bruised and torn and that the hymen itself was freshly lacerated; the fact that she was five feet two inches in height, weighing in life 105 pounds, and that though the defendant is over six feet tall, weighing 190 pounds he was clawed and gouged, hands and face, in such a fashion that as he was leaving the scene of the crime his face was filled with blood; that these gouges were plainly distinguishable the next day and on Thursday morning, and were somewhat evident one week later when he was arrested. To this may reasonably be added the statements of the defendant himself that she scratched and fought him and resisted violently. * * * To be sure, one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent' would be if she were here. * * * (State of the Case, Vol. III, page 737, lines 14 to 39, inclusive; page 738, lines 4 to 11, inclusive.)

"It is not permissible to extract a single sentence from the charge and consider it without regard to the context of the charge."

State vs. Sage (Supra).

The test for soundness of instruction to the jury is expressed in the following language in *State vs. Pitman*, 98 N. J. Law 626, affirmed 99 N. J. Law 527:

"The ultimate test of the soundness of instructions is, not what the ingenuity of counsel, can, at leisure, work out the instructions to

mean, but how and in what sense under the evidence before them and the circumstances of the trial, would ordinary men and jurors understand the instructions as a whole."

"It has long been established that it is the trial court's right and duty to comment on the evidence."

State vs. Jefferson, 129 N. J. Law 308.

"The equally long established limitations to this right and duty is that the ultimate decision of disputed facts is always the function of the jury."

State vs. Fuersten (Supra);
State vs. Corroda (Supra);
State vs. Dichter (Supra);
State vs. Swan (Supra).

The court in its charge and instruction to the jury stated as follows:

"In this most important sphere, that is the weighing and the evaluating of the testimony, you members of the jury yield neither to the arguments of counsel representing the defendant or the State, except as those arguments may appeal to your own sense of reason and your appreciation of the probabilities, nor to any references for that matter that may be contained in the Court's treatment of the testimony, if they conflict with your finding and assignment of credibility and weight. Any comment that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as

you may find them. Again, such facts as I may advert to should not alone be considered by you, but consideration must be given to all the facts in the case. Similarly it is your recollection of what the witnesses said that prevails to the exclusion of the recollection of either counsel or the Court." (State of the Case, Vol. III, page 723, lines 30 to 39, inclusive; page 724, lines 4 to 14, inclusive.)

Assuming but not conceding that the trial court improperly stated the facts in its charge to the jury this will not work a reversal where the jury were cautioned to rely solely on their own recollections of the facts.

State vs. Juliano (Supra);
State vs. Mohr (Supra);
State vs. Engle, 50 N. J. Law 272;
State vs. Knowles, 3 Misc. 1241, affirmed 102 N. J. Law 726;
State vs. Lavieri, 93 N. J. Law 201.

It is respectfully submitted that this particular portion of the court's charge objected to by plaintiff-in-error was not harmful and prejudicial but was correct and accurate in every respect.

POINT XI.

Plaintiff-in-error alleges that the Trial Court should have included in its instructions the provisions of R. S. 2:138-4 N.J.S.A.

> "The character of the sentence is not an issue for trial. The issue is guilt or innocence, and, as always, only proof relevent to that issue is admissible."
>
> *State vs. Molnar* (Supra), at p. 335.

The court instructed the jury as to the five possible verdicts that they could return in the following language:

> "With these instructions I have completed what I conceive to be the principles of law that must govern you in your deliberations and in the rendering of your verdict, which can be only one of five possible verdicts.
>
> First, not guilty.
>
> Second, not guilty by reason of insanity, in which case you will be required further to state in your verdict whether or not such insanity does continue.
>
> Third, guilty of murder in the second degree.
>
> Fourth, guilty of murder in the first degree with recommendation of imprisonment at hard labor for life, or
>
> Fifth, guilty of murder in the first degree."

The jury was told in no uncertain terms that they could return a verdict of murder in the first degree

with a recommendation of imprisonment at hard labor for life. The above statute provided that if the jury so recommends then the trial judge can not impose any greater punishment. The language of the statute in this regard is as follows:

> "in which case this and no greater punishment shall be imposed."

The provision prohibits a greater punishment in the event that the jury recommends life. There was no duty upon the trial court to discuss the matter of sentence in its instructions.

It is respectfully submitted therefore, that the instructions of the trial judge were correct and legal in this respect and there was no duty on the part of the court to discuss the question of sentence in its instructions to the jury.

POINT XII.

The verdict was not contrary to the law nor against the weight of the evidence.

It must be conceded that in order to justify the setting aside of a verdict as being against the weight of the evidence, the fact must be so clear as to give rise to an inference that the verdict was the result of mistake, passion, prejudice, or partiality.

State vs. Cox, 128 N. J. Law 108;
State vs. Monia, 132 N. J. Law 91;
State vs. Lederman, 112 N. J. Law 366;
State vs. Dworecki, 124 N. J. Law 219.

Plaintiff-in-error states in his brief, on page 45, that he proved his defense of insanity by the quantum of the evidence.

> "Insanity is an affirmative defense; the burden of proof to establish the defense of insanity rests upon the accused. The law presumes that every man is sane until the contrary be proved; the law assumes that at the time of committing the act for which he is tried, he was sane; therefore, when an accused sets up a defense of insanity the burden of proving it is upon him, and he must overcome the legal presumption of sanity by a preponderance of proof and by evidence satisfactory to the jury; if he fails to establish his insanity, the presumption, or assumption, of sanity still stands."
>
> *State vs. Overton,* 85 N. J. Law 287;
> *State vs. Lynch,* 130 N. J. Law 253;
> *State vs. Molnar* (Supra).

In New Jersey our entire law on insanity in criminal proceedings stems from the rule in the M'Naghten's case and beginning with *State vs. Spencer,* 21 N. J. Law 196, and followed in numerous cases of which the most notable are *State vs. Graves,* 45 N. J. Law 203, affirmed 45 N. J. Law 347; *State vs. Noel,* 102 N. J. Law 659, and many subsequent cases.

> "To establish a defense on the ground of insanity it must be clearly proved that, at the time of the committing of the act, the person accused was laboring under such a defect of reason, from 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 he was doing what was wrong. Thus the legal test of mental responsibility is: at the time of committing the act was the accused incapable of distinguishing between right and wrong, in a moral point of view? If the defendant is so able to distinguish between right and wrong he is legally responsible for his acts."

The above rule is so well imbedded in our system of jurisprudence that it requires no further citation.

In view of the legal presumption of sanity it became necessary for the defense to prove insanity by the preponderance of proof and evidence satisfactory to the jury.

State vs. Overton (Supra);
State vs. Lynch (Supra).

The defense, in attempting to prove insanity, presents testimony as to defendant's experiences while in the Army, also the expert medical testimony of two psychiatrists, to wit, Doctor James J. Waygood and Doctor Calvin S. Drayer.

Assuming but not conceding in the slightest, that the testimony produced by the defendant indicated some mental irregularities during his experiences in the United States Army, yet he was discharged from the Army as sane on July 30, 1945. Captain Homer E. Lawrence, Physician, stationed at the Mason General Hospital, Brentwood, New York, who had for a period of time plaintiff-in-error under his supervision, testified on direct examination by the State on rebuttal that plaintiff-in-error could distinguish between right and wrong upon his dis-

charge. (State of the Case, Vol. II, page 609, lines 12 to 39, inclusive; page 610, lines 4 to 39, inclusive, and page 611, lines 4 to 19, inclusive.)

Again, on re-direct examination by counsel for plaintiff-in-error, Dr. Lawrence testified that no signs of mental illness were evident as of the 27th day of July 1945. (State of the Case, Vol. II, page 371, lines 22 to 34, inclusive, and page 360, lines 25 to 29, inclusive.)

The Court is respectfully invited to read the testimony of Captain Lawrence, which appears in the State of the Case, Vol. II, on pages 335 to 373 and pages 606 to 623, inclusive. To the same effect is the testimony of Captain Aaron Podolnick which appears on pages 623 to 628, inclusive, of the State of the Case, Vol. II.

It is to be noticed in the argument of the counsel for plaintiff-in-error under this point that no mention whatsoever is made as to the testimony of his expert witnesses, to wit, Drs. Waygood and Drayer.

Dr. Drayer, psychiatrist, testifying on behalf of the plaintiff-in-error, testified that it was difficult to fix the exact time at which the defendant was unable to distinguish between right and wrong, but it was his opinion he would put the time at the moment when the defendant found or believed that the girl was dead, to wit, after the crime had been committed. On cross-examination Dr. Drayer testified that the defendant was sane when he picked the girl up and carried her into the bushes and when he was in the alleged act of intercourse, but that he could no longer be positive in his answer if the defendant knew why the girl screamed and scratched him. (State of the Case, Vol. II, pages 577 to 598, inclusive.)

Dr. Waygood, psychiatrist, testifying on behalf of the plaintiff-in-error, testified that it was probable that the defendant was not in his right mind at some time during the occurrence of the evening's events and that would include the last moment that he was having sexual intercourse with the dead girl when he was scratched by her. On cross-examination, however, the doctor testified that the defendant knew what he was doing at the moment he carried the girl into the bushes and that he probably knew what he was doing while he was engaged in the act of intercourse but that it was not possible for him to fix the exact time when the defendant reached the point, where, in his opinion, the defendant couldn't distinguish between right and wrong. (State of the Case, Vol. II, pages 563 to 577.)

Drs. Yaskin and Spradley, two eminent psychiatrists, testified in rebuttal for the State that the plaintiff-in-error was sane at the time of the commission of the crime and that he could distinguish between right and wrong. Their opinion was based upon a history supplied by the plaintiff-in-error during two (2) psychiatric examinations performed on August 22, 1945 and August 31, 1945. (State of the Case, Vol. III, pages 629 to 670, and pages 671 to 699, inclusive.) Personal examination of the defendant and their experience also formed the basis for their expert opinion.

Thus we have for determination by the jury the question of fact as to insanity; the dubious and uncertain testimony of the witnesses on behalf of the plaintiff-in-error as contrasted with the definite, positive and certain evidence of the State's witnesses.

The verdict of the jury as returned establishes

the failure of the plaintiff-in-error to carry the burden of proving insanity to the satisfaction of the jury.

As to the contention that the verdict was against the weight of the evidence, a brief resume of the evidence produced by the State will demonstrate beyond any doubt that the jury was justified in returning the verdict that it did.

The defendant and the deceased girl, after participating in the celebration of V-J day at the Bellmawr Fire Hall went to the home of Mr. and Mrs. Creek to continue the festivities. They remained there until about a little after one o'clock on the morning of August 15, 1945. (State of the Case, Vol. I, page 161, lines 21 to 27, inclusive.) This was the last time anyone saw the victim alive. The next person who saw the plaintiff-in-error was Mrs. Helen Anderson, who testified that at about 2:30 or 3 o'clock in the morning of August 15, 1945 she saw the defendant covered with blood walking down the Black Horse Pike; that she had two opportunities to observe the defendant, whom she testified was covered with blood. (State of the Case, Vol. I, page 268, lines 21 to 29, inclusive.) The same day at six in the evening, witness Helen Anderson again saw the plaintiff-in-error standing at the bar at the Bellmawr Fire Hall and spoke with him. Her husband was with her. (State of the Case, Vol. I, page 270, lines 4 to 18, inclusive.) At this time she picked up the defendant's hands and put them on top of hers and she noticed the scratches thereon. She also observed, at the same time, the scratches on his face. Upon some remark being made the defendant did not respond but left the premises without giving any answer. (State of the Case, Vol. I, page 270,

lines 27 to 38, inclusive, and page 271, lines 4 to 15, inclusive.) She described the digs on his face as wider than a scratch and very much into the flesh just as though they had been down clawed. (State of the Case, Vol. I, page 271, lines 14 to 26, inclusive.)

The next person who saw the defendant was witness Harry Agnew and his wife Orilla Agnew, when they picked him up on August 16, 1945 at 10:30 in the morning in order to give him a lift. At the time the defendant himself called their attention to the scratches on his face. (State of the Case, Vol. I, page 240, lines 21 to 23, inclusive.) Witness Agnew described the scatches as being like gouges which could be seen without looking very hard. (State of the Case, Vol. I, page 241, lines 7 to 12, inclusive.)

Witness Willa Stoerrle and her daughter, living close to the pumping station, testified they heard a terrifying scream, which was definitely that of a woman, at about 1:30 A. M. on August 15, 1945. (State of the Case, Vol. I, page 289, lines 20 to 39, inclusive.)

Upon the arrest of the defendant by Officer Norton of the Mount Ephraim Police on the night of August 21, 1945, defendant attempted to conceal his identity. Upon being searched, he admitted that he should have been known because people had been looking for him for several days. (State of the Case, Vol. I, pages 260 and 261.) At the time of his arrest scratches were still noticeable. (State of the Case, Vol. I, page 261, lines 21 to 39, inclusive, and page 262, lines 4 to 7, inclusive.) In the early hours of the morning of August 22, 1945, defendant, in company with County Detectives, went to the scene of the crime and indicated the spot where he had thrown the pocket-book which contained the

clothing of the victim. The same were not discovered due to darkness. (State of the Case, Vol. I, page 314, lines 10 to 21, inclusive.) Defendant was returned to the Prosecutor's Office and a full confession was made. This Honorable Court is again invited to read the same which appears on pages 374 to 391 of the State of the Case, which tells in detail, better than the writer can explain, the manner in which the crime was committed.

During the neurological and psychiatric examinations conducted by Dr. Yaskin and Dr. Spradley on August 22, and August 31, 1945, defendant admitted that the reason he disrobed the victim and disposed of her body was to secrete the body and try to conceal the evidence of the crime; that he went home, put his bloody clothes into a bag and the next morning threw the bag with the bloody clothes into the Delaware River was for the same purpose. (State of the Case, Vol. II, page 656, line 20, ending on page 659.)

The manner of the disposition of the victim's body and the place of its disposal by the defendant is depicted in the exhibit offered into evidence by the State.

Plaintiff-in-error, in his brief on page 49, states that the decedent let her panties down and cites page 569 or page 469 of the State of the Case. Regardless of where the same may be found, it is respectfully submitted that the decedent did not let her panties down but that the same were taken off by the defendant, the same as he took every other article of clothing off the decedent. (State of the Case, Vol. II, page 469, lines 19 to 21 and lines 26 to 29, inclusive, and page 477, lines 4 and 5.) If the panties had been taken off defendant fails to explain how the same became blood stained. The

panties were multi-stained with human blood. (State of the Case, Vol. I, page 136, lines 9 to 33, inclusive.)

It is contended therefore, that the verdict as returned by the jury was justified in accordance with the facts produced by the State. Also that the verdict was not the result of mistake, passion, prejudice or partiality as is required under *State vs. Cox* (Supra); *State vs. Monia* (Supra); *State vs. Lederman* (Supra) and *State vs. Dworecki* (Supra).

CONCLUSION.

Upon the whole case it must be concluded that the defendant was afforded a full and fair trial. He was confronted with the witnesses; he was afforded full opportunity to present his defense; he had the benefit of counsel; he was surrounded by every legal safe-guard to assure a fair trial in an orderly and deliberate proceeding.

It is submitted that on the trial he suffered no manifest wrong or injury in the admission or rejection of the testimony, or in the charge of the court, or in any matter touching the conduct of the trial; and that no error intervened which in any wise prejudiced the defendant in maintaining his defense upon the merits.

For the foregoing reasons it is suggested that there was no error and the judgment of conviction in the Court Below should be, in all things, affirmed.

Respectfully submitted,

GENE R. MARIANO,

Prosecutor of the Pleas of Camden County,

Attorney for and of Counsel with the Defendant-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
HOWARD AULD,
Plaintiff-in-Error.

ON WRIT OF ERROR.

BRIEF OF PLAINTIFF-IN-ERROR.

Plaintiff-in-error, Howard Auld, was convicted in the Camden County Court of Oyer and Terminer, of murder in the first degree, upon an indictment for the murder of Margaret McDade, on August 15th, 1945. The court imposed the death penalty. Plaintiff-in-error was tried upon the theory that the murder was committed in perpetrating or attempting to perpetrate rape.

The entire record is brought up with the Writ of Error, for review on Specifications of Causes for Reversal, and Assignments of Error, and a review of the record as certified by the Trial Judge.

FACTS.

On Sunday, August 20th, 1945, at about two o'clock in the afternoon, the nude body of Margaret McDade, a young girl about 22 years of age was discovered by two small boys in a cistern, in the Boro of Haddon Heights, Camden County. She had been dead for three or four days according to Dr. William T. Read, Jr.

On August 22nd, 1945, plaintiff-in-error was arrested and charged with the murder of Margaret McDade.

It appears that plaintiff-in-error was twenty-five years of age and first met Margaret McDade on the evening of August 14th, 1945, during the celebration of V-J Day. They met in front of the Bellmawr Fire Hall, and again met at the Creek home, where everybody had been invited to complete the celebration. There they became very affectionate toward each other.

Shortly after midnight, Margaret McDade told Florence Hulse, that she was going to take a walk with Howard, the plaintiff-in-error. She was told by the witness, Florence Hulse, "Don't you know that Howard hasn't been out with a girl since he was discharged from the Army," and Margaret replied, "Yes, that's the guy I'm looking for, that's just the guy I'm looking for." Margaret was at the party with a boy friend, and when asked about her boy friend, replied, "I know, pretend that we are going to the bathroom, and then I can go outside." She went outside to join the plaintiff-in-error.

They left the Creek home and walked about 300

feet to a municipal pumping station. They started hugging and kissing, when she started kidding him that she could not go in the bushes, and he stated, "Well, I will carry you in," which he did. Margaret after some more loving and kissing in the bushes, lowered her panties, and she and plaintiff-in-error proceeded to engage in the act of intercourse. It was while they were in the act, that she hollered and scratched him, and he struck her in the face. After he struck her, he got up and said, "Well, come on, let us go back to the party". She didn't get up, so he went to her and felt her pulse. He did not feel any pulse and thought she was dead. He faintly remembers picking her up and putting her across his shoulder, but did not remember what he did with the body.

The proof submitted by the State was practically all circumstantial, no one saw the plaintiff-in-error kill Margaret McDade. There is a statement in the evidence in which he stated that he tried to have intercourse with her, but he guessed she was too little or something (Case, p. 379). While in the act of intercourse, she hollered, and started scratching, and he struck her.

The defense was that the act of intercourse was voluntary on the part of Margaret McDade, and insanity. The defense of insanity was based upon a well-defined chain of circumstances and facts giving a complete history of causes, the symptoms and the facts down to the time of the murder, and was thoroughly established by credible medical evidence. The proof of the mental condition was from the hospital records, from medical doctors who treated him while in the several hospitals, and from witnesses who had observed plaintiff-in-error during his stay

in the hospital in Hollandia, Dutch New Guinea, and Mason General Hospital, in New York, and by eminent psychiatrists.

The proven facts clearly established that the plaintiff-in-error had suffered from symptoms of insanity, later diagnosed as insanity, which condition had manifested itself since February, 1945, many months before the murder.

He enlisted in the Military Service on September 16th, 1940. He went overseas in April, 1942, saw combat duty in the Pacific Theatre of Operations. His duties were to obtain information behind the enemy lines concerning the strength, location for bivouac and terrain features. Such information after obtained was transmitted to his superiors. In February, 1945, he was exposed to the explosion of a 500 pound bomb in Buna. After that experience, everything went "blank" from February, 1945, to May, 1945. He had a complete amnesia for that period.

During that period the hospital records disclose that he was confined in the 27th General Hospital, Hollandia, Dutch New Guinea, a Military hospital, where he was adjudicated insane by the Army doctors. He remained in that hospital until he was evacuated to the Mason General Hospital, Brentwood, New York, where he was confined from May 6th, 1945, to July 27th, 1945. He was admitted to the 27th General Hospital, in March, 1945, from the casual camp because he had been violently homicidal against a Sergeant with whom he had had an argument. After a few days at the hospital, he calmed down, seemed strange, but not entirely abnormal. On March 24th, 1945, was transferred to a replacement depot in the hope that he would be rotated

back to the States, was admitted to the hospital the same day in a confused, excited state (Exhibit D-2, Sheet 19, Case, p. 844). Restraint and sedation were necessary, and he was described as grossly psychotic (Exhibit D-2, Sheet 19, Case, p. 844). Was evacuated to the Zone of the Interior with a diagnosis of psychosis, unclassified. Dr. Yaskin testified that psychosis was synonomous with insanity (Case, p. 677).

Upon his admission to the Mason General Hospital, he was confined in a closed ward because he was resentful, inappropriate in some of his emotional responses, and remained very belligerent. He showed some diminished affective resonance; dreamed about combat occasionally, would bite his finger nails, and became irritated by noises; under pressure showed a facial tic. (Exhibit D-2, Sheet 20, Case, p. 845.) Upon admission to the Mason General Hospital, a diagnosis of psychosis, unclassified, was made, and upon release from the hospital on July 27th, 1945, with a diagnosis of psychosis, unclassified, active symptoms in remission, manifested by excitement, confusion and threatening attitude.

The various points which the plaintiff-in-error chooses to argue in his brief here follows:

POINT I.

This comprehends Specification of Causes for Reversal No. 11, and Assignment of Error No. 11.

This point relates to the refusal of the Trial Court to instruct the following request submitted by plaintiff-in-error (Case, pp. 754-755, Volume 3).

"The evidence that has been offered and accepted in this case on behalf of the State and the defendant is for the purpose of proving guilt or innocence of the defendant in accordance with the rules of law which I have heretofore given you. The same evidence, however, as offered by either the State or the defendant may be used and considered by you not only for the purpose of determining guilt or innocence of the defendant, but, in case of first degree conviction, the punishment to be inflicted upon this defendant. You have been instructed as to the requirements for legal insanity in New Jersey. If you should find that this defendant was legally sane on August 15th, 1945, the time when the homicide is alleged to have been committed by the defendant, but, should you also, from this same evidence, find that he suffered from some mental irregularity or abnormality short of legal insanity, you are justified in giving this due consideration in determining the punishment to be inflicted.

"In other words, if you find that the evidence falls short of establishing insanity as defined by New Jersey law, you are not obliged to disregard or discard said evidence for all purposes, and you are entitled to consider said evidence, in case of a first degree conviction, in selecting the punishment under the authority vested in you as previously explained."

Insanity was the defense interposed by the plaintiff-in-error.

The Court refused to charge said request in its entirety (Case, p. 746). The plaintiff-in-error was

entitled to this instruction under the Statute which provides that:

> "Every person convicted of murder in the first degree shall suffer death, unless the Jury shall, by their verdict, and as a part thereof, 'upon and after the consideration of all the evidence' fix the punishment as life imprisonment." Revised Statutes 2:138-4, N.J.S.A.

Upon this inquiry, the Jury was not limited to a consideration of some specific phase of the evidence, or that which was inadequate to sustain the particular defense to which it was directed, but was obliged to consider all of the facts introduced at the trial.

Under the provisions of the Statute, the Jury, in a murder case has a dual function of determining both the guilt and penalty, in the event of a first degree conviction. This double power of the jurors, because of the very fact that it is uncommon, requires the utmost care and precision in its definition. It is urged that when, in the main charge, the Court defined at length a standard by which insanity is determined under our law, there was fixed in the minds of the jurors, a criterion with respect to insanity, which governed their determination as to guilt or innocence of the defendant. Obviously, in this case, the Jury rejected the testimony tending to show that the plaintiff-in-error was insane, by finding him guilty of murder in the first degree. The jurors were entitled to know, clearly and plainly, and without uncertainty, that under our law, they had the power to reject the testimony as to insanity on the issue of guilt, and at the same time, give it consider-

ation and respect its weight on the issue of the penalty.

All that the Court was requested to charge was that *"all the testimony legally adduced at the trial should be considered on both issues of guilt and penalty"*. There is nothing in the charge as given to prevent the jurors from receiving the misapprehension or mistaken idea that evidence, once having been rejected by them on one issue, was to be rejected by them on the other issue, to wit, the issue of punishment.

The Legislative intent to give to the Jury the power of fixing the penalty cannot be served and fulfilled, unless the nature of that power is fully, completely and plainly explained to them. It is an extraordinary power, relatively recent in our law and stems from the desire of the Legislature to soften the harshness of the death penalty, theretofore the exclusive penalty for first degree conviction. The jury is entitled to know its powers in all of the ramifications thereof, minutely and in detail, and there can be no just purpose in withholding from a Jury a legitimate, proper recital of its powers.

The jurors should be instructed with a thorough, adequate definition and explanation of the unique power bestowed upon them in a capital case. A barren minimum statement in the closing remarks that they can return a *"verdict of murder in the first degree with a recommendation of imprisonment at hard labor", was not a response to the request to charge.* (Case, p. 745.)

It is admitted that the Trial Court is not required to charge a written request verbatim. *State vs. Genese*, 102 N. J. Law, 134, 130 A. 642. Neverthe-

less, the Court is required to charge a proper and relevant request in its complete essence and without distortion.

In the case of *State vs. Tanzarello,* 1 N. J. Misc. 375, the Court said:

> "Where (as here) a request to charge calls for the application of a correct legal principle if applicable to the testimony and clearly material to the defendant's case, he is entitled to have it distinctly charged in such a way as not to leave room for misapprehension or mistake by the Jury. State vs. DeGeralmo, 83 N. J. Law, 135".

The indictment in the instant case was murder, with the Prosecutor demanding the death penalty. All that the plaintiff-in-error requested the Court to charge was "that the Jury should consider all of the testimony after they had reached a verdict of murder in the first degree for the purpose of the punishment to be inflicted upon the plaintiff-in-error", which it denied.

In the case of *State vs. Roe,* 45 N. J. L. 49, the Court said:

> "One of the most important duties of the Court is to declare the law applicable to a case to a Jury when requested so to do."

By the very language of Revised Statutes, 1937, N. J. S. A. 2:138-4, the Jury, after a consideration of all the evidence, has the responsibility of determining whether to make or refuse a recommendation. That matter is entirely within the province of the Jury, and requires the support of evidence,

and the Trial Court was requested to so instruct the Jury, which it refused to do.

It will be further observed that an examination of the Court's charge (Case, pp. 722-746), shows that it covers 24 printed pages, and that not in a single instance was the requested instruction charged in substance, not in a single instance was the Jury instructed that it was bound to give consideration to all the evidence in determining whether to make or refuse a recommendation.

It is respectfully submitted that where a request to charge calls for the instruction upon a legal principle applicable to the testimony, and clearly material to defendant's case, he is entitled to have it distinctly charged in such a way as to not leave room for misapprehension or mistake by the Jury. *State vs. DeGeralmo,* supra—*State vs. Roe,* supra.

In the light of the Court's refusal to charge the requested instruction, how could the jury know its right and power to reject evidence on the issue of guilt, and retain, consider it, and respect its weight on the issue of penalty? Under the law, the jury was not limited to a consideration of some specific phase of the evidence, or under a duty to put aside evidence that was not adequate to sustain the particular defense to which it is directed. The jury is obliged to consider "all of the evidence introduced at the trial".

The failure of the Trial Court to charge the request, left room for misapprehension or mistake by the jury. In a capital case where the stake is life or death, the administration of justice must be more scrupulously full and precise, and not provide room for uncertainty, speculation, misapprehension and mistake by the jury. Such refusal to charge the requested instruction constitutes prejudicial error.

POINT II.

This relates to Assignment of Errors Nos. 1, 2 and 4, and Specification of Causes for Reversal Nos. 1, 2 and 4.

The main instance here is that the Court wrongfully refused to instruct the jury on the law as to punishment in murder cases, notwithstanding, it was expressly requested so to do.

In arguing this point, the particular matters in the specification of causes for reversal, and assignments of error involved are as follows:

1. The Trial Court refused to instruct the following request to charge submitted by the plaintiff-in-error (Case, p. 877):

> "There are two degrees of murder, first and second, and they are distinguished by our statute as follows: Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree, and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree.
>
> There is a further distinction between first and second degree murder with respect to the imposition of the punishment. In cases of con-

viction of first degree murder, the power and authority to impose the punishment rests with the jury. It is you, in such case, who determine whether the defendant shall be put to death or imprisonment at hard labor for life, and the statute defines your power and authority 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 its verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

2. And the Court refused to instruct the following request to charge, submitted by plaintiff-in-error (Case, p. 878):

"Every person convicted of murder in the first degree shall suffer death unless the jury shall, by their verdict and as a part thereof, upon and after the consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

3. And the Court refused to instruct the following request to charge submitted by the plaintiff-in-error (Case, p. 879):

"I charge you that if after considering all the evidence you find the defendant guilty of murder in the first degree, under your oaths as jurors, you may at the time of rendering your verdict recommend imprisonment at hard labor for life."

All of these requests to charge the jury were denied (Case, p. 746).

Requests Nos. 1, 2 and 4 in the main, contain the principle that if the plaintiff-in-error be found guilty of murder in the first degree, the defendant shall suffer death, unless the Jury, upon and after a consideration of all the evidence, recommends imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

Request No. 2 was in the very language of the Statute.

It was the duty of the Trial Court, upon the proper presentation of the requests, to charge the requests if they contained the law applicable to the situation. *Roe vs. State,* supra; *State vs. DeGeralmo,* supra; *State vs. Tanzarello,* supra.

In speaking of this statutory provision in the charge to the Jury, the Trial Court used the following language (Case, pp. 745-746):

> "With these instructions I have completed what I considered to be the principles of law which must govern you in your determinations and in the rendering of your verdict, which can be only one of five possible verdicts.
>
> *First,* not guilty.
>
> *Second,* not guilty by reason of insanity, in which case you will be required further to state in your verdict whether or not said insanity does continue.
>
> *Third,* guilty of murder in the second degree.
>
> *Fourth,* guilty of murder in the first degree with recommendation of imprisonment at hard labor for life, or
>
> *Fifth,* guilty of murder in the first degree."

Surely, such a charge was not a legal compliance with the requests. The Court not having dealt with the subject matter of the request in any other part of the charge.

If the requests were proper, they certainly were not charged by what the Court said. It is not a compliance with the request made to simply charge that *"you may bring in one of five verdicts—guilty of murder in the first degree with recommendation of life imprisonment at hard labor for life"*.

Manifestly, this charge which was all the Court said on this subject submitted nothing to the jury.

At the outset, in order to simplify this discussion, it is conceded that the Trial Court did not necessarily have to charge a request in the exact language set out by the defendant in his request to charge, provided the principles of law stated therein are clearly and unequivocally charged either in the main charge or in a charge substituted for the instruction requested. However, it is contended that when a request to charge embodies a correct statement of law applicable to a case and is fairly raised by the proffered instruction, and is material to the issue involved, the Trial Court should charge upon it clearly and distinctly. *Roe vs. State* (Supreme Court), 45 N. J. Law, 49; *State vs. DeGeralmo,* 83 N. J. Law, 135, 83 A. 643. See also *State vs. Tanzarello,* 1 N. J. Misc. 176.

Taking these various requests, it will be noted that in the main they are all concerned with the principle of law that every person convicted of first degree murder shall suffer death, unless the Jury shall, by its verdict and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

Nowhere in the charge of the Trial Court does this appear to be stated. Such an instruction was asked for, is applicable to the facts, was germane, relevant and stated the law properly.

It is contended that the defendant below was entitled to have the Jury instructed *"that every person convicted of murder in the first degree shall suffer death, unless the Jury shall, by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.* He was entitled to have explained the effect of the Statute and the power of the Jury to make such recommendation.

Assuming that what the Court said may be considered as part of the charge, it is criticised because under the Statute, such a verdict and recommendation can only be returned after a consideration of all the evidence.

In the case of *State vs. Jefferson,* 34 A. (2nd) 883, 131 N. J. Law, 70, Justice Bodine, speaking for the Court of Errors and Appeals, said:

> "It is argued that in arriving at the recommendation of life imprisonment, the Jury need not consider the evidence in the case. This may have been so under the Statute existing at the time. P. L. 1916, page 576; but the Legislature, realizing that the decision in the Martin case was improper, there being two separate dissenting opinions, amended the Act, P. L. 1919, page 303, to the end that it provide as in the present revision and requires that a recommendation shall be made after considering all the evidence".

In the instant case, the charge is silent as to whether the Jury need consider all of the evidence to recommend such penalty. In the single instance that the jury was instructed as to the law, applicable to the case, it was in the following language (Case, p. 736):

> "But if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.
>
> All murder is presumed in the law to be murder in the second degree and it is the duty of the State to overcome the presumption in order to make it a case of murder in the first degree.
>
> In this case, the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing itself within a Statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape shall be murder in the first degree."

The impression left upon the jurors must have been that the only verdict that could be returned, if they found the plaintiff-in-error guilty, was murder in the first degree, because nowhere in the charge was it instructed, *if, after consideration of all the evidence it found the defendant guilty of murder in the first degree, under their oaths, the jurors could, at the time of rendering their verdict, recommend imprisonment at hard labor.*

It is respectfully submitted that the several requests contained a correct statement of the law, were applicable to the testimony, and clearly mate-

rial to the defendant's case, and that he was entitled to have them distinctly charged, and that they were denied by the Court. *Aldrick vs. Peckham,* 74 N. J. Law, 711, 68 A. 345; *Mellon vs. Victor Talking Machine Co.,* 77 N. J. Law, 670, 73 A. 474. An examination of the charge shows that the precise points raised by the requests were not adverted to by the Court, that is, that the jury, after a consideration of all the evidence could, as part of its verdict, recommend imprisonment at hard labor for life.

It is contended that the requests to charge were statements of law which the plaintiff-in-error was entitled to have charged, and a failure and refusal of the Court to charge them constitutes legal error for which the verdict should be reversed. *State vs. DeGeralmo,* supra—*State vs. Roe,* supra.

POINT III.

This concerns Assignment of Error No. 32, and Specification of Causes for Reversal No. 32.

The question and answer should be recited to properly present this point. The following question was propounded to the witness, Dr. William T. Read, Jr.:

> "Q. Now, you can go into your diagnosis.
>
> A. There are notes I made at the time and I will read it, if I may. Due to the absence of fractures, and presence of rather severe congestion of the lungs, liver and spleen, it is felt that the most likely course of events was that the individual was in a state of shock due to the multiple contusions and lacerations and could well have been unconscious due to concussion

of the brain which might not leave any anatomic changes to be seen at autopsy. If the body was dropped into the sewage matter, death might not have occurred until suffocation would take place beneath the surface of the sewage material. The signs of trauma about the external genitalia make it seem most probable that the woman had been raped."

Request made to strike that portion of the answer "make it most probable that the woman had been raped", and such request denied (Case, p. 208).

It is contended that the witness could not state what unquestionably was his conclusion, and therefore improper and incompetent.

"Rape", as defined by our Statute, N. J. S. A. 2:163-1, "is the carnal knowledge of a woman forcibly against her will".

Dr. Read could testify as to the physical condition of the girl's body, but whether she had been *"raped"* was solely for the province of the jury, because it involved the question of "consent" or "forcibly against her will."

The accepted rule seems to be that when a witness makes an irresponsive answer, counsel for the adverse party is not always within his rights in moving to strike out the answer. The examiner may move to strike out the answer or part of the answer which is not responsive to a competent question, but opposing counsel has not such a right. The test seems to lie in the competency of the testimony. If the question be competent and the answer incompetent, either may move to strike out the answer. *State vs. Bleefield,* 115 N. J. L. 76, 178 A. 561, affirmed (Err. & App.) 115 N. J. L. 559, 181 A. 168.

In the instant case, that part of the answer "make it seem most probable that the woman had been raped" should have been struck out on the motion of the non-examining counsel, not because it was irresponsive, but because it was incompetent, since it was a conclusion. Its incompetency would make it subject to exclusion on the motion of counsel for defendant. *State vs. D'Adame,* 84 N. J. Law, 386, 86 A. 414.

In the case of *Rubin vs. Trawbridge Sign Co.,* 99 N. J. Law, 216, 122 A. 763, the Court summarized the rule as follows:

> "Where an answer, or part of an answer, is irresponsive to a competent question, the examiner may move to strike out what is irresponsive, whether it be competent evidence or not; but if competent, the adverse party has no such right. If an answer be relevant for any purpose, it may stand as against a motion to strike out. If, however, the question be competent and the answer incompetent, the adverse party may move to strike out the answer and he does not lose this right by not objecting to the competent question". *State vs. D'Adame,* 84 N. J. Law 386, 86 A. 414.

The witness by that answer was allowed to tell the jury that he did not believe that Margaret McDade voluntarily submitted to the suffering necessary to have brought on the physical condition which he found; further, by his answer, he was permitted to tell the jury that, in his opinion, the result was not accomplished with her "consent", and that the carnal abuse was done by force; in other words, *"that a rape had been committed on Mar-*

garet McDade". What the prosecution was lacking in this important element, required to constitute rape, the witness was permitted to tell the jury that, in his opinion, the act was committed against her consent, and consequently by force. The witness was allowed to testify that after an examination of Margaret McDade, three or four days after her death, over objection, that the signs "of trauma about the external genitalia, made it seem most probable that the woman had been raped".

The testimony was clearly incompetent. It was going far beyond the realm of expert testimony to allow him to give an opinion, that the evidence of trauma indicated to him that the decedent had been raped. It was for the jury to determine whether the signs of trauma about the external genitalia made it seem probable that she had been raped. This testimony encroached upon the jury's province. He was permitted to give an opinion on a matter, on which the jurors alone were competent to pass upon and its duty alone to decide. The evidence was improper and the motion to strike should have been allowed.

This evidence was rendered still more objectionable because the prosecuting attorney, in his summation, was permitted to quote with approval, as a fact proven in the case, that "the sign of trauma indicated that the girl had been raped".

The distinguishing feature of the crime of rape is that force shall be used in its commission. There can be no question that injuries to the hymen would have been the same whether the intercourse was by force or by consent. Now is it reasonable to suppose that the testimony of Dr. Read, who had been called to make the examination of the girl, would

have great weight and a controlling influence with the jury? It cannot be said that his opinion, illegal and improper, in the presence of the jury, did not prejudice the plaintiff-in-error, or that it did not control the verdict. He was permitted to express an opinion upon a doubtful fact, which was for the jury to determine.

It is contended that that part of the answer was improper and incompetent, and the motion to strike it out should have been granted, and the refusal to grant such motion was prejudicial error.

POINT IV.

This comprehends Specifications for Causes for Reversal No. 23, and Assignment of Error No. 23.

The Trial Court charged the jury as follows (Case, p. 740):

> "The testimony concerning the first defense as given by the defendant has already been outlined above and will not here be enlarged on further other than to suggest at this point that which, if I did not, I would feel in this case would closely approach a pusillanimous evasion of my own duty, and that is to consider with you the credit to be attached to the witnesses generally and to the defendant, Howard Auld, in particular. I have already laid down certain generally reliable norms by which one may determine the truthfulness or mendaciousness of a witness, the very nature of which discloses that there is not available means of judgment that will permit a reasonable man to maintain

> ness is a liar. But the experience of the years has resulted in the distillation from the day in and day out use of the commonly accepted and universally applied standards, some of which provide a better divination of the truth than others. One of these is expressed in the evidential maxim known to the law, false in one thing, false in all things."

This is clearly an erroneous and harmful declaration of the rule—falsus in uno, falsus in omnibus, or as declared in the charge, false in one thing, false in all things. It makes the rule to witnesses generally, but applicable to the defendant, Howard Auld, *in particular.*

The cases seem to be in harmony on this point that the application of this rule is applicable to *all witnesses* when the false testimony or statement is wilfully or knowingly or intentionally given or made, concerning a material fact of the case. *State vs. Dugan,* 84 N. J. Law, 606, 89 A. 691, affirmed by the Court of Errors and Appeals, 85 N. J. Law, 730, 89 A. 1135. *State vs. Samuels,* 104 A. 322.

There should be no distinction as between witnesses and the plaintiff-in-error as to the application of the rule. The instruction bears the import that the jury should give particular attention to the defendant's testimony, with respect to the application of the rule—false in one thing, false in all things.

The credibility of accused, like that of every other witness, is for the jurors to determine; and if they believe his testimony to be true, they should act upon it, or if they disbelieve it, they should disregard it; and, if a general rule, it is improper for the Court, in its instructions, to invade the province of the Jury in this regard. *Corpus Juris* 16, page 958.

And it is error, to instruct the Jury that it must or should consider his interest in the results; that they should, because of such interest, regard his testimony with greater caution. *Corpus Juris* 16, page 959.

The statement of the Court went beyond mere comment upon the evidence, it was a definite characterization of defendant's testimony, all of which make it apparent that the charge was harmful and erroneous.

POINT V.

This comprehends Specifications for Causes for Reversal Nos. 12, 13 and 15, and Assignments of Error Nos. 12, 13 and 15.

It will be well, at this point, to call the Court's attention to the fact that the defense was insanity.

After several prospective jurors had been examined and questioned on their voir dire, and two jurors, Roger Allen and John A. Reynolds, had been sworn and taken their places in the jury box, the Prosecutor, in the presence of the two jurors, informed the Court that he had just learned that no plea had been entered by the defendant, and requested that the defendant be arraigned to plead to the indictment. Defendant was requested by the Court to stand before the Court, and the Court stated "Prosecutor, let the indictment be read to the defendant (Case, p. 50). The indictment was read by the Prosecutor. Some colloquy between the Court and counsel for the defendant ensued, in which the Court asked counsel if there was any disability under which the defendant suffered which

required him to stand mute, and counsel answered "None I know of" (Case, p. 51). During the entire proceeding the defendant stood mute. A plea of not guilty was entered for defendant (Case, p. 51). At no time nor at any stages of the proceeding was the defendant requested to plead nor *did he refuse to plead.* Neither the Court nor the Prosecutor ever asked the defendant to plead to the indictment, therefore he could not have refused to plead. The Court's attention is also called to the fact that all of this was in the presence of two jurors already selected and sitting in the jury box.

N. J. S. A. 2:189-5 provides that:

> "If any person indicted for any offense against this State shall, on being arraigned or called to answer the matter charged in such indictment, stand mute, a jury shall forthwith be impaneled to determine whether the person so standing mute does so obstinately and on purpose or by the providence and act of God. If the verdict of the jury is that such person stands mute by the providence and act of God, the court shall cause him to be remanded to prison and shall not proceed against him until he shall have recovered therefrom, but, if the verdict of the jury is that such person stands mute obstinately and on purpose, the court shall cause to be entered upon the indictment against him the plea of not guilty to be entered, and shall also cause the like plea of not guilty where any person, indicted as aforesaid, shall refuse to plead or answer such indictment, and all cases shall proceed upon the trial in like manner and in all respects as if he had voluntarily pleaded the same plea thereto".

It is contended that the Court erred in ordering that a plea of not guilty be entered. Under the provisions of the foregoing Statute, when a defendant is called upon to plead, stands mute, duty is imposed upon the Court to forthwith impanel a jury to determine whether the person so standing mute does so obstinately and on purpose, or by the providence and act of God. This, the Court failed to do. All that happened in the case at bar was the calling of the defendant to stand before the Court, the reading of the indictment, defendant not asked how he plead, the Court asking counsel if he knew of any disability, and upon being answered, "None that I know of", ordered that the plea be entered. As stated before, during all of such proceedings, the defendant stood mute. The defendant did not refuse to plead because he was not asked to plead to the indictment.

Secondly, the proceeding is criticised and was prejudicial to the plaintiff-in-error because it was in the presence of the two jurors, sitting in the jury box, observing such conduct on the part of the plaintiff-in-error. It gave them the opportunity of observing the defendant's conduct, and who can tell the results of such observations if they felt that his standing mute was obstinate and on purpose.

It is, therefore, respectfully contended that error was committed in ordering that the plea of not guilty be entered under the circumstances.

POINT VI.

This Specification refers to Assignment of Error No. 33, and Specifications of Causes for Reversal No. 33.

This point concerns the question propounded to the witness, Dr. H. Edward Yaskin, *in rebuttal.* This point can be best stated by what the Court said (Case, p. 644):

> "The Court: Excuse me, Mr. Palese, the problem of the Court now is to decide whether or not the credibility of this statement, 'I don't remember' supports the statement made by the witness at the time of the examination which he denied remembering taking place. Is there anything further you want to add on the record. I am not going to rule now. I am going to make a little inquiry of my own."

Later on, the Court:

> "I will deny your motion and allow your exception." (Case, p. 646.)

The plaintiff-in-error, on cross-examination, stated that he did not remember being examined by the witness, Dr. H. Edward Yaskin. In rebuttal, Dr. Yaskin was permitted to testify, over objection, *that plaintiff-in-error had told him that "at the age of sixteen years, he was arrested for breaking and entering and he served two years, two months, I think this occurred in Delaware. In 1933, at the age of eighteen years, he was arrested for stealing manhole covers, which he sold for scrap and he was sent*

to Ancora at that time. At the age of nineteen, he was arrested for breaking and entering" (Case, p. 633, ll. 25-33).

Objection was interposed upon the ground that the State could not prove other crimes committed by the plaintiff-in-error, and that it was not proper rebuttal.

It is well-established in this State, that on the prosecution for a particular crime, evidence which in any manner shows or tends to show that the accused had committed other crimes, wholly independent from that for which he is on trial, even though it is a crime of the same sort, is irrelevant and inadmissible. 16 *Corpus Juris,* 586; *State vs. Bullock,* 65 N. J. Law, 557, 47 A. 62; *State vs. Snover,* 65 N. J. Law, 289, 47 A. 583; *Clark vs. State,* 47 N. J. Law, 556, 4 A. 327. On the trial of a person for one crime, evidence that he had been guilty of other crimes is irrelevant. *State vs. Raymond,* 53 N. J. Law, 260, 21 A. 328, and other cases there cited. This is the general rule, *State vs. Bloom,* 89 N. J. Law, 418, 99 A. 125.

It is contended that such testimony would have been irrelevant and improper had it been offered in the State's case, and surely could not be offered in rebuttal, to refute the statement and testimony that "he did not remember being examined by Dr. Yaskin".

It is discretionary with the Prosecutor whether he will introduce any evidence in rebuttal, but where he so decides to do, he may introduce in rebuttal, any competent evidence which is a direct reply to or a contradiction of material evidence introduced by defendant, or which is brought out on cross-examination. 16 *Corpus Juris,* page 867.

It is respectfully submitted that the admission of such testimony, over objection, was erroneous and harmful to the plaintiff-in-error. *State vs. Bloom,* supra.

POINT VII.

This concerns Specifications of Causes for Reversal No. 26, and Assignment of Error No. 26.

They refer and concern the question propounded to the witness, Dr. Calvin S. Drayer, and the sustaining of the objection thereto.

To properly argue this point, reference must be made to the question and answer (Case, p. 596):

> "Mr. Palese: It hasn't been asked and I am trying to clear up. The Prosecutor asked whether he was sane or insane and I want to know his status.
>
> "The Court: I will sustain the objection.
>
> "Mr. Palese: Do I understand your Honor will not let me prove what the mental condition was prior to the time he took a walk.
>
> "The Court: I sustain the objection.
>
> "Mr. Palese: I want to—I want to prove by this witness from the facts in the hypothetical question whether or not he can give us his opinion as to the mental condition of this defendant before he left with this girl.
>
> "The Court: It will be noted on the record." (Case, p. 597.)

It is argued that it was error for the Trial Court to refuse to admit evidence of the defendant's mental condition on the evening of August 14th and 15th.

Dr. Drayer had just testified in answer to a hypothetical question, "Yes, I would regard him as insane within the legal definition of insanity".

> Question: Dr. can you tell us when was the first time of the bringing in of the insanity—if you can, from the facts you have presented to you.
>
> Answer: I have already testified that it was at the moment he regarded the girl as dead, but I must first qualify that by saying that a burst of anger happened, and that is often one of the signs under the legal definition of insanity.

It will be noted from such testimony, that Dr. Drayer testified that at the moment defendant regarded the girl as dead, from that point on he was in a state of insanity.

The question propounded to him was, what was his opinion of the mental condition of the defendant prior to that time, which the Court refused to permit. Dr. Drayer was surely competent to answer that question from the facts included in the hypothetical question. He was a physician, a graduate of Washington Medical School, St. Louis, Mo., in 1931, had practiced his profession since that time, 1931 to 1938, specialized in Neurology and Psychiatry and had been associated and connected with many hospitals in Philadelphia. Had been engaged in research and clinical work at the Jefferson Hospital, and on January 12th, 1942, enlisted in the Military Service. He filled a number of Psychiatric positions at Camp Lee and Camp Pickett, and then went overseas at the time of the invasion of Africa and became the Psychiatrist to a number of hospitals. In July, 1944, became Psychiatric Consultant to the

Surgeon of the 5th Army, and was discharged from the Army with the rank of Lieutenant Colonel. Under his personal charge, he had for care and treatment, while in Africa and in Italy, about 500 soldiers in the hospital wards, all psychiatric cases.

The proffered testimony was relevant because insanity was the defense interposed by plaintiff-in-error.

In the case of *State vs. James*, 96 N. J. L. 132, 114 A. 553, the Court did not permit testimony as to the insanity in the family of the defendant, because the defendant had not pleaded insanity. The Court said:

> "The Legislature could never have intended by this Act to open the door to the trial of a collateral issue, such as insanity in the family of the prisoner who had not pleaded insanity in himself as a defense at bar."

It may be well to here restate the evidence of the mental condition which had been disclosed at the trial. In February, 1945, defendant was exposed to a 500 pound bomb in Buna. Upon his admission to the Military hospital in Hollandia, Dutch New Guinea, he was in a confused state, restraint and sedation administered, and was described as grossly psychotic. He was evacuated to the Zone of the Interior with a diagnosis of psychosis, unclassified; was evacuated to the States and was admitted to the Mason General Hospital, in New York, in 1945. Had a complete amnesia during the trip from Hollandia to New York. Upon admission to the Mason General Hospital, was confined in a closed ward for some time because he was very belligerent and inappropriate in some of his emotional responses;

dreamed about combat occasionally and would bite his finger nails; suffered a complete episode of insanity while in the hospital in Hollandia. Upon his discharge from the hospital, a diagnosis of psychosis (insanity unclassified) manifested by excitement, confusion and threatening attitude caused by severe two and one-half years overseas in the Southwest Pacific Theatre of Operations with twenty-four months of combat duty. The symptoms at that time were in remission. On July 27th, 1945, was awarded 50% disability by Board of Officers, Mason General Hospital, upon a diagnosis of psychosis, unclassified (active symptoms in remission); had been drinking whiskey all day of the celebration.

Dr. Drayer had also examined the defendant. That from such facts and his examination of the defendant, he was asked to express an opinion—first, his opinion as to the sanity or insanity of the defendant at the time of the alleged criminal act, and he expressed the opinion that the defendant was insane at the time of the commission of the act.

He was then asked as to his opinion, giving consideration of the facts in the hypothetical question, of the mental condition of the plaintiff-in-error on the evening of August 14th, 1945. The Court sustained the objection to the question.

This, it is contended was error on the part of the Court. The opinion of a qualified expert is admissible on the issue of insanity. The expert may be permitted to give his opinion in answer to a hypothetical question without any professional knowledge of acquaintance with the individual inquired about. 16 *Corpus Juris*, 752.

POINT VIII.

This embraces Assignment of Errors Nos. 25 and 27, and Specification of Causes for Reversal Nos. 25 and 27.

This concerns the testimony of Joseph J. Fitzgerald, by whose testimony a photostatic copy of the service record (Exhibit S-24, pp. 769-805), was placed into the evidence, purporting to be the service record of the plaintiff-in-error, and permitting the witness, over objection, to answer the following question (Case, p. 705):

> "Will you turn to that part of the service record of the defendant which states that, or has anything in it concerning the actual time spent in confinement by the defendant."

The witness, Joseph J. Fitzgerald was permitted, over objection to read from the record. No testimony as to how the record was made, or how the information contained in the record was obtained. The entries in the record had not been made by the witness, and therefore there was no right of cross-examination to determine the accuracy of the statements contained in the record. It was prejudicial error to the defendant, especially as it was made the subject of comment by the Prosecutor in his summation to the Jury (Case, p. 718).

It may be well to call to the Court's attention as to the position the witness held, and his association or connection with the service record. He was the Administrative Assistant to the Director of the Record Division of the Adjutant General's Office, War Department, with offices in Washington, D. C. (Case,

p. 700). His duties were the proper functioning of the records, Custodian of the records of the Administration (Case, p. 700).

It will be noted that the witness had not kept or made any entries in the service record, or was there any proof that it was the service record of the plaintiff-in-error. The Court's attention is also called to the fact that the record was kept in St. Louis, Mo., from ten days after the soldier named in the service record was separated from the service. It is apparent that the witness had not made a single entry in the record, had never seen or examined it until it was sent to him from the St. Louis office, so that he could bring it to Camden, New Jersey, and have a photostatic copy of the record made. Under such circumstances, he was permitted to examine the record for the purpose of answering the question "Will you turn to that part of the service record of the defendant which states that, or has anything in it concerning the actual time spent in confinement by the defendant".

A somewhat similar situation was considered by this Court in the case of *State vs. Deegan,* 133 N. J. Law, 263, 44 Atlantic (2nd), 111. Justice Donges speaking for the Court, said:

> "The next point has to do with the refusal of the Court to admit in evidence the record of William Harry McKim, grandfather of the defendant, who was for some time a patient at the Middletown State Hospital, which it was testified, is a hospital for the insane. The witness produced was Secretary to the Director of the Hospital. There was no proof of any knowledge by the witness of the contents of the proffered paper. A witness may testify to entries

made by him, but may not testify to entries made by others. State vs. Shapiro, 89 N. J. Law, 319, 98 A. 437."

And again in the case of *State vs. Deegan,* supra, in giving consideration to the army record of the defendant, the court, said:

> "It is next urged that it was error to sustain the State's objection to a question propounded to one of the defendant's medical expert witnesses. The Army record of defendant, made at Fort George G. Meade, offered by defendant, was admitted in evidence, without objection, on the testimony of the Assistant Registrar of the State Hospital. He was not a physician. He was the custodian of records. There was no testimony by the medical man who examined or treated defendant. Defendant had whatever benefit flowed from the exhibit, without the opportunity for the State to examine the persons who made it."

He was then asked the question concerning a certain entry in the record which was overruled, and Justice Donges, continuing said:

> "It is apparent that, in the absence of testimony by the physician who made the report as to the meaning of the language used, it was improper for this witness to state what the examiner meant by the language used."

And in the case of *State vs. Shapiro,* supra, this Court held "that it was not error to exclude a hospital record because such records, in themselves,

are not evidential, and may not be used except to refresh the recollection of the witness as to entries actually made by the testifying witness."

In the instant case, the witness who had not made any entry in the record was permitted to check the record, and to answer the question from information contained in the record.

The question immediately presents itself—was it harmful to permit the proffered evidence of the service record to be admitted, and to permit the witness to examine Exhibit S-24 for the purpose of answering several questions. Yes, it was harmful and prejudicial to the plaintiff-in-error. On cross-examination, defendant had admitted having been court martialed and sentenced, but testified that the sentence was subsequently suspended after serving three days because he volunteered for dangerous and hazardous duties (Case, p. 486).

The witness, however, testified that according to the service record, the plaintiff-in-error had served a period of 329 days. As was so well stated by Justice Donges, in the case of *State vs. Deegan,* supra, after such answer made by the witness, the plaintiff-in-error had no opportunity to examine the person who made the entries in the record. A reading of the testimony of the witness will disclose that he was permitted, over objection, to answer about ten questions as to the contents of the service record, commencing with page 708 to page 715.

It is urged that the admission of the service record over objection, and permitting the witness to examine it for the purpose of answering the several questions, was prejudicial and harmful error.

POINT IX.

This concerns Assignment of Error Nos. 8 and 9 and Specification of Causes for Reversal Nos. 8 and 9.

In arguing this point the particular matters in specification of causes for reversal and assignment of error involved the following:

The Trial Court refused to instruct the Jury the following requests submitted by the plaintiff-in-error (Case, p. 753):

> "I charge you that you may consider the fact that defendant having been insane once, or several times before, may render it more probable that the defendant was insane at the time of the homicide, if there is any direct proof that he was insane at the time of the commission of the crime. Insanity before the commission of the crime proves nothing where the State has shown a subsequent return to reason. Former insanity increases the probability that defendant was insane if there is any independence evidence that he was insane at the time of the commission of the crime."

The Trial Court refused to instruct the following request submitted by the plaintiff-in-error:

> "If it has been proven to your satisfaction that the defendant has been once insane, the presumption is, that he continues so until the contrary is shown, that is, if there is no period of lucid intervals since the time of the insanity proved, you must find him still insane, and in-

sane at the time of the commission of the homicide."

These two requests, in substance are, that if it has been shown by a preponderance of the evidence that the plaintiff-in-error was insane at any time before the commission of the crime charged in the indictment, then such insanity is presumed to continue, and the burden is upon the State to show that the defendant afterwards becoming sane, and while in that condition committed the crime charged in the indictment.

The issue here presented by the plaintiff-in-error was insanity, and it is urged that the Court erred in not charging that where insanity is once shown to exist, the presumption is that it continues to exist until the contrary is shown.

So that the Court may appreciate the pre-existing mental condition of the plaintiff-in-error prior to August 15th, 1945, and the nature and form of the insanity from which he suffered, the following is submitted:

Plaintiff-in-error after his enlistment went overseas in 1942, first going to Australia, and later engaged in many months of combat duty in Dutch New Guinea, and some in the Phillipines. In the invasion of Buna, he was dropped behind the enemy lines, and was exposed to the bursting of a 500 pound bomb, and from that time on he did not seem himself. In March, 1945, he was admitted to the 27th General Hospital, because he had been violently homicidal against a Sergeant with whom he had had an argument; expressed a desire to get into the jungle to look for three of the enlisted men who were lost; walked out of the hospital and wandered

back to the hospital in a confused state; wanted to rest so that he could take the jungle trip; was grossly psychotic, and it was then believed that rehabilitation for duty was impossible (D-2, Sheet 38, p. 863). He was ordered back to the States for further neuropsychiatric observation and treatment, with a diagnosis of psychosis, unclassified, manifested by dreamlike state, belligerent, resentful behavior, inappropriate actions and mild confusion; that he lost his memory on several occasions and had no explanation for his confinement in the hospital (D-2, Sheet 37, p. 862). He had a complete amnesia for his trip from Hollandia to the Mason General Hospital in New York.

While in the Hospital in Hollandia, he was confined in a locked ward, some days he was placed in a locked ward in a maniacal or wild state (Case, p. 401); he would try to get out of the room by beating on the wire enclosure (Case, p. 401). At 6:30 on the day he was evacuated from the Hospital in Hollandia, it was necessary to administer medication, was unconscious, but not restrained; was lying in a litter, held down to the litter with narrow muslin strips with his ankles and wrists tied to the litter (Case, p. 405). In that fashion he was taken in an ambulance to the ship. He just looked as though he was looking into space. Was subject to seizure of fits and convulsions during childhood. When sent to the States, the chart showed a diagnosis of psychosis (Exhibit D-2, Sheet 43, p. 863). On May 7th, 1945, he was admitted to the Mason General Hospital, and put in a closed ward for observation, and the attending physician made a diagnosis of psychosis, unclassified, acute schzophrenic reaction (Exhibit D-2, Sheet 18, Case, p. 843). Such

condition continued until July 27th, 1945, when he was awarded 50% diability by the Board of Officers, Mason General Hospital. At that time, the same diagnosis of psychosis unclassified was made, manifested by excitement, confusion and threatening attitude caused by 40 months overseas in Southwest Pacific.

Dr. Yaskin testified that if he was psychotic, he was insane (Case, p. 666).

Each request was refused and exception taken. These requests are supported by the decisions of our State, as laid down in the case of *State vs. Spencer*, 21 N. J. Law, 196, and cited with approval in the case of *State vs. Noel*, 102 N. J. L. 659, 133 A. 274.

Chief Justice Hornblower, in his charge to the Jury, at page 210, said:

> "I will take notice of one more consideration which it is proper for the Jury to regard in making up their verdict in this case. It is this. It is undoubted law, that when a man is proved to have been once insane, the presumption is, that he continues so until the contrary is shown. If I have left a relative in England who was afflicted with insanity, and I have not since heard from him, the presumption is that he is still insane. True, he may have recovered; and since the humane methods with which the disease is now treated, have become general in civilized countries, the probabilities of recovery from mental derangement is greatly increased. Still, the presumption is that my afflicted relative is in the same condition he was when I left him. * * * So, in the case at hand, if the prisoner has proven that he was once insane, the presumption arises, that he is

still insane at this moment, unless the contrary is shown. The evidence on this subject is all before you, gentlemen, and the prisoner is himself before you, and if you have no evidence of lucid intervals since the insanity proved, you must, of course, find him still insane, and insane at the time of committing the act in question."

These several requests which were refused by the Court, embody the same principle and almost the same phraseology as stated by the Court in the case of *State vs. Spencer,* supra. The requests contained principles of law, relevant to the issue at bar, and the law as laid down in the *Spencer* case, supra, and should have been charged.

It is clear from a reading of the *Spencer* case, supra, that inasmuch as there was a legal presumption of the continuance of the state of insanity, once established, the State was obligated to overcome the legal presumption, this the Court refused to charge, although instructed so to do.

It follows, therefore, that in the light of the requests to charge which were refused, under the authority herein before recited, the plaintiff-in-error contends that the trial Court erroneously refused to charge the said requests, and such refusal to charge was harmful error.

POINT X.

This relates to the Specification of Causes for Reversal Nos. 17, 18, 21 and 28, and Assignments of Error Nos. 17, 18, 21 and 28.

It is contended that this portion of the charge of

the Trial Judge was erroneous, inaccurate and an incorrect recital of the testimony of Dr. Read.

The testimony of Dr. Read was that due to the absence of fractures and presence of rather severe congestion of the lungs, liver and spleen, it is felt that the most likely course of events was that the individual was in a state of shock due to the multiple contusions and lacerations and could well have been unconscious due to concussion of the brain which might not leave any anatomic changes to be seen at autopsy. If the body was dropped into the sewage matter, *death may not have occurred until suffocation would take place beneath the surface of the sewage material* (Case, p. 207).

But the Court charged the jury, that none of the external injuries were in themselves the efficient and producing cause of the girl's unfortunate death, *but that she died of suffocation.*

The Court also charged as follows:

> "To be sure one bit of positive testimony is missing and that is the statement of the girl herself on this point. But is not the mute evidence much more persuasive in its demonstration that she resisted than the mere verbal declaration, 'I did not consent', would be if she were here."

This portion of the charge clearly indicated to the jury that all of the evidence in the case was persuasive in its demonstration that she had resisted. In other words, the jury was charged that the evidence was clear and persuasive that she had been raped, and that if she were present, she would have testified, "I did not consent". It is respectfully contended that such was a misstatement of fact.

It is reversible error for the Trial Court to make in its charge a misstatement of fact with relation to a fact of moment, that is, that it is proved when there is no testimony to support it. *State vs. Noel,* supra.

It is injurious error for the Trial Court in a criminal case to charge in effect that an incriminating fact has been proved when such fact has neither testimony nor the color of testimony to support it. Such a charge is not a comment on the testimony made for the benefit of the jury, but an elimination of testimony from the consideration of the jury. *State vs. Diamond,* 84 N. J. Law, 17; 86 Atlantic 57; *State vs. Lovell,* 86 N. J. Law 509; 92 Atlantic 376.

In this respect it is urged that the Trial Court misconceived the effect of the testimony. There was no testimony that the body, head and shoulder and part of one arm were mired and invisible as shown by Exhibit S-5, or that she was plunged head foremost in the mass of waste, or *that the evidence was clear and persuasive that she had been raped.*

True, it is the long-established right and duty of a Trial Court, in this State, to comment on the evidence, *State vs. Jefferson,* 129 N. J. Law, 308, and cases collated at page 310, 29 A. (2nd) 546, at page 548, but it is equally true that this long-established right and duty of the Trial Court are without equally long established limitations. The ultimate decision of disputed matters of fact is always the function of the jury, and the Court transcended its right and duty when it charged the jury *that the mute evidence was much more persuasive in its demonstration that she resisted than the mere verbal declaration.*

Exercise of this judicial discretion always calls

for great care and the judicial mind should be so expressed as to leave no doubt or uncertainty with the jurors that the ultimate right to settle disputed questions of fact is theirs, and this is particularly so when there is evidence, as in the instant case, if believed and accepted by the jury, that would have warranted a conviction of a lesser degree of crime.

The right of the Trial Court to give the jury the benefit of his individual view of the "evidence" is settled in this State beyond peradventure, so long as he is careful to avoid controlling them by "a binding instruction." *State vs. Corrado,* 113 N. J. Law, 53, 172 A. 571.

It is, therefore, respectfully contended that that portion of the charge was harmful and prejudicial to the plaintiff-in-error in that the charge was a binding instruction upon the jurors that the testimony demonstrated that Margaret McDade had resisted, and that the plaintiff-in-error had committed rape.

POINT XI.

This relates to Assignment of Errors Nos. 19 and 30, and Specifications of Causes for Reversals Nos. 19 and 30.

The Trial Court instructed the jury as follows (Case, p. 736):

> 19. "But, if you are convinced beyond a reasonable doubt that he did, a further step requires your consideration, and here seems to the Court to be the logical juncture at which to charge upon the degrees of murder.
>
> All murder is presumed in the law to be mur-

der in the second degree, and it is the duty of the State to overcome the presumption in order to make out a case of murder in the first degree. In this case the State in meeting this obligation contends that the defendant raped or attempted to rape the deceased, thus framing its case within a statute which provides that murder which shall be committed in perpetrating or attempting to perpetrate a rape, shall be murder in the first degree."

30. "If, after giving the accused the benefit of reasonable doubt, you are convinced that he killed Margaret Rita McDade in the perpetration of a rape or in the attempt to perpetrate a rape, then he is guilty of murder in the first degree, even though the killing be unintentional." (Case, p. 741.)

The jury, after having been so instructed, could bring in but one verdict—murder in the first degree. It is urged that the Court should have included in such instruction that, *every person convicted of murder in the first degree should suffer death, unless the jury shall, by their verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.* Revised Statutes 2:138-4, N.J.S.A.

This is the only instance in the entire charge when the Trial Court instructed the Jury upon the degrees of murder, and the jury instructed that they could bring in a verdict of *murder in the first degree.*

It is respectfully contended that the instruction of the Trial Court to the jury was absolutely and

unqualifiedly erroneous, contrary to and in conflict with Revised Statutes 2:138-4, N.J.S.A.

POINT XII.

This embraces Specifications of Causes for Reversal Nos. 35, 36, 37, 38 and 39.

This embraces Specifications of Causes for Reversal that the verdict was contrary to the law and the weight of the evidence.

Plaintiff-in-error will rest his argument on the various Specifications of Causes for Reversal embodied under this point on two general propositions. —first, that the verdict was against the weight of the evidence, in that the plaintiff-in-error had proved his defense of insanity by the quantum required; and second, the absence of any testimony that Margaret McDade met her death in the perpetration or attempt to perpetrate the crime of rape.

Let us first look at the plaintiff's-in-error's case as disclosed by the testimony. We have, according to the testimony, a young man who, in his early childhood, was subjected to convulsions (Case, p. 419); completed eighth grade at the age of sixteen years; enlisted in the military service in July, 1940, at the age of twenty years; went overseas in 1942, going first to Australia and later engaged in many months of combat duties in Dutch New Guinea and in the Phillipines. He worked chiefly as a scout, spending most of his time behind the enemy lines. In February, 1945, was dropped by a plane behind the enemy lines to obtain information concerning the strength, location and other data, when a 500 pound bomb bursted and from that time, he did not

seem himself. The following month, March, 1945, he was admitted to the 27th General Hospital, Hollandia, Dutch New Guinea, from a casual camp where he had been violently homicidal against a Sergeant with whom he had had an argument. After a few days in the Hospital, he calmed down, seemed strange, but not entirely abnormal. On March 24th, 1945, was transferred to a replacement depot in the hope that he would be rotated back to the United States. The same day was readmitted to the Hospital in a confused, excited state. Restraint and sedative administered and was described as grossly psychotic (Exhibit D-2, Sheet 38, Case, p. 863). Was evacuated to the zone of the interior with a diagnosis of psychosis, unclassified. During his stay at the hospital, according to the testimony of Mary Elizabeth Cathers, a Red Cross welfare worker, plaintiff-in-error was confined in the psychiatric section in a locked ward. He returned after his discharge in a confused state; was put in a private locked room inside the locked ward. Later he was permitted to be in and out of the locked section depending on his condition. Some days he was calm enough to accompany the social worker on the ward rounds, other days he would be placed in a locked room in a maniacal or wild state. He would try to get out of the locked room, by beating on the wire enclosure. This he was observed doing on several occasions, and he continued to do this until he was given a sedative or something to quiet him. After his discharge, he was readmitted to the psychiatric ward and stated that he had walked sixteen miles and wanted his valuables, his money and papers so that he would go back in the jungle (Case, p. 404). Here are some of the observations of the condition

and behavior of plaintiff-in-error by Sergeant Franks who was also confined in the same hospital with the plaintiff-in-error. When asked how he felt plaintiff-in-error answered that "he had to get up in the morning and plant potatoes because he like corn on the cob." (Case, p. 414.) He was resentful toward the Doctors, very belligerent; refused to take atabrine, requesting quinine (Case, p. 414). Always seemed as though he was looking for someone. On one occasion he was sent to the PX to get two cans of tomatoes and after four hours came back with two stones and a piece of wood (Case, p. 415). Always was in trouble with the nurses. When he had seizure of fits and convulsions, he would be unconscious and get blue in the face.

At 6:30 on the day he was evacuated from the Hospital, he had to be given medication rendering him unconscious (Case, p. 405); had to be tied down to the litter with narrow muslin strips tied at his ankles and wrists; he had a complete amnesia of the trip from Hollandia to Mason General Hospital.

On May 7th, 1945, upon his admission to Mason General Hospital, Brentwood, N. Y., he was put in a closed ward for a few days and the attending physician made a diagnosis of psychosis, unclassified, acute schzophrenic reaction (Exhibit D-2, Sheet 18, Case, p. 843). During his stay in the Hospital, he showed some diminished affective resonance; dreamed about combat occasionally, bit his fingernails and was easily irritated by noises. Always felt that he had been badly treated in the Army, always very tense, and under pressure showed a facial tic. On July 27th, 1945, at the Mason General Hospital, a diagnosis of psychosis, unclassified, was made "active symptoms in remission" manifested by excite-

ment, confusion and threatening attitude, caused by two and one-half years overseas in the Southwest Pacific Theatre of Operations, with twenty-four months of combat duties. After July 27th, 1945, he was very nervous, very restless and did not sleep at night very good. Talked in his sleep; could not sit any length of time; could not sit still for more than five minutes. The entire proofs of the mental behaviour of the plaintiff-in-error is by doctors who treated and cared for plaintiff-in-error; by the testimony of Mary Elizabeth Cathers, the social worker, and Sergeant Franks. (Case, pp. 412-417.)

The testimony is uncontradicted that plaintiff-in-error had been declared insane on several occasions.

The events of August 14th, 1945, and the early morning of August 15th, 1945, begin with the plaintiff-in-error leaving his home and meeting one, George R. Hulse about 10 o'clock. He was with Hulse until about seven o'clock that evening. After the broadcast at 7 o'clock of the termination of the war with Japan was heard, Hulse and the plaintiff-in-error went to the firehouse; boarded the fire truck and rode on the truck through the town celebrating V-J Day.

Later that evening he met Margaret McDade in front of the Fire Hall, and then went with her to the Creek home to complete the celebration. They became very affectionate toward each other. About 12 o'clock, Margaret McDade told Florence Hulse that she was going to take a walk with Howard (plaintiff-in-error). The witness then told Margaret, that Howard had not been out with a girl since his discharge from the army, and Margaret said, "Yes, that is the guy I'm looking for, that's just the guy I'm looking for" (Case, p. 422). Margaret

told Florence Hulse to pretend that she (Margaret McDade) had gone to the bath room (Case, p. 423).

They left the Creek home together. Walked up the Pike to Maple Avenue, where they started to hug and kiss. She was carried in the bushes. After some more hugging and kissing, she let her panties down (Case, p. 569), and they proceeded to engage in the act of intercourse, she lying on the ground and he lying on top of her (Case, p. 469), she hollered, scratched plaintiff-in-error, and he struck her. He got up and said, "Well come on let us go back to the party, but she did not get up, he felt her pulse and thought she was dead, and from that point on he faintly remembers what followed (Case, p. 470).

From the testimony of Dr. Read it must be inferred that the act of intercourse had been completed. It was the contention of the plaintiff-in-error that the act of intercourse was voluntary on the part of Margaret McDade (Case, p. 386); that when he was trying to have intercourse with her he thought she was too little or something (Case, p. 379). Surely from such testimony the jury was not justified or warranted in reaching the conclusion that Margaret McDade met her death in the perpetration or attempt to commit rape. The testimony of Florence Hulse proves conclusively that they left the Creek home for the sole purpose of engaging in the act of intercourse.

It is therefore respectfully contended that the plaintiff-in-error did not understand the quality of his acts, and did not know the difference between right and wrong when he disrobed Margaret McDade and carried her to the cistern. This is supported by the weight of the expert medical testi-

mony, his conduct and behavior before and after his enlistment, his experiences while in the military service, being subjected to many months of combat duty in the Southwest Pacific; the evidence of physicians and doctors treating him from February 1945 to July 27th, 1945, who had a splendid opportunity of judging his sanity or insanity.

It is also urged that the testimony is uncontradicted that the act of intercourse was voluntary on the part of Margaret McDade, and therefore, her death was not the result of any attempt to commit rape.

It is, therefore, respectfully submitted, that, in view of all the facts and circumstances, the verdict was against the weight of the evidence, in that there was a total absence of any testimony to establish that Margaret McDade's death was the result of the perpetration or attempt to perpetrate rape, or any testimony from which the jury could have reasonably inferred beyond a reasonable doubt the existence of such elements; and that the testimony clearly established that the plaintiff-in-error was insane at the time of the commission of the alleged crime.

Respectfully submitted,

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To be argued orally by
CARL KISSELMAN.