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Certificate of Chancellor
Filed November 7, 1930
IN CHANCERY OF NEW JERSEY

State of New Jersey, Defendant-in-Error, v. Bonaventura Nardella, Plaintiff-in-Error.	*Sur* Indictment for Murder.

CERTIFICATE OF CHANCELLOR

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

E. R. Walker,
Chancellor.

Dated November 7, 1930.

WRIT OF ERROR

Filed November 26, 1930

New Jersey, ss.

(Seal) The State of New Jersey to Peter F. Daly. Esq., one of the Justices of the Supreme Court of the State of New Jersey, and to the Judges of the Court of Common Pleas of the County of Passaic, constituting the Court of Oyer and Terminer, holden at Paterson, in and for the County of Passaic, of the term of September, in the year of our Lord, nineteen hundred and thirty.

Because in the record and process, and also in giving of judgment upon a certain indictment against Bonaventura Nardella, late of the City of Paterson, in the County of Passaic aforesaid:

"That, Bonaventura Nardella, late of the City of Paterson, in the County of Passaic aforesaid, on the Second day of August, in the year of our Lord nineteen hundred and thirty, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Lucia Nardella in the peace of God and of this State then and there being, wilfully and unlawfully an assault did make, and her, the said Lucia Nardella, did then and there wilfully and unlawfully and feloniously and of his malice aforethought kill and murder, contrary to the form of the statutes 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 and the several counts therein, whereof, before you, he, the said Bonaventura Nardella hath been indicted, and is thereof

convicted by a certain jury of the county, taken between the State of New Jersey and the said Bonaventura Nardella, as it is said, manifest error hath intervened to the great damage of the said Bonaventura Nardella, 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 Bonaventura Nardella, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the twenty-sixth day of November inst., and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this seventh day of November, A. D., one thousand nine hundred and thirty.

Joseph F. S. Fitzpatrick,
Clerk.

John C. Barbour,
E. Robert Coven,
Attorneys for and of
counsel with defendant.

Presented in open court this 10th day of November, 1930.

William B. Harley,
Judge.

Endorsed:

Writ presented November 10, 1930.
Let return be made.
Wm. B. Harley,
Judge.

Certificate of Chancellor
Filed November 7, 1930
IN CHANCERY OF NEW JERSEY

State of New Jersey, Defendant-in-Error, v. Bonaventura Nardella, Plaintiff-in-Error.	*Sur* Indictment for Murder.

CERTIFICATE OF CHANCELLOR

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E. R. Walker,
Chancellor.

Dated November 7, 1930.

WRIT OF ERROR

Filed November 26, 1930

New Jersey, ss.

The State of New Jersey to Peter F. Daly. Esq., one of the Justices of the (Seal) Supreme Court of the State of New Jersey, and to the Judges of the Court of Common Pleas of the County of Passaic, constituting the Court of Oyer and Terminer, holden at Paterson, in and for the County of Passaic, of the term of September, in the year of our Lord, nineteen hundred and thirty.

Because in the record and process, and also in giving of judgment upon a certain indictment against Bonaventura Nardella, late of the City of Paterson, in the County of Passaic aforesaid:

"That, Bonaventura Nardella, late of the City of Paterson, in the County of Passaic aforesaid, on the Second day of August, in the year of our Lord nineteen hundred and thirty, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Lucia Nardella in the peace of God and of this State then and there being, wilfully and unlawfully an assault did make, and her, the said Lucia Nardella, did then and there wilfully and unlawfully and feloniously and of his malice aforethought kill and murder, contrary to the form of the statutes 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 and the several counts therein, whereof, before you, he, the said Bonaventura Nardella hath been indicted, and is thereof

convicted by a certain jury of the county, taken between the State of New Jersey and the said Bonaventura Nardella, as it is said, manifest error hath intervened to the great damage of the said Bonaventura Nardella, 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 Bonaventura Nardella, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the twenty-sixth day of November inst., and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this seventh day of November, A. D., one thousand nine hundred and thirty.

Joseph F. S. Fitzpatrick,
Clerk.

John C. Barbour,
E. Robert Coven,
Attorneys for and of
counsel with defendant.

Presented in open court this 10th day of November, 1930.

William B. Harley,
Judge.

Endorsed:

Writ presented November 10, 1930.
Let return be made.
Wm. B. Harley,
Judge.

RETURN

State of New Jersey
County of Passaic. } ss:

We, Peter F. Daly, one of the Justices of the Supreme Court of the State of New Jersey, and William B. Harley, a Judge of the Court of Common Pleas in and for said County, constituting the Court of Oyer and Terminer in the Case of The State vs. Bonaventura Nardella; do hereby in the schedule hereto annexed, send to our Justices of our Court of Errors and Appeals of the State of New Jersey, at Trenton, the record and proceedings mentioned in the within Writ of Error, with all things touching the same, as I am within commanded.

In Testimony Whereof, I have hereunto set my hand and affixed the seal
(Seal) of the said Court and County, at Paterson, this Eighteenth day of November, A.D. Nineteen Hundred and Thirty.

Peter F. Daly, J. S. C.
William B. Harley, Judge.

STATE OF NEW JERSEY

INDICTMENT

Passaic County, to wit: Be it Remembered, That at a Court of Quarter Sessions, held at Paterson, in and for the said County of Passaic, on the Fifth day of September in the year of our Lord one thousand nine hundred and thirty, being the day on which the Grand Jury heretofore summoned to come before the Court of Oyer and Terminer and now sitting in and for said County, desires to present Bills and no Justice of the Supreme Court being present at the Court House in said County, before the Honorable William B. Harley, Judge of the said Court of Quarter Sessions in and for the said County of Passaic, according to the form of the statute in that case made and provided; by the oath of

1. James Wilson,
2. Peter Cimmino,
3. Daniel J. Morgan,
4. Jacob S. Schiller,
5. Anna S. Van Winkle,
6. Joseph C. Bamford,
7. Richard Moore,
8. John Gourley,
9. Thomas W. Reilly,
10. Abram N. Ryerson,
11. Charles Seigrist,
12 Cornelius Vandervate,
13. Mary Sutton,
14. David L. Hughes,
15. Donald C. Smith,
16. Phoebe J. Livingston,

17. Colin M. McLean,
18. William P. Laytham
19. Elsa Flower
20. Catherine Donnelly,
21. John H. Wilkinson,
22. Martha J. Brown,
23. Josephine Vanecek

good and lawful men and women of the said County of Passaic, duly summoned and then and there sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Passaic; it is presented in manner and form following, to wit:

The Bills herewith presented are true Bills.

J. Vincent Barnitt,
Prosecutor.

James Wilson,
Foreman.

COURT OF OYER AND TERMINER IN AND FOR THE COUNTY OF PASSAIC

April Term A. D. Nineteen Hundred and Thirty

Passaic County, to wit: The Grand Jury of the State of New Jersey, in and for the body of the County of Passaic, upon their oath, PRESENT, that Bonaventura Nardella, late of the City of Paterson, in the County of Passaic aforesaid, on the Second day of August, in the year of our Lord nineteen hundred and thirty, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Lucia Nardella in the peace of God and of this State then and there being, wilfully and unlawfully an assault did make, and her, the said Lucia Nar-

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

J. Vincent Barnitt,
Prosecutor of the Pleas.

Witnesses:
William A. Norval,
William M. Drew

Thereupon the said Court of Quarter Sessions did receive such Indictment and the Clerk of the said Court of Quarter Sessions did receive the same in the said Court; and also did thereupon make entry thereof in the mimnutes of said Court at the then session of said Court, and afterwards to wit at a Session of said Court it was on motion of J. Vincent Barnitt, Esquire, Prosecutor of the Pleas for said County of Passaic aforesaid ordered that the aforesaid indictment against Bonaventura Nardella be delivered to the Court of Oyer and Terminer for trial.

PLEA

And afterwards, to wit, on the Twenty-third day of September, A. D. Nineteen Hundred and Thirty, at a Session of the Court of Oyer and Terminer aforesaid, being of the term of September in the year of Our Lord One Thousand Nine Hundred and Thirty, before the Honorable William B. Harley, a Judge of the Court of Common Pleas in and for the County of Passaic aforesaid, who had been requested to hold the Court of Oyer and Terminer according to the statute in such case made and provided, comes the said Bonaventura Nardella in his own proper person and under the custody of Thomas Carless, Sheriff of the County of Passaic, (in whose custody in the gaol of the County aforesaid he had been before committed before the cause aforesaid) being brought to the bar here by the Sheriff aforesaid to whom he is also here committed, and having heard the Indictment read and forthwith being commanded of and concerning the premises in the said Indictment above specified and charged upon them how he will acquit himself thereof, he saith he is not guilty and thereof for good or evil he puts himself upon the Country, and J. Vincent Barnitt, Esquire, Prosecutor of the Pleas for said County of Passaic, who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore let a Jury come before the Judge aforesaid at Paterson, in the County of Passaic aforesaid, at the same term of the Court of Oyer and Terminer on Monday, the Twentieth day of October, next ensuing, of twelve good and lawful persons, each of whom shall be a citizen of this State, and resident within the County of Passaic

aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matters may be better known, and who are not of kin to the said Bonaventura Nardella, to recognize upon their oaths whether the said Bonaventura Nardella be guilty of the murder in the Indictment aforesaid specified, or not guilty, because as well the said J. Vincent Barnitt, Esquire, Prosecutor as aforesaid, who prosecutes for the State of New Jersey in this behalf, as the said Bonaventura Nardella has put himself upon the said jury, and the same day is given to the parties aforesaid at the same place.

And thereupon on Monday, the Twentieth day of October, in the year of our Lord One Thousand Nine Hundred and Thirty, at a session of the Court of Oyer and Terminer aforesaid, being as yet of the term of September, in the year of our Lord One Thousand Nine Hundred and Thirty, before the Honorable William B. Harley, Judge of the Court of Common Pleas aforesaid, who had been requested as aforesaid, come as well the said J. Vincent Barnitt, Esquire, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid, as the said Bonaventura Nardella under the custody of the Sheriff being brought to the bar here in his own proper person by the said Sheriff, and the Jurors of the said jury, by the Sheriff of the County of Passaic aforesaid, for this purpose empanelled, and returned, to wit:

1. Elizabeth Haefeli
2. Sara Giebert
3. Dorothy Muse
4. James Brown
5. Frank C. Tintle
6. Jessie Sproule
7. Isabelle Baumann
8. Mary Bainbridge
9. Julius Kunz
10. Charles Tipping
11. Anna Wuerker
12. Jane Gaskell

being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury from day to day until the Twenty-second day of October, in the year of our Lord One Thousand Nine Hundred and Thirty, at Paterson aforesaid, the jury in the meantime having all that time been kept together and sequestered in the care of officers of the said Court for that purpose, at which last mentioned day the said issue, after a charge from said Court, was submitted to the said jury, and the said jury in charge of said officers of said Court for that purpose were taken to a private room and sequestered to consider of their verdict, and afterwards, that is to say, on the Twenty-third day of October, in the year of our Lord One Thousand Nine Hundred and Thirty, at Paterson, 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, J. Vincent Barnitt, and the said defendant, Bonaventura Nardella, upon their oath say that the said Bonaventura Nardella is guilty of the felony and murder aforesaid on him above charged in the manner and form aforesaid, as in and by the said indictment is above supposed against him, and that they designate and find that the degree of the said murder and felony is murder

of the first degree and that he is guilty thereof, and afterwards, to wit, on Friday, the Twenty-fourth day of October, in the year of our Lord One Thousand Nine Hundred and Thrty, being as yet of the term of September aforesaid, it was demanded of him the said Bonaventura Nardella if he hath or knoweth anything to say wherefore the Court here ought not upon the premises and verdict aforesaid proceed to judgment and execution against him, who nothing further saith unless as he hath before said, whereupon all and singular the premises being seen and by the Court here fully understood it is considered by the Court and the sentence of the law is that the said Bonaventura Nardella do suffer death at the time and place, and in the manner prescribed by law, which time the Court now fixes as in the week beginning on the seventh day of December next.

William B. Harley,
Judge.

Opening for State

PASSAIC COUNTY COURT OF OYER AND TERMINER

Indictment No. 252805
April Term, 1930

The State
vs.
Bonaventura Nardella,
Defendant.

Before: Hon. William B. Harley, and a Jury.
Paterson, N. J., October 20, 1930

Appearances:
Hon. J. Vincent Barnitt, Prosecutor.
John C. Barbour, Esq., and
E. Robert Coven, Esq., Attorneys for the Defendant.

The selection of the jury having been completed, and the jury having been sworn, the trial of the case then proceeded.

Mr. Barnitt—If the Court please, and ladies and gentlemen of the jury: As you probably are aware with the suggestion of counsel in interrogating you as prospective jurors we are about to try an indictment for murder against one Bonventura Nardella. According to the indictment, he is charged with the murder of his wife, Lucy.

Briefly, I will relate the circumstances of the crime which the State charges against this defendant, and in conclusion will ask you to find a verdict when you retire in this case, of first degree

murder without any recommendation whatsoever.

The State's counsel believes that the circumstances surrounding this case are such as to justify a statement to you at the outset of the presentation of the facts.

On the second of August, of this year, this defendant then approximately 42 years of age;—his wife Lucy was 38. She had born him five children, one of whom had died; and today four children are motherless by reason of this man's dastardly acts in killing his wife. The oldest child is 14, the youngest three, and between we have ten and eight years of age respectively who are the other two children.

Now, these parties lived at 14 Mill Street. The defendant was a carpenter by trade, although some years before he had first taken up the business of horseshoeing and wagon making. In 1910, the defendant came to this country. He was not married, although he had up to that time for a period of five years kept company with his wife in the province of Cogia, in Italy. He went to Manlius, N. Y., which is a suburb or close to the city of Syracuse in Onendago County, and he worked there as a carriage maker and horseshoer for some time, residing with an uncle, who lived at that place, and whom I believe continued to live there even up to the time of the commission of this crime.

In 1914 he went back to Italy. He was a citizen of Italy, and he went back and went to war for Italy. He was not in any way wounded although he did serve on the Austrian frontier, and in 1915 he married his wife Lucy in Italy. Now there were two children born in Italy. The oldest one Joseph, 14, and the second oldest 10. After his marriage

he came back to America alone leaving his wife and these two children in Italy. He came to Paterson and in 1920 his wife came and two children were born in this country. He continued to reside there continuously since 1920. Now the State will show you that this woman bore an exemplary reputation and in no way could the State discover or ascertain anything which would indicate in any way but that she was a fine mother of these four children and a good wife to this man. She kept the home for him at this address at 14 Mill St. They occupied the first floor and the basement floor of the three story building at this place. There came a time when he commenced to have in his mind suspicions of his wife's infidelity. From time to time he would accuse his wife of being unfaithful to him and a scene would take place. His wife would tell him that he was absolutely unjustified, that his accusations were unfounded, that there were no truth to the suggestions that he made and for a time he would subside in her statement in that regard and would continue to live with her peacefully. Then it would crop up in his mind again that she was unfaithful to him and that continued for a time and he worked himself into a condition which will be described to you which shows he had jealous suspicions of his wife without any cause whatsoever. Not the slightest cause to in any way suggest to this man, to his mind about his wife's infidelity. Now it seems that a week before the second of August, the 2nd of August was a Saturday, that is the day ths man killed his wife. A week before the Saturday afternoon the oldest boy Joseph was home with his mother,

and the father after dinner commenced to have some more suspicion about his wife's unfaithfulness toward him and he finally concluded that he was going to throw her out of the house. She appealed to his better judgment and she tried to have him change his ideas about that subject but without avail and finally little Joseph, the 14 year old boy, left and went to one of our Italian Justices of the Peace, Mr. Thomas J. Rubino in Paterson, and told the Justice that his father wanted to throw his mother out into the street.

He appealed to the Justice to come up to the house and talk to his father, and to see if he could, the Justice of the Peace, could persuade his father in changing his mind. The Justice came there. The wife was in a sort of hysterical state. She was sort of semi-conscious. He asked the wife what the trouble was, and the wife said, "My husband is always accusing me of going around with men; he is jealous; he won't seem to change his ideas about that and now he wants to throw me out into the street with the children."

And the Justice Said, to this defendant, "What about this? Do you want to get yourself into jail?"

Well, he says, "I don't know, Mr. Rubino. I have an idea that my wife is unfaithful to me."

Well, he said, "Have you anything to show me that your wife is in any way or has been in any way unfaithful to you?" And he said, "No. Just my suspicions, my ideas of my wife's unfaithfulness to me."

Well, he said, "Now, I will tell you. Your wife wants me to have you arrested, but I will give you a chance, but you must stop accusing your wife in

the manner that you have been, unless you have something upon which to predicate it; otherwise," he said, "We will have to get you into jail."

Well, he said, "Mr. Rabino, give me one week to think this matter over; give me till next Saturday. Don't arrest me today, but give me till next Saturday and I will probably clear my mind up of this suspicion and things will go on, all right."

And the Justice left. In the meantime, while the Justice was there, relatives of the wife, had come to the home, and they will also corroborate what the Justice tells you as to what was said on that particular occasion.

Well, we come to the following Saturday, and that is the day of the murder. The wife had prepared the breakfast,—in the summer time—she had prepared the lunch and it appeared that the husband had had some trouble with one of the four fingers of, I think, the left hand.

He had some injury to that finger. I think with a saw and he expected on Friday to go to the Compensation Bureau in Paterson, to receive medical treatment. The wife, thinking of only the welfare of her husband, suggested after lunch that he accompany her to the Compensation doctor, so that he could treat the husband's finger on this Saturday afternoon. The husband said, "No, I think we will let this go until next week." That was Monday. The wife said, your finger has not been so well, and you promised to go to the doctor's this afternoon, you will probably go to work Monday with your brother Jerry, on his job in carpentering certain buildings in the city of Paterson, let us go this afternoon. Well, he said, "If you want to urge me to do it, but it is against my

best suggestion, I will accede to your suggestion, and we will go. Now, down in the basement of this house, they had living quarters as well as upstairs on the first floor. The wife had gone downstairs in the basement where the husband was, to put on her hat about half past one or a quarter of two on this Saturday afternoon. And, I will skip that for a moment, because I want to take you to that night. Four children, two of the youngest had gone over to the brother's house, the brother of this defendant, Jerry Nardella, and incidentally in this matter, so that you will not be confused, this defendant's brother Jerry Nardella is married to a sister of the dead woman, that is Bonaventura Nardella's wife. In other words, two sisters married two brothers. On that afternoon, early, the youngest children were sent over to Jerry's house, preparatory to the wife going with the husband to the compensation doctor. The two oldest boys, ten and fourteen, went out swimming up McBridge Avenue, way, and they subsequently returned to the house, about two o'clock, and while they were coming home, they were going to go for a shine box, a shine box which would hold shoe blacking and shoe brush and a clothes brush such as young boys use in the summer time, to start you folks with an invitation for shine; and when they come towards the house, they saw their father running away, and they saw the father come back after he had proceeded well up the street,—up Mill Street. Mill Street is where the home is located. He went back when he saw the children, and one of the boys went into the house, and he saw the father changing his clothes, changing his trousers and shirtwaist, and then the father went away. He laugh-

ed at the children. It will be borne out by the testimony that this was after he had killed his wife. He did not say anything to the children, and the children went away. It had been in the habit of the children to go to Jerry's home for meals at times, so when evening came and the boys returned to the home and they did not find any lights on, they went back over to Uncle Jerry's home, and they complained to Uncle Jerry, that there was no one home; so Jerry and his wife agreed that the children should stay there for supper, although they were for a while impatient but waited for them to come to the house; so that continued during the Saturday night of August 2nd, until very late at night. Joseph had his suspicions of his father and he and a friend in the neighborhood went to the home, and they called into the kitchen and upstairs and then they opened the door in the hallway which led to the basement and called down there, but no answer. They went down in the cellar and the door in the coal bin had been nailed up? Joseph had never observed that door being closed before—the door that led into the coal bin where the coal was kept. He came back, young Joseph, 14, and he had his suspicions that there was something wrong. Now, on the sidewalk is coal rake and he looked down, lighted a match, and looked down into this coal rake from the sidewalk into the coal bin, and there seemed to be a woman's leg with her silk stocking as he could see it; but he asked this friend of his to look down also, a man between 52 and 60, and he looked and said, "He couldn't see anything." He went back to his uncle Jerry, this Joseph, and he told him he had been through the house, and could not find anyone

in the house, that this door in the coal bin was locked or hammered with nails. Jerry waited up till four o'clock in the morning, and finally came home and he met the four children at the house that night. The next morning Jerry reported to Sergeant Pirala, of the detective bureau in Paterson, of his brother's brother being missing,

So Detective Sergeant Pirola and Detective Moore went to the house and they made an examination of the premises with the idea in mind of ascertaining what, if anything, they could discover about the premises which would indicate that the persons had suffered any harm or anything which could lead them to the possible location of their whereabouts. They didn't find them. They looked around. Everything seemed to be in order upstairs. They didn't go down into the cellar. They asked for photographs thinking they might be missing; they made a search through East Side Park and other places they will describe in detail to you.

In the meantime one of the relatives had phoned to New York, to the Bronx, at the home of the ~~time in question,~~ brother of this woman Tony Ciracino—~~his mother was~~ at the time in question Tony Ciracino—his mother was visiting relatives over here—and it was suggested that the parents of these children were missing during the night and that Tony better come over to bring his mother back to the Bronx.

In the meantime Tony came back, and about eleven o'clock on Sunday Tony and another relative, Nick Juliano—they go down to the house and they go down in the cellar and they open with a chisel this door that had been hammered with nails, and they looked in the coal bin and they find

the body of a woman buried in the coals, with her legs sticking out, which will be described to you in detail as we progress with the trial, the statements of this trial.

Well, now, in the meantime, due to the good work of the Paterson Detective Bureau that Sunday morning, it was learned that this man, Nardella, had an uncle, a relative living in Manlius, N. Y. As I said before, that is about 12 or 15 miles from Syracuse. It was stated that he had three fingers off one of his hands and he was missing and his wife was found in this position that I have described to you in this coal bin, murdered.

And they got in touch with the Chief of Police of Manlius, a Mr. Bowers, who is here and he and the Deputy Sheriff of Onondaga County, New York, went to the home of the uncle and found the defendant Nardella there, saw he had the three fingers missing and told them he was wanted for the murder of his wife. And he readily admitted he killed her that preceding afternoon. So he was brought on Sunday to the County Jail, at Syracuse, the capital city of Onondaga County. On Monday morning, August 4, he was interrogated by Mr. Unkles, District Attorney of Onondaga County through an Italian interpreter, a court interpreter, and the questions and answers were taken down stenographically by the secretary of the District Attorney of Onondaga County and we have that statement here.

We then extradicted that man to Paterson and when he was returned on Friday morning, August 8th, I likewise interrogated him on this entire matter in the Police Headquarters in the presence of

several detectives, and through an interpreter of the County Court, and with a stenographer present and he again readily admitted he had killed his wife. He claimed throughout his statement, the one he made to the District Attorney in New York and the one to myself here as follows: That on this Saturday afternoon his wife wanted him to go to the Compensation Bureau. He was reluctant about going but she urged him to go for his own welfare and because of the physical pain he was suffering. She got her hat on in the basement and started to go upstairs prepared to go out on the sidewalk with him. When she reached the landing at the top of the stairs, there was a baseball bat in the corner used by the boys to play ball with, and the glove and baseball. His wife put her foot up on the windowsill as if to tie her shoe preparatory to going out with him and unbeknown to her he took his baseball bat and hit her on the back of the head and she fell, according to his own statement on that platform at the top of his stairs stunned, but not dead, he said. He then says, in his own language, he takes her feet and drags her down from the top of the platform down the stairs into the basement and into the coal bin, where there was probably a half a ton of large coal. He dragged her in there and according to his own statement he says that he was listening to see if she was still breathing and finding that she was he observed in the corner of the coal bin a shovel and with this woman's head and body lying on top of these coals he describes to the District Attorney of Syracuse and myself here how he took that shovel and wielded it on his wife's head so many times that he doesn't remember; and then he said he

leaned down and it seemed to him she was still breathing and he observed in the corner a long handled axe and he takes the axe up and to make sure that she would never breathe again he described to me and to the District Attorney of Syracuse how he wielded that axe so many times that he did not know. Then he said he took the coals and he put them over her head, hiding her head in the coals when he was satisfied she was dead. Some lumber from the spare room he took and covered her over with this lumber so that most of her body excepting one leg—, excepting these two legs, from the knee to the foot. Then he said, satisfied that she was dead and he says glad he killed her and that he would do it again if he would have to, if he would have the chance, he goes upstairs and on the top of the stairs there was some garbage that had fallen out of the garbage tin on top of his wife as he pulled her down the stairs and he said he carefully cleared up the garbage and put it in the corner and carefully put away the axe and the shovel and went upstairs. When he got upstairs he saw blood on his grey trousers and blood on his shirt and he started to wash these objects. He put one, the trousers in the bath tub and the shirt in the wash bowl of the bath room upstairs. He had $80, twenty of which he had gotten from the tenant on the second floor and twenty-eight from the tenant on the third floor, it being rent collecting ~~due~~ day the 2nd of August and he had some twenty or thirty dollars which Jerry had given him the night before, Friday night, he having worked as a carpenter two or three days that week. And with the $80 he decided to go to his uncle's in Manlius, to escape the responsibility of

his act and to get away. It was when he was running away that the boys saw him. Then he says that he had never gone from Paterson to Manlius before, so he had to find out at the Erie depot, in Paterson, how to get there. Just to show you how carefully he planned to put this over, they told him about the way of getting the D. L. & W. at Hoboken to get on the train at Paterson to the station depot at Jersey Ciy of the Erie and then he took the ferry boat as he thought he had to go to New York and he said he got over to New York and found out he had to go to Hoboken for the train. He took the ferryboat back to the subway station at Paterson, pardon me, I said Paterson, I meant to say Jersey City, and from thence took the tube to Hoboken and when he got to Hoboken he waited a few hours for the train there to go to Syracuse. He got on the train to go to Syracuse and he had an hour or so to wait at Binghamton. He bought some pears in the early hours of the morning and got back on the train and went from Binghamton to Syracuse, got off the train at Syracuse and took the trolley car to Manlius, got off the trolley car at Manlius and from there walked to his uncle's house and got there on Sunday morning and saw his uncle who had not seen him for years. This was Sunday morning. He said he greeted his uncle and I asked him what he had told his uncle and he says nothing except to say that he had not seen him for some time and that he was making him a visit. I asked him if he told him he had just murdered his wife and he said "I didn't say a thing about it, I didn't want to leave anybody know about it."

Then, ladies and gentlemen, his capture took place as I related it to you. The State charges in this case, ladies and gentlemen, that this man murdered his wife wilfully, with premeditation and design, that he intended to murder her. He did murder her and has confessed he murdered her and the facts all bear out his statement, that he murdered her in the manner I have related to you. If you find from the evidence that statements which the prosecutor has related to you is in fact the truth I would ask you to return a verdict of first degree murder without recommendation of mercy which will carry with it the death penalty which, in the opinion of the State is what this man deserves without question.

ALVIN HEINRICKS, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Mr. Heinricks, what is your business? A. Photographer.

Q. You have to speak a little louder, please. A. Photographer.

Q. You are employed by your father, at the Heinricks studio, 97 Broadway, Paterson? A. Yes.

Q. On the 3rd day of August, Sunday, did you have occasion to take a series of photographs at the premises 14 Mill Street? A. I did.

Q. Did you reproduce those photographs into actual pictures? A. I did.

Q. And did you also on the 4th Sunday in August, take the pictures of the head of a woman at Deluccia's morgue in Paterson? A. Yes, sir.

Q. Do you recall with reference to the pictures you took on the 4th of this woman, whether or not the pictures are of a woman you saw, if you did, at premises 14 Mill Street on the preceding day? A. Yes.

Q. Were they the same? Were they the pictures of the same woman? A. Yes.

Q. And n connection with the woman that you saw at 14 Mill Street, where was it that you first saw here? A. In the coal bin.

Q. Did you take a picture of the woman in the coal bin? A. Yes.

Q. I show you photographs of a woman or of a person in the coal bin, and I ask you if those pictures are of the woman you saw in the coal bin? A. Yes.

Q. Are they? A. Yes.

Q. They reproduce on the picture exactly as you saw the woman there? A. Yes.

Q. What time did you see her? A. I believe it was between 10 and 11 in the morning.

Q. Sunday morning. A. Yes.

Q. I see. Now, with reference to these other photographs, I ask you if you can relate whether or not you took those and what they represent? A. Yes, I took those.

Q. And with reference to this description of the woman that you saw in the coal bin, and which you say was the woman you took the pictures of the next day at the morgue, at Deluccia's morgue, I ask you if those, too, are pictures you took of the

woman in the morgue? A. Yes, they are the ones.

Q. Are they the pictures of the same woman that you have described as being in the coal bin? A. Yes.

Mr. Barnitt—I offer the pictures in evidence.

Mr. Barbour—Just a minute. If the Court please, I would like to cross examine this witness.

The Court—All right.

Preliminary cross examination by Mr. Barbour:

Q. Did you yourself take the pictures, Mr. Heinricks? A. Yes, I did.

Q. Did you yourself develop the plates? A. I did.

Q. Did you yourself make the prints from the plates? A. I did.

Q. Where are those plates now? A. Down at the studio.

Q. Did you do any re-touching whatsoever of those plates before making a print? A. None.

Q. Mr. Heinricks, do you know whether or not these pictures are as conditions were on the 2nd day of August, this year? A. The ones at the coal bin are exactly the same as they were, I don't know that anything is any different there, as far as I know, of conditions that existed there at that time, those photographs are exactly the same.

Q. Had any of the furniture been moved while you were there? A. No, not to my knowledge.

Q. I show you one picture, and ask you what that is supposed to represent? A. That is the

opening on the sidewalk, and the coal down the coal bin.

Q. Well, was that the condition in which you found that opening? A. No; the lid was taken off for the photograph.

Mr. Barbour—I object to the introduction into evidence of these pictures at this time, on the ground it has not yet been shown that these are actual photograph of conditions as they existed, when first found by the police or those who discovered the body.

BY THE COURT:

Q. Do those photographs correctly indicate the conditions as they existed at that time,—correctly represent them? A. Yes.

The Court—They will be admitted in evidence and marked.

(Said photographs referred to are marked Exhibit S-1 to S-19 inclusive.)

Redirect examination by Mr. Barnitt:

Q. Mr. Heinricks, will you kindly step down here a moment, please? A. Yes, sir.

Q. Can you relate to the jury, where this picture was taken, and what it represents, Exhibit S-5? A. That represents the scene in the coal bin just as it was taken from the steps leading down into the coal bin.

Q. And this one, Exhibit S-6? A. That exhibit S-6, is a close-up of the body, and also the shovel and axe, in the corner.

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Q. And this one, Exhibit S-6? A. That exhibit S-6, is a close-up of the body, and also the shovel and axe, in the corner.

Q. And S-1? A. That is the coal hole with the lid removed and that is the coal in the bin.

Q. And S-10? A. That is a view taken from approximately at the bottom of the stairs looking through the kitchen in the basement showing the entrance to the coal bin. That is a view of one of the bedrooms on the first floor, S-3.

Q. And S-4? A. That is a view of the other bedroom on the first floor.

Q. And S-7? A. That is one looking from the bathroom, in the basement, through the kitchen, and showing the coal bin.

Q. RIGHT here (indicating)? A. Yes.

Q. And S-11? A. That is a storeroom in the basement.

Q. S-13? A. That shows a part of the bathroom here, and the floors going upstairs to the first floor.

Q. S-14? A. And that is a view of the kitchen in the basement.

Q. And S-7? A. That is of the bathroom on the first floor.

Q. And S-18? A. That is the kitchen on the first floor.

Q. S-19? A. That is a picture of the living room on the first floor.

Q. And S-12? A. That is from the front door looking in the first floor, showing the stairs leading up to the second floor, and also the door to go downstairs to the basement, and the door to go into the first floor into the kitchen.

Q. And S-16? A. That is a front view of 14 Mill Street.

Q. And S-15? A. That is a rear view of 14 Mill Street.

Q. And S-2? A. That is one showing the

porch at 14 Mill Street, and the coal hole cover.

Q. On the sidewalk? A. Yes.

On p. 30, between lines 2 and 3, insert:

Q. And S-1? A. That is the coal hole with the lid removed and that is the coal in the bin.

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res? A. Yes.

Q. And S-8? A. These were taken in DeLuccia's morgue, on October 4th.

Q. And, you testified, of the woman that was in the coal bin. A. Yes.

Q. S-9? A. And that is the same one.

Mr. Barnitt—Cross examine.

Cross examination by Mr. Barbour:

Q. I want to use the photographs. Mr. Heinricks, I show you Exhibit S-6. Are you sure that that is the position in which those implements were, when you entered that coal bin? A. Yes, I am quite sure they had not been moved at all, not to my knowledge.

Q. That is an accurate reproduction of the conditions as shown in that corner of the coal bin, when you were there? A. Yes.

Q. And that was when? A. That was between 10 and 11, eleven o'clock, on August the 3rd.

Q. Sunday morning? A. Sunday morning.

Q. Doesn't it show that the shovel is in front of the axe? A. Yes.

Q. I show you Exhibit S-5, and ask you if that is the exact condition in which you found things when you went there, at that time? A. Yes.

Q. Does that show coal heaped upon her body at any point? A. Only on the hand and as far as I know there wasn't any under the boards here.

Q. So that if coal had been heaped upon the body after the commission of the crime, it must have been removed, before you took the photographs? A. Yes, because that is just as I found things.

Q. And if that is true, that photograph does not represent the conditions as they were immediately after the crime, does it?

Mr. Barnitt—Of course, I object to that.

The Witness—Yes, that is as it was taken as I got there.

The Court—Objection sustained.

Mr. Barbour—I pray an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly. WILLIAM B. HARLEY, Judge.

Q. I show you Exhibit S-1, and ask you if that shows any portion of a body or leg of a body? A. None whatsoever. The body had been moved at that time.

Q. The body had been moved, before you took that photograph? A. Yes. This was made late in the afternoon.

Q. Mr. Heinricks, did you take any other views of the body at the morgue? A. Just the two close-ups of the head.

Q. Who instructed you from what view, from what place to take those pictures? A. Why, I believe it was Detective VanOrden, or Detective Drew. I am not sure.

Q. Did you take any views of the rear of the head? A. Why, there is one there. I think that is part rear, and part side.

porch at 14 Mill Street, and the coal hole cover.

Q. On the sidewalk? A. Yes.

Q. I notice here two objects, in the photograph, what are they? A. They are the legs of the tripod.

Q. That is used for taking the pictures? A. Yes.

Q. And S-8? A. These were taken in DeLuccia's morgue, on October 4th.

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Q. Did you take any views of the rear of the head? A. Why, there is one there. I think that is part rear, and part side.

Q. There are only two that show the head? A. Yes.

Q. I hand you those and ask you to indicate which one is part rear and part side? A. That one.

Q. Indicating S-8. And that is of the right side, is it? A. Yes, that is of the right side.

Q. Have you any views at all of the left side? A. No.

Q. Why didn't you take any other views? A. Because I thought that was all that was necessary, and that is all I received instructions to take.

Mr. Barbour—That is all.

DR. WILLIAM A. NORVAL, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Dr. Norval, you are the county physician of Passaic County? A. Yes, sir.

Q. And acting in that capacity and associated with Dr. Kim, on Monday, August 4th, did you have occasion to perform an autopsy upon one Lucy Nardella, at DeLuccia's morgue in Paterson? A. Yes, sir.

Q. And who actually performed the autopsy, Doctor? A. Dr. Kim, under my supervision and direction.

Q. Were you present? A. Yes, sir.

Q. Did you observe everything that occurred in connection with the performance of that autopsy? A. Yes, sir.

Q. Showing you Exhibit S-9, I ask you if you

can state whether or not the person upon whom the autopsy was performed, was the person shown in that photograph? A. Yes, sir.

Q. Was it, yes or no? A. Yes.

Q. And I show you Exhibit S-8, and I ask you whether or not that also reproduces the face and the head and the person who assisted in performing this autopsy? A. Yes.

Q. Is it? A. Yes.

Q. The person is dead, doctor? A. It is?

Q. Doctor did you make an examination of any part of that person's head, body, legs or limbs? A. Yes, sir.

Q. You ascertained any abnormalities of any kind? A. Yes, sir.

Q. Did you find anything? A. Yes, sir.

Q. Will you just relate what you found? A. The face was very much discolored and lacerated; the ear was torn; the face on the left side of the jawbone was fractured in a number of places, and on the right side there was a wound above the right eyebrow on the right side; and there was another wound that extended from the eyebrow all the way around to this bone (indicating here), the back of her head. It went through the bone and into the brain tissue, tore the brain tissue, which was lacerated, and the nasal bones were fractured.

Q. Was there any condition of the skull, doctor, that appeared? A. I explained that. There was a wound extending from the right eyebrow around to this bone in the back here (indicating).

Q. What do you call that, doctor? A. Why, a fractured skull.

Q. Doctor, you said that the brain was exposed? A. Yes.

Q. Was there any condition of the brain that you observed? A. The brain was lacerated, due to the trauma.

Q. Did you observe anything on the left cheek, doctor? A. Yes, there was a wound on the left cheek, a hole rather, that went through the left cheek into the mouth.

Q. What can you say as to whether the bone over the right eye was crushed? A. The face was lacerated; all the nasal bones were fractured and the jaw bone and a wound above the eye.

Q. Doctor, from your opinion,—from your observation of the head, face, were you able to observe whether or not the brain tissue was visible? A. It was visible; yes, sir.

Q. Will you state, doctor, from your examination whether or not the brain tissue has been destroyed? A. It was, sir.

Q. Could you state from your examination if any nasal bones had been fractured? A. They were, yes, sir.

Q. Doctor, did you form an opinion as to the cause of death? A. Yes.

Q. What was it? A. A fractured skull, destruction of the brain tissue and hemorrhage.

Q. Doctor, could the conditions that you observed have occurred by reason of a blow from a baseball bat, blows from a shovel and blows from an axe? A. Yes, sir; they could.

Cross examination by Mr. Barbour:

Q. Did you notice anything, any injury to the back of the skull? A. Yes, there was a wound extending—there was a wound or a fracture of the skull extending from the right eye, around to the posterior part of the occipital bone. That is from

here to there, it went through the skull and showed the brain tissue.

Q. That was not caused by one blow, was it? A. I should think so.

Q. Was that the only injury to the skull which you found? A. No, the whole forehead, the skin of the forehead and the tissues of the scalp also was masserated.

Q. Did you find any injury to the back of the skull? A. Only what I have just related.

Q. That is the one that extended from the right eye over the ear? A. Yes, from here over around to here.

Q. Was there any other evidence of a blow having been struck on the back of the head? A. Not that I recall.

Q. Was there any evidence of her having been struck over the back of the head, with a baseball bat? A. All the tissues of the scalp, as I just related and of the face were masserated, swollen and discolored.

Mr. Barbour—That is all.

Redirect examination by Mr. Barnitt:

Q. Could the injuries that you observed on the side of the face and the skull, could any of these injuries be caused by an axe being used with force?

Mr. Barbour—I object to the question, it is distinctly leading, and as I get it, asked if it could have been caused, and I think for that reason it is improper.

The Court—In view of your cross-examination, I think it is proper, and I will allow it, and allow you an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly. William B. Harley, Judge.

The Witness—Will you repeat that question?

Q. (Question repeated by Reporter.) A. It could.

Q. And a shovel, the same thing, could these injuries have occurred from a shovel? A. The injuries to the face, and nose, and cheek could have been caused by a shovel. And of course it might be possible that the shovel could have caused the other. But I don't think the shovel would have caused this fracture of the skull which would enter into the brain tissues.

Q. Do you think the blade of an axe could have? A. Yes.

Mr. Barbour—That is all.

PAUL SHILLING, called as a witness in behalf of the State, being first duly sworn, testified as follows:

Mr. Barnitt: I will withdraw this witness temporarily, so as to allow Dr. Kim to get away.

DR. GAY B. KIM, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Dr. Kim, your first name, is Gay B. Kim? A. Yes, sir.

Q. What is your profession or business, what is your occupation. A. Pathologist.

Q. You will have to raise your voice, Doctor. Did you say pathologist? A. Yes, sir.

Q. How long have you been a medical doctor? A. Eight years.

Q. And during your practice, you have had occasion to perform autopsies on deceased persons? A. Autopsies?

Q. Did you at any time perform an autopsy or autopsies on deceased persons? A. Yes, sir.

Q. Have you an idea of how many autopsies you have performed in the last year? A. About 60.

Q. During the last year? A. Yes, sir.

Q. And on the 4th of August, this year, did you have occasion to perform an autopsy on a woman who was dead at De Luccia's morgue, in Paterson? A. Yes.

Q. I show you two photographs, these two I guess, Doctor, right here, can you say as to whether or not the person on whom you performed an autopsy is the person whose head and face is shown on Exhibits S-8 and 9? A. Yes, sir, the same person.

Q. The person was dead, of course, Doctor? A. Yes, sir.

Q. Did you have an opportunity, Doctor, before you performed the autopsy,—or did you make an examination of the head and body? A. Yes, sir.

Q. What did you observe with reference to any abnormal conditions? A. I found the face was all black and blue, and on the right side extending from the right eye to the back of the head was a wide gaping wound going right through the skull. Through this wound you could see the brain tissue

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which was masserated and also a lot of clotted blood in it. Over the right eyebrow the bone was fractured. The left ear was torn, at the base of it, and there was a hole, a laceration, caused by laceration in the left cheek. The nasal bones were fractured. Those were the findings at the time.

Q. Could any of these wounds you have described have occurred by the use of force, wielding an axe blade. A. Yes, sir, very well.

Q. Could that condition on the skull, could that wound you have described occurred by the use of an axe? A. Yes, sir.

Q. Might any of these other wounds, you have described have occurred by the use of force, of the blade of a shovel? A. They could be produced that way.

Q. Did you observe any particular injury in the back of the head, Doctor, the skull? A. The wound extended to the back of the head.

Q. Yes, that is the wound that you have described, as coming from the right side of the skull? A. Yes, sir.

Q. Did you form an opinion as to the cause of death? A. Yes, sir.

Q. What was it, Doctor? A. Fractured skull, with lacerated brain and hemorrhage.

Cross examination by Mr. Barbour:

Q. Did you examine the back of the head? A. Yes.

Q. Did you find any evidences on the back of the head, of any injury other than the one that was over the right ear and extended to the back? A. No.

Q. No other evidence? A. No.

PAUL SHILLING, recalled to the stand, and testifies as follows:

Direct examination by Mr. Barnitt:

Q. Mr. Shilling, what business are you in? A. Municipal engineer, and surveyor.

Q. How long have you carried on that business? A. The last 16 years.

Q. At the request of the Prosecutor's office, did you have occasion to make a survey and a plan or diagram of the interior of the first floor and basement of 14 Mill Street, Paterson? A. Yes, sir.

Q. When did you do it, Mr. Shilling? A. August 4th.

Q. Monday, August 4th? A. Monday, August 4th.

Q. Where are these premises, in what city? A. The city of Paterson.

Q. What county. A. Passaic.

Q. New Jersey? A. Yes, sir.

Q. As a result of the survey you made, did you make a diagram of the first floor rooms and basement? A. Yes, sir.

Q. Have you it here? A. Yes, sir.

Q. Showing you the diagram on this board here, this easel, is that the diagram you made? A. Yes, sir.

Mr. Barnitt—I offer it.

Mr. Barbour—No objection.

The Court—All right, it will be marked.

(Diagram of first floor and basement of No. 14 Mill Street, marked Exhibit S-20, for the State.)

Q. Would you come down, Mr. Spindler, is it? A. No, Shilling.

The Court—Mr. Shilling has a ruler, You can use that.

Mr. Barnitt—A ruler? All right.

Q. Now, will you describe the first floor of these premises as shown on your map? Go around the other side, Mr. Shilling. Supposing you go on the other side. That would be better. Now, out loud, if you will, describe the first floor. On what side is the first floor diagram, on the right or left? A. On the left hand side.

Q. All right, now, go right ahead. A. This portion in here denotes that step, a platform through the front entrance to the building. This is the hallway. This shows the stairway going upstairs. In here is the stairway going down the basement. This line indicates the doorway—a door, rather—leading to the kitchen. This line indicates

On p. 40, l. 21 after word "basement" insert:

This line in here indicates a door swinging open this way, into the living room. This shows the stairway going down to an areaway which leads underneath the porch and the main entrance of the building. This indicates a door leading downstairs to the basement.

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On p. 40, l. 22 after word "kitchen" insert:

This line indicates a door leading to the living room.

Q. Right in here? A. Yes.

Q. Now, is that inside the door which separates the hall from the basement stairs? A. Yes.

Q. The platform. A. Yes.

Q. Can you give us an approximate idea as to the area of that platform? A. Why, it is two feet nine inches this way, and it is approximately three feet three inches this way.

Q. Can you state whether or not there s a window in there? A. Yes, sir, lines indicating a window.

Q. Do you know whether there is a windowsill? A. Yes.

Q. About how far from the platform is the windowsill? A. Approximately two and a half feet.

Q. From the floor of the platform? A. Yes, from the floor of the platform.

Q. Now, will you describe the description here of this object you have shown on the right side of Exhibit S-20; what is that? A. That is the basement plan.

Q. Of the same building? A. The same building; this portion here as indicated represents this doorway. No, that is wrong. This represents the stairway going up.

Q. From what? A. From the basement.

Q. To what? A. To the first floor.

Q. What can you say as to whether or not the object shown here which is marked L-line is the same space or area shown over here (indicating)? A. That is the same.

Q. Go ahead. A. And this room here represents the kitchen. This line represents the door leading into the spare room; this line represents the door leading into the toilet, and this line represents the door leading outside of the building; and this line represents a door leading to the coal bin. This

Q. Would you come down, Mr. Spindler, is it? A. No, Shilling.

The Court—Mr. Shilling has a ruler, You can use that.

Mr. Barnitt—A ruler? All right.

Q. Now, will you describe the first floor of these premises as shown on your map? Go around the other side, Mr. Shilling. Supposing you go on the other side. That would be better. Now, out loud, if you will, describe the first floor. On what side is the first floor diagram, on the right or left? A. On the left hand side.

Q. All right, now, go right ahead. A. This portion in here denotes that step, a platform through the front entrance to the building. This is the hallway. This shows the stairway going upstairs. In here is the stairway going down the basement. This line indicates the doorway—a door, rather—leading to the kitchen. This line indicates a door to the closet. This indicates a kitchen cabinet. Ths line indicates a door leading to a bedroom. This line indicate a door leading to the bathroom. This line indicates a door leading to another bedroom. In the rear is the back porch.

Q. Now, with reference to this locality here, you have described that as representing a part of the stairs leading to the basement from the hall? A. Yes.

Q. Then you stated that there was a door leading from the hall that enters in upon something before you go downstairs. A. This is a platform.

Q. Right in here? A. Yes.

Q. Now, is that inside the door which separates the hall from the basement stairs? A. Yes.

Q. The platform. A. Yes.

Q. Can you give us an approximate idea as to the area of that platform? A. Why, it is two feet nine inches this way, and it is approximately three feet three inches this way.

Q. Can you state whether or not there s a window in there? A. Yes, sir, lines indicating a window.

Q. Do you know whether there is a windowsill? A. Yes.

Q. About how far from the platform is the windowsill? A. Approximately two and a half feet.

Q. From the floor of the platform? A. Yes, from the floor of the platform.

Q. Now, will you describe the description here of this object you have shown on the right side of Exhibit S-20; what is that? A. That is the basement plan.

Q. Of the same building? A. The same building; this portion here as indicated represents this doorway. No, that is wrong. This represents the stairway going up.

Q. From what? A. From the basement.

Q. To what? A. To the first floor.

Q. What can you say as to whether or not the object shown here which is marked L-line is the same space or area shown over here (indicating)? A. That is the same.

Q. Go ahead. A. And this room here represents the kitchen. This line represents the door leading into the spare room; this line represents the door leading into the toilet, and this line represents the door leading outside of the building; and this line represents a door leading to the coal bin. This

represents an area way, stairs, leading from here up to the sidewalk.

Q. What is this space here? A. That is the coal bin.

Q. I notice here you have a circular marked "cover on walk"? A. Yes.

Q. Is that on the coal bin or upstairs? A. That is upstairs on the sidewalk, a cover, a steel cover over the coal hole.

Q. Did you observe if you could look down into the coal bin from the sidewalk? A. Yes.

Q. Well, could you? A. Yes.

Q. I notice here a black object with the words "blood stains"; what did you observe in reference to that on that examination?

Mr. Barbour—I object to the question because it has not been proven that this witness has any knowledge as to what kind of blood stains they were.

Mr. Barnitt—All right; I withdraw it.

Q. Did you observe something at the bottom of the stairs there, without stating what it was, did you? A. Yes.

Q. And as a result of what you observed, did you make this black ink spot to represent what you did observe there? A. Yes, sir.

Q. How close to the stairs was that object that you have described in your plans? A. Why, within six inches, this one; that is off the stairway. That is the one off the side of the stairway off the floor to the left; and the one on the stairway approximately three or four inches, on the second step.

Q. The one you have described as being on the stairway where is it on the stairway on that map? A. Right here.

Q. Pointing to the second step? A. Yes, sir.

Q. The second rise here? A. Yes.

Q. And you have indicated what you saw in black? A. Yes, sir.

Q. And the two objects that you have related, did you reproduce these on the map as being two black spots here? A. Yes.

Q. One being here on the steps and one six inches to the left of the stairs? A. Yes, sir.

Cross Examination by Mr. Barbour:

Q. Mr. Shilling, will you describe this cover of the coal hole, the make of it? A. It is in all probability steel, some kind of iron anyway.

Q. You indicate on it four small circular holes, —circles, what do they represent? A. Probably holes for ventilation.

Q. Well, do you know what they represent? A. And also to remove the cover.

Q. Do they represent holes? A. Yes, they represent holes.

Q. Not pieces of glass plating over them? A. No.

Q. Open holes? A. Yes.

Q. And there are four of those through the cover? A. Yes, sir.

(Recess taken at one o'clock until two P. M.)

The Court—I might say to the members of the jury that this is known in law as a capital case, and in all such cases it is necessary for the jury to be kept separate and apart from anyone else until the case is decided and finished. You will therefore be taken in charge of the court attendants to the Alexander Hamilton Hotel for luncheon, and if the case extends over the night you will be taken here and be extended every courtesy and consideration. You are not to discuss this case with anyone not even among yourselves until you are taken to the jury room for final determination of the case.

(Recess until 2 P. M.)

(After Recess.)

CHARLES PIROLA, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Sergeant Pirola, you are connected with the Police Department Bureau, Paterson? A. Yes, sir.

Q. And have been for how long? A. For the past 18 years.

Q. How long have you been connected with the Police Department, Sergeant? A. 18 years, going

Q. And you speak and understand Italian? A. I do.

Q. On Sunday morning, August 4th, did you have occasion to go to the premises of 14 Mill Street, Paterson? A. I did.

Q. About what time did you go there, Sergeant?

A. I should judge between half past 9 and ten o'clock.

Q. Did someone accompany you, Sergeant? A. Detective Moore, at that time; Sergeant Moore now.

Q. Did you have occasion to talk to someone there? A. With Jerry Nardella who accompanied us.

Q. Do you know what relation he is to the defendant, Bonaventura Nardella? A. Yes, sir; a brother.

Q. Was anyone else with you, outside of Jerry Nardella and the detective? A. I believe it was detective Moore and myself, and Jerry Nardella.

Q. As a result of having gone there, did you make an inspection of the premises? A. Of the living rooms, the first floor.

Q. Did you go downstairs? A. No, sir.

Q. Did you observe if there were anyone upstairs, other than the persons who accompanied you there; did you see anyone else? A. No, sir.

Q. As a result of your examination of the premises, did you subsequently have a conversation with someone over the telephone at Manlius, New York? A. I did; yes, sir.

Q. Now, the law will not allow you to say what you talked about. Who was the party you talked to? A. Chief John Powers, chief of police, of Manlius, New York.

Q. As a result of having talked with him over the telephone, did you subsequently on Monday, August 4th, arrive at Manlius, N. Y.? A. Arrived at Syracuse, N. Y.

Q. Syracuse? A. Yes, sir.

Q. And did you see Chief Powers at Syracuse? A. I did.

Q. Where did you go at that place? A. As we arrived in Syracuse, N. Y., I went to the County Jail of Onandego County.

Q. Onandego, N. Y.? A. Yes, sir.

Q. And you know, of course, that Syracuse is the county seat of that county? A. Yes, sir.

Q. Did you see someone in the county jail there? A. I did.

Q. Do you identify any one in the court room who you saw in the jail at that time? A. Yes, sir.

Q. Who did you see? A. Bonaventura Nardella.

Q. Will you come down and point him out, please, the defendant? A. Yes. (Witness leaving the stand.) This man right here.

Q. Put your hands on his shoulders, please. A. (Witness putting hand on shoulders of the defendant.)

Mr. Barnitt—Pointing out the defendant Bonaventura Nardella. Take the stand, sergeant, please.

(Witness returns to witness chair.)

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

Q. Tell us what was said at that time? A. I asked the keepers—

Mr. Barbour—Just a minute, if the Court please. I object to the question as being to general and as tending to bring out evidence for which the proper foundation will not have been laid and which will be inadmissi-

ble possibly under the laws of this State. I think the prosecutor should ask the questions so counsel will have a chance to object to any question as he goes along.

The Court—I think the state's counsel can make it clear. You mean in relation to this affair?

Mr. Barnitt—Yes, sir, in relation to this crime.

Mr. Barbour—I object to it on the ground that no foundation has been laid for any statement, any confessions or any conversation whatsoever to show that it is properly and legally admissible as evidence in this trial. This is getting right down to a conversation about the crime and he has not laid the usual foundation for testimony as to statements made by the defendant.

Mr. Barnitt—All conversations of the defendant is admissible.

The Court—I will allow it, and allow you an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

Q. Go ahead, Sergeant. A. County Investigator Cavaliere and myself entered the county jail and we told the keepers that we were from Paterson, New Jersey, and officers, and that we wanted to see Mr. Nardella. He could almost hear us because the bars from where we were we could be heard right through to him. They let him out and he recognized me right away.

Q. Did you know him? A. Yes.

Q. Did you know his wife Lucy? A. Yes.

Q. All right, go ahead. A. I recognized him and shook hands with him and I said "What did you do?" Well, he related the story to me and he said "Well, it is done now", and he told me just how he had done it.

Q. Go ahead, relate it. What did he say?

Mr. Barbour—If the Court please, I renew my objection to the question in this manner. There is nothing to show that this defendant was apprised in advance of his rights and told that anything he said might be used against him, nothing to show that the declaration or statements made were voluntarily made without fear, threats or promises or made without any inducement or anything else that makes it a valid, binding statement and admissible in evidence at the trial in this court.

The Court—I will permit it at this time subject to being stricken out.

Mr. Barnitt—Your Honor should observe that any statement which tends to incriminate him is admissible.

Q. All right, go ahead? A. I might say the statement came from him without being asked for.

Q. Go ahead and tell us what was said. A. He told me the story that it was his impression that his wife wasn't just right with him and I said "Well, what reason do you have, who do you accuse, who do you say was wrong with your wife"? He said, well, he didn't know and afterward I said well, what did you do it for?

Mr. Barbour—Just a moment, if the Court please. The way the sergeant is testifying it seems to be not conversation but—

The Court—His recollection.

Mr. Barbour—His recollection of it, phrased not in the language of the defendant, and I think it should be properly phrased. I object, if the Court please.

A . Well, the proper phrasing of it, later that morning I will say just after ten o'clock he was taken to the office of the District Attorney of the County, the gentleman who is sitting here now.

Q. This gentleman here? A. Yes, he was taken there by court officers and there he made a statement of his own free-will, being warned a dozen times of his rights and so forth.

The Court—All right, proceed.

Q. Go ahead. Was this conversation before you went to the District Attorney's office? A. Yes, sir.

Q. Before? A. Yes, sir.

Q. Go ahead. A. I should judge it was around —we arrived in Syracuse about seven o'clock and we arrived at the County Jail I should judge 8 o'clock in the morning, and that was before the District Attorney's office was opened, and we went right over there and we left our grips there, and the keepers asked us if we wanted to see him.

Q. I see. Will you relate the conversation you had with the defendant? A. The story was, I asked him, did he kill his wife, and he said he did. I said, "What did you do it for?" He said, "Well, I

thought that she wasn't all right," and I said, "Well, who did you accuse, who did you think was wrong with your wife, who did you know around there?" Well, he said, "No one in particular, but I heard somebody—someone looked cross at me enough before, and Saturday night she had Justice Rabino after me," and he said, "What is the use? It is all over now. I did it." I asked him, if he knew now at that time what had happened you would not do it," and he said, "~~Yes, I would do it would not do it," and he said,~~ "Yes, I would do it right all over again," and that he was satisfied he did it and he said, "You could do whatever the hell you want with me." Now, that is about the conversation.

Q. Was Mr. Cavaliere, Detective Caveliere, with you that time? A. Yes, sir.

Q. And subsequently did you attend at the office of District Attorney Unglis, in the court house building at Syracuse? A. Yes.

Q. At the time Nardella was interrogated? A. I did.

Q. Were you there? A. Yes, sir.

Q. And do you recall who else was present besides the District Attorney, Nardella, and yourself? A. I do.

Q. Who? A. District Attorney, myself, Cavaliere, Chief Bowers—

Q. Of Manlius? A. Of Manlius. The Deputy Sheriff Monson of the County.

Q. Of Onandego County? A. Of Onandego County. Miss Walsh, I believe her name is.

Q. The stenographer and secretary to the District Attorney? A . That is right. The Italian

Court Interpreter who interrogated. I think his name is Kopchifalko, that gentleman sitting there.

Q. Dionisio, Kopchifalko. Were you present at the time when any questions were put to Mr. Nardella by the District Attorney? A. Yes.

Q. Were you present when answers were made to those questions by Mr. Nardella? A. Yes, sir.

Q. Were you present during all that examination? A. Yes, sir. I never left until all the examination was complete.

Q. What way was the examination conducted? A. By asking questions and receiving answers.

Q. I mean, in what way? Through an interpreter? A. Some were through an interpreter and some he could speak. Some questions he kind of answered himself in the English language, but most of them through the Interpreter.

Q. I see. Who did the asking of the questions? A. I believe the District Attorney, Clarence Unglis.

Q. Yes. And who took the stenographic notes? A. Miss Walsh.

Q. And the Italian Interpreter, what did he do? A. He translated what was asked, and the answers.

Q. Now, going from August the 4th, that was Monday, going to Friday, August the 8th, at the Paterson police station, were you there when Nardella was there in the detective bureau? A. I was.

Q. Were you present when he was interrogated by the Prosecutor? A. I was.

Q. And were you present at that time when anyone asked him questions, meaning the defendant? A. I was.

Q. Who asked him the questions? A. Mr. Barnitt, the prosecutor of Passaic County.

Q. And who, if anyone, asked Nardella questions in Italian? A. Aquino, the official court interpreter.

Q. And were you present when these questions were asked by me to Nardella? A. Yes, sir.

Q. And were you present when such questions were asked my Mr. Aquino, an Italian, to the defendant? A. Yes, I was.

Q. And were you present when answers were made by the defendant in Italian, Mr. Aquino? A. Yes, sir.

Q. And were you present when those answers were interpreted by Mr. Aquino to the stenographer? A. Yes, I was.

Q. Do you know who the stenographer was? A. Miss Mildred Duffy, your secretary.

Q. Were you there during all of that examination? A. I was.

Q. Do you know who else was there at the time? A. Yes.

Q. Who? A. Captain Murphy of the detective bureau, Sergeant Smith, myself and Mr. Drew.

Q. Detective Drew? A. Detective Drew and Mr. Aquino.

Q. Do you know Dr. Collins? A. Dr. Collins from Greystone Park, yes, sir.

Q. Was Dr. Collins there? A. He was.

Q. During all of the conversation? A. Yes, during all of the conversation and there might have been one or two others there I can't just recall.

Q. Now, Sergeant, coming back to 15 Mill street, before you went to Syracuse on Sunday, did

you subsequently return after your first visit to 14 Mill Street? A. I did.

Q. And about what time was that on Sunday? A. About a quarter past one.

Q. And who was with you, Sergeant? A. I met Detective Cavaliere, a number of our officers, Captain Murphy, Detectice Hermann, Detective Brooks and Moore and a number of our reserve officers.

Q. Did you have occasion together with any of those other officers to go down into the basement of 14 Mill Street? A. Yes; I did.

Q. Did you have occasion to go into the coal bin of those premises? A. I did.

Q. Did you observe anything in the coal bin? A. Yes, sir.

Q. What did you see? A. I saw the body of Lucia Nardella.

Q. Did you know her before that? A. Yes, I did.

Q. Did you identify that person? A. If I didn't know her I would not have ever identified her the way she was chopped up.

Q. Who was she? A. Lucy Nardella.

Mr. Barbour—I object to the characterization by the witness.

The Court—Yes; strike it out; the characterizaion.

Q. You mean the way she was chopped up? A. Yes.

Mr. Barbour—If the Court please, we are engaged in the trial of a capital case and

I think we should be careful as to how we conduct the examination.

The Court—The characterization by the witness will be stricken out.

Mr. Barnitt—I understood your Honor to strike that out but I say that not all of the answer of the witness should be stricken out.

The Court—Just the characterization by the witness.

Q. You identified this lady as Lucy Nardella? A. Yes, sir.

Q. Do you know whether that Lucy Nardella was the wife of Bonaventura Nardella, the defendant? A. Yes, sir.

Q. Was she? A. Yes.

Q. Sergeant, showing you Exhibit F-5, what can you say as to whether or not the party whom you say you saw in the coal bin, Lucy Nardella, is the party who is shown in that photograph; was it? A. It was.

Q. What can you say as to whether or not the position of the body as shown there with those boards in the manner shown was the position of the body and boards when you saw the body? A. When I saw the body they were in the exact position, the body was in the exact position it was in; I saw the pictures taken.

Q. Were you present at the time when the boards were removed from the body? A. No, sir.

Q. Did you subsequently see the body in the

coal bin after the boards were removed? A. No, sir.

Q. Did you have occasion to see anything in the coal bin outside of the body and the boards? A. Yes.

Q. What did you see? A. I saw the axe and the shovel.

Q. Sergeant, I show you a shovel and I ask you if you identify that shovel as being the one you saw in the coal bin at the time you have described? A. That is the shovel.

Mr. Barnitt—I offer the shovel in evidence.

Examination by Mr. Barbour:

Q. How do you know that is the same shovel, Sergeant? A. On account of the handle being broken and the shape it is now in and the age of the shovel and the way it is worn and it was marked afterwards for identification.

Q. By whom? A. By one of our men in our office; I believe Detective Hermann.

Q. Do you know where that shovel has been ever since? A. Yes.

Q. Where? A. In the custody of the secretary of the police who has the custody of all these articles that are filed away for future evidence.

Q. When was it brought to the court house? A. I don't know.

Q. Then you do not know just where it has been all the time, do you? A. I do know it was turned over to the custody of the secretary of police; after that I don't know what become of it, I can tell

you what I think as to where it went, but I don't know.

Q. I asked you before if you knew where it had been the entire time, from the time it was taken from the coal bin until now? A. As far as I know, it was tagged and brought over to the police station and handed over to the property clerk.

Q. And that is all you know about it? A. Yes, that is all I know about it.

By Mr. Barnitt:

Q. You identify that as the shovel, do you, sergeant, do you? A. Yes, sir, I do.

Mr. Barnitt—I offer the shovel in evidence.

The Court—It will be admitted. Let it be marked.

(Shovel referred to is received in evidence and marked Exhibit S-21.)

Q. Did you see any of the other objects in the coal bin, Sergeant? A. Yes; the axe.

Q. I show you an axe, and ask you if you can identify that axe as being the axe you saw in the coal bin on that occasion you have related; yes or no? A. It is; yes.

Mr. Barnitt—I offer the axe in evidence.

By Mr. Barbour:

Q. How do you know that is the particular axe you saw? A. I recollect it by the marks and three

crosses put on it by pencil by myself and Detective Hermann and Brooks.

Mr. Barnitt—I offer the axe in evidence.

The Court—It is admitted in evidence; let it be marked.

(Axe referred to is received in evidence and marked Exhibit S-22.)

By Mr. Barnitt:

Q. Sergeant, showing you Exhibit S-6, I ask you if the axe and shovel as you see them in that photograph was the position of the axe and shovel at the time you have stated you saw these two articles in the coal bin; yes or no? A. Yes, sir; they are.

Q. Showing you this photograph, Sergeant, S-5, you will observe that photograph has boards on the body or part of the obdy of Lucy Nardella. You saw those there? A. Yes, sir.

Q. Did you see these boards there when you went there? A. Yes, sir.

Q. As shown on that photograph there? A. Exactly as this photograph is now.

Q. Just come down please and look at these boards and see if you can identify these boards as being the boards you saw on the body on that occasion, please? A. They are the boards.

Mr. Barnitt: I offer them in evidence, if your Honor please.

Cross Examination by Mr. Barbour:

Q. Sergeant, I notice you didn't look at all the boards, how is it you can tell these are the identical

boards on such a curcery examination? A. The size, shape and dirt and coal dust, and so forth that is on them.

Q. If these boards had been taken from any other coal bin, they would have dirt and coal dust on them? A. I recognize the size, I recognize the length—I would recognize the board, I seen them before.

Q. Did you put any marks on them? A. I don't think I did.

Q. You marked the ax, didn't you, Sergeant? A. Yes, sir, I did.

Q. Why? A. Well, because after for identification purposes.

Q. Well, then, why then didn't you mark the boards? A. Because I left the scene before the boards were taken away. Left it to the other men to take care of them.

Q. Did you realize at that time that these boards were going to enter into this case? A. I did.

Q. Did you realize they probably or might possibly be used in evidence? A. I did.

Q. Did you leave any instructions as to the boards? A. I did. To Detectives Hermann and Brooks.

Q. Did you leave any instructions as to the marking of them? A. They know their duty.

Q. Will you answer my question, please, Sergeant? A. I don't remember whether I did or not. I told them to take everything that could be used as evidence and take proper care of it.

Q. But you did mark the axe yourself? A. I did.

Q. But you didn't leave instructions to make sure the board would be marked? A. I got some

information about the man and I was going to look for the man. I didn't care about the evidence, just then. That is just what I did.

Mr. Barnitt—I renew my offer.

The Court—I will admit them.

Mr. Barbour—If the Court please,—

The Court—An exception will be allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

(Six boards marked Exhibit S-22, in evidence for the State.)

Redirect Examination by Mr. Barnitt:

Q. Sergeant, I want to take you back to the District Attorney Unkliss' office in Syracuse at the time Nardella was examined. I show you a piece of yellow paper with some handwriting in ink and some pencil markings in pencil. Do you recall seeing that before?

Mr. Barbour—I object, if the Court please, to the witness being handed the paper.

Mr. Barnitt—That is the only way I can show it to him as I understand it, Mr. Barbour.

The Court—He may look at it.

Mr. Barbour—Of course, I don't know what the paper is or anything about it.

Mr. Barnitt—What is your answer, Sergeant?

A. I did see this before.

Q. Do you recall anything being asked of the defendant Nardella in connection with the paper at District Attorney Unkliss' office? A. Yes, sir.

Q. What was it? A. He asked him to describe how the house was situated and where the crime took place, and there was a little map drawn—

Q. By whom? A. I believe the map was drawn by Cavaliere.

Q. In the presence of the defendant? A. That is the ink part of it. In the presence of Mr. Unkliss, while Mr. Unkliss was questioning—

The Court—Was Nardella there at the time?

The Witness—Yes, sir.

Q. Yes, sir, he said that at first, Judge. With reference to the lead pencil, who did that? A. Nardella did that.

Q. Did he say anything when he made the lead pencil markings? A. Just described how the stairs was and how you got down there, trying to explain to Mr. Unkliss the location and situation of the house.

Q. He put the lead pencil markings on there? A. I believe most of the lead pencil was put on by Nardella.

Q. And the ink by Caviliere? A. Yes, sir.

Mr. Barnitt—I offer that in evidence.

Mr. Barbour—Just a moment. If the Court please, I object to the introduction in evidence of this, because this witness has testified that most of it was put on by the defen-

dant, and he hasn't pointed out what part was not put on by the defendant. Therefore, it should not be admissible in evidence as against this defendant until the particular parts put on by the defendant are identified.

Mr. Barnitt—I thought it was clearly understood, your Honor. He has testified the INK was put on by Caviliere, and the INK by Nardella.

The Court—Is that so?

Mr. Barbour—If the Court please, he testified, and I am sure the stenographer can find it very quickly, that most of it—

The Witness—Most of the entire map.

Mr. Barbour—Most of the pencil marks he said were put on by the defendant.

Mr. Barnitt—I didn't understand it that way, your Honor.

Mr. Barbour—I would like to ask the stenographer to refer back.

The Court—What is the testimony of the witness?

Q. Who did it? A. The pencil mark was Nardella; the ink marking by Caviliere.

Q. What proportion of the ink mark and the lead pencil mark—

Mr. Barbour—That is not my objection.

The Court—It speaks for itself. It is admitted in evidence, now.

Mr. Barnitt—Yes, that is right.

Mr. Barbour—I take an exception.

The Court—The exception will be allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge

(Map marked Exhibit S-23, in evidence.)

Q. Now, it is understood, your Honor, that the State is just offering the first part of it. This lead pencil on the back has nothing to do with this.

Mr. Barbour—If the Court please, having just seen this, I notice some writing on here, and I would like to examine as to that. There has been testimony as to drawings put on here, but I do not recall that it was testified that he put writing on.

Mr. Barnitt—He said that everything in ink Mr. Cavilere wrote. Well, now, included in the ink was the words "Bedroom, bedroom, bathroom." Then it says, "Ben Nardella."

The Witness—I would rather look that over again with reference to the name. I don't think the name was put there by—the name wasn't put there by Caviliere. All with the exception of Ben Nardella as it is put there—that is the ink part. As far as the writing is concerned—the rest of it is all Caviliere's writing.

By Mr. Barbour:

Q. Written when? A. Right then and there.

Mr. Barnitt—Monday, August 4th.

Q. Was that written before the defendant put the pencil marks on or afterwards? A. Before.

Q. Before? A. Before.

Q. You don't know when the name was written on? A. No, I do not.

Mr. Barnitt—It may have been put there just for identification.

The Court—It is in evidence.

Mr. Barnitt—If your Honor please, I think we would be taking up the time of the Court unnecessarily to have him relate about the confessions. I have those.

The Court—You have them in writing.

Mr. Barnitt—That is, the stenographic record.

The Court—All right.

Mr. Barnitt—Cross examine.

Cross examination by Mr. Barbour:

Q. Sergeant, when you got to 14 Mill Street, on the afternoon of August the 3rd, had any of your force been there before that?

Mr. Barnitt—Would you parden me, for interrupting, John, there is one question I omitted, and then I won't interrupt.

Mr. Barbour—I will withdraw the question so as to keep it straight.

By Mr. Barnitt:

Q. I wanted to ask you if you can identify the person shown on these two photographs, Exhibits S-8 and 9, if you can say who that party is. A. Yes.

Q. Who is it? A. Lucy Nardella.

Q. What relation, if any, is she to the defendant, if you know? A. His wife.

Mr. Barnitt—That is all.

By Mr. Barbour:

Q. Sergeant, do you know whether you were the first of your department to arrive at 14 Mill Street on the afternoon of August 3rd? A. I was not.

Q. When you went in had the door of the coal bin been opened? A. Yes.

Q. Was anyone in there, then? A. No one in there. There was some standing outside of the door of the coal bin.

Q. Had the body been discovered before you got there? A. It had.

Q. Did you know who discovered it? A. I believe a brother, Tony Sarasino, a brother to the deceased.

Q. I show you Exhibit S-5, and ask you if you are sure that that was the exact condition of things in that coal bin when you got there? A. When I saw her this was just exactly the position, because the photographer was about to take the photograph, and I was there.

Q. The boards were just that way? A. Yes, sir.

Q. Did you lift the boards? A. I did not. I did not touch it.

Q. I believe you identified that as the body of Lucy Nardella, did you? A. I did.

Q. Do not the boards obscure the features of the face? A. They do.

Q. How could you identify her body? A. Because after it was moved I seen her face after she was about being taken to the morgue.

Q. Didn't you say that when you left there the boards were still over here? A. Yes.

Q. They had not been moved? A. No.

Q. Then, how could you see her face. A. Because I seen her afterwards. I seen her face. I returned and I saw her being taken and put in a basket to be taken to DeLuccia's morgue.

Q. When was that? A. Oh, a short time after. Some time, maybe—oh, an hour—it was around two o'clock, to the best of my recollection, just before two o'clock.

Q. You were interested in apprehending her husband, weren't you? A. I was.

Q. And yet you returned to the house? A. Yes.

Q. Where was her body when you returned? A. The second time I returned, that is—I don't mean in the morning. I mean the second time, after the body was discovered. I believe it was being placed in a basket to be taken away.

Q. Still in the coal bin, was it. A. No, it was just being taken away at that time, put in a basket.

Q. Now, referring to Exhibit S-6, that shows part of the body with the boards removed, does it not? A. Yes, sir.

Q. It shows the axe and shovel? A. Yes, sir.

Q. In the position in which they were, when you went there? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir, no, not when I went there. When I went there, according to the other photograph, and then while I was there it was put—the boards were removed by someone while I was going upstairs with someone, and then I saw the photographer come down. They were trying to set a light so that they could put the right kind of light to take the picture. I saw it being taken.

Q. You saw that picture being taken? A. Yes.

Q. The body is still on the floor, isn't it? A. On the coals.

Q. In the coal? A. Yes.

Q. It is not being put in the basket to be taken to the morgue? A. No, that was before I left.

Q. This was before you left? A. Positively.

Q. This was at 1:15? A. 1:15 I arrived.

Q. Your visit started at 1:15? A. Yes.

Q. Then, the boards were removed before you left there, at that time, were they, sergeant? A. Well, I couldn't say which time you mean, exactly. I was there before I left—not to return that day, see, because after seeing all that I arrested Jerry Nardella, the brother, and then from that, why, I continued on my trip, and so forth.

Q. Referring to Exhibit S-6, you don't know, do you, sergeant, that that is the position in which the axe and shovel were when the first person entered that coal bin, do you? A. I don't know where they were when the first person entered, but I know that they were there when I seen the photograph being taken.

Q. Did you see them before that? A. Before this time?

Q. The axe and shovel, yes, before you saw this photograph being taken? A. Well, I saw it when the lumber was on top of her, when that other photograph was taken.

Q. And were the axe and shovel in the same position then as they are in this picure? A. To my best recollection, they were. Now, I couldn't swear that everything was just so, but I know that they were there, because we handled them afterwards.

Q. Afterwards? Yes, after, to be taken away.

Q. You are sure it was not before the picture was taken that they were handled? A. Not by me.

Q. Did you see anyone else handle them? A. Not that I know of.

Q. Did you see any bloodstains or anything on the axe? A. I think there was bloodstains on the axe.

Q. Well, you handled it to see that, didn't you? A. Yes.

Q. Now, do you know whether that was before or after this picture, Exhibit S-6, was taken? A. I don't recollect.

Q. You have known the Nardella family for a long time, have you not, sergeant? A. Yes, for quite a while.

Q. You had known this defendant for quite a while, have you? A. Yes. Not to be intimate. I just knew him, knew where he lived or about where he lived, and who his family was.

Q. Do you feel ill disposed towards him?

Mr. Barnitt—I object to that, if the Court please.

The Court—Objection sustained.

Mr. Barbour—I submit, if your Honor please, it will affect his credibility; it is therefore admissible and proper.

The Court—The objection is sustained and the exception is allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge

Mr. Barbour—I pray an exception.

Q. When you went to Syracuse and first saw this defendant did you tell him what you were there for? A. I told him I was there to bring it back to Paterson.

Q. Did you bring it back to Paterson? A. I sure did with the aid of others.

Q. When? A. I think we arrived on the 7th —the night of the 6th. I could look up my notes and be—

Q. And when you talked to him, you asked him, why he had done it, did you? A. Yes.

Q. Did you tell him that anything he said might be used against him? A. He volunteered it without my asking.

Q. Did you tell him that? A. It was told when he made a statement in the District Attorney's office.

Q. But when he made a statement in the County Jail to you, did you tell him that anything he said might be used against him? A. I wasn't taking any statements from him.

Q. You asked him what he had done, did you not? A. Yes.

Q. You were trying to get him to admit the crime, were you not? A. I didn't need to try.

Mr. Barnitt—I object to that, if your Honor please. That pre-supposes—

A. He volunteered it.

The Court—Objection sustained.

Q. When you asked him if he had done it, did you tell him that anything he said would be used against him?

Mr. Barnitt—If your Honor please, I can't see that is relevant. Any declaration of the accused is evidential against him. It doesn't make any difference.

The Court—Objection sustained.

Q. Do you know Jerry Nardella? A. I do.

Q. Do you know him well? A. Pretty good.

Q. Is he a good friend of yours? A. Not a good friend, just a man I know, the same as I know—I should judge I know three quarters of the Italians in Paterson.

Q. Did you ever go to his home? A. Yes.

Q. Did he ever go to your home? A. Not that I know of. Not in my knowledge.

Q. The families are friendly, are they? A. My wife don't know of them outside of meeting them and saying hello to them, or something of

that kind. We are not friends in any way. I wouldn't say we are bad friends but not good friends, only to greet him the same as I would greet you or someone else on the street or elsewhere. Never been intimate.

Q. When you went there first on the morning of October 3rd—

Mr. Barnitt—August 3rd.

Q. (Continued) On August 3rd you only examined the first floor, did you? A. We really didn't go to examine any floor; we went there to get photographs because there was a report of missing people, two, missing persons. I had no idea that a murder had taken place in those premises.

Q. Did you find anything on the first floor that would indicate that anything had happened when you went there that morning? A. The house looked all right and furthermore as I say we didn't go there to look around, we just went to get photographs. I had already taken a missing persons report from Jerry.

Q. When you say to get photographs you don't mean to get these photographs here? A. No; I mean pictures of Nardella and his wife.

Q. Was anyone there when you went there? A. Myself, Detective Moore and Nardella—Jerry.

Q. Where did you look for the photographs?

A. In the front room, in the drawer of the dresser and on the walls.

Q. Did you go into any of the other rooms? A. No, sir.

Q. Did you go into the dining room? A. We had to go through the kitchen in order to get into the parlor.

Q. Did you go into the bedroom? A. You could look into the bedroom; I didn't go in.

Q. You were looking for photographs? A. That is all.

Q. Did you find one? A. Yes.

Q. Where? A. In the drawer of the dresser, I think you call it a dresser, a buffet in the front room.

Q. Did you go into the bathroom? A. I did not, not at that time; I went in there the next day.

By Mr. Barnitt:

Q. Sergeant, in connection with the shovel identified by you, did you observe anything on the shovel? A. Blood.

Q. Anything else? A. Only the way it was; it was broken and so forth.

Q. You did not observe anything else? A. No.

Q. Did you observe anything on any of the boards that you can identify? A. I did not look so thoroughly for anything else because Detective Brooks and Hermann were doing that.

JOHN BOWERS, a witness produced on behalf of the State, being sworn, according to law testified as follows:

Direct examination by Mr. Barnitt:

Q. Chief, I believe you are chief of police of the town of Manlius in New York State. A. Yes, sir.

Q. On the 3rd day of August, Sunday, 1930, did you have occasion to locate the whereabouts of one Bonaventura Nardella? A. I did.

Q. And did you locate him? A. I did.

Q. And what can you say, chief, as to whether or not the defendant, Bonaventura Nardella, is the man you located; is he? A. He is.

Q. And where did you locate him, chief? A. I located him at his uncle's house eating dinner.

Q. What is his name, do you know? A. Louis Nardella.

Q. Did you have a talk with him, meaning the defendant? A. I went to the home of his uncle and his uncle wanted to know what the trouble was and I told him I would see; I examined the man in question; I said "Stand up" and he stood up and I then put the handcuffs on him and said "You are under arrest", and his aunt and uncle wanted to know what the trouble was and I said "He will tell you". I said "Tell him what it is for".

Q. Speaking to whom? A. Speaking to Nardella.

Q. The defendant? A. Yes, sir, the defendant.

Q. Were his aunt and uncle in your presence? A. Yes, sir, his aunt and uncle were there at the time.

Q. In answer to that suggestion did the defendant tell his aunt and uncle? A. No, not at that time.

Q. All right, go ahead. A. Well, I placed him under arrest and I said, "You are from Paterson, New Jersey?" "I am," he said. I said, " You murdered your wife in Paterson, New Jersey"? "I did."

Q. Who said that? A. The defendant; then I took him in an automobile to the county jail.

Q. At Syracuse, New York? A. Yes, sir, Syracuse.

Q. Who, if anyone, was with you when you went to the uncle's home? A. Deputy Sheriff Mawson of Onondaga County.

Q. Is he here today? A. He is here.

Q. Were you present at the time District Attorney Unckless interrogated the defendant? A. I was.

Q. In Syracuse. A. Yes.

Q. On August 4th? A. Yes, sir, August 4th.

Q. Were you present during the entire questioning of the defendant by Mr. Unckless? A. I was.

Q Do you know whether Mr. Capaosadella, the Italian interpreter, was there? A. He was.

Q. Is he here today? A. Yes sir.

Q. Do you know if Detective Sergeant Prola of the Paterson Police Department was in attendance at that time? A. He was there.

Q. Do you know if County Detective Cavaliere of Passaic County was there? A. Yes, he was there too.

Q. Do you know if the Deputy Sheriff Arthur Mawson was there? A. Yes, sir, he was there.

Q. Do you know if Miss Catherine Walsh, stenographer of the District Attorney was there? A. Yes, sir, she was.

Q. Do you know if anyone took down the stenographic notes of the questions that were put to the defendant and the answers made by him to those questions? A. I know of no one only Miss Walsh.

Q. Is she here today? A. Yes, sir.

By Mr. Barbour:

Q. Did the defendant resist arrest, chief? A. No, sir.

Q. He went along freely? A. Yes, sir.

ARTHUR MAWSON, a witness produced on behalf of the State, being sworn according to law testified as follows:

Direct Examination by Mr. Barnitt:

Q. Mr. Mawson, you are one of the deputy sheriffs of the county of Onondaga, New York State? I am.

Q. On Sunday, August 3rd, did you have occasion to accompany Chief of Police Bowers to the home of one Nardella in Manlius, New York State? A. I did.

Q. And at that time, do you recall having seen the defendant, Bonaventura Nardella at the home of his uncle? A. I did.

Q. And do you identify, or can you identify the man you saw there whom I have referred to as Bonaventura Nardella; can you do that in court today? A. I can.

Q. Will you come down here please and point him out to the jury?

(Witness leaves the stand.)

Q. Lay your hand on his shoulder if you will, sheriff, and answer.

(Witness lays hand on shoulder of the defendant Bonaventura Nardella.)

Q. Sheriff, were you present at any time anyone asked any questions at the home of his uncle? A. I was.

Q. Who asked questions? A. Chief Bowers.

Q. I beg your pardon? A. Chief Bowers.

Q. Were you present at anytime when the defendant answered any questions of Chief Bowers? A. I was.

Q. Were they answered in English or Italian? A. English.

Q. Will you relate to the jury what questions were asked of him and what answers he made? A. Chief Bowers asked him if he was from New Jersey and he said yes. When he said "Stand up," Mr. Nardella stood up, and he says "Let's see your hand" and he showed him the left hand, the right hand.

Q. What was there about that hand if anything? A. The chief's instructions that he had three fingers missing on the left hand.

Q. Did you see that left hand? A. I did.

Q. Did you observe whether there were any fingers missing? A. There was.

Q. How many? A. Three.

Q. After that what happened? When the chief asked him to stand up? A. The chief said "You are my man, you are under arrest" and I immediately put the handcuffs on him and we took him up the street and into my car.

Q. Was there anything said to him in your presence, sheriff? A. Going up the street the chief asked him why he done it and he said he didn't know.

Q. Well, before that question was asked do you recall whether there was any other questions put to him by the chief? A. Not that I recall.

Q. Do you recall any other questions being

asked of him at all, by the chief other than the one you just related? A. He asked him in the house if he killed his wife and he said yes.

Q. When you say he you mean who? A. The defendant Nardella.

Q. That is, as I understand it. What did you do then? A. Took him up to the main street where my car was and took him to the Syracuse jail, the county jail.

Q. Were you present at the time he was interrogated by District Attorney Unckless? A. Yes, sir.

Q. In the county court house? A. Yes, sir, Mr. Unckless' office.

Q. The District Attorney of Syracuse? A. Yes.

Q. Do you recall whether Mr. Dionysius Capocesalo, the Italian interpreter, was present? A. He was.

Q. And Detective Sergeant Prala of Paterson? A. He was.

Q. County Detective Cavaliere? A. He was.

Q. Chief of Police Bowers? A. He was.

Q. And yourself. Were all these persons present? A. They were.

Mr. Barnitt—That is all.

Mr. Barbour—No questions.

FREDERICK CAVALIERE, a witness produced on behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Mr. Cavaliere, you are connected with the prosecutor's office? A. I am.

Q. On Monday, August 4th, did you have occasion to go to Syracuse? A. I did.

Q. Sunday, I mean? A. I did.

Q. August 3rd? A. I did.

Q. Did you see the defendant in New York State at that time? A. I did.

Q. When did you first see him? A. On Monday morning—

Q. You will have to raise your voice, please. A. On Monday morning at the county jail of Onondaga.

Q. Do you understand Italian? A. Yes, sir.

Q. And on Monday morning who was present besides yourself when you saw the defendant at the county jail? A. Sergeant Prola and I.

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

Q. What was said with reference to this crime? A. I asked him if what he had done in Paterson was true and he says yes, don't talk about it now, whatever they do with me I don't care. I said to him "What do you think of your boys now" and he said "Well, God will make the best of that and whatever they—"

Mr. Barbour—Will you talk louder, please?

A. (Continued) I asked him "what he thought of his boys now" and he said he didn't care what happened, God will take care of them and I asked him if he was sorry he killed his wife and he said if she was alive he would do it all over again. I spoke to him half in Italian and half in English.

Q. Was anything else said that you recall? A. That was all that was said at that time.

Q. Did you subsequently attend at the District Attorney's office, Mr. Unckless, on Monday? A. I did.

Q. Were you present at the time that he interrogated the defendant? A. I was.

Q. Do you recall the Italian interpreter interpreting the questions to the defendant? A. I did.

Q. Do you recall District Attorney Unckles asking the questions and the interpreter interpreting them to the defendant in reference to this case, the questions put by him? A. I do.

Q. Do you recall seeing one Catherine Walsh present taking stenographic notes of the questions put by the District Attorney? A. I do.

Q. And the answers made by the interpreter as coming to him from the defendant? A. I do.

Q. And the answers to these questions? A. I do.

Q. Do you recall whether this gentleman, Mr. Unckles, was the District Attorney? A. Yes, sir.

Q. And Mr. Dionysius Capocefalo was the Italian interpreter? A. Yes, sir.

Q. Was Sergeant Prola there? A. Yes, sir.

Q. Chief of Police Bowers? A. Yes, sir.

Q. Deputy Sheriff Arthur Mawson, of Onondaga County? A. Yes, sir.

Mr. Barnitt—Cross examination, John.
Mr. Barbour—No questions.

CLARENCE UNCKLESS, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. You are District Attorney of Onondaga County, New York State? A. Yes, sir.

Q. And have been how long, please? A. Five years.

Q. You have headquarters at the county court house building at Syracuse, New York? A. Yes, sir.

Q. How long have you been a practicing lawyer, Mr. Unckles? A. About 21 years.

Q. On Monday morning, August 4th, 1930, do you recall seeing the defendant Bonaventura Nardella? A. Yes.

Q. Where was he, Mr. Unckles, when you first saw him? A. He was brought to my office from the county jail which is directly across the road from the court house.

Q. Do you recall who brought him to your office? A. I believe Chief Bowers and Deputy Sheriff Mawson and I believe that one of the jailers, Mr. Black, brought him over but Mr. Black didn't remain.

Q. And did you have occasion at that time to interrogate the defendant? A. I did, through an interpreter.

Q. Do you know his name? A. Mr. Capocefalo.

Q. Dionysius Capocefalo? A. Yes, sir, he is the grand jury interpreter.

Q. For Onondaga County? A. Yes, sir.

Q. Have you used him before for interpreting the Italian language for your purpose as District Attorney? A. A great many times.

Q. And in connection with the questions you put to the defendant and which were interpreted by him to the defendant were those questions taken down stenographically by anyone? A. Taken down stenographically by one of my stenographers, Miss Catherine Walsh.

Q. How long has she been a stenographer? A. During my entire term she has been there and she was with my predecessor for a matter of two or three years, I believe.

Q. That would be in all seven or eight years? A. I think so. About that.

Q. Did you hear the stenographer put the questions in Italian to the defendant? The interpreter.

Q. I mean in the Italian language? A. Yes, sir.

Q. Did you hear the defendant answer these questions in his language? A. I did.

Q. The Italian language? A. Yes.

Q. You are not familiar with the Italian language yourself? A. I don't speak it but I know Italian when I hear it.

Q. Did you hear this defendant answer questions in Italian as put to him by the Italian interpreter? A. I did.

Q. And did you hear this interpreter make any statement in English to Miss Walsh, the steno-

grapher, of the answers made by the defendant? A. I did.

Q. And did he answer? A. He did.

Q. Do you know whether Miss Walsh in your presence transcribed, or rather made notes stenographically, of the questions and answers as made by him to the interpreter? A. She did.

Q. Subsequently did you have occasion to read over the questions and answers written stenographically by Miss Walsh in the form of a number of sheets of typewritten matter? A. I did examine it.

Q. Who handed these notes to you? A. Miss Walsh.

Q. I show you a number of pages of typewritten matter and ask you if you can identify the sheets, not what is in them, but as being the sheets Miss Walsh turned over to you, are they? A. They are.

Q. The same sheets? A. Yes.

Mr. Barnitt—I ask that they be marked for identification at this time.

(Marked Exhibit S-25 for identification.)

Q. Mr. Unckless, I show you Exhibit S-23 and ask you if you saw that before today. Well, we are just referring to the one front sheet. A. Yes, I saw this on the day that we were interrogating Mr. Nardella.

Q. Did you observe anybody write in ink what you see in ink on that page you are looking at? A. Yes.

Q. Do you know who it was? A. Now it is my

impression that it is Mr. Cavaliere, all except one portion of this that is in ink.

Q. What can you say as to whether or not the portion that you are referring to are the words Ben Nardella; do you know who wrote those words? A. Yes, that is in my handwriting.

Q. With reference to the lead pencil marks on that sheet from your own observation do you know who made those lead pencil markings on that sheet? A. I believe the defendant did.

Q. In your presence did you hear him say anything at the time he made those lead pencil marks? A. He was talking in Italian to the officers.

Q. Could you understand him? A. I could not.

Q. Outside of the time that the stenographer, Miss Walsh, took this testimony or these statements did you examine it again other than that one time, Mr. Unckles? A. The defendant?

Q. Yes. A. I may have spoken to him at the time that the extradition warrant came through but I didn't interrogate him again.

Q. What was his demeanor at the time he made the statement? A. Well, he was very gentlemanly about it and composed and was anxious to tell all about it.

Cross examination by Mr. Barbour:

Q. Mr. Unckles, when you carried on this interrogation did you give him any explanation as to his rights before asking the questions? A. Yes, I— If you want me to tell what I said to him.

Q. Yes. A. When he was brought into my offices I told him that he was charged with murder-

ing his wife in Paterson, New Jersey, and that he had a legal right to talk about it and give us his version about it or had a legal right to keep silent. And if he kept silent the fact of his silence could not be used against him and if he did talk and make any statement that anything he said could be used against him.

Q. Were these statements made by you in English? A. Made by me in English and interpreted by Mr. Capocefalo.

Q. Those very statements were interpreted in the Italian language to the defendant? A. They were. That is, in substance what I have told you now.

DIONYSIUS CAPOCEFALO, called as a witness in behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Mr. Capocefalo, what is your occupation? A. I am naturalization clerk for the county of Onondaga and official Grand Jury and County Court Italian Interpreter for the same county.

Q. How long have you occupied either or both of those official positions? A. About 23 years.

Q. Are you an Italian by birth? A. Yes.

Q. And do you recall ever having seen the defendant Bonaventura Nardella? A. Yes.

Q. Where did you first see him? A. In the office of the District Attorney.

Q. Mr. Unckles? A. In Onondaga County, Mr. Unckles' office.

Q. What can you say as to whether or not the

date was Monday morning, August the 4th, 1930? A. That was the date.

Q. What can you say as to whether or not on the occasion you saw this defendant on that morning whether District Attorney Unckles interrogated the defendant and whether you put to him the questions by the District Attorney, put by you in the Italian language to the defendant? A. Mr. Unckles did.

Q. And did you in turn interpret those questions, as put to the defendant in English to the defendant in Italian? A. I did.

Q. Did the defendant in Italian answer the questions which you put to him in English? A. Yes; he did.

Q. And did you in turn translate into English language the answers made by the defendant in Italian to you? A. I did.

Q. And do you know who, if anyone took stenographic notes of the questions put in the manner I have described and the answers made in the manner stated? A. Miss Walsh, stenographer, or clerk in the office of Mr. Unckless apparently was taken stenographic notes of his questions and my answers.

Q. Do you recall ever having seen typewritten sheets as reproduced by Miss Walsh on the typewriter of the questions and answers to which I have referred? A. Yes, sir.

Q. I show you S-25, for identification, and ask you if you can identify those sheets there as being the typewritten sheets, typewritten by Miss Walsh of those questions and answers? A. I would say this is a copy of interrogatories taken.

Q. That is the original; examine it closely. A. Yes; I believe so.

By Mr. Barbour:

Q. You mean, do you not, that that is the original typewritten sheet or rather several original typewritten sheets, when you say it is the original? A. It looks to me like the original typewritten sheets.

Q. You haven't read those all over now, have you? A. No, sir.

Q. You don't know whether those are the identical questions and answers that were put, do you? A. After glancing through them, I will say that they are the identical questions asked.

Q. Do you know whether anything has been omitted or added to that?

Mr. Barnitt—If the Court please, I was going to prove it by Miss Walsh; that is all.

KATHERINE WALSH, a witness produced on behalf of the State, being first duly sworn, testified as follows:

Examination by Mr. Barnitt:

Q. Miss Walsh, what is your business or occupation? A. I am secretary to the District Attorney of Onandego County, N. Y.

Q. How long have you occupied that position? A. For the past nine years.

Q. And as secretary do you have occasions to take down statements stenographically and transcribe the stenographic notes on the typewriter? A. I do.

Q. How long have you been a stenographer? A. Well, for 11 or 12 years.

Q. And in connection with the predecessor of Mr. Ungliss, did you occupy a similar position with his predecessor? A. I did.

Q. For how long? A. For about four years before Mr. Ungliss took office.

Q. So that in all you have occupied the position of approximately nine years? A. Yes, sir, nine years.

Q. Do you recall August 4th, 1930, at a time when Mr. Ungliss interrogated the defendant Bonaventura Nardella? A. I do.

Q. Do you see him in court today, the defendant? A. I do.

Q. And do you recall at that time whether or not Mr. Unckless asked questions of the defendant which were in turn asked the defendant through Capocefalo, the Italian interpreter? A. He did.

Q. And in connection with all the questions asked the defendant by the District Attorney, what if anything did you do with relation to those questions? A. I took them down in shorthand notes.

Q. And in reference to any answers made to the Italian interpreter by Bonaventura Nardella in English, what did you do with reference to those answers? A. I took them down in shorthand.

Q. In connection with all of the questions and all of the answers taken down stenographically by you, what did you do? A. I later transcribed them on the typewriter.

Q. Did you typewrite them on several sheets of paper? A. Yes, sir.

Q. Did you typewrite the entire number of questions and answers? A. Yes, sir.

Q. Showing you Exhibit S-25, for identification, I ask you whether or not all of the questions as so

put by the District Attorney to the defendant and the answers made in the manner that you have described taken down by you stenographically, were reproduced on those sheets as forming part of Exhibit S-25, for identification? A. Yes, those are the ones.

Q. Do those sheets as typewritten by you represent a true and correct transcript of the notes as taken by you in the manner that you have related? A. They do.

Mr. Barnitt—I offer it in evidence.

Mr. Barbour—Just a minute. If the Court please, I object to the offer in evidence and would ask permission to cross examine.

The Court—You may cross examine.

Cross examination by Mr. Barbour:

Q. What system of shorthand, do you use, Miss Walsh? A. Well, I have a combination of—well, it is called the Anderson system, which is a combination of Benn Pitman and of the Graham, I think.

Q. And you—did you take down the questions and answers in a notebook or on sheets of paper? A. In a notebook.

Q. Have you that notebook with you? A. I have.

Q. It is in your possession now? A. Well, Mr. Unckless has it in his pocket, I think.

Mr. Barbour—Will you have the notebook produced, please?

Mr. Barnitt—Here it is.

Q. Is this the notebook, Miss Walsh. A. That is the notebook.

Q. That is the beginning of it, is it? A. Yes, that is the beginning of it. See, I put it in my regular notebook.

Q. And have you examined this paper, marked S-25, for identification, sufficiently to be sure that that is the transcript that you made of your notes? A. Yes, I am positive that it is.

Q. Without any alteration? A. Yes.

Q. No additions? A. No.

Q. Nothing removed from it? A. No.

Q. Is there anything to indicate how many sheets you made of it? A. Well, the sheets are numbered and I had—there were 22 sheets.

Q. The sheets are numbered. A. Are numbered at the top.

Q. What kind of a typewriter did you use. A. L. C. Smith.

Q. Did you keep a copy of this, yourself? A. I had a carbon copy of it. We had one in the office.

Q. You have not that carbon copy with you, have you? A. I think—

Mr. Barnitt—Carbon of what?

Mr. Barbour—A carbon of that.

Mr. Barnitt—I have it here.

A. I think Mr. Unckless had it.

Q. All right.

Mr. Barnitt—He turned it over to me. I have it here.

The Court—What is the materiality of that?

Mr. Barbour—I just wanted to make sure.

Mr. Barnitt—I thought we put the original in evidence.

Mr. Barbour—I just wanted—no objection.

Mr. Barnitt—I renew the offer.

(Book of testimony marked S-25, for identification, now becomes S-25 in evidence.)

Mr. Barnitt—With the Court's permission I will read this to the jury.

The Court—All right.

Mr. Barnitt—"Statement taken at the office of the District Attorney of Onandego County, at Syracuse, N. Y., on Monday morning, August 4th, 1930, by Katherine Walsh, stenographer. Present: Ben Nardella, defendant, Clarence Unckless, District Attorney, Dianysius Capocefelo, Italian interpreter. Detective Sergeant Pirola. County Detective Caviliere, Chief of Police Bowers, and Deputy Sheriff Mawson, of Onandego County.

Questions by Mr. Unckless.

Q. Mr. Nardella, you are under arrest in Onandego County charged with killing your wife in Paterson, N. J.? A. Sure, I did t.

Q. Now, you have been brought to the District Attorney's office for the purpose of telling the Paterson authorities about this affair? A. Yes.

Q. Now, you have the right to state your ver-

sion of the affair here, and have the right to keep silent? A. I want to talk about it.

Q. All right. If you choose to keep silent, that fact cannot be used against you. Anything you say here, can be used against you if the police or the Paterson authorities see fit? A. It is necessary for me to relate my reasons.

Q. How old are you? A. 42.

Q. And how many years have you been in this country? A. I came the first time in 1910. I went back to Italy in 1914, to marry.

Q. When did you come back to this country? A. I was there during the period of the war, and was engaged in the war and came back here in 1920.

Q. You were married in Italy? A. Yes.

Q. What was the maiden name of your wife? A. Serasino.

Q. In what province were you born? A. The province of Fogio.

Q. Are your mother and father living? A. My mother died six years ago.

Q. Is your father living? A. Yes.

Q. Is he living at Fogio? A. He lives in the province of Fogio.

Q. When you came back to this country in 1920, with your wife, where did you go? A. No, I came here alone and my wife came after me.

Q. When you came back to this country, in 1920, you came alone. A. Yes.

Q. Where did you go then to live? A. To Manlius.

Q. How long did you stay in this country be-

fore your wife came over? A. My wife came over in 1922.

Q. And you have four children. A. Altogether, four.

Q. How many were born in Italy? A. Two in Italy, and three in this country, and one died.

Q. How long did you stay in Manlius?

Q. When did you leave Manlius? A. Stayed only a couple of weeks.

Q. After you came from Italy? A. Yes.

Q. Where did you go then? A. To Paterson, N. J

Q. Your wife went with you? A. No.

Q. She wasn't here yet? A. No.

Q. Where were you living when your wife came to this country? A. 46 Cross Street, Paterson, New Jersey, over the store of Angelo Tilli.

Q. Do you know what year it was that your wife came to this country? A. 1922.

Q. And you left Italy in 1920? A. Yes.

Q. Now, did she bring the two children with her? A. Yes.

Q. How old were these children when she arrived in the United States? A. The first one was about five years, and the other one was about 17 or 18 months.

Q. These were your children? A. Yes.

Q. You were the father of these children? A. Yes.

Q. And since leaving this country, you have had two more children? A. Yes.

Q. How old are the two younger children? A. The first is eight years and the last one is three years.

Q. Now, where did you work in Paterson? A. As a carpenter.

Q. Where did you learn the carpenter trade, in this country. A. No, from my father.

Q. From your father in the old country? A. Yes.

Q. Where did you live at the time that you killed your wife? A. At 14 Cross Street.

Q. Did you own that house? A. Yes, I had title to the house.

Q. You had a deed to the house? A. Yes.

Q. Was your wife's name on that deed? A. Yes, together.

Q. So if you had died it would have gone to your wife? A. To the wife and the children.

Q. Did your wife have any insurance? A. Yes.

Q. How much? A. About $400.

Q. What company? A. I don't know.

Q. Was it the Prudential, the Metropolitan, the John Hancock, or what company? A. I don't know.

Q. Was it a policy that there was to be paid so much—

(Interruption)

Q. Was it a policy that there was paid so much a week? A. It was paid by the week. I don't remember how much she paid. I don't know anything about it. She took care of that.

Q. A collector came to the house? A. Yes.

Q. Now, since 1922, have you lived all this time in Paterson. A. Yes.

Q. When did you buy this house. A. In 1924.

Q. Is it a two-family house? A. Three-families.

Q. And you get rent for the two apartments? A. Yes.

Q. And you live in the third one, yourself? A. I lived on the first floor.

Q. How old did you say your wife was? A. 38.

Q. And you are 42, yourself? A. 42.

Q. Now, what time of the day was it when you killed your wife? A. It was about half past one or a quarter to two.

Q. Was that on Saturday? Yes, last Saturday.

Q. That would be the 2nd? A. Yes.

Q. Now, had you worked on Saturday? A. No, I didn't work on Saturday.

Q. You were home? A. Yes, I was home.

Q. All the morning? A. All the morning.

Q. Did you work on Friday? A. Yes, I worked Friday.

Q. Where did you work Friday? A. 55 Ellison Street.

Q. What were you doing there? A. I was putting on shingles all over the house.

Q. On the outside or on the roof? A. On the outside, I worked with my brother.

Q. What time did you get up on Saturday morning? A. Eight o'clock.

Q. Did your wife get up with you? A. She got up about half an hour after I did.

Q. Did you get your own breakfast, or did the wife get the breakfast? A. My wife got some coffee for the children.

Q. And for you? A. Yes.

Q. Where had you been Friday night? Were you home? A. I was home the entire evening from about six o'clock on.

Q. Were your wife and children home? A. Yes.

Q. What time did you have dinner on Saturday? A. On Saturday?

Q. Yes, the day that this happened. A. 12 o'clock.

Q. And had you had any trouble with your wife, any quarrel or anything of that kind? A. No, not at all.

Q. Now, after you had dinner, what did you do right after dinner. A. I dressed up to go to the doctor.

Q. Did you tell your wife that you were going to the doctor's? A. My wife didn't want me to go until Monday night, and I said, "No, I want to go now."

Q. What did you want to go to the doctor for? A. For my finger. (He points to his index finger on the left hand. It shows crooked and apparently except under pressure.)

Q. Did you injure that finger? Did you hurt it? A. Yes.

Q. How? A. With a circular saw.

Q. What doctor were you going to? A. The insurance doctor.

Q. Do you know who the insurance doctor was? A. No.

Q. Where is his office? A. 15 Church Street.

Q. Is that the Compensation Bureau, where you get the doctor when you are hurt while work-

ing in a factory? A. They simply examined the injury. The doctor that treated me was Clifton.

Q. That was Dr. Clifton? A. Yes.

Q. Who has been your family doctor when you had been sick? A. We changed doctors. We never used doctors much. We had a doctor for the girl Amelia when she was burned.

Q. What doctor did you have at the time when Amelia was burned. Whom did you have then? A. Dr. Clay.

Q. Is he the only doctor you ever had? A. For Amelia.

Q. What doctor has ever treated you in Paterson for your sickness? A. I have forgotten what is his name, it is three years I have had no doctor.

Q. Was the doctor's name "Clay," or "McClay? Was he a big man? A. Yes.

Q. Has the wife been to the doctor lately? A. Oh, for small matters. Not lately.

Q. Did you have a doctor when the children were born in this country. A. No, no doctor; had a midwife.

Q. Well, now, you go ahead about what happened on Saturday and tell us just what happened. Tell it in your own words in Italian. A. I didn't want to go to the doctor. I said, "I don't feel very well; that I felt sleepy; that we will go Monday morning."

Q. That's what she said? A. No, I didn't want to go. I said, I didn't feel very well. I felt sleepy, "We will go Monday night." My wife said, "No, we will have to go right now." I said, I didn't feel well, once, two, or three times. I said, "I don't feel well." She caused me to get mad. She

got me mad and having the opinion that she was a bad woman, I picked up a baseball bat and hit her on the head.

Q. Now, let me ask you right here, where were the children then? A. The boys were playing outside on Passaic Street, and the girls went to their aunt's house. They were sent there by my wife, so we could go to the doctors.

Q. What room were you in when you were talking about going to the doctors? A. In the kitchen.

Q. And where was the baseball bat? A. It was back of the door leading down to the cellar. There was a ball there, a catch glove and a bat.

Q. Have you told us all she said about going to the doctor before you got mad and hit her? A. Well, I told you all, yes, but for three months before that we quarrelled because she was a bad woman.

Q. You had quarrelled because she was a bad woman. A. Yes.

Q. Did you sleep with your wife? A. Yes.

Q. Where did you hit her with the bat, on the head? A. Yes.

Q. How many times? A. Once, only once. Then she fell over.

Q. On what part of the head did you hit her? A. On the back of the head (he puts his hand on the back of his head.)

Q. And you had both hands on the glove at the time? A. Both hands.

Q. And did you hit her hard? A. Yes, sir.

Q. Did you intend to kill her at that time? A. Sure I intended to kill her. I always had that in-

formation about her, and suffered pain so that I couldn't sleep and rest.

Q. Now, after you hit her with the bat, she fell down to the floor? A. Yes.

Q. Was she unconscious? Did she know anything? A. She became unconscious.

Q. Then what did you do. A. I pulled her down by the feet and put her in the coal bin.

Q. Where did you hit her with the axe, was that upstairs. A. No, in the coal bin.

Q. Where did you get the axe? A. Down the cellar.

Q. You pulled her down the stairs, did you pull her or drag her? A. I dragged her.

Q. By her feet? A. Yes.

Q. Right down the stairs? A. Right down the stairs.

Q. Was she unconscious at the time? A. Yes.

Q. Was there any coal in this coal bin? A. Yes, about a ton and a half.

Q. Did you lift her up to get her into the coal bin? A. No, I pulled her two steps.

Q. Then when you got her into the coal bin, what did you do? A. Hit her with a shovel.

Q. Is that the shovel that you used to shovel the coal. A. Yes.

Q. How many times did you hit her with the shovel? A. I didn't count them.

Q. Two or three? A. I didn't count, I broke the shovel.

Q. The shovel handle? A. I dent it.

Q. Did you hit her on the head? A. Yes.

Q. Was there any blood upstairs in the kitchen when you hit her with a baseball bat. A. Not in the kitchen, no. I didn't strike her in the kitchen.

Q. What room was it that you struck her in? A. Right on the step leading to the cellar.

Q. What room is that? A. A little room, three feet by three feet.

Q. A hallway? A. Yes.

Q. Was there any blood there? A. Yes, a little bit.

Q. And you washed that up, afterwards? A. Yes, I got a mop and mopped it.

Q. Was there any blood on the stairs? A. There was a pail there in the stairway, and as I dragged her along the pail caught something, and the pail came along with her.

Q. Then, after you bent the shovel, did you hit her with an axe? A. Yes.

Q. How many times did you hit her with the axe? A. I didn't count them.

Q. Which side of the axe did you hit her with, the back or the blade? A. With the edge.

Q. And cut her? A. She was in the coal; I didn't see.

Q. Now, did you look at her when you were hitting her with the axe? A. No, I didn't look at her. I saw that she was dead, and I picked up the shovel and covered her up.

Q. She wasn't dead when you put her in the coal bin, was she? A. No.

Q. Could you see her breathe? A. Yes.

Q. Then the next thing you hit her with a shovel? A. Yes.

Q. Did she breathe after you got through hitting her with the shovel? A. Yes, she did. She breathed when I got through hitting her with the shovel.

Q. And then you took the axe? A. Yes.

Q. Did you cut her head off? A. I didn't see.

Q. Now, were you in the coal bin or outside of the coal bin when you were striking these blows? A. In the coal bin.

Q. Did you have to step down two steps to get down in the coal bin? A. Yes, go down.

Q. Is there an electric light there? A. In the kitchen, in the basement; not in the coal bin.

Q. Was it turned on? A. No.

Q. Did she say anything after you hit her with the baseball bat? A. No, she didn't talk at all.

Q. Did she scream when you hit her with the bat? Only a little bit,—"A-a-a", just like that, (Defendant giving a groan).

Q. Made kind of a groaning noise, like that? A. Yes.

Q. After the shovel bent, what did you do with that? A. With the shovel? I left it in the coal bin.

Q. Then how far did you have to go to get the axe? A. About ten feet.

Q. Where was the axe? A. In the basement, near the fire wood.

Q. What did you hit her with the axe for? A. I tried to kill her.

Q. You didn't think she was dead after you hit her with the shovel, is that right? A. I wasn't sure that she was dead.

Q. And you wanted to be sure that she was dead? A. Yes.

Q. Then, how did you cover her up with coal? What did you use to do that with? A. The shovel. It was bent, the same bent shovel.

Q. And did you cover her all up, so that you couldn't see her body? A. Not all of it.

Q. What showed? A. You could see part of her dress a little bit.

Q. Was her head towards the step or were her feet towards the step where you go into the coal bin? A. Her head.

Q. So that when you dragged her, you stepped down into the coal bin and pulled her in and then came out, is that right? A. Yes.

Q. Now, Ben, after you hit her with the axe, then were you satisfied that she was dead? A. Yes.

Q. Then, what did you do with the shovel? A. The shovel, I left it in the coal bin; the shovel and the axe.

Q. You left the shovel and the axe in the coal bin? A. Yes.

Q. Did you leave the axe in the coal bin? A. The shovel and the axe.

Q. Was there blood on the axe? A. Yes.

Q. Was there blood on the shovel? A. Yes.

Q. Did you wash it off? A. No.

Q. Left it right on? A. Left it right on.

Q. But you did mop up the blood in the hall upstairs? A. Upstairs, yes.

Q. At any time while this was going on, did the two boys who were playing outside come into the house? A. Yes, the two boys came in.

Q. What were you doing when the boys came in? A. I was changing my pants.

Q. And the wife was already buried in the coal? A. Yes.

Q. And you were changing your pants? A. Yes.

Q. Was there blood on the pants? A. Yes.

Q. And is that the same shirt that you are wearing now that you had on then? A. No, I had on a blue shirt.

Q. After you covered her up with coal, then you changed your clothes? A. Yes.

Q. You took off your pants and your shirt? A. Yes.

Q. Now, what did you do with the old pants and the blue shirt? A. The shirt I put in the basin in the bathroom; I just left it there.

Q. What did you do with the pants? A. I just folded it up, and put it underneath the soiled clothing.

Q. And you were changing your clothes when the children came in? A. Yes.

Q. What did the children say? A. Nothing; they took the shine box and went out again.

Q. They took the shining box and went out? A. Yes, the oldest one. They wanted to make some money, so they could go and play golf.

Q. What did the other one do? A. They came in together and went out together.

Q. Did they ask for their mother? A. No.

Q. Had you mopped up before the boys came in? A. Yes.

Q. About what time was it when the boys went out to shine the shoes? A. About two o'clock.

Q. And what time did you leave Paterson? A. As soon as I changed my pants and shirt, I locked my door and came out.

Q. What doors did you lock? A. The kitchen door and the basement door.

Q. Which door is in the basement, did you

lock? A. The door leading downstairs from the hall to the basement, and also the kitchen door.

Q. Then you took the train? A. Yes.

Q. Where did you buy your ticket for Syracuse? A. No, I took the train from Paterson to go to New York.

Q. After you changed your clothes, then did you go down to the coal bin again? A. No.

Q. Well, how did you get that blood on your shirt. Isn't that blood on your shirt? A. I think so.

Q. How did you get it? A. In the confusion, who can remember what happened.

Q. Did you go back down to see your wife after you put the coal on her? A. No. I locked the door, the door to the coal bin. I just closed the door and pushed the little button.

Q. Did you get a screw driver and make it tight? A. No.

Q. Was the button tight? A. It must have been.

Q. When you took the mop and mopped up, did you have on the blue shirt or this one? A. I had on this one.

Q. Do you think you might have gotten some blood on then? A. Maybe, when I picked up the mop some splattered on me.

Q. Are you sure that you didn't go down to see your wife again? A. No, I didn't.

Q. After you covered her up with coal, you didn't go back? A. No, I closed the door.

Q. Have you a brother? A. Yes.

Q. What is his name? A. Jerry Nardella.

Q. Where does Jerry live. A. In Paterson, at

58 and 60 Ellison Street, about two blocks from where I live.

Q. After you locked the house up and went out, where did you go first? A. I went down to the depot, the Erie depot, to get tickets.

Q. The Erie depot? A. Yes.

Q. Did you see Jerry? A. No, I didn't see anybody.

Q. When did you talk with Jerry about your wife? A. On Friday night.

Q. On Friday night you talked with Jerry about your wife? A. I was in his house on Friday night.

Q. What did you say? A. We talked about work. We didn' talk about anything.

Q. Didn't you talk about your wife? A. We talked about her Friday and Thursday, and for the last three months. We talked about the same thing. My brother and I talked to one another about my wife.

Q. You had this argument with your wife in the kitchen, about your finger, about going to the doctor, that was in the kitchen? A. Yes, in the kitchen.

Q. But you hit her in this hall, is that right? A. In the hall way.

Q. Where was she going when you hit her? A. She put her foot up on the window-sill, to adjust something about her stocking.

Q. Benny, did you tell your wife that you would kill her? A. No, I didn't say anything.

Q. Did you ever tell her that you would kill her? A. Yes, three or four nights before I said that to her, "My God, if you don't stop it, I will kill you".

Q. How long had you had it in your mind that you intended to kill her? A. All last week.

Q. And you were working all last week with the exception of Saturday? A. I started Saturday to work at one o'clock, worked Tuesday, Thursday and Friday, about two days and a half.

Q. Now, just a week before, on Saturday, did you have a fight with her, an argument? A. On Saturday? Not a fight; just a few words.

Q. What was that about? A. I wanted her to leave the house with the children.

Q. You wanted her to get out, you mean? A. I wanted her to get out.

Q. With the children? A. No, I wanted her to leave the children; I wanted her to get out.

Q. Why did you want her to go? A. She was a bad woman.

Q. What do you mean by a bad woman? A. Other man.

Q. Other men? A. Yes, that is why I killed her.

Q. Do you know of any men that she has ever been with? A. Yes, I know.

Q. Who? A. Michael DeLuccia.

Q. Where does Mike live? A. Next door, 13 Mill Street.

Q. Is he married? A. Yes.

Q. Has he got children? A. Yes, he has children?

Q. Do you say that he has been friendly with your wife? A. Yes.

Q. Is that the place that was raided by the police about five weeks ago? A. Yes, he and another partner.

Q. What was the partner's name? A. I don't know his name. I saw these two men DeLuccia and his partner, in an automobile, about 12 o'clock, waiting for my wife to come out, after I went to sleep.

Q. When was that A. Two weeks ago.

Q. Was your wife in bed with you at that time? A. Yes.

Q. And where was this car? A. In front of the house, in front of my house.

Q. You say it was about 12 o'clock at night? A. Yes.

Q. What kind of a car was it? A. I don't know what kind of a car it was.

Q. How do you know they were waiting for your wife? A. I suspected it.

Q. Did you ever see your wife do anything wrong with either of these men? A. No. No, I didn't see it.

Q. Did you ever ask your wife if she had been friendly with any other men? A. No, I never asked; I just watched out night and day to see something.

Q. But you never saw anything, did you? A. No.

Q. Your wife slept with you every night? A. Yes. When I fell asleep, she would open the door and go out. There were a lot of people witnesses that know everything. I heard the movements around the door.

Q. In your house? A. I nailed the doors and windows.

Q. You never woke up, did you, Ben, and found your wife out of the house? A. No.

Q. And you never saw her have any other men in the house? A. No, I didn't see them because she would hide them or have them hide.

Q. Do you mean in the night time? A. At night and in the day time when I was at work.

Q. Where would she hide him? A. They came in one door and went out the front yard.

Q. Did you ever accuse your wife of being a bad woman with other men? A. I told my wife.

Q. What did she say? A. She would say that there was nothing to it.

Q. Did she ever admit to you that she had been with any other men? A. No, no.

Q. Did she say to you once, "Let us live happy and forget all about that"? A. Yes, she did.

Q. She lived with you as man and wife? A. Yes.

Q. There was no trouble about that? A. There was no question about that.

Q. Now, did anybody ever tell you that they saw your wife do anything wrong or in any automobile, or anything like that? A. No.

Q. Did anybody ever tell you that your wife was untrue to you? A. I suspected it and I watched out night and day.

Q. But did you ever see anything that justified your suspicion? A. No, I never saw anything.

Q. You just thought she was bad? A. That is all.

Q. What do you think now? Do you think she was a bad woman or a good woman? A. Always that she is bad.

Q. Was she pregnant when you killed her? A. No.

Q. How old is the youngest child, did you say? A. Three years.

Q. Has she lost any children since the youngest child was born. A. Yes; she had an abortion.

Q. Some doctor? A. No, no doctor. She used a pump.

Q. She did it herself? A. Yes, she did it herself.

Q. Did you want her to do that, or didn't you care? A. I didn't care. She is the one that said she didn't want any more children.

Q. Now, has anybody ever told you anything about your wife? A. No, nobody.

Q. And you have never seen her do anything wrong, have you? A. No, but it is the people that talk.

Q. Who talked? A. People that live nearby.

Q. Who are they? A. They would talk to each other among themselves.

Q. Did you ever hear them talk? A. I saw them talking, looking towards me in the house.

Q. But you didn't hear what they said? A. No, I didn't hear it.

Q. You just suspected that they were talking about your wife? A. Yes.

Q. But you didn't know it? A. No.

Q. Are you glad that you killed her, or do you wish that you hadn't killed her? A. I don't regret it, because I suffered too much. I couldn't rest, night or day.

Q. Have you ever had any venereal disease? A. No, I never associated with women.

Q. Have you beaten and licked your wife occasionally, hit her and slapped her? A. Only a little bit, not much.

Q. What for? A. Sometimes on account of the kids.

Q. Because she would correct the children, is that what you mean? A. Yes.

Q. When you got up on Saturday morning, did you know when you got up that you were going to kill her that morning? A. Yes.

Q. Had you been thinking about it in the night? A. That night and all last week.

Q. Did you have any fights in bed? A. No, no fight.

Q. Did you have anythink to do with your wife that morning, before you got up? A. Yes.

Q. Let me ask you, are you a Catholic. A. Yes.

Q. Had you ever talked to the Priest about your wife? A. Both of us went to confession, about three weeks ago, at St. Michael's Church on Cross Street.

Q. Did you talk with the Priest about your wife? A. Yes.

Q. Did the Priest talk to you? A. Yes.

Q. Outside of confession? Did you ever go and call on the Priest and have a talk with the Priest about your wife? A. No, I never went to see him, to advise with him. I made a mistake not to go.

JOHN HERMAN, called as a witness for the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Detective Herman, how long have you been in the police department of Paterson? A. It will be 24 years the 1st of next June.

Q. How long have you been a detective. A. About 12 years.

Q. Sunday morning, or Sunday sometime, August 3, 1930, did you have occasion to go to 14 Mill Street, Paterson? A. I did.

Q. And did you have occasion to go down the basement? A. I did.

Q. To the coal bin of those premises? A. Yes, sir.

Q. And did you see anybody in the coal bin? A. I did.

Q. And where was the party you saw? A. Why, it was the body of a woman, that is, Mrs. Nardella. I learned it was her afterward.

Q. Lucy Nardella? A. Yes, sir.

Q. Did you have occasion while you were there to see any part of the face? A. Yes, I did.

Q. After the body was removed from the place? A. No, not after it was removed, no.

Q. Before it was being removed? A. Before it was removed.

Q. Preparatory to the removal did you have occasion to see the face? A. Yes.

Q. Showing you these exhibits, S-8 and S-9, what would you say as to whether or not the picture of the woman shown on those pictures were of the person you saw in the coal bin at that time? Were they, yes or no? A. Yes sir.

Q. And with reference to the body as you first saw it in the coal bin of the woman, showing you Exhibit S-5, does that reproduce the conditions as you saw them when you first saw the woman in the coal bin? A. Yes.

Q. Showing you Exhibit S-6, that reproduces the condition of the body after the boards were removed? A. No, this I did not see.

Q. I see. Exhibit S-5, and that is the woman you saw? A. Yes, sir.

Q. Exhibits S-8 and S-9. Now, with reference to Exhibit S-21, the shovel, you saw that there that morning, Detective Herman, or that day? A. Yes, sir, I did.

Q. Where was it when you first saw it? A. It was in the coal bin, right alongside of the body of the dead woman.

Q. And Exhibit S-22, this axe, did you see that at the place that you have described? A. Yes, sir.

Q. Where was it? A. In the coal bin, alongside the body of the woman.

Q. Showing yon this baseball bat, I ask you if you can identify that as having seen that baseball bat on that same day? A. Yes, sir.

Q. Just look at it please, Detective Herman. Where did you see that baseball bat? A. I saw the bat, I found that behind the door in the bathroom in the basement, standing directly up, right alongside of a couple of mops.

Q. Can you point out on this photograph to the jury the baseball bat that you have in your hand? A. This bat was standing right alongside, right in the rear of these two mops and, I noticed at the bottom there was a very visible spot, indicating blood.

Q. And this is the same bat? A. Yes.

Mr. Barnitt—I offer it in evidence, if your Honor please.

The Court—Mark it.

By Mr. Barbour:

Q. Are you sure it is the same bat? A. Yes, sir, it is.

Mr. Barnitt—There was only one there.

Q. Any marks upon it that you can place it? A. Yes, sir, there is.

Q. Where? A. Here you are, right there.

By Mr. Barnitt:

Q. What are those you are pointing out, Detective Herman? A. Identifications.

Q. Oh, the identification? A. Yes, sir.

By Mr. Barbour:

Q. You say there are three X's there? A. I mean the X here.

Q. I thought you said you put three X's? A. There were three X's put on the axe.

Q. Are you sure that is the bat? A. Yes, sir, it certainly is.

The Court—Mark it.

(Baseball bat marked Exhibit S-26.)

By Mr. Barnitt:

Q. You have had occasion to see these six boards that have been marked in evidence? A. Yes.

Q. Did you see those boards there at the time? A. Yes.

Q. Where were they with reference to the body?

A. They were right down at the coal bin. The body was concealed under them boards.

Q. Did you find any clothes upstairs in the bathroom? A. Yes, sir.

Q. In the meantime I would ask you this: Did you find anything or did you have occasion to observe anything on any part of this shovel, this Exhibit S-21? A. Being that it was broken there.

Q. Did you see anything on it? A. Well, it was kind of moist on the end indicating like blood stains.

Q. Did you see anything else on it? A. No, sir.

Q. Now, with reference to any of these boards that have been marked in evidence did you observe anything on the boards? A. The only thing is that they laid over the body.

Q. Did you see anything on them? A. No, I didn't.

Q. What did you do with the boards, if anything, and the shovel, axe and baseball bat? A. Why, after the body was removed we put them to one side and brought them to Police Headquarters and turned them over to Sergeant Riker, or Lieutenant Riker, the property clerk for identification.

Q. Sergeant Riker? A. Lieutenant Riker.

Q. Phil Riker? A. Yes, sir.

Q. I show you these grey pants, officer, and I ask you if you can identify these as having been found by you or observed by you at the premises 14 Mill street?

Mr. Barbour—While I realize the Prosecutor has been getting evidence in I think he

has been more or less leading and I object to this question.

The Court—I will permit it and allow you an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge

Mr. Barnitt—I will be glad to cooperate with John if he will tell me just the way I will say it.

Mr. Barbour—Well, the damage has been done.

The Court—You may proceed.

Q. Do you identify those trousers, officer? A. Yes, sir.

Q. Did you have occasion to see those trousers at 14 Mill Street? A. Yes, sir.

Q. Where did you find them? A. I found them in the bathroom in the presence of the son of the murdered woman, Joseph Nardella.

Q. Where did you find them? In the bathtub mixed up with a lot of soiled clothes and there was a watch in them at the time.

Mr. Barnitt—I offer them in evidence.

The Court—Mark them.

(Grey pants marked Exhibit S-26 in evidence for the state.)

Q. I show you this blue shirt and ask you if you can identify that as having seen that before? A. Yes.

Q. Where did you see it? A. Well, that shirt laid in a wash basin and the wash basin was placed

in the bathtub in the bathroom on the second floor.

Q. Of 14 Mill Street? A. Yes.

Mr. Barnitt—I offer it in evidence.

Cross examination by Mr. Barbour:

Q. How do you know it is the same shirt? A. By the trademark and the initial "C" on it.

Q. You remember that? A. Yes sir.

The Court—Allright; mark it.

(The shirt marked Exhibit S-27 in evidence for the State.)

Direct examination (continued) by Mr. Barnitt:

Q. I show you these trousers with this belt and ask you if you recall seeing these before? A. Yes, sir.

Q. Where were they, officer? A. They were down in the yard hanging on a line and apparently half of the legs here were partly wet, hanging on a line, clothes line.

Mr. Barnitt—I offer them.

Cross examination by Mr. Barbour:

Q. How do you know, detective, that is the same? A. By the belt.

Q. Are there any identification marks on it? A. No, just by the belt there.

Q. You recognize it by the belt? A. Yes, sir.

Q. And that is the only way you do recognize it? A. That is by the belt, yes, sir.

Q. So that it is the belt you identify? A. Yes, sir, only one pair of pants had the belt on it.

Q. Well, do you recognize the pants or recognize the belt? A. Recognize the belt attached to the pants.

Q. Is there anything else about these pants that causes you to remember them? A. No, only just the belt and the pants being wet at the time.

Q. Well, how do you know these pants have been wet? A. They were at that time.

Q. How do you know these are the pants that were wet? A. They were the same pants with the belt attached to them.

Q. If this belt had been taken and put on these pants would you then say these are the pants? A. No, sir.

Q. Why do you say these are the pants? A. Why, the color of the pants.

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

Q. What did you do with these pants after you took them? A. Brought them to Police Headquarters and had them held for evidence, turned them over to Lieutenant Riker.

Q. Did you put any marks of identification on them? A. I wrapped them up along with the others.

Q. Did you put any marks of identification on the package in which you wrapped them? A. Yes, sir.

Mr. Barbour—Is this the package?

Mr. Drew—I don't think that it is.

Mr. Barbour—I object to the introduction in evidence of these pants, sir, as not having

been properly identified by this man. He says he recognizes the belt and the color of the pants.

The Court—I will admit them subject to being connected up by Lieutenant Riker.

Mr. Barbour—I pray an exception.

The Court—It is allowed.

Exception allowed. Let it be sealed and it is signed and sealed accordingly.

William B. Harley, Judge

(Pants marked Exhibit S-29 for the State.)

Re-direct examination by Mr. Barnitt:

Q. I show you these two pair of pants, officer? A. They were brought in by the other officer. I believe they were also in the yard.

Q. Do you remember seeing these socks any place, officer? A. I believe they were picked up by the other officers there.

Q. Did you make an examination of the stairs leading from the hall downstairs to the basement? A. Yes, sir.

Q. Did you see anything on any of the steps? A. On the second step.

Q. From the top or bottom? A. From the bottom.

Q. What did you see? A. Blood stains.

Mr. Barbour—I move that the answer be stricken out as being a conclusion or opinion for which there has been no basis laid by this witness.

Mr. Barnitt—Well, what was the color of the stain you saw?

The Court—Yes; I will strike that out.
The Witness—Well, reddish, a bloodish color.

Q. And did you see any similar stains in any other part of the premises outside of those you have described as being on the second step? A. No, I did not.

Mr. Barnitt—Cross examination.
Mr. Barbour—No questions—pardon me, I have just one question, if Mr. Barnitt doesn't object to me asking it.
Mr. Barnitt—No, go ahead.

Re-cross examination by Mr. Barbour:

Q. I believe it was Exhibit S-5 that you identified before, wasn't it officer? Is that the picture that you identified before? A. Yes, sir.

Q. When was the first time that you saw the body as shown there? A. Why as soon as we arrived there I was informed that a woman was in there and I went in there—

Q. Had someone else been there before you? A. I believe some of the relatives had discovered the body before we arrived there.

Q. You were not the first one to enter the coal bin, were you, detective? A. No, sir.

Q. And you don't know whether anything had been done with either the coal or the boards before your arrival, do you? A. No, that I can't say.

Q. I believe you said that you did not notice the shovel and axe as shown on S-6? A. I seen it the first—no, not on that one there, no, sir.

Q. You said, I believe, that you found the shovel alongside of the body? A. Yes, sir.

Q. In what position was it? Laying with the scoop stuck up.

Q. Laying with the scoop stuck up? A. Yes, sir.

Q. It wasn't in the corner as shown on S-6, was it? A. No, sir.

Q. And where was the axe when you first saw it? A. The axe was laying over on the other side of the body.

Q. And was not in the corner as shown in S-6, was it? A. No, sir.

Q. The axe and the shovel were lying on the floor of the coal bin? A. Like on the coal; the axe laid behind the body and the shovel laid in front of the head like.

Q. Was there any coal on the body when you first saw it? No, there was no coal—there was coal kind of shoved up alongside the body, not on top of the body.

Re-direct examination by Mr. Barnitt:

Q. The axe and shovel that I showed you were the two objects, the same axe and shovel that you saw lying near the body that you related to Mr. Barbour? A. Yes, sir, they were.

Mr. Barnitt—That is all.
Mr. Barbour—That is all.

JAMES BROOKS, called as a witness for the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Detective Brooks, how long have you been in the Police Department of Paterson? A. Twenty three and a half years.

Q. How long have you been a detective? A. Eighteen years the first of the month.

Q. On Sunday, August 3rd, 1930, did you have occasion to go to 14 Mill Street, Paterson, New Jersey? A. I did, in company with Detective Herman.

Q. Did you go down to the basement? A. Yes, sir.

Q. Did you find anything unusual? A. Yes, sir; I found about a hundred Italian people in there and we had the reserves with us and at our request the room was cleared. There must have been a hundred Italian people there. And we got them out of the basement and we went down to the coal bin, they were all out of the room, none of them had been in the coal bin. And I took my flashlight and flashed it in the coal bin and seen the woman's legs sticking out and the rest of the body covered with boards. Captain Murphy was down shortly after us and we followed out his orders and left everything the way it was and I went to telephone, leaving Detective Herman there and when I got back Detective Herman had a baseball bat laying on the table in this room downstairs with blood on it. We kept everything there like it was until the photographer got there. When I first seen it the axe was here and the shovel lying

this side of the body within two foot of the head. My recollection is Detective Herman took these two things up and when we started taking the pictures put the shovel and the axe back in the coal bin and put the baseball bat where Herman said he had found it.

Q. I show you Exhibit S-26; can you say whether or not that is the baseball bat you saw, Officer Brooks? A. Yes, sir; that is the bat.

Q. Showing you Exhibit S-21, the shovel, can you say whether or not that is the shovel you saw, officer? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. And showing you Exhibit S-22, can you say whether that is the axe you saw? A. Yes, sir, it is.

Q. Is it? A. Yes, sir.

Q. Showing you Exhibit S-5 can you say whether or not the person you saw when you first went into the coal bin in the manner that you have described as shown on that photograph? A. Yes, sir, this picture was made by Mr. Heinrichs and Detective Herman, Moore and I was there.

Q. Were you there? A. Yes, sir.

Q. Were the boards in the same position? A. Yes, sir, the boards were like it is there and after that we took the boards off but you couldn't see her head. When the second picture was taken I couldn't find her head.

Q. Exhibit S-6, is that the second picture you have just related about to the court and jury? A. Yes, sir.

Q. That was taken when you say you couldn't see the head, is that the picture? A. Yes, sir.

Q. After that in your presence were the coals removed from the head? A. Yes, sir.

Q. Did you see then the head? A. Yes, sir, I did.

Q. Showing you Exhibits S-8 and 9 can you say whether or not the person who is shown in these two photographs, these photographs having the head on, is the person that you saw when the coals were removed from the woman's head in that coal bin; is it or not? A. That is it.

Q. The same person? A. Yes, sir.

Q. Did you have occasion to make any examination of the stairs leading from the first floor down to the basement? A. Yes, sir; Detective Moore, Herman and I.

Q. Did you see anything on the steps of the stairs? A. Some red spots on the second step going up from the bottom.

Q. The bottom leading from where? A. From the basement upstairs or going down from upstairs to the basement.

Q. Nearby the stairs on the floor did you have occasion to see any thing? A. No, I didn't notice anything there.

Q. Did you make an examination of the bathroom upstairs? A. No; Detective Herman went up there. I was making an examination of the other rooms and the windows were all nailed shut. The windows were all nailed shut and it was a piping hot day and that is the reason I went around to see why they were shut. There was a nail on top of the catch of every one of them and they couldn't be opened.

Q. Showing you Exhibit S-10, can you identify

the doorway shown in that exhibit? A. That is the coal hole.

Q. Where is the coal hole in that exhibit, please? A. Right here. Right here. You have to stoop to get down there, too. It is very small.

Q. Now, you will notice on this picture, a door here, to the left. Do you see it? A. Yes.

Q. And you will notice before the coal bin a door that leads in here. Do you see that? A. Yes.

Q. Two doors? A. Yes.

Q. You will notice over her something on the panel. Do you see that there, to the right of the— A. Yes.

Q. Did you have occasion to observe that that day? A. Yes.

Q. What was that? A. That had been moved with a screwdriver or something.

Q. I mean, what was there, if anything, that appeared— A. There was a sort of a piece of iron for a catch, and it had been fastened by someone. We don't know who, of course.

Q. Just show where you are pointing to the jury, each point as you go along. A. Right here. It was apparently a chisel or something, as though the door had been fastened and pried loose. This is the coal hole down here. This is the hole—this catch was fastened on here.

Mr. Barnitt—That is all. Cross examine.

Cross examination by Mr. Barbour:

Q. Detective Brooks, you spoke of orders being given to leave everything as it was; is that correct? A. Yes.

Q. And then afterwards, you said that you found the bat on a table downstairs? A. No, Detective Herman found the bat. Detective Herman had the bat on the table when I came back from telephoning for the photographer to come.

Q. And that table was downstairs that the bat was then on, was it? A. It was on a sort of dining room, just outside of the coal hole.

Q. In the basement? A. In the basement.

Q. And when you came back after telephoning to the photographer the bat then was not as shown in this picture, Exhibit S-7, was it? A. Not when I got back, no.

Q. For the purpose of taking that photograph it was placed there, was it? A. Put back by Detective Herman, where he said he got it from.

Q. And for the purpose of taking the picture marked Exhibit S-6, the shovel and the axe were placed in that position, were they not? A. The same position that they were found. Supposed to be.

Q. I beg your pardon. A. Supposed to be the exact position they were first discovered in.

Q. Didn't you testify before that when you first saw them— A. Let me see that.

Q. —one was lying on one side of the body and the other on the other? A. Right. That is right. That is right. The shovel isn't as it was.

Q. Then, they do not represent the position in which they were placed when they were first discovered? A. Not the exact position no.

Q. Will you look through all these exhibits, these photographs, and tell me if there are any others that represent things that have been placed

for the purpose of taking the photographs? A. No, that is all.

Q. Now, in your explanation of something on Exhibit S-10, you pointed to a latch. Is that latch on a door that closes up the coal hole or is it on a door that you get to before the coal bin door? A. The door before the coal bin.

Q. Now. When you got there—when you got there, were either of those doors shut? A. Why, yes. This door that I am speaking of was shut.

Q. When you got there? A. Yes.

Q. And had anybody been in there before you? A. Why, that I don't know. There was nobody in there when we got there. They were all out in the other room, and the door was closed.

Q. Where were these 100 people that you said were there? A. In the large living room in the basement.

Q. In the basement? A. Yes.

Q. Which is indicated on Exhibit S-20, on the right hand diagram, as kitchen; is that correct? A. Yes, I guess it would be. This is better yet, counselor, if you don't mind. Here is the picture of the room. This is the room I mean, right here.

Q. Oh, it is the room at the bottom of the cellar stairs; is that correct? A. Yes; yes, I would call it the kitchen, of the basement stairs.

Q. Of the basement stairs? A. Yes.

Q. And the door to which you have referred in Exhibit S-10, on which you pointed out the latch or something in connection with the latch to the jury, is that door which is shown on Exhibit S-20, as a line in the lower right hand corner of the room called "kitchen"; is that correct? A. Well, the

left hand corner, isn't it, the farthest, the left hand corner?

Q. Suppose you step down.

Mr. Barnitt—I think he means the left hand corner of the stairs, the right hand corner here.

Q. I am referring to the diagram, Detective Brooks, and I am indicating a door which is in the lower right hand corner of the diagram? A. That is it. That is it. That is it. Yes.

Q. Which is directly in front of the stairs leading toward the upper story? A. That is right.

Q. And is that the door that you referred to, as shown here on S-10. A. Yes, yes.

Q. Between that door and the coal bin appears a small space? A. A vestibule.

Q. A vestibule; is that it? A. There is another door out there, too.

Q. There is a door leading to the areaway from that vestibule? A. Yes.

Q. And then directly across that vestibule as you enter it from the room marked kitchen, is the entrance to the coal bin? A. That is right.

Q. And all these hundred people were— A. Right in there.

Q. Right around the kitchen? A. This door was shut. We found that door closed, and this door closed, too. Nobody in there. They were all in there.

Q. But you don't know whether any of those people, had been in there, do you? A. No, no, no.

Q. You don't know whether they had made any change in the conditions, from the time that had been found until you got there, do you? A. I don't know that.

Q. You do not know whether they loosened it—perhaps you had better go back on the stand—you do not know, Detective Brooks, whether they loosened up this latch or who did it, do you? A. Only what I was told.

Q. But you don't know yourself? A. From personal knowledge, no.

Mr. Barnitt—If it will save any time, I will prove who did open the latch. I mean, if it will save any time on this examination.

The Court—All right.

Q. Now, what did you mean, Detective Brooks, when you said that all the windows were nailed? A. Every window on the first floor was nailed shut. There was a big nail driven over the top of the catch so they could not be opened. It was terribly hot in the house and I tried them all to see if I could open them, and they were all nailed shut, bedroom and living room—

Q. Could those nails be removed easily? A. No, they were driven in good and tight.

Q. Did you try to pull any of them out? A. I did. It was so stifling hot, in the house, I tried to pull the front window out. I didn't have anything to do it with except my fingers. I tried it with my fingers but I couldn't do it.

Q. Every window on the first floor was nailed up? A. Nailed shut.

Mr. Barbour—That is all.

The Court—At this time we will adjourn until ten o'clock tomorrow morning and the jury must be permitted to leave the court room before anyone else leaves the court room.

Mr. Barnitt—May I ask your Honor to direct all the witnesses to return at 10 o'clock tomorrow without further subpoena?

The Court—All witnesses in the case will return tomorrow morning at ten o'clock without further subpoena.

(Whereupon an adjournment was taken until Tuesday, October 21st, 1930, at 10:00 o'clock A. M.)

(Trial of the case continued October 21st, 1930.)

Mr. Barbour—If the Court please, before we resume the taking of testimony of witnesses I would move at this time that Exhibits S-6 and S-7, be stricken out on the ground that Detective Brooks in his testimony at pages 193, and 197, testified, that as to Exhibit S-7, the bat, was placed for the purpose of taking the photograph in a position other than where it was when he first saw it; and as to Exhibit S-6, that the shovel and the axe were placed for the purpose of taking the photograph in a position other than where they were seen by him, and that therefore those pictures do not represent the positions of the bat, axe and shovel respectively as they were found after the commission of the alleged crime; and for

that reason I move that they be stricken out of the evidence.

Mr. Barnitt: I don't think your Honor wants me to answer that and take up the time of the Court.

The Court—The photographs were put in evidence for the purpose of simply photographing the alleged instruments; I will instruct the jury as to their position and instruct the jury to disregard any evidence other than that they were put in for the purpose of photographing the instruments.

Mr. Barnitt—The State is not going to contend that the axe and shovel were placed in any corner or position for any other purpose.

Mr. Barbour—It was testified that at the time the pictures were introduced that they represented the position of these instruments.

The Court—The position in which they were at the time the photographs were taken.

Mr. Barnitt—And in which they were found, sir. The photographs are already in evidence.

The Court—And you do not withdraw them?

Mr. Barnitt—No.

PHILIP RIKER, a witness produced on behalf of the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Lieutenant Riker, what position do you occupy in the Police Department of the City of Paterson? A. Secretary to the Chief of Police and Property Clerk.

Q. Property clerk? A. Yes, sir.

Q. And as property clerk, is it your duty to maintain and keep in custody all exhibits used in connection with the trial of causes? A. Yes, sir.

Q. In the criminal court? A. Yes, sir.

Q. In connection with the charge of murder against Bonaventura Nardella, did you as Property Clerk keep in your possession certain articles turned over to you by Sergeant John Herman, Detective of the Paterson Detective Bureau? A. Yes, sir.

Q. And with reference to the time or date that such articles were turned over to you, can you state to the Court and jury, when that was? A. They were turned over to me, I think it was on the 3rd; the 4th, I turned them over to Detectives Kennedy and Donnelly to be taken to Dr. Edell, at Newark.

Q. Lieutenant, showing you Exhibit S-21, what can you say as to whether or not that exhibit is one of the articles turned over to you by Sergeant Herman? A. Yes.

Q. Is it? A. Yes, sir.

Q. I show you S-22, Lieutenant, what can you say as to whether or not that is one of the articles turned over to you by Detective Herman? A. Yes, sir.

Q. And showing you Exhibit S-26, a baseball bat, what can you say as to whether or not that is one of the articles turned over to you by Detective Herman? A. Yes, sir.

Q. And what boards which have been offered in evidence and referred to as Exhibit S-23—were those turned over to you by Sergeant Herman? A. Yes, sir.

Q. And the two pairs of pants and blue shirt offered in evidence and permitted by the Court yesterday to be marked as Exhibits, can you state whether or not this blue shirt which is in evidence, and these two pairs of pants and belt were turned over to you by Detective Herman—were they? A. Yes, sir.

Q. You kept them for a time, and then turned them over to Detectives Donnelly and Kennedy, I believe you said? A. Yes, sir, Detectives Donnelly and Kennedy.

Q. For the purpose of taking them to Dr. Edell of Newark, a chemist? A. Yes, sir.

Q. And until such time as you turned them over to the detectives, did they remain in your personal charge and custody? A. Yes.

Q. Subsequently, were they ever, or any of those articles returned to you? A. They were returned to the prosecutor's office.

Q. They were not returned to you? A. No, not to me.

Cross examination by Mr. Barbour:

Q. Do you know whether or not all these articles are all in the same condition today as they were at the time you received them? A. Yes, sir,

except for a few creases and that from being continually wrapped up.

Q. Have you examined them in detail today to be sure of that? A. Yes.

Q. Is this shovel in the same condition in which it was, S-21, at the time you first received it? A. Yes.

Q. Sure of that? A. I can see no difference.

Q. Did you examine it with care at that time? A. I did.

Q. Were these red crayon marks on it? A. No, those are the doctor's, more than likely the doctor's crayon marks.

Q. Did you put on any mark yourself? A. No.

Q. That will enable you to identify it? A. I did not.

Q. Did you put any mark on any of these? A. I did not.

Q. Well, why do you say these trousers are the same ones you had? A. I noticed one part of the trousers, took particular notice of one pair of the trousers, the lower part, and the other pair of trousers I noticed the patching or lining, which is a sort of brown check, and the axe was marked with an X.

Q. You only had these for one day? A. Only for the one day.

THOMAS J. RUBINO, called as a witness for the State, being first duly sworn, testified as follows:

Direct examination by Mr. Barnitt:

Q. Mr. Rubino, you are a Justice of the Peace of the County of Passaic? A. Yes, sir.

Q. Having been elected how long? A. Two years ago.

Q. Two years ago. And you are an Italian? A. Yes, sir.

Q. And you have your office, your place of business and your home in the Italian section? A. Yes, sir, at 39 Passaic Street.

Q. 89? A. 39 Passaic Street.

Q. How far is that from 14 Mill street, approximately? A. I should judge near two blocks.

Q. On Saturday preceding Saturday, August 2nd, July 26th, 1930, did you have occasion to see Joseph Nardella, the young boy about 14 years of age? A. Yes, sir.

Q. The law won't allow you to say what he said to you or what you said to him, but where did you see him? A. At my office.

Q. At about what time? A. Between 10 and half past 10 at night, in the evening.

Q. You recall it being a Saturday night, Justice? A. Yes, sir.

Q. As a result of this young boy coming to your office did you have occasion to go to any residence on Mill street? A. Yes, sir.

Q. Where did you go? A. 14 Mill street.

Q. And with reference to that house you recall what apartment of that house you went to? A. Yes, sir.

Q. What apartment? A. In the kitchen on the first floor.

Q. Do you know whose apartment it was? A. Yes, sir.

Q. Whose was it? A. Nardella's

Q. Do you know his first name? A. Bonaventura.

Q. With reference to this defendant on trial today can you say as to whether or not you saw him on this occasion that you are referring to? A. I did.

Q. Did you see his wife Lucy at the same time? A. I did.

Q. In the presence of the defendant did the wife say anything to you at that time with regard to her husband? A. She did.

Q. Relate to the jury just what was said. A. She said that he was accusing her of keeping another man, and she wanted me to lock him up. Do you want me to relate, too, just what was said between Mr. Nardella and myself?

Q. Yes. A. So I turned over to Mr. Nardella and I asked him what was the idea of his raising all that trouble. "Well," he said, "Nothing." He said, "I just got that in my mind." I said, "What have you got in your mind?" "Well," he said, "I think she ain't true to me." I says, "Did you see anything?" He said, "No." "Do you know anything?" "No." "Anybody told you anything?" "No." "Well," I says, "What are you doing that for?" "Well," he says, "I just got that in my mind." Well, his wife insisted upon my locking him up, so I said, to him, I says, "Now, what are we going to do, Mr. Nardella? She wants me to pull you in." He said, "Oh, don't do it now. Give me another week's time, and I will try to get that out out of your mind?" 'That idea I got." "What is out of your mind?" "The idea I got." What is the idea?" "That she is unfaithful to me." I told him that he was foolish. He says, "I know I am, what can I do. I can't get it out of my mind, but give me another week, Tom, and I will try my

best to see if I can settle down." So I left him there and I went.

Q. Now, Justice, before you went to the house, did you have occasion to see a man by the name of Nick Juliano? A. Yes, sir.

Q. Where did you see him? A. In my office.

Q. And did you have a talk with him before or after young Joseph came to your office? A. I can't recall it, but I think it was after, because this Joseph came down to my office two times. One time he came alone, and the second time he came in with this Juliano.

Q. Nick Juliano? A. Nick Juliano.

Q. It was the same night? A. The same night, within five or ten minutes difference between the first time and the second time.

Q. When Joseph came in with Nick Juliano, which you say was the second time Joseph came, was that before you went to 14 Mill street? A. Before I went to 14 Mill street.

Q. When you got to 14 Mill street, did you see a Mrs. Juliano, there, if you can recall? A. Yes, sir.

Q. Was Nick Juliano there, if you recall? A. I don't think he was there.

Q. Where was Mrs. Nardella at the time you came in the house and she spoke to you in the manner that you have related? A. She was sitting on a rocking chair by a stove.

Q. What was her composure as you observed it? A. She had her hair all down and mussed up, and she was crying.

Mr. Barnitt—Cross examine.

Cross examination by Mr. Barbour:

Q. Justice Rubino, how long have you known this defendant? A. I know him for the last—well, about a year and a half. A year and a half.

Q. And how long have you known his wife? A. Pretty near the same time.

Q. Have you ever visited at their home? A. I did not.

Q. Did they ever visit at your home? A. No, sir.

Q. Did you see him very often during that year or year and a half? A. Quite often.

Q. Did you have any other difficulties with him during that time? A. No, sir. No, sir.

Q. Did he at any other time during that year and a half say to you that his wife was untrue to him? A. Never did.

Q. Just what did you say to him when he told you that that was what was on his mind? A. I just asked him what made him think so. The answer was that he didn't know. He says, "I don't know," he says, "I just got that in my mind, that is all." That is the only answer he gave me.

Q. Did he talk very long about that fact? A. He did not.

Q. And when he told you that he just had that in his mind, just as you have related, what did you say to him? A. Well, I says, "What makes you say so?" He says, "I don't know." I says, "Do you know anything?" He said, "No." "Did you hear anything?" "No." "Did anybody told you anything?" He said, "No."

Q. And then what did you say? A. I said, "What makes you think so?" He said, "I don't know."

Q. And then what did you say? A. He didn't say nothing else.

Q. Did you say anything else? A. Not to him.

Q. Did you say anything to anyone else in his presence? A. I did.

Q. What was it? A. To his wife.

Q. What did you say? A. I said, "What do you want me to do with him?" She says, "Lock him up."

Q. You are a Justice of the Peace? A. Yes, sir.

Q. And what was the nature of the offense which you were asked to lock him up on? A. Assault and battery.

Q. Or were you asked to lock him up because of his accusations against his wife's fidelity? A. No, sir, I was asked to lock him up because the wife told me that he beat her.

Q. What was his appearance on that occasion? A. Why, he was calm, he was sitting on a chair, he was not excited—sober.

Q. Did he laugh and joke? A. No, sir.

Q. Just what was it that Nardella said to you, when you told him you were going to lock him up.? A. Why, he said, "Don't do that, Mr. Rubino," he says, "Let me think this over. Let me have another week's time. I will think it over and I will try to get it out of my mind."

Q. Are you sure he said a week? A. Absolutely.

Q. What makes you so sure of it? A. That is just what he said.

Q. Why do you remember that particular part of it? A. I remember everything he said, not that particular part.

Q. Well, why do you remember everything he said? A. Well, why shouldn't I?

Q. Did you have any conversation with anyone else on that evening? A. Yes, after I went out of the house.

Q. With whom? A. With Mrs. Nardella's mother, father, and another man.

Q. Do you remember your conversation with them? A. Yes, sir.

Q. Do you remember every part of it? A. Every part of it.

Q. Did you see anyone else that evening? A. No, sir.

Q. Nobody at all? A. Nobody at all.

Q. Where did you go after you— A. In my office.

Q. And did anyone come into your office that evening? A. They did.

Q. Who? A. The mother and the father.

Q. Of who? A. Of Mrs. Nardella.

Q. Was it at your office, or was it in front of the Nardella home, that you saw them? A. The first time I saw them on the corner of Passaic street and Mill street. I walked down with them aways and they left me, and they went home, and then they came back to my office.

Q. And you had further conversation with them them? A. Yes, sir.

Q. They were anxious that you should do something about this man? A. Yes, sir.

Q. And after they left, did anyone else come to your office? A. No, sir.

Q. No one else? A. No one else.

Q. Those were the only people you saw that evening? A. That evening, yes, sir.

Q. And they spoke to you after you came out of the house? A. Yes, sir.

Q. And they came to your office and spoke to you again? A. Yes, sir.

Q. And they were urging you to do something? A. Yes, sir. Yes, sir.

Q. Wasn't it then that you expressed the opinion that he should be given a week? A. That I expressed the opinion?

Q. Yes. A. I didn't express no opinion.

Q. Wasn't it to them that you said, "We will give him a week?" A. No, sir.

Q. Who first mentioned the word "week" in the conversation? A. He did, he did.

Q. And that you are absolutely sure of? A. Absolutely.

Q. Of course, you could be mistaken, could you not, about it? A. No, sir.

Q. Do you remember seeing anybody the night before that Saturday night? A. No, sir.

Q. Did you see anyone? A. No, sir.

Q. Did you see anyone on that Thursday evening? A. Thursday evening?

Q. Yes. A. No, sir.

Q. Did you see anyone on the following Monday evening? A. No, sir.

Q. Where were you the following Monday evening? A. Right at my office.

Q. And nobody came in?

Mr. Barnitt—I think, if the Court please, in fairness to the witness, I think he means about this case. I may be wrong. I think counsel should state if he meant about this case.

The Witness—To any case?

Mr. Barbour—No one came to your office?

A. No, sir.

Q. When was the next time that anyone did come to your office about any case? A. On a Saturday night about half past 12.

Q. What Saturday night? A. Or Friday night, rather, about half past 12 at night.

Q. Which Friday night? A. The night before the murder.

Q. And who came to your office then? A. Mr. Juliano.

Q. About what case did he come to your office? A. About this particular case.

Q. About the Nardella case? A. Yes, right.

Q. And in between the Saturday night preceding the alleged murder and the night preceding it, no one came to your office in reference to any case whatsoever? A. No, sir.

Q. You took no complaint of any kind against any person that week? A. No, sir.

Q. What do you work at during the day? A. My office.

Q. And did anyone come into your office during the day for that whole week? A. When you say anyone, what do you mean, anyone in general or in this particular family?

Q. I mean in general. A. I can't remember who came.

Q. You can't remember who came? A. No, sir.

Q. Did you take any complaints during that week? A. No, sir.

Q. Did anyone come in with any story of abuse or make any complaint? A. No, sir.

Q. Sure of that absolutely? A. Absolutely.

Q. Not in reference to this particular case, but in reference to any case? A. In any case.

Q. But you do know that some people came to your office? A. Yes, sir.

Q. But you can't remember who they were? A. I do.

Q. Didn't you say a minute ago you didn't know who they were? A. I can't remember every one of them, but I do remember some of them.

Mr. Barnitt—Don't you think this has gone far enough?

The Court—I will permit it for the purpose of testing his credibility.

Mr. Barnitt——You can go on and on until doomsday; but he remembers about this particular instance.

The Court—It will go to test the credibility of the witness.

Mr. Barbour—Apparently he was under the impression I was referring to this particular case.

Q. Do you remember any one person that came to your office during that week? A. Yes; I do.

Q. Who? Q. Well, some Pollack who was working down here in Newark came; he works down near Newark in a restaurant.

Q. Do you remember your conversation about it? A. Yes.

Q. All of it? A. Yes, all of it.

Q. What was the name? A. It was a Polish name, but I can't just remember it.

Q. You can't remember it? A. No, I can't remember it but I can show you now that I got something in my pocket from which I can read his name.

Q. Did anyone else come to your office that week? A. Yes.

Q. Who? A. Some friend of mine from Passaic street.

Q. What is his name? A. Rocco Pareisi; he is a painter.

Q. What time of the day was it on this Saturday preceding the alleged crime that you went to the home first? A. What time of the day?

Q. Yes. A. Between 10 and half 10 in the evening.

Q. And who was there? A. Mr. Nardella, Mrs. Nardella and a big tall woman, an Armenian, I think it was, that lived on the second floor and her husband and Joseph Nardella, the boy, and Mrs. Juliano and another woman that I don't recall her name, that is I don't know her name.

Q. There were quite a few people there? A. Yes.

Q. They were all talking to you? A. Not all of them. Some of them were.

Q. There was considerable confusion, was there not? A. Not while I was there.

Q. What was the demeanor of the defendant at that time? A. What do you mean by that?

Q. What did he look like; how did he act? A. Nothing strange about him. He was sitting on a chair right across the way from his wife. Quiet. Sweating. That is all I noticed on him.

Q. Did he look worried? A. He did.

Q. Worn out? A. No.

Q. Tired? A. No.

Q. Was there any peculiar look about his eyes? A. No, sir, that I could notice it.

Q. Was he sober? A. Absolutely.

Q. And yet he told you this tale about his wife's infidelity? A. Right.

Q. Now, just what were his exact words at that time? A. Well, when I asked him what was the matter with him he said he thought—he said "I think that my wife is not truthful to me." I said, "What makes you think so?" And he said, 'I don't know." I said, "Did you see anything, did you hear anything?" But the only thing he would answer is "no, no, no."

Q. What did you think of him? A. What did I think of him?

Mr. Barnitt—If your Honor please, I object to that.

The Court—The question is too broad.

Q. What was your opinion as to his condition at that time?

Mr. Barnitt—Well, now, what does that mean? Physical appearance or what? If it means mental I am going to object to it.

The Court—On what ground?

Mr. Barnitt—His opinion as to this man's mental condition?

The Court—The law says a layman may testify—

Mr. Barnitt—Yes, but I don't see that he is in any position to state this.

The Court—He hasn't yet given any evidence, but he can do it, if he first satisfies the Court that he has observed certain things which enable him to testify.

Mr. Barnitt—Another reason is it is not proper cross examination. I brought nothing out on direct examination about his mental condition.

Mr. Barbour—As I recall it the prosecutor brought out his demeanor, attitude and—

The Court—If you can qualify the witness I shall allow him to testify.

Q. Justice Rubino you have known this defendant for some year and a half or more, have you not? A. That is right.

Q. And you have seen him with some degree of frequency? A. Not very often.

Q. How often? A. Once a week I should judge.

Q. Once a week? A. About once a week.

Q. Did you at any time during that year and a half or more and during your seeing him on an average of once a week observe anything about him? A. I did not.

Q. On this evening, on Saturday, July 26th, you had rather a lengthy talk with him, did you not, about this thought that was in his mind? A. No.

Q. Didn't you know before that night that he accused his wife of infidelity? A. I never did.

Q. Wasn't it common gossip in the neighborhood? A. Not that I know of.

Q. But he did tell you that night that he believed his wife was untrue to him? A. Yes, sir.

Q. And he did tell you that he had no ground for such belief, did he? A. Yes. sir.

Q. And he did tell you that that was in his mind? A. Yes, sir.

Q. And he did tell you that he would try to correct it? A. Yes, sir.

Q. But he didn't say when, did he? A. Yes, sir.

Q. Now, from his statements to you and your questioning of him at that time did you form any opinion? A. I did.

Q. Or have you any opinion? A. I did.

Q. As to his mental condition? A. I did.

Q. What was that opinion? A. That the man was suffering from jealousy, that is all, and he would be all right.

Q. To what extent did you think he was suffering from jealousy? A. I can't answer that question.

The Court—That is going too far for a layman. He may testify according to law where it is predicated upon the actual disclosure of facts. That is the reason for permitting a layman to testify but you can't go that far.

Q. Did he seem to have this belief deeply imbedded in his mind at that time? A. Yes, sir.

Q. Did it seem to be preying upon his mind? A. Yes, sir, at that time, yes.

Redirect Examination by Mr. Barnitt:

Q. These two photographs, Exhibits 8 and 9, can you identify this as being the party you saw on July 26th, Mrs. Lucy Nardella? A. Well, really, the condition that the pictures are in I wouldn't be

able to say this is the party. That is, that this is Mrs. Nardella, but I can say it is the same body that I saw—

Mr. Barbour—Just a moment, if the court please.

The Court—The question is, is this Mrs. Nardella.

Mr. Barbour—But he says he can't identify her from this picture.

Q. Did you see Mrs. Nardella at the morgue, Mr. Rubino? A. I did.

Mr. Barbour—What is the purpose of this? I object to it.

The Court—There might be some doubt in somebody's mind that it was actually Mrs. Nardella that he talked to in the presence of the defendant.

Mr. Barbour—But he has testified he knew Mrs. Nardella and now testifies he doesn't recognize this as her picture.

Q. What can you say as to whether or not the body that is shown in this Exhibit S-9 is the body you saw in DeLuccia's morgue? A. Those are the pictures.

LEO DONNELLY, called as a witness for the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Detective Donnelly, you are a member of the detective staff of the City of Paterson? A. I am.

Q. And have been for how long? A. About a year and a half.

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

Q. Did you at the instance of Lieutenant Riker take any articles to Dr. Edel, a chemist in Newark, in company with Detective Kennedy? A. I did.

Q. Did you do so? A. Yes, sir.

Q. With reference to August the 4th, 1930, can you state when you took these articles to Dr. Edel? A. It was around 11 o'clock when Detective Kennedy and I left Paterson.

Q. On what day? A. On August the 4th, Monday.

Q. I show you Exhibit S-21, can you identify that exhibit as being one of the articles you took to Dr. Edel? A. Yes, sir. that is one.

Q. And showing you Exhibit S-22, can you identify that axe as being one of the articles you took to Dr. Edel? A. Yes, sir.

Q. And showing you Exhibit S-26, can you identify that baseball bat as being one of the articles you took to Dr. Edell? A. Yes, sir.

Q. And these six boards down here, Detective Donnelly, can you state whether or not those boards were also taken by you and Detective Kennedy to Dr. Edell? A. Yes, sir; they were.

Q. And this blue shirt and two pairs of trousers,

attached to one pair is a belt, can you state whether those three articles were also taken by you and detective Kennedy to Dr. Edell? A. I don't know; I brought another package, that is wrapped up, I don't know about the clothing.

Q. Did you bring some articles of clothing wrapped up in a package? A. Yes.

Q. Did you give that package to Dr. Edell? A. Yes.

Q. Subsequently, did you secure the return of the same objects to which I have referred, shovel, axe, baseball bat and six boards, and the package of clothing from Dr. Edell? A. Yes.

Q. When did you get the return of them? A. Last Friday, October 16th, detective Kennedy and myself.

Q. To whom if anyone did you give all those articles, I have related? A. Detective Drew of your office.

Q. That is Prosecutor Detective Drew? A. Yes, sir.

Cross Examinaton by Mr. Barbour:

Q. You don't know detective, do you, if the contents that you brought back was the same as are the contents of the package that you took down? A. I don't know; I saw only the package.

Q. Are there any identification marks on the articles which you placed on them by which you can identify them? A. Yes.

Q. On each of them? A. Yes.

Q. Did you find your identification marks on each of them? A. Yes, sir.

By Mr. Barnitt:

Q. Detective Donnelly, do you recall taking this to anyone—I don't know if you did or not. Did you bring that back from Dr. Edell? A. No—unless it was in that bundle. It may have been. I brought that bundle wrapped up.

Q. You say it may have been? A. It may have been, but I did not see it.

Q. Who did you give the bundle to? A. To Mr. Drew.

DR. ALBERT E. EDELL, a witness produced on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Dr. Edell, by profession, what is your business? A. I am County Chemist and Toxicologist of the County of Essex.

Q. Of the County of Essex? A. Yes, sir.

Q. In the state? A. Yes.

Q. And how long have you occupied that position as County Chemist? A. Sixteen years.

Q. In connection with your profession, do you have occasion to make microscopical examinations of liquid contents to ascertain if it has an origin of human blood? A. I do.

Q. Do you also in connection with your business, make microscopical examinations of articles with reference to ascertaining whether they contain human hair? A. I do.

Q. And in connection with the articles which have been marked as exhibits on the trial of this

cause, do you recall Detective Donnelly turning over to you any articles for the purpose of making a microscopical and pathological examination of such articles? A. I do.

Q. And did he do that? A. He did.

Q. And can you state approximately when the articles were turned over to you, Doctor? A. On the 4th and 7th of August.

Q. Can you state what articles were turned over to you by Detective Kennedy on August 4th Doctor? A. A Turkish towel.

Q. Will you just raise your voice a bit, Doctor, so that we can hear? A. A Turkish towel, a child's dress, handkerchief, gray pants and a blue shirt and pants taken from clothesline, one brown stripe and a dark blue one; a baseball bat, an axe, broken shovel, some boards—some boards, wooden boards.

Q. What articles were turned over to you on August 7th? A. That was all turned over to me on the same day. On October 7th, I took some—made a blood examination.

Q. October or August? A. August 7th.

Q. Yes. Now, Doctor, did you make an examination of each and every one of the articles that you have related? A. I did.

Q. For the purpose of examining such for blood, of human blood? A. I did. I did.

Q. Showing you Exhibit S-21, I ask you, if you made an examination of that article, of the shovel, for the purpose of ascertaining whether there were any stains on such, to be positive for blood of human origin? A. I did.

Q. Did you find any stains of blood? A. I found them.

Q. Of human origin? A. I found them positive for blood of human origin.

Q. Can you tell the jury, where the blood was, that you found? A. Right here.

Q. Point it out, please, if you will, to the jury. A. Right here, where the red marks are. I still left a lot of blood on there.

Q. And, Doctor, did you find anything else by the use of a microscope on that shovel? A. I found some human hair which I removed, and brought along today, on a glass.

Q. Have you got the human hair that you found? A. I have.

Q. Where did you find that human hair, Doctor? A. Right here, where that red circle is.

Q. Show the jury, please. A. Right here.

Q. And with reference to where the blood was, how far away from where the blood was, was this human hair? A. This hair was embedded in the blood.

Q. I don't believe you found anything else on the shovel, did you, Doctor? A. I did not. Human hair and human blood.

Mr. Barnitt—I offer the hair in evidence.
The Witness—I took it myself.
(Glass slide marked Exhibit S-30.)

Q. Doctor, I show you Exhibit S-22, an axe. Can you identify that as having seen it before? A. Yes, sir.

Q. The axe which you stated Detective Donnelly turned over to you. What can you say as to whether or not the axe in your hand is the same axe he

turned over to you? Is it? A. I got it marked here. There is a tag on it.

Q. Is it? A. It is the same.

Q. Did you make an examination of the axe to ascertain whether or not it proved to have upon it blood of human origin? A. I did make an examination.

Q. Did you find from your examination any blood of human origin? A. Yes, sir.

Q. Was there on the axe any blood of human origin? A. There was blood on this axe, right here on the handle, marked by me, right here on the blade.

Q. You are pointing to what? A. On the blade. that red mark.

Q. The blade of what? A. Of that axe. On that side, too.

Q. Showing you a baseball bat marked as Exhibit in this cause S-26, what can you say as to whether or not the baseball bat to which you referred and which you say Detective Donnelly turned over to you, is the baseball bat that you are now examining? A. It is, because it is marked by me.

Q. Did you make an examination of that exhibit, of the baseball bat, to ascertain whether or not it was positive for blood of human origin? A. It is blood of human origin in several places, examined and marked by me with red pencil.

Q. Doctor, with reference to these six boards, I would ask you to please come down here. A. (The witness left the witness stand.)

Q. The six boards which you say were turned over to you by Detective Donnelly? A. They were.

Q. What can you say as to whether or not those

boards are the ones which have been marked as Exhibit S-23? A. They are the boards.

Q. S-23, which you are now examining, are those the same boards? A. The same boards. I put this on.

Q. Just a minute. Bring that board out. Now, with reference to that board, or plank, in your hand, forming one of the six boards introduced in evidence, as an aggregate S-23, what, if anything, did you do with reference to that particular board? A. I cut that piece off here to make a more thorough examination.

Q. For what purpose, Doctor? A. For the examination of blood and hair, which I could see with the naked eye first.

Q. I show you two pieces of board and I ask you if the pieces of board which you cut from that plank are the pieces that are in your hand now? Are those the same pieces? A. They are.

Q. And did you ascertain from the examination of those pieces whether those pieces contained positive blood of human origin? A. I did, and I found—

Q. Did they—I beg your pardon, go ahead? A. I did, and I found blood and human hair in it.

Q. And have you the human hair, Doctor? A. I have some still on that piece of board, and the rest is on here under my microscopic slide.

Mr. Barnitt—First, with your Honor's permission, I would offer the board and the hair. I will offer the three as one exhibit.

(Two pieces of board and one glass slide were marked Exhibit S-31.)

Q. Showing you this blue shirt, Doctor, did you have occasion to make an examination of that, to ascertain whether or not it contained blood of human origin? A. I have to refer to my notes on that.

By Mr. Barbour:

Q. When did you make those notes, Doctor? A. The same day as I made the examination. I dictated them to my stenographer, right into the machine.

Q. They are correct notes, are they? A. They are.

By Mr. Barnitt:

Q. I take it you are just refreshing your recollection now? A. Yes, sir. I made an examination of that shirt.

Q. Did you find any evidence of blood of human origin on that shirt? A. I did.

Q. Can you tell the jury, where? A. All these brown spots here.

Q. I don't think the jury hears you. A. All these brown spots here.

Q. You are pointing now to what? A. To the sleeve of that blue shirt.

Q. Yes? A. There is blood. Part of it removed by me, and examined.

Q. And with reference—go ahead. A. And marked. I have them all marked.

Q. I beg your pardon? A. It is all marked by me.

Q. Doctor, do you recall having these two pair of pants, for examination, turned over to you by Detective Kennedy? A. Yes.

Q. Did you examine them—exhibits in this

cause, either or both? A. I examined both and found blood on this pair of pants.

Q. Did you distinguish that pair by color from the other pair? A. I did.

Q. What color are you referring to now? A. To the gray pants, the gray ones.

Q. That is Exhibit S-27. Now, with reference to S-29, the pants with the belt, did you find any blood from your examination? A. I did.

Q. You did? A. Yes.

Q. The first pair you are referring to, as gray pants? A. This gray pants I didn't find any

Q. I don't think you found any blood on S-29, doctor. I want to make that clear. A. I didn't find any on this pair of pants.

Q. But the first pair, gray, you did find them? A. I did, because I have them marked.

Mr. Barnitt—Cross examine.

Cross Examination by Mr. Barbour:

Q. Doctor, I notice on the shovel, Exhibit S-21, some marks made with what appears to be a red mark? A. Yes.

Q. Are those marks made by you? A. I did make those marks where I removed the blood for examination.

Q. Are there any such marks on ~~which~~ what might be called the face of the shovel? A. There are none on that side.

Q. All the marks are on the back of the shovel, are they? A. Yes, sir; on the back of the shovel.

Q. Did you find any hair or blood anywhere else on the shovel except where indicated by you by these

circular crayon marks on the back of the shovel? A. I did not.

Q. And have you on all of these various objects indicated in a like manner with red crayon where you found blood or hair? A. Where I marked blood, where I found blood, hair, or where I removed any of the blood for examination.

Q. Well, it was there when you first examined it? A. Yes.

Q. And you removed it for examination? A. Part of it.

Q. But wherever there was any blood on these various articles at the time you first got them you so marked them? A. I only marked the part I examined; there is more blood on than I marked.

Q. Well, did you examine the face of the shovel? A. Yes, sir; there was nothing found; but many more parts were found on the axe which I did not mark because I did not make any biological or chemical examination.

Q. And the bat, were there more marks on the bat that you marked? A. Only parts of them were removed by me; for instance, I took that out and examined it (indicating) and took some out here and examined it and I could see through the lens that there is more blood—for instance there (indicating) and more blood there, but there was not biological or chemical tests made.

New Jersey State Library

ANTHONY SARASINO, a witness produced on behalf of the State being sworn according to law, upon oath testifies as follows:

Direct Examination by Mr. Barnitt:

Q. Anthony Sarasino, where do you live? A. 736 East 211th Street, Bronx, New York.

Q. Was Lucy Nardella a relative of yours? A. She was my sister.

Q. On Sunday, August 3rd, 1930, did you have occasion to come from the Bronx, New York, your home, and go to No. 14 Mill street? A. Yes, sir.

Q. Paterson? A. Yes, sir.

Q. Did you go to 14 Mill street, first, or did you go to the home of Jerry Nardella? A. No, sir.

Q. Where did you go first? A. I went to my uncle's home first.

Q. What is his name? A. Nick Juliano.

Q. From your uncle's home where did you go? A. From my uncle's home, my sister come, Jerry Nardella's wife.

Q. Her name is Lena? A. Yes.

Q. She came where? A. She came over to my uncle's home, so when I saw her and she told me—

Q. No, Tony; the law will not allow you to say what they told you, but, as a result of what was said to you at your uncle's home, did you go some place? A. No, sir.

Q. You didn't go some place? A. No.

Q. You went some place, didn't you? A. Yes, I went to the Western Union telegraph.

Q. In Paterson? A. Yes.

Q. And as a result of going to the Western Un-

ion telegraph office in Paterson, you found it closed, did you? A. Yes.

Q. And then you went some place, Tony? A. No, it was open.

Q. Well, as a result of going to the Western Union telegraph office did you go some place? A. I went back to my uncle's house.

Q. When you went back to your uncle's house did you see somebody there? A. I seen my sister Lena.

Q. Who else? A. My aunt.

Q. What is her name?

Q. Who else? A. My uncle, my aunt, and my sister.

Q. What time of the day was that? A. About 11 or half past 11.

Q. Sunday morning? A. Yes.

Q. From that place did you go some place else? A. Before I went to 14 Mill street I asked where the key of the house was for 14 Mill street.

Q. Well, you asked somebody for something, did you? A. No, I never went no place.

Q. Didn't you go some place from your uncle's home—some place? A. No, I told you before I went to the Western Union telegraph.

Q. And after you went there to the Western Union telegraph office where did you go from there? A To my uncle's house.

Q. And you stayed there for a little while? A. Yes.

Q. How long did you stay there, Tony? A. About 10 or 15 minutes.

Q. Was Joseph Nardella, the boy, there? A. Yes.

Q. And was Nick Juliano there? A. Yes, sir.

Q. And from your uncle's home did you and Nick and Joseph Nardella, the boy, go over to 14 Mill street? A. Yes, sir.

Q. Where did you go into 14 Mill street when you went in there; where did you go first? A. We go down cellar.

Q. Where did you go first—there is a hall there? A. Yes, into the hallway.

Q. Before you went down into the cellar you went into the hallway first? A. Yes, in the hallway.

Q. Now, Tony, showing you Exhibit S-12, can you state whether or not the hallway shown in that picture is the hallway you went into? A. Yes, sir.

Q. Did you go in that hallway? A. Yes, I go in this hallway.

Q. And what did you do when you got down to the end of the hallway? A. I opened this door (indicating).

Q. You opened this door (pointing to the door on the right side of the hallway)? A. Yes.

Q. Where did you go then? A. We go down in the cellar.

Q. When you got down in the cellar, do you identify Exhibit S-7 as being a picture of one of the rooms in the cellar? A. Yes, sir.

Q. And do you identify Exhibit S-10 as being a picture of one of the rooms in the cellar? A. Yes, sir.

Q. Now, when you got down the cellar, did you observe whether there was a door locked in one of the rooms of the cellar; did you see? A. Yes.

Q. And looking at Exhibit S-10, can you point

it out? A. This is the door that was locked (indicating).

Q. Come down please here, and just carefully show the jury, which door was locked? A. This one was locked.

Q. Can you tell the jury in what way you observed it was locked? A. It was locked, but the key was missing and I removed the screws.

Q. When you went down to that door and seen it locked, who was with you? A. My uncle and the boy, Joseph Nardella.

Q. That is the son of the defendant Bonaventura? A. Yes.

Q. And the object that you used to unlock the door, did you have it with you or did you send someone to get it? A. No, I sent Joey to get it.

Q. You mean Joseph Nardella? A. Yes, sir.

Q. You sent him to get it? A. Yes.

Q. Do you know where he got it? A. In the back yard, in the shed.

Q. Of 14 Mill Street? A. Yes, sir.

Q. Did he come back to where you were with Nick, down in the cellar? A. Yes, sir.

Q. Did he give you something? A. Yes, sir.

Q. What did he give you? A. Screwdriver, a hammer and a chisel.

Q. Did you use any or all of the objects? A. Yes, sir.

Q. On this door or lock? A. Yes, sir.

Q. What did you do with reference to these objects and that lock? A. I took the screws out.

Q. After you took the screws out? A. After I take the screws out, still the door was tight, and then, I see, there was a nail in it.

Q. With reference to the door and the sash of the door, where was the nail? A. About a little over the lock.

Q. What did you do with the nail? A. So I pulled the nail out of the door, with the chisel and forced the door open.

Q. When you got inside was there a little space there? A. Yes, sir.

Q. Did you see another door? A. Yes, sir.

Q. Was that door open or closed? A. Just bent over without the lock or anything.

Q. Was it open or closed? A. Open.

Q. Did you open the door further? A. Yes, sir.

Q. What did you do when you opened it further? A. I see my sister's legs over there.

Q. Who was with you? A. My uncle and Joseph.

Q. A little boy, Joseph, and Nick Juliano? A. Yes, sir.

Q. Showing you this picture, Exhibit S-5, can you identify the person shown in that picture as the person that you saw when you made your examination and opened that door and looked in? A. That is exactly the way I find her.

Q. Did the little boy, Joe, go in too? A. No, nobody go in.

Q. What did you do? A. We started to holler, and we go upstairs, and we run away.

Q. Did Nick go with you? A. Me, my uncle, and the kid Joseph.

Q. Did you go out on the sidewalk? A. Yes, sir.

Q. What did you do? A. We start to holler and all the people come.

Q. Did people come? A. Yes, sir.

Q. A short time after did the police come? A. Everybody is come.

Q. Now, showing you, Exhibit S-8, and 9, Tony, do you know who the picture is, as shown on these exhibits, do you know who the party is? A. Yes, sir, I do.

Q. Who is it? A. She was my sister, Lucy Nardella.

Q. You mean she was until she died? A. Certainly.

Q. Were you older than your sister, or was she older than you? A. She was older than me.

Q. About how old was she? A. About 38.

Cross Examination by Mr. Barbour:

Q. Who was it that went into this coal bin, with you, yourself and who else? A. My uncle Nick Juliano.

Q. Your uncle Nick Juliano and who else? A. Joseph Nardella.

Q. The boy? A. Yes, sir.

Q. Who went in the coal bin, with you? A. Nobody went into the coal bin.

Q. What? A. Nobody went into the coal bin.

Q. Did you go in? A. No, sir.

Q. What did you do? A. Just opened up the door and I see the same picture, I see now.

Q. Was there a light in there? A. Not so light in there, in the coal bin, because it is under the sidewalk, but I could see just the same.

Q. Well, could you see the boards over her body? A. Yes, sir.

Q. How long did you stand there, looking at her? A. Not even a minute.

Q. Not even a minute? A. No.

Q. Did you see a shovel there? A. I didn't see anything at all.

Q. You didn't see anything at all? A. No, sir.

Q. But you saw the body? A. I see the legs and I run away.

Q. You saw the legs? A. Yes.

Q. And that is all you noticed? A. That is all I noticed.

Q. You didn't see whether there was coal or boards over her? A. I just know there is boards over her.

Q. Now, as soon as you got to your house, you went right down the cellar to that door, did you? A. Went in the hallway, first, and after I opened the cellar door.

Q. Did you go in any of the other rooms, first? A. No, sir.

Q. You went right downstairs? A. In the cellar.

Q. Did you run downstairs? A. We don't run, nobody was rushing us.

Q. How long did it take you to get the lock off the door and get that one door open? A. About five minutes.

Q. As soon as you did that, you went on to the next door? A. Yes, sir.

Q. How wide open was it? A. What the door?

Q. Yes, the door to the coal bin, it is the second door you went through, was it partly open or almost closed? A. All closed, bent over.

Q. All closed? A. Yes.

Q. Does it open inside or open out? A. It opens out.

Q. And what did you have to do in order to open that? A. Nothing at all, just take the door and just pull it open.

Q. It wasn't fastened? A. No, sir.

Q. Now, when you got that door open, then you looked inside in the coal bin, and you saw the legs there? A. Yes, sir.

Q. Did you go inside? A. No, sir.

Q. Who did you think it was lying there? A. My sister.

Q. You didn't go in to see if she was still alive? A. No, sir.

Q. Why not? A. I didn't have enough nerve to go in.

Q. Did you after that go into the coal bin? Did you at any time after, go into the coal bin? A. No, sir. I don't see nobody, just I go upstairs and go away, start to holler and go away.

Q. Where did you go? A. Upstairs.

Q. After you hollered and went away, where did you go to? A. Over to my uncle's house.

Q. Did you from that time to today, ever go back to 14 Mill Street? A. No, sir.

Q. Were you there when the police got there? A. Sure, I don't was on the inside, was on the inside.

Q. Did you go in when the police were there? A. No, sir.

Q. In between these two doors, there is another door that leads to an areaway that leads up to the street? A. Yes.

Q. Was that door open or closed? A. I don't know.

Q. Now, will you kindly describe how this nail was placed, you say it was over the lock? A. A little over the lock.

Q. Was it driven through the door, into the door jamb, or how was it fastened? A. Through the door, into the door jamb.

Q. Did it stick out at all? A. Just the head.

NICHOLAS JULIANO. called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

The Court—Does this witness speak English?

Q. Do you speak English, Nick? A. No, sir.

Mr. Barnitt—May I ask that the Interpreter, Mr. Aquino, be sworn?

The Court—Yes, Mr. Aquino.

(Anthony D. Aquino, official interpreter of the Italian language is duly sworn.)

Q. Nick, where do you live? A. Passaic Street.

Q. And are you married? A. Yes.

Q. What do you work at? A. Public Service.

Q. Do you know the defendant, Bonaventura Nardella? A. Surely, I know him.

Q. Is he any relative of yours or your wife's? A. None of us.

Q. Now, Sunday, August 3, do you remember seeing Anthony Saracino and Joseph Nardella? A. Yes, sir.

Q. And did you accompany either or both of those persons to 14 Mill street, Paterson? A. Only Tony Saracino.

Q. Well, did you go down in the basement of that building? A. Yes, sir.

Q. And did you come to a door that you found locked? A. Yes, sir.

Q. Showing you Exhibit S-10, can you show us whether the photograph shows a door that you saw locked on there? A. My eyes are not very well, but the door that was locked is the one that enters down to the cellar.

Q. Did you go down the cellar? A. Yes, sir.

Q. Was Tony with you? A. Yes, sir.

Q. When you got down to the cellar did you see or observe a door locked? A. Only the one that we opened.

Q. Where was that? A. In the kitchen down the cellar.

Q. Who opened that door? A. Tony Saracino.

Q Do you know what if anything he used to open the door? A He used a chisel and screwdriver.

Q. Did you notice whether there was any nail on the door, in the door jamb? A. Yes, sir, there were four or five.

Q. Nails? A. Yes, sir.

Q. Well, they got the door open, did they? A. Tony Saracino opened it, and I was nearby.

Q. Did you see into the coal bin inside? A. I did not look inside.

Q. Why? A. I was afraid.

Q. Why? A. When I seen the legs.

Q. Now, showing you Exhibit S-5, what can you say as to whether or not that is a picture as you saw the conditions when you looked in?

Mr. Barbour—If the Court please, this witness testified that he did not look inside.

Mr. Barnitt—No, he didn't say that.

The Court—He said he looked in, but didn't go in.

Mr. Barnitt—He said he was afraid to go in when he saw the legs, as I understand it.

Mr. Barbour—He said he did not look inside, that he was afraid when he saw the legs. That picture shows more than legs.

Mr. Barnitt—All right.

A. Yes, sir, just the legs. (Indicating both legs.)

Q. Where did you go then? A. I went home to bring the report to my wife and my sister-in-law.

Q. I want to take you back to Saturday night, July 26th, a week before this woman was found. I want to know whether you were at Bonaventura's house at 14 Mill Street that night? A. At night.

Q. With whom, if anyone? A. The boy came to my house because he was saying words to his wife—Joseph Nardella.

Q. When you say the boy, do you mean Joseph the boy? A. Yes, sir. Joseph.

Q. When you went to the house did you go with anyone or did you go alone? A. I went there with my wife.

Q. Before you went there with your wife do you recall going—did you go to Justice Rabino's office with Joseph? A. We went to the office.

Q. I mean, did you see Justice Rabino? A. Yes, sir.

Q. And then from here did you go over to the house and see Nardella, the defendant, and his wife Lucy at the house? A. Yes, sir.

Q. Now, did Lucy Nardella say anything to you and your wife in the presence of Nardella that night? A. The wife told me that the husband. Nardella, was saying that I was a bad woman.

Q. Go ahead. What was said? Tell the jury. A. That is all.

Q. What did the husband say? A. The husband—the husband didn't answer, but wanted another week's time.

Q. Did he say that? A. Yes, sir.

Q. Were you there when Justice Rabino came there, the Justice of the Peace, or had you gone before the Justice came? A. I had gone to my house.

Q. When you left 14 Mill street did you leave your wife there at the Nardella home? A. Yes, sir.

Mr. Barnitt—Cross examine.

The Court—At this time we will take a five minute recess.

(Recess.)

Cross Examination by Mr. Barbour:

Q. Mr. Juliano, you said that you are not related nor any of your family related to this defendant, Bonaventura Nardella; is that true? A. Not relatives nor related.

Q. Were you or any of your family related to his wife? A. No, sir.

Q. Are you the man referred to by Tony Saracino, as his uncle, Nick Juliano? A. Yes, sir.

Q. Are you the uncle of Tony Saracino? A. Yes, sir.

Q. And was Lucy Nardella, Tony Saracino's sister? A. Yes.

Q. Then, wasn't Lucy Nardella your niece? A. Niece of my wife.

Q. Now, who went with you, when you went from home on Sunday, August 3rd, to 14 Mill Street? A. Tony Saracino.

Q. Did Joe Nardella, the 14 year old boy, go with you? A. I met him there.

Q. At the home? A. Yes, sir.

Q. At 14 Mill Street? A. Yes.

Q. Was Joe Nardella at your home that morning? A. No, sir.

Q. Did Tony Saracino meet Joe Nardella at your home that morning? A. No, sir.

Q. Did Tony Saracino walk with you and Joe Nardella from your home to 14 Mill Street, that morning? A. Only Tony Saracino.

Q. Who was with you when you looked into the coal bin? A. Tony Saracino and the boy.

Q. And where were you standing when you looked into the coal bin? A. At the door that is open.

Q. What do you mean, "At the door that is open"? A. The first door.

Q. Is where you were standing? A. Yes, sir.

Q. Did you go beyond that first door? A. Yes, sir.

Q. How far did you go? A. A couple of feet.

Q. Did you go as near as the door to the coal bin itself? A. Yes, sir.

Q. Did you put your head in through the hole there? A. No, sir.

Q. Where was Tony Saracino when you looked into the coal bin? A. With me.

Q. Was he in front of you, behind you, or alongside of you? A. On the side of me.

Q. How big is the space between that first door and the second door? A. Well, two feet and a half; not too much.

Q. How wide is that door to the coal bin? A. The door might be about three feet wide; that's all.

Q. I show you Exhibit S-10, do you know what that is? A. I don't see for the eyes; I think it is the house.

Q. You can't see what that is with your eyes? A. That is the house.

Q. Well, is it inside the house or outside the house? A. The outside.

Q. The outside? A. Yes, the outside.

Q. But you could see the legs in the coal bin, could you? A. From the outside.

Q. From where you stood? A. Surely; I seen that.

Q. It was kind of dark in the coal bin, was it not? A. Sure, it was dark.

Q. Were your eyes any better then than they are now? A. It was dinner hour when they found her.

Q. Are your eyes better at dinner hour than they are at quarter past 12? A. Just the same.

Q. But you are sure of what you saw in the coal bin? A. Sure I am sure.

Q. Even though when you hold this two feet from your eyes you think that S-10 represents the outside of the house? A. I don't know if it is the outside of the house. What do you think? I take the picture?

Q. Where were those nails placed in the door jamb? A. On the second door.

Q. On the second door? A. That was opened.

Q. On the door that leads right in to the coal bin? A. The door that the coal was in was open.

Q. Then which door had the nails in? A. The door of the kitchen in the cellar downstairs.

Q. Is that the door that Tony Saracino used a screwdriver and something else to open? A. A chisel and screwdriver.

Q. And how many nails did he take out? A. I didn't count them.

Q. Well, didn't you say on direct examination that there were four or five nails hammered into the door jamb? A. I didn't know how many there was. I was afraid when I seen it.

Q. Well, didn't you say there were four or five nails? A. Four or five, but I didn't count them.

Q. Or was there one nail? A. There was not only one.

Q. Well, did Tony Saracino take out more than one? A. Sure.

Q. You saw him take them out with your eyes? A. Yes, sir; I see him take them out.

Q. And you were sure there was more than one? A. Yes, sir.

Q. Were they nails or were they screws? A. He pulled them out with the chisel. He took the door on the side and pulled it.

Q. Were all these nails fastening the door shut or were they merely driven into the side of the door jamb to hold the door jamb together? A. They were nailed through the door.

Q. After you entered the house at 14 Mill Street that morning how long did it take you before you went down cellar to this door in the kitchen which you say was nailed shut? A. Six or seven minutes.

Q. You stayed upstairs six or seven minutes, did you? A. Yes, and then we went downstairs.

Q. Was Tony Saracino with you that whole time? A. Yes.

Q. Then you didn't go downstairs just as soon as you got in the house, did you? A. We went first into the first floor and then into the second. Yes, we went down to the cellar.

Q. Did you go direct down cellar to that door? A. Yes, the one we opened.

Q. Did you look in any of the other rooms down cellar? A. No, sir.

Q. Well, why did you go right to that door? A. Because the other ones were all open.

Q. Well, did you go through the spare room in the cellar? A. The one that was open?

Q. The room behind the kitchen? A. Yes, sir.

Q. Did you go in there first? A. Yes, sir.

Q. Then, you didn't go direct to the door which you opened? A. While Tony was opening that door I made a visit and went right back to the door that he had opened.

Q. Where was Joe when Tony opened that door? A. The three of us were together.

Q. Was he standing in the back or in front of you? A. Behind me.

Q. Is Joe bigger or smaller than you? A. Smaller than me.

Q. You didn't go in the coal bin? A. No, sir, I just seen the feet.

Q. Why didn't you go in? A. I got frightened.

Q. Why were you frightened? A. Because I seen it immediately and I got frightened.

Q. Did you know that she was dead? A. I didn't know she was dead.

Q. Well, why didn't you go in to see if she was still alive and if you could help her? A. When was I supposed to go? I worked on Saturday.

Q. Well, when the door was opened and you looked in and saw her legs there, why didn't you go in to see if she was still alive? A. I didn't have the nerve to go in.

Q. Tony Saracino was with you, wasn't he? A. Yes, sir.

Q. He is a big, husky lad, isn't he? A. Yes, sir, bigger than me, taller than me.

Q. Joe Nardella is a pretty big boy, isn't he? A. He is a tall boy, but thin, skinny.

Q. Well, what were you afraid of? A. Because I got afraid, because I had pain.

Q. This woman whose body was lying there, was the neice of your wife, wasn't she? A. Yes.

Q. And you saw her lying or saw her legs lying there in the coal bin? A. Yes, sir.

Q. But you didn't go in to see if she was still living, and if her life could be saved by your get-

ting medical attendance for her? A. I didn't enter.

Q. What time did you go to Nardella's house, Saturday, July 26th? A. 8 or 9 o'clock.

Q. Was that before you went to Justice Rabino's office, or after? A. Before.

Q. Did you go back to the house with Justice Rabino? A. Yes.

Q. And were you there when Justice Rabino was there? A. No, my wife.

Q. Well, what did you do when you got back to the house, with Justice Rabino? A. I remained outside.

Q. Why didn't you go in? A. Because there was a lot of people.

Q. How long were you in Nardella's house that night? A. About five minutes.

Q. Where do you live? A. Passaic Street.

Q. Near Justice Rabino's office? A. Yes.

Q. Now, when you went to Justice Rabino's office, did you go from your house, or from Nardella's house? A. From Nardella's house, directly to Rabino's office.

Q. Did Joe Nardella go over to Justice Rabino's office, so far as you know, before you went or after you went? A. Before I went.

Q. And then did he come back to where you were? A. Joe Nardella?

Q. Yes. A. Yes, he was waiting for the Justice of the Peace.

Q. After Joe Nardella went to the Justice of the Peace alone, where was it that you next saw Joe? A. Outside.

Q. Outside where? A. In front of Rubino's office.

Q. Did you leave Nardella's house to go over to Rubino's office? A. Yes, sir.

Q. And you met Joe outside of Rubino's office? A. The boy went away then.

Q. Did the boy go back into Justice Rubino's office with you? A. I went in alone.

Q. The boy was not with you? A. No, sir.

Q. At any time that night did you go to Justice Rubino's office accompanied by Joe Nardella? A. No, sir.

Q. Now, was it before you went to Justice Rubino's office that you had a talk with this defendant and his wife? A. Yes, sir; before.

Q. What did you say to him? A. Who?

Q. The defendant, Bonaventura Nardella? A. I didn't say anything; my wife was there talking and saying the words.

Q. What did Lucy Nardella say in your presence? A. She was very weak and on a chair and she couldn't talk.

Q. She couldn't talk at all? A. The only thing she said is that she was a bad woman.

Q. Was the defendant, Bonaventra Nardella there when she said that? A. Yes, sir.

Q. And she said that she was a bad woman, did she? A. Yes, sir.

Q. And what did her husband say? A. Who?

Q. Lucy Nardella's husband? A. That was always the word that he would say, Nardella.

Q. What was always the word that he would say? A. He had all of the windows closed and

nailed and he said also he was jealous of the flies.

Q. When did he say that? A. He always said that.

Q. How long had he been saying that? A. When I was at the home.

Q. What else would he do? A. Could I stay all day there at the house?

Q. Did you ever see him do anything else? A. That week he had made the trouble.

Q. How often did you go to his home? A. Every fifteen days or every month.

Q. How far did you live from his home? A. About five minutes' walk.

Q. How were these windows locked? A. With nails.

Q. When did you first see that? A. The night that the Justice of the Peace went there.

Q. Did you look at the windows that night? A. I looked at the windows on the outside.

Q. And could you see from the outside the windows were nailed shut? A. Yes, sir.

Q. Where were you standing? A. There.

Q. How near the house were you standing when you saw the windows were nailed shut? A. This far (indicating about 2 feet).

Q. That was the night that the Justice went there, was it? A. Yes, sir.

Q. Had you noticed before that at any time that the windows were nailed shut? A. I didn't see it because I didn't go there and couldn't go there.

Q. Why couldn't you go there? A. Because he was jealous.

Q. Jealous of you? A. Of everybody.

Q. How long had he been jealous of everybody? A. Since he is in America.

Q. He has always been jealous, has he? A. Always jealous.

Q. Getting more jealous all the time, was he? A. Yes, he was getting more jealous, more than he was.

Q. How did you know he was getting more jealous? A. Because he didn't want the family inside.

Q. Did he ever tell you he was jealous of his wife? A. If he didn't tell me his wife told me and told me not to bother around here.

Q. He told you he was jealous of the flies, did he? A. Yes, sure.

Q. What did he mean by that, do you think?

Mr. Barnitt—Oh, I object to that, if your Honor please.

The Court—Objection sustained.

Q. Did he tell you what he meant? A. He meant that it was the people at the house.

Q. The people at the house were doing what? A. He said that she was being a bad woman.

Q. The people at what house? A. On Mill Street.

Q. Did he tell you why he locked the window? A. He said that the people would come in through the windows.

Mr. Barbour—That is all.

Mr. Barnitt—Just one question.

Redirect Examination by Mr. Barnitt:

Q. On the night you went for Justice Rabino, you were at the Nardella house and did Mrs. Nardella say that she was a bad woman, or did she say that her husband said she was a bad woman?

Mr. Barbour—I object to that, if the Court please, because there has been no testimony that I know of, that that statement was made in the presence of the defendant.

Mr. Barnitt— Yes,sir, I understood him to say it was.

The Court—That is his testimony. I will admit the question, and allow you an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

The Witness—Lucy Nardella said, it to Rabino, that he always took her for a bad woman.

Recross Examination by Mr. Barbour:

Q. Were you present when Rabino was there? A. My wife was there.

Q. You only know from what your wife told you? A. That is all.

Q. When you said before that he said he wanted a week's time, you only know that because your wife told you that? A. Rabino told me that, I asked him.

Mr. Barbour—If the Court please, I move to strike from the evidence the testimony of this witness, that the defendant said he wanted another week's time, and his testimony about accusing his wife of being a bad woman.

Mr. Barnitt—The State has no objection. He brought that out on cross examination.

The Court—In order that the record may be clear, and that there will be no doubt about it, the jury will disregard any statements alleged to have been made by the defendant Nardella, not in the presence of this witness.

Mr. Barbour—On page 273, of the testimony on direct examination, the very last page of the testimony—

Mr. Barnitt—Will you read it, please, Mr. Barbour?

Mr. Barbour—The Prosecutor asks "What did the husband say?" A. "The husband—the husband didn't answer, but wanted another week's time."

Mr. Barnitt—Your Honor will recall that he was there with the husband before Rabino came.

Mr. Barbour—The answer is, "the husband didn't answer, he wanted another week's time." This witness now says he knows that because Justice Rabino told him so.

Mr. Barnitt—Your Honor has already stricken that out.

The Court—Any answer or any item of

testimony given by this witness, that this defendant is alleged to have said not in the presence of this witness and anything he testifies to that someone else told him is hearsay evidence and will be entirely disregarded by the jury.

Mr. Barbour—I want that particular answer stricken out.

Mr. Barnitt—You Honor. struck it out before, but just to clear this up, I will ask this.

Q. When you went to the house was Mrs. Nardella there and was her husband there? A. Yes, sir.

Q. Did Mrs. Nardella say anything to you and your wife in the presence of her husband, Mr. Nardella? A. She told it to my wife.

Q. Well, Mr. Juliano, were you there when she told it to your wife? Were you there? A. I was outside.

Q. Now then I will frame the next question. Did you hear Mrs. Nardella say anything at the house in the presence of her husband? A. Only that, that "that he said I was a bad woman."

Q. Yes. Now, was Mr. Nardella there when she said that? A. Yes, sir.

Mr. Barnitt—That is all.

By Mr. Barbour:

Q. Were you there when she said that? A. I had gone outside.

Mr. Barbour—That is all.

JOSEPH NARDELLA, called as a witness on behalf of the State, being first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Joseph, where are you living now? A. In St. Joseph's Home.

Q. How old are you? A. Fourteen years of old.

Q. And up to the end of June of last year did you go to school? A. Yes, sir.

Q. Where did you go to school? A. School No. 2.

Q. Paterson? A. Yes, sir.

Q. And at the end of June what class were you in? A. Eighth grade.

Q. Had you graduated? A. Yes, sir.

Q. Now, you have a brother Ralph, have you? A. Yes, sir.

Q. And a sister—two sisters, one eight and one three? A. Yes, sir.

Q. Do you know where your two sisters are? A. Yes, sir.

Q. Where? A. In the back.

Q. I mean, where have they been living? A. The one of eight years of age is staying with my uncle, and the one three years of age is staying with my grandmother and grandfather.

Q. In New York? A. Yes, sir.

Q. Is Ralph living with you? A. Yes, sir.

Q. Now, Joseph, do you remember Saturday night, July 26th, 1930, going to the office of Mr. Rubino the Justice of the Peace? A. Yes, sir.

Q. Before you left to go there were you at your home? A. Yes, sir.

Q. Did you see anything that occurred between your mother and father at the home? A. Yes, sir.

Q. Well, now, relate to the jury what you saw and what you heard? A. My father wanted my mother to get out of the house.

Q. Just go on. Tell what was done, Joseph, please. A. And he said he had suspicion that men came in the house and he wanted her to get out of the house.

Q. What did your mother say to your father When he wanted her to get out of the house? A. She didn't say nothing; she fainted.

Q. Did you see what she did when she fainted? A. Yes; she fell on the floor.

Q. And when you saw her fall on the floor, Joseph, what did you do then? A. I ran out of the house and I went to look for a policeman and I couldn't find any around, I went to Archy's house, the cop, to see if he was in the house and he wasn't in and then I went out again, still looking for a cop, and then I went to Mr. Rabino's office.

Q. Did you know Mr. Rabino was a Justic of the Peace? A. Yes, sir.

Q. Can you state, Joe, about what time it was when you got to Justice Rabino's house? A. About half past nine or ten o'clock.

Q. Saturday night? A. Yes, sir.

Q. Did you talk to the Justice? A. Yes, sir.

Q. Well, as a result of talking to him, did you then go away? A. Yes, sir.

Q. Where did you go? A. Over to Nick Juliano's house.

Q. Nick Juliano, the man who was just on the witness chair? A. Yes, sir.

Q. And did you leave the house with him and his wife? A. Nick Juliano came with me to Mr. Rabino's.

Q. Did Mr. Rabino go out of his office with you or without you? A. Without me.

Q. And you went to Nick's home? A. Yes, sir.

Q. When you left Nick's home, was any one with you? A. Yes.

Q. Who was with you? A. Nick Juliano.

Q. Where did you go? A. To Thomas Rabino's home.

Q. Find him there? A. Yes.

Q. Did you talk to him? A. Yes.

Q. Well, as a result of what said, did you leave his office, and go somewhere? A. Yes, sir.

Q. Where did you go? A. To my own home.

Q. Did you see your mother and father there? A. Yes.

Q. Did Justice Rabino at that time talk to your father and mother? A. Yes.

Q. Will you just relate what you heard? A. Thomas Rabino came to the house, he told my mother, "What is the matter, to my father." "What is the matter, you are crazy?" And he didn't say anything, and my mother said, he is saying that men came in the house and Thomas Rabino said to my father, "Have you any sus-

picions that men came to the house?" And he said, "No." "Did you see anybody was in the house?" And he said, "No." Then he said, "What is the idea of trying to get your wife out of the house?"

And he didn't say anything; Thomas Rabino said, "Don't you know you can get arrested for that?" And my mother said, "Get him arrested, I don't want him." And my father said, "Give me a week's chance." Then after they started talking, and we left the house again. After it was settled I stayed in the house beside my mother, and then afterwards we went to bed, and it was silent that night and I got up in the morning and it was all right, and I went out and then during the Friday night—

Q. Now, Joe, you are speaking of the Friday night before the Saturday night your mother was killed? A. Yes.

Q. That would be August 1st? A. Yes.

Q. Tell us about that. A. And he were over to my uncle Jerry's house, and at night we remained home and we went to sleep. We got up in the morning and my brother and I had breakfast and then we went out.

Q. You are speaking of Ralph, are you? A. Yes.

Q. That was Saturday? A. Yes, sir.

Q. Was your mother and father home when you went out? A. Yes; we went out and about 12 o'clock we went swimming, and we got from swimming, and it was between two and three o'clock, and we went to the house, and I wanted

to go downstairs, in the cellar to get a cold drink out of the icebox, water, and it was locked.

Q. When you say it was locked— I show you this picture, Exhibit S-12, and ask you if you can point out to the jury, the door which was locked? A. This door.

Q. And is that the door which leads from the hall down to the basement, downstairs? A. Yes, sir.

Q. That door was locked? A. Yes.

Q. Go right ahead, Joe. A. And I went into the other room, the kitchen, and I saw my father changing his pants, and I got a drink out of the sink, and we wanted to get the shine box, but we went out again, and my father locked the door and started running up the street. And I was down Passaic Street, and he was up near the Board of Health, and we went back and then I told my brother to get the shine box, and he went back and brought the shine box and then we went out shining, and about four o'clock we was done, and I let my brother have the shine box, and I went over to my aunt's house, Jerry Nardella's wife, and I told her, I was hungry, and nobody was home and she gave me a nickle, and I bought a hot dog; and after I stood around the golf course.

Q. That is the miniature Tom Thumb Golf Course, you refer to? A. Yes, and I stayed there until it was dark, and my aunt and grandmother was worrying where my mother and father could be.

Mr. Barbour—Now, if the Court please, I realize we are dealing with a young boy,

and we should take care to omit characterizations.

Mr. Barnitt—Well, leave that out.

Q. Anyway, did you stay that night at the home of your Uncle Jerry and Aunt Lena? A. Yes.

Q. And did Ralph stay there? A. I think so; but I am not quite sure.

Q. And two little girls? A. Yes; they were there.

Q. Now, during the night before you went to bed, as a result of the talk that you had with your uncle Jerry, did you go back to your home? A. Yes.

Q. And did you go inside the house? A. Yes.

Q. Were you alone or were you with someone? A. I was with someone.

Q. Who was it? A. I think it was Jerry Nardella's son, and another boy Primo Salamando.

Q. Did you go downstairs? A. Yes.

Q. How did you get down? A. Jerry Nardella loaned me his keys that fit the shop where his tools are, and said, "Try that door with these keys."

Q. Are you speaking of the door that leads from the hallway down to the basement? A. Yes.

Q. Did the key unlock it? A. Yes.

Q. Did you go downstairs then? A. Yes, sir.

Q. What did you see when you got downstairs? A. The floor is rotted away, and it was caved in, something like that, and we went into the room where we kept wood to see if they were there, and nobody was there.

Q. That is not the coal bin? A. No; then we went to the coal bin door, and it was locked.

Q. Did you see anything about the coal bin door then, outside of it being locked,—notice it particularly at that time? A. It was locked; I thought maybe locked by a key.

Q. Ever see it locked before? A. Most of the time it was open.

Q. As a result of having seen that, did you go upstairs, then, and go out, and go back to Jerry's home? A. Yes, sir.

Q. And before you went back, did you do anything to any part of the sidewalk, or side of the house? A. No, sir.

Q. You went back to the house? A. Yes, sir.

Q. Now did you leave Jerry's house after that to go back to the house again? A. Yes, sir.

Q. What time was that, Joseph? A. About half past 10 or 11 o'clock.

Q. Was someone with you then? A. Yes, sir.

Q. Who was with you? A. Some of the boys that were with me the other time.

Q. Did you do anything when you went back the second time? A. Went downstairs again and the door was still locked, and I looked around in the shanty in the back yard and I tried this

key and opened the shanty and no one was in there.

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

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

Q. Go ahead. A. Then we went outside and met Salamando and Nick.

Q. And Nick Juliano? A. I think Nick Juliano was with him.

Q. Is that Thomas Salamando quite an elderly man? A. Yes, sir.

Q. Did you do anything outside? A. Yes, sir.

Q. What? A. Lifted up the sewer down in the coal bin—

Q. You don't mean the sewer, do you; you mean that round metal disc that is used over the coal hole that shoots the coal down into the coal bin? A. Yes, sir.

Q. Can you say upon referring to Exhibit S-2 whether this is the metal disc I speak of? A. Yes, sir; that is the one.

Q. You lifted that up you say? A. Yes, sir.

Q. Well, now, it was night time, wasn't it? A. Yes, sir.

Q. Were you able to see down after you lifted it up? A. No, sir.

Q. What if anything did you do in order to look down in the dark? A. I borrowed a match from Charlie.

Q. Did you look down? A. Yes, sir.

Q. What did you see, if anything? A. Something like a leg, flesh colored stockings.

Q. As a result of what you saw did you have a talk with Salamanda, this elderly man? A. Yes, sir, I think I did.

Q. Did you see whether he looked down? A. Yes, sir.

Q. Did he look down? A. I think so.

Q. Did you tell him what you saw? A. Yes, sir.

Q. As a result of what you told him did you go back to your uncle's house? A. Yes, sir.

Q. And what time was that? A. About 11 o'clock.

Q. Well now, when you got back there did you tell him what you saw? A. No, sir.

Q. Why not? A. Well, I thought it was a piece of wood.

Q. Later on the next day did you go back to the house with Nick Juliano and Tony Saracino, your uncle? A. Yes, sir.

Q. What time did you go back? A. About half past 10 or 11 o'clock.

Q. Sunday morning? A. Yes, sir.

Q. Did you go down in the cellar? A. Yes, sir.

Q. When you got down there did somebody say anything to you? A. The door was locked and Tony Saracino said the door was locked and to get some tools.

Q. Tools? A. Yes, sir, tools. And I went over to the shanty and opened the shanty and got a chisel, a screwdriver and a mallet and I gave it to him and he took the big screws out of the padlock and then he got the chisel and pushed the door aside like to make room to get in and I think there was a nail there and he opened the door and the other door that looked into the coal bin was open and he opened it and—

(Witness crying.)

The Court—Are you all right now, son?

Mr. Barnitt—May I proceed, your Honor?

The Court—Yes.

Q. Then you went out, Joseph, didn't you? A. Yes, sir.

Q. You never saw your mother again, did you? A. No, sir.

Q. Do you know a short time before this of your father having some trouble with you? A. Who, my father?

Q. Yes. A. Yes.

Q. Did he do something to you? A. Before this?

Q. Yes. A. Yes.

Q. What did he do?

Mr. Barbour—Just a moment, if the Court please.

Mr. Barnitt—All right, I will withdraw it.

The Court—How is that material?

Mr. Barnitt—All right, I will withdraw it. Cross examine.

The Court—I think at this time, due to the situation, we ought to take an adjournment until two o'clock. The jury must be permitted to leave the court room before anyone else leaves the court room.

(Recess until 2 P. M.)

AFTERNOON SESSION

Cross Examination by Mr. Barbour:

Q. Joseph, on this Saturday night, August 2nd, when you first took the top of the coal hole off, and borrowed the match, and looked down there, was it then that you thought you saw a piece of wood there or a leg? A. A leg.

Q. And when did you change your mind about thinking about what it was? A. Well, when I think Salamando or Charles Ambrose was looking down the hole with me, they said it looked like a piece of wood, and then I thought it.

Q. When you went to the house the next day with Nick Juliano and your uncle Tony, did you go into any of the rooms on the first floor, then? A. No, sir.

Q. You went right down the cellar? A. Yes, sir.

Q. And you went direct to that door, did you? A. Yes, sir.

Q. When you came home after having gone swimming, and you went in the house, you say, you saw your father changing his pants? A. Yes, sir.

Q. Did you say anything to him then, Joe? A. No.

Q. Did he say anything to you? A. No, sir.

Q. Did he laugh? A. No, sir.

Q. Which room was he in then? A. In the bedroom.

Q. Now, there are two bedrooms on that floor, are there not? A. Yes, sir.

Q. Now, on this diagram,—will you come down here, please? A. (Witness then leaves stand.)

Q. On the left side of this paper, there is a diagram of the first floor; this is the door as you enter the hall; here is the living room to the left of it, the kitchen behind that, also to the left and then across the rear of that floor, there are two bedrooms, and a bathroom in between; in which of those two bedrooms did your father enter? A. This one (indicating the one at the top right of the diagram).

Q. Now, you can take the stand, again. A. (Witness then takes the stand.)

Q. So far as you know did he see you? A. Yes, sir.

Q. How did he act? A. Well, he was quite serious, and didn't say anything, just put his pants on and then he went to the living room and changed his shirt.

Q. That was all while you were there? A. Yes, sir.

Q. Did you ask him why the cellar door was locked? A. No, sir.

Q. Did you know that the windows on that floor had been nailed fast? A. Yes, sir.

Q. When did you first know that? A. Well, when I wanted to go—some days I went swimming, and I went back to the porch and when nobody was in, I wanted to get my bathing suit, it was in the bathroom, hanging on the hook, and there was a screen there, and it was nailed and I lifted that up, and a stick was under it and I lifted it up like that, and the nail come out with it

and I took the bathing suit and went swimming.

Q. How long was that before August 2nd? A. A couple of weeks before that, it was.

Q. And did you know then, that the rest of the windows in the house were nailed shut. A. Yes, sir.

Q. And was that the first that you knew they were nailed shut? A. Well, I went there twice to get the bathing suit. The first time I went there it was closed and the second time it was closed again.

Q. It had been nailed up again? A. Yes.

Q. Were any other windows in the house nailed shut? A. I think so.

Q. Do you know whether they were or not? A. I don't know if they were or not.

Q. Do you know who nailed that bathroom window? A. Yes, sir.

Q. Who?

Mr. Barnitt—I don't know as I understood that he said the window. I thought he said the screen.

The Witness—Yes sir, the screen.

Q. Who? A. My father.

Q. I think you said, Joe, that you went in there and raised the screen and went to raise the window and the nail gave loose and you were able to open it? A. Yes, sir.

Q. Was the nail holding the screen or the window? A. The screen at the bottom of the screen and the top of the frame, had nails in it at the top of the window.

Q. So that both the screen and the window was nailed on top of the window? A. Yes, sir.

Mr. Barnitt—Does he mean the window frame or the window, because I understood him to mean that the screen was nailed.

Mr. Barbour—I think the young man is capable of telling us—

Mr. Barnitt—Well, all I mean is the prosecutor wanted to know himself. It is not of any great importance

Q. You said that this window was nailed at the top of the stairs, didn't you, Joe? A. Yes, sir.

Q. And do you know what the sash is? A. No, sir.

Q. Well, will you point, indicate on that window behind you where the nail was? Can you point to the part if you can't reach it? A. This window was up—

The Court—Indicating the lower sash.

A. (Continued) And the screen was at the bottom and there was a wooden outline on the screen and the nail was put in that wouldn't outline in here like.

Q. Where was the nail you mention in connection with the window? A. Over here on top of the screen on top of the outline

Mr. Barnitt—Do you mean the frame of the screen?

The Witness—Yes, sir.

Mr. Barnitt—That holds the wire?

The Witness—Yes, sir.

Q. All right, Joe; come back to the stand. Then that window was open, was it? A. Yes, sir.

Q. Well, did you at any time before August 2nd notice any of the windows nailed closed? A. Yes, sir.

Q. When was it that you noticed any of the windows nailed closed? A. That was when I got the bathing suit.

Q. Well, isn't that what you were just describing now? A. Yes, sir; I mean that. I didn't know of the other window.

Q. Well, was the window nailed closed or nailed open? A. Open.

Mr. Barnitt—I think, John, when he says window he means the window screen in the frame. I think you might ask him.

Q. You know what we mean by the window, don't you, Joe? A. Yes, sir.

Q. Are the windows in your house somewhat like the windows in this court room except that they are smaller? A. Something like that.

Q. The bottom part goes up, does it not? A. Yes, sir.

Q. To open it? A. Yes, sir.

Q. And when the bottom part is up the window is open, is that right? A. Yes, sir.

Q. Now was this window in the bathroom nailed open or nailed shut? A. Nailed open.

Q. Were any of the windows in the house so far as you know nailed shut? A. I don't know, sir.

Q. Do you recall whether the windows were open or shut before Augut 2nd? A. The window that I went to get the bathing suit was opened and the bedroom window was shut and so was my bedroom window.

Q. Now you used to sleep there before August 2nd every night, didn't you, Joe? A. Yes, sir.

Q. When you would be asleep at night, would the window be open or closed in your bedroom? A. Closed.

Q. And was it always closed? A. No, sir.

Q. Well, how long had you known that it was closed? A. Oh, the past two weeks, before it happened.

Q. Did you try to open that window in your bedroom at night? A. No, sir.

Q. Did you notice any of the other windows in the house, whether they were opened or closed? A. No, sir, I didn't notice them.

Q. Do you know whether or not your father nailed any of the windows closed? A. Yes, I know he did.

Q. What windows did he nail closed? A. The one of the bathroom.

Q. When I say the windows, Joe, I don't mean the window screens; I mean the windows themselves, so that the lower part is down, and the upper part is up, so that that window is closed. Do you understand what I mean? A. Yes, sir.

Q. I don't mean anything about the screen. Now, was that window—just to get it straight—was that window nailed closed or was it nailed open, Joe? A. With the screen on,sir?

Q. The one in the bathroom? A. It was nailed open, sir.

Q. Well, now, where was the window that you found that was nailed closed? A. I didn't find any windows nailed closed, sir.

Q. Now, you do recall, though, do you, Joe, that for about two weeks before August 2nd, the window in your bedroom was closed, do you? A. Yes, sir, they were closed.

Q. But you don't know what kept it closed? A. No, sir.

Q. Well, then, what did you mean, Joe, when you said before that your father nailed the windows closed? A. Well, my mother, when this —on August 26th—

Mr. Barnitt—July.

A. Or July 26th, she said all the windows are closed, and why did he close them for and nailed them on?

Q. Was your father there, then? A. Yes, sir.

Q. And did you then recall that the windows had been closed? A. Well, when she said that, I thought they were closed then.

Q. I didn't get your answer.

Mr. Barnitt—He thought they were closed then, when his mother said that.

Q. Well, did you remember then, that the windows were closed? A. Yes, sir, they were closed.

Q. And how long did you remember then that the windows had been closed? A. Well, the two weeks before July 26th. I knew that only the bathroom window was closed with the screen and the window open.

Q. And how long before July 26th, had your window been closed? A. I don't know, sir.

Q. But had it been closed before July 26th? A. Yes, sir.

Q. You said that while you were there that night, on July 26th, your mother said that your father had nailed the windows closed; is that right? A. Yes, sir.

Q. And your father was there, then? A. Yes, sir.

Q. And what did your father say? A. Nothing, sir.

Q. Did he say that he had not closed, nailed them closed? A. He didn't say anything, sir.

Q. Didn't say anything about it, at all? A. No, sir, not that I remember of.

Q. Was that the way he always acted, Joe? A. Well, sometimes he came home drunk, and I had to—about 12 o'clock midnight, I had to go look for him.

Mr. Barbour—I move that the answer be stricken out as not responsive.

Mr. Barnitt—Oh, no, if your Honor please. He brought this out, himself. He is responsible for the witness' statement. I insist that that be in the record.

The Court—It will have to remain.

Mr. Barbour—I pray an exception.

The Court—The exception will be allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William H. Harley, Judge.

Q. Had you ever heard your father and mother talking before that, before July 26th? A. Talking?

Q. Arguing about anything? A. Yes, sir.

Q. Had you ever heard him say the things that you say were mentioned on July 26th? A. Well, before July 26th, during the week-days, and holidays, why, he would say he would choke her.

Q. He what? A. Choke her

Q. He said he would choke her? A. Yes, sir.

Q. Did you ever hear him say to her before then that she had two men as friends? A. Yes. I heard that.

Q. Every day? A. Almost every day they were fighting.

Q. And did you hear that almost every day? A. I am not quite sure, sir.

Q. Did he say it very often? A. I think so, sir.

Q. And when your father would say that, what would your mother say? A. She would say, "Why don't you prove it by the neighbors about all these men you know come in."

Q. How long was it before July 26th that you first remember your father saying to your mother that she had men coming in? A. I don't know, sir; I think it was about a week; a week before July 26th, sir.

Q. Did you ever hear him say that before that? A. I don't know, sir.

Q. Who lived in your house then, Joe? A. On the second floor,—I don't know what their name was.

Q. I mean with you in your part of the house? A. Only our family.

Q. And who is in your family, your father and your mother and the four children of you? A. Yes, sir.

Q. Did anyone else live with you then about July 26th, Joe? A. No, sir.

Q. Had anyone else lived with you a couple of months before that? A. Yes. sir.

Q. Who? A. My grandmother and grandfather.

Q. And how long did they live with you? A. They just boarded; I don't know for how long, sir, but they stayed for a couple of weeks, I think, or more.

Q. Then did your grandmother go to New York for something? A. Yes.

Q. Then how long did she stay there? A. I don't know, sir.

Q. Did she come back to your house after that to live? A. No, sir.

Q. And did your grandfather come to New York with your grandmother when she went that time? A. I think so, sir.

Q. Or did he stay with you people for a little while longer? A. I think he stayed a little while.

Q. Do you remember whether—I will withdraw that.

Redirect Examination by Mr. Barnitt:

Q. Joseph, did you know whether there was anyone lived next door to you by the name of Michael DeLuccia? A. Yes, sir.

Q. Will you point out on Exhibit S-15 the house which he lives in? A. That (indicating).

Q. Whose house is that? A. This is ours.

Q. The one to the left is where Michael De Luccia lives, is that right? A. Yes, sir.

Q. You spoke about going into the bathroom for your bathing suit? A. Yes, sir.

Q. Just look at Exhibit S-7, can you tell us whether that is the picture of the bathroom? A. Yes, sir.

Q. And is that the window you have referred to when you said a nail was in the frame of the window screen? A. Yes, sir.

Q. Do you see the window screen there? A. Yes, sir.

Q. Point it out to the jury where the window screen was that you are talking about. A. (Indicating to the jury).

Q. On this picture, Joe, S-18, do you recognize what that picture is? A. Yes, sir.

Q. What is it? A. That is the rear of the house.

Q. And does the bathroom window show, the one you went in to get your bathing suit that day

when you went to go swimming? A. Yes; I think it does, sir.

Q. Just show it to the jury, will you? A. There underneath the steps there (indicating).

Q. Looking at this Exhibit S-7, do you notice on the right side of the wooden part of that window screen something, right here; you notice that? A. Yes.

Q. Can you state whether or not at that point where the nail was? A. Yes; that is where it was.

Q. Joe, just show the jury what I am pointing to on that screen. A. (The witness indicating to jury).

Q. And is the point where your finger is indicating now the point where the nail was,—is that where the nail was? A. I think it was there, and somewhere at the bottom here.

Q. Was the screen you point out on this exhibit S-7 a small screen as shown there or a large screen? A. That was a small screen.

Q. Was the screen as large as the window frame itself or smaller than the window frame? A. Smaller than the window frame.

Recross Examination by Mr. Barbour:

Q. When your mother spoke about your father having nailed the window, she didn't mention the screens, did she? A. She said the windows.

Mr. Barnitt—Now, if your Honor please, this lady is a Greek woman, and I have a Greek interpreter, with your Honor's permission.

The Court—All right.

(Fokian Zorbas, sworn as an Interpreter, in the Greek language.)

FOTINO CRACOS, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. What is your name? A. Fotino.

Q. Fotino, what? A. Cracos.

Q. Where do you live? A. 36 Passaic Street.

Mr. Barnitt—Can't you raise your voice, please?

The Court—Speak louder, Mr. Interpreter.

Q. What is the address? A. 36 Passaic Street.

Q. Now, on the 2nd of August, 1930, where did you live? A. I live in Nardella's house.

Q. That is this defendant, Bonaventura Nardella's house? A. Yes, sir.

Q. What floor did you live on, Madam? A. I can't stay alone, because everybody move out of there, and I move too.

Q. I mean on this Saturday, did you live on the first, second or third floor? A. Top floor.

Q. What nationality is this lady, please?

The Interpreter—She is Greek.

Q. That Saturday afternoon, were you in your home? A. Yes, sir.

Q. Did you hear any noise of any kind? A. I heard one noise.

Q. What was the noise you heard? A. A lady's voice is crying.

Q. Crying, does she mean to cry? A. One voice, that is all.

Q. Well, how did she cry? A. Kind of a terrible voice, came up, from downstairs.

Q. I know a terrible voice came up from downstairs, but how did it sound to her? A. She go e-e-e-k.

Q. What time was that, Madam? A. About one or half past one.

Q. In the afternoon? A. Yes.

Q. Where were you when you heard that expression? Where were you at that time? A. I went out to clean the stairs.

Q. Did she clean the stairs, then, or go somewheres after she heard that? A. When I started to clean the floor, I heard that noise, and I went back into the room.

Q. When she said the room, does she mean her apartment? A. Yes, sir.

Q. After a while did she go somewheres from that room? A. After about ten minutes, later, I went out, I went outside of the door, and looked down, and saw Mr. Nardella and he was cleaning the stairs outside the door.

Q. Did you notice what he was cleaning with? A. He was near the door.

Q. What did he have, if anything, that she saw? A. It only was a mop, he had in his hands.

Q. A mop? A. Yes.

Q. When she said Mr. Nardella, who did she mean, who did she have reference to? A. That man there (indicating).

Q. The defendant here, sitting at the table, is that what she said? A. Yes, sir.

Cross Examination by Mr. Barbour:

Q. Is your hall a continuation of the downstairs hall? By that I mean, is her hall upstairs over the downstairs hall, and is it all open? A. The hall is open from the top to the bottom, you can see it.

Q. I show you Exhibit S-12, and ask you if you recognize that? A. This is the door, going down into the cellar.

Mr. Barbour—Indicating a door right underneath the stairs.

The Witness—And this stairway goes upstairs, he was mopping outside here. (Indicating.)

Q. Was he mopping right at the back of that hallway, or mopping in the middle of it, or out near the bottom of her stairs? A. Outside here.

Q. You are indicating where I have now put my pencil? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. Where were you standing when you saw him? Can you point out on that? A. I was on the top floor above that stairway; this is the second floor stairway.

Q. Is there another floor between the floor you lived on and the floor that Nardella lived on? A. The second floor. It has a second floor between.

Q. And did you come down from that stairway to the second floor? A. About two stairways from here floor down.

Q. Do you mean two stairways or two steps? A. Two steps from the top floor.

Q. And how could you see from there down to the first floor? A. Sure, I can see it.

Q. How could you see? A. I came down this way and saw it.

Mr. Barbour—That is all.

JOHN A MURPHY, was called as a witness in behalf of the State and being first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Captain Murphy, how long have you been associated with the Police Department of Paterson? A. Over 23 years.

Q. How many years a captain? A. Over 23 years.

Q. You have been a captain how long? A. Close to a year.

Q. On August 8th do you know who was in charge of the detective bureau in Paterson? A. I was.

Q. On Friday, August 8th, do you recall being in detective headquarters in Paterson at the time that the defendant, Bonaventura Nardella, was examined or was interrogated? A. I do.

Q. Do you recall who else was present at the occasion of the examination or interrogation? A. I do.

Q. Who was it, captain? A. Prosecutor Barnitt, Dr. Lawrence Collins, William Drew, Fred Cavaliere, William VanOrden, Sergeant Pyrola, Sergeant Smith, myself, and Anthony Aquino acted as interpreter, and Miss Mildred Duffy took the notes. The prosecutor asked the questions.

Q. Were you present during the entire time that the prosecutor interrogated the defendant? A. I was.

Q. Can you explain to the jury just in what manner the interrogation took place? A. The prosecutor would ask the question in English; the interpreter would interpret them to the defendant in Italian, and receiving the answer he would again interpret the Italian into English for the prosecutor.

Q. What, if anything, did Miss Duffy do that you observed? A. She made notes of the whole statement taken.

Q. Stenographic notes? A. Yes.

Q. When you speak of Mr. Aquino, do you know what position he occupies in the county? A. Court interpreter.

Q. What language? A. Italian.

Mr. Barnitt—That is all. Cross examine. Do you want to ask any questions?

Mr. Barbour—No, no questions.

ANTHONY AQUINO, was called as a witness in behalf of the State and being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Mr. Aquino, what position do you occupy? A. Italian court interpreter, Passaic County Courts.

Q. How long have you acted in that capacity? A. Eleven years.

Q. On August 8th were you acting in that capacity? A. I was.

Q. Did you have occasion to be at headquarters in the Detective Bureau of Paterson on that morning? A. I did.

Q. Do you recall on that occasion acting as interpreter in connection with the interrogation of the defendant Bonaventura Nardella? A. Yes, sir.

Q. Just explain in what way the interrogation took place. A. The District Attorney or prosecutor would put the questions in the English language to me and I in turn would translate it to Mr. Nardella; in turn he would answer it in Italian to me and I again would translate it in the English language to the prosecutor, and Miss Duffy, of the prosecutors office, would thereby take the notes of the statement.

Q. You have heard Captain Murphy testify as to who was present besides you? A. Yes, sir.

Q. Did you observe those persons present? A. Yes.

Q. That he stated to the Court and jury? A. Yes.

Mr. Barnitt—Cross examine.

Cross Examination by Mr. Barbour:

Q. Did you make a literal translation of the statements of the questions and answers? A. By that you mean what?

Q. An exact translation of his language? A. I did.

Q. As nearly as possible into the English language? A. Yes, sir. Yes, sir.

Mr. Barbour—That is all.

By Mr. Barnitt:

Q. I take it that he is Italian? A. I beg your pardon?

Q. The defendant is Italian? A. Yes, sir.

Q. Did you have any difficulty in interpreting his language? A. None whatsoever.

Mr. Barnitt—That is all.

MILDRED DUFFY, was called as a witness in behalf of the State and being first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Now, Miss Duffy, on August 8th, 1930, what was your position? A. Secretary to the Prosecutor.

Q. How long have you been secretary to the prosecutor? A. Six and a half years.

Q. Did you occupy a similar position with the former prosecutor, J. Willard DeYoe? A. I did.

Q. For how many years? A. Two and a half years.

Q. Now, on August 8th, 1930, did you have occasion to attend an interrogation of the defendant, Bonaventura Nardella, at the detective headquarters in Paterson? A. I did.

Q. And at that time do you recall whether or not the prosecutor interrogated in the English language the defendant? A. He did.

Q. And do you recall at any time any person asking any questions in a language different from the English language? A. Yes.

Q. Directed to the defendant? A. Yes, I do.

Q. Who did so? A. Mr. Aquino.

Q. And do you recall after such questions were presented to him in a language different from the English language whether or not the defendant answered in some language different from the English language? A. He did.

Q. Do you recall for us that day what if anything the interpreter, Mr. Aquino did? A. He translated it.

Q. Into what language? A. From Italian into English.

Q. And in connection with each and every question asked by the prosecutor in English, and answered by the defendant through the Interpreter, what did you do with those questions and answers? A. I took them down stenographically.

Q. What did you do with respect to each and every answer given by the interpreter in the English language? A. I took it down stenographically in English.

Q. When you say took it down, in what manner do you mean, in longhand? A. No, in shorthand.

Q. In shorthand? A. Yes.

Q. And as a result of the notes you took down in shorthand, what, if anything, did you subsequently do with those notes? A. I transcribed them.

Q. On paper? A. Yes.

Q. And did you truly transcribe each and every question and answer? A. I did.

Q. That you have referred to? A. I did.

Q. I show you a series of sheets comprising 38 pages, and ask you if you know who transcribed and typewrote the matter on those sheets? A. I did.

Q. And do those sheets represent, truly represent each and every question and answer asked by the Prosecutor and answered by the defendant, through the interpreter, in the manner in which has been related? A. They do.

Mr. Barnitt—I offer the statement in evidence.

Mr. Barbour—I object to it; there has been no foundation laid for the introduction of this statement in evidence; I submit it is not admissible until it has been shown that all the requirements of the law had been complied with as to whether the statement is a voluntary statement, or not.

The Court—Was the defendant advised that he did not have to make a statement, and if he did that it would be used against him?

The Witness—Yes, sir, he was.

The Court—The statemen will be allowed in evidence.

Mr. Barbour—Exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

Cross Examination by Mr. Barbour:

Q. Who asked the defendant through the interpreter if he desired to make a statement and if he did make a statement it would be used against him? A. The Prosecutor.

(Statement referred to is admitted in evidence, and marked S-33.)

(The Prosecutor then proceeded to read the statement as follows:

(Mr. Barnitt reading:)

"Mr. Aquino—Do you know this man, Ben, he is the Prosecutor and he wants to ask you something, you understand, don't you? Do you know this man?

Mr. Nardello—I don't know.

Mr. Aquino—Do you know the Court Interpreter?

Mr. Nardello—Yes.

Mr. Aquino—Do you understand English?

Mr. Nardello—A little bit.

Prosecutor—You came here first in 1914, didn't you?

Mr. Nardello—No, in 1910.

Prosecutor—I want to ask you a few questions. I am Mr. Barnitt, District At-

torney, Prosecutor of the County. Are you willing to talk to me about what happened? You don't have to if you don't want to. Are you willing to tell about your wife?

Mr. Nardello—Yes, sure.

Prosecutor—Tell him whatever he says to me at this time may be used against him?

(Mr. Aquino tells him).

Mr. Nardella—Yes, sir.

STATEMENT

Questions by Mr. Barnitt:

Q. What is your first name? A. Bonaventura Nardella.

Q. How old are you? A. Forty-two

Q. Where were you born? A. In Italy.

Q. What province? A. Foggia.

Q. What was the name of your mother? A. Lucy.

Q. Your father? A. Joe.

Q. Do you have any brothers or sisters? A. Two brothers and two sisters.

Q. Are they alive now? A. Yes, sir.

Q. Where do they live? A. One older than myself in Australia. Michael and Domitio.

Q. How old is he? A. He was born in '74.

Q. How old would that make him? A. Fifty-six years old.

Q. How old is the oldest brother? A. That is the oldest brother.

Q. How old is the youngest brother? A. Jerry is youngest. He was born in '90.

Q. How old would that make him? A. Thirty-seven or thirty-eight years.

Q. What year were you born in? A. In December, '87.

Q. What date? A. 18th.

Q. When you left Italy to come to America did you come alone? A. Yes.

Q. What year the first time? A. In 1910 and then came back in 1914.

Q. How old were you when you came here first? A. Twenty-three.

Q. What did you come to this country for? A. To work.

Q. Did you work when you were over in Italy before you came to this country? A. Yes.

Q. What did you do there? A. Carpenter.

Q. Was that your business too? A. Always a carpenter. Before that I was a blacksmith and wagon worker in Manlius, New York for four years.

Q. What year did you go up there? A. Immediately after I came from Italy.

Q. What the first or second time? A. 1910.

Q. Then did you stay there until you went back to Italy? A. Yes. I was four years in one shop. I work for Cheney.

Q. How much did you make a week up there? A. Nine dollars a week.

Q. During the time you were at Manlius you didn't become a citizen? A. No.

Q. Why did you go back to Italy in 1914? A. To go there and get a wife.

Q. The war had not started then, had it? A.

There was war there at that time between France and Germany.

Q. What month did you go there? A. December.

Q. Did you know your wife before you went over there? A. Yes, I kept company with her for ten years.

Q. What was her name? A. Saracina.

Q. Did you keep company with her for the ten years before you came to this country? A. Six years in Italy and four years while I was here. We wrote to one another.

Q. So then when you went back to Italy, did you go to Foggia? A. Yes.

Q. And did you meet your wife there then? A. Yes, but we were not married then.

Q. How long after you got back did you get married? A. I went back in December and married April 12, 1915.

Q. Did you come to this country then right away? A. No, I was called in for war duty.

Q. How long did you stay in the war? A. Three years.

Q. In any battles? A. Yes.

Q. Where? A. In Italy on the Alps.

Q. Between Austria and Italy. What part did you take in the war, artillery man? A. Yes.

Q. What did you do? A. I was operating the batteries.

Q. What did you do in operating the batteries? A. Cleaning pieces and cleaning cannons. Some part that would not function right I would change.

Q. Were you in battles? A. Yes.

Q. How long were you in the war? A. Three years.

Q. During all that time were you in battles all the time or in the Hospital at any time? A. I was in a hospital one week on account of a sore hand. I was working on pick and shovel and was not used to the work.

Q. Then you were never shot? A. No, sir.

Q. Always came out good. No trouble? A. No, sir.

Q. Did you have any injury, gas up nose or anything? A. Gas. That is tear gas. My eyes would run.

Q. But it didn't affect you in any way? A. No, sir.

Q. And the only time you were in the hospital was because of the palm of your hand being sore from pick and shovel? A. Yes.

Q. Would you have to stay in the hospital? A. Until they released me.

Q. About how long? A. One week.

Q. And did you go back to the war again? A. Yes.

Q. Did you stay with the Italian Army until the Armistice was signed? A. Yes, sir.

Q. And when war was declared over, were you in the army then? A. Yes.

Q. Where were you at that time? A. In Austria.

Q. With the Italian army? A. Yes.

Q. The Italian army got in Austria then? A. Yes.

Q. What part of Austria? A Tyrone.

Q. That is the Alps? A. Yes.

Q. How long after war was over did you stay in the army? A. I was released from the army on the 7th day of April, 1919.

Q. During that time your wife was in Foggia? A. Yes, sir.

Q. While you were away in the war did your wife have any children born? A. Yes, sir, one.

Q. That child is alive now? A. Yes, sir, a little boy.

Q. How old? A. Fourteen.

Q. What is his name? A. Joe.

Q. He was born in Italy. Was he the only child born while you were in the army? A. Yes.

Q. Then after you came out of the army, you went back to wife and boy? A. Yes, sir.

Q. How long did you stay in Italy after that? A. Until January, 1920.

Q. Then did you go to Manlius or to Paterson? A. Manlius.

Q. With your wife or alone? A. Alone.

Q. You left your wife then in January, 1920? A. Yes.

Q. Then did you have another boy born? A. Yes.

Q. What month? A. Fourth day of March, 1920.

Q. Why didn't you bring your wife and boy with you when you came? A. I came here on the transportation of the government because I was here before that.

Q. Did you intend to send for your wife later? A. Yes, sir.

Q. You did send for your wife? A. Yes, sir.

Q. When you came to Manlius where did you go to live at, whose house, your uncle? A. Yes.

Q. What is his name? A. Louis Nardello.

Q. Is it his house where you went after you had trouble? A. Yes, the same one.

Q. What year did your wife come over? A. 1922.

Q. Did you meet her in New York or Boston? A. Boston. We were waiting for a telegram that they were going to arrive but they came right to the house.

Q. Who, the boy. Two children? A. Yes. The mother of my wife, my wife and two children and sister-in-law.

Q. How long did you stay up there in Manlius? A. A couple of weeks.

Q. Then did you come to Paterson? A. Jerry came to Manlius and says you can get a better day's wages in Paterson why stay there.

Q. Did your wife stay then or did you come down with her? A. I wasn't in Manlius with my wife at all.

Q. Oh, she came to Paterson? A. Yes.

Q. Where? To your brother Jerry's house? A. Yes.

Q. You met her at Jerry's house? A. Yes.

Q. And you decided to stay in Paterson then? A. Yes.

Q. That was in 1922? A. Yes.

Q. Do you know the month? A. No.

Q. Later on did you start to live over Angelo Tilli's house, upstairs? A. Yes.

Q. Where was that? A. 46 Cross Street.

Q. Then you stayed there some little while? A. Two years.

Q. And you worked as carpenter? A. Yes, sir.

Q. Then you and your wife bought some property? A. Yes.

Q. Where? A. 14 Mill Street.

Q. Do you remember what year you bought the house? A. About six years ago.

Q. Who was your lawyer at that time when you bought the house? A. I didn't have any lawyer.

Q. How much did you pay for the house? A. $5500.

Q. How much cash? A. I forget how much I paid cash.

Q. Did you buy through building and loan? A. Yes.

Q. Last Saturday you didn't have to go to work? A. No work on Saturday, union man, carpenters don't work.

Prosecutor Mr. Aquino:

Q. Now, Mr. Aquino, what happened last Saturday from the morning? (Mr. Aquino asks question in Italian and interprets answer in English.) A. I had intentions that my wife was a bad woman. For the last three months I couldn't eat or sleep. I was always trembling and couldn't do nothing. To protect myself well I locked doors and windows and everything and Mr. Pirolo seen them. I had to go to the doctor's about two o'clock. I said to my wife I wasn't feeling good. Let me alone I said I am sleepy and want to go to

sleep. I said we would go to the Doctor on Monday night. She insisted that we had to go, had to go and with the intentions I had to get a lot of things out of my mind, I got a baseball bat and hit her over the head.

Q. Where is that baseball bat? A. On the stairway going down to the cellar. On a platform about three feet square. The ball and bat was there; the boys played with it. The bat was right on the platform there.

Q. Where was your wife when you got the bat? A. She was on the stairs adjusting her stocking.

Q. Was her back towards you or was she looking at you? A. Her back was towards me.

Q. As far as you know she did not know you had the bat? A. No.

Q. Did you go it quietly and quickly? A. Yes.

Q. Why did you go and get the bat? A. It was right there by me in back of me.

Q. What did you want to do with the bat? A. Hit her on the head.

Q. Why did you want to do that? A. I wanted to kill her.

Q. When did you first decide you wanted to kill her? A. All last week.

Q. Before last Saturday? A. All the week before last Saturday. I was just going to get rid of her I was poisoned.

Q. All that week? A. Yes, I was working and always thinking of that.

Q. Why did you wait until last Saturday? A.

Because she got me mad that she wanted to go to the Doctor and insisted on it.

Q. Then why did you wait a whole week if you made up your mind you wanted to kill her? A. When the devil gets in your mind.

Q. Did you have a fight with her before? A. Not a fight. Just a few words. Words that I don't want her in the house at all, I wanted to chase her out. I told her to get out and I didn't want her in the house.

Q. What did she say? A. She started to cry and holler, fainted and went down to the floor.

Q. After she came out of the faint was she still on the floor? A. I picked her up put her on the rocking chair and put some water on her forehead.

Q. Then you didn't go away, she stayed in the house? A. Yes.

Q. Then from that time on until last Saturday did you decide you were going to kill her? A. I always had them intentions to kill her.

Q. What, during that last week? A. Yes, sir.

Q. Did you know what you were going to kill her with? A. With anything that would come before me. I had no revolver or any arms.

Q. Well, last Saturday when she was in this position that you told us about and took the bat up, did you take hold of the bat at the handle of the bat? A. Yes.

Q. Just stand up and show me. A. The bat was here (pointing to his left) I put my both hands on and swung.

Q. Hard? A. Yes.

Q. The back of the head? A. Yes.

Q. Did you intend to kill her then? A. Yes, sir, I did.

Q. When you swung the bat at the back of her head did you have in mind killing her? A. Yes, sir.

Q. How many times did you hit her on the head with the bat? A. One time.

Q. Did she fall down? A. Yes.

Q. Where? A. On the top of the stairway on the platform.

Q. Is that the platform leading to the cellar? A. Yes, sir. On the stairs.

Q. Did she fall to the ground? A. Yes, sir.

Q. What did you do with the bat? A. I put it back in the same place.

Q. When you hit her on the head did she say anything? A. Just Ah-h-h, that is all

Q. Was that when she was on the ground or when you hit her? A. When I hit her.

Q. And when she fell on the ground what did you do then? A. I pulled her down by the feet and into the bin.

Q. Did you drag her down the stairs? A. Yes, sir.

Q. Did her head hit the stairs as she went down? A. I don't know, I didn't see anything.

Q. What were you going to do with your wife down there? A. I put her in the coal bin to cover her up with the coal.

Q. When you were dragging her downstairs was there anything attached to her clothes, as a pail? A. As I was dragging the garbage pail came down with her.

Q. Did you see that go down with her? A. Yes.

Q. You remember it? A. Yes. I took the broom and swept it.

Q. Where, by the cellar? A. The platform.

Q. That was after? A. Yes, sir.

Q. When you got your wife in the cellar then what did you do, you dragged her down here? A. I put her in the coal bin.

Q. How did you put her in the coal bin? A. I dragged her and put her in the coal bin. Always by the feet and never left her.

Q. Was there any coal there? A. About a ton and a half.

Q. She was on top of the coal? A. Yes, sir.

Q. What did you do then? A. I took the shovel and hit her on the head.

Q. How many times? A. I don't know.

Q. Why did you do that. Wasn't she dead? A. Not dead yet.

Q. How did you know? A. She was still breathing or groaning.

Q. Did you hear her groaning? A. Yes.

Q. How did you know she was breathing, did you hear her? A. Yes, sir.

Q. While she was in the coal bin? A. Yes.

Q. Did you see her breathing when you hit her with the shovel? A. She was not groaning then but she was breathing.

Q. How hard? A. (Shows prosecutor).

Q. Was her face up? A. On the side.

Q. Was her head near the entrance to the coal bin or her feet? A. Head was nearest to the entrance.

Q. Where were you when you hit her with the shovel, inside the coal bin? A. Yes, on the coal.

Q. Stand up and show me how you swung the shovel. A. (Shows prosecutor).

Q. What part of the shovel hit her head, metal part or wooden part? A. Metal part and it bent. The shovel bent.

Q. The shovel bent after you hit her? A. Yes.

Q. What made it bent? A. With the blows that I hit her.

Q. Did the handle of the shovel, did that break? A. No, just the metal part.

Q. The part that scoops up the coal? A. Yes.

Q. When you picked up the shovel, before you hit wife, did it look all right? A. Yes.

Q. You say it was bent because you hit your wife on the head with it? A. Yes.

Q. Where was the shovel? A. In the coal-bin.

Q. After the shovel, was she still breathing? A. Yes.

Q. Was she bleeding? A. Yes, sir.

Q. What part did you hit, side or the front of her head? A. The side.

Q. Which side, the right or left? A. Right side.

Q. The left side was on the coal? A. Yes, sir.

Q. After the shovel bent, what did you do then? A. I took the hatchet.

Q. Where did you get that from? A. Near the firewood.

Q. Did you have to go out of the coal-bin to get the axe? A. Yes, sir.

Q. Why did you go get the axe? A. To finish killing her.

Q. Wasn't she dead when you finished with her with the shovel? A. No, sir.

Q. How do you know? A. I wanted to make sure and cut her head off.

Q. Is that why you went to get the axe? A. Yes, sir.

Q. Was she breathing when you got the axe? A. Yes.

Q. Could you hear her breathing? A. Yes.

Q. You went and got the axe, did you come back to the coal-bin? A. Yes.

Q. Was it an axe or hatchet? A. Axe.

Q. How long was the handle? A. Long handle.

Q. Was it a sharp blade? A. Dull.

Q. How many inches was the blade? A. About five inch blade.

Q. Was it a regular axe you use to chop wood? A. Yes.

Q. Was it yours? A. Yes.

Q. Was shovel yours? A. Yes.

Q. The baseball bat belonged to one of the boys? A. Yes.

Q. When you went to get the axe and came back to the coal-bin, did you swing the axe to your wife's head? A. On the neck.

Q. Did you hit her on the neck with it? A. Yes.

Q. How many times? A. I don't know. (He indicated three times but can't say whether it was three, four or what).

Q. Did you want to kill her when you struck her with the axe? A. Yes.

Q. Did you bend over to have the axe hit her? A. Yes, a little low.

Q. And each time did you strike her did you strike her on the neck? A. Yes.

Q. Did you strike her on the face? A. No.

Q. How do you know? A. It was dark there.

Q. Could you see your wife there? A. I could see her but her head was in the coal.

Q. What. Was her head sinking in the coal? A. It was laying on the coal and when I struck her I didn't know whether it was going in or not.

Q. After what did you do with the axe? A. I left it in the coal-bin.

Q. Did you leave the shovel in the coal-bin, too? A. Yes.

Q. And you left bat on the platform? A. Yes, same place where it was.

Q. After you struck her with the axe why did you stop. Was she dead? A. I don't know. I took the shovel as crooked as it was or bent and threw some coal on her face and went out.

Q. What about the body? A. All covered.

Q. You covered the whole body? A. Yes, sir.

Q. With coal? A. Yes, sir.

Q. What did you do that for? A. To cover her face for the shame that she brought me.

Q. What did you do then? A. I went and changed my pants and changed my shirt.

Q. Did you throw any lumber or wood on your

wife? A. I took two pieces of lumber and threw them on her.

Q. Why, to hide her? A. Yes.

Q. Who was in the room when you did the first. Any of the children? Any of the family? A. No one.

Q. This was last Saturday, August 2nd? A. Yes.

Q. What time was it when you struck her with the bat the first time? A. About one thirty or a quarter to two.

Q. In the afternoon? A. Yes.

Q. When you went upstairs didn't you find this garbage on the stairs? A. Yes, I swept that up.

Q. Did you sweep that up first or change your clothes first? A. I swept that up first.

Q. And when you went upstairs you saw garbage on the stairs? A. Yes, I seen the pail was overturned on the stairs.

Q. And did you go up and get the broom right away? A. The broom was on the stairs.

Q. And did you see some blood on the stairs? A. On the platform.

Q. I show you a picture. Do you see where that white rag is. Is that where the blood was, underneath that? A. On the inside of that door.

Mr. Pirolo—Also on the outside. The woman upstairs saw him.

A. No, I didn't wash outside.

Q. Was it inside the door there where the blood was? A. Yes, sir.

Q. What did you wipe it up with? A. A mop.

Q. Where was it in the kitchen? A. On the stairs in the same place.

Q. Did you go to the kitchen and get some water? A. It was a mop.

Q. When it was finished could you see anything? A. You could see a spot.

Q. Then after you finished with the broom, and the mop cleaning up the blood, what did you do then? A. I took my pants off, washed my hands and closed door and went away.

Q. Where did you get your pants; were they hanging up in a closet in the bedroom? A. Yes.

Q. Where did you get your shirt? A. In the bureau.

Q. What did you do with the pants you took off and the shirt? A. I put the shirt in a basin in the bathroom. I wrapped pants up, rolled them and put them under dirty clothes.

Q. Why did you put the shirt in the basin. Was there blood on it? A. Yes I put it right in the water.

Q. Was it an outside shirt or undershirt? A. Outside, blue.

Q. What color were pants? A. Gray.

Q. Was there blood on them? A. Yes.

Q. Did you wash them or roll them up? A. Roll them up. The pants that were washed there, my wife washed.

Q. Are they gray too? A. No, same as shoes. Brown.

Q. Those were the pants you had on when you went away? A. No, I had them for work.

Q. What color pants did you have on when you went away? A. This is the one.

Q. When you took off pants and rolled them up, you had another pair of pants on? A. No, I only had one pair of gray pants. These are the ones. I took gray off and put this one on.

Q. The shoes. Are they the same shoes you had on when you hit wife with the bat? A. Yes.

Q. Same ones you had on when you killed wife with the bat? A. Yes. I cleaned them because they were dirty with dust and coal.

Q. When you went away did you have to change your money from one pants? A. Yes, I took money from those pants and put it in these pants.

Q. How much money? A. Eighty dollars.

Q. Where did you get that money? A. Twenty-eight dollars, from working and rest from rent

Q. When did you get rent Saturday morning? A. Yes, same morning, from second and third floor.

Q. Who gave you money, woman or man? A. Albert, twenty-eight dollars.

Q. Who paid you rent upstairs, woman or man? A. Man, Tommy Grico. Twenty-eight dollars.

Q. What time did you collect the rent? A. About half past eight from top floor and the other one about ten o'clock.

Q. How much did you get from the top floor? A. Twenty-eight.

Q. And second? A. Twenty-eight.

Q. That is $56.00? When did you get your pay? A. The night before.

Q. How much pay? A. Twenty-eight dollars.

Q. Did you get the pay or did your wife get the pay? A. My wife.

Q. How? A. From my brother.

Q. Did he give it to her? A. Yes.

Q. How did you get it from her, did she give it to you? A. No, I took it out of her pocketbook.

Q. After you killed her? A. No, before.

Q. Did you get the rents from the people upstairs or did your wife? A. I did.

Q. When did you take money out of her pocketbook? A. Friday night she gave me $10.00 to buy something and $20.00 she had in her pocketbook. I took money out of her pocketbook first thing in the morning about eight thirty.

Q. Did she see you? A. Yes, sir.

Q. Why did you take it out? A. To put in my pocket.

Q. Did your brother pay her every week? A. Only three days and a half.

Q. I mean did he always pay her the money or did he give it to you? A. Sometimes to me, sometimes to her.

Q. You didn't collect the rents before did you, your wife did, didn't she? A. Sometimes I would collect and give it to my wife.

Q. What time did you go to collect the rents that morning? A. I never go upstairs for it, they come down and pay me.

Q. Well, did they come down last Saturday or did you go after it? A. They always come downstairs.

Q. Last Saturday did they come downstairs to pay the rent or did you go up after the rent? A. They came down with it. I never go up to collect the rent, they always come down.

Q. What time did the first tenant come down? A. Eight thirty.

Q. What time did the second tenant? A. About ten o'clock.

Q. Was your wife there both times? A. Yes, sir.

Q. When you got up last Saturday what time was it? A. Eight o'clock. The people on the second floor came down and knocked on the door to pay me the rent.

Q. Was your wife in bed? A. Yes.

Q. Did you have anything to do with your wife that night? A. In the morning before I got up.

Q. Did you have relations with her? A. Yes, before I got up.

Q. Before you had relations with her that morning did you have in mind killing her that morning? A. Yes.

Q. Before you had relations with her? A. Yes.

Q. Why did you have relations with her then? A. I don't know.

Q. When you got out of bed did you still have in mind that you were going to kill your wife? A. Yes, all that week I was with the same intentions.

Q. Well when you got up that morning were you still of the same intentions? A. Yes.

Q. That morning just before you hit your wife with the bat did your wife have her hat on or not? A. No. She was dressed.

Q. Just before you hit her with the bat had you and your wife decided to go to the Doctor? A. Yes.

Q. Were you friendly with her then? A. We were not friends. I didn't want to go as I was not

feeling good and was sleepy. I told her I would go Monday night.

Q. What was the reason you were going to the Doctor, Ben? A. To get insurance for this finger. (He is now pointing to left index finger.)

Q. It appears to be curved? A. I can't straighten.

Q. Were you going to the compensation bureau on Church Street? A. Yes.

Q. Were you going to see a doctor there? A. Yes.

Q. Had you been there before? A. Yes.

Q. Was your wife with you before? A. Yes.

Q. How long ago before last Saturday was your wife with you to see about your finger? A. It was on the notice the day we went; I don't remember the exact date.

Q. Did you know the name of the doctor you were going to see? A. No, I never saw him before.

Q. What time were you supposed to be there on Saturday? A. I don't know. We were going down to see if we could get them in or not.

Q. Did your wife want you to go down and see about your finger? A. Yes.

Q. And you didn't want to go? A. No.

Q. Were you sleepy at the time you went and got the bat to hit your wife? A. No.

Q. How long before you hit her on the head did your wife want to go down to the Compensation Bureau? A. From Friday night, all Saturday morning.

Q. But you didn't have any quarrel with your wife? On Saturday morning were you and your wife

friendly? There was no quarrel was there? A. I always disturbed but there was no quarrel.

Q. On Friday night did you go to Jerry's house? A. My wife was there from about ten o'clock in the morning.

Q. What time did you go over to Jerry's house? A. We were workng right opposite the house and when we stopped working for dinners and suppers we stopped at Jerry's.

Q. Was Jerry working with you? A. Yes.

Q. When you went to Jerry's midday was your wife there with the two little children? A. Yes.

Q. Were the two older children there too? A. Yes, the four children were there.

Q. Who brought the children there Friday. You, and your wife or both of you? When you went to work you went from your house on Mill street. Your wife was still home. When you get to Jerry's house for dinner on Friday your wife was there with the four children and when you finished work you went to Jerry's house. Was your wife still there with the children? A. Yes, the girls were there, but I think the boys were in the yard.

Q. How old are the girls? A. Eight and three.

Q. Then you had supper in Jerry's house? A. Yes. I ate my eats.

Q. Did you eat at the same time with your wife? A. Yes.

Q. And the children? A. No. They made a sandwich before and went out in the yard and played.

Q. What time did you leave Jerry's house Friday night? A. Nine thirty.

Q. Where did you go? A. Home.

Q. Did anyone leave Jerry's house with you? Didn't your wife leave with you? A. Yes.

Q. When you went home did you go to bed with your wife? A. Yes.

Q. On Saturday morning when you got up was the children still there? A. Yes, all in bed.

Q. On Thursday was your wife over in Jerry's house on Thursday? A. Yes.

Q. On Wednesday? A. I wanted to keep her under my eyes and I could work better if she was at Jerry's house. I could work better.

Q. Why? Were you suspicious of her with some man? A. That was always my thought.

Q. What did you think your wife was doing? A. Everything.

Q. With men? A. Yes, sure.

Q. Did you ever see her do anything with men? A. I never seen her but I seen them going around in the night time.

Q. Who? A. Some suspicious people.

Q. Did you ever see any suspicious people with your wife? A. No.

Q. Did your wife always go out with you? A. When I was there.

Q. Did you ever see your wife with another man? A. I seen her talk with one man and I saw her and she went away. She didn't want to see them on the street.

Q. How long ago was that? A. About a month ago.

Q. Did you speak to her about it? A. No.

Q. What time of the day or night was that? A. It was in the morning about nine fifteen or nine thirty.

Q. Where was that? A. At the door.

Q. Where was your wife? A. She went out and going towards Passaic Street.

Q. Do you know where she was going? A. She was going to my aunt's house.

Q. Did she leave you in the house? A. I went out the door to see what steps she would take.

Q. Did your wife refuse to have relations with you ever? A. Many, many times. She would say: 'Let me alone, I don't feel good.'

Q. How often would you have relations with your wife? A. Once a night, maybe once every two nights.

Q. Did anyone ever tell you anything about your wife being a bad woman? A. Nobody told me aything. I only was suspicious about the people who was watching surrounding the place, the immediate neighbors.

Q. But nobody ever told you anything? A. This is a thing that nobody ever tells you unless you catch them on the spot.

Q. But you never saw your wife do anything wrong? A. No, sir.

Q. You just had suspicions about your wife? A. Yes.

Q. Last Saturday morning did your wife make the coffee? A. Yes.

Q. What did you have, bread and coffee? A. Yes, sir.

Q. Did your wife put cups and saucers on the table? A. Yes.

Q. When you went out of the house, after you had mopped up the floor and swept up garbage, you changed your money from gray trousers and put it in blue trousers? A. Yes

Q. Did you lock house? A. Yes.

Q. Did you go out the back or front? A. Front. Back door was nailed fast.

Q. You will notice you have blood spots on your shirt. How did you get those there? A. Maybe when I went to mop up.

Q. Did you do the mopping of the floor when you changed your shirt? A. Yes.

Q. Did you have the blue trousers on when you did the mopping? A. I took the majority of the blood off when I had the other pants on then I put these pants on and tried to clean it more.

Q. Where were the children? A. The two boys came in while I was changing.

Q. Did you talk to them? A. Yes.

Q. What did you say? A. They said they wanted the shoe shine box as they wanted to make some money to play golf.

Q. Who said that? A. Jose.

Q. Is he the oldest boy? A. Yes.

Q. Did you tell the boys what you had done to their mother in the cellar? A. No.

Q. Why? A. I was all confused.

Q. Before you went out of the house did the two boys go out of the house? A. Yes.

Q. When you were changing your clothes did the little boy go in or did both go in to get the shine box? A. Both.

Q. Wasn't one outside? A. No, both came in.

Q. How long were the boys outside of the house before you went out? A. About five minutes. They went out before I did.

Q. Did you decide to go away when you changed your clothes? A. No.

Q. I mean had you decided when you were changing your clothes to go away? A. Yes.

Q. Did you make up your mind where you were going to go? Where did you make up your mind you were going to? A. Manlius, that was my intentions for the whole week.

Q. So, before you killed your wife you decided that after you killed your wife you would go to Manlius? A. Yes.

Q. So before you killed your wife you knew where you were going to go before you killed her? A. That is the only road I know.

Q. Why did you want to go there? A. To run away.

Q. I just wanted to ask you Ben, about a week before on Saturday night you told me before you and your wife had had some words. A little quarrel, and she fell on the floor, remember? A. Yes, sir.

Q. Now what time was that on the Saturday before last Saturday? A. It was late. I don't remember. It must have been ten or eleven o'clock.

Q. Last Saturday was August 2nd. What I am asking you about now was the quarrel you had with your wife a week before on July 26th? The week before on Saturday night. After your wife came to and you put her on the chair, did someone send for Justice of the Peace Rubino? A. Yes.

Q. Who sent for him? A. I don't know. My mother-in-law or somebody.

Q. Where did she live? A. 34 Passaic Street.

Q. What time did you have this quarrel with your wife? A. It was a late hour. Time to go to bed.

Q. What time did Rubino come there? A. In all that confusion I don't know.

Q. It was the same night wasn't it? A. Yes.

Q. Was your wife there when he came? A. Yes.

Q. Your mother-in-law? A. No, my aunt.

Q. Did you and Rubino have a talk together? A. Yes.

Q. What did he say to you? A. He said: 'If your wife is a bad woman or you must leave her or you be peaceful or leave her.'

Q. What did you say? A. I did not answer.

Q. Didn't you tell Justice of the Peace Rubino that if he gave you eight days to fix up everything you would go away? A. No, I never said anything like that.

Q. Didn't you ask him to give you eight days and in the meantime you would talk it over and try to be good to your wife? A. I didn't tell him this. I didn't tell him anything about that.

Q. What did you tell him. You told him something? A. I told him we would do the best we could but I didn't tell him anything.

Q. How long was he there? A. About ten or fifteen minutes.

Q. After he went away, did you go to bed with your wife? A. Yes.

Q. Was it when Rubino was there that you had decided to kill your wife? A. No, not then.

Q. When, before or after? A. It was always before and after.

Q. Before what? A. Before Rubino came and after Rubino came.

Q. Was it before Rubino came? A. Yes. My wife said: "As soon as I would do something else

and say a word to her, I would put my sign down or signature and have me arrested."

Q. Did you ever strike your wife or hit her before last Saturday afternoon? A. Only little small slap.

Q. Did she ever hit you? A. No, sir.

Q. Didn't you give her a black eye not a long time ago? A. Yes, sir.

Q. How long ago is that, Ben? A. In the end of May.

Q. What with your fist? A. Yes.

Q. Was it closed? A. I don't remember, I seen the black eye in the morning.

Q. What reason did you have for hitting her that time? A. Always the trouble in the house.

Q. About what? A. Because she was a bad woman.

Q. Did you tell her she was a bad woman at any time? A. Yes, many times.

Q. What could she say? A. She would say "No," and stay in the peace of God.

Q. Did you ever tell your wife she was a bad woman when children were around? A. I told her when they were there and when they weren't there, too.

Q. Why did you tell that to your wife when the children were there? A. Sometimes you are in a way that you don't care for nobody.

Q. When you left the house did you know how much money you had in your pocket? A. About $80.00, I didn't even count it.

Q. While you were in the jail in Syracuse, you remember meeting Mr. Pirolo. Did you give him some money or did he take some money from you?

A. He says: "Give me the money and when we are in Paterson I will give it to you again."

Q. How much was it? A. $66.00 cash and $5.00 check.

Q. Let me ask you about your oldest boy. Did you throw a carving knife at him? A. No. I slapped him or kicked him in the ass.

Q. Did you hit him at any time? A. I hit him a small slap around the ass.

Q. Didn't you beat that boy up quite often because you were mad, Ben? A. Yes, sometimes.

Q. Ben, didn't you at one time throw a knife at the oldest boy? A. No, I don't remember.

Q. Did you throw a knife at any of the children at any time? A. No.

Q. When you left the house with the money where did you go from house, down to Erie Station, Paterson? A. Yes.

Q. Did you go to Jerry's house first? A. No. I went out of my house up Mill Street, past Market Street up Ward Street and down to the Erie Depot.

Q. What did you do when you got there? A. Bought a ticket from Paterson to New York.

Q. When you got to New York where did you go then? A. Hoboken.

Q. You didn't go to New York? A. Yes.

Q. When you got off train in Jersey City what did you do, go downstairs to tunnel? A. No, boat.

Q. Why did you go to New York? A. To go to Manlius.

Q. Didn't you say you went to Hoboken? A. Yes.

Q. Didn't you have to come back to go to Hoboken? A. Yes. Then I went to New York again.

tried it to get the road to go on I never went that way.

Q. When you got off train in Jersey City you went on ferry-boat and you got off ferry-boat in New York and then where did you go? A. Came back to Jersey City on ferry-boat, not same boat but same company, to the Erie Railroad in Jersey City.

Q. When you came back to Jersey City where did you go then? A. Somebody learned me where I could get ticket to go to Syracuse. He says: "Go downstairs subway and take No. 2."

Q. Did he tell you to get off at Hoboken? A. No. I got subway and went to Hoboken and got a ticket in Hoboken.

Q. When you got out of the train how did you know where to get out? A. I let somebody learn me.

Q. What did they tell you? A. Stop over here.

Q. Oh, on the train? A. Yes.

Q. What did you ask that somebody? A. I asked him to go to Hoboken where did I get off?

Q. Did you tell that somebody you wanted to go to the Lakawanna? A. In the office of ticket in Jersey City he told me.

Q. Is that the man who told you where to get off in Hoboken? A. The man who sold me ticket told me to take subway to Hoboken and then—

Q. When you got out of subway train did you go to Lackawanna or to subway? A. I bought the ticket and asked someone how I could go to Syracuse and he said $17., the last one over.

Q. Did you buy your ticket in Hoboken? A. Yes.

Q. One way or round trip? A. One way.

Q. How much? A. $9.93.

Q. What time did the train leave? A. About 6:20 in the afternoon.

Q. Saturday afternoon? A. Yes.

Q. When you got on train what time did you get to Syracuse? A. We changed at Binghamton. We went five hours to Binghamton.

Q. What time did you get to Binghamton? A. In that confusion I don't remember.

Q. Did you have supper on the train? A. I bought twenty-five cents worth of pears in Binghamton.

Q Then you got on the train at Binghamton for Syracuse at 3:00 o'clock Sunday morning and you got in Syracuse at 6:00 o'clock? Where did you have breakfast? A. I didn't.

Q. How did you get to Manlius by train? A. Trolley car.

Q. How far away is Manlius from Syracuse by trolley car? A. I don't know.

Q. What time did you get to Manlius on Sunday? A. About ten o'clock but I am not sure.

Q. When you got off the trolley at Manlius did you walk to your uncle's house? A. Yes. I went to the house where he was living at first and I found everything changed there and I asked someone there where Louis Nardella lived and they told me and I went to that place.

Q. When you got there did you find him there? A. Yes.

Q. Did you have a coat on? A. Yes.

Q. Did you have any bag? A. No, nothing.

Q. What did you tell Louis when you got there?

A. He asked me why I came and I said: "Is that a long time since I saw you and I paid you a visit."

Q. Did he ask you how your wife was? A. Yes.

Q. What did you tell him? A. I said: "Everything is all right. I didn't tell him anything that happened.

Q. Why didn't you tell him? A. I didn't have nerve to tell him.

Q. Sunday the police got there. Chief Bowers and another man. Did you know him? A. Yes.

Q. Did he talk to you? A. He came and arrest me but didn't talk.

Q. Didn't he say anything about your fingers? A. Yes. He said: "Let me see your hand. You killed your wife." I said, "Yes." He put handcuffs on me and took me to the train by automobile. He and deputy sheriff Arthur Mawson.

Q. Are you glad you killed your wife, Ben? A. Sure.

Q. Are you glad she's dead? A. If I wasn't glad I wouldn't have killed her.

Q. If she was living now would you kill her? A. Yes, I don't care, if I die I will die satisfied.

Q. How long have you had the idea that your wife disgraced you? A. Immediately after she came from the old country in Italy.

Q. In 1922? A. As soon as I got here.

Q. Your wife was younger than you? A. Four years.

Q. You are 42? A. Yes.

Q. And your wife was 38? A. Yes.

Q. Did you have any suspicions that any of your children weren't your children? A. Yes.

Q. Which child? A. The second.

Q. The boy? A. Yes, second boy.

Q. That boy was born in this country wasn't it? A. No, in Italy.

Q. You said before that you had the devil in your brain what do you mean by that? A. That my wife was bad.

Q. What suspicions did you have about the people whom you say were around the house at the time? A. Probably they seen everything of the people who came in and went out.

Q. But you never saw anyone go in the house? A. No.

Q. Did anyone ever tell you they saw anyone? A. No.

Q. Did you drink wine at any time? A. Yes.

Q. When? A. When I would eat and after I got through eating too.

Q. Did you ever get drunk? A. Plenty times.

Q. Saturday when you hit your wife were you sober? A. I had half a bottle.

Q. How long before? A. At lunch, when I was eating my dinner. A flat bottle that you put in your pocket.

Q. Red wine? A. Yes.

Q. Homemade wine? A. Yes.

Q. Did you ever think that your wife wanted to get rid of you? A. I didn't think so but I always had that thought.

Q. Did you ever hear the voices of the people around the house that you couldn't see? A. No.

Q. Did your wife ever give you any cause to think that she was not a good woman? A. She always gave me good reason that she was good.

Q. Did you ever think that your wife in preparing food to eat put anything in it? A. No. But many times I told her "Maybe you put some poison in there."

Q. Why? A. To poison me.

Q. You thought that? A. I would think that in my own mind.

Q. But you always ate the food? A. Yes, sure.

Q. You never saw any men in the house with your wife? A. No, sir.

Q. You say sometimes you would see people around the house. Did you ever recognize any of them who were there? A. They were some suspicious people.

Q. I know but did you know who they were? A. Yes.

Q. Who? A. One is Mike DeLuccia and his other partner.

Q. Do you know his name? A. No. It is a short time that they opened up place on the corner.

Q. What did you see that made you think of Michael DeLuccia? A. I saw him stop in front of my house two times at 12:00 at night with his partner.

Q. When was the first time? A. I cannot remember.

Q. When was the second time? A. Two weeks ago.

Q. Where was your wife the first time? A. Sleeping. I couldn't sleep one night and I went over by the window and I went and I saw these two in the automobile.

Q. Was it dark? A. There was a light nearby right on the corner.

Q. Where were they in the automobile? A. Yes.

Q. Was your house on the corner? A. No.

Q. Was the automobile parked on the same side of the street at your house or the other side? A. Right by the house. I stayed by the window while the machine was there.

Q. Where does DeLuccia live? A. 14 Mill street.

Q. Right next door? A. Yes, I know that.

Q. After you saw the machine here did you go back to bed with your wife? A. I stayed there a little while smoking.

Q. Was that the first time you saw DeLuccia there or second? A. First and second time same point. In automobile.

Q. Was it first or second time at twelve? A. One time at twelve and one time at one-thirty.

Q. Was your wife in the house both times? A. Yes, in bed.

Q. The second time did you see the machine in front of your house or 13 Mill street? A. In front of my house.

Q. Did you see DeLuccia get out of the machine either time? A. I seen both of them get out. They went some place, I don't know where, and they came back and went away.

Q. And during that time your wife was in the house? A. Yes.

Q. Did you ever see your wife talk with Michael DeLuccia? A. No.

Q. Did anyone tell you they did? A. No.

Q. Did your wife ever have anything to do with Michael DeLuccia? A. No, only suspicions.

Q. You said before, the reason you wanted to your wife was because she was a bad woman? What do you mean by a bad woman? A. She would go with other people.

Q. But you don't know that yourself, only suspicions? A. Only suspicions.

Q Sometimes your wife would not have relations with you when you wanted her to was it because she was sick? A. She would say she was tired.

Q. Did you ever hear any noises around the house at night, queer sounds? A. No.

Q. Are you glad you killed your wife? A. Yes, I am glad.

Q. Why? A. The thought that she was bad.

Q. If she was alive today and you were home would you still have a desire to kill your wife? A. No, if I had a left her I would have left her forever.

Q. When you went out on the street, Ben, did you ever notice people looking strange to you? A. Yes.

Q. Did you have suspicions that they were making remarks about you? A. Yes.

WILLIAM M. DREW, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Mr. Drew, you are one of the Passaic County Prosecutor's detectives? A. Yes, sir, I am.

Q. And how long have you been prosecutor's detective of Passaic County? A. About 18 years.

Q. On August 8th, Friday, 1930, at police head-

quarters, were you present when the Prosecutor interrogated the defendant, Bonaventura Nardella? A. I was.

Q. Do you recall any instance wherein the Prosecutor asked the defendant to demonstrate in what manner he used the baseball bat? A. I do; you had questioned him in reference to his hitting his wife over the head with the baseball bat, and you asked him to show just how he done it, or words to that effect.

Q. And did he do so? A. Yes; he did.

Q. Will you just show to the jury, in what manner he demonstrated that? A. Yes, sir.

Q. You were present and saw it? A. Yes, sir; he stood over him like this and took a step and reached down and got the baseball bat and (witness indicates standing over the deceased), striking three blows over the deceased.

Q. Now, do you recall when he spoke about the use of the shovel, the Prosecutor asked him to demonstrate in what manner he used the shovel? A. I do.

Q. Did he in response to that request demonstrate the manner in which he used the shovel? A. Yes; he did.

Q. Will you just step down here and show the jury the manner he demonstrated he used the shovel? A. (Witness stepping down from stand) Like that (standing over the deceased and indicating three blows with shovel.)

Q. And do you recall an instance when the Prosecutor asked the defendant to demonstrate in what manner he used the axe? A. I do.

Q. And did he demonstrate it? A. He did.

Q. Now, will you just show the jury, how in what manner he demonstrated he used the axe? A. Like that (indicating three blows with the axe.)

Q. Do you recall an instance wherein the Prosecutor asked the defendant to demonstrate if he would how he knew his wife was breathng before he struck her with the shovel? A. Yes, sir.

Q. And did he demonstrate? A. He did.

Q. Will you please express the manner in which he demonstrated that his wife breathed? A. This way (taking three or more short heavy breaths.)

Cross Examination by Mr. Barbour:

Q. When the defendant demonstrated how he hit his wife with a bat, where did he indicate that he secured the bat, from in front of him, or behind him, or from one or the other side of him? A. As I recall it, he went to his left.

Q. The left side of him? A. Yes, sir.

CAPTAIN JOHN MURPHY, already sworn:

Direct Examination by Mr. Barnitt:

Q. At the time of the interrogation of the defendant by the Prosecutor, at Police Headquarters, before you—you were present too—do you recall an instance wherein the Prosecutor requested the defendant to demonstrate in what manner he used the baseball bat? A. I do.

Q. Did he do so? A. He did.

Q. Will you please express to us the manner in which he used the bat? A. Just exactly as Mr. Drew demonstrated.

Q. And, in reference to the use of the shovel, do you recall an instance wherein the Prosecutor asked the defendant to demonstrate how he used that shovel? A. Yes, sir.

Q. Did he? A. He did.

Q. Will you just show the manner in which he demonstrated that he used it? A. Detective Drew's illustration was perfect.

Q. In reference to the manner in which the defendant used the axe, do you recall an instance wherein I asked to demonstrate how he used the axe? A. I do.

Q. And did he do so? A. Yes, sir.

Q. And will you please illustrate to us, how he demonstrated that? A. Just exactly as Mr. Drew did.

Q. And the Prosecutor requested, do you recall, of the defendant to demonstrate the manner in which his wife was breathing? A. Yes, sir.

Q. Did he do so? A. He did; he breathe heavy breaths just up and down; heavy heaves.

JERRY NARDELLA, was called as a witness on behalf of the State, and being first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. You are a brother of the defendant Bonaventura Nardellla? A. Yes, sir.

Q. You understand English, don't you? A. Yes, sir.

Q. I say you understand English? A. Yes, sir.

Q. Now, on Saturday, August 2nd, 1930, do you recall seeing your brother? A. No, sir.

Q. Or his wife? A. No, sir.

Q. Now your wife's name is Lena? A. Yes, sir.

Q. What relation if any is she to Lucy Nardella, the dead lady? A. A sister.

Q. You and your brother, two brothers, married two sisters? A. Yes, sir.

Q. Do you recall seeing the children of Lucy and Bonaventura on Saturday, August 2nd; did you see the children? A. I seen the children over to my house.

Q. What time? A. In the afternoon about three o'clock, two o'clock.

Q. How many children did you see that afternoon? A. Just the two little ones.

Q. Just the two little ones? A. Yes.

Q. Do you know how they got over to your house? A. They said they came over alone.

Q. Did you see the two older boys later? A. Yes, sir, later.

Q. What time about, Jerry? A. Well, they was around the golf course all afternoon.

Q. Well, did you see them that night? A. That night?

Q. Yes. A. They was over to my house.

Q. During that night did all these children stay at your home? A. Yes, sir.

Q. Did you go to 14 Mill street that night? A. Yes, about 7 o'clock.

Q. And did you go to the apartment where the Nardellas lived? A. Yes, sir.

Q. And did you see Lucy or Bonaventura there? A. No, I didn't see anybody.

Q. Did you look for them? A. I was look for them, that is why I went over there.

Q. After you didn't see them did you go back home or where did you go? A. When I went back home I call up the doctor where they was going and the doctor answered that nobody come here.

Q. You telephoned to the doctor? A. Yes, sir.

Q. And the doctor answered nobody had come? A. Yes.

Q. What did you do then? A. Then I went back home again.

Q. Did you go later to 14 Mill street? A. No, I go no more.

Q. After you went to 14 Mill Street before you telephoned to the doctor, did you try any doors? A. Yes, I opened the kitchen door.

Q. Is that the door leading down to the basement? A. I open it.

Q. How did you open it? A. I had a key.

Q. Was it locked or unlocked? A. It was locked.

Q. When you opened it what did you do? A. Just opened the door and called hello and nobody answered and I closed the door again and I went home.

Q. Later on do you know whether you had a talk with Joseph and afterwards Joseph Nardella do you know whether he left to go to the house at 14 Mill street ?A. Yes, he went to look at it.

Q. I beg your pardon? A. He went over around the house to look at it.

Q. What time was that? A. Around eight o'clock, something like that.

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Q. During that night what time did you go to bed? A. I was watching outside, me and a friend of mine that lives next door to me, waiting and watching the golf course to watch for somebody if they come home or not.

Q. What time did you go to bed? A. Around half past three or four o'clock.

Q. Did Bonaventura or Lucy come to the house for the children that night? A. No, sir.

Q. The next morning what did you do with reference to the Police Department? A. Seven o'clock I got up and went right to the Police station to report and then they told me I had to go over there again nine 'clock. Then I was waiting for Sergeant Pirolo to notify him that my brother was missing.

Q. Well, did Sergeant Pirolo and Sergeant Moore go over to 14 Mill street with you? A. Yes, sir.

Q. They were there while you were there? A. Yes, sir.

Q. Did they get any pictures, do you know? A. Yes, that is what we went down for, to get pictures.

Q. That was on Sunday morning? A. On Sunday morning.

Q. Then you went home, did you? A. Yes, sir.

Q. Did you go back to the house after that before the body was discovered? A. No. No, sir.

Q. You were not present when the body was discovered? A. No, sir.

Q. Do you remember having a talk with your brother Bonaventura, about the Saturday before, about some trouble he had with his wife? A. No; he never said anything to me, never.

Q. Did you say anything to him? A. Sure, I did, almost every day.

Q. Tell the jury. A. Sure. I told him to be a man the same as me, and the whole family can tell you that I was a man and he was drunk every day, and he used to beat his wife and the children almost every day, and every time he used to see me he kept quiet. As soon as I go away from their house he start over again.

Q. Do you know who, if anyone, called up the home of Tony Saracino at 211th Street, Bronx, on Sunday? A. I did call him up.

Q. You knew Tony? A. Yes, sir.

Q. Some few hours after you telephoned the Bronx did you see Tony in Paterson? Did he come to your house? A. No. I didn't see him. He went straight to Passaic street where his mother was.

Q. I mean did you see him that day? A. Yes, I did.

Q. What business did your brother work at then? A. Carpenter.

Q. Did he work for you up to that Friday night, August the 1st? A. Well, he didn't work for me then, only he did a little job. He had to help me for a few days and he only worked three days and a half.

Q. I mean that week? A. That week, yes.

Q. You had a little job that you had him work with you on, he worked with you on a little job that you had to do? A. Oh, yes.

Q. Is that what you mean? Did you pay him some money for it? A. I paid him $28.

Q. When did you pay him with reference to Saturday? A. I paid him Friday night.

Q. Where, at your house? A. Over at my house, and I gave the money to his wife.

Mr. Barnitt—Well, that can be stricken out. I have no objection.

The Court—Strike it out.

Q. Did you ever hear him talk to his wife about anything that he said his wife did? A. The way he was talking to his wife?

Q. Yes. A. Well, sometime.

Q. What did you hear him say to his wife? A. He always used to tell her that she was a bad woman.

Q. What did she say, if anything, that you heard him say? A. Well, she used to tell him, "I am not the kind of a lady that you mean, and I was good and I always will be good." That is what she said.

Q. How did they act while in your house? All right? A. They were all right in my house.

Mr. Barnitt—That is all. Cross examine.

Cross Examination by Mr .Barbour:

Q. Are you a carpenter also? A. Yes, sir.

Q. Did you and your brother use to work together on different jobs as carpenters? A. Well, for a long time now we don't work together, see, and I had a little job right across the street over my house and I want to call somebody else, and my wife told me, "You better call your brother," but I didn't want him, because I was afraid if he go on the scaffold, I was afraid of falling, because he used to drink, see. Then I said, "All right." For the children and his wife I did that, not for him.

Q. Not for him? A. No, sir.

Q. Did you ever have a talk with him about the accusations he made against his wife, that she wasn't a good woman? A. Well, sometimes he used to tell me, but I had to force him. Then I used to tell hi mback that his wife was good.

Q. What do you mean you had to force him? A. To see—you know, he was working and he used to go—(Witness sigh.)

"Why do you sigh for?" He never wanted to tell me. "Why don't you tell me?" Then he used to tell me, he said, "I can't stand my wife; she is not true to me."

Q. And what would you say to him? A. Well, I say that his wife, she is not that kind of lady.

Q. And when he acted that way where would you be, on the scaffold with him? A. Well, on the scaffold, in the room sometimes; when we worked together at Paterson Vehicle Company a year ago and more, he used to go like that too, sigh all the time.

Q. Did you ever tell him that if he did not stop doing that he would fall from the scaffold? A. Why, sure, because he gets crazy and drunk, and that is bad. I was afraid to call him.

Mr. Barnitt—Did you say drunk?

Mr. Barbour—He said—if the Court please—

Mr. Barnitt—I say, did he say drunk?

Mr. Barbour—He said crazy.

Mr. Barnitt—Did he say crazy drunk? That is what I wanted.

A. Yes.

Mr. Barbour—If the Court please, I object to the questions of the prosecutor. I am conducting my cross examination and I am not through. I think it is highly improper.

The Court—Let the stenographer read what the witness said.

Mr. Barnitt—I want to find out what he said. I understood him to say crazy drunk. I may be wrong.

The Court—I think he said crazy and drunk. Let us see.

(The reporter read as follows:)

"Q. Did you ever tell him that if he didn't stop doing that he would fall from the scaffold? A. Why, sure, because he gets crazy and drunk and that is bad. I was afraid to call him."

By Mr. Barbour:

Q. What did you mean when you said he gets crazy? A. Because he was thinking a whole lot and don't know what to do when he was working.

Mr. Barbour—That is all.

Re-direct Examination by Mr. Barnitt:

Q. What did you mean when you said he got crazy and drunk? What did you mean by that? A. Well, if you think it over your wife all the time your brains—you go out of mind.

Q. I mean the drunk part. What about that?

Q. Well, sometime I couldn't tell whether he was coming to work drunk. That was why I was afraid to bring him on the scaffold.

Q. Did he do his work all right? A. When he was working with me he was all right.

Q. You were speaking when you said crazy a moment ago about what he said on these occasions when you say he was crazy and drunk and he was working with you, wasn't he? A. Not with me.

Q. Who was he working for? A. Well, for the company, for Paterson Vehicle Company.

Q. I mean, he worked with you for that company, didn't he? A. Yes.

Q. He was working in your company, that is what I mean? A. Yes, yes.

Q. But he did his work all right while he was working with you for that company? A. Well, I had to watch him all the time.

Q. I mean did he do his work all right? A. Oh, yes.

Q. Did he? That is all.

Mr. Barnitt—The State rests if your Honor please.

The State Rested.

Mr. Barbour—If the Court please, inasmuch as it is now quarter past four—

The Court—The defense has no motions at this time? The defense has no motions?

Mr. Barbour—I would ask permission, sir, to prepare over night to make any motions I might have in the morning.

The Court—All right. We will adjourn until 10 o'clock tomorrow morning, and the jury must be permitted to leave the court room before anyone else leaves the court room.

(Whereupon an adjournment was taken until Wednesday, October 22nd, 1930, at 10 A. M.)

(Trial of the case continued, October 22nd, 1930.)

Mr. Covin—Ladies and Gentlemen of the jury: My associate, Judge Barbour, and myself have been assigned to try this case. This is not a case where we are being hired by the defendant and paid by this defendant. We have been assigned by this Honorable Court to perform a duty because as lawyers, we are officers of this court. We have been assigned to perform a duty the same as the Prosecutor is performing his duty and the same as the Judge is performing his duty, and the same as each and every one of you who as jurors are performing your duty.

Our interest in the defendant Bonaventura Nardella is not a money one; we have not received any money from him to represent him. Our interest in this case is only an interest as human beings; and ladies and gentlemen by the performance of this duty it is of course necessary for me and the Judge to speak to the defendant and find out why he did this. What was in his mind, have you a defense, what can we do

for you; and naturally we had to listen and then in talking to a man like that day after day—we have had this case now about a month, and I can tell you it is an experience and a moment of great anxiety to have this man as we think that he don't know what he is doing. We think he is insane, ladies and gentlemen, and we are going to put him on the stand and let you judge him for yourselves, just as we have judged him, and you are going to come to the conclusion, as we have, that the man don't know, didn't know what he was doing, that the man is insane; but, ladies and gentlemen, we are not going to ask you to take this man and acquit him; we are not going to ask you to take this man and put him on the street. We think this a case or subject for an insane asylum. Ladies and gentlemen, all we are going to ask you for is that you give this man your attention. You have heard the evidence of the State and it is gruesome; it is terrible, don't close your ears or hearts to this man when he gets on the stand—have an open mind; listen to him, and you are going to sympathize with him; after all, ladies and gentlemen, mercy is the greatest attribute of man.

Have a little bit of mercy. Listen to him. As I said, we are not going to ask for an acquittal, we are going to ask you to confine him, this man, either in the insane asylum or the State Prison for the rest of his life. For every day he has left. Is that asking

you much? Every day of his life behind iron bars. That is what we are going to ask you for. We don't expect you are going to put this man on the street. We don't ask it and he is not deserving of it. Now, ladies and gentlemen, we have not very many witnesses, in fact we could not get very many. We tried. But this man would tell us this happened and we would check it up and then find it wasn't so at all. He thought his wife was untrue to him and gave us the names of some men and it wasn't true. Just hallucination. Why, ladies and gentlemen, we will show you that one night while he was sleeping he thought he heard his wife's father, the deceased wife's father calling to her to come to his room to become intimate. Just hallucination and not true at all. And again just shortly before this second day of August, we will show you that he walked to the window one night and saw a car and a neighbor of his, Mike DeLuccia, and a friend outside of the house. He thought these boys were waiting for his wife and his wife was in bed sleeping. So what does he do? He takes nails and a hammer and nailed up every window in the house so these men couldn't get into the house. Does a man with a sound mind do that? However, ladies and gentlemen, he was in the Italian army as the prosecutor told you and he wasn't wounded in this last war, the World War, but he was gassed. We haven't been able, to get his record entirely as to whether

he was in the hospital or not, we have not been able to get it. We have tried to get it out of him, but have been unable to do so and we will try again this morning. After the war he came here in 1920. He had been here before but he returned to Italy. As I say, he returned here and he was very industrious and shortly after brought over his wife and two children and then had two children in this country where he has lived from 1920 down to date. Now, ladies and gentlemen, in 1910—1920—this man was at that time having these hallucinations, having these ideas about his wife. In 1920, ten years ago, he went through this same thing. He went through 1920 with these ideas and then 1921 and down to two and three and 1924 and right down to the present time and I think he still believes it. And this was working in his mind and it worked in his mind up to the point where it brought him to August 2nd.

Now, ladies and gentlemen, we are going to show you that he went to work with these suspicions, that none of his suspicions, as far as we could find, were true; that the man is of unsound mind, and that it was impossible for him to do such a thing in the way he did unless his mind was unsound.

We are going to show you that by putting the defendant himself on the stand. You are going to have an opportunity to look at him just as we have looked at him. You are to have an opportunity to hear him talk to you as he has talked to us, and you are going to be convinced, the same as my asso-

ciate, Judge Barbour, and I, that this man is insane.

Now, ladies and gentlemen, before I leave you I want to impress you with this: We are not asking you to acquit this man, because we do not think it is the right thing to do. We are asking you to confine him to an insane asylum or to State's Prison, for the rest of his life, and not to give him, as the Prosecutor asked you, the death penalty. We are asking you that when you bring in your verdict you bring in a verdict with a recommendation of mercy.

BONAVENTURA NARDELLA, called as a witness in his own behalf, being first duly sworn, testified as follows:

(The testimony of this witness was given through the Official Italian Interpreter.)

Direct Examination by Mr. Covin:

Q. Mr. Nardella, where were you born? A. In Italy.

Q. When? A. The 18th day of December, 1887.

Q. When did you come to this country? A. In December, of 1910.

Q. Were you married at that time? A. No, sir.

Q. Where were you married? A. In Italy.

Q. Then you returned to Italy? A. Yes, sir.

Q. When did you return? A. 1914, December.

Q. In December, 1914? A. Yes.

Q. Were you married at that time? A. No, sir.

Q. What were you doing at that time? A. Working.

Q. How long did you work? A. I went to Italy and married in April, 1915.

Q. In April, 1915, you were married. Did you join the Army after that? A. 1916.

Q. Where was your wife at that time? A. Home.

Q. How long were you in the Army? A. Three years.

Q. Were you injured, wounded, or gassed in any way? A. I got tear gas.

Q. What was the effect of that on your health? A. My eyes would cry and I had—my mind would always go around, disturb me.

Q. Were you suspicious at that time of your wife who was home? A. Yes, sir.

Q. What were you suspicious of? A. No suspicion.

Q. You were not suspicious? A. While I was in the Army?

Q. Yes. A. No, sir.

Q. All right. Now, when were you discharged? A. 1919.

Q. And where did you go at that time? A. Home.

Q. Did you stay in Italy? A. Yes, sir.

Q. How long? A. Until January.

Q. 1920? A. Yes, sir.

Q. And then you came to this country? A. Yes, sir.

Q. Did you bring your wife with you? A. No, sir.

Q. When you came to this country, who did you stop with; who did you stay with? A. I stayed about two weeks in Manlius.

Q. That is with your uncle? A. Yes, sir.

Q. Were you at that time communicating with your wife? A. No.

Q. How long were you in this country before you first heard from your wife? A. I don't understand the question.

Q. (Question repeated by the stenographer.)

The Court—Place the question to him—when did you get the letter from your wife?

The Interpreter—I put that question to him, your Honor. I referred to the letter in my question.

The Witness—When I wrote to her.

Mr. Coven—I ask that be stricken out as not being responsive.

The Court—Well, it don't do any harm; let it remain.

Q. While you were in this country in 1920, your second child was born, was it not? A. I received notice of that while I was here.

Q. And where was the child born? A. In Italy.

Q. When did you receive notice of it, do you remember? A. Very few days after coming to Paterson.

Q. Were you suspicious of this? A. Yes, sir.

Q. What were you suspicious of? A. I was suspicious that she had other men.

Q. And were you suspicious that the child was not yours? A. I believed yes and I believed no.

Q. Well, which is it, yes or no? A. I had a suspicion that it was yes and no.

Q. And why did you have this suspicion? A. I had caught on and also my aunt had told me about it—before you go to America take care of your business.

Q. You say you caught on, what do you mean Mr. Nardella?

Mr. Barnitt—Now, your Honor, if he is going to say what was told him in 1920 in Italy I am going to object—before the interpreter tells that to the jury. It is objectionable.

The Court—Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge.

The Interpreter—He is trying to say something that somebody told him.

The Court—Don't repeat it.

Q. Do you know when this child was born, Mr. Nardella? A. I don't remember because my mind was not at place.

Q. How soon after you came to this country, Mr. Nardella, did you receive a letter telling about this child being born? A. A couple of weeks after.

Q. When did you leave Italy, do you know? A. I know that I left in the month of January.

Q. January? A. Yes, sir.

Q. What year? A. In 1920.

Q. When did you come back from the army? A. 1919.

Q. What month do you know? A. On the 7th day of April.

Q. And when did you get to Paterson, Mr. Nardella? A. I don't remember very well because I was two weeks in Manlius.

Q. Is that where you received the letter? A. No, I received it in Paterson.

Q. Just after getting to Paterson, you received the letter? A. A very few days after.

Q. That would be about, when? A. I don't remember because my mind was not at place.

Q. Do you know how many months after you left Italy, you arrived in Paterson? A. Probably the month of March.

Q. What year? A. 1920.

Q. Now, you came back from the Army, in April, 1919? A. Yes, sir.

Q. And you lived with your wife, when you came back? A. Yes, sir.

Q. Did you have intercourse with her? A. Yes, sir.

Q. Right up until the time you left Italy? A. Yes, sir.

Q. Didn't you know when you left Italy that she was pregnant? A. Yes, sir.

Q. Well, what were you suspicious about? A. Suspicious because the people nearby would look at me, look at me cross and say words.

Q. Way back in 1920? A. No, in 1919.

Q. When you returned from the Army? A. Yes, sir.

Q. Did you hear them say anything? A. I heard them talk suspiciously against me.

Q. Did you hear them utter any words? A. No.

Q. When did you bring your wife over here? A. She came here. I did not bring her.

Q. When was this? A. She came in 1922.

Q. Did you send the money over to her? A. No, sir.

Q. How did she get here? A. They made me sign, and probably the father or the family thought about bringing her here.

Q. Did she bring the children with her? A. Yes, sir.

Q. You remember the month she came over in? A. I don't remember.

Q. Where were you living at that time, in Paterson? A. 46 Cross Street.

Q. And did you make a home for your wife and children at that time? A. Yes, sir.

Q. Now, when you brought your wife over here, and you were suspicious of this second child, did you say anything to her? A. No, I always tried to keep the thing in peace.

Q. What do you mean, peace? A. To be tranquil with my wife.

Q. You had suspicions of her? A. Yes.

Q. But you had forgiven her? A. Yes.

Q. So that in 1922, you lived at 46 Cross Street? A. Yes, sir.

Q. How long did you live there? A. About two years.

Q. Down to 1924. Now, during these two years—

Mr. Covin—I withdraw that question.

Q. From 1922, to 1924, when you lived at 46 Cross Street, did you have suspicions about your wife then? A. No, sir, no suspicion whatsoever.

Q. Now, Mr. Nardella, you remember that you were suspicious of your wife, when she came over in 1922, you testified to that? A. Up to the time she came here. When she came here, I always tried to put peace into the thing, and stay tranquil.

Q. Did the suspicion stop? A. Yes, sir.

Q. When? A. A few days before my wife arrived.

Q. And then when did it start again? A. In the month of May.

Q. What year? A. This year.

Q. In the month of May, 1930? A. Yes.

Q. What caused you to be suspicious, then? A. One day on a Sunday after dinner, I was laying on the table, after I got through eating, sleeping. The father, her father was sleeping in the boy's room, and I heard him call "Lucy, Lucy, come here." And my wife was down in the cellar washing dishes, and I was suspicious and I stayed all that day inside.

Q. What did you do while you stayed inside? A. To look. To see something.

Q. What did you do inside the house, were you sitting at the table, sleeping? A. I sit down a little bit, and then I would stand up, and go back and forth.

Q. How long did that continue? A. Up to the evening.

Q. And then what did you do? A. We had supper.

Q. And then what did you do? A. I stayed home all the time.

Q. Where did you stay? A. In the kitchen.

Q. How long did you stay there? A. Up to the time that I went to bed.

Q. Did you go to bed? A. Yes, sir.

Q. What time? A. I don't remember the time. Probably 9:30 or a quarter of 10.

Q. Did your wife go to bed with you? A. No, sir.

Q. Where was your wife? A. In the kitchen, cleaning up.

Q. Then did you go to sleep? A. No, I made believe that I was sleeping, but I was looking.

Q. Why did you make believe you were sleeping? A. To see what was going on.

Q. Did you see anything? A. I heard the father say, "Is your husband sleeping? "

Q. You heard the father say "Is your husband sleeping?" Whose father? A. My wife's father.

Q. And who did he say this to? A. To his daughter.

Q. In what kind of a voice? A. A very low voice, and I made believe that I was sleeping.

Q. What did your wife say? A. "Not yet."

Q. And then what took place? A. The father said, "Your husband has caught on. It is better if I go to sleep down the cellar."

Q. In what kind of a voice did he say that? A. Low voice, but I could hear everything.

Q. And what did you do? A. Nothing, only to make believe that I was sleeping, and my wife would come in occasionally to see if I was sleeping or not.

Q. Did you hear her? A. What?

Q. Did you see your wife come in? A. Yes, I would open and close my eyes, making believe that I was sleeping.

Q. And then what would your wife do? A. Come in, look, and go back into the kitchen.

Q. Did you hear anything else? A. I heard that.

Q. What else did your wife's father say to her? A. He went to bed.

Q. When? A. The hour I don't know, but I had the watch by me and I think it was 12:00 o'clock.

Q. When did your wife go to bed? A. A short time after the father had said, "Lucy, Lucy, come here, it is late."

Q. Who did she go to bed with? A. She didn't go to sleep. She said to the father, "Don't sleep yet."

Q. In what kind of a voice? A. A low voice. I could heard that.

Q. Didn't she go to bed that night? A. Who, me?

Q. No, your wife? A. Where?

Q. Did she go to sleep that night? A. I got up and I told her that we were wasting too much light, and I told her it was best to go to bed.

Q. Did you ask her what this talk between her father and her was? A. No, sir. She came to bed and we didn't talk about that no more.

Q. If you were suspicious, why didn't you ask her? A. I asked her in the morning.

Q. But you did not ask her that night? A. No, because my nerves were so much upset.

Q. What happened the next morning? A. I got up the next morning about six o'clock.

Q. By the way— A. I couldn't sleep any more and I had to get up.

Q. Which bedroom was that in? A. Me? Where I sleep?

Q. Yes, when you heard this? A. The bedroom on the back.

Q. Do you know—can you understand this? A. That is the boys' bedroom.

Q. That is the boys' bedroom? A. Yes.

Q. Then, it was in this bedroom? A. Yes.

Q. When you heard these whisperings? A. Yes, sir.

Q. Indicating the bedroom on the left on Exhibit S-20. Now, where was your wife? A. When?

Q. When you heard this talk between your wife and her father? A. In the kitchen.

Q. In this kitchen here (indicating)? A. Yes, sir.

Q. And where was your father in law? A. In the dining room in the front.

Q. You mean in this room here (indicating)? A. Yes, sir.

Q. Where did he sleep? A. In a small bed in the place of Amelia, my daughter.

Q. And in what room was that? A. In the dining room, in the front.

Q. In this room here? A. Yes, sir.

Q. Your father-in-law was married? A. Yes.

Q. And his wife was living? A. She is still living.

Q. Where was she? A. In New York.

Q. Now, next morning, did you say anything to your wife? A. Yes, sir; I had a pain in the heart, a strong impression. It was very dark in front of my eyes, and I said, "Oh, God, the house will fall on me now." I couldn't see anything else, it was all dark in my eyes.

Q. Did you say anything else to your wife? A. I told her what nerve between father and daughter, what a shame. She put her hands up like this (indicating) and never said a word.

Q. Who was there, then? A. Nobody; the father was outside; he went out to smoke.

Q. Did the father hear you? A. No, he did ~~sleeping, yet.~~ not hear me,

Q. Did your wife say anything else? A. She ~~not hear me.~~ didn't say anything.

Q. Where were the children? A. They were ~~didn't say anything~~. sleeping yet.

Q. Just raised her hands? A. She lifted her hands as I was telling her that. I hit her a punch.

Q. Did you say anything to the father? A. I didn't say anything to him; only I told my wife I didn't want her father in my house any more.

Q. Did you say anything that the father could hear? A. No, he was outside, smoking.

Q. All you did was to tell your wife you wanted her father out of the house? A. Yes, sir.

Q. Why didn't you talk to the father? A. I was too nervous; I couldn't talk to him, I couldn't find rest nowhere, from one side to another I would go.

Q. You were suspicious of other people, were you not? A. For a few days it had passed. The

strong impression I had that, I couldn't rest anywhere—couldn't rest anywhere.

Q. Who else were you suspicious of? A. One night, it was 12 o'clock, and I couldn't sleep; I said "I was going to get up and have a smoke."

Q. When was that? A. One night, but I don't recall what day it was.

Q. Was it before the incident with the father or afterwards? A. After.

Q. Was it before August 2nd? A. Before.

Q. How much before, do you know? A. Probably the month of July.

Q. 1930? A. Yes, sir.

Q. What happened then? A. I got up and I took a cigar to smoke; I pulled the shade up at the window; I saw an automobile stop in front of my house—it was stopped in front of my house. My wife told me "Don't go and open that window." As I opened the window, Mike DeLuccia, and his partner, they were both in there, said, "There is the husband, it is better if we go away from here," with a very low voice, but I could hear it. It was at night, and I could hear everything, and Mike DeLuccia said, "Wait, wait a little while."

Q. Did you open the window or did you just pull up the shade? A. I opened the window to let the smoke out.

Q. And you heard that conversation? A. Yes, sir.

Q. What did you do after that? A. I told my wife that I heard this and that.

Q. And what did she say? A. She started to cry; didn't say anything.

Q. Did you believe those fellows were going out with your wife? A. According to the words they were saying, surely.

Q. What kind of a tone did you hear, loud or soft? A. Low.

Q. That is the way they spoke, in low tone? A. Yes, sir; low voice.

Q. And they were sitting in an automobile out by the curb? A. Yes, sir.

Q. And you were in the living room of your house? A. Yes. I opened the window.

Q. Did you know Mike DeLuccia before that? A. Yes, sir, he lives by my house.

Q. He lives next door to you, doesn't he? A. Yes, sir.

Q. Did you ever ask him about it? A. No, sir, I never told him anything.

Q. Did anybody ever tell you he was taking out your wife? A. No, sir; nobody. The Greek on the third floor told me that two people—

Mr. Barnitt—I object to it.

The Court—The objection is sustained.

Q. As a result of what this Greek lady on the third floor told you did you do anything? A. I didn't do nothing.

Q. What was the effect upon you of what she told you?

Mr. Barnitt—I object.

The Court—The objection is sustained.

Q. What was this conversation—when? When was the conversation with the Greek woman? A. Some night, but I don't remember when; I didn't have that mind to remember.

Q. And she told you about DeLuccia? A. No.
Q. What did she tell you?

Mr. Barnitt—I object to this. Not that I don't want it disclosed, but it is not legal.

Mr. Coven—We are trying to do the best we can with this witness to bring out the circumstances.

The Court—Yes; we appreciate your difficulty. Proceed.

Q. Do you know the name of the Greek lady? A. She lived in our house about four years and I don't know the name. I never took notice of it.
Q. Is that the lady who was on the stand? A. Yes, sir.
Q. Did this Greek lady laugh at you or talk about you?

Mr. Barnitt—It is objectionable whether she laughed at him or talked about him. I don't want to stop the defense but I cannot, as the State's counsel, permit such questions to go in.

Mr. Coven—The statement which was read in evidence here described about suspicious people looking at him and neighbors talking about him and I think that that being in evidence these questions are proper.

Mr. Barnitt—A confession might include a declaration in favor of something that he would want to put in to favor himself and the mere fact that the statement or concession is introduced by the State and the confession includes something that is not prop-

er, he cannot be interrogated about it directly.

The Court—Yes; it would be self-serving.

Mr. Coven—We are not using the confession in part; we are using it in the whole. It has opened the door for questions of this type.

The Court—Objection sustained and an exception will be allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

Q. Who lived with this Greek lady? A. She had a boarder.

Q. What was his name? A. I know his first name was George; I don't know his second name.

Q. Were you suspicious of him? A. Yes, sir.

Q. Why? A. Because when I was sitting out in the front he would come down from upstairs from the rear porch.

Q. Yes. A. And he would go into the house.

Q. Yes; what else?

The Interpreter—He is going to state something, your Honor, that somebody else told him.

The Court—No; it cannot be repeated.

Q. Did you see him go into the house? A. No, sir; nobody.

Q. How do you know he went into the house? A. Someone told me.

Q. Who told you? A. Josie DeLuccia and Mary Ambrose.

Q. What did she tell you?

Mr. Barnitt—I object to it.
The Court—Objection sustained.

Q. Where were they when they told you? A. Mary Ambrose was on the porch and Josie DeLuccia was at the window.

Q. What porch and what window? A. Josie was at 13 Mill street at the window and Mary Ambrose was on the porch at 15 Mill street.

Q. That is the house next door and the one next to that? A. My house is in the center of the two.

Q. Where were you? A. In the yard.

Q. Did you hear them? A. Yes, sir.

Mr. Coven—I wish the Court would instruct the interpreter to repeat what he just told him.

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something.

Mr. Coven—What was the answer?

The Interpreter—He said yes, he heard it.

Q. What did you hear?

The Interpreter—He is saying something again that he was told, your Honor.

The Court—All right. It will not be repeated.

Q. What did you hear?

Mr. Coven—Now, I didn't hear any objection. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay.

Mr. Barnitt—And I suppose that is what he is doing, Mr. Coven. The point as I see it is that he can subpoena all these witnesses and put them on the stand and they can say what they saw or did, but for him to tell it there is no opportunity for the State to cross examine.

Mr. Coven—We have been unable to find such people.

The Court—That is no reason to admit hearsay evidence. That is no exception to the hearsay evidence rule.

Mr. Coven—But that is part of our defense.

The Court—It is unfortunate, but this Court did not make the laws; its duty is to administer them.

Q. Did you ever see George do anything with your wife? A. No, sir.

Q. Did you ever see anybody do anything with your wife? A. Never. I didn't see anything.

Q. Did you ever see people talking about you? A. Against me? No.

Q. Did you ever hear people talking about you? A. No, I heard no one talk about me.

Q. Did you ever see people staring at you? A. They would look at me and laugh, and they were suspects.

Q. What do you mean "suspects?" A. Suspect that they were talking against my wife.

Q. Could you hear them talking? A. I could hear them talk, but I couldn't distinguish what they were saying—couldn't hear what they were saying.

Q. What made you think that they were talking about you, about your wife? A. They would always look at me.

Q. And that is the only reason? A. Yes.

Q. You never heard exactly what they were talking about, did you? A. No, sir.

Q. In the middle of May, did you get suspicious of somebody living at 16 Mill street? A. Yes, sir.

Q. Why? A. I saw my wife at the window waving her hand like that (indicating).

Q. To whom? A. To that man that lived at 16 Mill Street. I also told my brother about this.

Q. Did you see the man? A. I saw him outside, yes.

Q. In the street? A. In front of the door.

Q. And your wife was standing where? A. At the window.

Q. And she was waving to this man in the street? A. Yes.

Q. Was she talking to him? A. No, I did not see them talk.

Q. How long did you live at Mill Street? A. I bought the house in 1925, something like that. I don't remember very sure.

Q. About five or six years? A. Yes.

Q. How long did this fellow at 16 Mill Street, live there? A. A couple of months, and then he moved.

Q. Just a couple of months? Did you ever see him talking to your wife before? A. My wife never spoke to anyone, outside.

Q. Did you ever see your wife signalling to him before or after?

The Interpreter—I beg your pardon?

Mr. Coven—"Did you ever see your wife making signals to him, before or after?"

A. Only one time.

Q. Did you ask her about these signals? A Yes, I asked her.

Q. What did you say to her? A. I told her, "Why did you signal to that man? Do you know him?"

Q. And what did she say? A. "I just happened to do that."

Q. Do you remember the incident where you nailed the windows in the house? A. Yes.

Q. Why did you do that? A. I was always with that pain.

Q. What pain? A. Always with that confusion.

Q. What pain, and what confusion? A. The pain at the heart, and a strong confusion that I didn't want any disturbance in my house.

Q. You nailed these windows shortly after you saw DeLuccia through the window, didn't you? A. Yes.

Q. Why did you do that? A. To let no one open the window.

Q. Why? Did you think somebody was coming in through the windows? A. With that strong confusion, I didn't know myself what I was doing.

Q. Did you have suspicions that people were coming through the windows? A. Not from the front.

Q. What do you mean, "not from the front?" A. How could they get up? They are a little high?

Q. Then, why did you lock the windows, nailed them?

The Interpreter—I beg your pardon?

Mr. Coven—"Why did you nail the windows?"

A. With that strong pain and confusion, I didn't catch on myself, what I was doing.

Mr. Coven—(To the Interpreter) Ask him, if he understands. I asked him, "Why, did you nail the windows?"

(The Interpreter repeated the question.)

A. Because in the summer time it is warm. I would put the chairs in the front because the veils would wave. When I was inside, the veils were still, and I would put the chairs there, so as they would not wave, and when I wasn't there, the chairs wasn't there, and probably that was a signal that she had.

Q. Then why did you nail the windows, so that she could not open them? A. Not to let the wind blow them veils, and to put that signal out.

Q. Then you were not suspicious that Mike DeLuccia would come through the window, were you? A. I don't suspect Mike DeLuccia coming in through the window,—to stop the signals that were going on.

Q. Did you see these signals? A. When I was there, the chairs by the window and by the veils; I saw that.

Q. Who did you see?

Q. Who did you see? A. The sign of the veil.

Q. What do you mean, the sign of the veil? A. The cloths that is by the window, that wave.

The Interpreter—In other words, they blow by the wind.

Q. Did you ask your wife about these signals? A. Yes; I asked her why she put the chairs in front of the window,—"Not to let the veils blow too much," that's the answer.

Q. Which windows did you do that to? A. The two windows at the front.

Q. Did you nail the back windows? A. Yes.

Q. Why? A. I always had that suspicion, that they might have come in through the window.

Q. Who might have come in through the window? A. Men or somebody that harm me; that did not like me.

Q. Oh, so you thought that men would come through the window? A. Yes, sir.

Q. Why would they want to do you harm?

A. I didn't know myself, what I was doing, from the strong impression what I had.

Q. In what way did you think they would hurt you? A. Not against me, but come in through the window for my wife.

(A five minute recess.)

BONAVENTURA NARDELLA, resumes the stand:

By Mr. Coven:

Q. Now, Mr. Nardella, what other incident can you tell us about, with reference to your wife and men? A. On the night of the 1st of August,—

Q. I mean before that, around the time that you saw these windows and signals, did your wife talk with any other men? A. I never seen anyone talking to her.

Q. You remember an incident in the yard, in your backyard where your wife was talking to somebody? A. She was talking with other women.

Q. Do you know a fellow named George? A. George?

Q. Yes. A. Never spoke to no one, never seen no one.

Q. You know George, that lived upstairs? A. Yes, sir, the Greek.

Q. Were you suspicious of him? A. Yes, very much.

Q. Why? A. Because I seen him come down, from the back door on the porch.

Q. And what would he do? A. Go into my house.

Q. Where were you? A. Down the cellar.

Q. And what part of your house, would he go into? A. From the back.

Q. If you were in the cellar, how could you see him go into the house? A. I heard footsteps and I went upstairs and the door was open and he went out into the back.

Q. As soon as you came up, he left? A. My wife says, the ice is come behind the door, not to let me see.

Q. Did you see the man's face? A. No, sir.

Q. How do you know it was George? A. I heard the door close immediately.

Q. Well, if you didn't see the man's face, how do you know it was George? A. Because I had a lot of suspicions of him.

Q. Is that your only reason? A. I told it to my wife, too, but she didn't talk.

Q. Why were you suspicious about him? A. When my wife would go into the yard, she would signal at him and I told that to my brother also.

Q. Did anybody see that? A. No.

Q. Did you see it? A. I seen when I was looking from the back of the bathroom door, I was looking purposely.

Q. And you saw George make signals to your wife? A. No, I couldn't see the signals, because I was inside.

Q. What was George doing? A. They would signal to one another and laugh.

Q. Did you have any other reason to be suspicious? A. No other reason.

Q. Just because you saw men in the yard making signals? A. Yes.

Q. Did you see them talking? A. I didn't see them talk, only nice morning.

Q. Only what?

The Interpreter—Nice morning. It is a nice morning.

Q. What do you mean, it is a nice morning? A. Good morning, today it is a nice day.

Q. Oh, that is what they said? A. Yes.

Q. And that made you suspicious? A. Also with the signals that they did with their hands.

Q. Did any other information come to you about that? A. No, no other information.

Q. Did any neighbors give you any information about them? A. Yes, Jose DeLuccia, and Mary Ambrose, they told me, what you don't do at night, the cats do it.

Q. What do you mean by that?

Mr. Barnitt—I object your Honor.

The Court—Objection sustained.

Mr. Coven—Well, the question is in.

Mr. Barnitt—The question is in, but the answer is not.

Q. What do you think they mean by that?

Mr. Barnitt—I object to that, as calling for a conclusion.

The Court—Objection sustained.

Q. Did that make you more suspicious? A. Sure. The blood the more it stays, the more it gets hot, and the more nervous I got.

Q. Why did that make you more suspicious? A. Because I always was thinking about that thing.

Q. About what thing? A. That my wife had other men.

Q. Can you tell us when you heard this? A. One day in the yard.

Q. You don't remember what month? A. No, from the confusion I had I didn't rest anywheres. I don't remember.

Q. Mr. Nardella, when was it that you heard this between Mary Ambrose, before the incident with your father-in-law or after? A. A long time after.

Q. A long time after? A. Yes, sir.

Q. Did you talk to your wife about George? A. Yes.

Q. What did you say? A. I says, "What is the matter, are you in love with George now?" She started to laugh and says there was nothing (indicating how he laughed), a false laugh.

Q. Indicating how she was laughing?

The Interpreter—Like he was laughing.

Q. Do you mean to tell us that your wife laughed at you? A. Yes, but a false laugh.

Q. What did you do then? A. Nothing. The blood, the longer it would stay the longer it would break, going back and forth and never could rest.

Q. You worked for the Paterson Vehicle Company, did you not? A. Yes.

Q. Do you remember when? A. I worked with them about a year.

Q. How long ago? A. They laid me off at the end of May.

Q. How long did you work for them? A. About a year.

Q. You worked for them a year? A. Yes.

Q. They laid you off in May, 1930? A. Yes.

Q. Now, when you started working for the Paterson Vehicle Company were you at that time suspicious of your wife? A. No, sir, I had no suspect. Every once in a while we would have a word, but it was nothing.

Q. Well, were you suspicious of your wife any time during the time that you worked there? A. I always had a little suspicion, but I would get over it quick.

Q. What was your little suspicion about? A. Always with the intentions that somebody would go to my house.

Q. When did this start? A. Every once in a while I would get that, but I would get over it quick.

Q. Were you suspicious when you started working there? A. A little while after.

Q. A little while after. Your brother worked with you there, didn't he? A. Yes, sir.

Q. Did you ever complain to your brother about being suspicious about your wife? A. I always told him—I would breathe heavily. He says, "Don't think about it. Give yourself courage. Don't think about it."

Q. That is what your brother told you? A. Yes, sir.

Q. When was this? A. While we were working. I couldn't remember the date and the moment.

Q. But it was sometime during the times when you were working at the Paterson Vehicle Company? A. Yes, sir.

Q. The best of your recollection is that you started it here in May, 1929; is that right? A. I don't remember for sure.

Q. While you were working at the Paterson Vehicle Company did you ever see your wife go out with anybody? A. No, sir, never with anyone.

Q. Was she home every night? A. Every once in a while she would be over to her aunt's house or to her sister's house.

Q. Would she go to sleep with you every night? A. Yes, sir.

Q. What were you suspicious about? A. Always that suspect that I had strong pain and strong impression.

Q. Did you every say anything to Jerry's wife about it? A. Yes. I told her many times.

Q. What did you tell her? A. They would fill me up of talk; they would talk to me of something and they would make it go over and it would pass by.

Q. What did you tell her? A. I told her that my wife was a woman that used to have other men in the house.

Q. What did she say to you? A. They used to blow me up with words.

Q. Didn't you believe them? A. No. They used to make me more nervous and I used to go out.

Q. What did they say to you? A They used to mix me up with talk.

Q. Did they ever tell you it was true? A. No; they always told me that it was untrue.

Q. Do you remember the first time that you ever told Jerry's wife about it? A. How can I remember?

Q. Was it long ago? A. I told her in the month of May about the father. I told my brother; I didn't tell his wife.

Q. I am asking you, when is the first time that you told Jerry's wife anything about your wife? A. Never told her. I used to talk with my brother and she used to talk with her sister.

Q. But you just told me that you spoke to Jerry's wife and told her about it, didn't you? A. Between the sisters they used to talk, but I never told her anything.

Q. You never spoke to Jerry's wife about it? A. No, sir; never of these things

Q. When is the first time you spoke to Jerry about it? A. At the time of the father's incident.

Q. Is that the first time? A. I don't remember the first time.

Q. Did you speak to Jerry back in 1920? A. Yes, sir.

Q. What did you tell him, then? A. The same thing, with the strong impression about my wife in Italy.

Q. Did you speak to Jerry in 1921? A. I al-

ways spoke to him, and they always tried to calm me down.

Q. In 1922 also? A. Who remembers?

Q. Can you try and remember? A. How can I remember?

Q. Well, from the time that you got in this country, in 1920, right up until 1930, were you always talking to Jerry, about your wife? A. I used to tell him something, but it was a light thing and it used to pass quick.

Q. Well, what was it? A. Small things that I would see and what would happen in the house, and it used to pass by quick.

Q. What did you see? A. How can I remember what I saw?

Q. Do you remember where you lived in 1924? A. I don't remember what month I moved away from Angelo Tilli's house.

Q. Where did you move after that? A. I stayed nine months at my brother's home, altogether.

Q. After you left Tilli's? A. Yes.

Q. Your brother Jerry's house? A. Yes.

Q. And you and your wife lived with Jerry? A. Yes.

Q. Nine months after you left Tilli's place? A. Yes, sir.

Q. Did you have any trouble there, with your wife? A. No, no trouble.

Q. Were you suspicious of her? A. No; everything was calm, there was no suspicion.

Q. When was the first time, Mr. Nardella, the very first time that you were ever suspicious of

your wife? A. When I came to America, a week before.

Q. Why, a week before? A. I suspected something but it would pass and I wouldn't think about it; since my aunt told me before I came to America to look after your business, then the pain got greater and with the strong impression?

Q. That was the first time? A. Yes, sir.

Q. Had the pain been there at all before? A. No, sir; everything was calm.

Q. And you got the pain at that time? A. Yes.

Q. In 1920? A. A week before I came from the country, to come here.

Q. Now, from that time, up until 1930, did that pain ever leave you? A. No, sir.

Q. So that you were suspicious from that time, that you come in 1920, right up to 1930, is that right? A. Yes, but it was a small thing, and it would pass by.

Q. That is, you mean there were many incidents about which you were suspicious? A. Yes, small things, but they would pass quick.

Q. Did you ever try to prove any of them? A. No, sir.

Q. Did you ever try to find out if any of them were true? A. I never thought of it.

Q. You remember the incident of being on the scaffold with your brother Jerry? A. Yes, sir.

Q. What happened? A. He would always see me, that my heart was beating, and I was shivering, and I was breathing and he would say "Be more calm, think of the work that you must do,

don't think of your wife; let her do whatever she likes."

Q. When was that? A. The 27th, 28th, or 29th of July.

Q. 1930? A. Yes, sir.

Q. Did he ever say anything like that before, when you worked with Jerry;—did Jerry ever say anything like that to you before? A. No, never; he would see me breathing that way, and would tell me to be happy, and to stay happy.

Q. How many times? A. I can't remember how many times.

Q. Now, recalling your mind to incidents between your father-in-law and your deceased wife, will you tell us when they took place? A. In the middle of May.

Q. And the morning after it happened you spoke to your wife? A. Yes.

Q. Did she deny it? A. She didn't deny it; she didn't say any word at all.

Q. What did you do? A. I had a strong pain in the heart and I had a strong impression and a very, very dark cloth in front of my eyes and couldn't rest anywheres.

Q. You say that was in the middle of May? A. Yes.

Q. Was that pain stronger then than the pain you had that you describe in 1920? A. At this time my wife was not nearby.

Q. Was it stronger? A. Yes, sir; more strong.

Q. And from that time until August 2nd did it continue to grow stronger? A. Yes, sir.

Q. Can you explain that pain to us? A. A

pain at the heart, a strong confusion; I was shaky and every once in a while a dark thing would come in front of my eyes and I didn't know what I was doing.

Q. Anything else? A. Whatever you may ask me I will answer.

Q. So that this pain continually grew worse and worse?

Mr. Barnitt—Of course your Honor, I take it it is very important that should be stricken out. That is very leading. He is suggesting to him the character of the pain and the extent of it. I object to that question.

The Court—Objection sustained.

Q. Mr. Nardella, how did you feel from that time on,—that is, from the time of the incident with your father-in-law? A. Up to date?

Q. Up until August 2nd? A. The pain the more it would stay the greater it would get, and the strong impression the same.

Q. Now, Mr. Nardella, do you remember July 26th, the Saturday before August 2nd? A. Yes, sir.

Q. What happened then? A. About Rubino, you mean?

Q. Yes; I want to know what happened. A. It happened at night.

Q. Tell me about Rubino. A. I was home in front of the door and I saw my wife and children coming up and the people were outside because it was warm and they would all look and put their

hands at their faces not to see her and they were turning their shoulder. My wife sleeps at home and with that pain and when I see them people put their hands to their faces that pain would get greater. I took my wife and told her the best thing for you to do is to get out of here; I don't want you in my house. I opened the door but I did not touch her at all and she went down to the floor alone. I took a rocking chair and I picked her up and sat her on the rocking chair and I got some water and put it on her face and forehead; then Joey, my son, went down to call her mother. I seen her mother and the aunt, two aunts, and the mother was saying "Where is he, what did he do, what did he do?" And I told her that I didn't do anything to her and that I didn't hit her, that she fainted when I wanted to put her out of the house and she fainted and that I didn't touch her at all. My mother-in-law got hold of an iron, a pressing iron and she wanted to throw it at me and I told her that I didn't do anything to her, that she fainted alone. My aunt says to my mother-in-law, "It is best that you go way and at this moment I seen Rubino. Rubino says to me "What is the matter, Mr. Nardella," and I says "Nothing is the matter' and I didn't talk any more. Then my wife told him that I had taken her for a bad woman and they were talking between themselves. I didn't answer anything and I heard my wife say "Have him arrested, have him arrested." I didn't talk at all. Then Rubino says to me "Either you stay in the peace of God with your wife or you leave her." And I told him I will try the best I can and I didn't talk any more.

Q. Didn't you ask Mr. Rubino to let you go for a week? A. No, sir; I didn't tell him nothing. The only thing I told him is that I will try the best I can.

Q. Was anything said about a week? A. No, sir, nothing.

Q. Where were you standing, when your wife asked Rubino to have you arrested? A. Seated by the table, and not talking.

Q. Where was Rubino and your wife? A. In the front of the door, Rubino.

Q. In front of the door? A. Yes.

Q. Did you see that? A. By the door of the kitchen.

Q. Could you see them from where you were sitting? A. Yes, sure.

Q. What tone of voice were they using? A. A low voice, but my wife was hollering.

Q. Now, Mr. Nardella, let me bring you back to Italy. When did you first meet your wife, before she was your wife? A. She was 13 years old, and I was 17 years old. We kept coming for ten years; six years I was in Italy and four years while I was here, corresponding with one another, writing to one another.

Q. At the end of ten years, what did you do? A. I had intentions to go there and get married. I left here and went there.

Q. Did you love here? A. Yes, sir.

Q. Were you very much in love with her? A. Yes, sir, I went there with all my heart and love.

Q. Did you continue to love her? A. Up to the time that I was into the Army, yes.

Q. After the Army, during all these troubles

and suspicions? A. Two or three months before I had forgot everything. I had a suspect then.

Q. Mr. Nardella, you loved your wife back in Italy, when you were courting her for the period of ten years? A. Ten years.

Q. Now, did that love ever stop? A. No, the love would grow more. The longer it went on, the more it would grow.

Q. Do you still love her, Mr. Nardella? A. I would have, but it is finished.

Q. Did you love her on August 2nd, Mr. Nardella, of this year, 1930? A. There was too much pain, that I had.

Q. Then what happened, Mr. Nardella, on August 2nd?

The Interpreter—On August?

Mr. Coven—On August 2nd.

A. It happened that I killed her. I done the spoils, and give me my medicine and finish it all.

Q. What was that? A. I done the spoils. Give me my medicine and finish it all.

Q. What does that mean? You are sorry?

The Interpreter—I beg your pardon?

Mr. Coven—Are you sorry?

A. Sorry about the poor children in the street, and ruined the whole family, and the whole house, the entire family.

Cross-examination by Mr. Barnitt:

Q. On Saturday, July 26th, after Mr. Rubino was at the house, did you make up your mind then, to kill your wife? A. No; I always had the intentions of keeping the house calm and tranquil, better than someone else.

Q. But before you killed your wife, did you make up your mind that you were going to kill her? A. I had small intentions, but not such.

Q. When did you form those small intentions, before July 26th, or after July 26th? A. After.

Q. How long after? A. I don't know; I don't remember.

Q. Did you decide how you were going to kill your wife? A. How could I decide that?

Q. Did you? A. No; how could I?

Q. Well, on Saturday afternoon, August 2nd, did you pick up a baseball bat and hit your wife in the head with that bat? A. Yes.

Q. Why did you do that? A. Everything came dark in front of my eyes, and I was shaking; I didn't watch to what I was doing.

Q. Well, just before you did that, did you have an argument with your wife about going to the Workmen's Compensation doctor's office? A. Only talking; no trouble that we had to go to the doctor.

Q. Didn't you tell your wife, that you didn't want to go to the Workmen's Compensation doctor, because you were tired, and did not feel well? A. Yes, sir, and I was sleepy.

Q. And then your wife said, "No, you must go this afternoon, you have complained about

your finger?" A. Yes, but I didn't want to go; it is better that we go Monday night.

Q. Didn't you say that to your wife, "It is better that we go Monday night?" A. Yes, sir.

Q. Well, just before you hit her with the baseball bat, you did decide to go to the Workmens' Compensation doctor, with your wife, did you not? A. I was decided to go because I was tired in my feet, and I was sleepy, and if I was to talk with the doctor, I wouldn't know what I was talking about,—couldn't guess of any words to say.

Q. Didn't you say to your wife, more than once, before you hit her with the baseball bat, that you wouldn't go to the doctors, until Monday night. A. I told her I didn't want to go, we will go Monday night, and she said, "No, no, we must go."

Q. How many times did your wife insist that you go to the doctor's that afternoon? A. Three or four times.

Q. And how many times did you refuse, by saying, that "I won't go until Monday night"? A. Everytime that she would say it, because I wasn't feeling good.

Q. Had you just finished your dinner? A. We had dinner at 12 o'clock.

Q. What time was it that you hit your wife in the head with a baseball bat? A. Half past one or quarter of two.

Q. Did your wife prepare herself to go to the doctor's? A. After she had washed the dishes.

Q. What time did she prepare herself to go to the doctor's? A. She started about 1 or 1:15.

Q. And how long after that, was it, that you hit your wife in the head with the bat? A. It was

half past one, or quarter of two; I was going back and forth and I was shaking because I wasn't feeling good.

Q. Well, at that time, did you make up your mind to kill your wife then? A. No, I didn't have those intentions.

Q. You had been drinking wine at your dinner before your wife started to prepare to go to the doctor's had you not? A. Yes, half a bottle.

Q. Is that all you had? A. That is all. I sent to buy it.

Q. Well now, you had your dinner downstairs in the kitchen of the basement? A. No.

Q. Upstairs? A. Yes.

Q. Well, do you know why your wife was in this space that leads to the basement when you hit her with the bat? A. I didn't even know she was ready to go, but I didn't want to go.

Q. Well, she wasn't ready to go while she was standing on the platform? A. Yes, she had put on her dress and shoes.

Q. Where? Upstairs or downstairs? A. Upstairs.

Q. What was she doing, if anything, in the space that leads from the hall to go down to the basement? A. She was adjusting her stocking.

Q. And where was her foot when she was adjusting her stocking? A. On the window.

Q. On the window sill? A. Yes.

Q. And is that window in the space where the platform is that leads down the steps to go to the cellar? A. Yes, sir.

Q. And was she facing toward the window or

was she facing you when you hit her with the bat? A. She wasn't watching me; she was there adjusting her stocking.

Q. How did you know that that was where you found it? A. It was there with a ball and a glove.

Q. Well, did you look for it or did you see it there? A. I saw it. You could see it.

Q. Did you take hold of it? A. Yes, when my nerves was upset something went in front of my eyes.

Q. I asked you, did you take hold of it? A. Yes.

Q. Stand up and show the jury what you did with the bat when you took hold of it.

Mr. Coven—I object to this, if the Court please. He has testified to it.

Mr. Barnitt—He has testified to it? When did he testify?

The Court—It is cross examination.

Mr. Coven—He has testified as to what he has done.

Mr Barnitt—To who?

Mr. Coven—To you, just now.

Mr. Barnitt—I want him to demonstrate to the jury how he wielded the bat.

Mr. Coven—You haven't got the same physical effects here, sir, that you had in the house.

Mr. Barnitt:—I stress the question if your Honor please.

The Court—No one knows better than himself what he did.

Mr. Coven—I take an exception.

The Court—The exception is allowed.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, judge.

A. I took the bat and I hit her on the head.

Q. Did you swing the bat in the light manner that you are demonstrating to the jury now or in a heavier manner? A. Slow.

Q. Slow, but did it have strength behind the speed? A. It wouldn't pass the door. There was a frame.

Q. Did your wife immediately fall to the ground? A. Yes.

Q. What did you do then? A. With the darkness in front of my eyes—

Q. I asked you what you did.

Mr. Coven— I want the answer, sir.

The Court—Let us have the answer.

A. With the darkness in front of my eyes I grabbed her by the feet and dragged her down to the coal bin.

Q. How did you know where to find her if the darkness was in your eyes? A. I couldn't recognize what I was doing.

Q. How did you know where your wife was if this darkness was in your eyes when you dragged her down the stairs? A. I didn't know what I was doing.

Q. Did you see your wife when you took hold of her legs? A. Yes.

Q. Why did you drag her down the stairs?
A. I didn't know what I was doing.

Q. Why did you drag her down the stairs?
A. I didn't know.

Q. You don't know why you dragged her down the stairs; is that what you want us to believe?

Mr. Cowen—I object to that.

The Court—The last part of the question is stricken out. "Is that what you want us to believe," is stricken out.

Mr. Barnitt—What is the question, Mr. Stenographer, please?

(The last question was read as follows: "Q. You don't know why you dragged her down the stairs?")

A. I dragged her down to bring her in the coal bin, but I didn't know what I was doing.

Q. Well, what did you do, when you dragged her into the coal bin? A. The shovel was nearby and I hit her with the shovel.

Q. Where was your wife when you hit her with the shovel? A. In the coal bin.

Q. Well, was she standing up or lying down?
A. Lying down.

Q. Showing you this exhibit, S-21, is that the shovel, you struck her with while she was lying down in the coal bin? A. Possibly it is ,but I don't remember.

Q. Well, you do remember that after you struck your wife with the shovel, you saw that the shovel was broke? A. Yes.

Q. Was it broken before you struck your wife? A. I don't know, but I think it was half broken.

Q. Wa sit broken like you see it now, before you struck your wife? A. No, sir.

Q. How many times did you strike your wife with the shovel? A. I don't know, two or three times.

Q. Why did you strike her more than once with the shovel? A. I didn't know what I was doing.

Q. Did you intend to kill her? A. I didn't know what I was doing.

Q. Did you know what you were doing, when you used the shovel, and raised it, and struck your wife with it? A. I didn't know what I was doing.

Q. Do you know why you didn't know what you were doing? A. I don't know, because I was shaking and my head was going around.

Q. Were you sober? A. I was sober.

Q. And with reference to the axe, did you strike your wife, with the axe, after you struck her with the shovel? A. Yes, I believe so.

Q. How many times did you strike your wife, with the axe? A. Who counted them?

Q. Did you? A. No, sir.

Q. Did you strike her more than once with the axe? A. I didn't count them, I don't remember.

Q. Who counted the number of times you struck your wife with the shovel, did you? A. How could I count them?

Q. How do you know it was two or three times, then? A. That is an idea.

Q. Showing you Exhibit S-22, this axe, is that the axe you used when you struck your wife? A. Yes, it is possible that it is, but I don't know.

Q. Did you strike your wife with the dull part of the axe, or the blade part? A. I don't know whether I hit her with the blade or the back of it.

Q. Do you remember being in the police station on August the 8th, when I interrogated you? A. I don't remember if it is you or someone else.

Q. Do you remember somebody asking you questions on that August the 8th, in the Police Station? A. Yes, sir.

Q. Do you remember at that time, saying that you struck your wife, with the blade part of the axe? A. It could be, but I don't remember well.

Q. Was your memory better then on August the 8th, as to what you did, on the afternoon of August 2nd, then it is today? A. I think today it is a little bit better.

Q. Do you remember at that time, August the 8th, being asked this question and making this answer: "Q. Did you want to kill her when you struck her with this axe?" And your answer, "Yes." Do you remember that question being made? A. It might be, but I don't remember well.

Q. You remember being asked this question, and making this answer, at the time I started before. "Q. After you struck her with this axe, why did you stop? Was she then dead? A. I don't know. I took the shovel as crooked as it was or as bent and threw some coal on her face, and went out." Do you remember making that

answer to that question? A. It might be, but I don't remember so well.

Q. Do you remember at that time being asked this question by me, and making this answer: "Q. Are you glad that you have killed your wife? A. Yes, I am glad." A. It might be, but I don't remember so well, and I know that I left four children on the street.

Q. And do you remember whether this is the bat, showing you Exhibit S-26, that you used when you struck her on the head? A. I don't know if it is that; if I hit her, that is the first time that I handled it.

Q. You did hit her with the bat, did you not? A. I don't know if it is that one or not.

Q. Does it look like the bat that you hit her with? A. I didn't see it because I never handled it.

Q. Did you ever see the bat before the time you struck your wife with the bat? A. That is something the children play with; how could I see it.

Q. Well, after you struck your wife with the bat and you dragged her down the stairs by the feet and into the coal bin before you struck her with the shovel, did you observe to see if she was still breathing.

Q. After you struck her with the shovel and before you struck her with the axe, can you tell us whether or not you recall if she was breathing? A. How could I tell; I don't remember so very well,—too much pain that I had and the darkness in front of my eyes, I didn't know what I was doing.

Q. How did you know how to bring her down into the cellar into the coal bin, can you explain that? A. I didn't know what I was doing.

Q. Well, immediately after you struck her with the axe, did you lock and nail the outside door that leads to the coal bin? A. How could I nail it;—you needs a nail and hammer and I didn't have it.

Q. Did you lock the door? A. I think I closed it, but without a key.

Q. Do you say that you didn't have a nail and hammer to lock and nail that door leading to the coal bin? A. No.

Q. How do you know you didn't have a nail and hammer then at that time? A. It was closed; how could I nail it or close it.

Q. Do you remember that you didn't have a hammer or nail or nails to lock that door with nails after you struck your wife with the axe? A. I don't remember; it may be, and it may not be.

Q. What did you do after you locked the door as you say which led to the coal bin; what did you do then? A. I went upstairs.

Q. What did you do? A. I changed my pants and shirt.

Q. Why did you change your pants and shirt? A. They were dirty.

Q. With what? A. They were dirty clothes.

Q. Why did you change them? A. To put on clean ones.

Q. Why, were you going somewhere? A. I had to go out.

Q. Where were you going? A. Thinking to run away.

Q. Had you made up your mind then when you changed your clothes to run away? A. After.

Q. After you changed your clothes, did you make up your mind to run away? A. Not to run, walk.

Q. What were you going to walk away for, for what reason? A. To walk.

Q. Walk where? A. I didn't even know myself where I was going.

Q. Where did you walk to? A. I went to the Erie Depot.

Q. How did you get there? What streets? What way did you take? A. Through Mill Street, past Market Street, Ward Street, right straight to the Erie Depot.

Q. When you got to the Erie Depot, what did you do in the depot? A. I took a ticket.

Q. For where? A. For New York.

Q. When did you make up your mind to buy a ticket for New York? A. While I was walking.

Q. Toward the station? A. Yes, sir.

Q. Well, when you were going to New York, where were you going when you got over there? A. I didn't know myself where I was going.

Q. What did you go to New York for? A. I don't know. With the strong impression that I had, I didn't know what I was doing.

Q. Well, how did you know that the train at the Erie depot would take you to New York? A. Because I went there a few times before.

Q. When you went there this day, did you know that you could take a train to New York? A. Yes.

Q. And when you got down to Jersey City, how did you go to New York, underneath the river, or via the ferry boat? A. With the steamboat.

Q. When you got over to New York, did you stay there, or did you come back over again, on the ferry boat? A. I returned.

Q. Why did you return? A. I came back to go to Hoboken.

Q. Why did you want to go to Hoboken? A. To walk.

Q. To walk where? A. Somewhere. I didn't know myself, where I was going.

Q. Why didn't you walk over in New York? Why did you come back to Hoboken to walk? A. My mind was all broken up, and I didn't know what I was doing.

Q. Didn't you ask somebody in New York, how you could go to Syracuse, by what railroad? A. I think so. It may be possible.

Q. And didn't that party tell you, that you had to go back over the river to the Delaware, Lackawanna, and Western Railroad at Hoboken, to get a train to Syracuse? A. Yes.

Q. Why did you ask somebody the way to go to Syracuse for, when you were in New York? A. I didn't know what way to take.

Q. Had you decided to go to Syracuse? A. Yes.

Q. Why? A. To go to see my uncle.

Q. Well, why were you going to see your uncle? A. Because it was ten years that I hadn't seen him.

Q. Well, you didn't have any money, did you? A. Yes, I think I had a little.

Q. How much did you have? A. I don't know. I forgot.

Q. Have you any idea how much you had when you left the house? A. Twenty-eight from my brother, twenty-eight dollars of the rent, of the second floor, and $28.00, for the third floor.

The Court—We will take an adjournment until two o'clock, and the jury must be permitted to leave the courtroom first.

AFTERNOON SESSION

BONAVENTURA NARDELLA, resumes the stand:

(A recess was taken until 2:00 o'clock P. M.)

By Mr. Barnitt:

Q. What railroad did you take to go to Syracuse, Mr. Nardella? A. Lackawanna.

Q. What time did the train leave Hoboken? A. I don't remember.

Q. Well, was it Saturday afternoon, or Saturday night? A. Saturday night, or the morning.

Q. At 12 o'clock? A. I don't know; I didn't look at anything.

Q. Well, before you got to Syracuse, did you get off the train? A. Yes.

Q. Where did you get off? A. I forgot what you call it.

Q. Binghampton? A. Yes, Binghampton.

Q. And before you got on the train, did you buy something at Hoboken;—did you buy something to eat? A. Yes. In Hoboken?

Q. Yes. A. I think I bought 25 cents worth of pears.

Q. Is that the only thing you bought? A. Yes, sir.

Q. Sure? A. Sure; I had eaten the dinner.

Q. Do you remember eating a dinner that day? A. What day?

Q. That Saturday, that you killed your wife? A. I ate two boiled eggs.

Q. Do you remember that? A. I don't remember if I eat two or three.

Q. You had some bread and wine at dinner? A. Yes, sir, bread.

Q. Then, did you eat anything after that, until you ate the pears on the train? A. It was at night time, where could I have gotten it?

Q. I am asking you, did you? A. No.

Q. Do you remember whether you had smoked any cigars while you were on the train? A. No, I had a pipe and some tobacco.

Q. Did you smoke the pipe and tobacco? A. Yes, sir, some time.

Q. And when you got to Binghampton and the train stopped, how long did you wait at Binghampton before you took the train again to go to Syracuse? A. I think it was five o'clock in the morning.

Q. How long did you stay there at Binghampton? A. I don't remember; I was going in and out from the station.

Q. What time did the train start from Binghampton? A. I don't remember what time it was.

Q. What time did you get to Syracuse? A. About 8 or 8:30; I don't know,—around that.

Q. Sunday morning? A. Sunday morning.

Q. When you got to Syracuse, did you know how to go to Manlius? A. Yes.

Q. I mean, you didn't have to ask anybody? A. No.

Q. How did you go to Manlius? A. Trolley car.

Q. When did this veil that you speak of, or this darkness,—when was that removed from your eyes? A. It lasted for half an hour or three-quarters of an hour, an hour's time.

Q. After you killed your wife? A. Yes, I believe so.

Q. And after that, it did not come back any more? A. One night while I was in the cell.

Q. And that is the only time? A. Yes, sir.

Q. And when you got to Syracuse, how did you go to Manlius, by the trolley car? A. Yes, sir.

Q. How long did it take you to go from Syracuse to Manlius? A. I don't know how long it would take.

Q. When you went to Hoboken and bought your ticket to Syracuse, how much did you pay for it? A. I think it was 993 or 995.

Q. Either one or the other? A. I don't remember well.

Q. Did you buy a one way ticket to Syracuse or a round trip to come back? A. No, only to go.

Q. Why weren't you coming home again? A. I had to come back.

Q. For what reason? A. To return home.

Q. When were you coming home? A. To give myself up at the police station

Q. When? A. That same night; I wouldn't sleep there over I couldn't rest anywhere.

Q. Sunday? A. Probably on Saturday night.

Q. Well what time did you get to your uncle's house? A. Ten, half past 10 or 11 o'clock; I don't know. You would need a watch in your hands all the time.

Q. Didn't you have in mind trying to get away so that you could get to Italy? A. How could I go?

Q. Didn't you have that in your mind when you left Paterson? A. I had no intention.

Q. Had you ever gone to Syracuse before? A. No.

Q. Never? A. No.

Q. Well, when you went to New York did you have in mind going to Syracuse or did you have in mind going to some place else? A. I was going around and I didn't know myself where I had to go.

Q. When you were over in New York, at that time you went to New York didn't you have in mind going to Syracuse then? A. I was going

around and I don't know myself where I had to go.

Q. When you went to New York didn't you have in mind making arrangements to try to get to Italy? A. No, sir, I did not have them intentions.

Q. Why did you lock the door in the coal bin if you had intentions to give yourself up on Sunday? A. What door?

Q. The one leading from the basement into the coal bin? A. I didn't close it; I only pushed it.

Q. Did you know it was locked when you pushed it? A. No, I don't think so.

Q. How do you know? A. It might have been closed, but I don't remember well.

Q. Now, speaking of the basement door, the door leading from the hallway down the steps into the basement, did you lock that door with the key when you came upstairs? A. I remember that I closed that door.

Q. Did you do that before you mopped up the blood on the platform? A. Yes, I think so.

Q. You remember mopping the blood up on the platform? A. Yes, I remember a little, not much.

Q. Did you decide—after you mopped the blood up, did you decide to go away then? A. I closed the door and went out.

Q. Those grey pants that you had on, didn't you wash those in the bathroom and hang them on the line in the yard? A. No, sir, I didn't wash anything.

Q. You didn't wash anything? A. No, sir.

Q. You didn't wash your pants? A. No, sir.

Q. You didn't wash your blue shirt? A. There was a little bit of water in the basin and put the shirt in there.

Q. Do you remember that? A. A little bit, not much.

Q. What did you put in the little water in the basement, your shirt, your trousers or both? A. I don't remember; I think I put the shirt in.

Q. Why did you put the shirt in, why didn't you hang the shirt up in the closet? A. I didn't know what I was doing. I was shaking and my breast was going this way and that way, beating.

Q. Do you remember putting the shirt in the basin of water? A. Yes, I remember a little.

Q. Do you remember where you put the trousers? A. In the bathtub.

Q. Do you remember seeing Ralph come in for the shine box after you killed your wife? A. Yes, I remember a little.

Q. Did you tell Ralph what you did? A. I believe I didn't talk at all.

Q. Why not? A. Because I was beating in all ways and I couldn't find rest.

Q. Did you take the money out of your grey trousers and put them in your blue trousers? A. Yes.

Q. Why did you do that? A. Not to leave it in my pants.

Q. Were you going to use the money when you left the house? A. I didn't know whether I was going to use it or not.

Q. Why did you take the money from your wife's pocketbook, $20, that morning? A. That is what came to my mind, in my opinion, and I took it.

Q. Do you remember it? A. A little bit.

Q. That was part of the $28, that your brother Jerry had given to your wife, the night before, for your wages of the week? A. I think so, because he gave it to me, at night.

Q. You said before that you received $28, from the second floor tenant and $28 from the third floor tenant. Either or both of those rents were paid to your wife, weren't they? A. No, it was given to me, and I put it in my pocket.

Q. Mr. Nardella, weren't you shaving, and when you were shaving, didn't one of the tenants come downstairs and give the $28, to your wife, and after the tenant went away, didn't you say, "Give me that money," and you took it from her? A. No, I think that they put the money in my hand.

Q. Did you shave that morning? A. I think so.

Q. Well, when you got to Manlius, did you go looking around for the house, where your uncle used to live, and you found he wasn't there, didn't live there any more? A. I went to Manlius, and I thought he was living in the same house, where I had left him.

Q. Did you go to that house? A. Yes.

Q. Did you find him? A. No, it wasn't inhabited, it wasn't rented.

Q. Well, then what did you do, when you found he wasn't there, or the house wasn't inha-

bited? Did you go somewheres else? A. I went around to find some friend, or some countrymen of mine to ask him.

Q. Did you ask him? A. Yes, sir.

Q. Did they tell you where your uncle lived? A. Yes, sir.

Q. Well, when you came to your uncle's house, did you find him? A. The first time I passed the house. Somebody had showed me wrongly the house, I was going to, and I passed by it. Then I asked again.

Q. You did get to your uncle's house and see him afterwards, didn't you? A. Yes, sir.

Q. Well, was your uncle the first one you saw in the house? A. Yes, because I went in from the back yard.

Q. Well, what did you say to your uncle? A. Nothing. I gave him my hand and kissed him.

Q. You hadn't seen him for ten years, had you? A. Yes, sir.

Q. And when you kissed him, did your uncle ask you how your wife was? A. He didn't ask me immediately.

Q. Afterwards? A. He asked me why I came here.

Q. What did you say? A. I told him, it was a long time that I hadn't seen him, and I came to see him.

Q. Had you made up your mind at that time, to give yourself up? A. I had decided to give myself up, to the police.

Q. Why, didn't you tell your uncle, that you had killed your wife? A. I didn't want to tell

him anything because I was to come back right away, and didn't want him to know anything.

Q. Why, when you were coming back, after you saw your uncle? A. Right away he said, "Stay here. We will eat something, and then you will go away."

Q. Did you tell your uncle that you were going away? A. Sure, I did.

Q. Where did you tell him you were going? A. Didn't let him know nothing. I told him I was supposed to come back to Paterson.

Q. When your uncle asked you how your wife was, what did you tell him? A. I told him they were all all right. He asked me, "why didn't you bring her?" I told him that it was too far, and it was too much expense.

Q. How long did you stay to your uncle's before you were arrested? A. Two hours, or two hours and a half.

Q. Were you still in the house, when the police officers came? A. Yes, sir, we were at the table.

Q. Do you remember at Manlius, you were asked some questions by the police officer, as to where you intended to go, from Manlius? and you told him you were going to a camp, 22 miles away, and after you were at the camp, 22 miles away, you were going from that place to Canada, and then take a boat from Canada to go to Australia?

(The question was read by the Reporter.)

A. No, sir, only a very few words, and what they asked me, I answered.

Q. Didn't you say that to the Chief of Police, Bowers, that there was a shipping place, that you knew you could go from into Canada, and get a passport from Canada, and because Australia was a province of Canada you would not need a passport to get into Australia, and you had relatives there? Didn't you say that to the Chief? A. Who spoke about at all?

Q. On the 3rd of August, did you have a brother living in Australia? A. Yes, and he is there, yet.

Q. What is his name? A. Mike.

Q. Did you not tell Chief Bowers at Manlius, that if you had not been arrested, you would have tried to go to your brother's place in Australia? A. No, sir; I didn't say anything about that.

Q. Did you put this lumber that had been marked in evidence here, on your wife's body in the coal bin? A. They were in the coal bin.

Q. Did you put the lumber on your wife's body? A. I believe so.

Q. And does this picture show the manner in which you left your wife, after you went out of that door and locked it? A. (Witness crying hysterically is compelled to leave the court room.)

Mr. Barnitt—The State is through with this witness, if the defense wants to go on, with the next witness.

Mr. Barbour—We have some re-direct.

The Court—Suppose you continue with

your redirect and await the defendant's return.

Mr. Barnitt—I think it ought to be in the presence of the Court, and the defendant.

The Court—Yes, that is right.

(The defendant then returns to the witness stand.)

Redirect Examination by Mr. Coven:

Q. Mr. Nardella, how many times have you gone over this story, that you have related to the Prosecutor just now? A. I don't know; two, three, four, five or six times.

DR. GEORGE W. KING, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Barbour:

Q. Doctor, what is your profession? A. Physician.

Q. Have you made any speciality of any branch of the medical science? A. I have been medical superintendent of the Hudson County Hospital for the insane, situated at Secaucus, the outskirts of Jersey City. If I live until next June 1st, I will complete a half century in that work.

Q. And during any part of that time, have you been away from your duties at that institution except on ordinary investigations? A. I have not. I was appointed county physician of

Hudson County in the year 1812. My successor,—I never retired; my successor was seized with a mental disease and I ran both places.

Mr. Barnitt—I don't want to stop him, but is the responsive about his successor?

The Court—Is there any question about this gentleman's qualifications?

Mr. Barnitt—No, his qualifications are admitted.

Q. Doctor, where did you study medicine? A. I graduated from the University of Michigan, in 1879,—a postgraduate course in New York University, and stayed a short time on Blackwell's Island. I was in private practice, and since June, 1881, my special and my entire work had been devoted to diseases of the mind, mental and nervous diseases.

Q. And when was it your duties as county physician,—what did they consist? A. It was the examination of and disposition of the insane population as they would occur from time to time in Hudson County.

Q. And have you ever been affiliated in any capacity with any other hospital? A. I have been visiting psychiratrist and neurologists to the North Hudson Hospital; I have been psychiatrist to the Jersey City Hospital.

Q. Have you ever given medical testimony in any trial? A. A great many; a great many.

Q. Over what period of time? For the past 50 years.

Q. And has any of that testimony had to do with the question of insanity? A. Yes, nearly all those cases,—mental cases.

Q. Were you ever connected with the office of the Prosecutor of the Pleas of Hudson County? A. For more than 20 years, I have done the work for the different prosecutors of Hudson County, or persons charged with crime whose defense was insanity, I have examined; made my report to the Court, and they acted accordingly, according to what report I would give them. That is for over 20 years, I still do that work yet.

Q. Have you been connected in any capacity, with any State institution? A. I was a member of the Board of Managers of the State Hospital, at Great Stone Park, Morris Plains, for three years.

Q. Doctor, do you consider yourself familiar with the care and treatment of insane persons in both State and County institutions? A. The greater part of my life I have lived in their midst, I have seen a great many, and have had every opportunity to know their personality, and to know their diffeffrent types of mental operations.

Q. How many insane persons have you examined during your professional career? A. Well, I have over 1250 in my institution today; I have examined for nearly half a century an average of three or four a day, a very simple mathematical calculation will convince you that I have examined more or less 50,000 or more insane persons, and when I say more or less, I mean more than I do less.

Q. Have you examined the defendant in this case, Bonaventura Nardella? A. I have.

Q. Where? A. In the Hudson County—I am so use to Hudson County I say Hudson County—in the Passaic County Jail, on October 16th, this month.

Q. Referring to the examination, what examination did you make? A. I made a complete neurological and psychiatrical examination of that man on that time and that date.

Q. And how was this done? A. The neurological examination was made, the man was stripped and appeared nude. I took his reflexes and compelted the neurological examination. After that I started a mental examination that ended after two and a half hours and I left him.

Q. Who was present during that examination, doctor? A. Counsel, yourself and associate, some representative from your office and some official of the county jail. We started without an interpreter but an interpreter came a short time after the examination started.

Q. Doctor, you said you examined the reflexes; what reflexes did you examine? A. I examined the eye reflexes and they were normal; the patella reflexes, which the knee jerk and which is the striking below—at the knee joint here (indicating) and you ought to get a response. That was absent in this man. He had no patella reflex.

His plantar reflexes, one leg, one foot was different from te other. When you take a sharp pointed instrument and rub it along the sole of the foot the muscles of the toe will contract. They would contract on one foot and would not in the other. Now, my notes are lost in the shuffle here

and I can't tell you which leg was right and which leg was wrong, but there was a decided difference in both legs.

Q. Do you remember whether or not the reflexes were present—what ~~do~~ did you call them, plantar? A. Yes, plantar.

Q. Do you recall definitely whether or not those plantar reflexes were present in both legs? A. I know positively they were absent in one leg and present in the other.

Q. What does the absence of these reflexes denote? A. That is an indication of a nervous or mental disease in the central nervous system, either in its formulative—well, it is something I don't like to see, no man likes to see it; they like to see them normal, but sometimes they don't mean anything, but you like to find them. It is a form of mental disease and you feel better if they are normal, if they are abnormal you have to take them as they come.

Q. After you completed the neurological examination what did you do? A. Asked him questions of his early life, the time he was married, what time he came to this country and the incidents and accidents that happened to him while he was in this country. I delved into his habits and personality and took me some time, sufficient to satisfy myself that I made a thorough examination.

Q. And what did you find? A. I found that he was suffering from a chronic and incurable form of mental disease known as paranoia.

Q. What did you base that opinion on? A. He had what I discovered to be a delusion of the unfaithfulness of his wife, that had existed for

years. He could give no logical basis for those morbid suspicions. He would be watching he said, and people would pass by the house smiling, and he thought that they were trying to have an opportunity—trying to meet his wife for immoral purposes. He said that two of his children were born in Italy, one of them, the younger child born in Italy, he denied the paternity of that child. These morbid suspicious ideas that he had he had for years, and, like all paranoics, at the incipiency of the disease they involve the plural number.

At first he had the idea that everybody, as he expressed it, was having illicit associations with his wife, and then as the disease progresses, which is characteristic, typical of that disease—as the disease progressed it centered down to one delusion, a mixture of both. That one delusion was that his wife's father was having illicit intercourse with his own daughter—his wife. We pressed on that question, interrogated him to get the truth of it and get the facts of it.

He could give me no reason. He would say that he would be lying in bed pretending he was asleep, and that his father-in-law would come and they would have whisperings. The father-in-law would say, "Be careful. I think that he is suspicious. I think he knows what we are doing. Don't let him find this out."

Well, he said his wife would come then and then she would walk out again. He would pretend he was asleep, but he was not asleep. From those whisperings, which to me is a typical case of the hallucination of hearing, from those whisperings which did not exist—what are called false hearing,

hallucinations of hearing due to an erroneous impression, an erroneous preception in hearing in his brain. Nothing but an abnormal and diseased mind will have hallucinations of hearing, and that, combined with his morbid suspicions of his wife's infidelity, particularly that part where her own father was involved, was a burning sore in his mental operations, of years standing.

He must have had a very unhappy life. Equally true, the wife's life must have been very unhappy, if she was innocent of that thing, being accused of and him living with the woman capable of doing such an unbelievable act. Why, the morbid mental torture that a man will go through in circumstances like that, ended, of course, as they always do—in the tragedy.

This man was all right, probably safe to make a living for himself and support his family, until he came to that time when the delusion of his wife's own father being intimate with his wife. That was the time that man should have been sequestered. That is the time he was a menace to society.

Mr. Barnitt—If your Honor please, I ask to have it stricken out.

The Court—It will be stricken out.

The Witness—Pardon me. I don't want to say anything I haven't any right to say.

The Court—Just give us the results of your observations, doctor.

Mr. Barbour—I ask an exception.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

The Witness—Stop me if I go beyond the bounds. I don't want to.

Mr. Barnitt—You have been in trials before, doctor.

Q. All right, doctor, proceed. A. I think I have stopped now. I think I have completed my testimony.

Q. Doctor, as a result of your examination have you formed an opinion as to the soundness or unsoundness of the mind of the defendant? A. Oh, he is an insane man, if I have ever seen one.

Q. Did you hear the testimony, doctor, of the nailing of the windows because in the summer time it is warm, and he would put the chairs in front because the veils would wave, and that when he was inside the veils were still, and when he wasn't there the chairs wern't there, and that that was probably a signal that she had; that he nailed the windows not to let the wind blow the veils, and to put the signal out? A. I heard that.

Q. You heard that? A. I did.

Q. In your opinion does that indicate anything? A. Oh, it is just the way all paranoics misinterpret things, an erroneous idea, an illogical method of reasoning. They take things like that as signs of something wrong, which they have no right to judge. It is a lack of judgment that they have. All paranoics do that.

Q. Did you hear the testimony, doctor, that in 1919, back in Italy, after he returned from the army he said he became suspicious because the people nearby would look at him, look at him cross and say words, that he heard them talk suspiciously

against him, but he didn't hear them utter any words? Did you hear that? A. I did.

Q. Does that indicate anything to you? A. The same condition, misinterpretation, false beliefs, with no logical basis.

Q. Did you hear the testimony that he said people would look at him and laugh and that he suspected they were talking against his wife, that he could hear them talk but could not distinguish what they were saying, could not hear what they were saying, and that the reason he thought they were talking about his wife was that they would always look at him? A. I heard that.

Q. Did that indicate anything to you? A. That would indicate to me that he had hallucinations of hearing, hearing voices that did not exist.

Q. Did you hear read, doctor, from the statement taken in Paterson police headquarters on August 8th of this year, from the defendant—did you hear read from that this question, "When you went out on the street, Ben, did you ever notice people looking strange at you," and his answer, "Yes."? The final question, "Did you have suspicions that they were making remarks about you," and his answer, "Yes." Did you hear that read from the statement? A. I did.

Q. And did that indicate anything to you? A. The same vaporings of a paranoic, of the same man.

Q. With these things which have been described, over a period of years, taking that into consideration, Doctor, and from your examination what would be the effect upon this man upon his mind? A. Oh, of course, there is no doubt in

my mind that that man's condition being in a state of mental disorder and it is a—he becomes whether sane or insane for so many years damaged in brain. This disease is always progressive; it never gets better; the disease starting from its inception is extensive and progressive and as they grow old it gets worse and worse and they get to a point where they are injurious and a menace to society, and that is this man's history according to my examination and from what I know about insane people.

Mr. Barbour—He testified, Doctor—I withdraw that.

Q. Did you hear the testimony, doctor, of the defendant, that for some half or three-quarters of an hour, there was darkness before him, at the time of the tragedy? A. I did.

Q. What did that indicate to you, if anything? A. Well, that gave me a great deal of concern. My mind is not thoroughly set on that. He described what is called a psychiatric epileptic equivalent, which is different; it is an attack of epilepsy and explosion of muscle, and loss of consciousness, an epileptic equivalent is an explosion of ideas with loss of consciousness, but in reading the confession that he gave to the Prosecutor, he did not seem to have any loss of memory. What happened there, and his confession about what happened at that time was so clear that that kind of eliminates to me that epileptic equivalent, what happens in an epileptic equivalent, a man don't remember—impulse of tenses of a kind happened

and he would commit crime and have no memory of it; but I want to be fair with the Prosecutor and explain things as they come to me and as they really are. I may be going beyond bounds in saying that, if he had the equivalent at the time he struck that woman, he would not be able to tell how he struck her, but it looks to me it is an equivalent, showing that he had got other things besides this insane warped brain.

Q. Doctor, what is an episode? A. Oh, that is a sudden attack, people get into an attack of uncontrollable rage and acute frenzy, and they do things that they would not do if they didn't get into that rage and then afterwards they get sorry.

Q. Doctor, are paranoids subject to episodes? A. Oh, yes.

Q. What is your opinion as to whether this man suffered an episode or not? A. I think that is an episode. He has had an episode in the description that has been given me, and in his life he evidently has had several of them—striking his wife, and giving her a black eye, and the family discord, one thing or the other as they arose you could not expect any family to live like that without discord.

Q. Everything summed up from your examination and from what you heard, of the testimony, Doctor, what is your opinion as to the sanity or insanity of this defendant? A. He is an insane man.

Mr. Barbour—That is all.

Cross Examination by Mr. Barnitt:

Q. Doctor, you spoke of reflexes, and you made an observation of these reflexes, at the time you made your examination at the County Jail. Are reflexes necessary for a diagnosis of paranoid? A. Not absolutely necessary. They come and they don't come, but we take them just to make a complete examination.

Q. What is paranoia? A. Paranoia is a chronic disease of the mind, characterized by fixed systematic delusions with the intelligence in no way affected. This man shows that. He described, I was interested in the confession you read off yesterday, he described that thing so well, but when you take them on their delusions then you discover their mental attitude, their mental demeanor, but the paranoid has intelligence, is in no way affected so that the average layman would talk to a paranoid and think he was perfectly sound mentally.

Q. In speaking about the statement he made with relation to the suspicions of his wife. You formed a conclusion after discussing that that he was suffering from a delusion? A. Yes.

Q. Is that the only delusion you discovered? A. That and the delusion of her own father having sexual relations with her.

Q. That were the suspicions he had? A. No, he was positive.

Q. But it was a suspicion? A. He was positive. He said he heard them say they had relations.

Q. But he didn't tell you that he saw them have relations? A. No, but he told me he heard them whispering.

Q. He told you he was suspicious of the fact his wife was having illicit relations with her own father? A. Yes.

Q. So I take you back to the first remark I made, with reference to the delusion. There was only one delusion then, that you observed he was suffering from, is that right? A. Yes.

Q. Did he have a reason for his suspicions in the statement made by his aunt in Italy that his wife was going around with other men? A. He didn't tell me that.

Q. In paranoia, doesn't a delusion arise spontaneously? A. As a rule.

Q. Does a paranoid ever appear sorry for a crime committed by him? A. Some do, some do not.

Q. What can you say as to your observations of the demeanor of this defendant on the stand? Did you have occasion to observe him? A. Yes, sir, I have.

Q. When I showed him the picture of his wife in the coal bin? A. I did.

Q. What reaction did you have to the emotional effect on him to the suggestion I made to that photograph? A. I thought he showed feelings of remorse.

Q. Would you say a condition such as he expressed in that manner, indicated to you, that he was a paranoid? A. Yes, that doesn't change my opinion a bit.

Q. That wouldn't make any difference, then? A. Not the slightest.

Q. What his mental reaction was? A. No. See there is a difference. There is a difference. I

have seen him a short time after the murder, and he has been confined to the County Jail, where he was gett ing treatment, I say treatment, there was freedom from excitement. I saw him on the 16th, and there has been a slight amelioration in his condition now, and the time that this murder was committed.

Q. What does amelioration mean? A. Oh, you know what it means.

Q. No, I don't. Maybe the jury doesn't know. I don't know what it means, I would like you to tell us? A. It means there has been an improvement in his condition.

Q. You have been able to observe that since you saw him? A. I compare your examination which I think was a very good psychiatrical examination and I compare your examination with my examination. Lots of things he told you he didn't tell me. I understood in your examination, he said he was glad, and wasn't a bit sorry. He doesn't say that to me. He didn't say that. But that doesn't change my opinion. Of course, remember, I am only giving you an opinion.

Q. When you form your opinion on October 16th, you didn't know what my examination was, did you? A. No.

Q. When did you change your opinion? A. I didn't. Don't get me wrong, I didn't change my opinion.

Q. I mean, as to the condition of improvement, you have described? A. Oh, when I read your confession.

Q. You mean from October 16th, until yesterday, you have been able to see an improvement?

A. I haven't changed my opinion, let's get that right.

Q. Before continuing with some other questions I have in mind, I want to ask you. You call this man an insane person? A. Yes, sir.

Q. Is there a distinction between being medically insane and being physically insane? Yes, or no? A. Well, now you are getting down to cases.

Q. Is there? A. There is.

Q. Doctor, in you ropinion, did this defendant know when he committed this crime on August the 2nd, 1930, the difference between right and wrong, yes or no? A. He did.

Q. In your opinion, on August the 2nd, 1930, from the history of the case as expressed to you, and from your observations of the defendant his reactions and such other matters as you have observed them, as they have been expressed, would you say he knew the quality of his act when he committed that crime on August 2nd? A. Well, now—

Q. No, did he, Doctor? A. He knew the major quality.

Q. Do you know, Doctor, under the law of this State, with reference to the examinations made of you, during the course of trials, bearing on the subject matter of insanity that the law does not recognize as a criminal defense to a criminal charge a form of insanity in which the defendant knows the act which he has done, is wrong, notwithstanding he is unable to refrain from committing it?

Mr. Barbour—I object to it on the ground that the Court is here to instruct the jury on the law, he is a doctor and he is not supposed to know the law.

Mr. Barnitt—He has testified, your Honor, with reference to the insanity of this man, which is interposed by the defendant as a defense to the commission of this crime. I urge the question.

The Court—You may answer it, yes or no.

The Witness—You will have to repeat that.

(Question repeated by Reporter.)

Mr. Barbour—Now, if your Honor please—

The Court—I will permit the doctor to answer, "yes or no."

The Witness—I can't answer that question. My ignorance may be great, but I—

The Court—All right, Doctor, you are not supposed to know the law, you are supposed to know medicine.

The Witness—That is what I wanted to say, your Honor, but you said it for me. Thank you.

Q. You know why you are testifying here? A. What is that?

Q. You know why you have been brought here to testify, do you? A. Oh, I think so.

Q. Now, did he know the quality and kind and nature of his act, Doctor? A. He did.

Q. Is there any question about that? A. I haven't any.

Q. Now, will you explain to the jury, and his Honor the distinction between medical insanity and legal insanity? A. You do that explaining. You are a lawyer. You are asking me lawyer's questions, and I am not going to answer lawyer's questions.

The Court—All right, now, Doctor, just a minute.

Q. Doctor, you said on your direct examination, that this man was suffering from mental insanity?

Mr. Barbour—Just a minute, that is not the testimony. He gave a plain answer that this man was insane, and didn't differentiate between medical and legal.

The Court—But he later said there was a distinction between the two. He may answer it.

The Witness—I don't get you, your Honor. I don't think I said that there was a distinction between medical and physcial, the physical condition. I don't know what the law is.

Q. Is there a distinction between medical and physical insanity? A. You are not clear with me, or maybe I am not clear with you on that.

Q. You never heard of physical insanity before? A. Oh, I heard lots of things.

Q. Did you ever hear of legal insanity? A. I did.

Q. What is the difference between medical and legal insanity? A. Make yourself clear. I don't get what you mean.

Q. Will you explain to the jury, the difference and please don't criticize me. A. I know, but I want to understand your question.

Q. You understand that, don't you? A. I do not.

Mr. Barnitt—Repeat the question.
(Question repeated by Reporter.)

A. You don't mean that question. Let's get this down to cases. Suppose we call it medical and legal, how is that?

Q. Will you explain to the jury, the difference between medical and legal insanity? A. Yes. People in charge of institutions for the insane know this, that any individual in an insane hospital when he does something wrong unless he has no mind whatsoever knows that he has done wrong, and that is demonstrated by the fact that if they violate some rules, if you deprive them of certain privileges they won't do it again. To find an individual insane who don't know the difference between right and wrong, unable to differentiate between right and wrong, he must have no mind at all. As I understand the law and your Honor will correct me, if a man commits an act, an atrocious crime like this, for instance, and knows when he commits that crime, that he is doing wrong, he is ameniable to the law, and the punishment therefrom.

Q. I think you said in your opinion he knew he done wrong? A. Yes, I did. I put that in my answer.

Q. At the time he did it? A. That goes, yes, sir.

Q. No question about that? A. Not the slightest.

Q. Does an insane paranoid ever become cured? A. I haven't ever seen one, they have improved, I have seen them better, seen them improve, but I have never seen one of these fellows that came to me, that I could say was cured. Probably your expert there has had better luck than I have had.

Q. Who are you referring to? A. Dr. Buehling.

Q. Did this defendant know the difference between right and wrong, with reference to the dillusion you have made reference to? A. I don't know, the workings of that man's mind. I don't know, perhaps he did. But I don't know what the conditions were in this man's mind, that is something I cannot answer.

Q. The point I make is, if he did know it, you couldn't know it, in order to state that to the jury? A. No, I am not certain on that point, and I don't want to say anything I am not absolutely certain about.

Q. So you cannot tell the jury, can you? A. No, I cannot.

Q. What kind of a memory has a paranoid, a sluggish one, an active one? A. He might have a very active one.

Q. And aparanoid's memory has evidenced by his answers to questions on the witness stand, is of some assistance to you, in your diagnosis of paranoid? A. Yes.

Q. Doctor, besides paranoia and epilepic equivalent, has the defendant any other form of mental disease? A. I don't know of anything more; I don't think he has.

Q. Doctor, is there such a thing as sarcasm evidentual in a paranoic? A. I don't know what you mean.

Q. Well, you know what I mean by sarcasm? A. You will have to explain yourself; I know what sarcasm means, yes.

Q. Would your observations of this man lead you to believe that his condition as you have expressed it was based upon anything which would prove an indication as expressed by him of sarcasm? A. I am afraid you will have to explain yourself.

Q. You don't understand? A. No, I don't understand that.

Q. Do you know Dr. Beeling? A. Very well, for years I have known him and I know him to be a good capable man, a man that knows his business.

Q. Has his opinion ever been expressed to you? A. It certainly has.

Q. You rely upon it? A. We have met together many times, and we have been against each other.

Q. And you have heard opinions expressed by him on insane persons? A. Yes sir; I have, I have been with him and I have been against him

and sometimes we agree and sometimes we don't. Doctors don't always agree, lawyers don't always agree and even judges don't agree for that matter.

Q. With reference to the fact as you have expressed it that this defendant knew the difference between right and wrong, you and Dr. Beeling have agreed upon that, have you not? A. I don't know that we have.

Q. Why, doctor, you talked to Dr. Beeling about it, did you not? A. No, I can't say that I did. You have an erroneous opinion of that.

Q. Well, what did you say to Dr. Beeling about that? A. I said to Dr. Beeling I am going to be on the level with this case and I don't think but what we will agree.

Q. What did you mean by that? A. Just what I said.

Q. Did you mean that you think you would agree with him? A. I knew his expression would be such that—

Q. That you would both think of making this man anything other than a paranoic? A. Well, that, yes.

Q. And also that you knew he knew the difference between right and wrong; was your opinion such that you concluded that you would agree? A. That is my opinion.

Q. You know Dr. Dowd, do you? A. Yes, sir, I know him very well. Another good man.

Q. An authority on the subject of insanity? A. Yes, sir.

Q. And do you know Dr. Collins of Greystone Park? A. Yes, one of the best men in this state;

a good friend of mine; sorry I am against him, but I have got to judge this case as I see it.

By Mr. Barbour:

Q. Doctor, you told the prosecutor you know why you have been brought here to testify; will you now tell us why you were brought here to testify? A. I was asked to come here and examine into his state of health and mental condition, the prisoner's, and so report.

Q. By whom were you employed, do you know?

Mr. Barnitt—I object to that.

The Court—Objection sustained.

Q. Regardless, doctor, of the difference between medical insanity and lega insanity, what is your opinion as to this man's sanity?

Mr. Barnitt—The doctor has already said he was insane.

Mr. Barbour—That's all. All right.

The Defense Rests.

STATE'S TESTIMONY IN REBUTTAL

DR. LAWRENCE M. COLLINS, was called as a witness in behalf of the State, and being first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Dr. Collins, by profession what is your business? A. I am a physician.

Q. A medical physician? A. A medical physician.

Q. Practicing as such? A. I am.

Q. How long have you been conducting the business of a medical doctor? A. Eighteen years.

Q. Have you made any study of mental diseases? A. For the past 14 years.

Q. Are you at the present time associated in any mental disease hospital? A. I am the assistant clinical director of the mental disease and senior resident physician of the New Jersey State Hospital at Morris Plains, Greystone Park.

Q. And at that institution do you have occasion to examine persons in order to determine the sanity of such persons? A. Many hundreds.

Q. Can you explain to the jury from your experience at that institution how many cases, on an average per year, you have examined in order to determine the sanity or insanity? A. In the neighborhood of perhaps five or six hundred.

Q. Per year? A. Per year.

Q. And at the present time are you carrying on the same work at that institution? A. I am.

Q. Doctor, on August the 8th, 1930, at the request of the prosecutor, did you have occasion to sit in at a time when I examined the defendant in the Paterson Police Station? A. I did.

Q. And can you state approximately how long you remained at that examination? A. In the neighborhood of three to three and a half hours.

Q. And did you at that time have occasion to observe the answers made by the defendant to questions put to him? A. (No answer).

Q. Did you? A. I did.

Q. Did you at that time have occasion to observe the defendant's demeanor during the entire time that such examination was being conducted? A. I did.

Q. At that time, doctor, was there any physical examination conducted by you, other than your observation of the defendant? A. None whatsoever.

Q. Subsequent to August the 8th did you have occasion to make an examination of the defendant at the county jail? A. I did.

Q. And can you state whether you made such an examination at that institution on more than one occasion? A. I did.

Q. How many occasions? A. Twice.

Q. Do you recall on August the 12th making an examination of the defendant at the county jail? A. I did.

Q. Do you recall whether any other physician was with you? A. Doctor Dowd.

Q. This gentleman here (indicating)? A. That is him.

Q. Who is Dr. Dowd? A. An alienist from Newark.

Q. Do you know who requested you to have Dr. Dowd at that examination? A. You did.

Q. Do you know who requested you to attend the examination on August 8th in the Paterson police department? A. You did.

Q. Do you know for what reason you were requested? A. To make an examination of this Bonaventura Nardella.

Q. And do you know for what reason Dr. Dowd was requested to make the examination with you on August 12th? A. For the same reason.

Q. For what purpose? A. To assist me in the examination.

Q. For what purpose? A. To make the mental examination.

Q. For the determination of what? A. For the determination of his sanity.

Q. Yes. Do you recall the date subsequent to August 12 that you made a second examination in the jail? A. September 29.

Q. Do you recall whether any other physician was with you at that time? A. Dr. Buehling.

Q. This gentleman here (indicating)? A. That is him.

Q. Who is Dr. Buehling? A. He is an alient from Newark.

Q. And do you know for what reason Dr. Buehling made an examination with you on this subsequent date? A. To make a mental examination.

Q. Now, doctor, with reference to the three examinations that you made, did any of those examinations include a physical examination? A. They did.

Q. How many? A. The one with Dr. Dowd and I.

Q. And what did that consist of, stripping the defendant? A. Stripping the defendant, going over and making an examination of his heart and lungs, the respiratory system, the cardiac system, the abdominal and digestive system, of the teeth and tonsils, a neurological examination, the endocrine system, that is, the thyroid, and of the pituitary gland. I found—

Q. With reference to all the examinations that you made, as you just related, was it necessary in your opinion to make all those detailed examinations in order to pass upon the question of this man's sanity? A. I would say it was, always.

Q. Now, will you state to the jury on what your observation was—what your reaction and your conclusion was with reference to those examinations? A. The physical examination revealed nothing to my mind of an organic disturbance. His cardiac, that is, his heart and his lungs and his kidneys, were negative. He showed no evidence of disturbance as far as the teeth were concerned, his tonsils and so forth. The endocrine glands, that is the thyroid, the pituitary, showed no evidence of disturbance. He had a blood Wassermann made by a pathologist of St. Joseph's hospital. That was for syphilis. This pathologist also made at my request an examination of the spinal fluid. The blood Wasserman for

syphilis was negative, and the spinal fluid was negative for syphilis.

Q. What did that indicate with reference to this possible condition? A. It was negative. It did not indicate anything.

By the Court:

Q. That he did not have syphilis? A. That he did not have syphilis.

By Mr. Barnitt:

Q. Go ahead, doctor. A. The only thing I found wrong was that he had three fingers off his left hand, and he had an ankylosis, that is, a stiffening of the index finger of his left hand. But the neurological examination embraced, as Dr. King said, an examination of the eyes. The pupils would equally react and contract, react to light and accommodation. I tested them for distance and for light. They were equal. They contracted and they dilated. I examined his patella reflex.

Q. Did it respond? A. That did respond in my examination.

Q. Go right ahead. A. I made no further examination neurologically. I found no evidence which would in my opinion suggest further examination.

Q. Go ahead, doctor. A. I then went ahead and I made a mental examination. That mental examination was conducted by Dr. Dowd and I, extending over a period of at least three hours to three hours and a half. We examined, observed, his attitude, his general behavior when he

came into the examining room in the city jail. He was unshaven; he was unkempt. His face was drawn and worried. He had an apprehensive look, and he was handcuffed to an officer. He sat down and he had a bewildered expression. They removed the handcuffs and we told him why we were there. We told him we were physicians and he became more composed. We told him we were there to examine his case and we were not to harm him, and he became more quiet. He evidently was under considerable nervous tension, as he was restless and he wrung his hands. After we told him we were doctors he became more quiet.

As the examination progressed he became slightly irritable, because we asked questions that he didn't like, and his emotional tone, his feeling throughout the entire examination was a normal one. He would cry at the most appropriate time. If we would ask him a certain idea, especially relating to his home and family, he would cry, which was a natural reaction. If it had not been he would have remained placid, stolid, and indifferent. But the reaction was perfectly normal.

Of course, this examination was carried on with the aid of the interpreter, but at times he attempted to voluntarily reply in English and to answer in English, but then he soon dropped into Italian and the interpreter would re-translate it for us.

I examined his train of thought, that is, what he said. It was normal, productive. It flew rapidly. He answered questions promptly and relevantly and he showed a logical progression always in the associations of his ideas. Then we examined his mental

trend, that is, the content of his thought, what was bothering him.

I asked why he was there, and he said, "Because I killed my wife." I said, "You killed your wife? Why did you kill your wife?"

He said, "Because there was something wrong," and I said, "What was wrong?"

Then he said, "Well, she wasn't a good woman."

And then I followed the question up and I said, "For what reason wasn't she a good woman," and he did not know. So then I asked him if he had any names and he said no. I said, "Where you worked did anybody bother you? Did you think that people were following you or anything like that?" He said, "No, sir, everybody was good. I was a good friend to everybody; everybody a good friend of mine. So then I asked him if his wife wasn't a good woman, did anybody ever tell him that she wasn't a good woman. He said, "No."

"Well," I said, "Why do you think she wasn't a good woman? Did you ever take any means to find out that she wasn't a good woman?" He said, "'No."

"Well," I said, "Then that was a peculiar thing, wasn't it? Did you ever ask the neighbors?" He said, "No."

I said, "Why did you think she wasn't a good woman?" He said, "Well, I just thought that." I said, "How long have you thought that?" He said, "Three months."

I said, "Three months you have been suspicious of your wife?" He said, "Three months."

"And it has not been any longer?" He said, "No."

On a previous examination when I examined him or when the prosecutor interrogated him he told us

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that since the war he had been jealous, so I asked him that, why he had changed, and he said, "Well, I don't think about it." So I then asked him as to hearing false voices, that is, hallucinations, as doctor King has spoken of.

He said, "I never heard voices. I saw the little children; I hear my wife talk. I hear those voices."

"But," I said, "When you are alone in a room by yourself have you ever heard voices? Did you ever suspicion that people were talking when no one was around?" He said, "No." He said, "The only voices I hear people talk." I asked him in regard to ideas of hypnotism, as many of these patients will tell you that they are under some willful influence. He denied it, said nobody had any control of his mind and nobody had any influence on his body. I asked him then if he thought that he had any self-accusatory ideas, as they will sometimes tell you, and this he absolutely denied. He denied that anybody was punishing him, that God was punishing him, and so forth. I was unable to detect or determine any evidence of a psychosis, that is, psychotic ideas or delusions. He was suspicious and he was jealous, but I was unable to determine any evidence of any delusions.

I then examined his sensoria, that is, was he oriented, did he know the time, the place, his person and surroundings. He was perfectly oriented in all spheres.

I then asked him with regard to the remote past, his boyhood in Italy and his birthplace, his schooling, his love affair with his wife, his remote experiences, and so forth, and he had an excellent memory on the remote past. His mind was very acute and

very vivid of everything that had happened early in his life.

I then asked him with regard to his recent life and I went into what had happened in the last few months of his life, and he had a very good grasp. He told me of the murder and of the weeks subsequent to the murder, how he did the murder, what happened from the time he went to Syracuse up until the time of his capture by the police and his return to Paterson. I examined him in the intelluctual spheres and I found no disturbance. He showed no evidence whatever that would lead me to believe he had an organic or mental defect.

His calculation was good, in keeping with his early education and his advantages. I did not determine his intelligence rating, because I didn't think it was necessary. He was acute mentally. He showed no evidence of mental deficiency.

Q. Doctor, did you form an opinion as to whether this defendant was sane or insane? A. I did.

Q. What was the opinion? A. That he was sane.

Q. Doctor, on what did you base this opinion? A. On my general observation of his attitude and behavior during your interrogation; at the examination of Dr. Dowd and myself, which occupied a period of three hours or three hours and a half, and my examination with Dr. Buehling which also occupied a similar period.

Q. In your opinion, doctor, did he know the quality and nature of the act he was doing? A. It was my opinion that he did.

Q. And did he, in your opinion, know the difference between right and wrong at the time he murdered his wife? A. He certainly did.

Q. Doctor, Dr. King has said that it is his opinion that this defendant is a paranoic. What have you to say as to that? A. I have all the deepest respect for Dr. King's expression of that opinion, but I will have to disagree with him. I think it was not a case of paranoia. In my opinion, a paranoic is one who has a fixed suspicion, persecutory delusions, has dominant ideas, grandiose trends, which are logically elaborated with due regard to reality, but as far as paranoia is concerned, it is the rarest of rare forms of mental disease, and I have never seen one in my own experience of many thousands of cases.

Mr. Barnitt—That is all.

Cross Examination by Mr. Barbour:

Q. Doctor, you have never seen a paranoic? A. I have never seen a case of paranoia.

Q. And how would you recognize that paranoid, if you saw one? A. Well, it would be very difficult for me to; it would occupy a period of study for many months.

Q. Doctor, you said, did you, that his reflexes did respond? A. Yes; they did at my examination.

Q. Doctor, will you take the defendant now and show us how you examined his patellar reflexes? A. I will.

(The doctor then left the stand for the purpose of testing the patellar reflexes of the defendant.)

The Doctor—What is your name?—don't hold it stiff; he is holding it stiff.

(The doctor upon tapping the knee of the defendant says, "That one reacts.")

Q. Will you please, show us, on the right leg, the reflex action you got there?

The Doctor—How do you feel?

The Witness—Not good.

(Doctor at the same time tapping the right knee of the defendant.)

Doctor—It is not necessary to get a reaction of this knee down. When I hit his patellar, I get the response up here, in the muscle; it is not as acute as the other, but I do get a contraction of feeling of my hand. When I hit this ligament—it is not necessary to get the kick. He is holding that. He is absolutely responsive to the thing.

Q. Doctor, did you examine him for his plantar reflexes? A. No, I did not.

Q. You didn't? A. No.

Q. What does a failure of the patellar reflexes to respond, indicate? A. Not a thing; not in this case.

Q. Does it in any way indicate anything? A. Absolutely, nothing.

Q. And what does it indicate in other cases? A. Evidence of an organic brain disease, such as syphilis and tumors.

Q. Does a failure of the plantar reflexes to respond indicate anything? A. Yes, it does; it indicates evidence of an organic disease.

Q. Of what, doctor? A. Of the brain.

Q. Of the brain? A. Yes.

Q. When you say that this man is insane, are you following the legal definition of insanity, or the medical definition? A. I am following them both.

Q. You are following the two of them? A. Yes, I am following both; I was trying to determine if the man was sane.

Q. And what do you mean by insane? A. Well, insanity is a disease of mind, where there is a departure from the normal way of things and acting over a prolonged period of time.

Q. And as part of your definition, or your opinion of insanity, is it necessary that there be a failure to distinguish between right and wrong, before you say a man is insane? A. Yes.

Q. So that you say then, Doctor, as long as a man can distinguish between right and wrong, he is sane? A. Legally.

Q. Legally? A. Yes.

Q. Doctor, is it not true, that a man may in fact be sane and yet be able to distinguish between right and wrong mentally? A. No, sir; not in my opinion. If he is insane, he is insane.

Q. Then why did you say legally, that it was not necessary that— A. It was only that I examined him—it was because that term was brought up here.

Q. But for a man to comply with your definition of insanity, he must be unable to distinguish between right and wrong, is that correct? A. That is my definition.

Q. You are connected with the State Hospital at Gray Stone Park for the insane? A. Yes, sir.

Q. Have you any people confined there as insane persons who can distinguish between right and wrong? A. Perhaps we have cases of sini-neurosis—they are classified as incompetent, and incapable and classified as insane.

Q. Yet they can distinguish between right and wrong? A. Yes; if it is in its incipiency.

Q. Even though you have never seen a paranoid, you have made some study of them, have you? A. I have made a great study of paranoia.

Q. Do you know whether or not they can be suffering from paranoia and yet distinguish between right and wrong? A. Yes.

Q. They can? A. They can.

Q. So that there is nothing inconsistent between a distinction between an ability to distinguish between right and wrong and a diagnosis of paranoia, is there? A. No.

Q. Doctor, is it not a fact, that people suffering from paranoia, have in fact very often no evidence of intellectual impairment? A. That is true.

Q. And people suffering from paranoia, can remember perfectly well things covering practically their whole life? A. That is true.

Q. Doctor, you were present, I believe, on August 8th, at Paterson police station, when this defendant made this statement? A. I was.

Q. And did you hear him answer at the end of his statement a question:

"Q. When you went out on the street, Ben, did you ever notice people looking strange at you?" Did you hear his answer to that question? A. I don't recall that.

Q. But you were present? A. Yes, and I asked him a similar question, and he told me that he did.

Q. And did you hear the question:

"Q. Did you have suspicion that they were making remarks about you?" A. Yes.

Q. And what did he tell you? A. He said he thought they did.

Q. Did that indicate anything whatsoever to you as an alienist? A. Of course, it did.

Q. What did that indicate to you? A. It indicated to me that I made a more thorough study of the case.

Q. Is that what it indicated? A. When I asked him more questions, leading up to it, he changed his mind so many times, that it didn't indicate anything at all in the end.

Q. At what time? A. At this time.

Q. Did you continue to ask questions from then on? A. I did.

Q. Questions that don't appear in this statement? A. I didn't make those lists of questions.

Q. At the end of the statement, which was read in evidence here, yesterday, the questions which I have just read to you, and which you said were answered in the affirmative, that is, that people looked strangely at him, and that he had suspicion that they were making remarks about him appear at the very end of that statement? A. Yes.

Q. And then there were other questions asked, were there? A. There were.

Q. And other answers made? A. Other answers were made.

Q. When these two particular questions were put and answered in the affirmative, what did it indicate to you? A. It indicated that I should continue further along that line of questioning.

Q. Why? A. Because I suspicioned there might be some jealousy on his part.

Q. It indicated there might be some disarrange-

ment of the brain or mind, did it not? A. That is the reason I followed it up.

Q. That's the reason you followed it up? A. That is true.

Q. You say he told you he never heard voices? A. He did.

Q. Did you hear his testimony this morning, Doctor? A. I heard part of it; I didn't hear all.

Q. Did you hear his testimony, reading from page 448.

"Q. Didn't you know when you left Italy, that she was pregnant? A. Yes, sir.

"Q. Well, what were your suspicions about? A. Suspicious because the people nearby would look at me cross, and say words.

"Q. Way back in 1920? A. No, in 1919.

"Q. When you returned from the army? A. Yes, sir.

"Q. Did you hear them say anything? A. I heard them talk suspiciously against me.

"Q. Did you hear them utter any words? A. No."

Is that Doctor, any evidence to you, that he heard voices? A. None whatever. He said he didn't hear them.

Q. Is the fact that he said he heard them talk suspiciously about him, but did not hear them utter any words, evidence of anything of a disillusion? A. Not to my mind.

Q. Evidence of hallucinations of the hearing? A. Not to my way of thinking.

Q. Doctor, did you hear the testimony of this defendant, this morning, that he never saw anybody do anything to his wife? A. I didn't hear that; I was not here then.

Q. The defendant testified this morning, reading from page 468: In answer to the question, "Q. Did you ever see anybody do anything to your wife? A. Never; I didn't see anything.

"Q. Did you ever see people talking about you? A. Against me? No."

Then he was asked further down on the same page,

"Q. Did you ever see people staring at you? A. They would look at me and laugh, they were suspects.

"Q. What do you mean, 'suspects'? A. Suspect that they were talking against my wife.

"Q. Could you hear them talking? A. I could hear them talk, but I couldn't distinguish what they were saying—couldn't hear what they were saying.

"Q. What made you think that they were talking about you, about your wife? A. They would always look at me.

"Q. And that is the only reason? A. Yes.

"Q. You never heard exactly what they were talking about, did you? A. No, sir." Does that indicate anything to you? A. I questioned him along similar lines and it indicated to me he had an inherit defect of jealousy which was projected by his own personality and people who came within his environment.

Q. What do you mean? A. Well, we all have our own personality. This man has his, personality, and you may have your personality, and I mine, and we have all certain defects and the defects of intelligence was more pronounced than any other defect in his personality.

Q. But weren't these jealousies groundless in this case? A. As far as I could find out, they were.

Q. Every bit of your examination would indicate to you that they were groundless? A. As far as I could ascertain.

Q. And isn't there a difference between jealousy on the part of a man who has grounds to be jealous, and jealousy on the part of a man who has no such grounds? A. Not necessarily.

Q. But isn't there a difference? A. Yes; oh, yes, there is a difference.

Q. Doctor, did you hear the testimony about the windows being nail shut? A. He told that to Dr. Buheling and I, but after I had examined him, he denied it.

Q. He denied the windows were shut? A. No, he didn't deny the windows were shut; I questioned him on two different occasions, and I asked him why he had not told it to me and he said, I don't know. He admitted it.

Q. That the windows were nail shut? A. Yes.

Q. Did he tell you why he nailed the window shut? A. He did not.

Q. Did you hear his testimony at all, this morning? A. I was here just part of it.

Q. He testified on page 471, Doctor, in answer to the question:

"Q. Do you remember the incident where you nailed the windows in the house? A. Yes.

"Q. Why did you do that? A. I was always with that pain.

"Q. What pain? A. Always with that confusion.

"Q. What pain, and what confusion? A. The pain at the heart, and a strong confusion that I didn't want any disturbance in my house.

"Q. You nailed these windows shortly after you saw DeLuccia through the window, didn't you? A. Yes.

"Q. Why did you do that? A. To let no one open the window.

"Q. Why, did you think somebody was coming in through the window? A. With that strong confusion, I didn't know myself, what I was doing.

"Q. Did you have suspicions that people were coming in through the windows? A. Not from the front.

"Q. What do you mean, not from the front? A. How could they get up, they are a little high.

"Q. Then why did you lock the windows, nail them? A. With that strong pain and confusion, I didn't catch on, myself, what I was doing."

And then when the Interpreter repeated the question, his answer was:

"A. Because in the summertime it is warm. I would put the chairs in the front because the veils would wave, when I was inside, the veils were still, and I would put the chairs there, so as they would not wave, and when I wasn't there, the chairs wasn't there, and probably that was a signal that she had.

"Q. Then, why, did you nail the windows, so she could not open them? A. Not to let the wind blow them veils and to put that signal out.

"Q. Then you were not suspicious that Mike DeLuccia would come through the window, were you? A. I didn't suspect Mike DeLuccia coming in through the window—to stop signals that were going on."

And then he was asked if he saw those signals and his answer was, "that when he was there, the chairs were by the windows and by the veils and that he saw the sign of the veil." Does that testimony indicate anything to you as an alienist? A. Yes; an inherent suspicion of jealousy.

Q. Were you here yesterday, Doctor, when Nick Juliano testified? A. I don't know which one it was. I was here all day, yesterday.

Q. Did you hear the testimony that the windows were nailed by the defendant, because of his jealousy of the flies? A. No, I did not.

Q. Doctor, did you hear the testimony that was given by this defendant relating to what occurred or supposed to have occurred on the Sunday afternoon between his wife and her father? A. I heard Dr. King tell that; I never heard it before.

Q. Had you heard that story before would it have changed your opinion at all? A. None whatsoever, because I asked him questions along those lines.

Q. You asked him questions along those lines? A. Yes. All ideas relating to marital infidelity.

Q. What were his answers? A. All negative.

Q. He had no ideas at all? A. He had no idea that any man could not suspicion that any man would come, no particular man would come and have relations with his wife.

Q. Did you ask him as to whether or not he had any suspicions of infidelity with any member of her family? A. No, I didn't ask him that.

Q. Isn't that a common hallucination of paranoics? A. It is not common; it is one of the ideas. It is not an hallucination; it is a delusion.

Q. You were present in the Paterson police station? A. I was.

Q. During the whole examination? A. Yes, sir.

Q. And didn't you hear him there mention specifically the name of Mike DeLuccia? A. I heard him.

Q. As one of the persons whom he suspected of having had intercourse with his wife? A. He never said that. He said he saw Mike DeLuccia and some other man outside, but he never said he suspected him of having intercourse with his wife.

Q. Did you hear the question, "Did your wife ever have anything to do with Michael DeLuccia?" And his answer, "No, only suspicion." A. Yes, I heard that.

Q. Then he did say he was suspicious and thought Michael DeLuccia did something with his wife? A. Not intercourse. I asked him that and he said no. He only said he thought.

Q. Didn't he say no, only suspicion? A. Only suspicion; that is what he said.

Q. Well, didn't that mean that he was suspicious—to you didn't that mean he was suspicious that Michael DeLuccia was having intercourse with his wife?

Mr. Barnitt—I object to that.

The Court—I will permit the doctor to answer the question.

A. It meant he may have.

Q. And then immediately following that answer in the Paterson police station did you hear the ques-

tion, "You said before the reason you wanted to kill your wife was because she was a bad woman; what do you mean by a bad woman?" And his answer was "She would go with other people." And the next question was "You don't know that yourself, only suspicions." And his answer was "Only suspicion." Did that indicate anything to you? A. Still that inherent, defective jealousy.

Q. Did you say defective jealousy? A. In the development of his personality.

Q. And by inherent do you mean deeply imbedded? A. Deeply indebted.

Q. Could such a jealousy be corrected? A. I doubt it.

Q. And does such a jealousy have a tremendous influence over the life of such a man? A. As a rule it guides his life.

Q. Does it have an effect upon his mind, doctor? A. None whatever.

Q. Ever? A. None whatever, so far as intellectual capacity is concerned.

Q. But, doctor, a paranoiac intellectual capacity is not impaired? A. I didn't say this man was a paranoic person.

Q. But jealousy will not affect a man's intellectual capacity, you say? A. No, sir.

Q. And isn't it also true that paranoia doesn't affect a man's intellectual capacity? A. That is true.

Q. And you say you have never seen a paranoiac? A. In my long experience I have never seen a case of paranoia. I would like to see one.

Q. And yet you say this man is not a paranoiac? A. My own opinion is he is not a case of paranoia.

Q. Has this defendant a paranoiac trend? A. He has some ideas that partake of the paranoiac trend.

Q. Have you been in conference with your colleagues Dr. Buehling and Dr. Dowd? A. If you call it that, both of us, we all examined him together.

Q. And conferred before leaving on your opinion? A. We did not. I don't know what their opinion is going to be.

Q. Did you tell them what your opinion was going to be? A. I did not.

Q. Have you talked with them as to whether you believe this man was sane or insane? A. Of course we came to that opinion.

Redirect Examination by Mr. Barnitt:

Q. Mr. Barbour asked you if a man has paranoia is his mental capacity affected and you said it was not? A. Yes, so far—what do you mean by mental capacity?

Q. What did you understand was meant by it? A. The higher thinking powers.

Q. If what Dr. King said is so, that this man is a paranoiac, if conceding what Dr. King said was a fact, in your opinion would that have affected his intellectual capacity? A. No.

Q. He still would have intellectual capacity? A. Yes.

Q. Even conceding, which you don't, that what Dr. King says, that this man's condition is paranoia? A. Yes, sir.

Mr. Barnitt—That is all.

(Ten minute recess.)

(After recess.)

DR. AMBROSE F. DOWD, called as a witness for the State in rebuttal, having been first duly sworn according to law, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Dr. Down, what is your profession? A. Physician.

Q. How long have you been a physician? A. Twenty years.

Q. Have you specialized in connection with your profession? A. I have.

Q. What particular line of medical practice have you specialized in? A. Nervous and mental diseases.

Q. I think you will have to raise your voice. A. Nervous and mental diseases.

Q. How long have you been practicing that character of work? A. Thirteen or fourteen years.

Q. And have you ever testified in court inquiry with reference to the sanity or insanity of persons? A. I have; I have.

Q. How often have you testified, doctor? A. A number of times. I can't tell you how often.

Q. Have you ever testified in murder cases? A. I have.

Q. Both for the State and for the defendant? A. For both.

Q. Doctor, did you have occasion to examine the defendant, Bonaventura Nardella? A. Yes.

Q. Do you recall when it was that you examined him? A. August 12, 1930.

Q. And where was he? A. Police headquarters, Paterson, New Jersey.

Q. Was any other doctor with you, doctor, at that time? A. Dr. Collins.

Q. The doctor who preceded you on the stand? A. Right.

Q. Will you tell in what manner this examination took place? A. We examined Nardella physically and for nervous and mental diseases. We interrogated him about his family history, his past personal history, his past life, his married life, and the situation in which he was and which explained his presence in the police station.

Q. And for what purpose, doctor, did you make that examination? A. To determine whether he was of sound mind and appreciated his predicament.

Q. Do you know at whose request you were called in to make that examination? A. Yours.

Q. For the purpose of determining what, doctor? A. His sanity or insanity.

Q. Now, doctor, as the result of the examination you made did you form an opinion as to the sanity or insanity of this defendant? A. I did.

Q. What was that opinion? A. I concluded that he is sane.

Q. Doctor, did you, at the time you interrogated him with Dr. Collins have him relate to you the incident concerning the murder of his wife? A. Yes.

Q. Did he do so? A. He did.

Q. Having made your examination in the manner in which you did, having received the history of this man's past life, as you expressed it, having had him relate to you this killing of his wife in the

manner that you have stated he did, what would you say, doctor, as to whether or not the defendant knew on August 2, 1930, the quality of his act? A. He did.

Q. What, doctor, is your opinion, if you have one, as to whether or not he, the defendant, knew the difference between right and wrong at the time he committed this act of August 2nd, 1930? A. He did.

Q. Doctor, you have heard Dr. King testify with reference to the examination he made of this defendant and as to the conclusion reached by him that this defendant was a paranoiac. What is your opinion with reference to the decision reached by Dr. King with reference to whether this man has or did have paranoia? A. In my opinion he has not.

Q. What is paranoia, doctor? A. Paranoia is a mental disease characterized by a long-standing delusional state that begins with a period of analysis, followed by a period of explanation, then a period of delusional formation and fixation, elaborations and systematization of that delusional state.

Q. Doctor, you have attended the trial of this case and have observed this defendant testifying at this trial. Were you able to conclude the reaction, if any, that you had regarding the emotional expression which this defendant displayed today at the time the prosecutor showed him a picture of his wife in the coal bin? A. That was a natural and normal emotional reaction.

Q. If he had not responded in that way, as he expressed it in that emotional manner, would you have had any different opinion of this defendant

than you formed on August 12th? A. No, I would not have changed my opinion.

Q. Is it a natural reaction for a defendant to respond in the manner that you have observed his response to the questions and answers put to him during the course of this trial, as you have observed it? A. Yes, that is a natural reaction.

Q. In your opinion, doctor, did this defendant on August the 2nd, 1930, at the time of the commission of this crime, discriminate clearly between right and wrong? A. Yes.

Q. And in your opinion, doctor, was he entirely accountable for what he did or anything that he had done on August 2nd, 1930? A. Yes, he was.

Q. What is meant by oriented, doctor? A. It means to know where you are, with whom you are, and the natural objects in the environment.

Q. On August 12, 1930, when you examined him what is your opinion as to whether he was oriented or not? A. He was, perfectly.

Q. What can you say as to his memory on August the 12th, doctor? A. It was excellent.

Q. What can you say as to whether or not he was hallucinatory? A. He was not, in my opinion, hallucinatory on that date.

Q. What does that mean, doctor? A. It means to have perceptions and draw conclusions from those perceptions without external objects to justify the percept.

Q. Doctor, if this man was suffering from jealousy, as he would indicate from what he has said and done in this case, would that in your opinion indicate that he was insane? A. No. Jealousy is not insanity.

Q. Can a person be jealous and still not be insane? A. Certainly.

Q. What can you say, doctor, as to whether or not the defendant was pathologically illusional? A. He was not.

Q. What can you say as to whether or not he was delusional? A. He was not.

Q. Did he at the time you examined him, express what appeared to be some delusive ideas? A. He expressed some delusive ideas, yes.

Q. And having heard him express those delusive ideas, did you conclude that those delusive ideas were such as to make you believe that he was insane? A. No, I did not.

Q. On the contrary, what would you say, doctor, with reference to the conclusion you reached at that time regarding that point? A. I concluded that he was quite sane.

Q. What can you say as to whether or not a careful analysis quickly established that these delusive ideas of his were poorly constructed? A. They were very poorly constructed, and they were not elaborated and they were not systematized.

Q. What can you say as to whether they were due largely to his inability to clearly express himself? A. I think that played a part in the expression of his ideas.

Q. In your opinion is this man illiterate? A. Yes, he is.

Q. And in your opinion would the illiteracy, as you concluded it, contribute to the aforesaid delusive ideas which I have expressed as being a character of delusions? A. Yes.

Mr. Barnitt—Cross examine.

Cross Examination by Mr. Barbour:

Q. Did you make an illiteracy test, Doctor? A. No.

Q. But you have testified that you believe him to be illiterate? A. Yes, in some degree.

Q. Without making any illiteracy test? A. Yes, certainly.

Q. You did find that he expressed certain delusive ideas, did you, Doctor? A. Yes.

Q. And when you say that this man is sane, are you following the legal definition of insanity or the medical definition? A. I think he is medically and legally sane.

Q. Is there a distinction between the two? A. Yes.

Q. A man can be legally sane and still be medically insane, can he not? A. Oh, there is no question about that.

Q. Did you say that his reaction on the stand, when he was shown the picture, did not change your opinion formed on August the 12th as to his sanity? A. I said that.

Q. You also said that if he had shown a different reaction or had shown no reaction whatsoever, it still would not have changed your opinion as to his sanity? A. I said that, that is right.

Q. So that his reactions when shown the picture, did not affect your opinion, at all? A. I will not conclude that a man is sane or insane, upon one reaction.

Q. When you said he was not hallucinatory on August 12th, did you then know of all the incidents, all the delusive ideas and all the suspicions particularly in reference to the alleged intercourse between

his wife and her father, did you then know of this incident? A. I did not know of the alleged act between the wife and her father. He did not tell me of that.

Q. Would that have changed your opinion at all? A. No, that would be just a delusive idea.

Q. If these delusive ideas had no foundation and fact, does that indicate anything to you? A. It indicates a suspicion and a disturbed emotional state, resulting from the suspicions.

DR. CHRISTOPHER C. BELING, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Dr. Beling, you are by profession a medical practitioner? A. I am a physician.

Q. How many years, Doctor? A. Since 1897.

Q. Have you practiced during all that time? A. Yes, sir.

Q. Have you specialized in any particular branch? A. Yes, sir.

Q. What branch? A. Nervous and mental diseases.

Q. Have you ever had occasion to examine patients for the purpose of ascertaining whether the person is sane or insane? A. Yes.

Q. How often, Doctor? A. Quite frequently.

Q. Can you give the jury some impression of the number of times in the course of the year? A. Well, I was assistant physician at the New Jersey State Hospital at Morris Plains, from 1900 to 1906—1907.

Q. And for those seven years, what was the character and nature of your work? A. Constant examination and treatment of mental disorders, of the insane.

Q. Subsequent to 1907? A. Subsequent to 1907, I went to the City of Newark, and specialized on nervous and mental diseases, and in 1908, I opened a ward at the Newark City Hospital, for the reception, treatment, and commitment of insane persons, and I still have charge of that ward, and all through these years have passed through this ward, people for examination, certification, and commitment to institutions or for treatment and discharge as the case might be.

Q. Have you ever had occasion to testify in court proceedings, with reference to the sanity or insanity of persons accused of crimes? A. Yes, I have.

Q. Have you ever done so for Prosecutors of the State of New Jersey? A. I have.

Q. How often had you been called on to testify, say for the last five years, for prosecutor, throughout the State of New Jersey, about the sanity or insanity of persons accused of crime A. I cannot tell you the number of times, but I think in all in 40 cases.

Q. Did you testify in the Campbell case? A. The Campbell case?

Q. Yes, the torch case of Elizabeth? A. No, I did not.

Q. Will you relate some of the cases you testified in, in the State of New Jersey, to which you are referring? A. I testified in a case of Mrs. Martin Martin vs. the State, and the Dumback case.

Q. Were you in the Noel case? A. Yes, sir.

Q. Go ahead, Doctor. A. And numerous other cases.

Mr. Barbour—I think we will admit the doctor's qualifications.

Mr. Barnitt—Yes, but I thought the jury might like to hear that.

The Court—I think it is immaterial, what cases the doctor testified in.

Q. Doctor, with reference to this defendant, Bonaventura Nardella, did you have occasion to examine him? A. Yes, sir.

Q. Do you recall when it was? A. September 29th, 1930.

Q. Was any other doctor present? A. Dr. Lawrence Collins.

Q. State in what manner you made your observations, or examinations, Doctor? A. Yes. May I use my notes, your Honor, that I made at the time?

The Court—Yes.

Mr. Barbour—Were they made at the time, Doctor?

The Witness—Yes.

The Court—All right, go ahead.

The Witness—My examination—

Mr. Barbour—Are those the notes you made at the time?

The Witness—These are the notes which I transcribed, as a result of my examination, but here are the notes I made at the time.

The Court—All right, go ahead, Doctor.

The Witness—To save time, I thought I would just give you the salient features of the case.

The Court—All right, go ahead.

The Witness—This examination took place in the Passaic County Jail, on September the 29th, 1930. The examination was directed specially to the ascertaining of his mental status and during the entire examination the patient, the prisoner talked freely and gave a history, a detailed history of his family life, his early life in Italy, his service in the Italian army, his marriage in Italy, and the warning given him by his aunt before he left for America, in 1920, relating to his wife's relations with other men. Her coming to America in 1922—I just lost my place. Oh, yes, relating to her coming in 1922, and that he did not want her here. She was forced on him by her family, and how they were happy together until the middle of May, 1930, when he got the impression that she was going with other men, and how the impression grew on him, after a Greek woman who lived on the top floor told him to close the alley-door, because there were two men went in there, all the time. Then he became suspicious and he spoke to his wife, about the men and received denial, which he did not believe. So he set about to watch her, and he described all the watching and then he went into the details of discussion and arguments he had with his wife, and how on one occasion, how he struck her, and went into the details of the killing, which are substantially the same as stated here in the court. He said that he killed her because she made him mad about going to the doc-

tor, and because he had that impression about her. He had determined to kill her, about four or five days before he did actually kill her. That is a summary of the examination made.

Q. Doctor, were you able to form an opinion from that examination, as to the sanity or insanity of this man? A. Yes, sir.

Q. Did you? A. Yes, sir.

Q. What was that opinion? A. I thought he was sane.

Q. Do you still think so? A. I do.

Q. Now, Doctor, something has been said here about delusion. What is your understanding of delusion? A. A delusion is a false belief that is based upon no evidence or a very slight evidence.

Q. Does a person have to be insane to have delusions? A. No.

Q. Doctor, can a person be absolutely sane and still have delusions? A. Yes, sir.

Q. Doctor what would you say as to whether or not this defendant on August 2nd was suffering from paranoia? A. In my opinion he was not suffering from paranoia on August 2nd. Is that the date you cited?

Q. Yes, that is the date of the killing; ~~is~~ your opinion any different at any time before or subsequent to that date? A. No, I don't find any evidence of paranoia in this case.

Q. Doctor, in your opinion, did this defendant know the nature and quality of the act that he did, in the killing of his wife on August 2nd, 1930? A. Yes, sir.

Q. Doctor, did this defendant in your opinion know the difference between right and wrong at the

time he killed his wife? A. Yes, sir.

Q. Did he? A. Yes, sir. I have my opinion, and in my opinion he did.

Q. Doctor, at the time that this defendant committed this act on August 2nd, 1930, in your opinion, did he know the consequences of his act? A. Yes, sir.

Q. Did he? A. I think he did—in my opinion.

Q. If this man had a condition of jealousy regarding the fidelity of his wife, assuming that he did have a jealous condition of mind, with respect to the fidelity of his wife, in your opinion, doctor, would that indicate that this man was insane? A. No.

Q. Can a person be jealous or have a condition of jealousy and still be sane? A. Yes.

Q. And in your opinion, if ~~the~~ this man did in fact have a jealous disposition or regard towards his wife on August 2nd, 1930, in your opinion, doctor, was this man sane, even conceding that he had that jealous disposition? A. That is my opinion.

Q. Would the condition related to you regarding the fidelity of his wife as he assumed them have caused this man to form a jealous disposition towards his wife? A. Well, I believe that probably as far as I could judge from my examination and investigation of the case that the basis of it was laid away back in Italy when he was informed by his aunt that his wife was not behaving herself, with me.

Q. When you examined this man on September 29th, 1930, doctor, as far as you could observe, was he in contact at all times with his surroundings? A. Absolutely.

Q. And have you had any occasion to observe any difference with respect to that situation since this trial opened and since you have been in attendance here daily? A. No, sir.

Cross Examination by Mr. Barbour:

Q. Doctor, is not jealousy closely related to insanity where the jealousy is without foundation in fact? A. We often see jealousy in insane people —people who are insanely jealous.

Q. Insanely jealous? A. Yes.

Q. And is that not more or less characteristic of the latin races? A. I cannot say.

Q. Did you have an interpreter to aid you in your examination? A. Yes.

Q. Isn't one of the evidences of paranoia that they imagine people are standing here and there talking about them and speaking of their condition and making disparaging remarks about them? A. I just said that I could not say whether it is really characteristic of paranoia or not.

Q. If that condition continued for a period of ten years, wouldn't that be one of the elements that tends to make up a paranoiac condition? A. When we speak of paranoia we have to know just what we are talking about. My conception of paranoia and yours may be entirely different. If we can come to understanding what it is I might then be able to answer you.

Q. Doctor, isn't there a vast difference of opinion between authorities as to just what paranoia is? A. I don't believe so; I think paranoia is a rare mental disease from which I think nearly all alienists, if not all, nearly all, are agreed.

Q. Do the authorities agree that the definition of paranoia is well settled? A. Yes, I think they agree; what I think you have in mind is a definition paranoial ———, a condition which resembles paranoia; but paranoia is a very definite mental disease that can't be mistaken when it is seen.

Q. Has this defendant any paranoiac trend? A. Well, you might speak of the suspicion as being a paranoiacal reaction, but it has nothing to do with paranoia.

Q. But, has he any paranoiac trend? A. No, I don't think so; I think he has been jealous of his wife for ten years at least.

Q. Did you have any grounds on which to base this jealousy that you were able to ascertain— A. Yes, one of the grounds I got from him that his aunt told him his wife was going around with other men and to watch out, and he stated he left Italy and came to America.

Q. Did you get as one of the grounds the fact that this Greek woman told him so? A. That was subsequent.

Q. After what the Greek woman told him? A. After the Greek woman told him this he got all worked up again; that was an attitude he had towards his wife.

Q. Was that one of the grounds of his jealousy what the Greek woman told him? A. That is what he told me.

Q. And is that what you understood as one of the grounds? A. No, that made him very suspicious, that he was suspicious of his wife and after he came to America they got along all right and

when the Greek woman told him this it began to work on him again.

Q. If it were not true what the Greek woman told him and yet he made that statement, what would that indicate to you? A. I couldn't say.

Q. Doctor, did you hear of the incident of the father and daughter, his wife? A. Yes, sir.

Q. If that had no foundation in fact would that indicate anything to you? A. Yes, it would indicate a suspicion.

Q. Would it not indicate more than a suspicion? A. No, it would not, not any more, unless that suspicion was elaborated upon and formed delusions.

Q. If, as a result of that suspicion, he lay in bed for hours pretending to be asleep in an effort to catch them, would that be an elaboration? A. That is a condition where he wanted to protect his own interests, a sense of ownership of his wife.

Q. Doctor, is that an elaboration of that suspicion? A. That is an emotional, natural thing.

Q. Answer my question, doctor, yes or no? A. Yes, it is a normal elaboration.

Q. And when suspicions are elaborated upon, they become delusions, do they not? A. They form the basis of delusions.

Q. Suspicion is one of the emotions of a primitive character, is it not? A. No, suspicion is the belief in something that exists on little or no evidence at all; that is an idea that one gets a result of thinking something may be so and it may or may not be so.

Q. Doctor, are not suspicion, vanity, pride and fear emotions of a primitive character? A. No; suspicion is not an emotional state.

Q. Doctor, is vanity an emotion of a primitive character? A. Vanity is the prohibition of an emotional state regarding sentiment of the individual; if I am proud and I want people to see me and I have vanity, that is my desire to display myself, which is natural.

Q. Will you answer my question yes or no, doctor, as to whether or not vanity is an emotion of a primitive character? A. It is an expression of an emotion.

Q. Is it an emotion of a primitive character? A. It is not an emotion of a primitive character; it is the expression of an emotion.

Q. And is pride an emotion of a primitive character? A. It is an expression of distinctive reaction, of which the emotional element is a component.

Q. Doctor, did you ever diagnose a man as insane when he was afterwards proven to be sane? A. I might have; I might have been mistaken; we all make mistakes.

Mr. Barnitt—The State rests.

Mr. Barbour—The Defense rests.

COURT'S CHARGE

Ladies and gentlemen of the jury:

This indictment charges the defendant at the bar, Bonaventura Nardella, with murder. It alleges that Bonaventura Nardella, late of the city of Paterson, in the County of Passaic, aforesaid, on the second day of August, in the year of our Lord nineteen hundred and thirty, with force and arms, at the city aforesaid, in the county aforesaid, and within the jurisdiction of this court, in and upon one Lucia Nardella in the peace of God and of this state then and there being, wilfully and unlawfully and assault did make, and her, the said Lucia Nardella, did then and there wilfully and unlawfully and feloniously and of his malice aforethought kill and murder, contrary to the form of the statutes in such case made and provided, and against the peace of this state, the government and dignity of the same.

Murder is the killing of a reasonable being with malice aforethought,—that is, with an intent to do evil. A purpose to do grevious bodily harm is sufficient and malice may be presumed from the character of the killing.

Under the form of this indictment, the prisoner may be convicted of murder in the first degree or murder in the second degree or acquitted.

The classification of murder in two degrees is made by statute, and the statute requires the jury, upon a conviction for murder, to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree.

The distinguishing feature between the two degrees of murder is the intent with which the homicidal act was done. The presumption of law is that all homicides are murder, but there is the further presumption that it is murder in the second degree, and the burden of proving affirmatively that the accused is guilty of murder in the first degree rests upon the state.

If the intent was to take life and the act was premeditated deliberate and wilful, it is murder in the first degree. Wilfulness, deliberation and premeditation are distinct acts each requiring some appreciable time, and you must find in order to convict of murder in the first degree, that the accused contemplated the act—that is to say, premeditated it; then determined upon its commission—that is to say, wilfully intended it—and then weighed such intent before carrying it into effect, or, in other words, deliberated. It is true that these words do not import any appreciable period of time and that the mental acts to which they severally refer are capable of being performed with that degree of celerity with which the human mind is proverbially capable of acting.

The law now 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 considering all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

Prior to the enactment of this statute, the jury in a homicide case had no function to perform except the ascertainment and declaration of the guilt

or innocence of the accused, and in case of his being found guilty, to declare the degree of the crime; the punishment which should follow the conviction was a matter with which the jury had nothing to do. By force of this legislation, however, the jury may, in case they shall adjudge the defendant to be guilty of murder in the first degree, determine within the limits fixed by the statute what his punishment shall be

Murder in the second degree comprehends those cases of murder which are an attempt to do grievous bodily harm without the intent to take life, or where the act is done in the heat of passion, but without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfulness.

Ladies and gentlemen of the jury, I will not refer to the facts, because you have heard them. I shall instruct you as to the law, and you are to apply the law as I give it to you to the facts as you believe them to be.

The defendant is presumed to be innocent until proven guilty, and the defendant is entitled to the benefit of any reasonable doubt arising upon the evidence. The burden is on the state to prove beyond such a doubt every material element of the crime, and if upon such proof, there is a reasonable doubt with regard either to the guilt of the accused, or to the degree of criminality, he is entitled to the benefit of that doubt. Such burden of proof remains upon the prosecution throughout the whole case, and never shifts.

As I said before, the defendant is presumed to be innocent until proven guilty, and the burden

rests upon the state to satisfy you beyond a reasonable doubt of the defendant's guilt.

Reasonable doubt has been defined by the highest court in our state as follows: If, after a consideration of all the evidence of the case, you cannot say that you feel an abiding conviction to a moral certainty that the defendant is guilty of this offense, it will be your duty to acquit him. But if, on the other hand, you are so satisfied, then you shall convict.

The principal controversy in this case is whether the accused is criminally responsible for the act in question. The defense is insanity. If a defense of ~~the~~ This character be sufficiently established, the law accords the accused the benefit of it by an acquittal; but with regard to the methods by which such a defense may be made successfully, the law, from considerations of public policy, exacts, in the proof of such a defense, compliance with the standard adopted by the law for determining where criminal responsibility ends and criminal irresponsibility begins.

In the first place, the burden of proof as to insanity rests upon the accused, the defendant. The law presumes that every man is sane until the contrary be proved. Hence, when an accused sets up a defense of insanity, the burden of proof is upon him, and he must overcome the legal presumption of sanity by a preponderance of proof, and by evidence satisfactory to the jury. In the next place, the law adopts a standard of its own as a test of criminal responsibility,—a standard not always in harmony with the views of scientists. Many of the firms and degrees of mental disease

which, in the judgment of learned men, would be regarded as insanity, are rejected by the law in the administration of criminal justice. The law regards insanity as a disease of the mind. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act and ends when it is consummated.

Furthermore, the law not only considers insanity, when offered as a defense to a criminal charge, as a disease of the mental faculties, but it also prescribes the degree of the mental disorder which shall be exacted as the condition of which the defense of insanity shall be allowed, for it is not every kind or degree of insanity that will render a man irreponsible for acts otherwise criminal.

To establish a defense on the ground of insanity, it must be proved that at the time of committing the act, the accused was laboring under a defect of reason 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, 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 has been adopted as the test of insanity in criminal cases by the courts of our state.

The standard by which criminal irresponsibility is determined is well settled. It is accepted as the law that if the accused at the time of the committ-

ing of the act, was capable of distinguishing between the right and wrong and was conscious that the act was one which he ought not to have done, he cannot be excused on the ground of insanity.

An accused may have the most absurd and irrational notions on some subjects; he may be unsound in mind and be a fit subject for confinement and treatment in a hospital for the insane; but if, on any accusation like this, he has the mental capacity to distinguish right from wrong and to understand the nature and quality of the act done by him, he is amenable to the criminal law. The law does not require a man to be in the full possession of his faculties, or in the possession of all his faculties, to subject him to criminal responsibility; having adopted as the test of responsibility the capacity to distinguish between right and wrong, and to comprehend the nature and quality of the act done. There the law stops. The safety of society and the security of life are dependent upon the maintenance of the standard adopted by the law and its enforcement.

These principals must necessarily be the governing principals in the administration of the criminal law, or the most henious crimes would be those which would be dispunishable, for such crime are almost always committed under the influence of an impulse which overcomes and sets at naught the restraint which usually prevents the commission of crime.

The sanity of the accused cannot be inferred from the atrocity of the crime. If such were the case, the more atrocious the crime, the greater the certainty of the defense being sustained; and the

most atrocious crimes would be attended by immunity from punishment.

There has been some evidence in the case that the defendant after the alleged crime, fled the jurisdiction of this court. The law says:—Flight of one accused of crime or escape from custody under a criminal charge, is deemed, when unexplained, to raise an inference of guilt, akin to the presumption deemed to arise upon the fabrication of false evidence or the suppression of true evidence.

I have been requested upon behalf of the defendant to make certain charges to the jury:

"(1) You are not to be influenced in the consideration of this case by any comment or expression of opinion in the newspaper reports of this case and you must disregard any statement or comment contained in any such reports, if same has in any way been brought to your attention." I so charge you.

"(2)": I refuse to charge, except as already charged.

"(3)": If you find that the evidence shows you that at the time of doing the act this defendant was so mentally diseased so that his faculties were prostrated and rendered him incapable of forming a specific, wilful, deliberate and premeditated attempt to kill, then although it is no defense nor justification, his offense would be murder in the second degree." I so charge you.

"(4): The Court of Errors and Appeals of this State has said that it is a "fact that one who is insane and who committs a crime can go through certain mental processes without comprehending the quality of the act in which he is engaged or

knowing the difference between right and wrong. We know from experience that if a lunatic wholly demented kills a person that he goes through a process of reasoning by which he knows that he must have instruments to do the killing with and that he must procure a weapon for that purpose. He may be apparently logical in this respect either wholly devoid of such a mentality as would distinguish between what was right and what was wrong." By his acts he does not necessarily show that he knew the difference between right and wrong." I so charge you.

"(5)": I refuse to charge, except as already charged.

"(6) : The denial of the several motions made by defendant's counsel throughout the trial and the rulings of the court upon objections and refusals by the court to charge as requested are not to be taken as any expression of opinion on the part of the court upon the facts of the case, but are only rulings upon the law, about which you have nothing to do." I so charge you.

Now, ladies and gentlemen of the jury, you are charged with the most solemn duty that the law can impose upon you as citizens. The responsibility which rests upon you is a grave one. Let your verdict accord with the evidence. Remember that you are here as vindicators of the law, charged with the high responsibilities of your position, mindful on the one hand of your obligations to the defendant, and, on the other, of what is due to public justice. Let no fear of responsibility deter you from discharging your duties faithfully; for the consequences that may follow from your ver-

dict neither you nor this court is responsible. When we have discharged our duty fairly, conscientiously and firmly, our responsibilities are at an end, and we may leave the consequences to the law.

Swear the officers.

DEFENDANT'S OBJECTIONS TO THE COURT'S CHARGE

Mr. Barbour—

I take a general exception to the charge of the court.

Exception allowed, Let is be sealed and it is signed and sealed accordingly.

William B. Harley, Judge.

I take exception to the refusal of the court to charge the second request, because the charge on that point as given, following the charge of the burden of the state to prove beyond a reasonable doubt its case, tends to leave confusion in the minds of the jurors, and merely charging that insanity need be proven by a preponderance of the evidence does not sufficiently differentiate between your reference and the burden.

Exception allowed. Let it be sealed and it is signed and sealed accordingly.

William B. Harley, Judge.

I also take exception to the refusal of the court to charge the fifth request on the ground that since the jury now is charged with the duty of determining the sentence by determining whether to find a verdict of guilty of murder in the first degree or to find a verdict of guilty of murder in the first degree with a recommendation of imprisonment at hard labor for life, is charged with the responsibility of in fact determining the sentence to be imposed, and is therefore entitled to know what that sentence means.

I think that is all.

Exception allowed. Let it be sealed and it is signed and sealed accordingly.

William B. Harley, Judge.

DEFENDANT'S REQUESTS TO CHARGE

The defendant requests your Honor to charge the Jury:

1. You are not to be influenced in the consideration of this case by any comment or expression of opinion in the newspaper reports of this case and you must disregard any statement or comment contained in any such reports, if same has in any way been brought to your attention.

2. The insanity of the defendant need not be proven beyond a reasonable doubt.

3. If you find that the evidence shows you that at the time of doing the act this defendant was so mentally diseased so that his faculties were prostrated and rendered him incapable of forming a specific, willful, deliberate and premeditated attempt to kill, then although it is no defense nor justification, his offense would be murder in the second degree.

4. The Court of Errors and Appeals of this State has said that it is a "fact that one who is insane and who commits a crime can go through certain mental processes without comprehending the quality of the act on which he is engaged or knowing the difference between right and wrong. We know from experience that if a lunatic wholly demented kills a person that he goes through a process of reasoning by which he knows that he must have some instrument to do the killing with and that he must procure a weapon for that purpose. He may be apparently logical in this respect either wholly devoid of such a mentality as would distinguish between what was right and what was wrong." By his acts he does not necessarily show that he knew the difference between

right and wrong. (State vs. Noel 102 N. J. L. 659 at 678.)

5. There was a statute passed in 1919, Chapter 134, page 303, which reads in part as follows: 108. "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 consideration of all the evidence recommend imprisonment at hard labor for life * * *." Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury, the court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree and in that case the defendant shall suffer the death penalty, but the statute also now provides that the jury upon finding a person guilty of murder in the first degree may as a part of their verdict recommend imprisonment at hard labor for life. The very important duty is, therefore, placed upon the jury of deciding whether to render a verdict of murder in the first degree without recommendation, thereby carrying a death penalty, or render a verdict of murder in the first degree with a recommendation of imprisonment for life. By Chapter 214 of the Laws of 1914 it was provided that "every prisoner who * * * they have sentenced for the term of his natural life has served not less than

fifteen years may be released on parole." This provision has now been repealed so that a prisoner sentenced for the term of his natural life is no longer eligible for parole after serving fifteen years or any greater or lesser portion of his sentence. It is, therefore, your duty, if you find the defendant guilty of murder in the first degree to determine whether or not he should be put to death or should be confined for the remainder of his natural life in State's Prison at hard labor, and if you determine that he should be so confined your verdict should be that he is guilty of murder in the first degree but that you recommend imprisonment at hard labor for life.

6. The denial of the several motions made by defendant's counsel throughout the trial and the rulings of the court upon objections and refusals by the court to charge as requested are not to be taken as any expression of opinion on the part of the court upon the facts of this case but are only Rulings upon the law about which you have nothing to do.

October 23rd, 1930.

At 1:50 A. M., the Court sent for the jury for the purpose of ascertaining whether or not they could agree upon a verdict, and if the Court could assist them on any point of law. The jury entering the jury box, the Court addressed them as follows: "Ladies and Gentlemen of the Jury, I sent for you at this hour of the morning to find out if it is possible for you to agree upon a verdict.

Juror—We have not agreed.

The Court—Is there anything in the law from which the Court can assist you?

Juror—Yes, we did send out a note, but we got no reply.

The Court—What is there you want to be refreshed on?

Juror—On the cross examination of Doctor King —the cross examination, I think it was.

The Court—I'll read the cross examination of Doctor King to you. (The Court thereupon read the complete cross-examination of Doctor King.)

The Court—Now, ladies and gentlemen of the Jury, may I impress upon you further; to establish a defense on the ground of insanity, it must be proved that at the time of committing the act, the accused was laboring under a defect of reason 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 the accused had sufficient mind to know the difference between right and wrong with respect to the act he was doing, he cannot discharge himself from responsibility by showing that he did the act under the influence of an irresistable impulse.

Capacity and reason sufficient to enable the accused to distinguish between right and wrong has been adopted as the test of insanity in criminal cases by the courts of our State.

The standard by which criminal irresponsibility is determined is well settled. It is accepted as the law that if the accused, at the time of the committing of the act, was capable of distinguishing between the right and wrong and was conscious that the act was one which he ought not to have done, he cannot be excused on the ground of insanity.

An accused may have the most absurd and irra-

tional notions on some subjects; he may be unsound in mind and be a fit subject for confinement and treatment in a hospital for the insane; but if, on an accusation like this, he has the mental capacity to distinguish right from wrong and to understand the nature and quality of the act done by him, he is amenable to the criminal law.

The law does not require a man to be in the full possession of his faculties, or in the possession of all his faculties, to subject him to criminal responsibility, having adopted as the test of responsibility the capacity to distinguish between right and wrong, and to comprehend the nature and quality of the act done. There the law stops.

Is there any further matter of law on which the jury desire information?

Juror—No, sir.

(Jury then retires to Jury Room.)

Mr. Barbour—I desire to take an exception to the Court emphasizing at this time, without request for instructions, as to the law—the law as to insanity. Their request was as to the cross-examination of Doctor King, and I take exception to the Court having repeated his instructions to the jury and emphasizing it in the mind of the jury—the law on insanity—that insanity is no defense unless it comes within the strict legal rule.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

I also except to the fact that the Court's additional instructions were given to the jury in the absence of the defendant.

The Court—But in the presence of the defendant's Counsel—and it will be so noted on the record.

Exception allowed. Le tit be sealed, and it is signed and sealed accordingly.

William B. Harley, Judge.

At 2:50 A. M., the Jury knocked on the door of the Jury Room, advising the officer that they had agreed on a verdict. The Court was summoned and appeared in Court. The prisoner was sent for and also appeared in Court. The Jury then were sent for and took their seats in the jury box, at 3:01 A. M.

The Clerk—Ladies and Gentlemen of the Jury, have you agreed upon a verdict.

The Forelady—We have.

The Clerk—Who shall say for you? Madam Forelady, how do you find?

The Forelady—Guilty.

The Court—Guilty of murder in the first degree?

The Forelady—Yes, your Honor.

The Clerk Thereupon Polled the Jury: Juror No. 1, Madam Forelady, how do you find? A. Just as I said.

The Court—Guilty of murder in the first degree?

Juror No. 1—Yes.

Clerk—Juror No. 2, how do you find?

Juror No. 2—Murder in the first degree.

Clerk—Juror No. 3, how do you find?

Juror No. 3—Murder in the first degree.

Clerk—Juror No. 4, how do you find?

Juror No. 4—Murder in the first degree.

Clerk—Juror No. 5, how do you find?

Juror No. 5—Murder in the first degree.

Clerk—Juror No. 6, how do you find?

Juror No. 6—Murder in the first degree.

Clerk—Juror No. 7, how do you find?

Juror No. 7—Murder in the first degree.
Clerk—Juror No. 8, how do you find?
Juror No. 8—Murder in the first degree.
Clerk—Juror No. 9, how do you find?
Juror No. 9—Murder in the first degree.
Clerk—Juror No. 10, how do you find?
Juror No. 10—Murder in the first degree.
Clerk—Juror No. 11, how do you find?
Juror No. 11—Murder in the first degree.
Clerk—Juror No. 12, how do you find?
Juror No. 12—Murder in the first degree.

The Clerk—Ladies and gentlemen of the Jury, hear your verdict as recorded; you find the defendant guilty of murder in the first degree, so say you all.

October 24, 1930.

Mr. Barnitt—If the court please, the state moves the sentence to be imposed by the court upon Bonaventura Nardella, convicted by a jury of murder in the first degree, and I would ask that the defendant be brought into court and sentenced.

The Court—Where is the defendant; yes, send for him. (The defendant was thereupon brought into court.)

Mr. Barbour—If the court please, I object to these proceedings at this time, as I do not believe that the court as now constituted is the court of Oyer and Terminer. Is it so constituted now?

Mr. Barnitt—I assume, your Honor, it is so constituted.

The Court—Yes, it is so constituted, the Court of Oyer and Terminer, for the purpose of sentencing this defendant.

Mr. Barbour—If the court please, I move to set aside the verdict of conviction and ask that a new trial be granted this defendant, without waiving the rights of the defendant and without waiving the right to make a motion arrest of judgment, on the following grounds:

1. The verdict is contrary to the evidence.
2. The verdict is contrary to law.
3. After the jury had retired to consider its verdict and after it had been deliberating approximately seven hours, the trial judge returned to the bench, recalled the jury, without being requested to do so by the jury, which said procedure was improper and in violation of the law and prejudicial to the right of the defendant.
4. Upon having recalled the jury and the jury having taken their position in the jury box, the trial judge asked the jury if they could yet agree, to which the madam forelady answered in the negative. Thereupon, the judge asked of the jury whether they would like further instructions, to which the madam forelady answered that they would like to hear the cross-examination of Dr. King. The trial judge complied with this request and read from the record the cross-examination of Dr. King, but, in addition thereto, recharged the jury as to the law on insanity, which said explanation of the law on insanity was not requested by the jurors and which said reiteration of that part of the charge about the law on insanity was made in the absence of the prisoner although in the presence of his counsel, and for greater certainty as to that which was explained by the judge, I refer to the record. This unrequested explanation and charge to the jury was

improper, prejudicial to the rights of the prisoner, and in violation of the law, the entire proceedings taking place in the absence of the prisoner, and especially the reiteration of the law on insanity which was, as charged, improper, prejudicial to the interests of the defendant, and in violation of the law.

5. When the jury returned to render its verdict the following took place:

By the Deputy County Clerk, Mr. Floyd Jones—Ladies and gentlemen of the jury, have you agreed upon a verdict?

"We have," answered the forelady.

By the Deputy County Clerk—Who shall say for you, how do you find?

By Madam Forelady—Guilty.

That the court then said "Guilty of murder in the first degree?" And that the forelady said, "Yes."

That the court thereupon directed the jury to be polled, and on that, we contend, sir, that the court was without power to frame the verdict for the jury but should have directed them to retire until they had properly framed a verdict, charging them, if need be, as to the various forms of verdicts that could have been returned.

6. That the jury was polled on the direction of the trial judge, without the request of the defendant, which was illegal, improper, prejudicial to the interests of the defendant, and in violation of the law.

The Court—Your motion is denied.

Mr. Barnitt—If the court please, may I have on the record that the state in answer to the motion desires the court to have before it, that part of the record of the proceedings which form part of the

proceedings of the trial and which were taken down stenographically by the duly official stenographer who reported the proceedings of the trial. I don't think there is anything else for the state to say.

The Court—The court has the record before it.

Mr. Barbour—If the court please, I think that is correct. I desire to take an exception to the ruling of the court. But, I think that the record of the proceeding as taken down by the stenographer should be amended so as to show that the judge directed the polling of the jury. It does not show now on whose direction the jury was polled, and I move for such an amendment.

Mr. Barnit—I reiterate, that the official record of the stenographer shall be the record on which the state relies in answer to the suggested motion.

The Court—The record will remain as shown by the official stenographer.

Mr. Barbour—On that point, I would request permission of the court to introduce evidence as to the fact that the defendant was not present at the time, unless the Prosecutor will stipulate as to that.

The Court—At what time?

Mr. Barbour—At the time of the charge—when the jury were recalled by the court and an additional charge given.

The Court—That is shown in the record, and if you will read the record, it will be shown here on page 4.

"Mr. Barbour—I also except to the fact that the court's additional instructions were given to the jury in the absence of the defendant.

"The Court—But in the presence of the defend-

ant's counsel—and it will be so noted on the record."

The Court—Motion denied.

Mr. Barnitt—I will now press my motion previously addressed to the court that the court impose sentence on Bonaventura Nardella convicted of murder in the first degree by a jury, and may I respectfully suggest that the question of the court to the defendant and his answer thereto. and the court's sentence be made through the court interpreter, Mr. Aquino.

May I first request that the defendant be informed of the motion of the state addressed to your Honor that sentence be imposed.

(Same was thereupon translated by interpreter, Aquino, to the defendant.)

Mr. Barbour—If the court please, the verdict was returned in the absence of the interpreter, and I would like to ask if he has ever been informed of the verdict so as to understand what it was.

The Court—What difference does it make? His counsel were present and they understand. If he could not understand English, he was here during the trial.

The Court—Bonaventura Nardella, have you anything to say why sentence should not be pronounced against you?

The Defendant—(Through interpreter Aquino)—I have nothing to say.

The Court—The judgment and sentence of this court is that you suffer the punishment of death at the place and in the manner provided by law, on some day within the week beginning the seventh day of December, nineteen hundred and thirty, and may God have mercy upon your soul.

State of New Jersey,
vs.
Bonaventura Nardella.

CERTIFICATE OF COURT STENOGRAPHERS

County of Passaic:

We, Sidney J. Turner, John F. Lee, Jr., and James Shaw, official stenographers of the Passaic County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by us at the trial of the case of the State of New Jersey vs. Bonaventura Nardella, on indictment No. 252805, murder, which trial was held before the Honorable William B. Harley, Judge of the Court of Oyer and Terminer in and for the County of Passaic and a jury, on Monday, October 20th, Tuesday, October 21st, Wednesday, October 22nd and Thursday, October 23rd, and Friday, October 24th, 1930, at Paterson, New Jersey.

Sidney J. Turner
John F. Lee, Jr.
James Shaw

State of New Jersey,
vs.
Bonaventur aNardella

CERTIFICATE OF JUDGE

I, William B. Harley, Judge of the Passaic County Court of General Quarter Sessions and Passaic County Court of Oyer and Terminer, to whom the above case was referred by the Judge of the Supreme Court, within whose district the said Court of Oyer and Terminer was situate, in accordance with Chapter 248, P. L. 1928, and the Judge who presided over the aforesaid cause, certify that the above book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the Writ of Error bringing up the bill of exceptions signed and sealed in this cause.
Dated November 18, 1930.

William B. Harley, Judge.

Assignments of Errors

(Filed December 19, 1930.)

NEW JERSEY COURT OF ERRORS AND APPEALS

The State, Defendant in Error, vs. Bonaventura Nardella, Plaintiff in Error.	In Error

ASSIGNMENTS OF ERRORS

New Jersey ss:

Afterwards, that is to say, on Tuesday, the third day of February, A. D., 1931, before our Court of Errors and Appeals in the last resort in all causes comes the said Bonaventura Nardella by John C. Barbour and E. Robert Coven, his Attorneys, and of counsel with plaintiff in error, and says:

That in the record and proceedings aforesaid and also in the matters recited and contained in the said Bill of Exceptions and also in giving verdict and judgment aforesaid, there is manifest error in this, to wit:

1. That the said court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Bonaventura Nardella aforesaid, erroneously sustained an objection to the following question asked on cross examination of Alvin Heinricks, a photographer called on behalf of the State:

Q. "And if that is true, that photograph does not represent the conditions as they were immediately after the crime, does it?"

Objected to, objection sustained and exception noted.

2. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the witness Dr. William A. Norval, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

Q. "Could the injuries that you observed on the side of the face and skull, could any of these injuries be caused by an axe being used with force?

Objected to, objection overruled and exception noted.

3. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the witness Charles Pirolo, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

Q. "Did you have a talk with him, Sergeant? (referring to defendant). A. I did.

Q. Tell us what was said at that time?"

Objected to, objection overruled and exception noted.

4. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the witne s Charles Pirolo, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

Q. "Go ahead, relate it. What did he say? (referring to defendant.)

Objected to and objection overruled.

5. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permited the witness Charles Pirolo, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

Q. "Go ahead and tell us what was said.

A. He told me the story that it was his impression that his wife wasn't just right with him and I said, 'Well, what reason do you have, who do you accuse, who do you say was wrong with your wife?' He said, well, he didn't know and afterward I said, well what did you do it for?"

Objected to on the ground that the witness was testifying to a conversation, but not phrasing it in the language of the defendant.

6. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously admitted into evidence six boards (marked Exhibit S-22) without proper foundation having been laid.

Objected to, objection overruled and exception noted.

7. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously admitted into evidence a sketch or map (marked Exhibit S-23) drawn by Prosecutor's detective Fred Caviliere and upon which the defendant was alleged to have made several pencil markings, without proper foundation having been laid.

Objected to, objection overruled and exception noted.

8. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously sustained an objection to the following question asked on cross examination of Charles Pirolo, a detective sergeant called on behalf of the State:

Q. "Do you feel ill disposed towards him? (referring to defendant)."

Objected to, objection sustained and exception noted.

9. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously sustained an objection to the following question asked on cross examination of Charles Pirolo, a detective sergeant called on behalf of the State:

Q. "You were trying to get him to admit the crime, were you not?"

Objected to and objection sustained.

10. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously sustained an objection to the following question asked on cross examination of Charles Pirolo, a detective sergeant called on behalf of the State:

Q. "When you asked him if he had done it, did you tell him then that anything he said would be used against him?"

Objected to and objection sustained.

11. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the witness James Brooks, a detective, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

Q. "I show you these grey pants, officer, and I ask you if you can identify these as having been found by you or observed by you at the premises, 14 Mill Street?"

Objected to, objection overruled and exception noted.

12. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously admitted into evidence a pair of pants with a belt attached (marked Exhibit S-29), without proper foundation having been laid.

Objected to, objection overruled and exception noted.

13. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously denied the motion of counsel for the defendant to strike out of the evidence two photographs marked Exhibits S-6 and S-7 respectively, as to which testimony adduced after they were admitted in evidence showed that such Exhibits did not represent the positions of the bat, axe and shovel respectively, as they were found after the commission of the alleged crime.

14. The said court before who, &c., at and upon the trial of the said issue so joined, after the witness, Joseph Nardella, in behalf of the State, on cross examination answered the following questions:

Q. "Did he say that he had not closed, nailed them closed? A. He didn't say anything, sir.

Q. "Didn't say anything about it, at all? A. No, sir, not that I remember of.

Q. "Was that the way he always acted,

Joe? A. Well, sometimes he came home drunk, and I had to—about 12 o'clock midnight, I had to go look for him."

erroneously denied the motion of counsel for the defendant that the answer "Well, sometimes he came home drunk, and I had to—about 12 o'clock midnight, I had to go look for him," be stricken out as not responsive.

Motion denied and exception noted.

15. That the said court before whom, &c., at and upon the trial of the said issue so joined erroneously admitted into evidence a statement made by the defendant (marked Exhibit S-33), without proper foundation having been laid.

Objected to, objection overruled and exception noted.

16. That the said court before whom, &c., at and upon the trial of the said issue so joined, instructed the official Italian Interpreter, Anthony Aquino, who was interpreting the testimony of the defendant, Bonaventura Nardella, as follows:

"The Court—Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge."

thereby empowering the interpreter to determine what was hearsay testimony, thereby delegating a judicial power.

17. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously sustained an objection to the following question asked on direct examination, of Bonaventura Nardella, the defendant:

Q. "Did this Greek lady laugh at you or talk about you?"

Objected to, objection sustained and exception noted.

18. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the official Italian Interpreter, Anthony Aquino to refrain from interpreting in full the answer of the defendant, Bonaventura Nardella, to the following question:

Q. "Did you hear them? A. Yes, sir.

Mr. Coven—I wish the Court would instruct the interpreter to repeat what he just told him."

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something."

19. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously instructed the official Italian Interpreter, Anthony Aquino, to refrain from interpreting the answer of the defendant, Bonaventura Nardella, to the following question:

Q. "What did you hear?"

The Interpreter—He is saying something again that he was told, your Honor.

The Court—All right. It will not be repeated.

Q. What did you hear?

Mr. Coven—Now, I didn't hear any objections. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay."

20. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously permitted the defendant, Bonaventura Nardella, on cross examination to demonstrate how he struck the deceased with a bat, in accordance with the request of the Prosecutor as follows:

> Q. "Stand up and show the jury what you did with the bat when you took hold of it?"

Objected to, objection overruled and exception noted.

21. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously ordered the following testimony of Dr. George W. King, an alienist on behalf of the defendant, to be stricken out:

> "This man was all right, probably safe to make a living for himself and support his family until he came to that time when the delusion of his wife's own father being intimate with his wife. That was the time that man should have ben sequestered. That is the time he was a menace to society.
>
> Mr. Barnitt—If your Honor please, I ask to have it stricken out.
>
> The Court—It will be stricken out."

Exception noted.

22. That the court before whom, &c., at and upon the trial of the said issue so joined, erroneously refused to charge the jury with the following request to charge, as requested by the plaintiff-in-error:

> "The defendant requests your Honor to charge the jury the insanity of the defendant need not be proven beyond a reasonable doubt."

23. That the court before whom, &c., at and upon the trial of the said issue so joined, erroneously refused to charge the jury with the following request to charge, as requested by plaintiff-in-error:

"There was a statute passed in 1919, Chapter 134, page 303, which reads in part as follows: 108. "Every person convicted of murder in the first degree * * * shall suffer death unless the jury shall by their verdict and as a part thereof and after consideration of all the evidence recommend imprisonment at hard labor for life * * *." Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury, the court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree and in that case, the defendant shall suffer the death penalty, but the statute also now provides that the jury upon finding a person guilty of murder in the first degree, may as a part of their verdict recommend imprisonment at hard labor for life. The very important duty is, therefore, placed upon the jury of deciding whether to render a verdict of

murder in the first degree without recommendation, thereby carrying a death penalty, or render a verdict of murder in the first degree with a recommendation of imprisonment for life. By Chapter 214 of the Laws of 1914 it was provided that 'every prisoner who * * * they have sentenced for the term of his natural life has served not less than fifteen years may be released on parole.' This provision has now been repealed so that a prisoner sentenced for the term of his natural life is no longer eligible for parole after serving fifteen years or any greater or lesser portion of his sentence. It is, therefore, your duty, if you find the defendant guilty of murder in the first degree to determine whether or not he should be put to death or should be confined for the remainder of his natural life in State's Prison at hard labor, and if you determine that he should be so confined your verdict should be that he is guilty of murder in the first degree but that you recommend imprisonment at hard labor for life.

24. That the court before whom, &c., at and upon the trial of the said issue so joined, erroneously sent for the jury at 1:50 o'clock in the morning, after it had been deliberating for some six and one-half hours, without the jury having requested additional instruction and inquired of the jury if they had been able to agree upon a verdict, thereby tending to hasten the jury in its deliberations, to the prejudice of the plaintiff-in-error.

25. That the court before whom, &c., at and upon the trial of the said issue so joined, erroneously

read to the jury the testimony on cross examination of Dr. George W. King, an alienist on behalf of the defendant, upon being requested by the jury so to do, after the court had sent for the jury at 1:50 o'clock in the morning, which was prejudicial to the plaintiff-in-error.

26. That the court before whom, &c., at and upon the trial of the said issue so joined, after having sent for the jury at 1:50 o'clock in the morning, while it was deliberating and without request for further instructions, stated to the jury as follows: "Now, ladies and gentlemen of the jury, may I impress upon you further" and then repeated his charge as to the law on the question of insanity, thereby erroneously emphasizing such portion of his charge without request therefor, which was prejudicial to the plaintiff-in-error.

Exception noted.

27. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously gave additional instructions to the jury in the absence of the defendant, the plaintiff-in-error.

28. That the said court before whom, &c., at and upon the trial of the said issue so joined, erroneously framed the verdict for the jury which was given by the forelady as "Guilty" whereupon the Court asked the following question:

> The Court—Guilty of murder in the first degree?

to which the forelady gave the following answer:

> The Forelady—Yes, Your Honor.

which was prejudicial to the defendant, the plaintiff-in-error.

There are diverse other errors in the record and proceedings aforesaid and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

Wherefore, the said Bonaventura Nardella, prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing and that he may be restored to all things which he has lost by occasion thereof.

John C. Barbour
E. Robert Coven
Attorneys for and of counsel
with plaintiff-in-error.

Reasons for Reversal

Filed December 19, 1930
NEW JERSEY COURT OF ERRORS AND APPEALS

The State, Defendant-in-Error, vs. Bonaventura Nardella, Plaintiff-in-Error.	In Error

REASONS FOR REVERSAL

And now comes the said Bonaventura Nardella, by John C. Barbour and E. Robert Coven, his Attorneys and of counsel with plaintiff-in-error, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said Bill of Exceptions and in giving the verdict and judgment aforesaid, there is manifest error, and the said Bonaventura Nardella says that said judgment should be reversed and assigns the following reasons or causes:

1. Because the trial court sustained an objection to the following question asked on cross examination of Alvin Heinricks, a photographer called on behalf of the State:

> "Q. And if that is true, that photograph does not represent the conditions as they were immediately after the crime, does it?"

Objected to, objection sustained and exception noted.

2. Because the trial court permitted the witness, Dr. William A. Norval, on behalf of the State, to

be asked and to answer the following question, which was objected to by the counsel for defendant:

"Q. Could the injuries that you observed on the side of the face and skull, could any of these injuries be caused by an axe being used with force?"

Objected to, objection overruled and exception noted.

3. Because the trial court permitted the witness Charles Pirola, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

"Q. Did you have a talk with him, Sergeant? (referring to the defendant) A. I did.

Q. Tell us what was said at that time?"

Objected to, objection overruled and exception noted.

4. Because the trial court permitted the witness Charles Pirolo, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

"Q. Go ahead, relate it. What did he say?" (referring to the defendant)

Objected to and objection overruled.

5. Because the trial court permitted the witness Charles Pirolo, a detective sergeant, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

"Q. Go ahead and tell us what was said. A. He told me the story that it was his impression that his wife wasn't just right with him and I said, 'Well, what reason do you have, who do you accuse, who do you say was wrong with your wife?' He said, well, he didn't know and afterward I said well, what did you do it for?"

Objected to on the ground that the witness was testifying to a conversation, but not phrasing it in the language of the defendant.

6. Because the trial court admitted into evidence six boards (marked Exhibit S-22) without proper foundation having been laid.

Objected to, objection overruled and exception noted.

7. Because the trial court admitted into evidence a sketch or map (marked Exhibit S-23) drawn by Prosecutor's detective Fred Cavaliere and upon which the defendant was alleged to have made several pencil markings, without proper foundation having been laid.

Objected to, objection overruled and exception noted.

8. Because the trial court sustained an objection to the following question asked on cross examination of Charles Pirola, a detective sergeant called on behalf of the State:

"Q. Do you feel ill disposed towards him?" (referring to the defendant)

Objected to, objection sustained and exception noted.

9. Because the trial court sustained an objection to the following question asked on cross ex-

amination of Charles Piorolo, a detective sergeant called on behalf of the State:

"Q. You were trying to get him to admit the crime, were you not?"

Objected to and objection sustained.

10. Because the trial court sustained an objection to the following question asked on cross examination of Charles Pirolo, a detective sergeant called on behalf of the State:

"Q. When you asked him if he had done it, did you tell him then that anything he said would be used against him?"

Objected to and objection sustained.

11. Because the trial court permitted the witness James Brooks, a detective, on behalf of the State, to be asked and to answer the following question, which was objected to by the counsel for defendant:

"Q. I show you these grey pants, officer, and I ask you if you can identify these as having been found by you or observed by you at the premises 14 Mill Street?"

Objected to, objection overruled and exception noted.

12. Because the trial court admitted into evidence a pair of pants with a belt attached (marked Exhibit S-29), without proper foundation having been laid.

Objected to, objection overruled and exception noted.

13. Because the trial court denied the motion of counsel for the defendant to strike out of the evidence two photographs marked Exhibits S-6 and S-7 respectively, as to which testimony adduced after they were admitted in evidence showed that

such Exhibits did not represent the positions of the bat, axe and shovel respectively, as they were found after the commission of the alleged crime.

14. Because the trial court, after the witness, Joseph Nardella, in behalf of the State, on cross examination, answered the following questions:

> "Q. Did he say that he had not closed, nailed them closed? A. He didn't say anything, sir.
>
> Q. Didn't say anything about it, at all? A. No, sir, not that I remember of.
>
> Q. Was that the way he always acted, Joe? A. Well, sometimes he came home drunk, and I had to—about 12 o'clock midnight, I had to go look for him."

denied the motion of counsel for the defendant that the answer, "Well, sometimes he came home drunk, and I had to—about 12 o'clock midnight, I had to go look for him," be stricken out as not responsive.

Motion denied and exception noted.

15. Because the trial court admitted into evidence a statement made by the defendant (marked Exhibit S-33), without proper foundation having been laid.

Objected to, objection overruled and exception noted.

16. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, who was interpreting the testimony of the defendant, Bonaventura Nardella, as follows:

> The Court—"Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge."

thereby empowering the interpreter to determine what was hearsay testimony, thereby delegating a judicial power.

17. Because the trial court sustained an objection to the following question asked on direct examination, of Bonaventura Nardella, the defendant:

Q. "Did this Greek lady laugh at you or talk about you?"

Objected to, objection sustained and exception noted.

18. Because the trial court permitted the official Italian Interpreter, Anthony Aquino, to refrain from interpreting in full the answer of the defendant, Bonaventura Nardella, to the following question:

Q. "Did you hear them? A. Yes, sir.

Mr. Coven—I wish the Court would instruct the interpreter to repeat what he just told him.

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something."

19. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, to refrain from interpreting the answer of the defendant, Bonaventura Nardella, to the following question:

Q. "What did you hear?

The Interpreter—He is saying something again that he was told, your Honor."

The Court—All right. It will not be repeated.

Q. What did you hear?

Mr. Coven—Now, I didn't hear any objections. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay."

20. Because the trial court permitted the defendant, Bonaventura Nardella, on cross examination, to demonstrate how he struck the deceased with a bat, in accordance with the request of the Prosecutor as follows:

Q. "Stand up and show the jury what you did with the bat when you took hold of it?"

Objected to, objection overruled and exception noted.

21. Because the trial court ordered the following testimony of Dr. George W. King, an alienist on behalf of the defendant, to be stricken out:

"This man was all right, probably safe to make a living for himself and support his family until he came to that time when the delusion of his wife's own father being intimate with his wife. That was the time that man should have been sequestered. That is the time he was a menace to society."

Mr. Barnitt—If your Honor please, I ask to have it stricken out.

The Court—It will be stricken out."

Exception noted.

22. Because the trial court refused to charge the jury with the following request to charge, as requested by plaintiff-in-error:

"The defendant requests Your Honor to charge the jury the insanity of the defendant need not be proven beyond a reasonable doubt."

23. Because the trial court refused to charge the jury with the following request to charge, as requested by plaintiff-in-error:

"There was a statute passed in 1919, Chapter 134, page 303, which reads in part as follows: 108. "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 consideration of all the evidence recommend imprisonment at hard labor for life * * *." Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury, the court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree and in that case, the defendant shall suffer the death penalty, but the statute also now provides that the jury upon finding a person guilty of murder in the first degree, may as a part of their verdict recommend imprisonment at hard labor for life. The very important duty is, therefore, placed upon the jury of deciding whether to render a verdict of

murder in the first degree without recommendation, thereby carrying a death penalty, or render a verdict of murder in the first degree with a recommendation of imprisonment for life. By Chapter 214 of the Laws of 1914 it was provided that 'every prisoner who * * * they have sentenced for the term of his natural life has served not less than fifteen years may be released on parole.' This provision has now been repealed so that a prisoner sentenced for the term of his natural life is no longer eligible for parole after serving fifteen years or any greater or lesser portion of his sentence. It is, therefore, your duty, if you find the defendant guilty of murder in the first degree to determine whether or not he should be put to death or should be confined for the remainder of his natural life in State's Prison at hard labor, and if you determine that he should be so confined your verdict should be that he is guilty of murder in the first degree but that you recommend imprisonment at hard labor for life.

24. Because the trial court sent for the jury at 1:50 o'clock in the morning, after it had been deliberating for some six and one-half hours, without the jury having requested additional instruction and inquired of the jury if they had been able to agree upon a verdict, thereby tending to hasten the jury in its deliberations, to the prejudice of the plaintiff-in-error.

25. Because the trial court read to the jury the testimony on cross examination of Dr. George W.

King, an alienist on behalf of the defendant, upon being requested by the jury so to do, after the court had sent for the jury at 1:50 o'clock in the morning, which was prejudicial to the plaintiff-in-error.

26. Because the trial court, after having sent for the jury at 1:50 o'clock in the morning, while it was deliberating and without request for further instructions, stated to the jury as follows: "Now, ladies and gentlemen of the jury, may I impress upon you further" and then repeated his charge as to the law on the question of insanity, thereby emphasizing such portion of his charge without request therefor, which was prejudicial to the plaintiff-in-error.

Exception noted.

27. Because the trial court gave additional instructions to the jury in the absence of the defendant, the plaintiff-in-error.

28. Because the trial court framed the verdict for the jury which was given by the forelady as "Guilty" whereupon the Court asked the following question:

> The Court—"Guilty of murder in the first degree?"

to which the forelady gave the following answer:

> The Forelady—"Yes, Your Honor."

which was prejudicial to the defendant, the plaintiff-in-error.

John C. Barbour
E. Robert Coven
Attorneys for and of counsel
with plaintiff-in-error.

Joinder in Error

Filed December 20, 1930
COURT OF ERRORS AND APPEALS

The State of New Jersey, Defendant-in-Error, vs. Bonaventura Nardella, Plaintiff-in-Error.	In Error to Court of Oyer and Terminer

JOINDER IN ERROR

And thereupon the State of New Jersey, defendant-in-error, by J. Vincent Barnitt, its attorney, comes in court and says, that there is no error either in the record and proceedings aforesaid or in the giving of judgment aforesaid, and it prays here, that the court here may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and the judgment aforesaid, in the manner aforesaid, given, may in all things, be affirmed, etc.

J. Vincent Barnitt,
Attorney for Defendant-in-Error.

Exhibit S-1

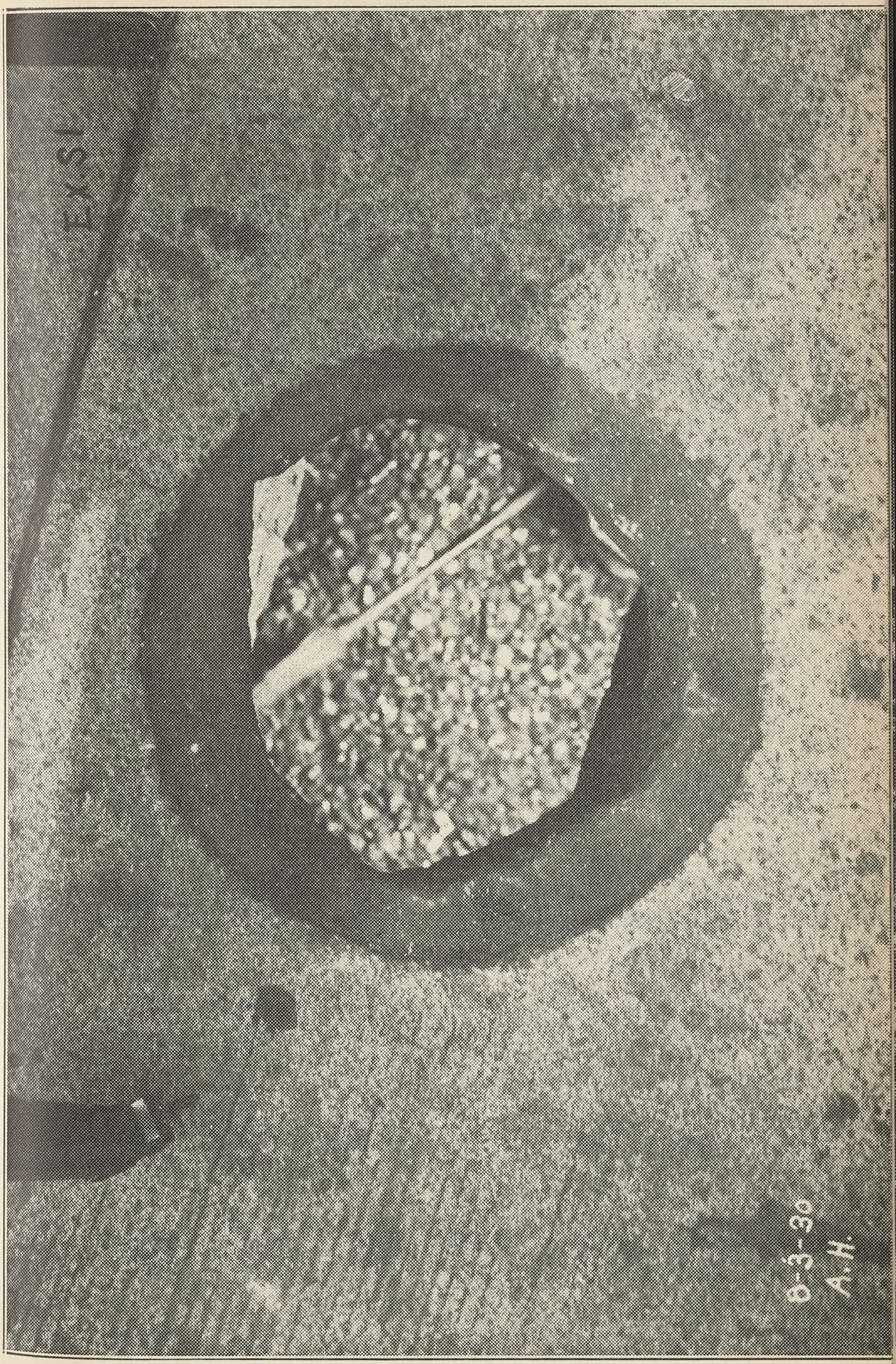


Exhibit S-2

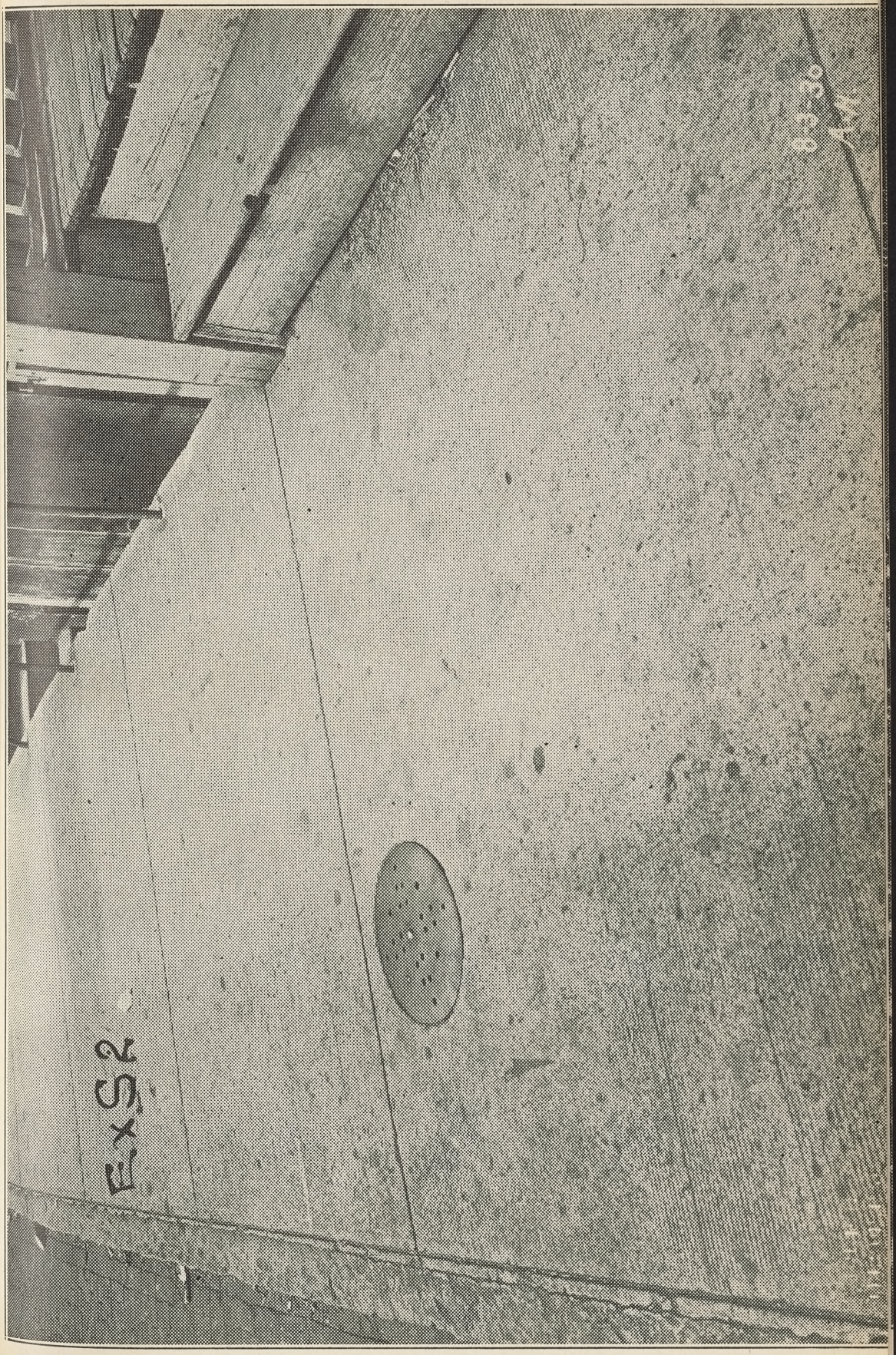




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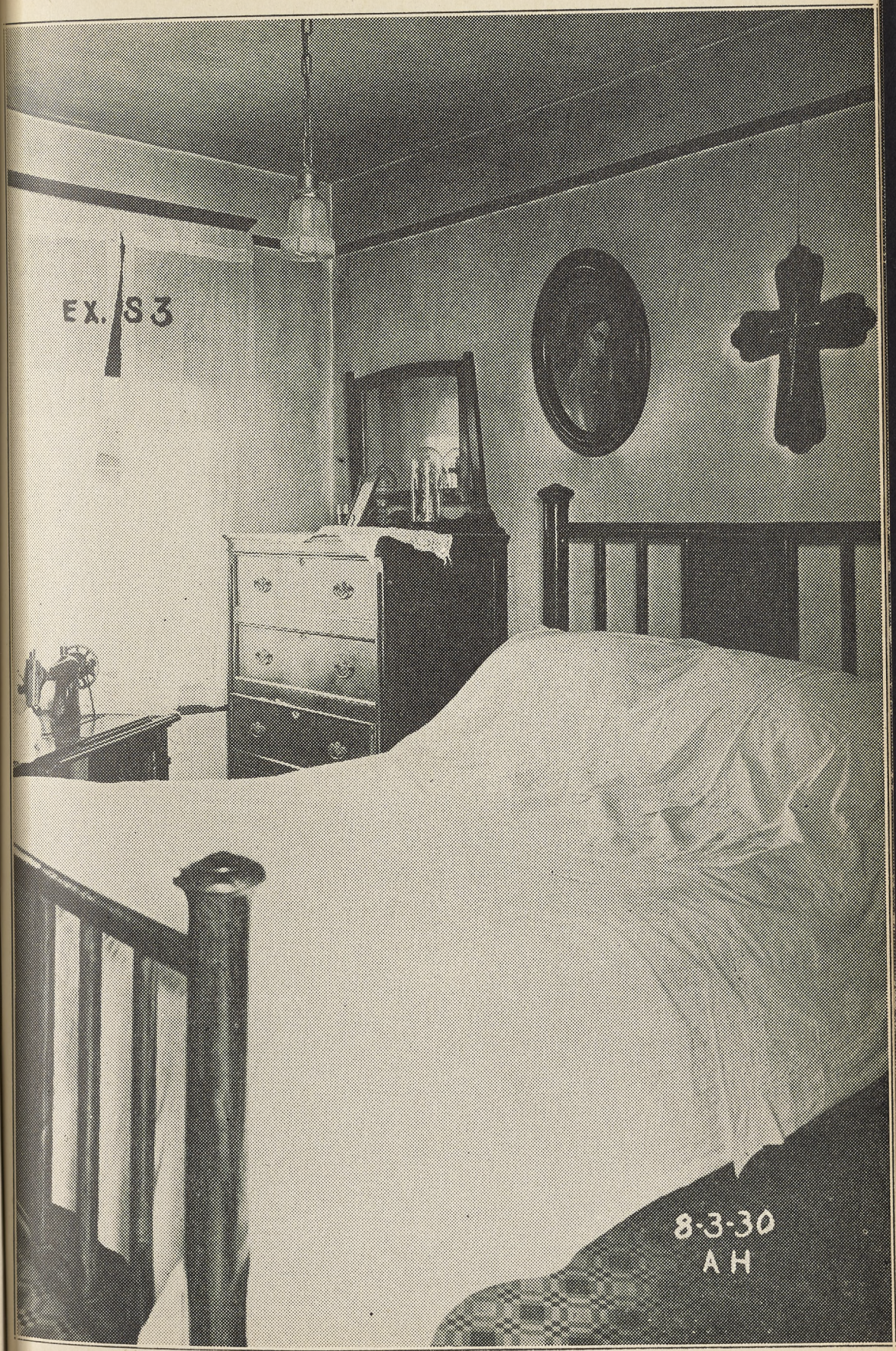
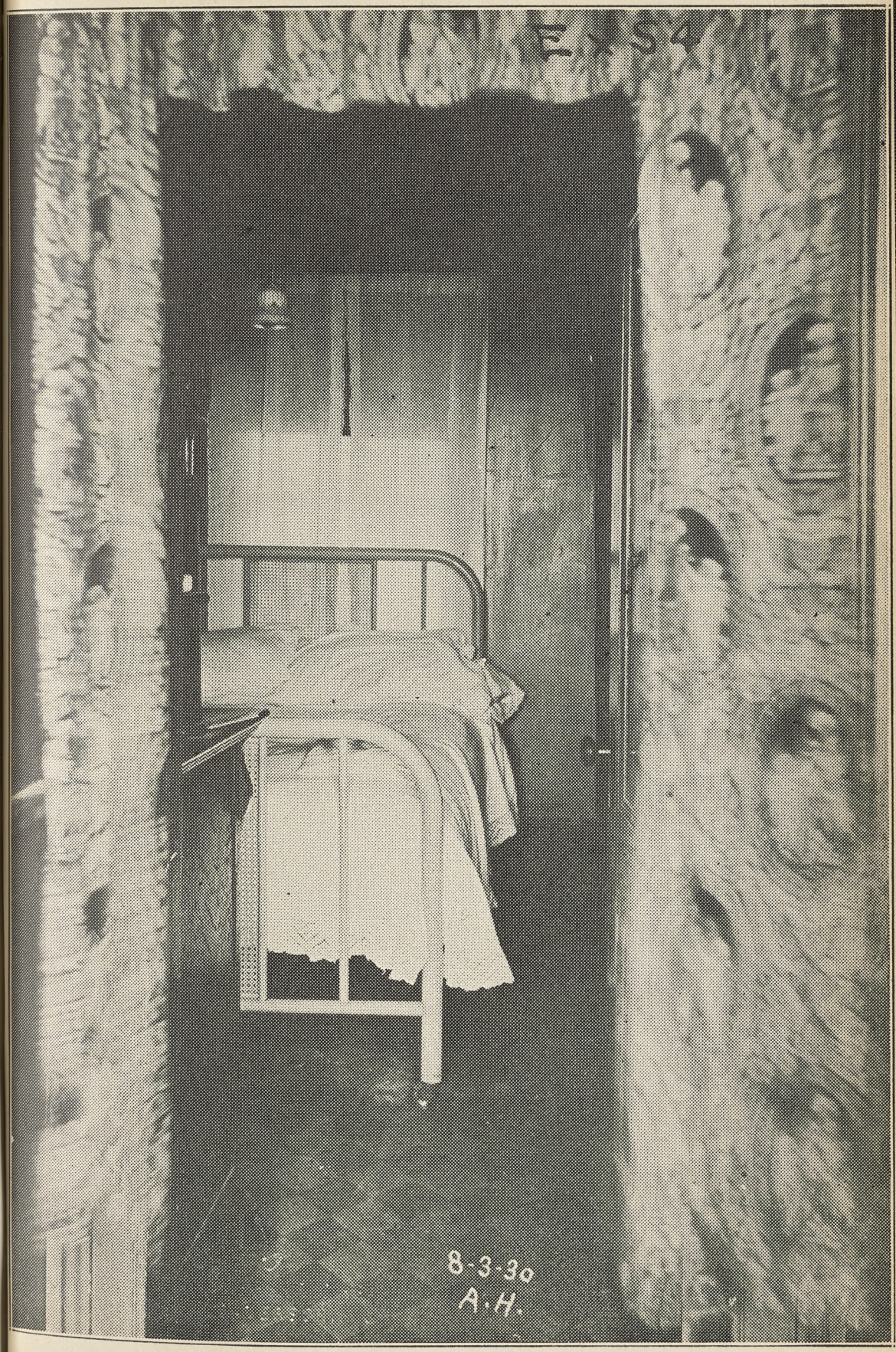


Exhibit S-4





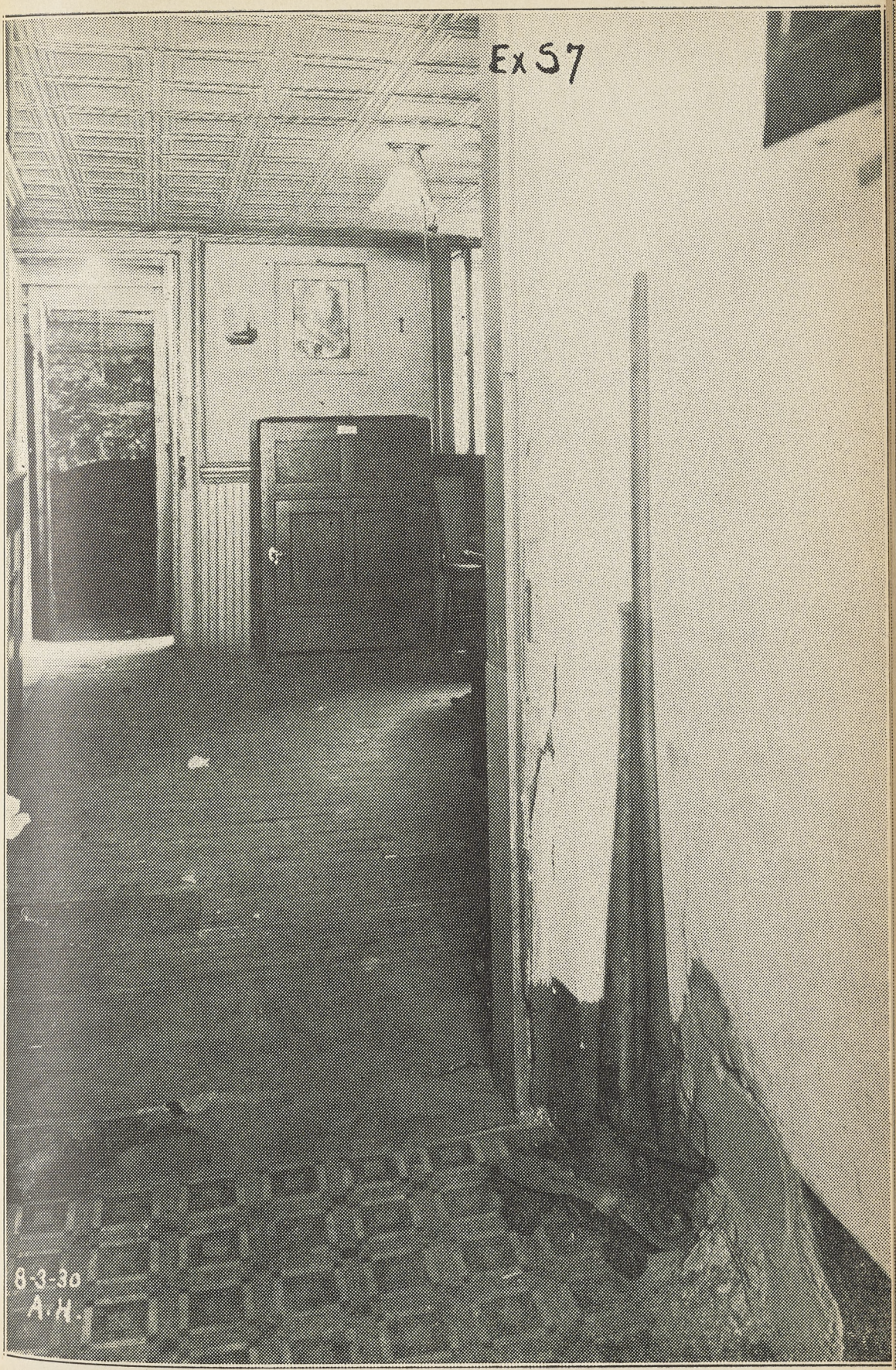

Ex S7
8-3-30
A.H.

Exhibit S-10

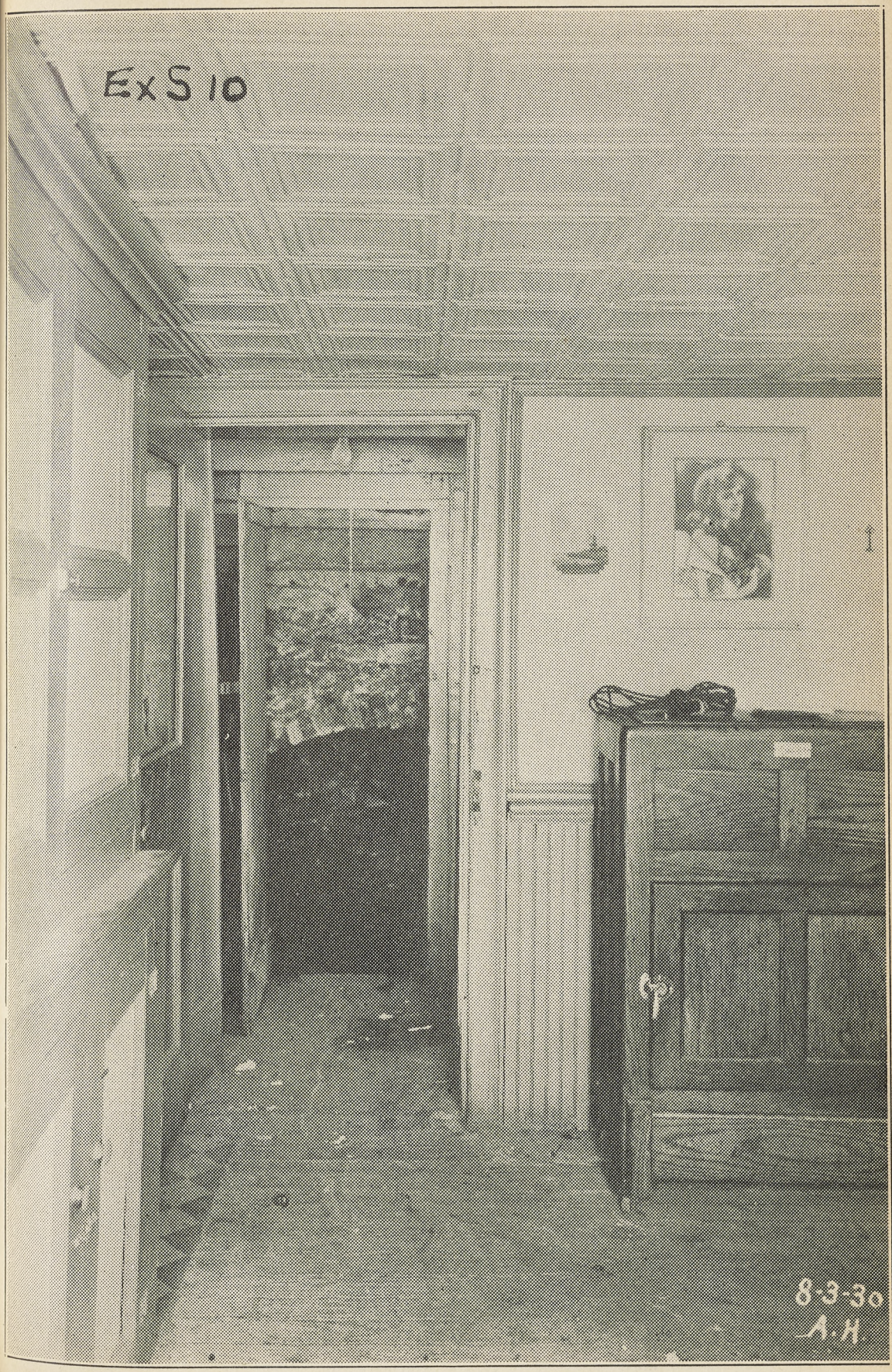




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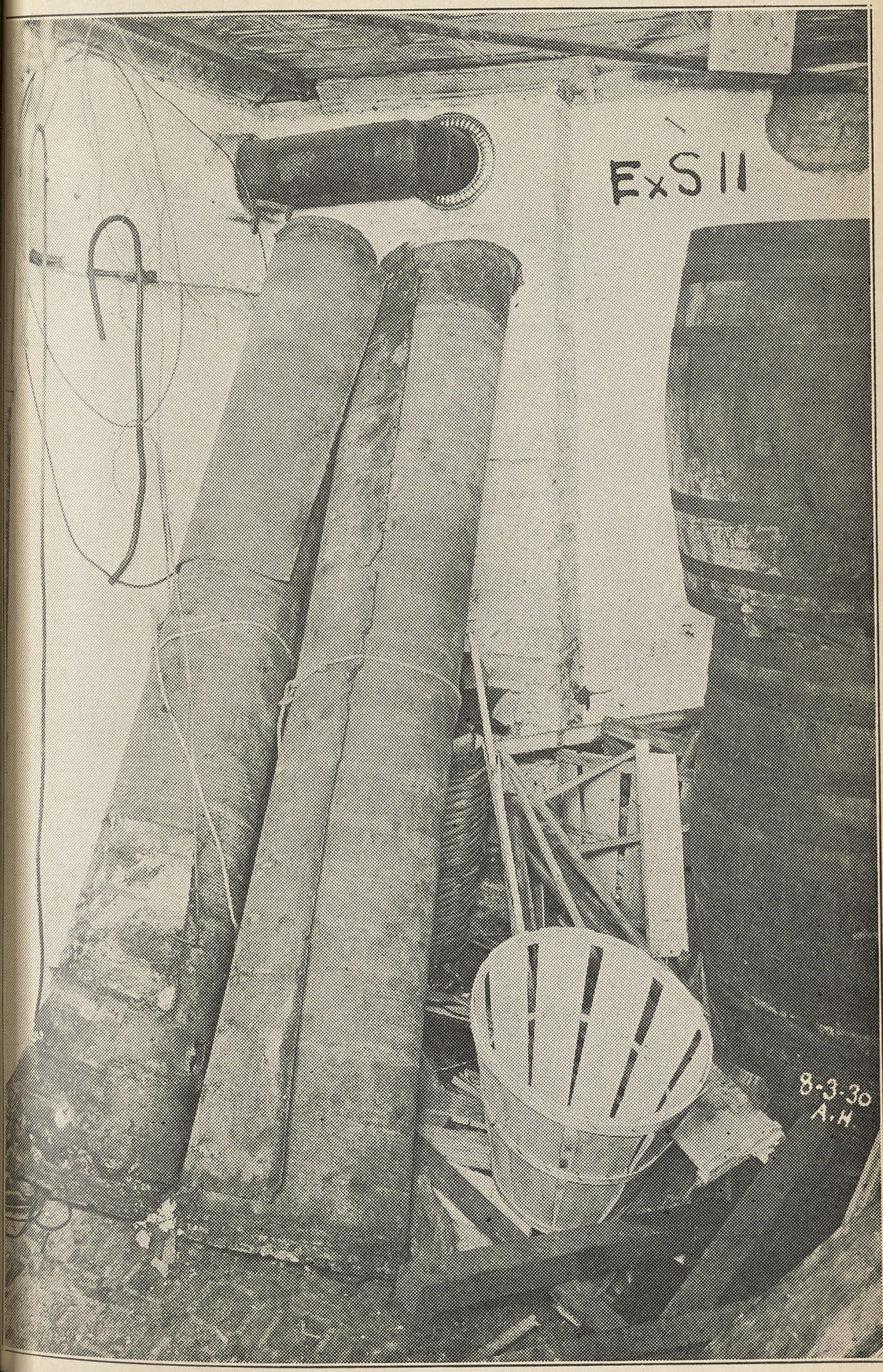
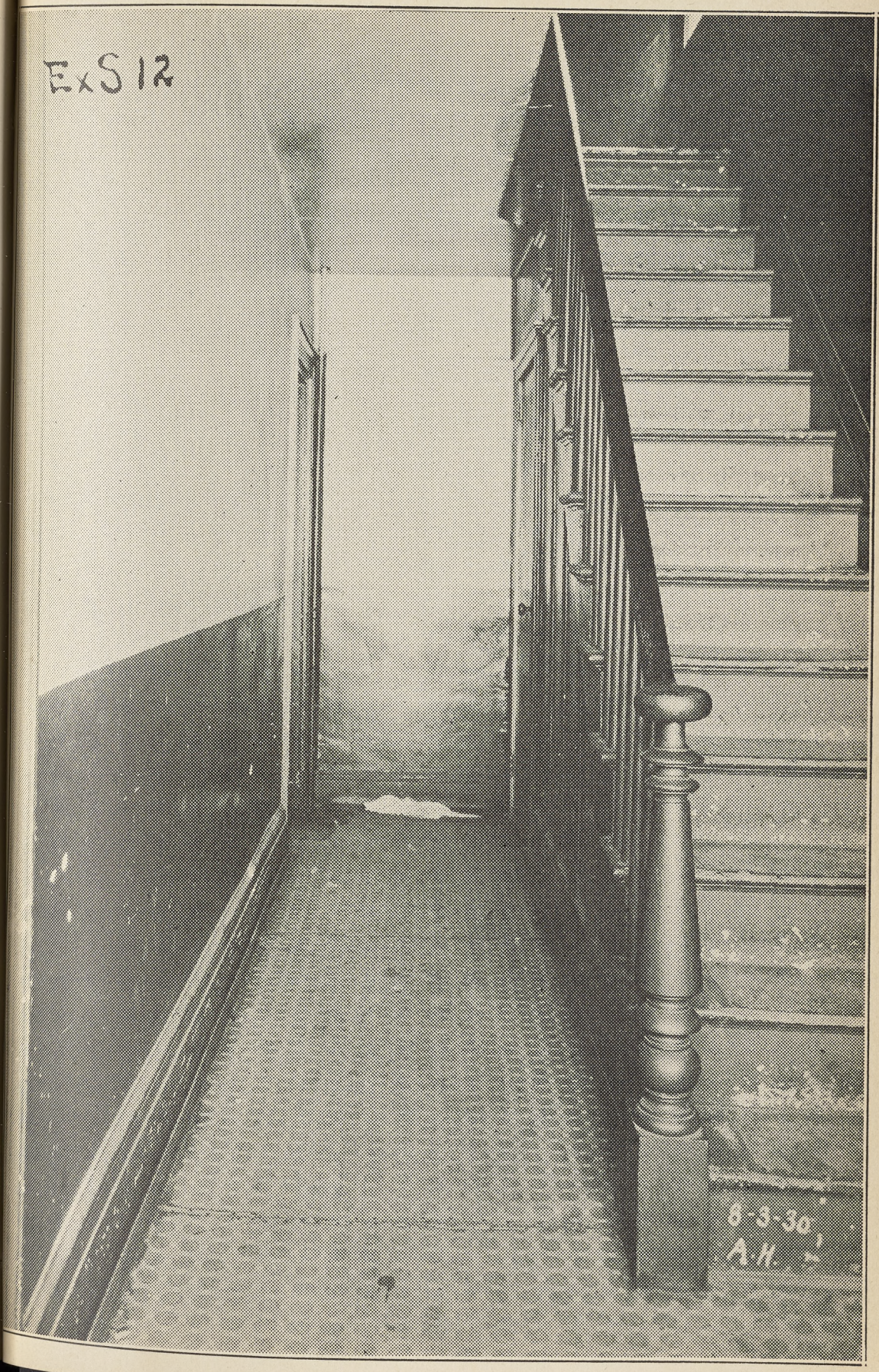
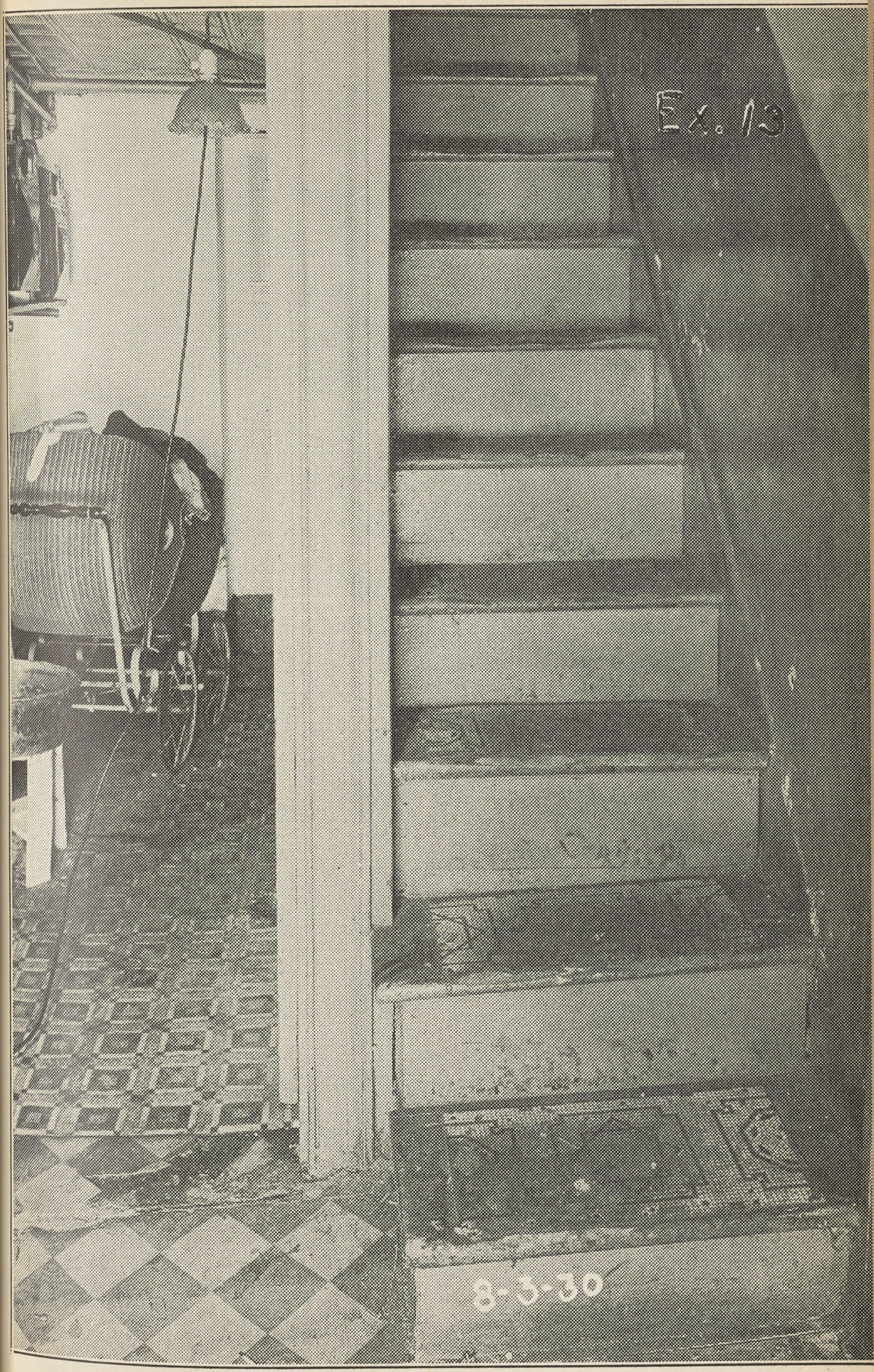


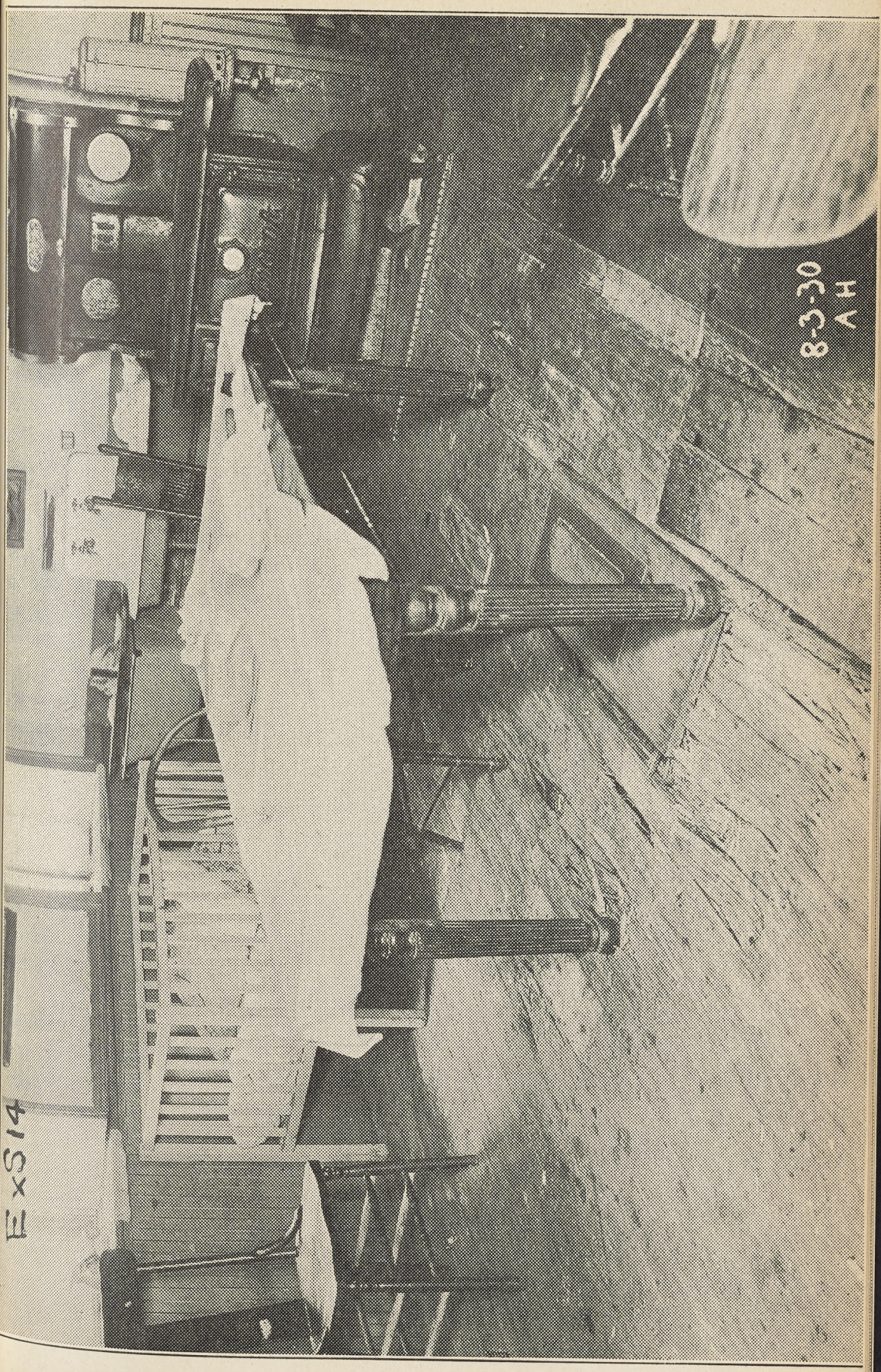
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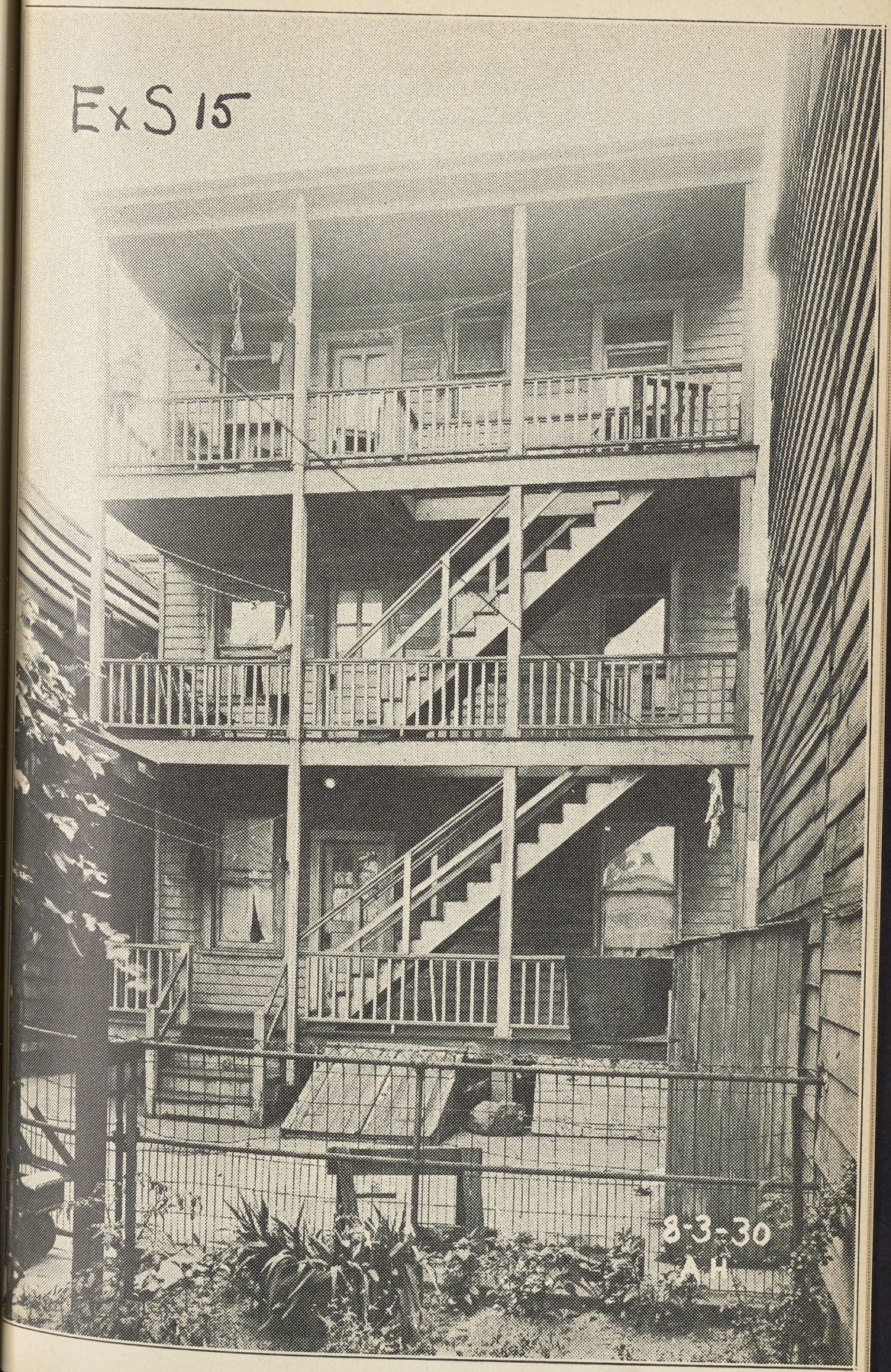

Ex. 13
8-3-30

EX514

Exhibit S-14






Ex S 15
8-3-30
AH



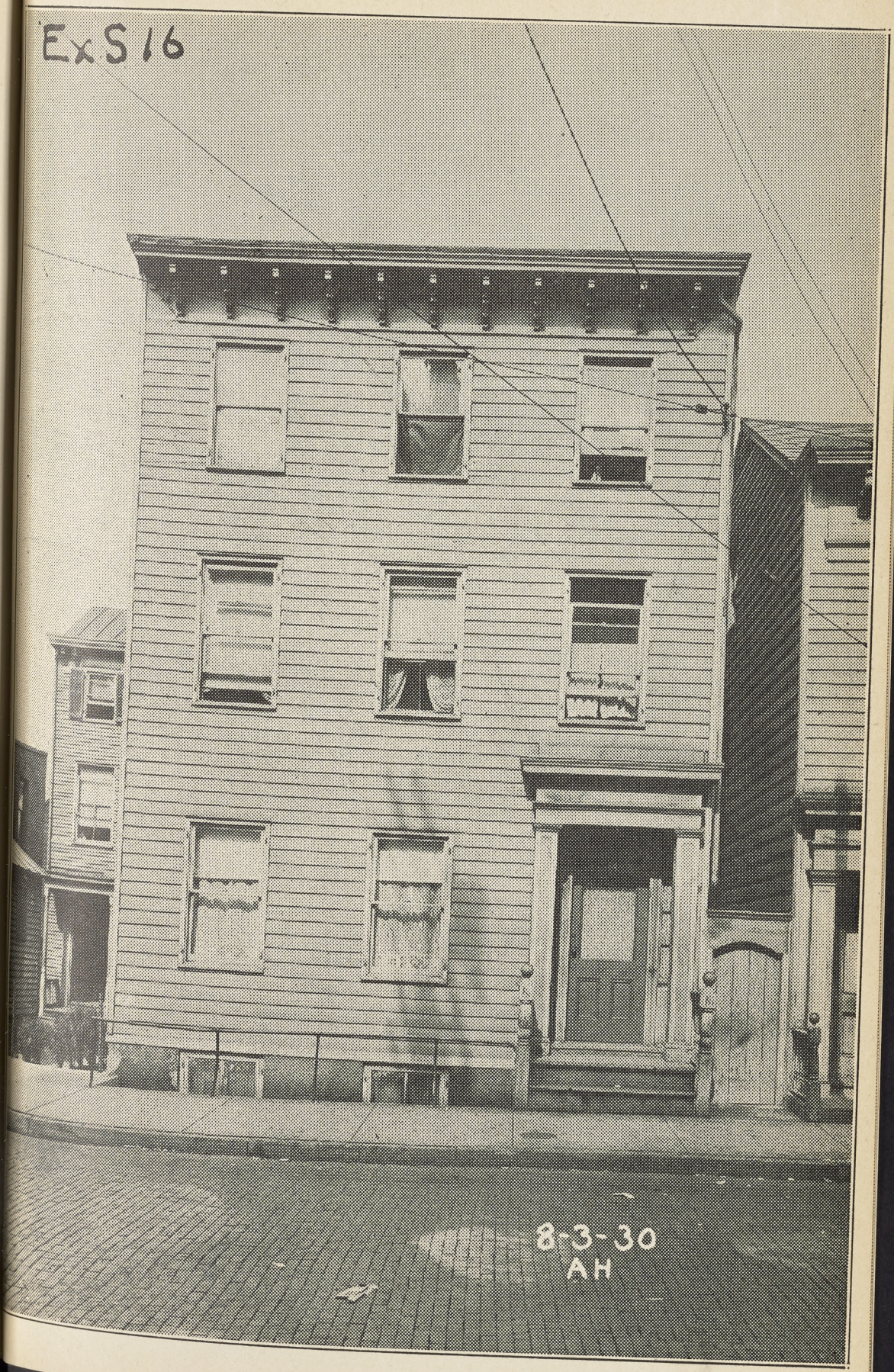

Ex S 16
8-3-30
AH

Exhibit S-17

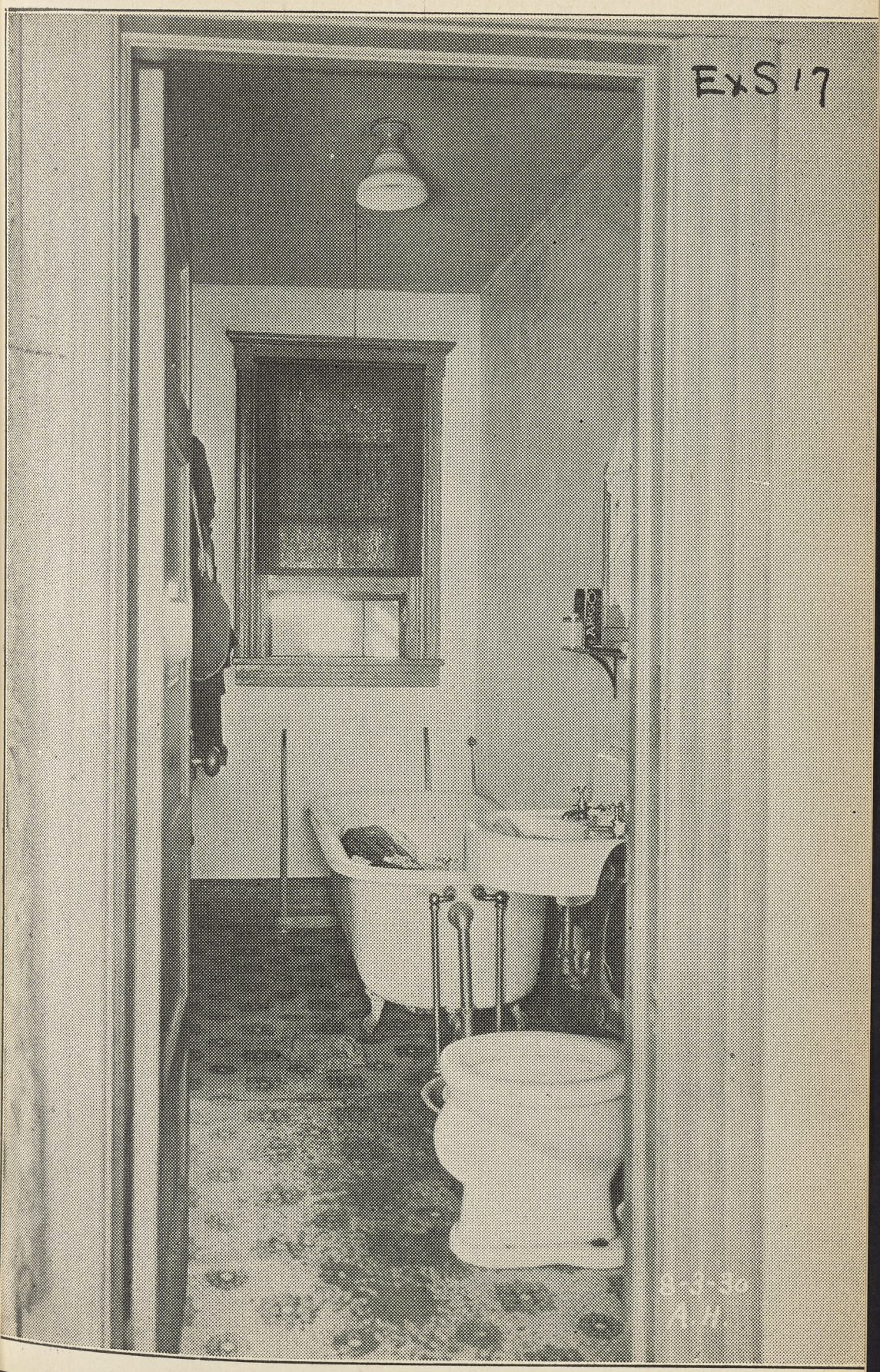




Exhibit S-18

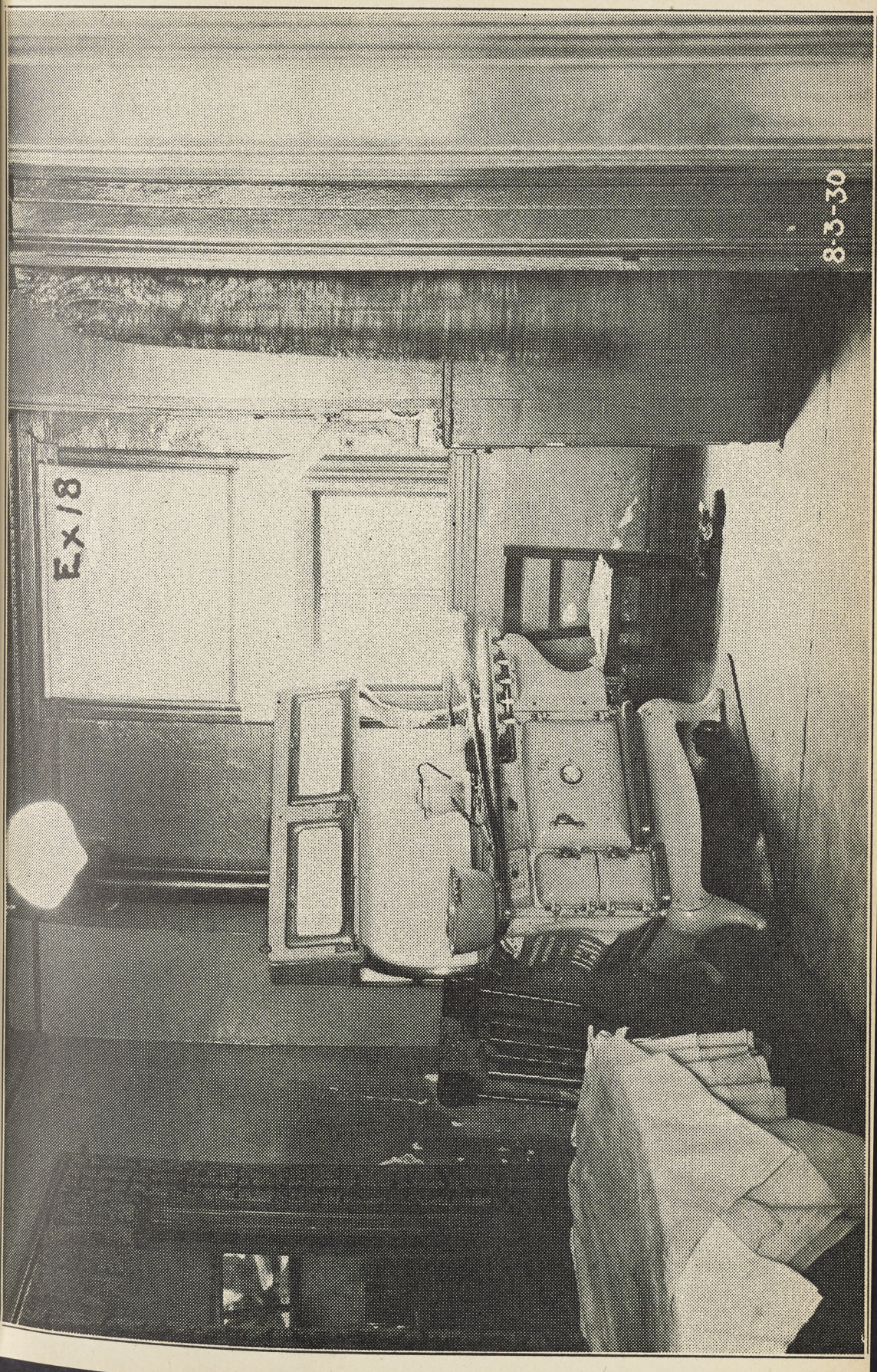
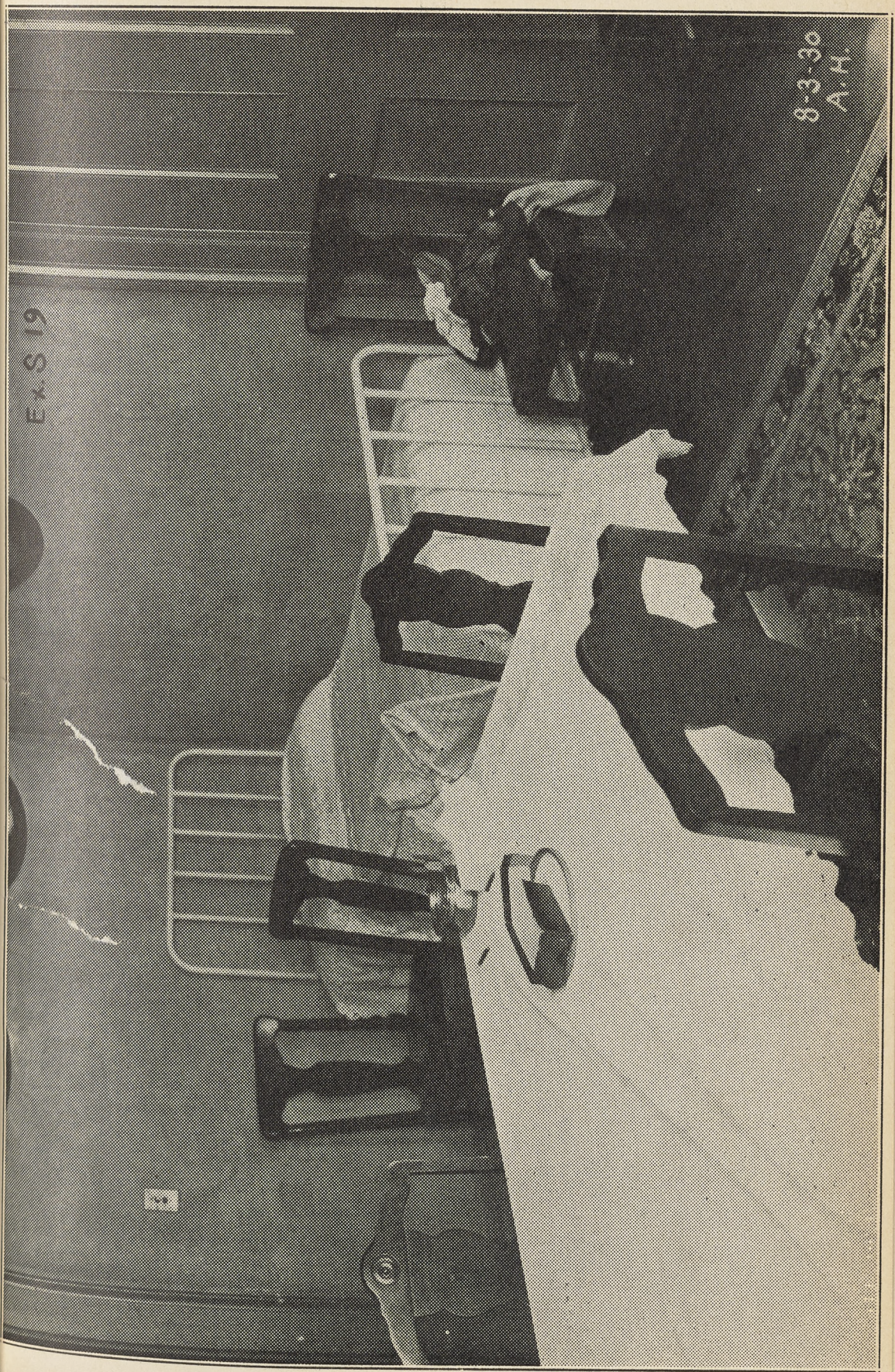




Exhibit S-19



New Jersey Court of Errors and Appeals

The State of New Jersey,
Defendant-in-Error,
vs.
Bonaventura Nardella,
Plaintiff-in-Error.

On Indictment for Murder; On Writ of Error to Court of Oyer and Terminer, Passaic County

Brief for Plaintiff-in-Error

STATEMENT OF CASE

The plaintiff-in-error, Bonaventura Nardella, was indicted in the Passaic County Court of Oyer and Terminer for the murder of his wife, Lucia Nardella, tried, convicted and sentenced to death, and brings said conviction before this Court for review.

The plaintiff-in-error was born in Italy 42 years ago and came to the United States of America in 1910. He was not then married, although he had up to that time, for a period of five years, kept company in the province of Foggia, Italy, with the young woman whom he afterwards married and whose life he took on August 2, 1930. He worked at Manlius, New York, until 1914 when he returned to Italy to marry the deceased, which he did in 1915. Shortly after his marriage, he entered the Italian Army and served during the World War. While serving at the front their first child, Joseph, was

born. After his discharge he and his wife lived together in Italy until early in the year 1920 when the plaintiff-in-error returned to the United States, leaving his wife in Italy, shortly after which the second child was born. The plaintiff-in-error has since resided continuously in this country, and in the year 1922 his wife and two children also came to this country, after which time they resided together in the City of Paterson, in this State, for some time prior to August 2 ,1930 having resided at No. 14 Mill Street, in the said city. While residing in the City of Paterson, two daughters, Amelia and Lucy were born to the plaintiff-in-error and the deceased.

Before returning to this country in 1920 he commenced to have in his mind suspicions of his wife's infidelity. His wife would tell him that he was absolutely unjustified; that his accusations were unfounded; that there was no truth to the suggestions that he made, and for a time he would subside in her statement in that regard and would continue to live with her peacefully. From time to time thereafter, his mind would again be troubled. At first he suspected no man in particular, but later his mind fastened upon two neighbors in the city of Paterson and eventually, in or about the month of May, 1930, his mind fastened upon the father of the deceased, as being the man with whom the deceased was violating the marriage vows (p. 268 etc.). He testified to hearing a conversation between the deceased and her father on a certain Sunday. He nailed all the windows closed (p. 174,

l. 36). There was no foundation, in fact, for any of these suspicions and he was described by Dr. George W. King, an alienist appointed by the Court upon request of the defendant's attorneys, as insane, (p. 326, l. 11) suffering from paranoia, (p. 323, l. 30) which was controverted by the alienists for the State. He was in such a state and condition that his brother, Jerry Nardella, a witness on behalf of the State, feared for his safety while working upon scaffolds while engaged in his occupation as a carpenter. He and his brother had worked together at the Paterson Vehicle Company a year or more before the happening of August 2, 1930, and at that time he complained to his brother of the alleged actions of his wife. This brother, Jerry Nardella, testified (pp. 255 and 256) that the defendant, plaintiff-in-error was "crazy" and that while he was working he "had to watch him all the time" (p. 257).

Sometime prior to August 2, 1930, the defendant, plaintiff-in-error, suffered an injury to one of his fingers in the course of his employment at the Paterson Vehicle Company in the City of Paterson, and was undergoing treatment therefor by a physician. On the afternoon of August 2, 1930, the deceased urged him to go with her for further treatment to said physician and he demurred, saying that he was tired and would go the following Monday evening. She urged him further and, as he testified, something black came over his eyes and he took a baseball bat standing in the corner of the platform at the top of the stairs leading from the first floor to

the basement, as the deceased was adjusting her stocking apparently, on said platform, and struck her with said baseball bat over the back of the head, rendering her unconscious. He took her by the heels, dragged her down the cellar stairs and through to a coal bin or coal hole situated under the sidewalk, where he struck her first with a shovel and then with an axe. He covered her head with coal and placed several boards upon her body. He then returned to the first floor, changed his clothes, left the house and went by train to New York City and thence by train to Syracuse, New York and thence to Manlius, New York, a suburb of Syracuse, to the home of an uncle, where he was apprehended later on the afternoon of his arrival, the day following the killing of his wife. The defendant, plaintiff-in-error, made two written statements, one to Clarence Unckless, District Attorney of Onondaga County, New York, introduced as evidence and marked as Exhibit S-25 found on pages 89 to 108 inclusive. The second statement was made to the Prosecutor of Passaic County and was marked Exhibit S-33 and is found on pages 211 to 246 inclusive. The defendant took the stand and testified to the facts surrounding the killing of the deceased, there being no attempt to deny such killing or the manner of it.

The defendant in mitigation and excuse of his offense offered testimony to show that he was insane, suffering from paranoia, which resulted in the happening of August 2, 1930. The State by its proof attempted to refute this and to show that he was sane.

The case was submitted to the jury under instructions commencing at page 379 and the jury subsequently returned with a verdict of "Guilty" whereupon the trial judge said to the jury "Guilty of murder in the first degree?" and the forelady answered, "Yes, Your Honor" whereupon the jury was polled (p. 394). Plaintiff-in-error contends that this was an illegal verdict upon which he was sentenced to death.

SPECIFICATIONS OF ERRORS

Plaintiff-in-error assigns twenty-eight Assignments of Error (p. 402 &c.) and twenty-eight Reasons for Reversal (p. 414 &c.). The only Reasons which will be argued in this brief are the following:

"16. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, who was interpreting the testimony of the defendant, Bonaventura Nardella, as follows:

> "The Court—Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge."

thereby empowering the interpreter to determine what was hearsay testimony, thereby delegating a judicial power."

"18. Because the trial court permitted the official Italian Interpreter, Anthony Aquino, to refrain from interpreting in full the answer of the defendant, Bonaventura Nardella, to the following question:

"Q. Did you hear them? A. Yes, sir.

Mr. Coven—I wish the Court would instruct the interpreter to repeat what he just told him.

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something."

"19. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, to refrain from interpreting the answer of the defendant, Bonaventura Nardella, to the following question:

"Q. What did you hear?

The Interpreter—He is saying something again that he was told, your Honor.

The Court—All right. It will not be repeated.

Q. What did you hear?

Mr. Coven—Now, I didn't hear any objections. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay."

"23. Because the trial court refused to charge the jury with the following request to charge, as requested by plaintiff-in-error:

"There was a statute passed in 1919, Chapter 134, page 303, which reads in part as follows: 108. '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 consideration of all the evidence recommend imprisonment at hard labor for life * * *.' Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury, the court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree and in that case the defendant shall suffer the death penalty, but the statute also now provides that the jury upon finding a person guilty of murder in the first degree may as a part of their verdict recommend imprisonment at hard labor for life. The very important duty is, therefore, placed upon the jury of deciding whether to render a verdict of murder in the first degree without recommendation, thereby carrying a death penalty, or render a verdict of murder in the first degree with a recommendation of imprisonment for life. By Chapter 214 of the Laws of 1914 it was provided that 'every prisoner who * * * they have sen-

tenced for the term of his natural life has served not less than fifteen years may be released on parole.' This provision has now been repealed so that a prisoner sentenced for the term of his natural life is no longer eligible for parole after serving fifteen years or any greater or lesser portion of his sentence. It is, therefore, your duty, if you find the defendant guilty of murder in the first degree to determine whether or not he should be put to death or should be confined for the remainder of his natural life in State's Prison at hard labor, and if you determine that he **should be so confined** your verdict should be that he is guilty of murder in the first degree but that you recommend imprisonment at hard labor for life."

"27. Because the trial court gave additional instructions to the jury in the absence of the defendant, the plaintiff-in-error."

"28. Because the trial court framed the verdict for the jury which was given by the forelady as 'Guilty' whereupon the Court asked the following question:

"The Court—Guilty of murder in the first degree?"

to which the forelady gave the following answer:

"The Forelady—Yes, your Honor."

which was prejudicial to the defendant, the plaintiff-in-error."

ARGUMENT

POINT I.

THE TRIAL COURT IMPROPERLY DELEGATED TO THE INTERPRETER, THE JUDICIAL DUTY OR POWER OF DETERMINING WHAT WAS AND WHAT WAS NOT HEARSAY EVIDENCE, BY REASON OF WHICH PLAINTIFF-IN-ERROR SUFFERED MANIFEST WRONG AND INJURY.

This point covers the following Assignments and Reasons:

"16. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, who was interpreting the testimony of the defendant, Bonaventura Nardella, as follows:

> "The Court—Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge."

thereby empowering the interpreter to determine what was hearsay testimony, thereby delegating a judicial power." (Assignment 16, p. 407, l. 17; Reason 16, p. 418, l. 30.)

"18. Because the trial court permitted the official Italian Intepreter, Anthony Aquino, to refrain from interpreting in full the answer of the defendant, Bonaventura Nardella, to the following question:

> "Q. Did you hear them? A. Yes, sir. Mr. Coven—I wish the Court would in-

struct the interpreter to repeat what he just told him.

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something."

(Assignment 18, p. 408, l. 3; Reason 18, p. 419, l. 11.)

"19. Because the trial court instructed the official Italian Interpreter, Anthony Aquino, to refrain from interpreting the answer of the defendant, Bonaventura Nardella, to the following question:

"Q. What did you hear?

The Interpreter—He is saying something again that he was told, your Honor.

The Court—All right. It will not be repeated.

Q. What did you hear?

Mr. Coven—Now, I didn't hear any objections. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay."

(Assignment 19, p. 408, l. 17; Reason 19, p. 419, l. 25.)

The plaintiff-in-error testified through the official Italian Interpreter, Anthony Aquino, and in his direct examination (p. 265, l. 5) said:

"A. I had caught on and also my aunt told me about it before you go to America take care of your business."

The question was then asked of him by Mr. Coven, one of his counsel:

"Q. You say you caught on, what do you mean, Mr. Nardella?

Mr. Barnitt—Now, your Honor, if he is going to say what was told him in 1920 in Italy I am going to object—before the interpreter tells that to the jury. It is objectionable.

The Court—Yes. You will not repeat anything that is hearsay. Only testify as to what he knows of his own knowledge.

The Interpreter—He is trying to say something that somebody told him.

The Court—Don't repeat it."

Again during his direct examination the plaintiff-in-error gave the following testimony: (p. 276, l. 13 &c.):

"Q. Who lived with this Greek lady? A. She had a boarder.

Q. What was his name? A. I know his first name was George; I don't know his second name.

Q. Were you suspicious of him? A. Yes, sir.

Q. Why? A. Because when I was sitting out in the front he would come down from upstairs from the rear porch.

Q. Yes? A. And he would go into the house.

Q. Yes; what else?"

Thereupon the following statement was made and instruction given the interpreter by the Court:

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"The Interpreter—He is going to state something, your Honor, that somebody else told him.

The Court—No; it cannot be repeated." (P. 276, l. 30.)

Again under direct examination, the plaintiff-in-error gave the following testimony (p. 277, l. 8 &c.):

"Q. What porch and what window? A. Josie was at 13 Mill Street at the window and Mary Ambrose was on the porch at 15 Mill Street.

Q. That is the house next door and the one next to that? A. My house is in the center of the two.

Q. Where were you? A. In the yard.

Q. Did you hear them? A. Yes, sir.

Mr. Coven—I wish the Court would instruct the interpreter to repeat what he just told him.

The Interpreter—I have been instructed by the Judge not to say anything that he was told by someone else, and he just started to say something.

Mr. Coven—What was the answer?

The Interpreter—He said yes, he heard it.

Q. What did you hear?"

The following statement was then made by the interpreter and instruction given by the court:

"The Interpreter—He is saying something again that he was told, your Honor.

The Court—All right. It will not be repeated."

Whereupon the following question was asked (p. 278, l. 1):

"Q. What did you hear?"

to which the answer of the plaintiff-in-error was not repeated by the interpreter, whereupon the following discussion was had:

"Mr. Coven—Now, I didn't hear any objection. Is the interpreter trying the case for the State?

Mr. Barnitt—Your Honor has directed the interpreter not to—

The Court—Not to repeat any hearsay.

Mr. Barnitt—And I suppose that is what he is doing, Mr. Coven.

~~Mr. Coven—~~The point as I see it is that he can subpoena all these witnesses and put them on the stand and they can say what they saw or did, but for him to tell it there is no opportunity for the State to cross examine.

Mr. Coven—We have been unable to find such people.

The Court—That is no reason to admit hearsay evidence. That is no exception to the hearsay evidence rule.

Mr. Coven—But that is part of our defense.

The Court—It is unfortunate, but this Court did not make the laws; its duty is to administer them."

The foregoing instructions by the trial judge to the interpreter constituted a delegation by the Court of its judicial power and judicial duty to determine what was and what was not hearsay evidence.

It is well settled in application of the constitutional principle that the judiciary cannot delegate its power, the judicial power of judge must be exercised by him in person; he cannot delegate it to another. (33 Corpus Juris, p. 961, sec. 84.)

> "Chancellor Kent thus states this familiar rule: 'The general rule is, that judicial offices must be exercised in person, and that a judge can not delegate his authority to another. I do not know of any exception to this rule with us.' * * * Those who are chosen by the people to sit as judges must themselves discharge all the judicial duties of their offices. The trust is imposed upon them, and they can not share their judicial duties with any person. The people have a right to the judgment of those whom they have made judges, and this right the judges can not surrender, if they would, without a flagrant breach of a sworn duty. The trust is a personal one, inalienably invested in the persons selected by the people, and it can not be delegated by the judges themselves nor by any one else for them." (State vs. Noble, 118 Ind. 350, 363, 21 NE 244, 4 LRA 101, 33 C .J. 962, n. 15a.)

The determination of what is and what is not hearsay evidence is a judicial power and duty, not ministerial, and can only be exercised by the judge. It is the duty of the interpreter to interpret and repeat to the Court every statement made by the witness whose evidence he interprets and he has no discretion or power to determine what is admissible and what not admissible or to fail to interpret what he considers hearsay.

> "Where an interpreter states to the Court that the witness stated something that had been told him by somebody it is error for the court to act on such statement and instruct the interpreter not to repeat what the witness said."
>
> (People vs. Wong Ah Bang, 65 Cal. 305; 4 Pac. 19; 40 Cyc. 2414.)

In the case of State vs. Deslovers, 100 Atl. 64 (R. I.) the court said:

> "It is the duty of an interpreter to interpret and repeat to the court every statement made by the witness whose evidence he interprets, and he has no discretion or power to determine what is admissible and what not admissible, or to omit to interpret what he considers hearsay."

In the case of Tavares vs. Dewing, 82 Atl. 133 (R. I.), the court said:

> "It is the function of an interpreter to interpret correctly all questions and answers thereto, and the power to determine whether answers given by the witness are responsive belongs to the court, and must be exer-

cised by it, and cannot be delegated to the interpreter ******. We are of the opinion that this instruction to the interpreter constituted prejudicial error."

The determination of the question of whether or not certain evidence is hearsay, requires the exercise of judgment or discretion and being a judicial act or duty, delegation by the court was, we submit, harmful error, and the defendant, the plaintiff-in-error, thereby suffered manifest wrong and injury. We respectfully submit the judgment should be reversed for such reason.

POINT II.

THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JURY WITH THE FOLLOWING REQUEST, WHEREBY THE DEFENDANT, PLAINTIFF-IN-ERROR, SUFFERED MANIFEST WRONG AND INJURY.

23. Because the trial Court refused to charge the jury with the following request to charge, as requested by plaintiff-in-error:

> "There was a statute passed in 1919, Chapter 134, page 303, which reads in part as follows: 108. '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 consideration of all the evidence recommend imprisonment at hard labor for life * * *." Before this act was on the statute book the

duty of the jury was merely to determine from the evidence whether or not the defendant was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury, the court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree and in that case the defendant shall suffer the death penalty, but the statute also now provides that the jury upon finding a person guilty of murder in the first degree may as a part of their verdict recommend imprisonment at hard labor for life. The very important duty is, therefore, placed upon the jury of deciding whether to render a verdict of murder in the first degree without recommendation, thereby carrying a death penalty, or render a verdict of murder in the first degree with a recommendation of imprisonment for life. By Chapter 214 of the Laws of 1914 it was provided that 'every prisoner who *** they have sentenced for the term of his natural life has served not less than fifteen years may be released on parole.' This provision has now been repealed so that a prisoner sentenced for the term of his natural life is no longer eligible for parole after serving fifteen years or any

> greater or lesser portion of his sentence. It is, therefore, your duty, if you find the defendant guilty of murder in the first degree to determine whether or not he should be put to death or should be confined for the remainder of his natural life in State's Prison at hard labor, and if you determine that he should be so confined your verdict should be that he is guilty of murder in the first degree but that you recommend imprisonment at hard labor for life."

The refusal of the trial court to charge the request as above set forth is set forth under Assignment No. 23 (p. 410) and Reason No. 23 (p. 421, l. 5).

Prior to the enactment of the statute of 1916 (P. L. 1916 p. 576) and the statute of 1919 (P. L. 1919 p. 302) it is true the jury had nothing to do with the punishment to be imposed but was charged solely with the duty of determining the guilt or innocence of the accused. The Act of 1919 follows very closely the Act of 1916 except to limit the jury to a consideration of the evidence and to make a recommendation of imprisonment for life at hard labor upon a review of the whole evidence.

In State vs. Rombolo, 89 N. J. L. 565 at 570, this Court said:

> "Prior to the enactment of this statute the jury in a homicide case had no function to perform, except the ascertainment and de-

claration of the guilt or innocence of the defendant, and, in case he was found guilty, to declare the degree of his crime. The punishment which should follow the conviction was a matter with which the jury had nothing to do. By force of this legislation, however, an additional burden is put upon the jury, in case they shall adjudge the defendant to be guilty of murder in the first degree, and that is to determine, within the limits fixed by the statute, what his punishment shall be. Naturally one of the elements to be considered by them in determining that punishment is whether, if they shall by their verdict impose life imprisonment, it can be disregarded and set at naught by the Court of Pardons."

In State vs. Schilling, 95 N. J. L. 145 at 154, as in many other cases, the court said:

> "The power of the court of pardons is a constitutional one of common knowledge."

It is common knowledge that after the passage of Chapter 214 of the Laws of 1914 (p. 429) every prisoner who had been sentenced for the term of his natural life and "has served not less than fifteen years may be released on parole," and it is common knowledge that since the enactment of such 1914 Act many prisoners who have been sentenced for life were, in fact, paroled after serving fifteen years.

It is not a matter of common knowledge, however, that such provision of the 1914 Act is not still in force but that such Act was repealed by Chapter 214 of the Laws of 1926 (p. 351). It is still the common belief that one who has been sentenced to life imprisonment may still be paroled in accordance with the 1914 Act and, therefore, the jury is not only entitled to know of the repeal thereof but the defendant is entitled to have the jury informed to that effect. Since the 1916 and 1919 Acts imposed upon the jury the duty of determining by their verdict the punishment to be imposed upon the defendant, the jury should know and should be informed as to such punishment.

In the case of State vs. Martin, 92 N. J. L. 436 at 445, Chancellor Walker, in his dissenting opinion, in referring to the 1916 Act said:

> "This Act gives the jury the right, practically, to pass sentence of life imprisonment instead of death."

The Court did charge (p. 381, l. 5):

> "By force of this legislation, however, the jury may, in case they shall adjudge the defendant to be guilty of murder in the first degree determine within the limits fixed by the Statute what his punishment shall be."

Exception was taken (p. 388, l. 23) to the refusal of the Court to charge the fifth request, the one now being argued.

It is the function of the Court to instruct the jury as to the law and the Court's refusal to instruct the jury that the right of parole is no longer available to one who has been sentenced to life imprisonment was prejudicial to the defendant, because the jury might consider that life imprisonment with the right of parole at the end of fifteen years is not adequate punishment and that, therefore, it would make no recommendation, but on the other hand, had the jury known that a verdict of guilty of murder in the first degree with a recommendation of imprisonment for life at hard labor meant, in fact, imprisonment for life, it might have considered such a sentence ample punishment and rendered its verdict accordingly.

The refusal of the trial court to charge as requested was harmful error and the defendant, the plaintiff-in-error, thereby suffered manifest wrong and injury. We respectfully submit that this judgment should for such reason, be reversed.

POINT III.

THE TRIAL JUDGE ERRED IN GIVING FURTHER INSTRUCTIONS TO THE JURY IN THE ABSENCE OF THE DEFENDANT, THE PLAINTIFF-IN-ERROR.

This is set forth under Assignment No. 27 (p. 412) and Reason No. 27 (p. 423).

After the jury had been deliberating for some six and one-half hours, the trial court sent for the

jury at 1:50 o'clock in the morning (p. 391, l. 24 &c.) and delivered further instruction to the jury in the absence of the defendant (p. 393, l. 33 &c.) to which exception was taken by counsel for the plaintiff-in-error, who were present.

> "Although there is authority to the contrary, as a general rule it is error to repeat the charge to the jury or to give them additional instructions in the absence of the accused; and the presence of his counsel does not cure the error. If accused is present the absence of his counsel is not material, unless a statute expressly provides that notice shall be given to the counsel for the defendant." (16 Corpus Juris 1089, Sec. 2558.)

In Cook vs. Green, 6 N. J. L. 109, the Court said:

> "If a jury after withdrawing to consider the cause, get embarrased on a question of law, they may, and in prudence ought to, ask for the opinion of the justice thereon, and it is his duty to declare the law to them. It should be done in the presence of both parties, that they may except to the opinion for error if they think it erroneous and, therefore, they ought to be called, and even sought for, by the constable, or other person deputed by the court."

In State vs. Simon, 101 N. J. L. at 13, the Court said:

> "But apart from this, it is quite plain that while, normally, the defendant is supposed

> to wait in the court room for the verdict and to be present when it is rendered, and if absent therefrom, is absent at his peril, nevertheless, in a case where the court has distinctly directed that the jury shall be locked up for the night and that the court room be cleared, and the defendant, being out on bail, was required to leave the court room and told to come back in the morning, the defendant, under such circumstances, is under no obligation whatever to wait around the court room on a chance of the jury coming in before the time indicated by the court when the jury was locked up."

In the instant case, the defendant, plaintiff-in-error, had been taken to the County Jail of the County of Passaic after the jury retired and was not again brought into Court until the jury was about to return with its verdict. He was not in the custody of his counsel nor, of course, was he free to go where he saw fit, but was in the custody of the State.

The doctrine of Cooper vs. Martin, 48 N. J. L. 607 at 609, that "in contemplation of law the parties and their counsel remain in court until a verdict has been rendered or the jury discharged from rendering one," could not apply in this case and it was the duty of the State, in whose custody he was, to either keep him in Court or have him there when additional instructions were given to the jury. This was a right which his counsel could not waive.

The giving of further instructions in the absence of the defendant, the plaintiff-in-error, was harmful error and he thereby suffered manifest harm and injury. We respectfully submit that the judgment should be reversed for such reason.

POINT IV.

THE VERDICT WAS ILLEGAL AND THE TRIAL COURT ERRED IN CHANGING IT, BEING WITHOUT POWER TO AMEND IT.

This is set forth under Assignment No. 28 (p. 412) and Reason No. 28 (p. 423).

Upon the return of the Jury and the statement of the forelady that they had agreed upon a verdict the clerk asked (p. 394):

> "The Clerk: Who shall say for you? Madam Forelady, how do you find?
>
> The Forelady: Guilty.
>
> The Court: Guilty of murder in the first degree?
>
> The Forelady: Yes, your Honor.
>
> The Clerk Thereupon Polled the Jury: Juror No. 1, Madam Forelady, how do you find? A. Just as I said.
>
> The Court: Guilty of murder in the first degree?
>
> Juror No. 1: Yes."
>
> The remaining jurors all replied, "Murder in the first degree."

The verdict in this case as announced by the jury was "Guilty". The court had instructed the jury (p. 379, l. 31 &c.):

> "The classification of murder in two degrees is made by statute, and the statute requires the jury, upon a conviction for murder, to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree."

The court then continued in its charge (p. 380) to define the two degrees of murder. The verdict failing to designate the degree of murder of which the jury found the defendant guilty, it was fatally defective.

In State vs. Turco, 98 N. J. L. 61 at 63, the Court said:

> "Under that statute, as was said in Graves v. State, supra, according as the defendant 'shall or shall not be proved to have committed the crime of murder, he will be convicted or acquitted, and if convicted, according as it shall be proved that he committed it under circumstances which characterize the one degree or the other, so it will be found or adjudged with a view to his punishment.' The jury before whom the trial is had, if they find the defendant guilty, are required to find this fact, and to designate by their verdict whether it be murder in the first degree or in the second degree. It is therefore apparent, from the

plain and imperative provisions of the statute, that a verdict (such as the present) which fails to designate the degree of murder of which the jury find the defendant guilty, is so fatally defective that no judgment can be legally pronounced thereon. It follows, of course, that if (as here) the jury be discharged and judgment pronounced ***without such verdict being amended by the jury*** by adding the intended degree, the judgment must be reversed and a new trial awarded. That interpretation of the statute not only accords with its plain and positive language, but it is supported by a long train of decisions in other states having statutes the provisions of which are similar to our own. The cases are collected in 13 R. C. L. 782, and Whart. Hom., sec. 652.

"The argument of the state that the judgment of death was justified rests upon the contention that the verdict of 'guilty' is tantamount to conviction of first degree, because the judge instructed the jury that under the law and the evidence the defendant was either guilty of murder in the first degree or no offence at all. But that argument ignores the rule that, in determining whether the verdict is sufficient in the specification of the degree of the offence charged, its finding must be considered in connection with the charge in the indictment (which in the present case would support a verdict for both degrees of the

crime) and with the statutory requirements. As we have seen section 107 of the Crimes act requires the jury, if they find the defendant guilty, to designate by their verdict whether it be murder in the first degree or in the second degree, and that statute is imperative. It further provides, that no plea of guilty shall be received. It also provides, in effect, that punishment of death shall not be inflicted upon a plea of non vult or nolo contendere. And section 108 (Pamph. L. 1919, p. 303) declares that every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed; and that every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years. It is therefore quite certain that, upon such an indictment as that in the present case, under our statutes, the death penalty cannot be imposed by the court in the absence of a finding by the jury of guilt and designated by their verdict as murder in the first degree."

The verdict being improper and illegal, it was the duty of the trial judge to further instruct the jury as to the form of verdict to be returned

and direct them to retire and return with a proper verdict. The Court was without power to frame, mould or amend the verdict as it was defective in a substantial degree.

In State vs. Merra, 103 N. J. L. 361 at 369, the late Justice Kalisch, in his dissenting opinion, said:

> "There is no doubt in my mind that the court in which a verdict is rendered has power in a civil case to mold the same in conformity with the issue tried, where the intention of the jury is clearly expressed and not ambiguous. But this rule is not applicable to verdicts in criminal cases. 1 Chit. Crim. L. 529, says: 'The jury may also themselves rectify their verdict in the same stage of the proceedings, and it will stand as ultimately amended. Though they can neither be directed nor allowed to make any alteration after the verdict is recorded. But a general, like a special, verdict may be amended in matter of form, though not in any substantial degree.'
>
> "And (on p. 527) this learned expositor of the criminal law says: 'It seems to have been laid down, that in a capital case, a special verdict cannot be amended in matters of fact, yet the court may amend a mere error in form, even in capital cases, when there are any notes or minutes by which it can be amended.'
>
> "In the present case there were no minutes or notes by which the amendment could be made. Furthermore, the amend-

ment in the present case was to a matter of fact and not as to the form of the verdict. Surely, it cannot be reasonably said that where the amendment of the verdict affects the life or death of the accused that such amendment is only as to the form of the verdict. In the civil cases relied on by the state, at the argument, authorizing the amendment of verdicts, it clearly appeared that such amendments were allowed so that the verdicts would be in conformity with the issues tried, but we are dealing here with a capital case."

In State vs. Overton, 85 N. J. L. 287 at 296, the Court said:

"As the court had the undoubted right to poll the jury to ascertain that it was the individual finding of each juror, it had also the right to remove any possible uncertainty by sending back the jury after calling their attention to the surplusage, so as to ascertain beyond peradventure whether guilty in the first degree was indeed their verdict; as it in fact proved to be. The action of the court in nowise prejudiced the defendant. Coit v. State, 62 Neb. 15; 86 N. W. Rep. 925."

"It is the court's duty to see to it that the verdict is in proper form to carry into effect the findings of the jury, and to that end, where the intention of the jury is ascertainable, the court may amend the verdict, and by correcting manifest errors of form or sub-

stance make it conform to the intention of the jury, if the matter of amendment can in no way affect the questions submitted to the jury." (38 Cyc. 1896)

In the present case the intention of the jury was not ascertainable from the verdict of "Guilty" and the matter of amendment would affect the questions submitted to the jury.

In State vs. Gonneion, 68 N. J. L. 429, Chief Justice Gummere, speaking for the Supreme Court, said:

> "It seems to us, also, clear that it could not have been so moulded by the court as to certainly express the conclusion reached by the jury. That they considered the prisoner guilty of assault and battery of course, appears; but it is equally obvious that they did not intend that this should be taken as the full extent of their finding. In this situation it was clearly within the power of the trial court to refuse to receive and record the verdict and to send the jury out for further consideration of the case. Such is declared to be the proper practice in Bac. Abr. tit. "Verdict" (G), where it is said: 'If a jury who, by mistake, or from partiality, have given an improper verdict, go together again, at the recommendation, or by the leave, of the judge, before the improper verdict is recorded, and afterwards give a different verdict, the verdict last given shall stand.'

> "In the case of Pritchard v. Hennessy, 1 Gray 294, it is stated that "the practice of sending out a jury when they return a finding that is absurd or defective has existed for more than four hundred years'."

In the same case, State vs. Gonneion, supra, Chief Justice Gummere quoted Chief Baron Pollock:

> "There is no doubt that a judge, both in a civil and criminal court, has a perfect right and sometimes it is his bounden duty, to tell the jury to reconsider their verdict."

It was the duty of the trial Judge to further instruct the jury as to the form of verdict to be rendered, and it was improper and prejudicial to the defendant for the trial judge to put into the mouths of the jurors any particular verdict which was the effect of his question "Guilty of murder in the first degree?".

Had the court asked the jury which of the three forms of verdict permissible under its instructions was intended, so as to require a definite declaration by the jury, while it would have been error, it may be no harm would have been suffered by the defendant. By propounding the question as the Court did, the probability of any different form of verdict being returned was rendered unlikely.

Furthermore, the jurors by their verdict of merely "Guilty" indicated that they had either

disregarded or forgotten the instruction of the Court as to the different degrees of murder and that if they found the defendant guilty of murder in the first degree, they could return a verdict to that effect or they could return a verdict of guilty of murder in the first degree with a recommendation of life imprisonment. If the trial Court had again instructed them as to the form of verdict, they might have returned with a verdict of guilty of murder in the first degree with a recommendation of life imprisonment or even guilty of murder in the second degree.

The verdict having been defective to the extent that it was, the Court was without power to frame, mould or amend it and by so doing prejudiced the defendant, and thereby, the defendant, the plaintiff-in-error, suffered manifest wrong and injury. We respectfully submit that the judgment should be reversed, for such reason.

CONCLUSION

This is a capital case, in which the plaintiff-in-error has been sentenced to death. Before the State executes such a sentence, extreme care should be taken to avoid error prejudicial to the defendant and in case of such error to correct it by reversing the judgment. We respectfully submit that the learned trial Judge did commit harmful error in the particulars hereinbefore set forth, by an improper delegation to the interpreter of a judicial duty, by refusing to charge as to the meaning of the punishment to be meted out, by

further charging the jury in the absence of the defendant, and by improperly framing, moulding and amending the verdict of "Guilty" and failing to further charge the jury and direct it to retire and return with a proper verdict.

The crime was indeed a shocking one but was caused, we contend, by a diseased mind, was committed by an insane person. The defendant may have been justly convicted; another jury in a trial free from error might render a verdict of guilty of murder in the first degree without a recommendation, but we cannot speculate on that. The defendant is entitled to all the safeguards of the law; he is entitled to the presumption of innocence, and his life must be guarded just as zealously as the life of any other being. He is entitled to a trial free from harmful error so that the verdict of the jury and the execution of the sentence shall be beyond question.

His counsel, assigned in his behalf, feel that this he has not had, and earnestly and respectfully submit this case in all its aspects to this learned Court, contending that the judgment of conviction should be reversed.

Respectfully submitted,

JOHN C. BARBOUR,
E. ROBERT COVEN,
Attorneys for and of counsel with
plaintiff-in-error.

New Jersey Court of Errors and Appeals

State of New Jersey, Defendant-In-Error, vs. Bonaventura Nardella, Plaintiff-In-Error.	On Indictment For Murder. In Error to the Court of Oyer and Terminer, Passaic County

Brief of Defendant-in-Error

STATEMENT OF FACTS

The Plaintiff-in-Error was charged by indictment by the Grand Jury of the County of Passaic with having on the 2nd day of August, 1930, in the City of Paterson, wilfully, unlawfully and feloniously and of his malice aforethought killed and murdered his wife, Lucia Nardella.

On the 23rd of September, 1930, he pleaded not guilty to the indictment and the State moved the trial of such on the 20th of October, and after trial the jury, on the 23rd of October, 1930, found the defendant guilty of murder as charged in the indictment and designated the degree of said murder to be that of first degree without a recommendation of life imprisonment.

On the 24th of October, 1930, the defendant was sentenced to suffer death in the manner prescribed by law in the week beginning on the 7th of December, 1930. Application was made to

Chancellor Walker for the allowance of a writ of error to be issued out of the Supreme Court for a review of the judgment of conviction which was refused by the Chancellor because no cause arguable or otherwise was shown for the granting of such writ of error to the Supreme Court.

On the 7th day of November, 1930, the defendant obtained a writ of error from the Court of Errors and Appeals directed to the Honorable Peter F. Daly, one of the Justices of the Supreme Court and to the Judges of the Court of Common Pleas of the County of Passaic constituting the Court of Oyer and Terminer.

The facts concerning the murder and the flight and capture of the defendant are as follows: On the 2nd day of August, 1930, the defendant resided at 14 Mill Street in the City of Paterson, County of Passaic and State of New Jersey. He was married and had four children by his wife, the woman whom he murdered. He resided at the address referred to with his wife and four children.

At the time of the murder, the defendant was forty-two years of age. He was born in Italy and came to America on two occasions. The first time in 1910 at which time he came to America alone and he was not married. He returned to Italy in 1914. He went there for the purpose of marrying the deceased wife with whom he had before his marriage kept company for a period of ten years. That is, six years before he came to America and the four years between 1910 and 1914. He continued to correspond with his wife as he was in America and she was in Italy and af-

ter his return to Italy in 1914 he married the deceased wife on April 12, 1915, then he went into the military service with the Italian Army. He did not receive any injuries although it appears that his eyes would run from tear gas but that he was not affected in any way by reason of such. He did during his war service have a sore palm from handling a pick and shovel which necessitated his being confined in a hospital for a week. Other than this injury, he received no injuries at any time during the war which in any way affected him.

He was released from the Italian Army in December, 1919, and during the time he was in service his wife continued to live in Italy in a town called Foggia, and while he was in service a child was born who at the time of the trial was fourteen years of age. In January 1920 he came to America going to Manlius, New York, to live at the home of an uncle, named, Louis Nardella. It was at this latter place that he subsequently, after the murder of his wife, fled to and was captured. When he came to America in 1920, he left his wife and child in Italy and while he was in America in the month of March, 1920, shortly after he left Italy, a second child was born, a boy who, at the time of the trial was ten years of age. Later, after coming to America he sent for his wife.

In 1922 his wife came to America with the two children that had been born in Italy and the family went to Manlius, at the home of the defendant's uncle, where they resided a short time and then all came to Paterson, New Jersey, where

they continued to live down to the time of the killing of the wife. There were two other children born of this marriage. These latter two children were born in America and at the time of the trial they were eight years and three years respectively, making four children in all, two boys, one fourteen and one ten and two girls, one eight and one three.

The defendant by trade was a carpenter. He purchased a home at 14 Mill Street, Paterson, and lived there. It was a three family house. He lived with his family on the first floor and two other floors or flats were rented.

It appears that on August 2nd and for sometime prior thereto the defendant by his own admissions had premeditated and deliberated upon killing his wife. His confessions and his testimony in Court on this point were that for sometime before the killing he had an idea that his wife was unfaithful to him although he had no particular evidence of any kind that he could point to to justify the conclusions which had been uppermost in his mind for several weeks before the killing. But he was firmly convinced according to his statements that his wife was unfaithful and it worked upon his imagination to such an extent that his only solution, as he saw it, to the matter was to kill her.

The confessions of the defendant were made by him to the authorities, the first confession (S. C. 89) having been made in the form of a statement taken at the office of Mr. Clarence Unckless, District Attorney of Onondaga County, at Syracuse, New York, on Monday morning, Aug-

ust 4th, 1930, which was the Monday following the Saturday afternoon that the killing occurred. The other confession or statement (S. C. 212) was taken by the Prosecutor of Passaic County, at Paterson Police Headquarters, after the defendant was extradited from New York State and immediately upon his arrival. This second confession or statement was made by the defendant on August 8, 1930, or slightly less than a week after the killing. At the trial the defendant admitted the killing.

On the day of the killing he had intended to go to the Workmen's Compensation Bureau in Paterson to be examined for an injured finger, and after having a light lunch with his family, he informed his wife that he would delay the intended visit to the Compensation Bureau until another day, but his wife, being rather insistent that he have the finger examined and if necessary attended to, he finally acquiesced in her suggestion that he go in company with her. While his wife was preparing her clothing for the purpose of leaving the house with her husband to go to the Compensation Bureau and, particularly, at a time when his wife had placed her foot upon a window sill in a small place known as an areaway or platform which led from a hall of the apartment down into the cellar, and while her back was turned to the defendant, the defendant seeing a baseball bat in one of the corners of the place where this platform was located raised the bat and without warning to his wife struck her over the head.

Upon being asked what he wanted to do with the bat he stated that he wanted to hit her on the

head and that he wanted to kill her and that he had decided that he wanted to kill her all the preceding week. It seems that just a few days before, approximately a week, he had had some words with his wife which necessitated relatives calling in a Justice of the Peace to the home. It seems that the husband had so unnerved his wife that she fell to the floor in a faint and after being revived she explained to the Justice of the Peace the actions of her husband and informed the Justice that her husband wanted to put her out of the house late at night and at the same time said her husband had accused her of infidelity and unfaithfulness which she denied most emphatically. The Justice of the Peace warned the defendant that he would have to discontinue acting toward his wife in this manner and if he didn't he would have to take steps toward his arrest.

The man said he would mend his ways and refrain from acting towards his wife in a manner which the wife complained of. After striking the wife on the head the defendant said in his statements that the wife fell down on the top of the stairway on the platform leading to the cellar. He placed the bat in the corner and after hitting her he observed that she made a sound like Ah-h-h and that was all. After she fell to the platform, he pulled her down by the feet, down the various steps leading from the platform to the cellar and dragged her into the bin and that while she was being dragged from the platform to the cellar, a pail of garbage which had been located on the platform nearby where the wife had fallen after being struck with the bat, had become tangled in

some manner with the clothing of the deceased woman and emptied upon the wife and upon the various steps of the stairs while the husband was dragging the wife from the platform down to the cellar.

When he reached the cellar, after pulling her down by the feet, he placed her in the coal bin with the intention of covering her up with coal and that he placed her on top of the coal, took a shovel which had a wooden handle and a metal scoop and hit her on the head more than once. The number of times he didn't know. He stated that his reason for hitting his wife with the shovel was because she was still breathing or groaning, and that in striking his wife on the head with the shovel with the blows that he used, the shovel bent, that is, the handle part of the shovel.

There was introduced into evidence a picture of the wife lying in the coal bin with a shovel and an axe nearby. (Exhibit S-6, page 430.) It will be particularly noted by an examination of this picture that the wooden part of the shovel at the place where the metal connects with the handle part was separated. It might be further mentioned at this time that the axe shown on page 430 is an axe which the defendant stated and testified that he used in striking his wife on the neck. I will refer to the axe presently.

It appears that after striking the wife with the shovel the defendant observed that she was still breathing and then the defendant took an axe which he stated he secured possession of to finish killing her and after he had finished using the shovel he observed that she was not dead and

that he wanted to use the axe to make sure she was dead and cut her head off and that when he got the axe he observed she was still breathing. That the axe had about a five inch blade and had a long handle and used the axe by striking his wife on the neck. He didn't know how many times he struck her but indicated three times in a statement made to the Prosecutor but couldn't say definitely if it was three or four or any greater number of times and that when he struck her with the axe he intended to kill her.

After striking her with the axe he left the axe and the shovel in the coal bin, but with reference to the baseball bat he left that in the same place where it was when he obtained possession of it on the platform when he struck his wife on the head. After striking his wife with the axe he took the shovel again and said that as crooked as the shovel was or bent, he threw some coal on her face and body and placed some boards or lumber over her and then left the coal bin and returned upstairs. That all of this happened between one thirty and two o'clock on the afternoon of Saturday, August 2nd, 1930.

When he got upstairs he swept the garbage first and that he wiped up some blood on the platform inside of the hall, the platform being the one where the wife was struck with the baseball bat. That he wiped up some blood with a mop on the stairs which were the stairs leading from the platform to the cellar. Then he took his pants off, washed his hands, and that a shirt that he had on he put in a basin in the bathroom and he wrapped pants up, he took off, rolled them up and put

them under some dirty clothes. That the shirt he took off had blood on it and for this reason put it in a basin of water and the pants he took off had blood on them. He changed his pants and the shoes he had on at the time he killed his wife he cleaned because they were dirty with dust and coal and that he changed his money from the trousers that he took off and put the money in the pants or trousers that he put on. The money that he had was about $80.00, some of which he had received from the tenants accupying the house that particular morning and the rest he received for work he had done that week as a carpenter.

He further said that on the particular morning of the day he had killed his wife he had had sexual relations with her and before he had had such relations with her on this particular morning he had in his mind, at that time, killing her. He said he knew of no reason why he should have relations with her when he intended to kill her but the fact was as he said, he did have relations with her at a time when he had in mind killing her.

While he was changing his clothing, the two boys came into the house. He talked to them and it appears that one of the boys wanted to get a shoe shine box as he wanted to make some money to play golf; that the father didn't tell the boys anything that had happened and that their mother was in the cellar in the coal bin; and that while he was changing the clothes the boys went outside and he didn't see them again and that when he was changing his clothes he had decided to go away to the town of Manlius which he said was the town he intended to go to for the whole week

preceding the killing. He had intended to kill his wife and then proceed to Manlius as this was the only place that he knew where he could go. It was the town where his uncle lived. That after leaving the house he went to the railroad station, the Erie depot railroad station in Paterson and bought a ticket from Paterson to New York and being confused as to how to get the train to go to Manlius he went over on the boat to New York and after going to New York he came back to Jersey City on the ferry boat, not the same ferry boat that he took from Jersey City to New York, but another, and when he got back to Jersey City he found out where he could purchase a ticket to Syracuse by going downstairs in a subway and taking a particularly numbered subway train to Hoboken where he went and when he got to Hoboken he purchased a railroad ticket for Syracuse, the railroad ticket office being the railroad of the Delaware, Lackawanna and Western in Hoboken, and that he found out that it would cost $17.00, and that he bought a one way ticket for $9.93, and that he took the train about twenty minutes past six on that Saturday afternoon or evening and when the train reached Binghamton, New York, where the train remained for a time, he took another train from Binghamton to Syracuse. That while in Binghamton he purchased $.25 worth of pears and that he arrived in Syracuse about six o'clock in the morning and then took a trolley car to Manlius, New York, where he arrived on the following day, Sunday morning about 10:00 o'clock. He went to the house where his uncle Louis Nardella lived and they told him his uncle

had moved and he went to another place where he met his uncle. His uncle asked him why he came and the defendant answered by saying; it was a long time since he had seen his uncle and he came to pay him a visit and that his uncle asked him how his wife was and he answered that everything was alright and he didn't tell him anything that happened the day before when he killed his wife. That on the same day, Sunday, the Chief of Police of Manlius and another man came to his uncle's house and they asked him to let them see his hand and upon seeing his hand, the Chief of Police said to the defendant that he had killed his wife and the defendant answered that he had. He was then placed in an automobile and taken to a train by the Chief of Police and a Deputy Sheriff of Onondaga County and from there brought to the office of the District Attorney of Onondaga County in New York where he was interrogated by the District Attorney and made a statement in the form of questions and answers which was offered in evidence and which is part of the State of the Case, commencing on page 89 and extending over to page 108. Then he was brought to Paterson, New Jersey, after being extradited, and immediately was interrogated by the Prosecutor of Passaic County.

The questions and answers on this particular occasion were reproduced in typewritten form by a stenographer and the sheets comprising this statement were introduced in evidence and are shown in the State of Case commencing on page 212 and extending over to page 246. On this occasion the defendant readily admitted all that had

transpired and appeared to be perfectly rational in every respect. On this occasion the Prosecutor had Dr. Lawrence Collins present, Dr. Collins having been associated with the Sanitarium at Greystone Park, Morris Plains, where he has been in attendance as a physician on diseases of the brain for many years.

The Prosecutor had intended that Dr. Collins to observe the demeanor of the defendant during the examination. At the trial, the defendant readily admitted all that had taken place but counsel urged that the jury consider the defense they advanced on behalf of the defendant; that at the time of the commission of the crime the defendant was insane, and offered as a witness Dr. George W. King, who testified that he was the medical superintendent of the Hudson County Hospital for the Insane stationed at Secaucus, and as a County Physician he had, on many occasions, the opportunity to observe the inmates for the purpose of determining the question of the sanity or insanity of such persons. It was this Doctor's opinion that he had determined that the defendant was suffering from a chronic and incurable form of mental disease known as paranoia, and that he based his opinion on what he discovered to be a delusion of the unfaithfulness of his wife which had existed for years and that the defendant could give no logical basis for those morbid suspicions.

Upon being asked by the State on cross-examination whether, in his opinion, the defendant

knew when he committed the crime on August 2, 1930, the difference between right and wrong, the Doctor answered that the defendant did know the difference between right and wrong. (S. of C., p. 333.) And upon being further asked on cross-examination as to his opinion from the history of the case as expressed to him and from his observations of the defendant, his reactions and such other matters as the Doctor observed them, and as they were in any event expressed, to him, would he the Doctor say that the defendant knew the quality of his act when he committed that crime on August 2, 1930, and his reply that he knew the major quality. (S. of C., p. 333.)

The State in rebuttal to prove that the defendant was sane at the time he committed the crime and also at all times since the commission of the crime and down to the time of the trial, offered the testimony of Doctor Lawrence M. Collins, heretofore referred to as being associated with Greystone Park, Doctor Ambrose F. Dowd, who specialized for many years in the treatment of nervous and mental diseases, and Doctor Christopher C. Beling who testified that he had been a physician for over thirty-three years and that he specialized in the treatment of nervous and mental diseases for many years. All of these doctors were of the opinion that the defendant was sane, that he knew the nature and quality of his act when he committed the crime on August 2, 1930, and that under no circumstances did the defendant show any signs which would indicate to any of these physicians that the defendant was insane.

The defendant had a fair trial, the jury deliberated approximately nine hours and at about three o'clock in the morning brought in a verdict of guilty of murder in the first degree without a recommendation of life imprisonment.

POINT ONE

THERE WAS NOTHING WHICH THE COURT DID IN CONNECTION WITH THE MATTER REFERRED TO UNDER THIS POINT WHICH IN ANY WAY PREJUDICED THE ACCUSED IN MAINTAINING HIS DEFENSE UPON THE MERITS.

Under this point the Plaintiff-in-Error refers to the action of the Court in stating to an Italian interpreter who was sworn to interrogate for the defendant when he was testifying at the trial questions propounded to the defendant and answers made by the defendant to such questions. And it appears that reference under this point is made to what was said by the court, the interpreter, by the Prosecutor and by the counsel for the defendant at different stages of the examination of the defendant through the interpreter and all of which matters referred to under this point are shown in the State of the Case on the following pages: Pages 265, line 5, commencing at line 5; page 265 commencing at line 17 to line 19; page 265 from line 9 to line 22; page 276 line 13 to 25 and lines 26 to 29; page 277, line 16, throughout the remaining portion of said page and continuing through to page 278 to line 26, inclusive.

Now, it will be observed in connection with the matter referred to that the court informed the interpreter that he, the interpreter, should not repeat anything that was hearsay but only testify as to what the defendant knew of his own knowledge, and the defendant maintains that the action of the court in precluding the defendant from telling to the court and jury anything except what the defendant knew of his own knowledge was error. There was, in no instance, any objection taken or any exception made to the action of the court in informing the interpreter of the matter in question, but inasmuch as the entire record has been certified under the writ of error, the case is before the court not only on the bills of exception but pursuant to the provisions of Section 136 of the Criminal Procedure Act which provides that upon the argument the entire record shall be considered and adjudged by the Appellate Court, and if it shall appear that the defendant on the trial below suffered manifest wrong or injury, either in the admission or rejection of testimony, whether objection was made thereto or not, or in the charge of the court or in the denial of any matter by the court which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not, the appellate court shall remedy such wrong or injury and give judgment accordingly, and order a new trial. Public Laws of 1898, page 952, Vol. 2, Compiled Statutes of New Jersey, 1863. In the case of State v. Dragone, 99 N. J. L., 144, the Court said:

> "The first point is that there was error requiring reversal in the refusal of the trial judge to strike out an answer made in response to a question put by the state to an officer named Badgley, who participated in the raid upon the premises in question.
>
> "We think that there is no merit in this point. No objection was made to the question and no reason for striking out the answer was stated. In such case the action of the trial judge in denying the motion to strike out the answer will not lead to a reversal, even though, as here, the entire record is before the court under section 136 of the Criminal Procedure act. State v. Murphy, 87 N.J.L. 515, 523; State v. Hummer, 73 Id. 714, and on rehearing, 81 Id. 430."

In the case of State v. Hummer, 67 Atl. Rep., page 294, 81 N.J.L. 430, Justice Garrison, delivering the opinion for the Court of Errors and Appeals, held that the meaning of the language of the statute, Sec. 136 of the Criminal Procedure Act, was such,

> "If any such rule is laid down by the statute, it is by force of its provision for reversal upon error:"
>
> "If it appears from the record that the plaintiff in error on the trial below suffered manifest wrong or injury either in the admission or rejection of testimony whether objection was made thereto or not."

"The meaning of this language is to be ascertained by the ordinary canons of construction.

"The phrase 'admission or rejection of testimony' clearly imports judicial action. No one but the trial court can reject testimony. Hence, as 'rejection of testimony' must imply action by the court, the same sort of meaning is by the familiar rule to be given to the word 'admission' as an associated term of precisely the same nature used in exactly the same context. That this is the correct construction of the word 'admission' is placed beyond all doubt by the history of this legislative provision. As originally enacted (P. L. 1894, p. 246) this provision dealt solely with 'rejection of testimony', which, as has been seen, necessarily imported action by the trial court. When, therefore, in 1898, the Legislature coupled with the word 'rejection', that already had this imperative connotation, the correlated word 'admission', it must be deemed to have used such added term in view of the established meaning of the word with which it was thus associated. 'The admission or rejection of testimony' thus importing judicial action, a consistent construction must be given to the qualifying words 'whether objection was made thereto or not.' Obviously judicial action upon testimony, if not called forth by any objection, must be of the court's own motion. Assuming there-

fore, but not deciding, that the legislative intention was to provide a scheme of spontaneous judicial interpositions during the reception of testimony at criminal trials, it must be held that the propriety of the exercise of such authority was in the first instance committed to the sound discretion of the judicial officers in whom such authority was reposed. Judicial dereliction in this regard would therefore come within the next clause of the statute touching matters of discretion to which bills of exception had or had not been allowed. Upon this assumption an appellate court would be authorized in the case of flagrant or oppressive abuse of this discretion, whether arising from the action or inaction of the trial court, to review such discretion and grant the relief contemplated by the statute."

And then continuing the court went on to say that:

"The implied allegations of judicial error upon which this specification rests have no foundation in the record or in fact. The sole action of the court below in the premises was the denial of defendant's motion to strike out a certain question after it had been answered. This was not, as averred in the specification, 'allowing the witness to be asked the question,' for that had already been done; neither, for the same

reason, was it allowing the witness to answer such question, which is, in effect, the second averment.

"It is too late now to inquire whether this specification even justified the consideration given in our opinion to the motion that was made at the trial by the defendant; but it is clear that such consideration, whether of grace or of right, was all to which the plaintiff in error was entitled. Without regard, however, to this matter of statutory practice, we have thought best to examine the present application upon its merits, and are constrained to deny it for the reasons already stated."

In the case of State v. Yarrow, 141 Atl. Rep., page 85, Chancellor Walker, delivering the opinion for the Court of Errors and Appeals, on page 87, said:

"Giving full force and effect in this case, to the broad review required when a cause is brought here under Section 136 of the Criminal Procedure Act (whether or not our jurisdiction is invoked by the specification and service of causes in this record relied upon for relief and reversal under section 137), and having examined the entire record of the proceedings had upon the trial of the defendant, we are of opinion that on the trial below he suffered no wrong or injury in the admission of testimony, or in the charge of the court, or in

> the denial of any matter by the court, which was matter of discretion; and that no error intervened which in any wise prejudiced the defendant in maintaining his defense upon the merits. See State v. Sage, 99 N. J. Law, 229, 233, 122 A. 827."

In the case of State v. Lewis, 98 N. J. L., page 618:

> "A judgment in a criminal case will not be reversed for alleged errors which could not have prejudiced the accused in maintaining his defense upon the merits."

and the same conclusion was reached, in the case of the State v. Kudznowski, Vol. 7, N. J. A. R., No. 42, page 1083.

From the foreging the State maintains that even if the court did commit error in telling the interpreter that he should not repeat anything that the defendant said which in the opinion of the interpreter was hearsay, the action of the court did not in any way prejudice the defendant in maintaining his defense on the merits.

It will be observed from a reading of the State of the Facts as outlined by the State in its brief that the defendant admitted the killing of his wife; that he had premeditated sometime before the killing and determined to take the life of his wife. He narrated in his two confessions with minute detail all of the facts concerning the actual murder, and in addition, related, at some

length, his determination to kill his wife, for sometime prior to the actual killing. The only defense which he offered at the trial was that at the time of the commission of the crime he was insane, and, in substantiation of his contention in that regard, the defense offered as a witness, Doctor King, as pointed out by the State. Dr. King admitted on cross-examination that at the time that the defendant took the life of his wife he knew the difference between right and wrong and knew the major quality of his act. There was no question but that he was sane at the time he committed the crime in the legal sense as advanced by the opinion of the courts of this State, particularly, in the case of Mackin v. State, 59 N. J. L., page 495 (36 Atl. R., page 1040) that:

> "The test of responsibility is the capacity of the defendant, at the time of the doing of the act complained of, to distinguish between right and wrong with respect to that act."

And, that:

> "The law does not recognize as a defence to a criminal charge a form of insanity in which the defendant knows that the act which he does is wrong, but, notwithstanding, is unable to refrain from doing it."

In other words, the position of the State in this matter is that there was no question of the guilt

of the defendant both from the circumstances of the case as related by the various witnesses for the State and for the defense and, particularly, because of the confessions or admissions of the defendant admitting all the particulars of the killing, and the further fact, that it was definitely shown, in addition to the testimony of Doctor King who acted as a witness for the defense, the testimony of the three alienists produced for the State, Doctors Collins, Dowd and Beling, the latter three having testified that the defendant was sane at all times.

Doctor King, the defendant's alienist, testifying that the defendant knew the nature and quality of his act and knew the difference between right and wrong at the time of the commission of the crime.

Therefore, it can hardly be said that even conceding but not admitting that the court was in error in having informed the interpreter to exclude hearsay evidence of the defendant, that because of this action of the court the defendant's rights were prejudiced to such an extent as would justify a reversal of the conviction on this ground. The crime was most heinous, the jury deliberated at great length before arriving at their verdict and, in the opinion of the State, it can not now be said that the point advanced under this head was such error as to have prejudiced the rights of the defendant on the merits of the case.

POINT TWO

THE REFUSAL OF THE COURT TO CHARGE THE FIFTH REQUEST TO CHARGE WAS NOT ERROR.

The point is made by the plaintiff-in-error that because the court did not charge specifically as requested, the plaintiff-in-error suffered manifest wrong and injury. The facts regarding this point, being, that after the court had charged the jury, the court took under advisement various requests to charge. The one in question being the fifth request to charge which is set out on page 390 of the State of the Case. On page 386, the court said, referring to this fifth request to charge:

> "I refuse to charge except as already charged."

This request to charge substantially referred to that provision of the law which had to do with the determination by the jury of considering as part of its verdict recommending imprisonment at hard labor for life. And further, the request to charge dealt with the point that the law as it existed at the time of the trial was such that the jury should be informed by the court that the law as it formerly existed, which law was referred to in the charge as being Chapter 214 of the Laws of 1914, provided that every prisoner who was sentenced for the term of his natural life and who had served not less than fifteen years may be released on parole. The point to which particular reference is

made by the plaintiff-in-error being that the court should have informed the jury that such a law which formerly existed was at the time of the trial repealed, and that the jury should be informed that imprisonment for life meant imprisonment for life and that the plaintiff-in-error if convicted of murder in the first degree and if the jury by its verdict recommended imprisonment at hard labor for life, they were entitled to know in determining the guilt or innocence of the defendant that the defendant, if convicted of murder in the first degree and the jury by its verdict recommended imprisonment at hard labor for life, that such verdict would carry with it a penalty which would require the defendant to serve the sentence of the court by being imprisoned at hard labor for life and that the jury should fully understand that the defendant could not be released on parole after serving a minimum term of fifteen years.

The State maintains that the court properly charged the jury in its general charge of the law with respect to the statute referred to in the fifth request to charge which statute is known as Chapter 134 of the Laws of 1919 and refers to that part of the charge commencing on page 380, in which the court charged as follows:

> "The law now 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 considering all the evidence, recommend imprisonment at hard

labor for life, in which case this and no greater punishment shall be imposed."

This part of the court's charge is verbatim the language of the statute known as Chapter 134 of the Laws of 1919. And, in the court's charge as referred to on page 380, the court said as follows:

"Prior to the enactment of this statute, the jury in a homicide case had no function to perform except the ascertainment and declaration of the guilt or innocence of the accused, and in case of his being found guilty, to declare the degree of the crime; the punishment which should follow the conviction was a matter with which the jury had nothing to do. By force of this legislation, however, the jury may, in case they shall adjudge the defendant to be guilty of murder in the first degree, determine within the limits fixed by the statute what his punishment shall be."

Regarding this last mentioned part of the court's charge, it will be interesting to refer the court to the fact that the plaintiff-in-error has referred, on page 18 of his brief, to the case of State v. Rombolo, 89 N. J. L., 565 at page 570. The language quoted by the plaintiff-in-error in his brief in which he quoted the language of the court in the case of State v. Rombolo, is the identical language which the court used in its charge to the jury and which is the last mentioned part of the charge

which is quoted above, except the last sentence as quoted by the plaintiff-in-error in which that part of the opinion in the State v. Rombolo was cited as follows:

> "Naturally one of the elements to be considered by them in determining that punishment is whether, if they shall by their verdict impose life imprisonment it can be disregarded and set at naught by the Court of Pardons."

Now in referring to the case of State v. Rombolo which opinion was written by Chief Justice Gummere, the Court says on page 437 of the opinion referred to in 99 Atl. R.,

> "We see no reason why they (meaning the jury) should not be informed of the power of the court of pardons, if they so desire, and, as a necessary consequence, we see no impropriety in the trial court, either at the request of the jury, or without such request, apprising that body with relation to the power of supervision possessed by the pardoning tribunal."

At the time this opinion was written the law had then existed pertaining to the point in question as referred to in the opinion, and which law was known as Chapter 214 of the Laws of 1914, had not been repealed. This particular law, however, was repealed by Section 3 of Chapter 214 of the Laws of 1926. So, therefore, it was not the

law at the time of the trial of the case in question, that a defendant who had been convicted of murder in the first degree and by the verdict of the jury a recommendation of imprisonment for life at hard labor was included, would be permitted to be released by the Court of Pardons on parole after he had served a minimum term of fifteen years. It cannot be said that there was a duty cast on the court under the circumstances, to particularly instruct the jury that life imprisonment meant life imprisonment and not a release on parole after a minimum term of fifteen years had been served.

It will be further noted that the jury made no inquiry of the court as was done in the case of the State v. Rombolo in which case the jury inquired of the court as to whether a man could be pardoned if found guilty of murder in the first degree with recommendation.

The State maintains in this connection that the court charged the jury in its charge as to what the law was at the time with reference to the degree of guilt which the jury could determine and further informed the jury, with reference to the law which gave the jury the right to determine as part of its verdict a recommendation of imprisonment for life at hard labor and that the defendant was not entitled to have the court specifically charge the particular part of the charge which is the subject of this point.

POINT THREE

THE TRIAL COURT DID NOT ERR IN GIVING FURTHER INSTRUCTIONS TO THE JURY IN THE ABSENCE OF THE DEFENDANT.

On page 391 of the State of the Case, it will be observed that at ten minutes to two in the morning the Court sent for the jury who had retired some several hours before to determine upon their verdict for the purpose of ascertaining whether or not the jury could agree upon a verdict and if the court could assist the jury or any point of law. The jury entering the jury box, the court addressed the jury as follows:

> "Ladies and Gentlemen of the Jury, I sent for you at this hour of the morning to find out if it is possible for you to agree upon a verdict."

One of the jurors answered by saying:

> "We have not agreed."

and the Court then said:

> "Is there anything in the law from which the Court can assist you?"

And the jury said:

> "Yes, we did send out a note, but we got no reply."

And the court said:

> "What is there you want to be refreshed on?"

An the juror said:

> "On the cross-examination of Dr. King—the cross-examination, I think it was."

The Court then said:

> "I'll read the cross examination of Dr. King to you." (The Court thereupon read the complete cross-examination of Dr. King.)

And then the court went on to refer to what must be proven to maintain a defense on the ground of insanity and what the court said at this time was exactly on the point in question what the court had said in its original charge to the jury, and the court did not in any way extend in this statement to the jury, anything or any matter which had not been particularly referred to by the court in its original charge to the jury. In fact, it is exactly what the court said in its original charge to the jury. Then the Court in conclusion inquired of the jury as to whether there was any further law on which the jury desired information and the juror said there was none and the jury retired to the jury room.

Now, it appears that the defendant was not present in the court room when this took place but his counsel was present during the entire proceedings between the jury and the court, and after the jury retired, one of the counsel for the defendant said that he desired to take exception to the court emphasizing at this time, without request for instructions, as to the law—the law as to

insanity. And he went further on to say that the jury's request was to the cross-examination of Dr. King, and counsel said he took exception to the court having repeated his instructions to the jury and emphasizing it in the mind of the jury—the law on insanity,—that insanity is no defense unless it comes within the strict legal rule. And counsel further said that he excepted to the facts that the court's additional instructions were given to the jury in the absence of the defendant. The court then said:

> "But in the presence of the defendant's Counsel—and it will be so noted on the record."

Under this point as urged by the plaintiff-in-error as a justification for reversal, the plaintiff-in-error maintains that what took place in that proceeding was prejudicial and manifest wrong and injury to the plaintiff-in-error because the defendant was not present and in the brief of the plaintiff-in-error he first refers on page 22 to a citation of the law as referred to in 16 Corpus Juris, page 1009, section 2558, in this it is said:

> "Although there is authority to the contrary, as a general rule it is error to repeat the charge to the jury or to give them additional instructions in the absence of the accused; and the presence of his counsel does not cure the error."

There is no decision of the point in question which the State has been able to locate bearing directly on this point as decided by the courts of New Jersey. However, in the case cited by the plaintiff-in-error of Cook v. Green, 6 N. J. L., 109, this case was a civil action and has no reference to a criminal proceeding. In this case the Court went on to say that

> "while it is the duty of the court to declare the law to the jury, it should be done in the presence of both parties, that they may except to the opinion for error if they think it erroneous, and, therefore, they ought to be called, and even sought for, by the constable or other person deputed. But if sought for honestly at the place of trial, where they ought to be, they cannot be found, or being found, they or either of them refuse to attend, such absence or refusal does not release the justice from his duty to declare the law to the jury."

The second case cited by the plaintiff-in-error under this point, State v. Simon, 101 N. J. L., is not in point. In this case it appeared that the court had directed the jury to be locked up for the night and the court room cleared and the defendant who was on bail was told to come back in the morning, and the Supreme Court held it was error for the Clerk of the Court, without the direction of the court, on the jury arriving at a verdict, to take the verdict and discharge the jury without sending for the defendant or his counsel

or Judge, the defendant having a right to poll the jury and being under no obligation to come back to the court until the time indicated by the court.

As will be observed upon a reading of this case, the point regarding the absence of the defendant had to do with the obligation of the court to receive the verdict at the time that the court informed the defendant to return and the defendant relying upon what the court had said absented himself from the court room and during the night the jury having arrived at a verdict and desirous of rendering the verdict, was permitted to render the verdict by the Clerk of the Court receiving the jury and accepting the verdict at a time when the defendant was absent and at a time when the defendant had no right to believe or expect that the jury would be received by the Clerk of the Court in his absence, as being directly opposite to what his belief or understanding was with reference to the time that the jury's verdict would be received, by the court. So, therefore, this case, as cited by the plaintiff-in-error, has no bearing on the point which the plaintiff-in-error raises.

Now, in the case of Cooper v. Morris, 48 N.J.L., cited by the plaintiff-in-error, (cited as Cooper v. Martin by plaintiff-in-error) this was a civil action and in this case Chancellor Runyon speaking for the court of Errors and Appeals says:

> "The conduct of the judge, in calling the jury from their room, and giving them further instructions in the absence of the

> **plaintiffs and their counsel,** is not error. In contemplation of law, the parties and their counsel remain in court until a verdict has been rendered or the jury discharged from rendering one."

In reference to this opinion, the Plaintiff-in-error states that the doctrine of the Cooper v. Morris case could not apply to the case in question, as it was the duty of the State, in whose custody the defendant was, to either keep him there or have him there when additional instructions were given to the jury, and that this was a right which his counsel couldn't waive.

The State fails to find any decision which says that the defendant suffered manifest injury and wrong by the court instructing the jury on a part of the court's charge which further instructions were in the same identical language of the court's charge in a case where counsel for the defendant was present and the defendant himself not being present.

The State maintains that since counsel for the defendant was present at the time the court instructed the jury in the manner referred to, it was unnecessary that the defendant be actually present as he was present by his counsel being present and that the State believes that the only reason why it could be said that it would be error for the court to further instruct the jury on any point in a case where the defendant was not present and his counsel was not present would be because

of the fact that his counsel would have no opportunity to take any exception to the court's further instruction if counsel deemed it inadvisable to do so and, therefore, counsel for the defendant being present in the case in question, the defendant's rights were not in any way prejudiced or impaired.

POINT FOUR

THE VERDICT WAS NOT ILLEGAL AND THE TRIAL COURT DID NOT ERR.

Under this point, the plaintiff-in-error maintains, in effect, that the trial court changed the verdict of the jury by molding the verdict. Now, at the outset, the State maintains that this argument is absolutely not in accord with the fact. The statement of the matter as advanced by the defendant is an incorrect statement or conclusion of the defendant as to the actual facts pertaining to the matter in question. At the outset the State maintains that the court did not change the verdict, did not mold the verdict, did not amend the verdict, and, in fact, did nothing by its action, hereinafter particularly referred to, which in any way changed the verdict of the jury. As a matter of fact, the court did not in any way determine upon the verdict or instruct the jury as to the manner in which it should determine upon and deliberate its verdict.

The subject matter of the point advanced by the plaintiff-in-error has to do with what took

place at the time the jury rendered its verdict, and particularly referred to on pages 394-395 of the State of the Case. It will be observed, referring to page 394, that the court being advised by an officer of the court that the jury had agreed upon a verdict, was summoned and appeared in court, the defendant was sent for and he appeared in court, the jury were then sent for and took their seats in the jury box at one minute past three in the morning. The poll took place, as follows:

"The Clerk—Ladies and Gentlemen of the Jury, have you agreed upon a verdict?

The Forelady—We have.

The Clerk—Who shall say for you? Madam Forelady, how do you find?

The Forelady—Guilty.

The Court—Guilty of murder in the first degree?

The Forelady—Yes, your Honor.

The Clerk thereupon polled the jury: Juror No. 1, Madame Forelady, how do you find? A. Just as I said.

The Court—Guilty of murder in the first degree?

Juror No. 1—Yes.

Clerk—Juror, No. 2, how do you find?

Juror No. 2—Murder in the first degree.

Clerk—Juror No. 3, how do you find?

Juror No. 3—Murder in the first degree.

Clerk—Juror No. 4, how do you find?

Juror No. 4—Murder in the first degree.

Clerk—Juror No. 5, how do you find?

Juror No. 5—Murder in the first degree.

Clerk—Juror No. 6, how do you find?

Juror No. 6—Murder in the first degree.

Clerk—Juror No. 7, how do you find?

Juror No. 7—Murder in the first degree.

Clerk—Juror No. 8, how do you find?

Juror No. 8—Murder in the first degree.

Clerk—Juror No. 9, how do you find?

Juror No. 9—Murder in the first degree.

Clerk—Juror No. 10, how do you find?

Juror No. 10—Murder in the first degree.

Clerk—Juror No. 11, how do you find?

Juror No. 11—Murder in the first degree.

Clerk—Juror No. 12, how do you find?

Juror No. 12—Murder in the first degree.

The Clerk—Ladies and Gentlemen of the Jury, hear your verdict as recorded; you find the defendant guilty of murder in the first degree, so say you all."

From the foregoing it will be clearly apparent that the court did not, in any way, direct a verdict, amend the verdict, alter the verdict, mold the verdict or in any form whatsoever, change anything, particularly the verdict of the jury or instruct or direct the jury in what manner and form it should deliver its verdict, and, in this connection, the State particularly calls to the attention of the court that in the court's charge to the jury, the court told the jury, very plainly, on page 379, as follows:

> "The classification of murder in two degrees is made by statute, and the statute requires the jury, upon a conviction for murder, to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree."

And, of course, as said before, under point 2, the court instructed the jury on page 380 that the jury shall by their verdict and as a part thereof, upon and after considering all the evidence recommend imprisonment at hard labor for life at which this and no greater punishment shall be imposed.

Now, the plaintiff-in-error maintains, on page 32 of his brief, that the court was without "power to frame, mold or amend it" and by so doing, prejudiced the defendant and the defendant suffered manifest wrong and injury by the action of the court in doing what the plaintiff-in-error says the court did.

The State, particularly, maintains, that there is nothing indicated by what took place to show that the court framed, molded or amended the verdict of the jury. The court simply inquired of the jury, by interrogating the jury, as to whether the verdict of the jury was guilty of murder in the first degree, only after the forelady of the jury had said that the jury had found a verdict of guilty, and in answer to the inquiry of the court the forelady said that the jury had found the defendant guilty of murder in the first degree and then the

clerk polled each of the jurors and each of the jurors responded to the inquiry as to how each juror found that the defendant was guilty of murder in the first degree.

The plaintiff-in-error refers to the case of State v. Turco, 98 N.J.L., 61, at page 62, and the closing part of the opinion in this case. The opinion of the court in this case has nothing to do with the point advanced by the plaintiff-in-error in this case. As will be observed upon referring to the Turco case, that was a case where the jury had brought in a verdict of guilty and the opinion of the court was, which verdict in the form referred to was accepted by the court and the jury was discharged, and the Supreme Court in reversing the verdict said that the jury by its failure to designate the degree of murder was in error and that if the jury be discharged and judgment pronounced without the insufficient verdict being amended by the jury by adding the intended degree, the judgment would be reversed and a new trial ordered which was done in this case for the reasons stated.

And the opinion particularly states as follows:

> "The jury before whom the trial is had, if they find the defendant guilty, are required to find this fact, and to designate by their verdict whether it be murder in the first degree or in the second degree. It is therefore apparent, from the plain and imperative provisions of the statute, that a verdict (such as the present) which fails

> to designate the degree of murder of which the jury find the defendant guilty, is so fatally defective that no judgment can be legally pronounced thereon. It follows, of course, that if (as here) the jury be discharged and judgment pronounced without such verdict being amended by the jury by adding the intended degree, the judgment must be reversed and a new trial awarded."

Reference is made on page 28 of the brief of the plaintiff-in-error in which there is cited part of the dissenting opinion of Justice Kalisch in the case of State v. Merra, 103 N.J.L., 361 at page 369. In the first part of this dissenting opinion, Justice Kalisch says; that there is no doubt in his mind but that the court in which a verdict is rendered has the power in a civil case to mold the same in conformity with the issue tried. Of course, in the issue at hand, the court did not mold the verdict and the court is not charged with molding the verdict. The plaintiff-in-error further quoting Justice Kalisch states:

> "This rule is not applicable to verdicts in criminal cases."

and refers to 1 Chit. Crim. L. 529, wherein it is stated "the jury may also themselves, rectify their verdict in the same stage of the proceedings and it will stand as ultimately amended. Though they can neither be directed nor allowed to make any alteration after the verdict is recorded. But a gen-

eral, like a special verdict may be amended in matter of form, though not in any substantial degree."

And then Justice Kalisch upon referring to the case of State v. Merra, goes on to say further, on page 369,

> "And (on p. 527) this learned expositor of the criminal law says: 'It seems to have been laid down, that in a capital case, a special verdict cannot be amended in matters of fact, yet the court may amend a mere error in form, even in capital cases, when there are any notes or minutes by which it can be amended'."

Of course, what Justice Kalisch refers to in quoting Chitty on Criminal Law, had to do with the amending of a verdict as actually received and the reference by Justice Kalisch of the law as propounded by Chitty has no particular reference to the point raised by the plaintiff-in-error as to grounds for error in his case, because it clearly appears that what transpired in connection with the proceedings between the court, the Clerk and the jury; that the court did not receive the verdict until after the entire jury had been polled and had rendered its verdict of guilty of murder in the first degree, and that after that, nothing at all was done, and, therefore, it cannot be said that the court amended or molded the verdict which the jury had rendered.

In the case cited by the plaintiff-in-error, State v. Overton, 85 N. J. L., 287, at page 296, a portion of this opinion is quoted, and in the second paragraph it is said:

> "It is the court's duty to see to it that the verdict is in proper form to carry into effect the findings of the jury, and to that end, where the intention of the jury is ascertainable, the court may amend the verdict, and by correcting manifest errors of form or substance make it conform to the intention of the jury, if the matter of amendment can in no way affect the questions submitted to the jury." (38 Cyc. 1896.)

And then the plaintiff-in-error goes on to say,

> "In the present case the intention of the jury was not ascertainable from the verdict of 'Guilty,' and the matter of amendment would affect the questions submitted to the jury."

As will be observed, the State reiterates what it has said before that the court did not mold, alter or change the verdict by anything that the court did.

The plaintiff-in-error then goes on to cite the case of State v. Gonneion, 68 N. J. L., 429, and quotes a portion of the opinion of Chief Justice Gummere, in which it is stated by the court that it was clear to the court that it, meaning the

verdict, could not have been so molded by the court and certainly explains the conclusion reached by the jury. Of course, as said by the State, the court in no way molded, altered, amended or changed the verdict of the jury.

It will be further observed in connection with the proceedings in which reference is made that there was only one verdict actually received and that was a verdict of guilty of murder in the first degree.

The case of State v. Williams, 98 Atl. R., 416, the court 88 Atl. R. 689, it says:

> "In that case the verdict was guilty of murder in the first degree with a recommendation to the leniency of the court."

Such a verdict showed that the deliberation was at an end and that a determination had been reached. The legal effect of which was passed to the court.

From the statement of the jury in this present case it is clear that the deliberation was at an end and that a determination had been reached and that determination was expressed when the jurors were polled and all answered guilty of murder in the first degree.

On page 31 of the brief of the plaintiff-in-error reference is made to the duty of the trial judge to further instruct the jury as to the form of

the verdict to be rendered, and it was further said that it was improper and prejudicial for the trial judge to put in the mouths of the jurors any particular verdict which was the effect of his question, "Guilty of murder in the first degree?"

It will be observed from a reading of the court's charge to the jury that the court instructed the jury as to the form of the verdict to be rendered in which the Court said that the jury could find the defendant guilty of murder in the first degree in which case they could with their verdict recommend imprisonment for life at hard labor or guilty of murder in the second degree or guilty of manslaughter or acquit the defendant.

Then on page 31 of the brief of the plaintiff-in-error it is further said, that,

> "Had the court asked the jury which of the three forms of the verdict permissible under its instructions was intended so as to require a definite declaration by the jury, while it would have been error, it may be no harm would have been suffered by the defendant. By propounding the question as the court did, the probability of any different form of verdict being returned was rendered unlikely."

Now the State particularly refers to the proceedings and calls again the attention of the court to the effect that the entire jury was polled, and then after the entire jury was polled

and each juror had responded by saying that he or she found the defendant guilty of murder in the first degree. The clerk in conclusion said on page 395 of the State of the Case,

> "Ladies and Gentlemen of the Jury,
> Hear your verdict as recorded; you find the defendant guilty of murder in the first degree, so say you all."

For the foregoing reasons, the State maintains that the conviction of the plaintiff-in-error was proper and in accord with justice and that on the merits of the case, consisting of the entire record of the proceedings, the conviction should be affirmed.

Respectfully submitted,
J. VINCENT BARNITT,
Prosecutor of the Pleas and of Counsel
for Defendant-in-Error.