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Record No. 6260

In the
Supreme Court of Appeals of Virginia
at Richmond

EUGENE WILLIAM ROLLINS
v.
COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.
§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6260

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 14th day of October, 1965.

EUGENE WILLIAM ROLLINS, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Arlington County
Walter T. McCarthy, Judge

Upon the petition of Eugene William Rollins a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 1st day of February, 1965, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

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PURSUANT TO ADJOURNMENT the 19th day of January 1965 came the Defendant in custody of the Sheriff and his Attorneys Harry J. Ahearn and Franklin L. Carroll.

WHEREUPON the Commonwealth of Virginia again proceeded with the introduction of its evidence; until the Court adjourned for the luncheon recess after the members of the jury were admonished not to discuss this case with anyone nor to permit anyone to discuss it with them or in their presence nor to reach any conclusion until so directed by the Court.

THEREUPON after the luncheon recess the jury returned to the jury box and the Commonwealth of Virginia then proceeded to introduce its evidence until 3:20 P.M. at which time the Court adjourned to January 21, 1965 at 10:00 A.M., and the jury was excused to said date and hour, after the members thereof were admonished not to discuss this case with anyone nor to permit anyone to discuss it with them or in their presence nor to reach any conclusion until so directed by the Court nor to read any newspapers or listen to any radio or television broadcasts relating thereto nor to reach any conclusion until so directed by the Court and if any attempt be made by anyone to discuss this case with them or in their presence to forthwith report it to the Court.

AND the Defendant is hereby remanded to jail.

Entered this 20th day of January 1965.

WALTER T. McCARTHY
Judge

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THE 18th day of January, 1965, came the Commonwealth of Virginia, by its attorney, and the Defendant in custody

of the Sheriff and his attorneys, Harry J. Ahearn and Franklin L. Carroll.

THEREUPON, out of the presence of the veniremen reporting for jury service on this date, the Commonwealth of Virginia moved the Court for leave to question those called as the law directs separately, which said motion the Court granted and accordingly so ordered, the Defendant, after conferring with his Counsel offering no objection thereto.

WHEREUPON the Commonwealth of Virginia moved the Court to try this case with a regular jury of twelve and two alternate jurors, which said motion the Court granted and accordingly so ordered, the Defendant, after conferring with his Counsel offering no objection thereto.

THEREUPON from the veniremen reporting for jury duty on this date came a panel of twenty (20) free from exception, from which panel each side struck four; the members of said panel having been duly sworn on their *voir dire* and questioned by the Court, the Commonwealth of Virginia thereafter withdrawing its motion to question the veniremen separately.

WHEREUPON came a jury of twelve (12) composed of the following named persons, to-wit: Joseph A. Krcek, Frank L. Lombardo, John P. Wagstaff, Stuart B. Barber, James E. Chinn, Mrs. Virginia E. Carlson, John L. Thompson, Nickie H. Colarusso, Lyman N. Fairbanks, Sr., John W. Childress, Herbert M. Neale and Howard Oiseth, which was sworn as the law directs as a jury for the trial of this case.

THEREUPON two additional veniremen, Mrs. Laura May Eckley and Robert E. Lord, were drawn to serve as alternate jurors. They were sworn on their *voir dire* and found free from exception and both the Commonwealth of Virginia and the Defendant, after conferring with his counsel, stated to the Court that they did not desire strikes.

WHEREUPON Mrs. Laura May Eckley and Robert E. Lord were duly sworn as the law directs as alternate jurors in this case; the oath administered being as follows:

"Do you and each of you solemnly swear to well and truly try the case of *the Commonwealth of Virginia* against *Eugene William Rollins* whom you shall have in charge and that if directed by the Court you will take your place in the jury box as a regular juror and a true verdict render thereon according to the law and the evidence. So help you God?"

THEREUPON the Clerk delivered the charge to the jury and thereafter on motion of the Commonwealth of Virginia all witnesses present were duly sworn as the law directs and excluded from the Courtroom; those reporting after the commencement of the trial being likewise sworn as they took the witness stand to testify.

WHEREUPON opening statements were made to the jury by the Attorney for the Commonwealth and Counsel for the Defendant and the Commonwealth of Virginia then proceeded to introduce its evidence; during the introduction of which and prior thereto the Defendant and the Com-
page 36] monwealth of Virginia made certain motions out of the presence of the jury and the Defendant noted various exceptions to rulings of the Court as to matters of evidence, said motions and the rulings thereon being more particularly set out in the stenographic report of this trial.

THEREUPON the Court recessed at 4:15 P.M., until January 19th, 1965, at 10:00 A.M., and the jury was excused to said date and hour after the members thereof were admonished not to discuss this case with anyone nor to permit anyone to discuss it with them or in their presence nor to read any newspapers or listen to any radio or television broadcasts relating thereto nor to reach any conclusion until so directed by the Court and if any attempt be made by anyone to discuss this case with them or in their presence to forthwith report it to the Court; a similar admonishment having been given prior to the luncheon recess.

AND the Defendant is hereby remanded to jail.

Entered this 20th day of January, 1965.

WALTER T. McCARTHY
Judge

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PURSUANT TO ADJOURNMENT the 21st day of January 1965 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his At-

torneys Harry J. Ahearn and Franklin L. Carroll.

WHEREUPON the Commonwealth of Virginia again proceeded to introduce its evidence until the Court adjourned for the luncheon recess and the members of the jury were similarly admonished as they were on the preceding day of this trial.

THEREUPON after the luncheon recess the jury returned to the jury box and the Commonwealth of Virginia rested its case.

WHEREUPON the Defendant moved the Court to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied and to which said ruling of the Court the Defendant duly excepted.

THEREUPON the Court adjourned at 4:45 P.M. until 10:00 A.M. January 22, 1965 and the members of the jury were admonished by the Court to be governed by the same restrictions as heretofore given on the preceding day of this trial.

AND the Defendant is hereby remanded to jail.

Entered this 22nd day of January 1965.

WALTER T. McCARTHY
Judge

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PURSUANT TO ADJOURNMENT the 22nd day of January 1965 came the Commonwealth of Virginia, by it Attorney, the Defendant in custody of the Sheriff and his Attorneys, Harry J. Ahearn and Franklin L. Carroll.

THEREUPON the jury was polled and placed in the jury box.

WHEREUPON the Commonwealth of Virginia proceeded with the introduction of its evidence and at the conclusion thereof the Defendant out of the presence of the jury, moved the Court to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied and to which said ruling of the Court the Defendant excepted.

THEREUPON the Court adjourned until January 25th, 1965 at 10:00 A.M. and the jury was excused to said date

and hour after the members thereof were admonished as they were prior to the luncheon recess, to be governed by the same admonition heretofore given by the Court during the progress of this trial.

AND the Defendant is hereby remanded to jail.

Entered this 1st day of February, 1965.

WALTER T. McCARTHY
Judge

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PURSUANT TO ADJOURNMENT the 25th day of January 1965 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Harry J. Ahearn and Franklin L. Carroll.

THEREUPON the jury was polled and placed in the jury box.

WHEREUPON the defendant proceeded with the introduction of his evidence and at the conclusion thereof, out of the presence of the jury, the Defendant moved the Court to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied and to which said ruling of the Court, the Defendant, excepted.

THEREUPON the Commonwealth of Virginia proceeded to introduce in rebuttal.

WHEREUPON, out of the presence of the jury, the Defendant again moved to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied and to which said ruling of the Court the Defendant excepted.

THEREUPON the Court excused the jury until 10:00 A.M. on January 26th, 1965 and the members of the jury were admonished, as they were before the luncheon recess, to be governed by the same admonition as heretofore given during the progress of this trial.

WHEREUPON after the jury retired from the Courtroom the matter of instruction was argued by Counsel.

THEREUPON the Court adjourned until January 26th, 1965 at 10:00 A.M. and ordered the Defendant remanded to jail.

Entered this 1st day of February, 1965.

WALTER T. McCARTHY
Judge

* * * * *

page 56] INSTRUCTION 12

The Court instructs the Jury that the presumption of malice referred to in other instructions is not a conclusive presumption but may be overcome by proof of extenuating circumstances sufficient to create a reasonable doubt in favor of the defendant, either as to the degree of the offense or as to his guilt or innocence. You are the judges of whether the weapon used by the defendant in this case was a deadly weapon when used in the manner and under the circumstances in which it was used as disclosed by the evidence.

The Court further instructs the Jury that in this case under other instructions, there are two burdens of proof. On the question of sanity or insanity, the burden is on the defendant to prove to your satisfaction by the evidence the insanity of the defendant. If you find the defendant sane, then the burden of proof under other instructions is on the Commonwealth to prove by the evidence all the elements of the crime beyond a reasonable doubt. If, upon a consideration of the evidence, independent of the issue of insanity, you have a reasonable doubt as to whether the defendant acted with malice, you should not find him guilty of murder.

* * * * *

page 66] INSTRUCTION NO. 30

The Court instructs the jury that when the defense is insanity of the defendant at the time the offense was committed, and if they acquit him on that ground, to state the fact with their verdict.

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page 81]

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THE 26th day of January 1965 came the Commonwealth

of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Harry J. Ahearn and Franklin L. Carroll.

THEREUPON the jury was polled and placed in the jury box.

WHEREUPON the Court instructed the jury and after hearing closing arguments of the Attorney for the Commonwealth and Counsel for the Defendant the jury returned to its room to consider its verdict and after a time returned into Court and presented the following verdict, to-wit:

"January 26, 1965

We the jury find the defendant, Eugene William Rollins, guilty of murder in the first degree and fix his punishment at confinement in the penitentiary for life.

(Signed) HOWARD OISETH,
Foreman"

THEREUPON the Jury was discharged.

WHEREUPON the Defendant moved the Court to set aside the verdict of the jury as contrary to the law and the evidence, contrary to the weight of the evidence and without evidence to support it, which said motion the Court denied and to which said ruling of the Court, the Defendant excepted.

THEREUPON the Court being of the opinion that the verdict of the jury is right and proper doth hereby adjudge that the Defendant is "Guilty of Murder in the First Degree" and so finds.

WHEREUPON the Court continued this case for sentencing to January 27th, 1965 at 10:00 A.M. and ordered the Defendant remanded to jail.

Entered this 1st day of February, 1965.

WALTER T. McCARTHY
Judge

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PURSUANT TO ADJOURNMENT the 27th day of Jan-

uary 1965 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Harry J. Ahearn and Franklin L. Carroll.

THEREUPON the Court ordered the Defendant to stand and demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law and the Defendant responded personally and then asked that both of his Counsel be allowed to speak, which request the Court granted and Harry J. Ahearn, Esquire and Franklin L. Carroll, Esquire, were given the opportunity to speak in the Defendant's behalf.

WHEREUPON nothing being offered or alleged in delay of judgment, it is accordingly the Judgment of the Court, pursuant to the verdict of the jury, that Eugene William Rollins, a/k/a Marvin Westbrook be and he is hereby sentenced to confinement in the Penitentiary of this Commonwealth for life and pay the costs of this proceeding.

THEREUPON the Defendant signified his intention of applying to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of the Court and moved the Court to suspend the execution of the sentence for a period of thirty (30) days to permit the Defendant to apply for a writ of error, which said motion the Court granted and the execution of the sentence pronounced against the Defendant is hereby suspended for said period, and if the petition for a writ of error is timely filed, then thereafter until such petition is acted upon.

AND the Defendant is remanded to jail.

Entered this 1st day of February, 1965.

WALTER T. McCARTHY
Judge

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Filed 3/26/65
H. BRUCE GREEN, Clerk

NOTICE OF APPEAL
and
ASSIGNMENTS OF ERROR

To: H. BRUCE GREEN
Clerk of the Circuit Court
County of Arlington
Arlington, Virginia

Counsel for Eugene William Rollins, defendant in the above-styled case, hereby gives Notice of Appeal from a final judgment entered herein on February 1, 1965.

The said Eugene William Rollins, the defendant in the above-styled suit, will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to said judgment and herewith sets forth his Assignments of Error as follows:

1. The Court erred in that it permitted Mr. Arthur Centor, a clinical psychologist, to qualify as an expert to testify as to his opinion of the mental condition and sanity of the defendant.

2. The Court erred in refusing to admit into evidence the medical records from St. Elizabeth's Hospital on the basis that they were hearsay when the records page 86] were not offered to prove the truth of the contents therein, but rather to show the jury those records that the expert witnesses in part had relied upon in forming their expert opinions.

3. The Court erred in ruling that an adjudication of insanity in the District of Columbia did not shift the burden of proof to the prosecution to prove sanity and in refusing to so instruct the jury.

4. The Court erred in admitting into evidence oral evidence of confessions or statements of the defendant made to arresting officers who obtained same after undue delay without taking the defendant before a committing magistrate.

5. The Court erred in admitting into evidence, evidence and exhibits seized as results of illegal searches and seizures.

6. The Court erred in instructing the jury that "(I)f the act which is alleged to be the result of an irresistible impulse was planned in advance, as a matter of law such act cannot be said to be the product of an irresistible impulse."

7. The Court erred in refusing to instruct the jury that

should the jury find the defendant not guilty by reason of insanity the jury should state that fact in its verdict and that the Court then had the duty to determine if the defendant was dangerous to public peace and safety and, if so, the Court would order him committed to a state institution until such time as he might be pronounced sane and safe to be at large. By refusing the latter part of this instruction the Court submitted to the jury the thought that a finding of not guilty by reason of insanity woud result in the release of the defendant, the same as if the jury rendered a verdict of not guilty.

page 87] Dated this, the 26th day of March, 1965.

EUGENE WILLIAM ROLLINS

By: HARRY P. FRIEDLANDER
Counsel

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EDWARD F. HAWKINS,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and occupation.

A. Edward F. Hawkins. I am a patrolman, Arlington County Police Department.

Q. Directing your attention to the 11th day of May 1963, what tour of duty were you performing, if you recall?

A. I was working the midnight shift.

Q. Did there come a time when you had occasion to respond to South Fern Street in the vicinity of 24th Street in Arlington County, Virginia?

Edward F. Hawkins

A. Yes, sir.

Q. When you arrived there, will you tell the Court and jury what you observed, if anything

A. I observed an Arlington County ambulance at the scene.

I also observed a '63 Chevrolet four-door parked page 35] at the curb with motor running.

I also observed a body in the left front of the vehicle, slumped over.

Q. Did you have occasion to examine the doors of the vehicle?

A. Yes, sir.

Q. What did you find on that examination?

A. The left front door on the driver's side was closed, but it was unlocked. The right front door was locked. The right rear door was unlocked.

Q. Did there come a time when you had occasion to take any pictures of what you observed while you were there?

A. Yes, sir.

Mr. Hassan: If Your Honor please, I would like to have these photographs marked for identification.

The Court: Do you want them in any particular order?

Mr. Hassan: Any order at all, Your Honor.

The Court: They already have numbers on them.

Mr. Hassan: Yes, sir.

The Court: Commonwealth's 1 to 7.

(The photos referred to were marked Commonwealth's Exhibits Nos. 1 through 7 for identification.)

page 36] By Mr. Hassan:

Q. Officer Hawkins, I show you Commonwealth's Exhibit for identification No. 4, and ask you, sir, whether or not that is a picture which you took and whether it depicts what you saw at the scene?

A. Yes, sir.

Q. What is in that picture?

A. This picture shows the '63 Chevy from the front view, with several police officers standing around.

A Juror: Will you speak up a little louder? I can't quite hear you.

Edward F. Hawkins

The Witness: This picture shows the '63 Chevy with a body behind the wheel, with several police officers standing around.

By Mr. Hassan:
Q. Does it also show the ambulance which you spoke about?
A. Yes, sir.

Mr. Hassan: If Your Honor please, I would like to offer that as an exhibit and show it to the jury.
The Court: Admitted. Do you have a number on it?
Mr. Hassan: No. 4.
The Court: 4.

(The photo previously marked for identification as Commonwealth's Exhibit No. 4 was received.)

page 37] By Mr. Hassan:
Q. I would like to show you Exhibit No. 5 for identification and ask you, sir, if that is one of the pictures that you took?
A. Yes, sir.
Q. And that shows the front door open and Leon Tatleman in it; is that correct?
A. Yes, sir.

The Court: You will have to speak up.
The Witness: Yes, sir.
Mr. Hassan: I would like to offer that, Your Honor.
The Court: Admitted.

(The photo previously marked for identification as Commonwealth's Exhibit No. 5 was admitted.)

By Mr. Hassan:
Q. And Exhibit No. 7 for identification. I ask you whether you took that picture, and what that is a picture of?
A. Yes, sir, I did. This shows the picture of the vehicle and a body behind the wheel, on the left side.

Mr. Hassan: I would like to offer that, Your Honor.
The Court: Admitted.

Edward F. Hawkins

(The photo previously marked for identification
page 38] as Commonwealth's Exhibit No. 7 was admitted.)

By Mr. Hassan:

Q. Exhibit No. 1. I ask you, sir, what that is?

A. This also shows a picture of the car, more or less a close-up of the body behind the wheel.

Mr. Hassan: I would like to offer that, Your Honor.

The Court: Admitted.

(The photo previously marked for identification as Commonwealth's Exhibit No. 1 was admitted.)

By Mr. Hassan:

Q. I show you Exhibit No. 3, and ask you, sir, what that is?

A. This shows a picture of the body behind the wheel from a shot that I shot through the windshield, from the right front portion of the vehicle.

Mr. Hassan: I would like to offer that one, Your Honor.

The Court: Admitted.

(The photo previously marked for identification as Commonwealth's Exhibit No. 3 was admitted.)

By Mr. Hassan:

Q. I show you Exhibit No. 2, and I ask you,
page 39] sir, what that is?

A. This shows a picture of the person in the car, shot from the right side.

Mr. Hassan: I would like to offer that one, Your Honor.

The Court: I don't think there could be any misunderstanding as to what he meant, what he said, it shows a picture of the person in the car, that he shot. I know he is talking about shooting the photograph, but just to get the record straightened out —

The Witness: This is a picture that I took of a person behind the wheel, from the right side.

Edward F. Hawkins

Mr. Hassan: I offer that, Your Honor.
The Court: Admitted.

(The photo previously marked for identification as Commonwealth's Exhibit No. 2 was admitted.)

By Mr. Hassan:
Q. I would like to show you Exhibit No. 6, marked for identification, and ask you, sir, if that is a picture which you took?
A. Yes, sir, I did.
Q. What does that show?
A. This picture shows a body behind the wheel, that I took from the front portion of his vehicle — correction, the left portion of his vehicle.

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The Court: You want that admitted?
Mr. Hassan: Yes, sir; I would like to offer that, Your Honor.
The Court: Admitted.

(The photo previously marked for identification as Commonwealth's Exhibit No. 6 was admitted.)

By Mr. Hassan:
Q. Did there come a time when, in your presence, there was an examination of the body made by a medical examiner?
A. I do not recall.
Q. Did there come a time when there were any valuables removed from Leon Tatleman in your presence?
A. No, sir; not in my presence.

Mr. Hassan: I have no further questions of this witness, Your Honor.
Mr. Ahern: I have no questions, Your Honor.
The Court: Step down.

(Witness steps down.)

Mr. Hassan: Lois Ryder.

page 41] Whereupon

Lois Ryder

LOIS RYDER

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and address?

A. I am Lois Ryder; I live at 2501 South Fern Street in Arlington, Virginia.

Q. Directing your attention to on or about the 11th day of May 1963, do you recall anything unusual occurring in your neighborhood?

A. Yes, sir. I was awakened early in the morning, I would say approximately somewhere around 6:30, and I had gone in the kitchen to get something to eat. I happened to look out my kitchen window and saw a number of people going in and out of Miss Rickard's house. Having known her for a period of years, I was naturally curious as to what was going on. I had called down to my aunt's house to see if they knew what was going on. The reason I called there is because my cousin is a doctor and she would be most likely to be called if there had been anything wrong there.

At that hour of the morning I couldn't get an
page 42] answer on the phone. I didn't understand why
somebody didn't answer the phone, with four adults in the house.

So I got dressed and went down there to see what was wrong at my aunt's house, which is just five doors from me.

When I went down to my aunt's house, I met some policeman — I don't know who he was — a young policeman was out in my aunt's rose garden, so I asked him what he was looking for, what was wrong — something wrong here?

Q. What was your aunt's name?

A. My aunt's name is Green.

The Court: Don't tell what he told you.

The Witness: So he wanted to know who I was.

Mr. Ahern: I object, Your Honor.

The Witness: Sir?

Lois Ryder

The Court: Don't tell what he told you. He asked who you were. I don't think that is hearsay.

The Witness: He asked me who I was and what I was doing there.

So I told him I was down to my aunt's house to find out why they didn't answer the telephone. So I knocked on the door and they came to the door. I had gotten them out of bed. They hadn't even heard the telephone. So that is how I got involved in the situation.

The policeman asked me who I was and what I
page 43] was doing there at that hour of the morning and so forth.

By Mr. Hassan:

Q. May I ask you another question?

A. Yes, sir.

Q. During the night of the 10th and the 11th of May, did you hear anything unusual?

A. Well, I had heard, the night before I had heard something that sounded to me like a gunshot, but it came from the area, so I thought, of where the Arlington incinerator was, which was down further south of my house, about four blocks. It sounded like it was coming from that area, but I did not know. I would say it was late at night when I heard that, and I don't recall exactly what hour it was. I did at that time, and I told the policeman at that time when he asked me.

The Court: Don't tell us what you told him.

Mr. Hassan: No further questions.

The Court: Wait just a minute.

Mr. Ahern: We have no questions.

The Court: Step down.

(Witness steps down.)

Mr. Hassan: May she be excused, Your Honor?

The Court: She is excused.

(Witness excused.)

page 44] Whereupon

JENNIE RICKARD

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Would you please state your name and address?

A. Jennie Rickard, 2320 South Fern Street, in Arlington.

Q. Mrs. Rickard, directing your attention to on or about May 11, 1963, did there come a time when anything unusual happened in the vicinity of your house?

A. Yes, sir. I was awakened by, sounded like a car door slamming. I looked at my clock and it was about 1:30. So I was curious. I went to the front of the house, on my front porch, and there was a car parked out front rather not close to the curb, and motor was running; but there wasn't anybody around, and so I watched for about maybe ten minutes, and I didn't see anything but the car. I couldn't see anybody in the car. I went back to bed.

About twenty minutes later, another car door, or a car door slammed again. When I went out there were three cars. One was abreast of the parked car; another one was turning left and another turning right on 24th.

page 45] Then they all drove away. Two went to the left and one to the right. Then I went back to bed.

At 6 o'clock I was awakened by another car, another door slam. Then the ambulance was there, several men.

Mr. Hassan: Thank you very much.

Mr. Ahern: No questions.

The Court: That's all.

Through with her?

Mr. Hassan: Yes, Your Honor; she may be excused.

The Court: You are excused.

(Witness excused.)

Robert E. Miller

Whereupon

ROBERT E. MILLER

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Robert E. Miller, Arlington, Virginia.

Q. Directing your attention to the defendant, sir, do you know him?

A. Yes, I do.

Q. How long have you known him?

page 46] A. Well, up to the present time, approximately twenty months.

Q. Directing your attention to on or about May 10, 1963, did there come a time when you had occasion to see this defendant on that day?

A. Yes, I did.

Q. Where and when did you see him?

A. I saw him in the rear of Arlington Towers. He was coming out of the rear of the Tyler Building, which is Arlington Towers. I, at the time, was with Leon Tatleman.

Q. What time of the day or night was that?

A. It was approximately 8 o'clock, 8 to 8:30, somewhere in there.

Q. In the evening or in the morning?

A. P.M.

Q. P.M.

At that time, did you say anything to the defendant?

A. Yes, I told him that we were going over to pick up Leon's money. The defendant was aware that Mr. Tatleman had won $1600 on a horse, and I told Rollins that we were going over to pick up Leon's money and that we would either pick him up later or call him. At that time, we told him we were going to the Red Coach Inn.

Robert E. Miller

Q. Did there come a time when you had occasion to see him at the Red Coach Inn?

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A. Yes, sir. He came there approximately, I would say, in the neighborhood of 9:30 to 10 o'clock with Margaret Klassett. They joined us.

Q. Joined you at that time. How long did you remain at the Red Coach?

A. I would say that we stayed there until approximately 1 or 1:15.

Q. What did the defendant do during that period of time?

A. Well, while we were in the Red Coach?

Q. Yes.

A. While we were in the Red Coach, we were seated at the table and Eddie Welch came in and he had Leon Tatleman's money, and Eddie Welch gave the money to Leon Tatleman while we were all seated there at the table.

During this time, Mr. Rollins would say things to me to the effect, "You are talking too loud. There is a man over there that has a bulge in his pocket. I think he has a gun in his pocket." And things of this nature.

Q. Then did there come a time when you left the Red Coach Grill?

A. Yes, sir. I left the Red Coach and every one in my party left the Red Coach.

Q. That included the defendant?

page 48]

A. That included the defendant, Margaret Klassett, Leon Tatleman, Eddie Welch, and myself. We went to the rear of Arlington Towers, where we lived. I got out of the automobile.

Q. Whose automobile was this?

A. Leon Tatleman's. It was either his or Rosenthal Chevrolet, for whom he worked at that time.

Q. Will you tell us where everyone was seated in that vehicle when it came from Washington, please?

A. Sir, to the best of my recollection, of course, Leon Tatleman was driving. Margaret Klassett was sitting in the middle. I was sitting next to her, nearest the door on the right side. In the back was Rollins, the defendant, and Eddie Welch; and we all got out of the automobile except Leon, who was driving — Leon Tatleman, who was driving, and Rollins,

Robert E. Miller

who remained in the back seat. He requested Leon to take him somewhere.

Q. Did there come a time when you saw Leon and the defendant depart from —

A. Yes, they left; the two of them left together.

Q. Where was the defendant seated at that time?

A. He was seated in the rear of Leon Tatleman's automobile.

Q. Did there come a time subsequent to that when you had occasion to see the defendant again?

page 49] A. No, I don't believe I ever saw the defendant again until in this courtroom.

Q. Did there come a time subsequent to that when you had occasion to see Leon Tatleman again alive?

A. I never saw Leon Tatleman alive after that evening when the two of the them departed. I never saw Leon Tatleman again.

Q. How long had you known the defendant up to that time?

A. Up to that time, approximately four weeks.

Q. How did you happen to meet him?

A. He was living, he was staying, at that particular time, with Eddie Welch, who lived on the sixth floor in the Tyler Building. I lived on the third floor in the Tyler Building, and Eddie Welch was a friend of mine, and through the acquaintance of Eddie Welch I got to meet Rollins.

Q. Did there come a time when Rollins visited in your apartment?

A. Yes, sir.

Q. Did there come a time when you ever saw Rollins with a gun?

A. Yes, sir. There was one occasion that he showed me a gun and, frankly, my words were, "What in the hell are you doing with a gun?"

I told him to take it and throw it in the Potomac

page 50] River.

He stated, "No, I can sell it for $100."

I said, "Well, if you won't throw it away, give me the bullets."

He gave me the bullets. I just threw them up on the top of the cabinet. That was the end of that.

Robert E. Miller

Q. Did there come a time when you had occasion to see those bullets again?

A. Yes, after this particular incident involving Leon Tatleman, I turned the bullets over to Detectives Rasmussen and Keyes.

Q. Now, during the course of time that you knew the defendant, did there come to your attention any of the acquaintances of the defendant who might live in the vicinity of 24th and South Fern Streets?

A. Yes. Mr. Rollins was dating a lady over there by the name of Fran Thornburg.

Q. Where did she live?

A. In the vicinity of 24th and Fern, Arlington, Virginia.

Q. Did there come a time when, to your knowledge, the deceased had ever driven him to that address?

A. To my knowledge, that he had driven him there? I know nothing about that.

page 51] Q. Had the defendant been in Leon Tatleman's car before the night when you saw him depart with Mr. Tatleman, May 10?

A. He could have been, yes.

Q. But was he ever in when you were there?

A. I don't believe he was.

Q. Now, during the period of time that you knew the defendant, would you describe to us his actions and his personality?

A. The defendant, during the time I knew him, which was some four weeks, seemed quite rational. One of the things about him, that I found rather interesting or somewhat unusual, knowing that he had a limited education, was the fact that his vocabulary was a little better or a little higher than someone with his limited background and educational background. His vocabulary was better than the average person's who would have his education.

Q. Was he a sociable person?

A. He was extremely sociable. He was very friendly. That is, he had a very good sense of humor. In fact, I discussed the fact with him about his vocabulary. He stated that it was due to the fact that he had read quite a bit.

As for his sociability, he was quite sociable, and he was

Robert E. Miller,

extremely fond of children. In fact, I remember one particular incident that he became upset when someone was going to harm a kid. He and I and Margaret Klassett
page 52] were at a Little League baseball game, and there was a child in the field shining a light — he had a mirror and he was shining this on the batter's face. An individual on the field went over to the kid and got the glass and threw it on the ground.

When Rollins saw this, he became upset and he went over and he had words with the man.

Q. Was there any violence?

A. No, just Rollins said that he had a few words with the man. The man threatened to shoot him.

Q. Did you see any other occasion where there was any indication of, during the period of time you knew him, of Mr. Rollins being upset?

A. Oh, yes. When he was going with Fran Thornburg, he had stated that he was quite fond of her. It seems that their relationship had been severed as a result of Miss Thornburg, whichever may be, had severed their relationship and he was quite upset as a result of that. He stated to me, and I believe to Miss Klassett, that he was in love with her.

The Court: Let the jury retire.

(The jury retired.)

The Court: You may step down, Mr. Miller.

(Witness steps down.)

The Court: The court will recess until 1:30. I wanted to get the courtroom cleared.
page 53] I have some instructions to the jury, but I want the courtroom cleared of people who are in here before the defendant goes out.

(The courtroom was cleared.)

The Court: Excuse the witnesses until 1:30.

(Witnesses were excused until 1:30.)

The Court: Let the jury step inside just a minute now. Are you ready, Sheriff?

Let them all come in.

Ladies and gentlemen of the jury, the court will recess for the luncheon period. You will be in custody of the sheriff. He will get you your lunch and bring you back.

Don't discuss the case as you walk along the street. Don't ask the sheriff any questions. Don't try to reach any conclusions about it.

Come back when he brings you.

All right, recess.

Mr. Hassan says you are not going to request the jury be locked up, and you are not going to request it. In view of the opening statement, it is not necessary. I don't want to discuss this or make any ruling until you have the defendant present. Around here, at this time of day, with all these people coming back and forth, I might be inclined to let the sheriff take them to meals and bring them back, as distinguished from going home.

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(The luncheon recess was taken.)

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AFTERNOON SESSION
(1:50 P.M.)

Mr. Hassan: I have three witnesses to be sworn, Your Honor.

The Court: Before we get to that: Mr. Ahern, here are two messages from two jurors they want delivered to their home. I don't suppose there is any objection?

Mr. Ahern: I have no objection.

Mr. Hassan: No objection.

The Court: Three witnesses?

Mr. Hassan: Yes, sir.

The Court: You want them sworn now?

Mr. Hassan: Yes, please.

(The witnesses referred to were sworn by the Clerk.)

The Court: You want them excluded or not?

Mr. Hassan: Two doctors, Dr. Enos and Dr. Sheehy, who

are the medical examiners, and will testify about the autopsy — I have no desire to have them excluded.

The Court: Bring in the jury.

Mr. Hassan: The other witness, however, is FBI.

Mr. Ahern: I want him excluded.

Mr. Hassan: Yes.

(The jury resumed its place in the jury box.)

The Court: Who is your witness?

page 56] Mr. Hassan: Mr. Miller was on the stand at recess.

Whereupon

ROBERT E. MILLER

resumed the stand and testified further on his oath as follows:

Mr. Hassan: May we approach the bench on that matter?

BENCH CONFERENCE

Mr. Hassan: The Commonwealth has no desire to make a move to have the jury excluded, Your Honor, the jury kept together overnight.

Mr. Ahern: We concur in that as far as the defendant is concerned.

The Court: You do not want them kept together? You concur in that?

Mr. Ahern: Yes, sir.

Mr. Hassan: I do think they should be kept together at lunchtime because there are so many witnesses and only a few restaurants.

The Court: All right.

Mr. Hassan: I have no further questions, Your Honor.

IN OPEN COURT

CROSS-EXAMINATION

By Mr. Ahern:

Q. Now, Mr. Miller, you stated that you went over to the

Robert E. Miller

page 57] Red Coach Inn and that Rollins joined you over there at Georgetown, and you sat down at the table. There was a conversation going on. Who was at the table?

A. At our table?

Q. Yes.

A. Myself, Leon Tatleman, Rollins, Eddie Welch, Margaret Klassett.

Q. You stated that Rollins made a statement to the effect, Don't talk so loud, there is a man with a bulge in his pocket?

A. Yes, sir.

Q. Did you see the man?

A. I didn't pay any attention to the remark. No, I did not.

Q. Did you see anybody with a bulge in his pocket?

A. No, I didn't pay any attention to it.

Q. That doesn't sound like a very rational statement, does it?

A. I didn't attach any significance to it whatsoever.

Q. Then the other time you saw him remonstrating with a man who was going to take the piece of glass away from the little boy, Rollins told you at that time the man said he was going to shoot him?

A. Yes.

page 58] Q. Does that sound like a very rational statement to you?

A. I never paid too much, I never gave it any particular interpretation, frankly. I had no reason to.

Q. Did you know that just up until the week before you went into the, or a month before you went into that Red Coach Inn that Rollins had spent seven consecutive years in a mental institution?

A. I had no inkling or no indication of Mr. Rollins' background whatsoever.

Mr. Ahern: I have no further questions.

Mr. Hassan: No further questions.

(Witness excused.)

Stephen J. Sheehy

Whereupon

STEPHEN J. SHEEHY

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and your occupation.

A. I am Stephen J. Sheehy; I am a physician in private practice in Arlington County. I am also the Arlington County Medical Examiner.

Q. Directing your attention, Doctor, to the morning of 11 May 1963, did you have occasion to go to Fern Street in the vicinity of South 24th Street?

page 59]

A. Yes, I was called a little before 7 o'clock to come down, because they had found a gentleman dead in an automobile, parked on South Fern Street.

Q. When you arrived there, Doctor, did you examine that gentleman?

A. Yes, I did.

Q. What did you do at that time?

A. Well, I examined the gentleman, found that he had a bullet wound, a little bit in front of the right temple.

In examining the patient's skull further I was able to feel a bulge about an inch and a half above the left ear, which felt like the bullet which had entered on the opposite side of the skull.

I then examined the bullet wound, examined the patient for the degree of rigor mortis; examined him for the extent of pooling of blood which occurs when anyone has been lying or sitting in a particular position for a period of time after they have been dead.

Q. Did there come a time when you pronounced Leon Tatleman dead?

A. Yes, I felt that he had been dead for quite some time.

Q. Then did you make an official Medical Examiner's report as Chief Medical Examiner?

page 60]

A. Yes, I did, sir.

Mr. Hassan: If Your Honor please, I would like to have this marked Commonwealth's Exhibit No. 8 for identification.

(The report referred to was marked Commonwealth's Exhibit No. 8 for identification.)

By Mr. Hassan:

Q. I would like to show you this, Doctor, and ask you whether or not this is your report?

A. Yes, sir; that is.

Q. What was the cause of death that you cited in your finding of death?

A. Death was due to a bullet wound of the brain.

Mr. Hassan: I offer that in evidence, Your Honor, as Exhibit No. 8.

The Court: Admitted.

(The report previously marked for identification as Commonwealth's Exhibit No. 8 was admitted.)

Mr. Hassan: Thank you, Doctor.

Mr. Ahern: I have no questions.

Mr. Hassan: May Dr. Sheehy be excused, Your

page 61] Honor?

The Court: Yes.

(Witness excused.)

Whereupon

WILLIAM ENOS

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

William Enos

A. William Enos, pathologist, Northern Virginia Doctors Hospital; and designate pathologist for the Medical Examiner.

Q. Dr. Enos, in this capacity did there come a time when you performed an autopsy on Leon Tatleman?

A. Yes, I performed it at Arlington Hospital, May 11, 1 o'clock in the afternoon.

Q. Would you tell us what the protocol of your examination was?

A. We found that a bullet wound which was penetrating the head, which entered on the right side, approximately here (indicating), and traversed the brain tissue and ended in the soft tissue of the scalp right here, and severe laceration of the brain was the cause of death. There was also a fractured skull which was obviously associated with the bullet wound.

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Q. Did you make an examination for the direction of the bullet and the proximity of the weapon at the time of the wound?

A. As mentioned, the bullet entered the right side. There was no smudging, tattooing, or charring of the tissues present — smudging meaning burned powder material which contaminates the skin — and tattooing means unburned powder marks which enter the skin. They were not present. Nor was the hair charred above the wound of entrance.

Then the missile entered and went straight across, ending in the soft tissue just above the ear.

Q. Did you make any other significant findings in your autopsy, Dr. Enos?

A. Aside from the bullet wound and fractured skull, and the lack of smudging, tattooing, there was no other significant changes.

Q. Did you come to any conclusion in regards to the distance of the weapon at the time of the entry of the bullet as a result of your autopsy?

A. Obviously from the character of the wound of entrance, it was not a contact wound. In other words, the gun was not held against the skin and discharged. Nor was it, nor was the end of the gun held at a distance, say, of less than three to

six inches. It had to be six inches or above. In
page 63] other words, the end of the gun wasn't held
within a six-inch area.

Q. As a result of your examination, did you establish a probable time of death?

A. Rigor mortis was completed and it corresponded to the Medical Examiner's findings.

Q. Do you recall what that finding was?

A. Let me see. He had complete rigor mortis. It was in May. So that probably was one. That means that it takes usually about 12 hours for complete rigor mortis. I autopsied him at 1 o'clock that day, so it would be twelve hours at least.

Q. About 12 hours?

A. It could be even more.

Mr. Hassan: No further questions.

Mr. Ahern: I have no questions.

The Court: Excused.

(Witness excused.)

Mr. Hassan: I would like to ask Dr. Enos just one more question, if I may, Doctor.

Whereupon

WILLIAM ENOS

resumed the stand and testified further on his oath as folows:

DIRECT EXAMINATION (Resumed)

By Mr. Hassan:

Q. Dr. Enos, in your examination, did you find
page 64] a slug inside the head of Mr. Tatleman?

A. Yes.

Q. Did you remove that?

A. Yes.

Q. Who did you give it to?

A. Officer Keyes was present at the autopsy.

Q. You gave him the —

A. It was so marked, too, at the time I took it out. Marked it and gave it to him.

Q. Marked it and gave it to him?

A. Right.

The Court: What kind of marking did you put on it?

The Witness: I put on my initials.

The Court: Questions?

Mr. Ahern: I have no questions.

(Witness excused.)

Whereupon

CARL LILJA, JR.,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name, sir.

page 65] A. My name is Carl Lilja, Jr.

Q. Where are you employed, sir?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been employed there?

A. Over seventeen years.

Q. What is the nature of your work?

A. I work as a document examiner in the FBI laboratory in Washington, D. C. I perform examinations in all phases of this work, including comparison of handwriting, hand printing, typewriting, check writing, and other examinations of this nature.

Q. Have you had any training?

A. I have completed a course in document identification in the FBI laboratory. I have read books by noted authors in the field of handwriting identification. I have worked with other FBI document examiners on various cases. I have examined thousands of cases and have testified in states, federal

and military courts throughout the United States and Puerto Rico.

Mr. Gallucio: Do you wish to examine as to his qualifications?

Mr. Ahern: No.

Mr. Gallucio: Your Honor, may I have these two envelopes marked for identification?

page 66] The Court: Commonwealth's 9 and 10.

(Two envelopes were marked Commonwealth's Exhibits Nos. 9 and 10 for identification.)

The Court: When you get through looking at those, you had better put those back inside before you look at the other one.

Mr. Ahern: Yes, sir.

By Mr. Gallucio:

Q. I show you an envelope marked Commonwealth's Exhibit No. 10 and ask you if you have ever seen the contents of that envelope?

A. Yes, I have.

Q. I show you an envelope marked Commonwealth's No. 9, and ask you if you can identify the contents of that envelope?

A. I have seen the contents of Commonwealth's Exhibit No. 9 in the FBI laboratory in Washington.

Mr. Gallucio: If Your Honor please, I would like to have each of these marked for identification as coming from Commonwealth's Exhibit No. 9.

The Court: 9-A and 9-B.

(Contents of Exhibit No. 9 were marked Commonwealth's Exhibits 9-A and 9-B for identification.)

page 67] Mr. Gallucio: I think, Your Honor, this is from No. 10. May we have that No. 10-A?

The Court: No. 10-A.

(Contents of Exhibit No. 10 were marked Commonwealth's Exhibit 10-A for identification.)

By Mr. Gallucio:

Q. I would like to show you Commonwealth's Exhibits 10-A and Commonwealth's Exhibit 9-B, and ask you if you have compared the signatures appearing of Eugene William Rollins on both of those documents?

Mr. Ahern: Your Honor, I am going to object until such time as they are received in evidence, and before they are received in evidence I would like to examine this agent.

The Court: Objection sustained.

By Mr. Gallucio:

Q. These exhibits, where did you receive them?

A. I received these exhibits from the Arlington County Police Department in the FBI laboratory in Washington, D. C.

Q. For what purpose did you receive them?

A. For the purpose of making a handwriting examination on these documents.

Q. Do you recall when you received them?

A. I received Commonwealth's Exhibit 9-A
page 68] and 9-B on May 28, 1963.

Q. Would you identify those by name?

A. Commonwealth's Exhibit 9-A is a report of transfer of ownership of firearms and signed on April 3, 1963, by Marvin —

Mr. Ahern: He is testifying to the contents. I object.

The Court: Objection sustained.

By Mr. Gallucio:

Q. Can you identify, what number is this? What is this, please, sir?

A. Commonwealth's Exhibit No. 10-A is a form of the United States of America, State of New York, which is a consent —

Mr. Ahern: I object.

The Court: Objection sustained.

By Mr. Gallucio:

Q. That's fine. What is the last document, please?

A. Commonwealth's Exhibit 9-B is a sheet of paper bearing handwriting.

Mr. Gallucio: If it please the Court, to meet the objection, I would like to have this witness temporarily excused and call Detective Keyes to the stand, please.

The Court: Any objection?

Mr. Ahern: I have no objection to that, Your Honor.

The Court: Step down.

page 69] (Witness temporarily excused.)

Whereupon

B. E. KEYES

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. Detective Keyes, state your name and occupation, please.

A. Detective B. E. Keyes, Arlington Police Department.

Q. I show you Commonwealth's Exhibit No. 10-A and ask you if you have ever seen that document?

A. Yes.

Q. Did you see this document signed?

A. I did.

Q. All signatures?

A. Yes, I did.

Q. Does your name appear on that document?

A. My name appears on it. Eugene Rollins, Florenta from New York, and Detective Rasmussen.

Q. Did you say the signature of Eugene Rollins appears on that?

A. Right.

page 70] Q. Did you see that document signed by Eugene Rollins?

B. E. Keyes

A. Yes.
Q. Was it in your presence?
A. It was.

Mr. Gallucio: At this point I offer this document into evidence.
Mr. Ahern: May I see that?
Mr. Gallucio: Yes.
Mr. Ahern: I have no objection to this document.
The Court: It is already identified. It is now admitted in evidence.

(The document previously marked for identification as Commonwealth's Exhibit 10-A was admitted)

By Mr. Gallucio:
Q. I show you Commonwealth's Exhibit 9-B and ask you if you have ever seen that?
A. Yes.
Q. Where did you see that document previously?
A. Over at St. Elizabeth's Hospital.
Q. What was the occasion of your seeing it?
A. This is a partial of a letter signed by Eugene M. Rollins; we got it from Dr. Robertson, Detective Rasmussen and myself.

page 71] The Court: I cannot hear you.

By Mr. Gallucio:
Q. Would you repeat that, please?
A. This is a partial of, part of a letter that was signed by Eugene M. Rollins. We got it from Dr. Robertson of St. Elizabeth's Hospital, Leroy Rasmussen and myself.

Mr. Gallucio: At this point I would like to offer this into evidence.
Mr. Ahern: I would like to ask him a couple of questions, Your Honor.
The Court: All right.
Mr. Ahern: You did say you got that from the files of St. Elizabeth's Hospital?

B. E. Keyes

The Witness: No, I —

Mr. Ahern: Where did you get it?

The Witness: I got it from Dr. Robertson.

Mr. Ahern: A psychiatrist of St. Elizabeth's Hospital?

The Witness: I have no idea. He signed his name and told me he was Dr. Robertson.

Mr. Ahern: Is he here today?

The Witness: I couldn't answer that.

Mr. Ahern: I am going to object to the introduction of any evidence from psychiatrists at St. Elizabeth's page 72] Hospital, who were treating Rollins, unless I find out whether Rollins authorized the release of any information. I object to it on that basis.

The Court: Let the jury retire.

(The jury retired.)

The Court: You gentlemen wish to argue this?

Mr. Hassan: If Your Honor please, Dr. Robertson is under subpoena at the request of the defendant, and will be here to later testify in regard to this.

Mr. Ahern: I can only answer that by saying that as far as I know the defendant didn't waive any privilege that existed between him and Dr. Robertson. I certainly didn't waive any privilege on behalf of the defendant. Dr. Robertson, I thought I heard this gentleman say something about, it came out of the files when he started testifying.

But, in any event, it is apparently a communication between the defendant and his doctor, and I don't understand how the doctor could waive any privilege that exists between the two individuals.

The Court: Let me see the communication, will you?

My recollection of the law in the State of Virginia is that there is no privilege or was no privilege until 1956, and that privilege is set forth in the Code under Title 8, Section 289.1, which isn't in the same form as it was when it page 73] was first enacted in 1956.

It reads as follows:

"Except at the request of or with the consent of patient, no duly licensed practitioner of any branch of the healing

arts shall be required to testify in any civil action, suit or proceeding at law or in equity respecting any information which he may have acquired in attending, examining or treating a patient in a professional capacity if such information was necessary to enable him to furnish professional care to the patient. Provided, however, that when the physical and mental condition of a patient is at issue in such action, suit or proceeding, or when a judge of a court of record in the exercise of sound discretion deems such disclosure necessary to the proper administration of justice, no fact communicated to or otherwise learned by such practitioner, particularly in connection with such attendance, examination or treatment, shall be privileged and disclosure may be required. This section shall not be construed to repeal or otherwise affect the provisions of 65-88 relating to privileged communication between physicians and surgeons and employees under the *Workmens* Compensation Act nor shall the provision of this section apply to information communicated to any such practitioner in an effort unlawfully to procure narcotic drug or unlawfully to procure the administration of any such drug."

page 74] Of course, this section is dealing primarily with testimony by a physician, which is not exactly what we have here, but I think it would be covered in a general way at least by the same rules.

Whether or not he had a right to release it or didn't have a right to release it, he did release it, and I think if the Court is called upon to exercise its discretion in this case, it would do so to the effect of having this produced, because it does not seem to me that it has too much to do with the information necessary for the physician in dealing with his patient — that is, in treating, examining, or attending his patient.

The objection is overruled.

Take a ten-minute recess.

(Short recess.)

Mr. Ahern: Your Honor, before the jury comes in, would Your Honor permit me to take an exception from Your Honor's last ruling?

The Court: Yes.
Mr. Ahern: Thank you.

(The jury resumed its place in the jury box.)

Mr. Gallucio: At this point, Your Honor, I am going to offer Exhibit 9-B into evidence.

The Court: It has already been marked. I
page 75] understand the objection was that it was in violation of the doctor's or the defendant's privilege with the doctor.

The objection is overuled. The exception is noted.
Mr. Ahern: Yes, sir.

(The document previously marked for identification as Commonwealth's Exhibit 9-B was admitted.)

By Mr. Gallucio:
Q. Now, Detective Keyes, I show you Commonwealth's Exhibit 9-A which purports to be report of transfer of ownership of a firearm, and I will ask you if you have seen that before?
A. Yes.
Q. Where did you see that?
A. This was in the Atlantic Gun Shop in Silver Spring.
Q. Did you obtain that?
A. Detective Rasmussen and myself did.
Q. Is your signature on it?
A. Right.

Mr. Gallucio: At this time, Your Honor, I would like to offer this document into evidence.
Mr. Holcomb: The jury says they cannot hear the witness.

The Court: Ask him over again. They said they
page 76] didn't hear him.

By Mr. Gallucio:
Q. Who did you receive this from?
A. This come from Atlantic Gun Shop over in Silver Spring, Maryland.
Q. Who did you receive it from?

B. E. Keyes

A. From George Schneider, owner of the gun shop. Detective Rasmussen and I went over to it and picked it up. It is the signature of Marvin Westbrook on it.

Mr. Gallucio: I offer this document into evidence.

Mr. Ahern: I object to that, Your Honor. You want me to state my reason?

The Court: You mean nobody has proved the handwriting on here?

Mr. Ahern: Of course, I think the only person who could testify as to that is the person who actually received it from Westbrook.

Mr. Gallucio: We are offering it subject to being connected up, Your Honor.

The Court: The objection to its now being introduced into evidence is sustained. I don't agree with what counsel has said.

If you connect it up, I will let it in.

page 77] Mr. Hassan: For the record, Your Honor, we have subpoenaed the individual whose name is on here, Mr. Schneider. He will be here to testify as to that signature.

The Court: Well, when he is here — you say you got it from Mr. Schneider?

The Witness: Yes, sir.

The Court: When Mr. Schneider gets on the stand, we will see about letting it in then.

Mr. Gallucio: In the meantime, Your Honor, we will connect it up by our expert.

I have no further questions of Mr. Keyes at this time, but I would like to have him subject to recall.

The Court: All right.

Do you want to ask him any question?

Mr. Ahern: No, sir.

The Court: Step down.

(Witness steps down.)

Mr. Gallucio: Mr. Lilja, please.

May we approach the bench, Your Honor?

BENCH CONFERENCE

Mr. Hassan: Will you allow us to have the handwriting expert testify prior to the testimony of Mr. Schneider?

The Court: Did you hear what he said?

Mr. Ahern: I heard what he said.

The Defendant: I didn't hear what he said.

page 78] Mr. Hassan: I asked if he would allow us to have the handwriting expert testify prior to the testimony of Mr. Schneider.

The Defendant: Who is Mr. Schneider?

Mr. Ahern: Just a second.

I don't want to inconvenience you. However, I have the rights of an individual to protect here. Assuming you will produce Mr. Schneider, I have no objection.

Mr. Hassan: Mr. Schneider is on subpoena. We proffer that he will state that the defendant, using the name Marvin Westbrook, signed that in his presence and obtained the gun from him. We will further identify on the gun.

Mr. Ahern: I will have no objection, provided I am allowed to renew my objection in the event you don't produce Mr. Schneider.

Mr. Hassan: Yes, sir.

The Court: All right.

IN OPEN COURT

Whereupon

CARL LILJA, JR.

resumed the stand and testified further on his oath as follows:

DIRECT EXAMINATION (Resumed)

By Mr. Gallucio:

page 79] Q. Mr. Lilja, I show you Commonwealth's Exhibit No. 10-A and Commonwealth's Exhibit 9-B and ask if you have made a comparison of the signatures of Eugene Rollins on those two documents?

A. Yes, I have.

Q. Did you reach a conclusion as to their similarity or dissimilarity?

A. Yes, I did.

Q. Have you brought other exhibits here, enlargements of those signatures?

A. Yes, sir.

The Court: Show them to him.

Mr. Gallucio: May I have these marked for identification?

The Court: How many do you have there?

Mr. Gallucio: Two. I have two others.

The Court: Commonwealth's 11 and 12.

(Documents referred to were marked Commonwealth's Exhibits Nos. 11 and 12 for identification.)

Mr. Gallucio: May I have these marked for identification, please?

The Court: Commonwealth's 13 and 14.

page 80] (Documents referred to were marked Commonwealth's Exhibits Nos. 13 and 14 for identification.)

By Mr. Gallucio:

Q. I show you these four exhibits, Commonwealth for identification Nos. 11, 12, 13 and 14, and ask you what they are?

A. Commonwealth Exhibit No. 11 is approximately a five-time enlargement of the signature of Eugene William Rollins appearing on Commonwealth's Exhibit 9-B.

Commonwealth's Exhibit No. 12 is approximately a five-time enlargement of the signature of Eugene William Rollins appearing on Commonwealth's Exhibit 10-A.

Commonwealth's Exhibit No. 13 is approximately a five-time enlargement of the signature, Marvin Westbrook, appearing on Commonwealth Exhibit 9-A.

Commonwealth Exhibit No. 14 is approximately a five-time enlargement of the handwriting appearing above the signature, Eugene William Rollins, on Commonwealth Exhibit 9-B.

Q. Now, if we may revert back to Commonwealth's 9-B, which is a letter with a signature of Eugene Rollins and —

The Court: Can you hear him?

By Mr. Gallucio:

Q. Commonwealth's Exhibit No. 10-A, which is a document entitled, United States of America, with the signature of Eugene Rollins on it, do you have the blown-up photographs of the signatures appearing on those two documents?

page 81]

A. Yes, I do.

Q. In reaching your conclusion, would you explain to the jury first how you reached your conclusion, comparing those two documents? Could I hold them for you?

A. Commonwealth's Exhibit No. 11 and 12, as previously stated, are approximately five-time enlargements of the signatures, Eugene William Rollins, appearing on Commonwealth's Exhibit 9-B and 10-A.

The red arrows which appear on these two exhibits have been placed there by me to show some of the points I found in making my comparison.

I found that the writer, in forming the capital letter E in the name, Eugene, on government, on Commonwealth Exhibit 11, has a small loop on the upper part of the letter.

This same character is particularly found on Commonwealth Exhibit No. 12 — that is, the writer, in the formation of the capital letter E in the name, Eugene, has a loop comprising the upper portion of the letter.

On Commonwealth Exhibit No. 11, I found that the writer in the formation of the smaller letter G in the name, Eugene, has an opening and a re-trace at the top portion of the letter. This same characteristic I found on Commonwealth Exhibit No. 12. That is, the writer, in the formation of the smaller letter G in the name, Eugene has an opening and a retrace at the top portion of the letter.

page 82]

On Commonwealth's Exhibit No. 11, I found that the writer, in the formation of the small letter N has a point comprising the first loop of the letter in the letter N in the name, Eugene. This characteristic I also found on Commonwealth's Exhibit No. 12. That is, the writer, in the formation of the small letter N in the name Eugene has a point comprising the first

loop of the letter.

I found that the writer, in the formation of the capital letter W in the name William on Commonwealth's Exhibit No. 11, has a long narrow loop, and in going into the formation of the small letter M has a horizontal stroke connecting the two letters.

This same characteristic I also found on Commonwealth's Exhibit No. 12. That is, the writer, in the formation of the capital letter W, in the name Willliam, has a long narrow loop forming the beginning of the letter, and has a horizontal connecting stroke with the letter M in the name William.

On Commonwealth's Exhibit No. 11, I found that the writer, in the formation of the capital letter R has a small hook prior to the beginning stroke, in the beginning of this letter. This characteristic I also found on Commonwealth's

page 83] Exhibit No. 12. That is, the writer, in the formation of the capital letter R has a small hook as a beginning stroke in the formation of this letter.

On Commonwealth's Exhibit No. 11, I found that the writer, in the formation of the small letter O, has a small opening and a retrace at the top portion of the letter. This characteristic I also found on Commonwealth's Exhibit No. 12. The writer has a small opening at the top portion of the letter, and retrace loop comprising the downstroke of this letter.

On Commonwealth's Exhibit No. 11, I found that the writer, in writing the two LL's, the second L is higher than the, the bottom part of the second L is higher than the lower part of the first L in the name Rollins. This same characteristic I also found on Government Exhibit 12. That is, the writer, in writing the two L's in the name Rollins, the bottom portion of the second L is above the bottom portion of the first letter.

I also found that the writer of Commonwealth Exhibit 11, in the formation of the ending S has a triangular formation as an ending stroke. This characteristic I also found on Commonwealth's Exhibit No. 12. That is, the writer, in the formation of the small letter S has a triangular formation as an ending stroke in the writing of the name.

These are some of the characteristics which I

page 84] found in making comparison of the signature, Eugene William Rollins, appearing on Govern-

ment's Exhibit, on Commonwealth's Exhibit No. 11 and 12.

Q. When you say Exhibits 11 and 12, I think you have testified that they are blown-up versions of the exhibits?

A. 9-B and 10-A.

Q. Now, based upon those, what was your conclusion as to the signatures?

A. It is my opinion that the Eugene William Rollins signature appearing on Commonwealth's Exhibit 11 was written by the same person who wrote the Eugene William Rollins signature appearing on Commonwealth's Exhibit No. 12.

Q. Now, I show you Commonwealth's Exhibit No. 9-B and Commonwealth's Exhibit 9-A and ask you if you have compared those documents?

A. Yes, I have.

Q. What did you compare on those documents?

A. I made a comparison of the signature, Marvin Westbrook, appearing on Commonwealth's Exhibit 9-A with the handwriting appearing on Commonwealth's Exhibit 9-B.

Q. Did you reach a conclusion as to the similarity of those signatures?

A. Yes, I did.

Q. Or those specimens.

page 85] In reaching that conclusion —

The Court: Didn't give you any conclusion. He told you he reached one, but didn't say what it was.

Mr. Gallucio: Yes, Your Honor.

By Mr. Gallucio:

Q. With regard to that conclusion, did you also bring these exhibits 13 and 14 to illustrate the basis of your conclusion?

A. Yes, I did.

Q. Would you explain it to the jury?

A. Commonwealth Exhibit No. 13 is approximately a five-time enlargement of the signature, Marvin Westbrook, appearing on Commonwealth Exhibit 9-A.

Commonwealth Exhibit No. 14 is approximately a five-time enlargement of the handwriting appearing on Commonwealth Exhibit 9-B.

Again, the red arrows which appear on Commonwealth

Exhibit Nos. 13 and 14 have been placed on there by me to show some of the points I found in making my comparison.

On Commonwealth Exhibit No. 13, I found that the writer, in the formation of the small letter A, in the name Marvin, has a small opening and a retrace in the upper portion of this letter.

I also found this same characteristic on Com-
page 86] monwealth Exhibit No. 14. That is, the writer, in the formation of the small letter A in the word, patients, has a small opening and a retracing at the top portion of this letter. This characteristic also appears in the word, and the formation of the letter A on Commonwealth's Exhibit 14.

On Commonwealth's Exhibit No. 13, I found that the writer, in the formation of the small letter R in the name Marvin, has a small dip in the left part of the letter. This same characteristic I also found on Commonwealth's Exhibit No. 14. That is, the writer, in the formation of the small letter R, in the word, transferred, has a small dip at the left portion of the letter. This characteristic also appears in the second letter R in the word, transferred.

On Commonwealth's Exhibit No. 13, I found that the writer, in the formation of the capital letter W, in the name Westbrook, has a long narrow loop. This characteristic I also found on Commonwealth's Exhibit No. 14. That is, the writer, in the formation of the capital letter, West, has a long narrow loop as an initial stroke of the letter.

On Commonwealth's Exhibit No. 13, I found that the writer, in the formation of the small letter S, in the name Westbrook, has a triangular formation and opening at the bottom portion of the letter.

This characteristic I also found on Common-
page 87] wealth's Exhibit No. 14. That is, the writer, in the formation of the small letter S in the word, West, has a triangular formation at the bottom portion of the letter.

On Commonwealth's Exhibit No. 13, I found the writer, in the formation of the capital letter — rather, the small letter B, has an even opening at the formation of this letter. This characteristic I also found on Commonwealth's Exhibit No.

14. It has a smooth, even open space in the formation of the *capital* letter B in the word, possible, and again in the word, but.

On Commonwealth's No. 13, I found that the writer had two large loops in the formation, high loops in the formation of the small letter K in the name, Westbrook. This characteristic I also found on Commonwealth's Exhibit No. 14. That is, the writer, in the formation of the small letter K, has two large loops in the formation of the letter in the name — rather, in the word, back, and again in the word, *that*.

These are some of the characteristics I found in making comparison of the government exhibit 13 with Commonwealth's Exhibit No. 14.

Q. On the basis of those comparisons, what was your conclusion as to the similarity of the signature of Marvin Westbrook to the other specimens of handwriting you had?

page 88] A. It is my opinion that the signature, Marvin Westbrook, appearing on Commonwealth's Exhibit No. 13, was written by the same person who prepared the handwriting appearing on Commonwealth's Exhibit No. 14.

Mr. Gallucio: At this point, Your Honor, I would like to offer Commonwealth's Exhibit No. 9-A into evidence, on the basis of the testimony of the expert.

The Court: Any objection?

Mr. Ahern: I have no objection, subject to my original —

The Court: Yes, sir.

It is admitted, I don't say subject to your reservation; I say with your reservation in the record.

Mr. Ahern: I was going to say, subject to my original statement.

The Court: Yes, sir. All right.

(Document previously marked for identification as Comwealth's Exhibit No. 9-A was admitted.)

Mr. Gallucio: I have no further question.

Mr. Ahern: No further questions.

Were these offered or weren't they offered?

Mr. Gallucio: I thought they had all been offered.

Edwin Welch

The Court: I want to be sure about it.

Mr. Gallucio: The exhibits he testified to.

page 89] The Court: Are you offering these now?

Mr. Gallucio: Yes.

The Court: That were made by this witness?

Mr. Gallucio: That's correct; 11, 12, 13 and 14.

The Court: Your rservation runs to these, too?

Mr. Ahern: Yes, sir.

The Court: All right, sir.

They are admitted.

(Documents previously marked for identification as Commonwealth's Exhibits Nos. 11, 12, 13 and 14 were admitted.)

The Court: Exhibit 9-B, to which objection was made, is now admitted into evidence; Exhibit 10-A is now admitted into evidence.

Further questions?

Mr. Gallucio: I have no further questions.

The Court: Questions?

Mr. Ahern: I have no further questions.

The Court: That's all.

Do you want to excuse this witness now?

Mr. Hassan: Yes, Your Honor.

The Court: You may be excused.

(Witness excused.)

page 90] Mr. Gallucio: Edwin Welch, please, Your Honor.

Whereupon

EDWIN WELCH,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name, sir.

Edwin Welch

A. Edwin Welch.

Q. Do you know the defendant, Mr. Rollins?

A. Yes, I do.

Q. When did you first know Mr. Rollins?

A. I knew him as a kid, first time I met him.

Q. Can you speak up?

A. I knew him as a kid, about ten-eleven years old.

Q. Were you raised in the same neighborhood?

A. Yes, sir.

Q. Now, since your childhood or teenhood days, when was the most recent time you saw Mr. Rollins, approximately when?

A. Since I was a kid?

Q. Yes.

A. It was about April '63.

Q. Under what circumstances did you see him?

page 91] A. I met him in a restaurant.

Q. Did he tell you, did he remember your face? Did he remember you?

A. Yes, sir.

Q. Did he introduce himself? Did you remember him?

A. Yes, I remembered him.

Q. What was the result of that meeting?

A. Well, I gave him my phone number and told him to come over and have dinner sometime. That's about all.

Q. What happened after that? Under what circumstances did you see Mr. Rollins again?

A. Well, he and this, he had called me up and said he wanted to talk to me. This girl and himself came up and he said that he didn't have anywhere to stay and could he stay with me a while, a few days, until he got straightened out.

Q. Did he tell you what he was doing then?

A. No, he said he had just come down from New York.

Q. As a result of this conversation, did he then stay with you?

A. Yes, sir.

Q. How long did he stay with you?

A. I would say four or five weeks.

Edwin Welch

Q. Did you see him very often then, during those five weeks?

page 92] A. The last couple of weeks I didn't see much of him, no.

Q. But before that, did you see much of him?

A. Yes.

Q. I take it, were you out socially, let's put it that way?

A. We did once, I believe one time I was out socially, once or twice.

Q. During the course of this renewed acquaintance or friendship, had you had occasion to talk with him and discuss things with him?

A. Well, we talked some about, you know, when we was kids. He said he was waiting for a special delivery letter from New York. He wanted to sign my name. He wanted a special delivery letter from New York sent in his name.

Q. What was the nature of your conversations with him, or his personality?

A. Seemed all right to me. Just general conversation.

Q. Do you mean that they were the normal conversations people would have, the everyday conversations?

The Court: I don't think they can hear you.

The Witness: I would say, yes.

By Mr. Gallucio:

Q. Was there anything unusual about him that

page 93] struck you as unusual, or anything like that?

A. No.

Q. Now, directing your attention to May 10, 1963, was there some reason for you seeing Leon Tatleman?

A. Yes, sir.

Q. What was that reason?

A. I was going to bring him some money.

Q. How much money were you going to bring him?

A. Approximately $1500.

Q. Was the defendant living with you at that time?

A. He was *supposedly* to move that day.

Q. Did you know whether he moved that day?

A. I called there in the evening and he told me he was moved.

Edwin Welch

Q. What time of day or evening was this?

A. I imagine around 8, 8:30 in the evening.

Q. 8 or 8:30. Did he know at that time of this Tatleman *hit* the money you were supposed to deliver?

A. He said that Leon and Bob were looking for me, and that they would meet me over in town later that night.

Q. Did he say where they would meet you?

A. At the Red Coach Inn.

Q. Did you subsequently go to the Red Coach Inn?

A. Yes, sir.

page 94] Q. Approximately what time did you arrive?

A. I'd say between 11 and 11:30.

Q. Who was there when you arrived?

A. It was Leon and Miss Klassett, Mr. Miller and Mr. Rollins.

Q. When you say Leon —

A. Mr. Tatleman.

Q. Leon Tatleman.

What was your purpose in going to the Red Coach Inn?

A. To meet Leon and deliver him this money.

Q. Did you give him that money?

A. Yes, sir.

Q. Where did you give it to him?

A. At the table.

Q. Was the defendant present when you gave him that money?

A. Yes, sir.

Q. Now, did there come a time when you left the Red Coach?

A. Yes, sir.

Q. What time did you leave?

A. I would say around 12:30.

Q. Where did you go?

A. We went to our apartments.

page 95] Q. Where was your apartment?

A. 1121 Arlington Boulevard.

Q. What is that, please?

A. Arlington Towers.

Q. Who all went to your apartment?

A. Five of us.

Edwin Welch

Q. Who were the five?

A. Mr. Rollins, myself, Mr. Tatleman, Miss Klassett, and Mr. Miller.

Q. What occurred there?

A. Well, we got out, Mr. Miller and Miss Klassett got out. They went up to their apartment. I went in to get this special delivery letter for Mr. Rollins. I brought that back out, gave it to Mr. Rollins. Then I went back in.

Q. Where was Mr. Rollins at that time?

A. He was sitting in the back.

Q. Back of what?

A. Of Mr. Tatleman's car.

Q. Where was Mr. Tatleman?

A. He was driving.

Q. Then what happened?

A. Then they drove off. I went back in the apartment.

Q. Were they seated the same way as you just described when they drove off?

page 96] A. Yes, sir.

Q. Did you hear anything from Mr. Rollins with regard to why they were driving off together?

A. I heard Mr. Tatleman say he would take him where he wanted to go.

Mr. Gallucio: That's all.

Mr. Ahern: Would Your Honor indulge us just one moment?

Mr. Gallucio: Your Honor, if it please, I do have one or two more questions.

The Court: Go ahead.

By Mr. Gallucio:

Q. After Tatleman and Rollins drove off, where did you go from there?

A. Where did I go?

Q. Yes.

A. I went up to Mr. Miller's apartment.

Q. Where did you go from there?

A. I went to my own apartment,

Q. Was there anything unusual about your apartment?

A. Yes, sir; some of my personal effects were missing.

Edwin Welch

Q. How about the effects of Mr. Rollins? Had he had any effects there?

A. He had some wearing apparel.

page 97] Q. Were they there at the time you returned?

A. No, sir.

Q. They were all gone?

A. Yes, sir.

Q. Some of your personal effects?

A. Yes, sir.

Q. What effects were they?

Mr. Ahern: Your Honor, I object. I would like to make my reasons known. May we approach the bench?

BENCH CONFERENCE

Mr. Ahern: I think it is irrelevant as to anything that this man might have owned that was missing from his apartment, unless he can connect it up in some way with the murder charge we are trying here today. It is certainly immaterial as to the issue here as to what might have been missing from his apartment, to connect up with the defendant Rollins in the murder charge.

Mr. Hassan: We intend to connect it up, Your Honor, because various items which were missing here and elsewhere were found both in York and in New York, where the defendant was apprehended, and these items are all a part of the flight. They all were taken at various places and were found there, to help establish the continuity which will all be testified to in the evidence. He was assisted

page 98] in taking these things out of there in the afternoon. The people who took them out of there with him and traveled with him to York — two items were left in York and other items were recovered in New York, in the Bronx, New York, in an automobile which was likewise taken out of Washington on the same day — all a part of the flight after what we claim is the robbery and murder of Tatleman.

Mr. Gallucio: Also we are showing, Your Honor, intent, that these articles were taken before the event, the homicide. There was some preparation associated with this.

The Court: What do you have to say?

Mr. Ahern: Well, he is not charged with taking anything from this individual. I say it is certainly immaterial as to what happened in the murder charge that has been lodged against him. It is not alleged that Tatleman left anything in this apartment. This man is being asked now what was taken from him, with the inference that Rollins must have taken it.

The Court: Objection sustained.

Mr. Gallucio: I have no further questions.

IN OPEN COURT

Mr. Ahern: I have no questions.

The Court: Step down.

(Witness steps down.)

page 99] Whereupon

MARGARET KLASSETT,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name?

A. Margaret Klassett.

Q. Directing your attention to the 10th day of May 1963, did there come a time when you had occasion to see the defendant?

A. Yes.

Q. Mr. Rollins.

What time of the day or night was that?

A. Probably about 10 o'clock at night.

Q. Where did you see him?

A. Red Coach Inn. I saw him in Arlington Towers before.

Q. What was the occasion for you seeing him at Arlington Towers?

A. He went with me to the Red Coach Inn.

Margaret Klassett

Q. How did you happen to be going to the Red Coach Inn?
A. I was meeting Mr. Miller and Mr. Tatleman there.
Q. Did Mr. Rollins go with you to meet them?
page 100] A. Yes.
Q. And were the four of you together?
A. Yes.
Q. At the Red Coach Inn?
A. Yes.
Q. What occurred at the Red Coach Inn, if you know?
A. Mr. Welch came to deliver some money to Mr. Tatleman.
Q. Do you know what money that was?
A. Yes.
Q. What money was that?
A. Money Mr. Tatleman had won.
Q. Had won?
A. Yes.
Q. Was that money delivered to Mr. Tatleman there at the Red Coach Inn?
A. Yes.
Q. Then what occurred, if anything?
A. Mr. Welch — you mean after he gave him the money?
Q. Yes. Did there come a time when you left there?
A. After he gave him the money, we left.
Q. When you say, we left, who left?
A. All of us.
Q. How did you leave?
A. We all left together.
page 101] Q. In what kind of transportation?
A. Mr. Tatleman's car.
Q. Where were you seated?
A. Up front with Mr. Tatleman and Mr. Miller.
Q. Where was Mr. Rollins seated?
A. In the back.
Q. Who else was in the back?
A. Mr. Welch.
Q. Where did you go when you left the Red Coach Grill?
A. Arlington Towers.
Q. What occurred there, if anything?
A. Mr. Welch went in the Towers and Mr. Miller and I went in, and Mr. Rollins and Mr. Tatleman left.
Q. Did you see them leave?

Margaret Klassett

A. Well, I didn't see them leave. They were in the car to leave.

Q. Where was Mr. Rollins, still in the back seat?

A. The back seat.

Q. Now, how long had you known Mr. Rollins?

A. About a month.

Q. Beg your pardon?

A. About a month.

Q. Had you been out with him in his company?

A. Yes.

page 102] Q. On several occasions?

A. Yes.

Q. And did you know that he had recently been an inmate at St. Elizabeth's Hospital.

A. No.

Q. Did you see anything in his demeanor, his personality, that indicated that he might have been a patient at a mental institution?

A. No.

Q. Did you see anything unusual or out of the ordinary about him?

A. No.

Q. How did he treat you?

A. Very nice.

Q. What were his social qualities, that you had assessed, as to his character?

A. He had very nice manners and spoke well, very sociable.

Q. Now, on the night of the dinner at the Red Coach Grill, on the 10th of May, who paid the bill?

A. Mr. Tatleman.

Q. That was for everybody?

A. Yes.

Mr. Hassan: I have no further questions.

page 103]

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JOHN WILLIAM DANE,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and

page 104] your occupation?

A. John William Dane; I am a Special Agent with the Federal Bureau of Investigation.

Q. Directing your attention to on or about the 11th, 12th, 13th and 14th of May 1963, what was your duty station?

A. York, Pennsylvania.

Q. Did there come a time when you had occasion to investigate the presence of the defendant in York during that period of time?

A. Yes, I did.

Q. Where did you direct your investigation, sir?

A. At the Hotel Yorktowne, and also a parking lot located at the rear of 29 North Duke Street, which is approximately one-half block from the Hotel Yorktowne.

Q. Did there come a time when you had occasion to discover a weapon which had been located in York, near the hotel?

A. Yes, I did.

Q. When you discovered that weapon, sir, what did you do with it?

A. I transported that weapon from York, Pennsylvania, to the FBI laboratory in Washington, D. C.

Q. Do you have that weapon?

A. Yes, I do.

Q. — here today.

page 105] Would you open that so that I may show it to Mr. Ahern?

Mr. Hassan: If Your Honor please, I would like to have this marked as Commonwealth's for identification No. 15.

The Court: Commonwealth's No. 15.

John William Dane

(Weapon referred to was marked Commonwealth's Exhibit No. 15 for identification.)

By Mr. Hassan:

Q. Mr. Dane, *willyou* examine that to see whether or not it is loaded, and if it is not, leave the cylinder open?

A. The weapon is empty.

Q. Now, Mr. Dane, did there come a time when you marked that weapon for identification?

A. Yes, I did.

Q. Where did you mark it and what did you mark it with?

A. I scratched my initials in the butt of the handle here.

Q. What are those initials, Mr. Dane?

A. J.W.D.

Q. Did anyone else mark that gun in your presence, sir?

A. I believe Mr. Poppleton, the laboratory examiner, also has his initials in the same location.

Q. Now, sir, where was that gun found?

page 106] A. That gun was found in the yard of the Martin Memorial Library, which is located on the corner — that is, the yard part is located on the corner of Clark Avenue and North Queen Street in York, Pennsylvania.

Q. Now, did there come a time when you had occasion to examine any hotel rooms or motel rooms in York, Pennsylvania?

A. Yes, I did. I examined rooms in the Hotel Yorktowne.

Q. What rooms did you examine, sir?

A. Rooms Nos. 411 and 415.

Q. Why did you examine those rooms, sir?

A. Because the defendant and two other persons were supposed, or had been identified as staying in those two rooms.

Q. During the course of your examination, sir, did you discover anything in those rooms?

A. Yes, I did.

Q. What did you find?

A. I found a black —

Mr. Ahern: I would like to have an opportunity to cross-examine the agent at this time, Your Honor.

The Court: As to what he found?

Mr. Ahern: Yes, sir; as to how he gained entry.
The Court: All right. Let the jury retire.

(The jury retired.)

page 107] CROSS EXAMINATION

By Mr. Ahern:

Q. Mr. Dane, I believe you said you had certain information that Mr. Rollins was in a room at the Yorktowne Hotel in York, Pennsylvania?

A. That's correct.

Q. Where did you get that information?

A. From the employees of the hotel, who identified his photograph.

Q. Did you know what room he was in?

A. Yes, they had located the registration cards which showed the room number that he and the other parties, the other members of his party, had been assigned to by the hotel.

Q. When, in the point of time, day and time, if possible, did you obtain that information?

A. I believe, if I could take a look at this evidence I have here, it will give me the date on the ticket. I believe it was in the morning.

Q. Well —

A. The date.

Q. Sir?

A. It would be on the date that is on the identification tag like this, attached to the items.

Q. All right. Let's assume, for purposes of this
page 108] discussion, that it was in the morning. What did you do after you got the information?

A. Which information do you mean, sir?

Q. The information that Mr. Rollins was there, registered in a room at the Yorktowne Hotel.

Mr. Hassan: If Your Honor please, there is no such testimony that he was there, that he had been there. Nobody has testified he was there at this time.

John William Dane

The Court: I don't know whether he is going to say he was there or going to say he wasn't there.

If the question is wrong, the witness can correct it.

The Witness: Could the question be restated, please?

Mr. Ahern: Could he restate the question?

(The reporter read the question referred to.)

The Witness: I think I testified earlier that he had been there, not that he was there at that time.

By Mr. Ahern:

Q. Did you ever find out that he checked out?

A. I don't believe that he actually checked out, inasmuch as they went in with no luggage. They paid for the room at the time they checked in.

Q. Now, did you obtain Rollins' permission to go into the room?

A. Mr. Rollins was no longer a guest at that hotel.

page 109] Q. You do know that he checked out?

A. I was given to understand that he had left the hotel, because the rooms had been rented to other individuals since they had been rented to him.

Q. Who let you in the room?

A. One of the assistant managers and also one of the rooms had a guest in the room at the time. We knocked, and with his permission and the assistant manager, I entered the room and conducted a search.

Mr. Ahern: I have nothing else.

The Court: Bring the jury in.

The objection is overruled.

Mr. Ahern: I take exception, Your Honor.

(The jury resumed its place in the jury box.)

DIRECT EXAMINATION (Resumed)

Mr. Hassan: Would you repeat that question?

(The reporter read the question referred to.)

The Witness: I found a black suit under the extra blanket in the bottom drawer of the dresser of the room there, that had been used by the defendant.

By Mr. Hassan:
Q. Do you have that black suit there?
A. Yes, I do.

Mr. Hassan: I would like to have these marked
page 110] as Commonwealth's Exhibit No. 16 for identification. I believe there is a tag on the bottom of them at the present time, 16-A and 16-B.
The Court: 16-A and 16-B.

(Black suit referred to was marked Commonwealth's Exhibit No. 16-A and 16-B for identification.)

By Mr. Hassan:
Q. Mr. Dane, would you tell us, sir, what time you found these and on what day and who was present?
A. They were found on May 14, 1963, in Room 411 of the Yorktowne Hotel. I believe it was in the morning. I am not absolutely positive of the time of day. I believe it was in the morning, rather close to noon.
Q. What else, sir, did you find, if anything?
A. There was some other items in the room; a pair of men's socks and a ticket for service work from an unknown Gulf Service Station.

Mr. Hassan: If Your Honor please, I would like to have them marked for identification as Commonwealth's Exhibit Nos. 17 and 18.
The Court: 17 and 18.

(Items referred to were marked Commonwealth's Exhibits Nos. 17 and 18 for identification.)

John William Dane

page 111] By Mr. Hassan:

Q. Now, Mr. Dane, did you, in the course of your examination, discover any other items?

A. Yes. I was at the parking lot that I previously described, at the rear of 29 North Duke Street, and talking to the attendant who tentatively identified the vehicle which had been driven.

Mr. Ahern: I object.

The Court: Objections sustained.

By Mr. Hassan:

Q. While you were there at the parking lot, sir, did you find anything?

A. Yes. I had the number of a parking ticket that I was looking for. I found, the owner of the lot found, the parking lot's stub which was of the same number in the wastebasket in the office of the parking lot.

Q. Do you have that here, sir?

A. I have that here.

Mr. Hassan: If Your Honor please, I would like to offer this as Commonwealth's Exhibit No. 19 for identification.

The Court: 19.

(Stub referred to was marked Commonwealth's Exhibit No. 19 for identification.)

page 112] By Mr. Hassan:

Q. Did you discover anything else in the course of your examination in the way, in York, in the way of physical evidence?

A. No, I believe that rather well covers it.

Q. Now, sir, at the time that you conducted your investigation, *didyou* have occasion, without saying what they said, to talk to any witnesses and exhibit to them any photographs?

A. Yes, I did.

Q. What photographs, sir, did you exhibit?

A. Photographs of the defendant and the other two persons who were supposed to have been in York with him.

Q. What were their names, sir?

A. The female, I believe her first name was Barbara Roberts, and another individual by the name of Taltavault, or pronunciation similar to that.

Q. Who did you exhibit these pictures to, sir?

A. Employees at the parking lot and the hotel.

Q. Were they identified?

Mr. Ahern: Object.

The Court: Objection sustained.

By Mr. Hassan:

page 113] Q. As a result of exhibiting these photographs, sir, have any individuals in York been subpoenaed to appear here?

Mr. Ahern: I object.

The Court: Objection sustained.

Mr. Hassan: I have no further questions.

Mr. Ahern: I have no further questions.

The Court: No questions?

Mr. Ahern: No, sir.

The Court: Thank you, sir.

(Witness steps down.)

Mr. Ahern: Is he taking the exhibits with him? They have not been offered.

Mr. Hassan: They have been marked for identification. They are in custody of the Clerk until they are offered.

I would like to recall Mr. Welch.

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EDWIN WELCH,

was recalled as a witness by and on behalf of the plaintiff and, having been previously duly sworn, was examined and testified further on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Mr. Welch, I would like to show you Commonwealth's

Edwin Welch

Exhibit No. 16-A and 16-B for identification, sir, and ask you to examine them and tell me whether or not, page 114] sir, you can identify them?

A. I believe this is a suit that Mr. Miller had given me, and it had a torn knee. I might have patched it up and may have worn it.

Q. When is the last time you saw that before today?

A. That was in my apartment.

Q. When was that in relationship to time?

A. It was in the closet there; I guess it was there about a month, month or two.

Q. When, what year?

A. 1963.

Q. Have you seen that since Mr. Rollins left your apartment?

A. No, sir.

Q. In May of 1963?

A. No, sir.

Q. That is your suit?

A. Yes, sir; Mr. Bill had given this to me.

Mr. Hassan: I offer that into evidence.

Mr. Ahern: I have just a couple of questions I would like to ask him.

CROSS-EXAMINATION

By Mr. Ahern:

Q. Mr. Welch, you knew a Mr. Taltavault also, page 115] did you not?

A. Mr. who?

Q. Mr. Taltavault, and a Barbara Roberts?

A. I had met Miss Roberts once.

Q. They had been over to your apartment?

A. Miss Roberts was there one afternoon.

Q. You don't remember Mr. Taltavault?

A. No, sir.

* * * * *

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JOHN B. KADEL,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and page 118] testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name and occupation.

A. John B. Kadel, Lieutenant, Arlington County Police Department.

Q. Were you so employed on the 11th day of May 1963?

A. I didn't catch that.

Q. Were you so employed on the 11th day of May 1963?

A. Yes.

Q. At that time, did you have occasion to respond to a call to the neighborhood of 24th and South Fern Street?

A I did.

Q. What did you find there?

A. I found a car parked in the street with Mr. Tatleman dead in it.

Q. Did you have occasion to search Mr. Tatleman's person?

A. Body, yes, sir.

Q. When was that?

A. We spent approximately an hour on the scene, looking for any evidence to preserve.

The Court: Did you ask him when it was?

Mr. Hassan: Would you ask him to speak up page 119] louder? I can't quite hear him.

The Court: Ask them both to speak up louder. The officer apparently didn't hear what he asked him.

By Mr. Gallucio:

Q. What time was that that you searched him, approximately?

A. Approximately 7 o'clock, between 6 and 7.

John B. Kadel

Q. What other officers were present?

A. Hawkins. Mr. Hassan was there in the area. There were numerous officers. I don't have a list of them.

Q Were you there when Officer Hawkins was there?

A. Yes, sir.

Q. Were you present when he opened the door, and so forth?

A. No.

Q. How long after you arrived — was he still at the scene when you arrived?

A. Yes, he was. Those officers are on the road. I was at the station when the call came in.

Q. Officer Hawkins was present when you arrived, is that correct?

A. Yes.

Q. Were you there when the doctor arrived?

A. Yes.

page 120] Q. When did you search, or did you search the person — you did testify to that?

A. Yes, at the time, we took him out of the car, the body out of the car.

Q. At the time you took him out of the car, was that after the doctor had examined him?

A. Yes.

Q. What items did you remove from his person?

A. I took money out of his coat pocket.

Q. How much money did you take out of his coat pocket?

A. $17. There was a ten, a five and two ones.

Q. Go ahead.

A. And numerous other papers were on him. An American Security check from American Security and Trust Company, for $275. There was change totaling in the amount of 58 cents. Masonic pin.

Q. That's all right. Was there any other money found on his person?

A. No.

Q. Was there any money found in the automobile?

A. Not to my knowledge.

Q. Was Detective Keyes there when you were there?

A. Yes, sir.

Q. Do you know who searched the automobile, if anyone?

page 121] A. No, I don't.

Q. What did you do with the items that you removed from the person of Mr. Tatleman?

A. I turned them all over to Detective Keyes.

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GEORGE SCHNEIDER,

a witness called for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name sir, and occupation?

A. I am Mr. George Schneider and I am a gunsmith and I have been a gunsmith in Silver Spring, Maryland.

Q. Mr. Schneider, I would like to show you a document which is marked as Commonwealth Exhibit No. 9 and ask you, sir, if you can tell me what that is?

A. This is a transfer of ownership of a revolver that we sold to the man stated here. I made out this form. It is the form that is used in Montgomery County and

page 126] throughout the State of Maryland. It is not a registration but a transfer of ownership from me to this individual. It is my printing on here and his signature.

Q. Was it signed in your presence, sir?

A. These are all signed in my presence.

Q. In your presence?

A. Yes, sir.

Q. Now, sir, I would like to show you Commonwealth's Exhibit No. 15, for identification, sir, and ask you whether or

not that is the gun which was transferred by this transfer record?

A. The gun described on this application follows — this is the gun that is stated.

Q. That is the gun that was transferred?

A. Yes, sir.

Q. Now, sir, do you have any recollection of the individual who executed that document in your presence?

A. This goes back to 1963. I don't know that I could identify him, but I do remember the incident. I took this application myself.

Q. Do you see in the courtroom the individual to whom you sold the gun?

A. No, sir, I don't think I would recognize him anymore.

Mr. Hassan: I have no further questions.

Mr. Ahern: No questions.

page 127] Mr. Hassan: Thank you, sir.

(Witness excused.)

Mr. Hassan: Your Honor, please, if you will just bear with us a moment. We sent for the next witness.

The Court: Is anybody in the courtroom a witness in this case?

(No reply.)

Mr. Gallucio: This witness has not been sworn yet. Will you take the stand, please?

Whereupon

ELLEN KERNS,

called as a witness for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name and residence?

Ellen Kerns

A. Ellen Kerns, Washington, D. C.

Q. Mrs. Kerns, directing your attention to May 10, 1963, did you see the defendant, Mr. Rollins at any time?

A. Yes, I did.

Q. Could you point him out? Which person would he be?

A. He is the gentleman in the center. He has gotten a little thin, but that is him.

Q. Where did you see him?

page 128] A. I saw him in a store.

Q. That is sufficient. Now, what time of the day or night did you see him?

A. I saw him two o'clock in the afternoon on May 10, it was exactly.

Q. Did he have anything unusual in his possession?

A. Yes, he had a gun.

Q. What type gun was it?

A. It was a small, short gun.

Q. I ask you, would this be something similar to the gun you saw?

(Indicating.)

A. Yes.

Mr. Gallucio: No further questions, your Honor.

Mr. Ahern: Will you indulge us just one moment, your Honor?

The Court: Yes.

Mr. Ahern: I have no questions.

Mr. Gallucio: May the witness be excused?

The Court: I didn't understand. What was the store she saw him it?

Mr. Gallucio: May we approach the bench?

(Whereupon the following colloquoy was had at the bench:)

Mr. Gallucio: The Commonwealth says that

page 129] this took place during an alleged robbery in the District of Columbia.

Mr. Hassan: At two o'clock in the afternoon of the tenth.

The Court: All right.

(Whereupon the conference at the bench was concluded.)

Bernard Keyes

The Court: No further questions?
Mr. Hassan: No further questions.
The Court: You are excused.

(Witness excused.)

Mr. Hassan: Detective Keyes, please.

Whereupon

BERNARD KEYES,

a witness called for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. Will you state your name and occupation, please?

A. Detective Bernard Keyes, Arlington County.

Q. Directing your attention to May 11, 1963, did you have occasion on or about May 11, 1963 to see a Robert Miller?

A. Yes, I did.

Q. Did you receive anything from him?

page 130] A. I received .38 bullets from him—five—.38 calibre bullets.

Q. What did you do with those?

A. I marked them and turned them into the Property Room.

Mr. Gallucio: Your Honor, we would like to call for Property Envelope 16143.

Mr. Hassan: I might explain, Your Honor, they are all just outside the door. We didn't want to bring them all into the Courtroom.

By Mr. Gallucio:

Q. On or about May 11, 1963, did you have occasion to go to the Arlington Hospital?

A. I did.

Q. Did you receive anything from Dr. Enos there?

Bernard Keyes

A. I received a *liitle* bottle about so big with one slug, lead slug in it. One bottle about so big containing one lead slug, it was already sealed.

Q. I ask you to look at the contents of that envelope.

The Court: Is that envelope marked? Is it marked on the front?

The Witness: Yes, sir.

The Court: What has it got on it?

The Witness: A number.

The Court: What is the number?

The Witness: 16143.

page 131] The Court: All right, that's what I want to know.

By Mr. Gallucio:

Q. Would you open that envelope?

(Whereupon the witness complied with the request.)

Mr. Gallucio: May I call for property inventory 16142, please? At this point I would like to have these marked for identification.

The Court: Commonwealth Exhibit No. 20, marked No. 20.

(Whereupon the item referred to was marked Commonwealth Exhibit No. 20 for identification.)

Mr. Gallucio: Commonwealth Exhibit No. 20. Five bullets received from Mr. Miller.

May I have this marked for identification, your Honor?

The Court: Commonwealth Exhibit No. 21.

Mr. Gallucio: The bottle that is in it, do you think that should be marked?

The Court: *Its* broken all in pieces. Commonwealth Exhibit No. 21-A.

(Whereupon the item referred to was marked Commonwealth Exhibit No. 21-A for identification.)

Bernard Keyes

By Mr. Gallucio:

page 132] Q. What did you do with this Commonwealth Exhibit 20—that would be the other?

A. This is the bottle that I received—

Q. That is Commonwealth's Exhibit 21. Number 20 is the envelope.

A. The property sheet was made out and turned into the property room.

Q. To whom did you turn it in?

A. I believe that was Jones.

Q. Is this your property sheet?

A. Yes, right. Jones, I turned it into, Jones.

Q. You took a copy of this?

A. This is the copy that I got. This also was turned into Jones.

Q. Commonwealth's Exhibit 21 and 21-A?

A. Yes.

Q. You received them from Dr. Enos?

A. This from Dr. Enos, yes.

Mr. Gallucio: May I have these marked for identification, your Honor?

The Court: Commonwealth Exhibit 22 to 25.

(The items referred to were marked Commonwealth Exhibit Nos. 22 to 25, inclusive for identification.)

page 133] Mr. Gallucio: Will you mark this one?

The Court: The key is Commonwealth 26.

(The item referred to was marked Commonwealth Exhibit No. 26 for identification.)

By Mr. Gallucio:

Q. Detective Keyes, I show you Commonwealth Exhibit No. 22 and ask you if you can identify those?

A. These are the five bullets which I picked up in New York from Agent Lenehan.

Q. I show you Commonwealth Exhibits 23, 24 and 25. Return the others to the envelopes, please.

Can you identify those?

A. These also I picked up in New York from Agent Lenehan.

Q. What do they purport to be?

A. They are a register for a room at the Yorktown Hotel, York, Pennsylvania.

Q. Then I show you Commonwealth Exhibit No. 26 and ask you if you can identify that?

A. That key also was picked up from Lenehan in New York.

Q. What does that purport to be?

A. For the Yorktown Hotel, York, Pennsylvania, Room 411.

page 134] Q. Is that a key?

A. That is a key.

Mr. Gallucio: No further questions, your Honor.

The Court: I don't want any mistake about this. Do you think you introduced this in evidence yet?

Mr. Gallucio: No, sir.

The Court: All right.

Mr. Gallucio: They can leave them there. We are going ahead with the additional witnesses in connection with those.

The Court: All right. Mr. Ahern?

Mr. Ahern: I have no questions.

The Court: That's all.

(Witness excused.)

Mr. Gallucio: Mr. Jones, please.

Whereupon

ROBERT R. JONES,

a witness called for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and occupation?

A. Robert R. Jones, United States *Marshall,* assigned to

Robert R. Jones

Washington, D. C.

page 135] Q. Directing your attention to on or about the 11th day of May, 1963, what was your employment at that time, Mr. Jones?

A. I was the Property Officer of the Arlington County Police.

Q. Mr. Jones, I would like to direct your attention to Commonwealth Exhibit for identification No. 20 and ask you, sir, whether or not you have any independent recollection of that property number?

A. Yes, I do.

Q. What is that property number related to, sir?

A. There should be five—.38 calibre bullets in this envelope according to the stamp. This is also the number of this property record.

Q. Did there come a time when you received those five —.38 bullets?

A. I did.

Q. Who did you receive them from?

A. Detective Keyes.

Q. What did you do with them?

A. Made out this record and put the storage place where these bullets were stored.

Q. Did there come a time you took those bullets any where?

A. Yes, sir, there was.

page 136] Q. Where did you take them?

A. I took them to the FBI for analysis.

Q. Who did you turn them over to?

A. Special Agent Poppleton.

Q. Did there come a time when you received them back?

A. Yes, I did.

Q. Who did you receive them from?

A. That would be Agent Poppleton.

Q. Then what did you do with them?

A. They were put back in the regular storage place.

Q. I would like to direct your attention to Commonwealth Exhibit No. 21, for identification, and ask you, sir, if you have any information concerning it.

The Court: It is glass that is broken there.

The Witness: Yes.

Robert R. Jones

By Mr. Hassan:

Q. I understand the bottle is marked 21-A and the box marked 21, for identification.

A. Yes.

Q. Who did you receive those from if you did receive them?

A. Detective Keyes.

Q. What did you do with them?

A. Same procedure. Marked the sheet, marked the box and put them in the storage space.

page 137] Q. Then did there come a time when you took them any where?

A. Yes.

Q. Where did you take them?

A. Once again to the FBI for analysis.

Q. Who did you give them to at the FBI?

A. Agent Poppleton.

Q. Did there come a time when you received them back?

A. Yes

Q. When was that?

A. 5-16-63.

Q. Who did you receive them from?

A. Agent Poppleton.

Q. Was the Exhibit 21-A sealed in Exhibit 21, that black box, at the time you received it?

A. I believe it was.

Q. What did you do with it?

A. It was put back where it was originally stored.

Q. At the time you received this did you see that bottle?

A. Did I seal it?

Q. Did you see it? Did you observe it?

A. I believe I did. I believe I put it in this box.

Q. Do you have any recollection as to whether it was *in tact* or broken at that time?

page 138] A. No, I don't.

Q. You don't?

A. No, I didn't know.

Q. At the time you put it in the box did you have any recollection as to whether it was broken or *in tact*?

A. No, I don't.

Q. You don't?

A. No, I don't.

Mr. Hassan: I have no further questions, your Honor.
Mr. Ahern: I have no questions.
The Court: That's all.

(Witness excused.)

Mr. Hassan: FBI Agent Poppleton, please.

Whereupon

RICHARD J. POPPLETON,

a witness called for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and occupation?

A. Richard J. Poppleton, I am a Special Agent of the Federal Bureau of Investigation assigned to the page 139] FBI Laboratory here in Washington.

Q. Do you have a specialty, Mr. Poppleton?

A. Yes, sir, I am assigned to the Firearms Identification Section of the FBI Laboratory and this generally consists of microscopic comparisons of markings on bullets and cartridge cases to determine whether or not a particular bullet or a cartridge case was fired from a certain weapon.

Q. Have you had some special training in this regard, sir?

A. Yes, sir, I have. I received a bachelor *or* science degree in mechanical engineering and then was subsequently assigned to the Firearms Section of the Laboratory. In this section I conducted under the supervision of experts in the field who were already assigned there many hundreds of microscopic comparisons of markings on bullets and cartridge cases for the purpose of determining whether or not a particular bullet or cartridge case was fired from a certain gun.

I performed functional tests on weapons, gun powder tests which are related to firearms identification examinations and after completing the training period of approximately a year and a half, I began to conduct these examinations upon my own.

Richard J. Poppleton

Q. Have you had occasion to conduct any number of examinations? Do you have any idea as to what
page 140] number of examinations you conducted?

A. I would say I have conducted examinations upon hundreds of cases involving thousands of ammunition specimens, sir.

Q. Over what period of time?

A. Since 1950.

Q. During that time have you had occasion to testify?

A. Yes, sir, I have.

Q. Have you been qualified as an expert in testimony in any court?

A. Yes, in most State and Federal Courts throughout the country.

Q. How many times have you testified in court?

A. I would say approximately three hundred to four hundred times, sir.

Q. Now, sir, directing your attention to Commonwealth Exhibit for identification No. 15, I would ask you, sir, to examine that and tell us what the weapon is and whether you have seen it before?

A. This is a .38 Special Smith and Wesson revolver, Model 36, Serial No. 247943 which I received from Special Agent John Dane of the York Agency of the Philadelphia FBI Office on May 14, 1963.

Q. Sir, at that time did you have occasion to observe—*didyou* have occasion to place any markings on the weapon?

page 141] A. Yes, sir, I did.

Q. What markings did you place on it, sir?

A. On the butt of the weapon I placed a symbol number for the specimen and my initials.

Q. Then, sir, did there come a time in your official capacity that you did anything with that weapon?

A. Yes, there did come a time.

Q. What did you do, sir?

A. I test-fired this weapon in the FBI Laboratory to obtain test bullets and test cartridge cases from it for comparison with an evidence bullet.

Q. Now, sir, I would like to show you Commonwealth Ex-

hibit for identification No. 21 and 21-A and ask you, sir, to examine those and tell me if you have seen them before.

The Court: Did you put that seal on there?

The Witness: I don't recall, your Honor. This specimen is badly coated with cotton at the present time, sir, and it will be necessary for me to use something to remove this cotton. It appears the cotton was damp.

By Mr. Hassan:

Q. After you removed the cotton, sir, what do you expect to find?

A. I expect to find the markings which I placed on this bullet, that is, my identifying marking on May 14, 1963 when I received it from Officer Jones of the Arlington

page 142] County Police Department.

Q. What marking would that be, sir?

A. It would be or should be specimen "Q1" and my initials.

Q. What do you need to remove that cotton from that?

A. I believe a little water would be sufficient to remove the cotton.

Yes, sir, I see my markings on this bullet now and this is the one which I received from Officer Jones on May 14, 1963.

(Whereupon the item referred to was tendered to Mr. Ahern.)

By Mr. Hassan:

Q. Mr. Poppleton, would you come down here and point out these markings for Mr. Ahern and Mr. Carroll?

(Whereupon the witness complied with the request of Mr. Hassan.)

Mr. Hassan: If your Honor, please, may we have a recess while I get a magnifying glass?

The Court: We don't need a recess. Let somebody get a glass.

Richard J. Poppleton

By Mr. Hassan:

Q. Mr. Poppleton, would you tell us, sir, what you did with that specimen after you received it?

A. I examined this specimen and found it to be a .38 Special Lead bullet of Remington and Peters Manufacture. I found that the rifling impressions on this bullet were the same in number, direction of twist and width to the rifling impressions on the test bullets which I fired from the Smith and Wesson revolver previously described.

page 143]

Finding the rifling characteristics the same, I then proceeded to compare, by means of a comparison microscope the individual microscopic markings on this bullet with those on the test bullets which I fired from the submitted revolver, Commonwealth Exhibit No. 15.

This instrument which I used is optically designed to permit me to observe two bullets, namely, the evidence bullet and a test bullet from Commonwealth Exhibit No. 15 in the same field of view so that I can observe the microscopic markings on either side of a dividing line and putting in both objects in the same eyepiece.

The purpose of this examination was to determine whether or not the barrel markings on this evidence bullet were the same as those on the test bullets which I fired from Commonwealth Exhibit No. 15.

I performed this examination and I found similar microscopic markings within the rifling impressions on the evidence bullet and those which I fired from Commonwealth Exhibit No. 15.

Q. Sir, as a result of your examinations and experiments have you a conclusion as to whether this Commonwealth Exhibit 21-A was shot from Commonwealth Exhibit 15?

page 144]

A. Yes, sir, I have a conclusion.

Q. What is that opinion, sir?

A. In my opinion, the bullet, Commonwealth Exhibit 21-A was fired from the revolver, Commonwealth Exhibit No. 15.

Q. Sir, did you examine Commonwealth's Exhibit No. 20, for identification?

Richard J. Poppleton

(Whereupon the witness examined the exhibit referred to.)

The Witness: These are five cartridges contained in Commonwealth's Exhibit No. 20 I received from Officer R. R. Jones of the Arlington County Police Department on the 14th of May, 1963 and I did examine these cartridges, yes, sir.

Q. Did you come to any conclusion as to the relationship between those cartridges and the slug that was contained in Commonwealth Exhibit 21-A?

A. Yes, sir, I did.

Q. What was that, sir?

A. I concluded that the bullet, Commonwealth Exhibit No. 21-A is the same calibre type and manufacture as the bullets contained in these five cartridges of Commonwealth Exhibit No. 20.

Q. By examination and experiment, are you
page 145] able to make any closer identification between
bullets that they are the same manufacture and calibre?

A. No, sir, it is not possible to state that this bullet, Commonwealth Exhibit 21-A came from the same lot or was made on the same swedging machines and so forth that the bullets of the five cartridges of Commonwealth Exhibit No. 20 came from.

Q. Thank you, sir.

Were you able to tell whether they were the same weight — whether the slugs are of the same weight?

A. They are of the same weight, yes, sir.

Q. Did your examination disclose that?

A. Yes, they did.

Mr. Hassan: If your Honor please, I would like to offer in evidence Commonwealth Exhibit No. 15, for identification.

The Court: It has already been identified.

Mr. Hassan: I would like to introduce it at this time.

The Court: Any objection?

Mr. Ahern: Yes, we will object to it, your Honor.

The Court: On the grounds?

Mr. Ahern: We don't see it has been connected in any way

with the defendant. The gun was found, I understand, some place in Pennsylvania.

page 146] The Court: Objection overruled.

Mr. Ahern: Note exception.

The Court: Commonwealth Exhibit 15 is admitted.

(The item previously marked Commonwealth Exhibit No. 15 for identification was received in evidence.)

Mr. Hassan: I would like to offer into evidence Commonwealth Exhibit No. 20 for identification, introduced in evidence.

Mr. Ahern: We have an objection on the same grounds as stated before.

The Court: Is this what came from Mr. Miller?

Mr. Hassan: Mr. Miller testified these were taken out of the gun, given to him and turned over to Detective Keyes.

The Court: Exhibit No. 20 is admitted over the objection.

(The item previously marked as Commonwealth Exhibit No. 20 for identification was received in evidence.)

Mr. Hassan: I would like to offer into evidence Commonwealth Exhibit No. 21 and 21-A, being the slug that Dr. Enos removed from the deceased and gave to Detective

page 147] Keyes who gave it to Detective Jones and transported to the FBI.

Mr. Ahern: I object to that. All we have is a broken bottle and something inside. No explanation as to why it was broken or how it was broken.

The Court: Objection is overruled.

Mr. Ahern: Your Honor, note an exception to all the objections.

(The item previously marked Commonwealth Exhibit No. 21 and 21-A for identification was received in evidence.)

Mr. Hassan: When the evidence was brought into the courtroom —

The Court: You can't state that for the record. Let the man who did it get on the stand and testify.

Guy W. Holcomb

Mr. Hassan: I want to state that the slug which was in it has been positively identified.

The Court: All right, sir. Both have been admitted.

Mr. Hassan: I have no further questions, of Mr. Poppleton.

Mr. Ahern: I have no further questions.

The Court: Are you through?

Mr. Hassan: Yes, sir, your Honor.

The Court: You are excused.

(Witness excused.)

page 148] Mr. Hassan: I would like to call Deputy Sheriff Holcomb as my next witness.

Whereupon

GUY W. HOLCOMB,

called as a witness for and on behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you state your name and occupation?

A. Guy W. Holcomb, Deputy Sheriff, Arlington County, Virginia.

Q. Directing your attention to the 19th day of January, 1965, were you assigned to duty in the Courtroom on the sixth floor of the Courthouse in Arlington County, Virginia?

A. I was.

Q. As part of your duty did you bring into the Courtroom Commonwealth's Exhibits 20, 21 and 21-A to be presented to a witness?

A. I did.

Q. When you brought it into the Courtroom did you drop it at the time you were attempting to place it on the witness stand?

A. I did.

Q. At the time you dropped it did you hear any-
page 149] thing?

A. No, I didn't.

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page 152]

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EDWARD S. LENEHAN,

a witness called for and behalf of the Commonwealth, having been first duly sworn by the Clerk, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Gallucio:

Q. Would you state your name, sir?

A. My name is Edward S. Lenehan.

Q. How are you employed, sir?

A. I am employed as a Special Agent with the Federal Bureau of Investigation.

page 153] Q. Where is your duty station?

A. New York City.

Q. Were you so employed in May of 1963?

A. Yes, sir.

Q. Directing your attention to that time, did you have occasion in May of 1963 to see the defendant, Mr. Rollins?

A. Yes, I did, sir.

Q. Under what circumstances did you see him?

A. Well, in the early afternoon of May 13, 1963 was received confidential information that subject —

Mr. Ahern: Objection.

The Court: Objection sustained.

The Witness: The purpose was to locate and apprehend the defendant.

By Mr. Gallucio:

Q. Did there come a time when you did apprehend him?

A. Yes, sir.

Q. When was that?

A. The afternoon of May 13, 1963.

Edward S. Lenehan

Q. Did you have a warrant for his arrest?
A. Yes, sir.
Q. At the time you arrested him did you search him?
A. Yes, sir.
Q. Did you find any money on him?
A. Yes, sir.
page 154] Q. Do you know how much money you did find on him?
A. $980.00 on his person, sir.
Q. After your arrest did you inquire —

Mr. Ahern: I am going to object and ask that the answer be stricken. It is certainly irrelevant to the issue here. I ask the jury be instructed to ignore it.

The Court: I don't think he answered it.

Mr. Ahern: He said he found $980.00 on him. I now object to it. It is irrelevant to the charge at hand and I ask that the jury be instructed to disregard the statement.

The Court: Let the jury retire.

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page 157] DIRECT EXAMINATION (RESUMED)

By Mr. Gallucio:

Q. After you searched the defendant, did you have occasion to question him?
A. Yes, sir.
Q. Before you questioned him, did you advise him of his rights?
A. Yes, I did, sir.
Q. Did you obtain some kind of consent?
A. Yes, sir.
Q. Do you have that with you, please?
A. Well, I didn't — I was present when it was executed.
Q. You were present when it was obtained?
A. Yes, sir.
Q. Do you have it here?
A. It is outside.

Mr. Gallucio: Can the witness be excused to get it, your Honor?

The Court: Yes.

(Whereupon the witness withdrew from the Courtroom to obtain document referred to.)

Mr. Gallucio: All right.

(Whereupon a document was handed to Mr. Gallucio by the witness. Mr. Gallucio tendered a document to Mr. Ahern.)

page 158] Mr. Gallucio: May I have this marked for identification?

The Court: Commonwealth's No. 27.

(Whereupon the document referred to was marked Commonwealth's Exhibit No. 27 for identification.)

By Mr. Gallucio:

Q. I show you Commonwealth's Exhibit No. 27 and ask you if you can identify that?

A. This is a consent to search form.

Mr. Ahern: Just a second. Before he reads what he has to *to* the jury, I certainly intend to question him about it. It has been marked for identification. Now he has started to read what is the contents.

The Witness: I wasn't going to read it.

Mr. Ahern: I am not talking to the witness. That's the impression I got.

The Court: Let the jury retire.

(The jury retired.)

Mr. Ahern: Mr. Lenehan, is that correct?

The Witness: Yes, sir.

Mr. Ahern: Mr. Lenehan, you had an arrest warrant for Mr. Rollins, you testified?

The Witness: Arrest warrant outstanding for Mr. Rollins.

Edward S. Lenehan

Mr. Ahern: Where had you secured that?

page 159] The Witness: It was secured down here in Alexandria.

Mr. Ahern: And you apprehended him pursuant to that arrest warrant, is that correct?

The Witness: That's correct.

Mr. Ahern: Where did you apprehend him?

The Witness: At the corner of Southern Boulevard and Fordham Road in Bronx, New York.

Mr. Ahern: What time of the day and what day of the week and what date of the week was it?

The Witness: It was March — May 13, 1963 at 1:32 p.m.

Mr. Ahern: When you apprehended him —

The Witness: On Monday.

Mr. Ahern: On a Monday. When you apprehended him, where did you take him?

The Witness: Took him to our New York Office of the Federal Bureau of Investigation.

Mr. Ahern: Where is that located?

The Witness: 201 East 69th Street, New York City.

Mr. Ahern: What time of the day did you reach your office?

The Witness: I have a log outside that has all the time in it.

Mr. Ahern: Do you have any independent recollection as to when you reached your office?

page 160] The Witness: It would be a guess, because I am not sure right now.

Mr. Ahern: Where did you take Mr. Rollins?

The Witness: Took him to our office.

Mr. Ahern: Did you have him in handcuffs?

The Witness: Yes, we did.

Mr. Ahern: How many of you were there?

The Witness: Seven.

Mr. Ahern: What did you do when you got to your office?

The Witness: Mr. Rollins was put in an interview room with myself and Agent Leland Lowry.

Mr. Ahern: You don't know what time of the day this was?

The Witness: Well, I got it outside.

Mr. Ahern: Are you sure it was daytime?

The Witness: It was in the afternoon.

Mr. Ahern: You are sure the courts were open and there was a magistrate available?

The Witness: I am sure.

Mr. Ahern: If so, you could have taken him before a Commissioner or any other magistrate, could you?

The Witness: Yes.

Mr. Ahern: But you preferred not to do that?

The Witness: We preferred to interview him first.

page 161] Mr. Ahern: All seven of you?

The Witness: Just Mr. Lowery and myself.

Mr. Ahern: Where did the other five — how many?

The Witness: Three.

Mr. Ahern: Where did the other four stay while you were interviewing?

The Witness: During the course of the interview Mr. Rollins told us that there were two other individuals with him.

Mr. Ahern: Just a second. I didn't ask you that question. Where did the other four stay while you were — while three of you were interviewing Rollins?

The Witness: Just two of us interviewing Rollins.

Mr. Ahern: Where were the other five, outside?

The Witness: Yes.

Mr. Ahern: Was he still in handcuffs at that time?

The Witness: I don't recall.

Mr. Ahern: How long did you talk to him?

The Witness: He voluntarily talked to us —

Mr. Ahern: I didn't ask you that Mr. FBI Agent.

Mr. Hassan: I am going to object to the counsel arguing with the witness.

The Court: He doesn't have the right to throw words that don't belong there. He didn't ask him whether he voluntarily did anything. He asked him what time it was or

page 162] how long it took.

The Witness: I would say it took approximately two hours, the interview.

Mr. Ahern: As a result of that two hour interview you obtained this consent that you are talking about?

The Witness: During the course of that time, Counselor.

Mr. Ahern: And as a result of that two hour interview you obtained certain other information from him?

Edward S. Lenehan

The Witness: Yes, sir.

Mr. Ahern: Was he free to go and come if he so desired?

The Witness: I don't understand what you mean by that.

Mr. Ahern: My question is whether or not he was under arrest at that time or whether he was free to leave?

The Witness: He was under arrest when we apprehended him up there in the Bronx at 1:32 p.m.

Mr. Ahern: You never attempted to take him before any judge or magistrate at all prior to securing the statement and other statements, is that correct?

The Witness: That's right.

Mr. Ahern: I certainly object. I don't think on the face of the testimony that we have, your Honor, that anything can be voluntary under the circumstances. Seven agents arrest an individual, put him in handcuffs, take him to page 163] an office and for a period of approximately two hours they say, interrogate him, he doesn't remember whether or not the defendant had his handcuffs on or not, it was during the day, he could have been taken before a Committing Magistrate, but they chose not to do this and as a result, of what I call illegal *detension,* a statement was taken from this individual violating his Constitutional Rights.

The Court: We are finished producing all the evidence or are there some more questions by anybody?

Mr. Ahern: I have no further questions, your Honor.

Mr. Hassan: If your Honor please, I most assuredly don't want to leave this sitting here with this self-serving, half-baked examination of what occurred in New York. I think you should hear all of the evidence and then determine.

The Court: Do you want to ask him any questions, Mr. Hassan, on this question?

Mr. Hassan: Yes, sir.

Mr. Hassan: Mr. Lenehan, did there come a time when the defendant was taken before a magistrate in New York?

The Witness: Yes, sir.

Mr. Hassan: And what time of the day or night was that?

The Witness: That was the late afternoon or early evening of the 13th.

Edward S. Lenehan

Mr. Hassan: Now, from the time that you ap-
page 164] prehended this defendant in theBronx in con-
nection with this apprehension, was there some other investigation and apprehension imminent?

The Witness: Yes, sir.

Mr. Hassan: Were the agents that were involved in the apprehension of Rollins involved in those matters?

The Witness: Yes.

Mr. Hassan: Did there come a time when the apprehensions made on the basis of your confidential information resulted in the apprehension of anyone else on that day?

The Witness: Yes, sir.

Mr. Hassan: What time were they taken to a committing magistrate?

The Witness: I think the next day, sir.

Mr. Hassan: The next day. Were they apprehended before Mr. Rollins was taken to the committing magistrate?

The Witness: Yes.

Mr. Hassan: Did there come a time when Mr. Rollins made any request for appearance before a magistrate or for counsel prior to the time that you took him to the magistrate?

The Witness: No, sir.

The Defendant: You are lying. I did say so in that Court
in New York and I told you so. You are lying
page 165] like hell I didn't ask to see a judge. I told that
judge up there you are arresting me illegally and I didn't have any warrant, either. You are telling a damn lie. I told that judge I wanted to be represented and you took and stuck me in the hospital and wouldn't give me no lawyer because you arrested me illegally. You are telling a damn lie.

(Whereupon the witness withdrew from the Courtroom at the direction of the Court.)

The Court: Take him in the Grand Jury Room and take Counsel with him. *Lets* recess. We will recess for ten minutes.

(Whereupon a short recess was taken.)

The Court: All right, let the witness come in.

Edward S. Lenehan

Whereupon

EDWARD S. LENEHAN,

a witness previously called for on behalf of the Commonwealth, having been previously duly sworn by the Clerk, resumed the stand and testified further as follows:

(The jury is still in retirement.)

Mr. Hassan: Mr. Lenehan, did you bring with you your log of what occurred in New York on that afternoon?
The Witness: Yes, sir.
Mr. Hassan: You have it there with you?
The Witness: Yes, sir.
Mr. Hassan: I will show it to Mr. Ahern.

page 166] (Whereupon a document was tendered to Mr. Ahern.)

Mr. Hassan: Is this log in your own handwriting, sir?
The Witness: No, sir.
Mr. Hassan: In whose handwriting is it?
The Witness: Agent Edward Green.
Mr. Hassan: Was it made in your presence?
The Witness: Yes, sir.
Mr. Hassan: Now, what time did you say you made the apprehension?
The Witness: 1:32 p.m.
Mr. Hassan: What time was he taken before the magistrate?
The Witness: Four o'clock.
Mr. Hassan: And in that course of time you had also apprehended two other individuals who are related with this defendant in the arrest that you were making?
The Witness: Yes, sir.

Mr. Ahern: Just a second. He couldn't be two places at once and I object to the question.

The Court: I took it the "you" to mean a plural "you." That's the way I understood it. Better make it clear.

Mr. Ahern: That's the basis of my objection. He was with

the defendant from 1:30 to four. He was not arresting anybody else.

page 167] The Defendant: You are telling him what to say and coaching the witness, that's what you are doing. I seen him shake his head to you. Why is he doing that to you?

The Court: If you can't restrain him we will have to stop it.

The Defendant: He is looking at Hassan and shaking his head. He is going to know what to say. I can't understand why nobody can see these things but me.

The Court: Go ahead.

Mr. Hassan: Were you in charge of this investigation in the apprehension of Mr. Rollins and others?

The Witness: Yes, sir.

Mr. Hassan: At the time of the apprehension of Mr. Rollins I believe you said there were seven agents?

The Witness: Six besides myself.

Mr. Hassan: Six besides yourself?

The Witness: Yes.

Mr. Hassan: They were working under your direction?

The Witness: Yes.

Mr. Hassan: Did you continue to direct the related activities that occurred between 1:32 and four p.m.?

The Witness, Yes, sir.

Mr. Hassan: Now, what magistrate did you take the defendant to in New York?

The Witness: United States Commissioner —

page 168] I don't — I don't really recall whether it was the Commissioner or a judge we took Mr. Rollins before.

Mr. Hassan: Do you recall where the magistrate or judge was located?

The Witness: Yes, sir. Southern District of New York.

Mr. Hassan: 2 Foley Square?

The Witness: In Foley Square.

Mr. Hassan: And how far is that from your 69th Street Office?

Edward S. Lenehan

The Witness: Not quite twenty minutes.

Mr. Hassan: About twenty minutes?

The Witness: Yes, sir.

Mr. Hassan: How far was the place of apprehension of Rollins from your 69th Street Office?

The Witness: About 32 minutes.

Mr. Hassan: 32 minutes?

The Witness: Yes.

Mr. Hassan: So then he was in your office from about two to shortly after 3:30, before he was taken to the magistrate?

The Witness: That's correct.

Mr. Hassan: And during that course of time under your supervision two other apprehensions were made?

The Witness: Yes, sir.

page 169] Mr. Hassan: No further questions, your Honor.

Mr. Ahern: We have a couple of statements that were raised.

Actually, it was closer from the place of arrest to Foley Square than it was from the place of arrest to your office, wasn't it?

The Witness: No, it wasn't, counsel.

Mr. Ahern: Maybe I got my figures wrong. What was 20 minutes and what was 32 minutes?

The Witness: According to this log —

Mr. Ahern: You said about 20 minutes. You weren't reading the log. About 20 minutes from your office to Foley Square, the Commission's office or magistrate's office?

The Witness: That's right.

Mr. Ahern: How far was it from where you arrested him to your office?

The Witness: About 32 minutes.

Mr. Ahern: Isn't that what I just said?

The Witness: I didn't understand what you were saying.

Mr. Ahern: Or was it 32 minutes from the place you arrested him to Foley Square?

The Witness: Not according to my records here.

Mr. Ahern: Did you go with him to the magistrate's?

The Witness: Yes, sir.

page 170] Mr. Ahern: You don't know whether it was a magistrate or United States Commissioner?

Edward S. Lenehan

The Witness: I am not sure whether — it is generally a Commissioner, but in this case I don't know whether a judge sat.

Mr. Ahern: Did he have any counsel there?

The Witness: No, sir.

Mr. Ahern: He was committed to Bellevue from there, wasn't he?

The Witness: Yes, sir.

Mr. Ahern: Was that at your request?

The Witness: No.

Mr. Ahern: Whose request was that?

The Witness: I don't know.

Mr. Ahern: I have nothing else.

The Court: Any other questions?

Mr. Hassan: No further questions.

The Court: Do you want to argue again?

Mr. Ahern: No, your Honor, I merely say this: that — repeating myself — from the time of this man's arrest, *detension,* 1:30 until after four o'clock that he was taken before a magistrate, I say that the *detension* in between that time while under arrest and questioning by the FBI deprived him of his Constitutional Rights and therefore I think pagepage 171] — anything obtained during that period of time should be suppressed at this time by your Honor, statements or waivers.

The Court: One question of fact. I didn't get it exactly straight — this timing business from your office to the Court, whatever Court it was, approximately 20 minutes, and from your office to the point of apprehension was approximately 30 minutes, 32 minutes, you said. Where was the apprehension made?

The Witness: In the Bronx, New York, sir, up by the Bronx Zoo.

The Court: Going from the Bronx to your office, do you go by the Court?

The Witness: No, sir. Bronx is in the northern part of the city and the court is in the southern part of the city.

The Court: Bronx is in the northern part?

Edward S. Lenehan

The Witness: Yes, sir.

The Court: Well, in coming from the point of apprehension to your office did you travel south?

The Witness: Point of apprehension to our office we travelled south, yes, sir, but the court is further south than our office.

The Court: That's what I am trying to find out.

The Witness: Yes, sir.

The Court: That's what I want to know.

page 172] Mr. Hassan: I am sorry, I worked there and knew the situation — I am sorry I didn't ask the question.

The Court: What do you have to say, Mr. Hassan?

Mr. Hassan: I don't believe there is any unreasonable delay in presenting the man before the magistrate. He was apprehended and it took a half hour to get to the office and he was there approximately an hour and a half, during which time two related matters had to be cared for. This man was in charge of the whole situation and he promptly took him before the magistrate. The total time from the time of apprehension to appearance before the magistrate is less than three and a half hours of which almost one hour is travel time. So no unreasonable length of time is lost here.

The Court: May I see the paper itself?

Mr. Hassan: What paper, his log?

The Court: Do you have any recollection as to approximately what part of the inquiry you were making of the defendant when you obtained this paper?

The Witness: He executed that form, sir, at 2:10 p.m.

The Court: Objection is overruled.

Mr. Ahern: How about the statements obtained from this man? That's going to be the next thing. He is going to say he got certain statements from him.

page 173] When did you take the statement from the Defendant Rollins?

The Witness: You mean a written statement?

Mr. Ahern: Did you take a written statement?

The Witness: No, sir.

Mr. Ahern: Did you take an oral statement?

The Witness: Yes, sir.

Mr. Ahern: When did you take the oral statement?

The Witness: Well, the oral statement started around 2:07 p.m.

Mr. Ahern: How long did they last?

The Witness: I would say about 3:40.

Mr. Ahern: Until 3:40. At 3:40 what did you do?

The Witness: He ate a sandwich that we gave him and milk, 3:41.

Mr. Ahern: 3:41?

The Witness: Yes, sir.

Mr. Ahern: Where did you go from there?

The Witness: Then we photographed him and we transported him to the United States — to the Commissioner in the Southern District.

Mr. Ahern: What time did you arrive there?

The Witness: 4:00 p.m., sir.

Mr. Ahern: So at 3:41 he started eating a sandwich?

The Witness: Yes, sir.

page 174] Mr. Ahern: How long did it take him to eat the sandwich?

The Witness: We have him being photographed at 3:58.

Mr. Ahern: And then at 4:00 o'clock you were at the Commissioner's?

The Witness: We were en route to the Commissioner's.

Mr. Ahern: Did you say you arrived at the Commissioner's at 4:00 o'clock.

The Witness: Transported to the offices of the Office of the United States Commissioner at 4:00 p.m.

Mr. Ahern: I was led to believe that you got to the Commissioner's at 4:00 o'clock.

The Court: You are not asking him anything.

Mr. Ahern: Did you?

The Witness: No.

Mr. Ahern: So when Mr. Hassan talked about the arrest from 1:30 to 4:00 o'clock, that is not correct, is it? Appearing before the Commissioner — you got to the Commissioner's after 4:00 o'clock?

The Witness: Yes.

Mr. Ahern: You don't know how long after 4:00 o'clock, do you?

Edward S. Lenehan

The Witness: I think they stayed there — in case you call down and say you have somebody to be arraigned, page 175] they will wait.

Mr. Ahern: I merely asked you, you don't know how long after 4:00 o'clock you finally arrived at the Commissioner's?

The Witness: Exactly, no.

Mr. Ahern: *Wasit* 5:00 o'clock.

The Witness: Exactly, I don't know.

Mr. Ahern: Was it 6:00 o'clock?

The Witness: I don't know.

Mr. Ahern; Well, then, I renew my objection. These figures are self-serving to the Agent and when you started — when you start adding them up they just don't add up to the proper total.

The Court: Mr. Hassan?

Mr. Hassan: If your Honor please, I don't know what the log said. I never read it. The testimony we have is that he, as I understand it, they left for the Commissioner's at 3:58, they photographed him and left for the Commissioner's. He said it took him 20 minutes. The most I could be off would be 20 minutes because once they hit Two Foley Square they just take the elevator and go up to it. It doesn't take any time once you hit this parking lot to get the prisoner upstairs. The Commissioner is waiting and they have it. It is a long time since I took any up there, but I took them up page 176] there.

The Court: The Commonwealth, as I understand it, proposes to introduce some statements that this defendant made to this Agent at some time after this consent was executed?

Mr. Hassan: Yes, sir. We propose to introduce evidence in regard to some of these items which have been marked for identification which were found as a result of that search consent you have. The statements concerning the activities of the defendant that were made to the Agents of the Federal Bureau of Investigation in New York at that time.

The Court: Step down.

(Witness excused.)

The Court: Sheriff, make arrangements to take the jury to lunch. I think we better recess and let the Court examine some of the authorities in connection with this business.

Bring the jury in.

(The jury resumed its place in the jury box.)

The Court: Ladies and gentlemen of the jury, the Court will be recessed until 2:00 o'clock. You will be in the custody of the Sheriff. During that time he will get your lunch for you. Don't get separated and be governed by the same instructions that were given to you yesterday.

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page 227]

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Mr. Hassan:

Getting back to the problem we had before we recessed, for the Court to look into the admissibility of the oral evidence of confessions or statements or whatever you characterize them to be, of the defendant to the FBI agent, the Court has reached the conclusion that these statements should be admitted in evidence.

The examination of the authorities that follow the McNab and the Mallory rule appear to all be founded
page 228] upon Federal rules which, of course, are not applicable here, and while I know that the *Mapp* case, which is not exactly in line, but which the Federal Court held that the Federal rule as to the use of illegally obtained evidence would hereafter be applied to Federal Courts, well, I think they even went further than that and said it should have been applied in state courts before, based, however, on some theory of having application of the Constitution and the due process clause, is not in itself applicable to detention of a prisoner while a confession is obtained and before taking him to a magistrate.

I am sure that the state courts are not going to extend this theory for the Federal Courts. They may be forced to is some day, but they haven't got that far yet.

In addition to that, however, the cases that I have looked

at indicate that the amount of time in which this prisoner was held is not such an unreasonable time as to give rise to an inference that he was, by reason of such detention, led to make a confession in order to obtain a release from the detention.

The case that goes the farthest, I think, is the *Killough* case from the District of Columbia. I would not be inclined to go so far as the *Killough* case goes, unless I had to, and I call your attention to the fact that four of the Federal Judges dissented when the objection was rendered.

page 229] The objection is overruled.

Mr. Ahern: May I take exception to that?

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EDWARD S. LENEHAN

resumed the stand and testified further on his oath as follows:

DIRECT EXAMINATION (resumed)

By Mr. Gallucio:

Q. I believe we had a question. Did you talk to the defendant? Was there an oral statement given by the defendant?

A. Yes, sir.

The Court: That is not where you were, because this all started over the written statement. I don't think you need the last question. Ask him what you want.

This was the objection. It will now be admitted in evidence.

Mr. Gallucio: We move to have it admitted.

The Court: Commonwealth's Exhibit No. 27 is admitted in evidence.

(Statement previously marked for identifica-
page 230] tion as Commonwealth's Exhibit No. 27 was admitted.)

Mr. Ahern: I take exception to that, Your Honor.

The Court: You want the witness to read it to the jury?

Mr. Gallucio: Not at this point.

Edward S. Lenehan

By Mr. Gallucio:

Q. Would you take it in your possession, please? What time in the afternoon did you arrest the defendant, Rollins?

A. 1:32 p.m.

Q. Where did you take him after you arrested him?

A. To the New York office of the Federal Bureau of Investigation.

Q. What time did you arrive there? Do you have your notes there?

Mr. Ahern: Has he exhausted his independent recollection? Does he absolutely need his notes to testify?

The Court: I don't know whether he does or not.

Mr. Ahern: I do suggest he be asked that question.

The Witness: Approximately 2:05 we arrived at our office.

By Mr. Gallucio:

Q. How many agents were with you? How many made the arrest?

A. Six besides myself.

page 231] Q. How many returned to the FBI headquarters?

A. Seven of us.

Q. Approximately what time did you obtain that consent?

A. Shortly after arrival at our office.

Q. Was this in the course of discussing, talking to the defendant?

A. Yes, sir.

Q. Would you now read that consent to the jury, please?

A. "I, Eugene William Rollins, having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant, and after my right to refuse to consent to such a search, hereby authorize Francis A. Torpey and William J. Fleming, Special Agents of the Federal Bureau of Investigation, United States Department of Justice, to conduct a complete search of my residence located at Bronx Park Motel, 2500 Platona Avenue, Bronx, New York. These Agents are authorized by me to take from my residence any letters, papers, material, or other property which they may desire. This written permission is

being given by me to the above Special Agents voluntarily and without threats or promises of any kind.

"Signed, Eugene William Rollins."

Q. Now, after you obtained that consent, what did you do then?

page 232] A. I went outside. I left the interview room and I talked to Special Agent James M. Beardsley. I informed him of the information we had, and I instructed him to take several Agents up to this location to conduct a search.

Q. How many agents left for this search?

A. Offhand, I don't know.

Q. How many agents remained with Mr. Rollins at this time?

A. I came right back in the room.

Q. Who was with you, if anyone?

A. Leland F. Lowery.

Q Anyone else with you besides the defendant, Rollins?

A. No, sir.

Q. That address given on that consent, where is that in relation to the place where the defendant Rollins was arrested?

A. That particular Bronx Park Motel is located above and diagonally from where we apprehended the defendant.

Q. Would this be on the same street?

A. Yes. It was on the same street. It was off the corner and we apprehended the defendant in the parking lot of Howard Johnson's store, which is right on the corner of Southern Boulevard and Fordham Road.

Q. Now, after you instructed the agents to leave, did you go back and talk to the defendant, Rollins?

page 233] A. Yes, sir.

Q. Did you advise him of his rights with regard to statements, or had he been advised?

A. He had been advised at the time of his arrest.

Q. Did he make a statement to you?

A. He made an oral statement.

Q. Could you summarize that statement?

Mr. Ahern: Your Honor, may I interrupt at this point?

Edward S. Lenehan

May I know what rights he was advised of? That is a statement used by District Attorneys and FBI Agents, but a lot of us don't know what it means.

The Court: Tell him what advice you gave him.

The Witness: I advised him that he didn't have to make any statement and that any statement he did make could be used against him in a court of law. I advised him that no threats or violence was going to be used upon him in order for him to make a statement, and that he had a right to an attorney.

The Defendant: Why didn't you get me one?

By Mr. Gallucio:

Q. When you took this statement, could you, to the best of your recollection — maybe we had better do this by questioning.

Did Mr. Rollins *tellyou* where he had been on the evening of May 10?

page 234] A. Yes, sir.

Q. Where did he say he had been?

A. He said on the evening of May 10 he went with Margaret Klassett, who occupied an apartment in Arlington Towers, here in Arlington, Virginia, and they went to the Red Coach Inn. They were there shortly when personal friends of the defendant arrived, namely, Edwin Welch, Robert Miller, and Leon Tatleman. He said that from the discussion that he was hearing, Tatleman won a large amount of money on a race, horse race, and that Welch, who was supposed to have paid Tatleman, was reneging on the bet. He said there was a tremendous amount of liquor consumed between the group, of Miller, Tatleman and Welch, and that the more they drank the more antagonistic they *began* to one another.

He said, around 1 o'clock they all left the Red Coach Inn and they drove, in Tatleman's car, to the Arlington Towers where Robert Miller got out and Margaret Klassett got out. He said that Edwin Welch was still in the car with Tatleman and himself, and they were arguing, still arguing about the money and the bet.

He said that during the evening he noticed that Tatleman

had quite a bit of money on him, but that after a period of time, around 2 o'clock, Welch got out of the car and went into the Arlington Towers, and the defendant page 235] asked Tatleman to drive him to a phone booth, which he said was about a block and a half from that location. He said Tatleman agreed, and he drove a block and a half and he got out of the car, went to the phone booth to call a cab.

When he came back, Tatleman was gone, and that's the last time he has ever seen him.

Q. Now, did he tell you where he was? Where did he say he went from there?

A. He said he went to a hotel in Washington, D. C., I think the Stone Hotel, and that around 6 o'clock in the morning he stopped over at his wife's house, Lela, and he stayed only a short period of time, and he gave her about $140.

Q. Where did he go from there?

A. This is the morning of the 11th, and he said that he went over to Washington, D. C., and met Robert Taltavault; that he had previously met on the 10th of May. And during their discussion on the 10th —

Q. Outside of the discussion, my point is, where did he go after he left his wife?

A. He went to Washington, D. C., and then subsequently he went to York, Pennsylvania, where he stayed the night of the 11th at the Yorktowne Hotel in York, Pennsylvania.

Q. Did he say when he left the Yorktowne Hotel?

A. He said he left on the 12th, May 12th. He page 236] checked out of the Yorktowne Hotel and proceeded to New York, where he checked into the Bronx Park Motel.

Q. What date did you arrest him?

A. The 13th, May 13th.

Q. Now, did he give you any explanation for the amount of money on his person?

A. Yes, he said —

Mr. Ahern: Your Honor, I don't know whether Your Honor has ruled on that as yet; that was another motion, two motions.

The Court: Yes, I ruled on it.

Mr. Ahern: Exception granted?

The Court: Yes, sir.

The Witness: He said he got his money on the 9th of May when he bet three dollars on the numbers and it came in, and he won $1800.

By Mr. Gallucio:

Q. Now, this questioning, or this statement all took place at the FBI headquarters?

A. Yes, sir.

Q. What time did you leave the FBI headquarters that day, or if you left that day?

A. Yes, sir; we left around 4 o'clock.

Q. Where did you go?

page 237] A. We went to the Southern District of New York, United States Courthouse, Southern District of New York.

Q. Besides making a statement, did you do any other thing at the FBI headquarters that day, with the defendant?

A. We photographed him. We fed him. That's all I can recall.

Q. Did there come a time after you dispatched the five agents, or the number of agents who were with you, to the Bronx Motel, did they return?

A. Yes, they returned.

Q. Did they return with any items of any nature?

A. Yes, they returned with a quantity of merchandise.

The Court: Returned with what?

The Witness: A quantity of merchandise.

By Mr. Gallucio:

Q. Now, this merchandise that you received, did there come a time that Detective Keyes met you or talked to you in New York?

A. Yes, sir.

Q. At that time, did you give Detective Keyes anything?

A. Yes, I turned over several items to him.

Q. What did you turn over to him, do you recall?

A. Five .38 caliber bullets, a key to the room at the Bronx

Park Motel, and a few other items I just can't
page 238] recall right now.

Q. With regard to the bullets that you turned over to Detective Keyes, did he do anything to those bullets in your presence?

A. He initialed them.

Q. He did initial them.

I show you Commonwealth's Exhibit No. 20 — I am sorry, that is the wrong exhibit — I show you Commonwealth's Exhibit No. 22. Can you identify those?

A. They appear to be the initials of Detective Keyes.

Q. Do they appear —

Mr. Ahern: I object to a conclusion, Your Honor.

Mr. Gallucio: It was done in his presence and Detective Keyes —

The Court: Unless he can identify them, the objection is sustained.

By Mr. Gallucio:

Q. Would they be the same caliber —

Did you give some bullets to Detective Keyes?

A. Yes, sir.

Q. Are they the same bullets?

A. They appear to be.

Q They appear to be?

A Yes, sir.

page 239] Q. Now, you say you gave Detective Keyes a key?

A. Yes, sir.

Q. I ask you if you can identify that item as — would that be the key you gave Detective Keyes?

A. It appears to be.

The Court: Why do you say, it appears to be? Is there some identification mark on there, or does it just look like a key?

The Witness: I didn't put any identification mark on it, Your Honor.

The Court: Was any identification mark put on it in front

of you, while you were there?

The Witness: No, sir; I didn't see any.

The Court: All right.

By Mr. Gallucio:

Q. Would that key contain the same information on the tab that was contained on the key that you gave to Detective Keyes in New York?

A. Yes, sir.

Q. Who did you receive that key from?

A. I don't know if it was Agent Lowery or Agent Beardsley.

Q. Either one of those?

A. Yes, sir.

page 240] Q. I show you Commonwealth's Exhibits 23, 24, and 25 — and for the record, will you show that the key being testified to was Commonwealth's Exhibit 26 — and ask you if you recognize those?

A. Yes, sir; I recognize these.

Q. Did you give those to Detective Keyes?

A. Yes, I did.

Q. Do you know who gave those to you? Do you recall?

A. Agent Beardsley gave them to me.

The Court: What exhibit number appears on those slips?

The Witness: 23.

The Court: Look at all three of them.

The Witness: 24 and 25.

The Court: Are you through?

Mr. Gallucio: Just a moment, Your Honor.

No further questions.

The Court: Again, do you think you introduced these?

Mr. Hassan: No, sir.

The Court: Are you through with this witness?

Mr. Gallucio: I have no questions.

CROSS-EXAMINATION

By Mr. Ahern:

Q. You mentioned, did you pick up anybody page 241] else in New York besides the defendant?

A. I didn't.

Q. According to your instructions, were two other people picked up?

A. Yes, they were: Taltavault and the girl.

Q. What was her name?

A. Barbara Robert.

Q. They were picked up in New York?

A. Correct.

Q. Correct?

A. Yes.

Q. Where were they picked up, do you know?

A. I was told, in Bronx Park Motel.

Mr. Ahern: I have no further questions.

The Court: Step down.

(Witness steps down.)

Mr. Gallucio: Mr. Beardsley, please.

Whereupon

JAMES M. BEARDSLEY

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

page 242] DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. James M. Beardsley. I am a Special Agent of the Federal Bureau of Investigation.

Q. Directing your attention, sir, to on or about May 13, 1963, did there come a time when you had occasion to see the defendant, Mr. Rollins?

A. Yes.

Q. Where and when did you first see him on that day?

A. I saw him at Fordham Road and Southern Boulevard in the Bronx, when we placed him under arrest.

Q. What time of the day or night was that, sir?

A. That was about 1:30 in the afternoon.

James M. Beardsley

Q. And did there come a time subsequent thereto when, pursuant to a consent which is identified as Commonwealth's Exhibit No. 27, that you took some action?

A. Yes.

Q. And what action did you take, sir?

A. I proceeded to the Bronx Park Motel at 2500 Cretona Avenue in the Bronx, where I conducted an investigation.

Q. At that time, sir, did you have occasion to go to a specific location in that motel?

A. I did.

page 243] Q. What location was that?

A. I went to Room 221 of the Bronx Park Motel.

Q. When you arrived at Room 221, whom did you find, if anyone?

A. I found two individuals who identified themselves to me as Richard Taltavault and Barbara Roberts entering Room 221 as I arrived.

Q. Concerning those two individuals, sir, did you perform any official act?

A. I arrested both of them.

Q. Did there come a time when you had occasion to enter that room, 221?

A. Yes, sir.

Q. Did these two individuals enter with you?

A. They did.

Q. Did there come a time when you had occasion to advise them of their rights?

A. I did.

Q. Where and when did you do that, sir?

A. Immediately after entering Room 221.

Q. What did you advise them?

A. I advised each of them —

Mr. Ahern: I object. This is hearsay, as far as I am concerned. I don't care what he said to somebody else,

page 244] out of the presence of my client. I don't think it is admissible.

The Court: The objection is overruled.

James M. Beardsley

By Mr. Hassan:

Q. What did you advise them, sir?

A. I advised each of them that they were under arrest.

Mr. Ahern: I take exception to that, Your Honor.

The Court: Yes.

The Witness: That they did not have to make any statement; that any statement they did make could be used in court against them. I advised them of their rights to an attorney.

By Mr. Hassan:

Q. Did there come a time when you asked them, subsequent thereto, about the search of Room 221?

A. Yes.

Q. What did you ask them?

A. I asked them if they would have any objection to a search of the room, and they replied that they would not.

Q. This is the same room that you obtained consent to search from the defendant?

Mr. Ahern: I am objecting to any conversations he had with any people who are not a party of this action, who are not here to be cross-examined. It is rank hearsay, Your Honor.

page 245] The Court: I am sorry, sir; I don't agree. It is not hearsay.

Mr. Ahern: Take an exception, then.

The Court: If he goes on to tell what they told him about some past actions that they engaged in, I will sustain the objection — it is hearsay.

By Mr. Hassan:

Q. Was this the same room that they consented to you, that you already had the consent for from Mr. Rollins on?

A. It was.

Q. Now, did there come a time when you did search the room?

A. Yes, sir.

Q. What did you find then, sir, if anything?

A. I found a large quantity of material. I believe there

were three suitcases, considerable amount of clothing, papers, and five bullets.

Q. Did you take possession of any of these items?

A. I took personal possession of the five bullets.

Q. Sir, I ask you to examine the contents of the brown envelope front of you, which is marked Commonwealth's Exhibit No. 22 for identification, and advise me, sir, if those are the bullets to which you refer?

A. They are.

page 246] Q. What did you do with those, sir?

A. I turned them over to Agent Lenehan at our office that same day.

Mr. Hassan: If Your Honor please, I would like to offer Commonwealth's Exhibit No. 22 for identification in evidence as Commonwealth's Exhibit No. 22.

The Court: Admitted.

Mr. Ahern: May I object again, Your Honor, and take exception?

(Bullets previously marked for identification as Commonwealth's Exhibit No. 22 was admitted.)

By Mr. Hassan:

Q. Did you take possession of anything else at Room 221 in the Bronx Park Motel?

A. I did not take personal possession of any other individual item, but I transported the suitcases containing the other materials back to our office.

Q. Who was with you at this time, sir?

A. There were five other agents at this location.

Q. Who was in charge of this detail?

A. I was.

Q. Who had assigned you to this?

A. Agent Lenehan.

page 247] Q. Now, would you tell us, in normal travel time, what the travel time is from Southern Avenue and Fordham Road to 2 Foley Square — that is the place of apprehension of the defendant, Rollins, and the Federal Court Building in New York?

A. I would say approximately one hour.

Q. Would you tell us, in normal travel time, what the time of travel was from the same location, the point of arrest of Mr. Rollins, and the 69th Street headquarters of the FBI?

A. I would say about one-half hour.

Q. Now, what kind of a building is 69th Street head quarters?

A. It is a 15-story building.

Q. On what floor is the FBI headquarters?

A. We have all the floors from 6 up.

Q. To what floor was Mr. Rollins taken, to the interview room?

A. The 6th floor.

Q. The 6th floor.

On what floor was the United States Commissioner or Committing Magistrate located, at 2 Foley Square?

A. The United States Commissioner's office is located in the floor below ground level, but the United States Attorney, to whom — is located on the 4th floor.

Q. Did you go to 2 Foley Square with Mr. Rollins?

page 248] A. No, I did not.

Q. What is the travel time, normal travel time, from the 69th Street office or headquarters to 2 Foley Square?

A. I would say approximately one-half hour.

Mr. Hassan: No further questions.

The Court: Wait just a minute.

Mr. Hassan: A few more questions, if Your Honor please.

The Court: Wait just a minute.

Are you ready?

Mr. Ahern: Yes.

The Court: Go ahead.

By Mr. Hassan:

Q. When you searched Room 221, did you examine the various items of luggage to which you referred?

A. I did.

Q. Did you come across, in that examination, any identification papers?

A. I did.

James M. Beardsley

Q. Do you recall the names on any of those identification papers?

A. I recall some of the names.

Q. What names do you recall?

A. I recall the name, Smith. I recall the name,
page 249] Nelson. I recall the name, Westbrook.

Q. Do you recall any first names?

A. No.

Q. Do you recall what those papers of identification were?

A. They were of various identification nature. They included Social Security cards, personal identification cards of the types that are carried in wallets, and other sorts of identification papers.

Q. Do you recall which papers, classifications which you described, would pertain to any particular name?

A. No, sir.

Mr. Hassan: Thank you very much.

CROSS EXAMINATION

By Mr. Ahern:

Q. When you went into this room, you said you saw two other people. Were they in the room or outside the room?

A. They were opening the door to the room.

Q. Were you observing the room?

A. Yes.

Q. When they went in, were these other two — when *thse* other two people went in, you arrested them?

A. Yes.

Q. Did they have a key to the room?
page 250] A. Yes.

Q. Were they registered to the room, if you know?

A. I don't know for a fact what their registrations were as to that particular room.

Mr. Ahern: I have no further questions.

The Court: Through?

Mr. Hassan: Yes, Your Honor.

The Court: Thank you.

(Witness steps down.)

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LELAND F. LOWERY,
was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Would you please state your name and your occupation?

page 251] A. Leland F. Lowery, Special Agent, FBI.

Q. I am directing your attention to on or about the 13th of May 1963. On the 13th of May 1963, where were you assigned?

A. New York City.

Q. Did there come a time when you had occasion to see this defendant?

A. Yes, sir.

Q. Where and when did you see him?

A. In a part of New York City known as the Bronx, at the time I arrested him.

Q. At that time, were you attached to a detail of agents?

A. Yes, sir.

Q. Who was in charge of that detail?

A. At the time, S. A. Lenehan.

Q. Did there come a time subsequent thereto, pursuant to Commonwealth's Exhibit No. 27, that you assisted in the execution of a search of Room 221 of the motel in the Bronx?

A. No, sir. I was there at the arrest and when he was arrested I was one of the ones who took the subject immediately back to the office.

Q. Did you go to the motel?

A. No, sir.

Q. At the Bronx.

Now, did you remain with the defendant at the

page 252] headquarters, at the FBI Headquarters, at 69th Street?

A. Yes, sir.

Leland F. Lowery

Q. Did there come a time when agents, pursuant to that search warrant, returned to the FBI headquarters with any items or any individuals?

A. Yes, sir.

Q. Who did they return with?

A. Would you rephrase that, please?

Q. Who did they return with?

A. They brought two other subjects as well as the material from, the material in the Bronx.

Q. What were the names of the other subjects?

A. Taltavault and Barbie Robertson.

Q. Did they bring some items of merchandise with them?

A. Yes, sir.

Q. Did you have occasion to examine them?

A. Yes, sir.

Q. I would like to show you Commonwealth's Exhibit for identification marked 23, 24 and 25, and ask you, sir, if you saw those in the 69th Street headquarters of the FBI in New York?

A. Yes, sir.

Q. Did you locate them in the luggage?

A. Yes, sir.

page 253] Q. Did you mark them?

A. No, sir; I did not.

Q. What did you do with them after you found them?

A. I put them in a cellophane wrapper and turned them over to S. A. Lenehan.

Q. These are the items that you are referring to now, the bills from Yorktowne Hotel?

A. Yes, sir.

Mr. Hassan: If Your Honor please, Commonwealth at this time would like to offer Exhibits 23, 24, and 25.

Mr. Ahern: I object on grounds previously stated.

The Court: The objection is overruled.

Mr. Ahern: Take exception.

(Documents previously marked for identification as Commonwealth's Exhibits Nos. 23, 24 and 25 were admitted.)

Leland F. Lowery

By Mr. Hassan:

Q. Now, sir, I direct your attention to Commonwealth's Exhibit marked No. 26 for identification and ask you, sir, whether you found that in your examination of the luggage and merchandise that the agents brought to headquarters?

A. Yes, sir.

Q. What did you do with that when you found it, sir?

page 254] A. I again turned it over to S. A. Lenehan.

Mr. Hassan: If Your Honor please, I would like to offer in evidence Commonwealth's Exhibit No. 26 for identification, as admitted into evidence.

Mr. Ahern: I object on grounds previously stated.

The Court: The objection is overruled.

Mr. Ahern: Ask for an exception.

(Item previously marked for identification as Commonwealth's Exhibit No. 26 was admitted.)

By Mr. Hassan:

Q. Now sir, did there come a time —

The Court: Wait just a minute.

Mr. Hassan: Yes, sir.

The Court: Did he tell you where he got this key from? Where did you get the key?

The Witness: All *thismaterial* was brought back to the office, and it was placed in a room, and we went over it, bag by bag, upon its coming into the office. That particular evidence there I found in a Val-a-Pak.

The Court: The key?

The Witness: The key.

By Mr. Hassan:

Q. Did there come a time, in this examination,

page 255] when you obtained, when you located the half stub of a parking ticket?

A. Yes, sir.

Q. When you did, what did you do with that?

A. I again put it in a cellophane wrapper and passed it to

S. A. Lenehan, who was with me at the time.

Q. Have you had occasion to see that since that time?

A. Yes, sir.

Q. Did you see it today?

A. Yes, sir.

Q. It it among the properties that is out there with Detective Keyes?

A. Yes, sir.

Mr. Hassan: If Your Honor please, I would like to have him get that pack.

(Witness left the stand momentarily and returned.)

By Mr. Hassan:

Q. On that ticket that you found in New York, is there any printing, without saying what it is?

A. Yes, sir.

Mr. Hassan: If Your Honor please, I would like to have this marked for identification as Commonwealth's Exhibit No. 28.

The Court: 28.

page 256] (Ticket referred to was marked Commonwealth's Exhibit No. 28 for identification.)

Mr. Hassan: I would like to offer this in evidence, Your Honor, and have him read what it says on that ticket.

Mr. Ahern: I object to it, Your Honor.

The Court: Objection is overruled.

Mr. Ahern: Take exception.

(Ticket previously marked for identification as Commonwealth's Exhibit No. 28 was admitted.)

The Witness: It is a parking lot stub bearing, "Rear — 29 Duke Street, York, Pennsylvania, No. 22106." And it gives — you want me to read the bit about the liability of the car?

Mr. Hassan: No, that will not be necessary.

Now, if Your Honor please, I would like to offer to the

defendant Commonwealth's Exhibit No. 19, marked for identification, and ask him to compare it with what he just read, and offer this in evidence.

The Court: I think you said "to the defendant" — you mean the witness?

Mr. Hassan: I mean the witness, yes.

I offer this in evidence, Your Honor. It is marked for identification.

page 257] (Stub previously marked for identification as Commonwealth's Exhibit No. 19 was admitted.)

By Mr. Hassan:

Q. I would like to ask you, sir, to examine 19 and tell me whether or not it bears the same legend and number as 28?

A. They both bear the same address of York, Pennsylvania, and both have the same number, 22106.

Mr. Hassan: I would like to show these to the jury, Your Honor.

I have no further questions of this witness, Your Honor.

Mr. Ahern: Would Your Honor indulge me a moment?

CROSS EXAMINATION

By Mr. Ahern:

Q. As I understand it, Mr. Lowery, you were present at the 69th Street office, you were present when the defendant was arrested?

A. Yes, sir.

Q. You went with him to the 69th Street office?

A. Yes, sir.

Q. Did you stay with him at the 69th Street office?

A. Yes, sir.

Q. How long did you stay with him?

A. Until the time that he was removed to the

page 258] Commissioner's office.

Q. Did you go with him?

A. No, sir.

Q. Do you know what time he was removed?

A. I have no way of recalling, unless it is by the interview logs.

Q. What's that?

A. I don't recall.

Q. Were you with him when he was removed?

A. I was in the room with him during the period he was interviewed. Then I was called out to another part of the office. And then I came back and I wasn't in the room itself when he was taken actually to the Commissioner's office.

Q. Did you ever hear him ask him to get a lawyer for him?

A. No, sir; I don't recall that.

Q. Did he say anything about a lawyer?

A. Not in my presence.

Mr. Ahern: That is all.

The Court: What is your name?

The Witness: First name, Leland; last name, Lowery.

The Court: Is Mr. Breen here?

The Witness: No, sir.

The Court: Not here. All right.

page 259] Mr. Hassan: I have no further questions.

The Court: No further questions of this witness?

Mr. Hassan: No, sir.

The Court: You are excused.

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page 273]

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MILLARD LEIPHART,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. My name is Millard Leiphart; 848 East Philadelphia

Street, York, Pennsylvania.

Q. What is your occupation?

A. I am a carpenter, retired carpenter.

Q. Directing your attention to on or about the 13th day of May 1963, where were you employed on that day, if you recall?

A. I was at the Martin Library putting the screens in.

Q. Did there come a time when anything unusual occurred?

A. Well, I went through the yard; I happened to see a revolver laying in there on the grass. So I picked the revolver up and looked to see if it was loaded. It wasn't.

page 274] I just stuck the revolver in my hip pocket and then I went into the library and said to Miss Shorey, "Look what I found back there in the yard."

Q. Did there come a time subsequent to that when you were present when somebody got that gun?

A. Yes. She called the police then, and I was there when two policemen came and got the gun.

Q. Did you notice anything unusual about that gun?

A. No, I did not.

Mr. Hassan: Thank you, Mr. Leiphart.

Mr. Ahern: I have no questions.

By Mr. Hassan:

Q. Mr. Leiphart, where is the Martin Library located in York?

A. At the corner of Market and Queen Street, East Market and Queen.

Q. Whereabouts on the property of the Martin Library did you find the gun?

A. At the north end, between the Martin Library, and there is a wall there, between that and the adjoining property.

Q. What is on the adjoining property?

A. What is on there, the adjoining property?

Q. Yes.

A. It goes by the brownstone building.

page 275] Q. The brownstone building?

A. Yes, sir.

Q. Where is that in relation to the rear of 29 North Duke Street?

A. The rear of 29 North Duke.

Oh, that is about a block away.

Q. What is located there?

A. A parking lot.

Q. Where is the library in relation to the Yorktowne Hotel?

A. That is one block east of the Yorktowne Hotel, and facing Market Street.

Q. Facing Market Street.

Where is that in relation to the parking lot?

A. Well, it would be east of the parking lot. The parking lot on the north along Clark Alley, on the north side of Clark Alley.

Q. On the north side of Clark Alley. Where is that with relation to the place on the Martin Library property that you found the gun, that Clark Alley?

A. Well, Clark Alley is on the north end of the Martin Library.

Q. Was that near where you found the gun?

A. Yes.

page 276] Mr. Hassan: Thank you, sir.

Mr. Ahern: I have no questions.

The Court: That's all. You are excused.

(Witness excused.)

Whereupon

KATHERINE SHOREY,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Katherine Shorey, York, Pennsylvania.

Q. What is your occupation?

A. I am the Director of the Martin Library in York.

Q. Directing your attention to the 13th day of May in

1963, did there come a time when you had occasion to see a revolver?

A. Yes, sir.

Q. Will you explain to the Court and jury what occurred at that time?

A. I had a man working in the garden putting up the screens on the building. He brought in to me a revolver that he said he had found under the bushes.

page 277] Q. Then what did you do, if anything?

A. I called the police and asked them to come and pick it up.

Q. Did there come a time when the police arrived to pick up the gun?

A. Yes, sir.

Q. Do you recall who the police were?

A. No, sir.

Q. Did there come a time when they picked up the gun?

A. Yes, sir.

Q. Who was present when they picked up the gun?

A. Well, a number of my staff members were around there, because the gun had been laid down in the area of the circulation desk.

Q. Was Mr. Leiphart present?

A. I don't really know, I am sorry to say; I don't know.

Q. But you did give the gun to a police officer?

A. Yes, sir.

Mr. Hassan: Thank you very much.

Mr. Ahern: I have no questions.

The Court: That's all.

(Witness excused.)

Whereupon

page 278] EDWARD PINKERTON,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

Edward Pinkerton

DIRECT EXAMINATION

By Mr. Hassan:

Q. Would you please state your name, sir, and your address?

A. My name is Edward Pinkerton. I live at 641 Crunister Street in York, Pennsylvania.

Q. What is your occupation, sir?

A. At the present time I am a deputy sheriff.

Q. Directing your attention to May 13, 1963, sir, what was your occupation?

A. At that time I was a Sergeant of Detectives with the York City Police Department.

Q. On that day, sir, did you have occasion to receive a gun in York, Pennsylvania?

A. I did, sir.

Q. Who did you receive it from?

A. I received the gun from Mrs. or Miss Katherine Shorey, who is Librarian at the Martin Memorial Library, at the corner of Queen and Market Streets, in the City of York, Pennsylvania.

Q. At that time, sir, did you note anything con-
page 279] cerning that gun?

A. Yes, sir; I did.

Q. What did you note?

A. I noted the serial number of the gun. I noted the frame number of the gun, the make of the gun, which was a .38 caliber Smith and Wesson five-shot, with a two-inch barrel. I also recall the hammer on that gun was damaged. There was a piece broken out of the hammer of the gun.

Q. Did you write the number down?

A. Yes, sir; I did.

Q. What was that number, sir?

A. The serial number of the gun was 247943.

The frame number of the gun was No. 49262. The gun was a Model 36.

Q. Now, sir, I would like to show you Commonwealth's Exhibit No. 15 and ask you, sir, to examine it and advise me whether or not that is the gun which you received on May 13, 1963, in York, Pennsylvania?

A. The serial number, 247943 on the end of the gun. The

frame number, I am not sure where that was. It just is, right in that little part there. The frame number, I am unable to make the frame number out just here, with the light the way it is; but I am sure it is the gun. The hammer of the gun is damaged. A piece is broken out of the hammer, page 280] just as it was when I received the gun from Mrs. Shorey.

It is a .38 Smith and Wesson, two-inch barrel.

Mr. Hassan: May we borrow the juror's magnifying glass?

The Witness: This is Model 36. Model 36 is here.

I am not sure where I found that frame number.

I am not sure where I found the frame number, Your Honor; but the frame number is on there, and it is the right serial number, and it is the same gun.

By Mr. Hassan:

Q. What did you do with that gun, sir, if anything?

A. I took that gun to our office, which is located in the City Hall — that is the York Police Department at 35 West King Street in the City of York, and I had the gun in my possession until approximately between 8 and 9 p.m. the same night, May 13, 1963, when I turned the gun over to Mr. William Dane, who is the local FBI agent in York.

Mr. Hassan: Thank you, sir. No further questions.

Mr. Ahern: I have no questions.

(Witness excused.)

Whereupon

BRYCE JACKSON,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

page 281] DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name, sir.

A. Bryce Jackson.

Bryce Jackson

Q. Where do you live?
A. York, Pennsylvania.
Q. Where are you employed?
A. Yorktowne Hotel.
Q. Were you so employed on the 13th day of May 1963?
A. Yes, I was.
Q. On that day did you have occasion to carry some baggage, in the early morning, to a room for some clients who had just checked in?
A. Yes, that is what I do all the time. I am a bellhop.
Q. Did you see anyone in this courtroom whom you saw on the morning of the 13th?
A. I am not exactly sure.
Q. With that qualification, do you see anyone who resembles someone you saw on the 13th day of May? Do you see anyone sitting in this courtroom who resembles anyone you saw on the 13th of May?
A. Do I have to answer that?
Q. Yes.
page 282] A. Well, I will put it this way. From the photos you showed me over a period of, I think that was 1963, the photos and possibly anybody in here that looks similar to that person, doesn't look the same.
Q. Do you see anyone who looks similar?

Mr. Ahern: Your Honor, I think he has answered the question.
The Court: I think it is repetitious.
Mr. Ahern: I object.
The Court: Objection sustained.

By Mr. Gallucio:
Q. On the 13th day of May, or shortly thereafter, did you have occasion to talk to an FBI agent by the name of Mr. Dane?
A. Yes, I did.
Q. At that time, did you make an identification from photographs of three persons who had registered at the Yorktowne Hotel on May 13?
A. At that particular time, I did. I knew Mr. Dane for quite some time. I say approximately 15 years. And he brought

these photos in and put them on the desk and asked me had I ever seen these people before. Of course, in my line of work, you meet a lot of people year-in and year-out, so when he put the pictures down, I said to him, I didn't know there was anything serious involved —

page 283] Mr. Ahern: I am going to object to any statement made to Mr. Dane.

The Court: You just answer the questions that are asked you, whether you knew there was anything serious or not.

What was the question you had?

By Mr. Gallucio:

Q. Did you identify from photographs from Mr. Dane three persons?

A. At that time, yes, I did.

Q. Was there any doubt at that time as to those three persons being in the hotel, the three persons in that photograph?

A. At that time, I mean, I had a pretty good idea that I had seen these people before, but it has been, I don't know what it has been. Over a year.

Mr. Gallucio: No further questions.

Mr. Ahern: I have no questions.

The Court: That's all. You are excused.

(Witness excused.)

Whereupon

BEATRICE CONTI

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on her oath as follows:

page 284] DIRECT EXAMINATION

By Mr. Gallucio:

Q. Would you state your name, please?

A. Beatrice Conti.

Q. Where do you live, Mrs. Conti?

Beatrice Conti

A. 543 Madison Avenue, York, Pennsylvania.
Q. Where are you employed?
A. As auditor at the Yorktowne Hotel in York.
Q. Were you so employed in May of 1963?
A. I was, sir.
Q. Did you bring some records with you from Yorktowne Hotel?
A Yes.

Mr. Gallucio: May I have these marked for identification, Your Honor?
The Court: All as one, or separate?
29 to 35.

(Records referred to were marked Commonwealth's Exhibits Nos. 29 through 35 for identification.)

By Mr. Gallucio:
Q. I show you Commonwealth's 33, 34, 35, and ask you what they are?
A. They are the account cards for a guest in the
page 285] hotel, showing their —

The Court: Can you hear?

By Mr. Gallucio:
A. They are account cards for guests in the hotel, showing the room that they were registered in, the name, the amount of the room, the address, the date they checked in, and anything that they had on their bill during their stay.
Q. Are these part of the records of the Yorktowne Hotel?
A. They are.
Q. Part of your permanent record?
A. Yes.
Q. I notice, I believe they are partly carbons — could you explain why that is?
A. There is a small bill which the customer gets that fits on the top of this. It is just this big, this outside column, is not on that bill, it just comes down this far. That is the original which fits on top of this, and is written on in the posting machine.

Beatrice Conti

Q. Now, Mrs. Conti, I show you Commonwealth's Exhibits 23, 24, 25, and ask you if they have any relation to these exhibits you just testified to?

A. These are the originals. This is the original for this bill, Room 411. This is posted in the machine like that

page 286] — the original goes on here; the carbon comes through on our copy.

Q. Would the record show that the witness has identified Commonwealth's Exhibit 23 as the original for Commonwealth's Exhibit 34 for identification?

Mr. Gallucio: At this time, Your Honor, I would like to offer Commonwealth's Exhibit 34 into evidence.

Mr. Ahern: I am going to object to the introduction on the grounds it is related to Exhibit 23, flows from the admission of 23. Therefore, I say it is objectionable.

The Court: The objection is overruled.

Mr. Ahern: Will Your Honor allow me an exception?

The Court: I don't know whether it makes any difference or not, but there are two markings on this item 34 that do not appear on — there is a pencil marking here and there is also a pencil marking there, and in addition to that the "Paid" stamp, unless it was put in upside-down, is not the same.

By Mr. Gallucio:

Q. Would you explain the differences in Commonwealth's Exhibit 23 and Commonwealth's Exhibit 34? Would you explain that, please? How does that appear?

A. The white copy is marked, paid, with the cashier's stamp. So is our copy. This copy would be facing the

page 287] clerk behind the desk, our copy, when the clerk would check out the guest.

They always hand the copy which belongs to the guest toward the guest this way, showing them the amount of the bill. When they are paid, they generally take the stamp and go like this (indicating), and this would be why this stamp, which is the same, made by the same rubber stamp, why this stamp would be upside-down and this one would be facing the clerk.

The pencil notation —

The Court: That is one of them?

The Witness: The pencil notation on the side is simply the clerk's pencil notation, Check-out, 4 p.m.

The Court: What is that circle around the $7?

The Witness: I don't know what the circle around the $7 would be.

By Mr. Gallucio:

Q. I notice that on the original you have the date, May 11, and on the last date on the original and on the hotel record, May 12 is the last date.

A. Because this is marked paid, this does not have the paid key. In other words, this one was put back in the *machin.*

Q. This one was not?

A. This one was handed directly to the guest.

Mr. Gallucio: To save time, Your Honor, I would page 288] like to offer these exhibits on the same basis.

Mr. Ahern: I will make the same objection, Your Honor. In addition to the fact that clearly one is not an original of the other, because there are notations on one that do not appear on the other.

Mr. Gallucio: I think the difference was explained.

The Court: I don't know what the differences are on these two bills. I haven't looked at them.

Mr. Gallucio: The same difference that appeared on the other bills.

The Court: As far as the first objection is concerned, it is overruled. I don't know that technically I can eliminate the second objection. The only person I know who can do it is the witness.

By Mr. Gallucio:

Q. Now, Mrs. Conti, I show you Commonwealth's Exhibit 24 and Commonwealth's Exhibit for identification No. 33, and ask you to compare those for the jury as to similarities and dissimilarities, with any explanation that may occur for dissimilarities?

A. This is the same situation, our copy and the guest's copy. The clerk here again would have stamped it, so that it is upside-down, so far as the paid stamp is concerned, on the

guest's copy, which would be sitting here, and the
page 289] right side up on the copy in front of the clerk.
There again the clerk has pencil notation of checkout here, and also this copy, the guest takes, and after this transaction this copy has been put back in the machine.

Q. When you say this copy, you mean the hotel's?

A. Our hotel copy has been put back in the machine, and the paid rung in the machine. This does not have paid on it, just the stamp.

Mr. Gallucio: At this point, Your Honor, I offer Commonwealth's No. 33.

Mr. Ahern: May I *aks* the witness just a question, Your Honor?

You didn't make these notations yourself, that you speak of?

The Witness: No, sir.

Mr. Ahern: You assume it was the clerk who made the notations, is that correct?

The Witness: I would assume.

Mr. Ahern: There is no signature there that you identified?

The Witness: No, I would assume so.

Mr. Ahern: You are merely assuming someone else made the notation.

Again, I object and renew my objection to the
page 290] original introduction of Exhibit 34 on the ground
that the witness is of the opinion that a clerk made the notation on Exhibit 34. There is a figure 7 in there that she doesn't identify, doesn't know what it is.

The Court: I think you misunderstood that. The figure is there with the regular typing, but it has a pencil circle around it that I called her attention to. If you look at it, you can see what I am talking about.

Mr. Gallucio: She doesn't know what the circle was around it, not why the 7 was there.

If it please the Court, the witness has testified these were records kept in the normal course of business. From her testimony she shows a definite procedure of keeping these records. I think under those circumstances they are admissible.

The Court: The objection is overruled.

Mr. Ahern: Request an exception, Your Honor.

The Court: You now offer in evidence Commonwealth's No. 33 and 34?

Mr. Gallucio: Yes.

The Court: Admitted.

(Records previously marked for identification as Commonwealth's Exhibits 33 and 34 were admitted.)

page 291] By Mr. Gallucio:

Q. Now, Mrs. Conti, I show you Commonwealth's Exhibit 25, which I think you have previously identified as the customer's copy, and Commonwealth Exhibit for identification No. 35, which you previously identified as the hotel's copy.

Would you compare those two copies for similarities and dissimilarities; and if any dissimilarities occur, would you explain if there is any explanation?

A. This is the same situation. Here is the customer's copy and this is our copy. The "paid" stamp here faces the clerk. The "paid" stamp here faces the customer. The copy was facing the customer.

Here again it has the pencil notation of checkout time, and here gain, after the customer has taken the copy, this, our copy, the hotel's copy, is put back in the machine and the "paid" rung through on the machine.

Mr. Gallucio: I offer Exhibit 35 in evidence, Your Honor.

The Court: It is admitted.

Mr. Ahern: I object, Your Honor, and request an exception be noted.

The Court: All right; exception is noted.

(Record previously marked for identification
page 292] as Commonwealth's Exhibit No. 35 was admitted.)

By Mr. Gallucio:

Q. Now, Mrs. Conti, I show you Commonwealth's Exhibits 30, 31 and 32, and ask you if you can identify those?

A. These are our regular registration form which the guest signs when he comes to the hotel. It has a date on it, the name.

Q. I am sorry, I didn't understand what you first said they were?

Beatrice Conti

A. The regular registrations which a guest signs when he comes to the Yorktowne Hotel.

Q. Would these have any relation to Commonwealth Exhibits 33, 35, and Commonwealth's Exhibit 34?

A. This is the guest account card which is made up from this registration.

Down here in this corner is an account number. In this case, it is 34675. This means that the guest's account in the hotel was Account No. 34675. This is tied up from the information on the registration.

Q. Would the record show that the witness is comparing Commonwealth's Exhibit No. 30 for identification and Commonwealth's Exhibit 34?

A. This account card has Account No. 34676. It means that the information on this registration is typed

page 293] on this account card, 34676.

Q. Would the record again show that the witness was comparing Commonwealth's Exhibit for identification No. 31 with Commonwealth's Exhibit 33?

A. This is Account No. 34677, which means that the information here is typed on this account, 34677.

Q. Would the record again show that witness is comparing Commonwealth's Exhibit 35 with Commonwealth's Exhibit for identification 32?

Mr. Gallucio: At this point, Your Honor, the Commonwealth offers into evidence Commonwealth Exhibits for identification 30, 31 and 32.

The Court: Same objection?

Mr. Ahern: I object, Your Honor.

The Court: Same ruling; same exception.

Mr. Ahern: Thank you.

The Court: Admitted.

(Records previously marked for identification as Commonwealth's Exhibits Nos. 30, 31 and 32 were admitted.)

By Mr. Gallucio:

Q. I show you Commonwealth's Exhibit No. 29 for identification and ask you if you can identify that?

page 294] A. This is a restaurant check which is posted on account card number —

Q. One moment, please. You say that is a restaurant check. How was that used in the normal course of business?

A. This shows that it is a room service order taken by the bellboys. It is a bellman's check for food or beverages that are delivered to a room, that shows that it was delivered to Room 415, or was called from 415, was delivered to Room 411 and signed for. That is posted on Account No. 34675.

Q. I ask you if Commonwealth's Exhibit 29 for identification has any relation to Commonwealth's Exhibit 34?

A. This is the restaurant which is posted here as the first item, restaurant $4.65 and our State tax, 19 cents. Restaurant, $4.65 and State tax, 19 cents.

Mr. Gallucio: At this point I offer into evidence Commonwealth's Exhibit for identification No. 29.

Mr. Ahern: I am going to object. I don't think there has been any connection between that restaurant stub and the room, to show that the defendant was in that room.

The Court: Let me see that a minute.

Let me see the other card.

The objection is overruled.

Mr. Ahern: Request an exception be noted, Your

page 295] Honor.

The Court: All right, exception noted.

(Record previously marked for identification as Commonwealth's Exhibit No. 29 was admitted.)

Mr. Gallucio: No further questions, Your Honor.

Mr. Ahern: I have no further questions.

The Court: That's all.

(Witness excused.)

The Court: How many of these green cards do you have?

Mr. Hassan: Three.

The Court: Has each of them a slip with it?

Mr. Gallucio: No, that should be for the last one I put in, Your Honor.

The Court: Now you would like to recall whom?

Mr. Hassan: FBI Agent Dane.

The Court: You have testified before?

Mr. Dane: Yes, I did.
The Court: You were previously sworn in this case?
Mr. Dane: I was.

Whereupon

JOHN WILLIAM DANE

was recalled as a witness by and on behalf of the plaintiff and, having been previously duly sworn, was
page 296] examined and testified further on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Mr. Dane, directing your attention to on or about the 13th day of May 1963, did there come a time when you had occasion to display any photographs to a Bryce Jackson?

A. I did.

Q. What photographs did you display to him?

A. Photographs, I had two of the defendant, one of Barbara Roberts, and one of the other individual, Taltavault.

Q. At that time, sir, did Byrce Jackson make an identification of any of those photographs?

A. He did.

Q. What identification did he make?

A. He identified all three of them as being guests in the hotel, Yorktowne Hotel.

Q. When did he identify them, if you recall?

A. I believe it was the 14th of May, in the afternoon, around lunchtime, the day that I was there, and previously testified as to searching the rooms.

Q. What year was that, Mr. Dane?

A. 1963.

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ROBERT H. ROBERTSON, M.D.,

was called as a witness by and on behalf of the
page 311] defendant and, having been first duly sworn, was
examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Ahern:

Q. Doctor, will you please state your full name?

A. Robert H. Robertson.

Q. Where are you employed?

A. I am a staff psychiatrist at St. Elizabeth's Hospital in Washington.

Q. How long have you been a staff psychiatrist?

A. Since 1953.

Q. Has that been at St. Elizabeth's?

A. That's correct.

Q. Where did you attend medical school, Doctor?

A. Temple University, School of Medicine, in Philadelphia.

Q. Will you please speak up?

A. Temple University, School of Medicine, in Philadelphia.

Q. When did you graduate from Temple University?

A. 1948.

Q. Did you pursue a specialty thereafter?

A. Yes.

Q. What specialty did you pursue?

A Psychiatry.

Q. Would you tell us what training you re-
page 312] ceived subsequent to your graduation from medi-
cal school?

A. I had a year's residency training in the Public Health Service Hospital for Addicts at Lexington, Kentucky, and two years' residency training at St. Elizabeth's Hospital in Washington.

I have taken the examinations of the Board of Psychiatry.

Q. Are you a member of the Board of Psychiatry?

A. Yes.

Q. Is that known by any other term? Are you a Diplomate?

Mr. Ahern: I submit the doctor has been qualified as a psychiatrist.

The Court: Unless there is objection, I would say so.
Mr. Hassan: There is no objection, Your Honor.

By Mr. Ahern:
Q. Doctor, during your employment at St. Elizabeth's Hospital as a psychiatrist, did you have occasion to examine Eugene William Rollins?
A. I met Mr. Rollins first in November 21, 1962, when he was transferred to my service.
Q. Do you have with you the records of St. Elizabeth's Hospital?
A. I do.
Q. Do those records indicate when Mr. Rollins
page 313] was committed to St. Elizabeth's Hospital?
A. He first came to St. Elizabeth's in September 26, 1956.
Q. Was that pursuant to a commitment of the United States District Court, do your records so indicate?
A. He was found mentally incompetent.

Mr. Hassan: I am going to object.
The Court: Objection sustained.

By Mr. Ahern:
Q. That he was committed to your hospital in when?
A. September 26, 1956. He was admitted.
Q. Pursuant to what order?
A. As I understand it, it was an order of the District Court.

The Court: The objection is sustained.
Mr. Hassan: Objection.

By Mr. Ahern:
Q. How many times did you examine Mr. Rollins while he was at St. Elizabeth's Hospital, if you remember?
A. I have five notes written, which means I examined him prior to writing each note. I have also examined him at other times.
Q. Did you confer with other doctors concerning Mr. Rollins' mental condition?
page 314] A. Yes, I have.
Q. Has that been on many occasions?

Robert H. Robertson, M.D.

A. That I couldn't specify, the number of times.

Q. Now, as the result of your — what did your examinations consist of concerning Mr. Rollins?

A. Interview.

Q. How long would these interviews take place?

A. I think half an hour.

Q. Did you have, for your benefit, the record showing prior interviews and diagnostic conferences?

A. I have the complete record of his hospitalization.

Q. Dating back to 1956?

A. And I am familiar with that.

Q. What would you do besides interview him? Anything else?

A. I had to take care of, if he wanted something he would have to come to me for it. I would have to deal with the request.

Q. As a result of these several interviews over the years, that you had with Mr. Rollins, and as a result of information which you had pertaining to his examination by other psychiatrists at St. Elizabeth's Hospital, did you form any opinion as to the mental condition of Mr. Rollins?

Mr. Hassan: I would like to object, unless the page 315] time of arriving at that opinion is established.

Mr. Ahern: I want to find out if he formed one first. Then I will ask him when he formed it.

The Court: The objection is overruled.

By Mr. Ahern:

Q. Did you arrive at any conclusion or opinion concerning the mental condition of Mr. Rollins?

A. I am of the opinion —

The Court: Did you or not?

By Mr. Ahern:

Q. Did you at some time reach a conclusion?

A. Yes.

Q. When did you first reach a conclusion as to his mental condition?

A. I think after the first interview that I had with him.

Robert H. Robertson, M.D.

Q. When, in point of time, would that be, Doctor?

A. And after I reviewed the record.

Q. When, in point of time, would that be?

A. I would have to look up the exact date. He was transferred to my service March 21, and it was very shortly thereafter.

Q. Do you have the records with you?

A. Yes, I do.

Q. Would you mind looking up that date from the records?

page 316] A. Yes. My first note was written on November 26, 1962.

Q. What opinion did you form on November 1962 concerning the mental condition of Eugene William Rollins?

A. At that time he suffered from schizophrenic reaction, paranoid type.

Q. Will you tell the jury what schizophrenic reaction, paranoid type, is, in lay terms, if you can?

A. Well, it is a major mental illness which consists of three major symptoms. One is *withdrawl* from, the individual withdraws from other people and lives alone. He doesn't relate to other people. He doesn't attach himself to other people, even to the point of, he may go off in a room and not even talk to anyone.

The second main symptom is that he has a loosening of his associations. This may vary from what we called a word salad to just disordered thinking, unrealistic thinking.

The third symptom is their feelings are not expressed normally, such as they may laugh when they talk about something very serious to them. It worries them. Instead of showing it, they will laugh.

In addition to that, they have normal mental faculties. They are clear as to what is going on around them, and these are the primary symptoms of the illness.

In addition, the more obvious symptoms of

page 317] hallucinations. The individual believes he hears or sees objects when there is no stimulus of his sensory organs, or he has delusions which are unreal ideas, which he will maintain despite any person reasoning with him. He will maintain them regardless.

Usually, or frequently, they are very bizarre. For example,

gas is coming through a hole in the floor, or that someone is talking to him at a great distance — rather peculiar ideas associate with it.

Q. Would you define the term, schizophrenic reaction?

A. Yes.

Q. Was that coupled with any other form of insanity?

A. In the particular instance?

The Court: You used the word, paranoid.

By Mr. Ahern:

Q. You used the word, paranoid. Would *youexplain* that to the jury?

A. There are four types of the schizophrenic reaction, one of which is the paranoid type. These individuals are a little better developed in their ability to get along and to do things, and they do form more ideas which are somewhat plausible, but associated with this are delusions of persecution and delusions of grandeur; usually with some bizarreness in these ideas.

Q. Did Rollins manifest any of these delusions
page 318] that you talk about? If so, tell us what he did, specifically.

A. In the early part of his hospitalization, the record indicates that he had bizarre delusions of grandeur and persecution. He thought that a psychiatric aide or attendant on the ward had visited his wife's home and been peeping in the window, and that when this individual became sick with a cancer, that it was the very fact that he had visited Mr. Rollins' home was the reason he developed the cancer. This is a magical belief that he would have such power over the man as to produce a cancer in him.

He had other, a fixed set of ideas that police and people in authority were hurting him; that the police were putting injections into his body in order to kill him; that the doctors also were doing this; that the police had gotten into a conspiracy with the physicians at St. Elizabeth's in order to harm him.

He said that he had shown up the police, and that is why they really hated him and wanted to hurt him. They wouldn't let him see his indictment papers, because they wanted to

see that he never got out of an institution.

He had other ideas of persecution. Let me see if I remember.

He said he did not trust the people at the hospital, and would not tell them his story. He frequently said

page 319] that the people at the hospital were against him.

Q. The fact that sometimes he would not tell his story, is that typical of a person suffering with this type of mental illness?

A. Yes, it is.

Q. Have you had occasion to read a report from Bellevue Hospital in New York concerning an examination conducted in May of 1963 and going, I believe, into June?

A. *As* I read this report this morning.

Q. Does that report confirm your opinion as to —

Mr. Hassan: Objection.

The Court: Objection sustained.

By Mr. Ahern:

Q. Are you in agreement with the report that you read from Bellevue?

The Court: Objection sustained.

I understand he made his opinion without ever seeing this report. We are trying to get his opinion. He has already given it.

Objection sustained.

By Mr. Ahern:

Q. Doctor, did there come a time when Rollins escaped from St. Elizabeth's Hospital?

A. March 31, 1963, he was placed on unauthor-

page 320] ized leave. He did not return from 9 p.m. ground privileges.

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page 334]

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Q. Doctor, let me direct your attention to March of 1962.

A. Yes.

Q. That record. Wasn't there a finding at that time that he was competent to stand trial, that he knew the difference between right and wrong, and could assist counsel —

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The Court: Have you got the file?

The Witness: Yes.

The Court: Well, let's refer to the particular report he is talking about.

The Witness: You want me to answer that?

In May, I think it was, 1962, it was the decision of the doctors and authorities at the hospital that he was competent to stand trial. So he then was sent back to jail and stood trial.

As I understand it, that is not tantamount to mean that he was well.

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The Court: I asked the doctor to turn to the report and see whether it contained this language of right and wrong.

Mr. Ahern: Yes, sir; I know you did.

page 336] The Witness: Recommendations. This is dated April 1st, 1962. Recommendation for discharge to court. It ends up stating:

Recommendations. In our opinion he is mentally competent for trial; and, two, he was suffering from mental disease on or about April 20, 1956, and the criminal acts with which he is charged is committed by him, if committed by him, were the product of mental disease.

Would you like more?

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Robert H. Robertson, M.D.

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The Court: Is there any language in there about knowing the difference between right and wrong?

The Witness: No, there is not.

Mr. Hassan: Is there any language in there about his ability to assist counsel in his defense?

The Witness: Let's see, '62. Yes, it does, in the next paragraph.

Subjectively, the patient feels that he understands the nature and character of his charges and is capable of assisting his counsel in his defense. That of course, is subjectively.

page 338] His only concern is that his mother, who is suffering from a severe heart condition, ought not to be brought to court, into court as a witness.

The Court: I don't know whether that answers the question or not. He pointed out that this was a subjectively, meaning, I take it, that this was the patient's opinion of himself and not the doctor's opinion of the patient.

By Mr. Hassan:

Q. Does it say that in there, Doctor, or did you add that parenthetically?

A. No, the subjectively is the beginning word there. But I know from experience at the hospital it means objectively, too. This means that the physicians feel that he is competent to assist in his own defense.

Q. He understood the charges and was competent to assist in his defense?

A. Yes.

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Q. Doctor, you have not examined him since March of 1963, have you?

page 345] A. That's correct.

Q. And you know nothing about his condition since March of 1963?

A. That's correct.

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By Mr. Ahern:

Q. Doctor, I show you what has been marked as Defendant's Exhibit 1-A. Can you tell us what that purports to be, or what it is?

A. This is the original hospital record of Eugene W. Rollins at St. Elizabeth's Hospital, one part of it.

page 348] Q. I show you what is marked 1-A; what does that consist of — 1-B, rather. What does that consist of?

A. This is the second part of his original record; the correspondence folder is what we call it.

Mr. Hassan: I am going to object to it, Your Honor. They are replete with hearsay, and are not subject to cross-examination.

Mr. Ahern: I am offering them in evidence as official records of St. Elizabeth's mental institution for consideration of the jury on the theory that they contain medical records dating back to 1956, up through 19 — March of 1963.

The Court: Objection sustained.

Mr. Hassan: I also object to the correspondence on the same grounds, Your Honor.

The Court: He hasn't offered them.

Mr. Ahern: I am not offering the correspondence, if the other exhibit is not received.

And, with that, I have no further questions of the doctor.

The Court: Are you through with the doctor now?

Mr. Ahern: I take exception to your ruling. I am through with the doctor.

Is Mr. Hassan through with the doctor?
Mr. Hassan: Yes.

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ARTHUR CENTOR,
was called as a witness by and on behalf of the plaintiff in rebuttal and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Gallucio:
Q. Doctor, would you state your name, please?
A. Arthur Centor.
Q. Where are you employed, sir?
A. Southwestern State Hospital, Marion, Virginia.
Q. What is your profession there?
A. I am chief psychologist.
Q. How long have you held that position?
A. Eight and a half years.
Q. Have you been recently appointed to another position?
A. I have been appointed by the Commissioner of Mental Hygiene and Hospitals, the State Department, effective March 1st, as Director of Psychological Services. This is a position in which the psychologist is in charge of all the psychological services or psychologists in all of the State hospitals in all of the State clinics under the Department of Hospitals in the Commonwealth of Virginia.

Q. Now, Doctor, could you please give your
page 365] educational background and experience in outline form, please?

A. I received my Bachelor of Science in Psychology from the City College of New York in 1950; my Master of Science from the same college in 1951. I began studies for my Ph.D. degree at New York University in 1951, and have completed all of the requirements for the Ph.D. degree, including my

thesis and the final orals.

Now, the Ph.D. degree will be granted February 23 of this year, so that in this interim period I am not entitled to put the Ph.D. initials after my name, but I have all the privileges, having completed all of the requirements of the Ph.D.

I had a year's internship at Crownsville State Hospital, Crownsville, Maryland; and was staff psychologist for a year and a half at Southwestern State Hospital before becoming Chief Psychologist there, making my total experience over eleven years.

I am a member of the American Psychological Association, Virginia Psychological Association, Southeastern Psychological Association, and Medical Correctional Association.

Mr. Gallucio: I submit, Your Honor, that the witness is qualified as an expert.

Mr. Ahern: I would like to ask a few questions, Your Honor.

page 366] Mr. Gallucio was calling you Doctor. Actually, you are no doctor of anything yet, are you?

The Witness: Effective February 23.

Mr. Ahern: That is something — the end of the world may come between now and then.

The Witness: That's perfectly correct.

Mr. Ahern: So you are not a doctor at all?

The Witness: You are perfectly correct.

Mr. Ahern: You do not get this title, if you get it — you will be a Doctor of Philosophy?

The Witness: That's correct.

Mr. Ahern: Is that correct? You don't hold any M.D. degree?

The Witness: No.

Mr. Ahern: Do you?

The Witness: No.

Mr. Ahern: And you haven't taken any courses in psychiatry, have you?

The Witness: I have taken courses in diagnosis and evaluation, yes.

Mr. Ahern: But you hold no degree pertaining to the field of psychiatry?

The Witness: I don't have a medical degree.

Mr. Ahern: I submit this man is not qualified to
page 367] testify to mental condition. He is not an M.D.
He is not even a Ph.D.

Mr. Gallucio: He is qualified to testify as a psychologist.

Mr. Ahern: He may be able to test, but I don't see how he can testify as to a medical condition. He doesn't have his Ph.D. yet, and strictly is a layman as far as I know. He can testify as a layman, I suppose, but I don't see how he can testify as an expert, and the jury be apprised that he is an expert.

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Mr. Hassan:

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I would like to have the record contain some additional
questions of Mr. Centor before this question is
page 370] considered by the Court.

Would you take the stand?

Mr. Ahern: He has already submitted that the witness was qualified.

Is he going to be allowed now —

Mr. Hassan: If he finds him unqualified, we can come back and ask some more questions in an attempt to qualify him.

The Court: I don't think there is any question about it being proper to ask him more questions.

Mr. Ahern: I withdraw the objection.

Whereupon

ARTHUR CENTOR

resumed the stand and testified further on his oath as follows:

DIRECT EXAMINATION (Resumed)

By Mr. Hassan:

Q. Mr. Centor, during the eleven years you have been a

practicing psychologist, have you had occasion to testify as an expert in any court?

A. Yes, sir; in the Commonwealth of Virginia, about forty times as an expert witness.

Q. Have you testified in any other courts beside the Commonwealth of Virginia?

A. No, sir.

Q. Have you practiced psychology, the profes-
page 371] sion of psychology as a psychologist, in any other State besides —

A. In Maryland.

Q. In Maryland.

Now, in the course of your experience, have you had medical boards consider your diagnostic opinion in the determination of the mental capacity of any individual?

A. The staff conference which passes on the diagnosis of all criminal cases at Southwestern Hospital consists of the Superintendent, Clinical Director, and myself. And it is the opinion of the three of us that determines the final diagnosis.

Q. Your opinion is a part of the final diagnosis?

A. Very important part of it.

Q. How many cases during the past eleven years has your opinion been a part of the final diagnosis?

A. Two thousand, almost; I am a little bit short of two thousand.

I am sorry; it is two thousand at Southwestern Hospital, in ten years. There were approximately fifty more at Marion. So it would be over two thousand.

Mr. Hassan: I think that completes the —

The Court: I didn't understand exactly about the board at the hospital. Do you mean that each member of the board takes a vote, gives his opinion?

page 372] The Witness: It is a staff conference after the workup.

The Court: I am not talking about that. After you get through with all the conferences, when you make the conclusion, the determination, who does that?

The Witness: All of the opinions are heard, but it is the superintendent who affixes the final diagnosis.

The Court: All right.

Mr. Ahern: Are you a clinical psychologist?

The Witness: Yes, sir.

Mr. Ahern: What is a clinical psychologist?

The Witness: A clinical psychologist, as opposed to other types of psychologist, experimental, educational, industrial, military, child — various branches in psychology — clinical is one who deals with the same type of material that psychiatrists would.

Mr. Ahern: You get no special papers or degree to show you are a clinical psychologist, do you?

The Witness: No.

Mr. Ahern: Do you get something in addition when you get your Ph.D.?

The Witness: No.

Mr. Hassan: One further question:

On your thesis for your Ph.D. degree, what was page 373] the subject?

The Witness: Prognosis in schizophrenia.

The Court: Prognosis in?

The Witness: In schizophrenia. My specialty was schizophrenia for the thesis.

The Court: All right.

You want to ask him any more questions?

Mr. Ahern: No, sir. I was just wondering if Your Honor would allow us to, bearing in mind he has submitted his thesis but *heis* not Ph.D. — I wonder if Your Honor would allow us to research this a few minutes? I didn't realize when —

The Court: I think we had better pursue this a little bit more.

I am satisfied he is an expert. Of course, a metallurgist would be an expert, too. What is he going to testify to?

Mr. Hassan: He is going to testify to the tests and examination that he conducted in the field of psychology with this defendant when he was confined to Southwestern State Hospital, to his examination of the records, of the past history of this defendant, and to his recommendations and diagnosis which were submitted to the staff in the final consideration of Mr. Rollins' case at Southwestern Hospital. page 374] All of the participating members of that staff conference are here to testify — all of those records. He conducted some eleven tests and has examined, in arriving at his conclusions, the report of Bellevue Hospital

and the reports of St. Elizabeth's Hospital, and the records and reports which he helped make at Southwestern State Hospital.

The Court: Is the report of the Bellevue Hospital here?

Mr. Hassan: Yes, sir.

The Court: And he examined this?

Mr. Hassan: He used it in his examination at Southwestern at the time he arrived at his opinion. It was a part of his consideration when he arrived at his opinion in this case, the last examination.

The Court: Now then, I think where we possibly come to a legal question here is his diagnosis. I take it this is where the objection comes?

Mr. Ahern: Yes, sir.

Mr. Hassan: I don't know whether it is the proper word or not. I am not versed in those terms.

Mr. Ahern: Prognosis.

The Court: Prognosis.

Mr. Hassan: He does arrive at the results that are furnished by the tests he runs, and he is qualified to arrive page 375] at those results and to express his opinion based upon those tests as a clinical psychologist. And when I used the word, diagnosis, I mean within the field of clinical psychologist, which also, I think, is entitled to an opinion on prognosis.

The Court: Well, I am not sure that the two would necessarily be the same thing.

Mr. Ahern: I have one more suggestion. I am trying to aid the Court. I think that he should be limited to the function that he exercised during the conference.

The Court: Well, I don't want to agree to that right here. Possibly that is true, except that he is one of the people that looked at this record yesterday, and I don't know whether this is going to make any difference in his testimony or not; but if he is going to testify with respect to that, maybe the Court might not agree with this last suggestion.

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The Court: Recess for twenty minutes.

(Short recess.)

The Court: Did counsel have anything else to say? You said you wanted to research a point.

Mr. Ahern: No, I think in the *Jenkins* case, which we gave Your Honor, Judge Fahey's concurring opinion; Judge Fahey's concurring opinion spells it out pretty well as to our contention.

The Court: Do you have anything you want to say?

Mr. Hassan: We have nothing further to say.

The Court: Well, I have read the *Jenkins* case, and on the basis of the *Jenkins* case, on the basis of the *Jenkins* case and on the basis of the decision referred to by the Commonwealth's Attorney, particularly paragraph or section No. 459 of the Criminal Evidence, Wharton's Criminal Evidence, Underhill's Criminal Evidence, Volume 2, the Court will overrule the objection.

page 377] As I see it, this is a question of weight and not one of competency or admissibility. Competence meaning practically the same thing as admissibility here.

Under the law, as I understand it, it is not necessary to have an expert to testify on a question of sanity. A non-expert, lay witness, can testify if they have had the opportunity over a long time to observe and to be associated with the subject.

Of course, the development of the expert, I think, has come about by reason of the application of tests which would certainly be difficult, if not impossible, for persons without the peculiar training to use. I don't mean that a non-expert could testify in a case where there hadn't been the opportunity of observation and association.

However, this particular witness appears to have had so much contact with this case, that I am not sure he couldn't testify as a non-expert. He is not offered as a non-expert, and he would go before the jury having been admitted as an

expert, which would carry with it some connotation of authority from the court.

This, I think, can be taken care of by proper instruction in which the jury could be told that they are not bound by the testimony of an expert, in that they are to give their evaluation to the weight and worth of his testimony.

page 378] The objection is overruled.

Mr. Ahern: Take an exception, Your Honor.

The Court: Are you all ready?

Mr. Hassan: Yes, sir.

The Court: Jury.

(The jury resumed its place in the jury box.)

Whereupon

ARTHUR CENTOR

resumed the stand and testified further on his oath as follows:

DIRECT EXAMINATION (Resumed)

By Mr. Gallucio:

Q. Going back to your experience and background, how long have you been employed in the field of psychology?

A. Over eleven years.

Q. Where has that employment been, and the duration?

A. One year at Crownsville State Hospital, Crownsville, Maryland, as an intern, and that was the year of '52 to '53.

Then was appointed Staff Psychologist at Southwestern State Hospital, October 1954. Became Chief Psychologist at Southwestern State Hospital in August of 1956, and have been Chief Psychologist there, and will assume my duties March 1st as Director of Psychological Services in Richmond.

Q. This last appointment of yours, what is the nature of that?

page 379] A. The Director of Psychological Services —

Mr. Ahern: I object. This is something that is prospective. It is not experience that he already has. It is something he anticipates getting in March. I object to the question. Irrelavant.

Mr. Gallucio: Goes to the qualification and experience and

so forth of this witness.

The Court: The objection is overruled.

The Witness: Director of Psychological Services is under the —

Mr. Ahern: Exception, Your Honor.

The Court: Yes.

The Witness: — is directly under —

The Court: You have already been appointed to this job?

The Witness: Yes, sir.

The Court: You just have not qualified?

The Witness: No, sir; I have been appointed. I will assume my duties March 1st. It has been announced in the papers.

The Court: Go ahead.

The Witness: Director of Psychological Services in the State Department of Mental Hygiene and Hospitals assumes responsibility for all of the psychological services page 380] in the five State hospitals: Southwestern, Eastern, Western, and Central, DeJarnette, and the two training schools, Petersburg Training School and Hospital, and Lynchburg Training School and Hospital, and all of the mental hygiene clinics in the Commonwealth of Virginia. I don't know the exact total today — they are increasing — but I believe it is about twenty.

By Mr. Gallucio:

Q. Could you briefly explain to us what your duties have been at Southwestern Hospital?

A. As Chief Psychologist, I supervise other psychologists, when they were available. At present there is one in service now, to return. Essentially, for the past more than ten years I have limited myself to the interview and testing of what are called criminal cases. Criminal cases are those sent by the courts under special section for care and observation to determine whether they are competent to stand trial.

We now number some 300 per year of such cases, and I have individually tested and offered my reports, insofar as my findings and diagnosis on these cases, on each criminal case that has been sent up.

Q. How many criminal cases of this nature have you been involved in, or examined — patients?

A. I believe it is about at the two thousand mark now.

Arthur Centor

Q. Have you examined, had any of this type
page 381] cases at your other employment?

A. I was involved in the testing of criminal cases when I was doing my internship at Crownsville State Hospital, Crownsville, Maryland, but not exclusively. I have been doing practically exclusively criminal cases at Southwestern.

Q. These criminal cases at Southwestern, after you make your examination, what is your next step, after you examine the patient, and what function do you play in the over-all determination?

A. In this particular setting the examination of the court cases is very carefully reviewed of all available information, because some opinion has to be passed insofar as the patient's condition at the time of the alleged crime.

History in this case is very important. I, myself, don't gather this material. We have a social worker who does this.

Then, interview with the patient insofar as his psychological standing for the present, and some examination, talking with him about his, to help determine his, condition at the time of the alleged crime, after which I engage in psychological tests, whatever tests I consider necessary. Some are longer, some are shorter. I then dictate my report, which is entered in the file, after which we will have a final staff conference.

page 382] Sometimes there is a preliminary staff conference in some serious cases — not always. But there is always a final staff conference, at which the Superintendent, the Clinical Director and I will review all of the material, the history, the interview, the psychological tests, other laboratory tests, interview the patient again and then, when the patient has left, give our opinions as to the diagnosis in the case, and then the Superintendent will make the diagnosis that he will offer for this particular case, and send it back to court.

Q. Do you remember an opinion at the staff conferences?

A. Yes, sir.

Q. As to the mental condition of the subject being studied or examined?

A. Yes, sir.

Q. We have been calling you Doctor, I realize this is a

little premature, since your Ph.D. will not become effective until February. But you have submitted a thesis for your Ph.D., have you not?

A. I have.

Q. What was the subject of that thesis?

A. I have submitted it and defended it. I don't know if you know the workings of the Ph.D. degree, but you submit an original piece of research in any area that is acceptable to the faculty of the university you attend — in my page 383] case it was New York University — after which you submit this thesis; you must defend it before the faculty. I have defended it successfully. I have been notified that the thesis was acceptable, and my oral examination was acceptable. This was on the prognosis of schizophrenia.

Schizophrenia is a very large field, and I was involved in research in the diagnosis and prognosis in schizophrenia.

Q. Which part of that field did your thesis cover?

A. It covered, well, the history of schizophrenia, the diagnosis of schizophrenia, and the prognosis of schizophrenia based on certain psychological tests and diagnosis.

Q. Now, with regard to the, could you briefly explain for us the function of a psychologist?

A. The psychologist is involved in the whole study of human behavior. As such, he may use any type of material available to him: the history, observation. In case of infants, that is about all you can do is observe. With adults you can sometimes form your opinion as to his functioning and why he does certain things, what he is expected to do on the basis of observation. Very often psychologists will use, in addition to this observation and their history, psychological tests.

From all of these together, it is expected the page 384] psychologist will be able to form some sort of opinion about this individual insofar as normality or deviations from normality are concerned.

Q. You have talked about psychological tests. What is the nature of these tests?

A. Anything that an individual does which will help you form some sort of opinion of how he would be expected to function is a psychological test, instead of knowing everything at all about this individual, which is the best way to

form an opinion about him. If you could know all there is to know about any one individual, you could say, I expect in the future that he will behave in such-and-such a manner, normally or abnormally or whatever.

In the absence of such information, you administer tests to help you in your opinion as to how this individual might behave in the future and explain why he is behaving a certain way in the past.

There are different types of tests. Some are simply occupational; some are language tests. Some are considered by the profession of psychology to be of a higher order.

Q. Are these standardized? Do you have standardized tests that you administer?

A. There are tests that, as I say, are more acceptable to the members of the profession. Some tests are page 385] more acceptable than others. They are all called tests, but, for the most part, the body of psychologists will accept an individually administered intelligence test and one of the major projective techniques is either the Rorschach or the TAT.

Q. Could you briefly outline for us, or describe for us, what the intelligence test is, and what its purpose is?

A. This particular intelligence test that I administered is known as the Wechsler Adult Intelligence Scale, and because of the initials, it is called the WAIS. It is a test which is composed of eleven separate tests which tap the intelligence of this individual, or his function, his present functioning.

These eleven sub-tests, when added together in a certain way, yield an I.Q. score, but the interaction of the eleven sub-tests, as he performs on the eleven sub-tests, allows the psychologist to obtain more information than just how intelligent or lack of intelligence the individual has. It helps you get at certain information, such as brain damage. It helps you get at certain information regarding neurotic conflict, anxiety, agitation, severe emotional disturbance, and also, very often, we will be able to differentiate between a mild emotional disturbance and severe mental and emotional disturbance, such as psychoses or schizophrenia.

Q. I have heard you mention the Rorschach test.

Arthur Centor

A. Commonly known as the ink blot test. Most
page 386] people know it by that name. There are ten ink
blots. Ink blot is simply made by dropping ink on a sheet of paper and folding it over and smearing it out on the inside. Ten such ink blots have been found to be especially useful in getting at the personality of the individual. It is still a test. It is not perfect. But it helps us with other information to determine the personality of the individual, to test for the various diagnostic categories, mental disturbance, lack of mental disturbance, and so on.

Q. Now, did you have occasion to see the defendant, Mr. Rollins?

A. I did, on three occasions I saw him individually; on two occasions I saw him as part of a staff conference.

Q. Is that five altogether?

A. That is five. I am talking about insofar as specific study is concerned. I may have seen him on the wards, too. I don't consider this seeing him.

Q. When was the first time you saw him, the defendant?

A. Let me mention that he was admitted to our hospital for study and care July 1st, 1963, and the first time I saw him was the day after this, July 2, 1963. That was for some twenty minutes, between 9 and 9:20.

Q. What was the purpose of that interview?

A. To become acquainted with the patient, since
page 387] I was going to test him at some future date rou-
tinely. I was interested in seeing this patient as early as possible after he came.

Q. Is there anything of substance that would relate to later findings of yours in this interview?

A. At this particular time he had come to us directly from Arlington Jail and was non-communicative at this time. He appeared to be under sedation. I couldn't tell whether his difficulty in speaking or communicating was due to this or for some other purpose, and I held my opinion in reserve. He did communicate a little with me, gave me certain name and address, and I jotted it down, sent him back to the ward.

Q. Did there come a time when you again saw Mr. Rollins?

A. I saw him again Sunday. This happened to be a Sunday, July 28, for 25 minutes, from 1:20 to 1:45 in the afternoon.

At that time he refused to communicate with me. He refused

to tell me anything, refused to undergo psychological tests; had nothing to say. Responded to nothing, to very specific and direct questions. He was returned to the ward.

Q. Now, did you have occasion to see him again?

A. I saw him this time for the third time on August 19, 1963.

No, I am sorry; that is the date of the report. I saw him August 9th for interview, between 9 and 11:10 — page 388] that is two hours and ten minutes — for testing. 1:50 to 4 p.m. Again on August 9th.

Q. What was your purpose in seeing him on that date?

A. Well, this was to comply with the court order to observe him and to report, to determine whether he was capable of being returned to court to stand trial — in other words, whether he was competent to confer with counsel; and to administer whatever tests I felt were indicated, to interview this individual in relation to all of the information we had on him and to offer a report for consideration of the staff.

Q. Now, did you have information concerning his past history?

A. At this particular time we had information from members of the family, from St. Elizabeth's, from Bellevue, certain newspaper articles, FBI reports. This, and I am pretty certain we had some report from other places he had been.

Q. What was the, what did your interview from 9 to 11 that morning consist of, or from 9 to 11:10?

A. The purpose of the interview is essentially, at first, to determine whether he is now competent to confer with counsel, capable of being returned to court, whether there is any sign of mental illness now in such, the areas of questioning in such cases — just review the entire life of the individual, finding out what he has done, the history of the page 389] individual as it comes from him, what he is able to report, to determine whether any distortions, any types of, what are commonly called imaginations, and then to question him about the alleged crime; to determine what his thinking was about the time of the alleged crime; and from this information, which would be, which would make up the body of the interview section of my report, I then proceeded into the testing section.

When I was satisfied that I had all of the information that

I needed or was obtainable from the patient in this case, it took some two hours.

Q. Then you had a testing, administered tests in the afternoon. What test did you administer?

A. I administered the one that I described, the WAIS or the Wechsler Adult Intelligence Scale, and the Rorschach, described as the ink blot test.

Q. Have you evaluated and collated and interpreted those tests?

A. I have.

Q. Would you please go through these tests by the sub-group and give us the results of those tests, please?

A. The two highest scores that the patient achieved were in information and vocabulary — well above average — indicating that the patient is well-read, has devoted himself to gathering information, and uses words on a level that is above the average.

page 390] Then his other tests are fairly level, about the average range.

Q. What are those sub-groups?

A. The other tests are comprehension, a knowledge of what to do under certain circumstances, or what is expected of one to do under certain circumstances, a sort of social comprehension.

Another sub-test was an arithmetic test, he being able to do arithmetic computations, some simple, some difficult.

Another test is similarities, in which one is, the patient is, asked to give the similarity between two objects — for example, an orange and a banana: In what way are a banana and an orange similar? They both have skin, you eat both, or both are fruit.

From there it becomes more difficult.

Some people with brain damage are unable to do the more difficult ones.

In this sub-test, a digit span, in which digits are asked, are given to the patient from smaller numbers to increasingly larger numbers. The patients repeats them backwards and then is asked to a different set of numbers to repeat one set forward and one set backwards. That is known as digit span.

page 391] I have already told you about information vocabulary.

Then these six make up the verbal scales; these tests reflect education and experience. And then there are performance tests, such as putting colored blocks together according to design, arranging certain types of puzzles together, something like object assembly tests.

Cartoon sequences are not in the right order, and the patient is asked to put them in the right order, to make up a story.

Picture arrangement; picture completion, in which a set of, a series of pictures have a certain essential part missing. The patient is asked — a car might have a door handle missing and by looking, observing this picture or drawing, the patient is asked to name what is missing. That is one part of the performance test.

Another, and the last, actually is the digit symbol, in which the patient has a code — each number has a certain mark — then he has these marks to fill in under, in the blank spaces under these numbers which come in different order, and the speed helps to give us a certain type of information about the individual.

When all of these tests, eleven sub-tests were taken together and manipulated in a certain way, according to the acceptable procedure, according to the manual,

page 392-3] he was found to be of average intelligence; no deviation in any of these eleven sub-tests indicated any type of mental disorder, an emotional disturbance, or any type of severe mental disorder such as psychosis or any brain damage affecting intellectual function.

Q. Now, tell me, Doctor, I meant to ask you earlier, is psychological testing normal in the testing of subjects to arrive at their — is it a normal procedure to arrive at their—

A. Let me say this: Where the diagnosis in the case is very obvious, where you have somebody who is so disturbed and has been so disturbed over a long period of time, psychological testing is not indicated. When the diagnosis is so obvious that anyone could make the diagnosis, even a first-year medical student, you don't administer psychological tests. It is not indicated.

Where there is any question, where there is a question that

the patient may be malingering, where there may be a question where the patient may have some self-serving needs to give you certain types of information about himself, then it is commonly accepted today that the psychiatrists will request psychological testing, and it is a procedure in our hospital to have psychological testing on all cases other than those that are so disturbed and so violent that psychological testing is, on the face of it, not indicated.

Q. I notice in your answer you said, in any case page 394] where you think there may be malingering and self-serving. Are these tests more objective than a normal?

A. The purpose of psychological tests in criminal cases is, in my opinion, and in the opinion of the members of my staff, extremely valuable because where criminal charges are involved, it is quite often found that the one charge of the defendant will give certain bits of information which are self-serving, sometimes to attempt to steer towards a diagnosis or conclusion which is in his favor. Psychological tests attempt, not always successfully, I admit, but attempt to cut under this malingering, this attempt to serve one's self, by making certain statements to psychiatrists.

Q. Did you state you administered shock?

A. I did.

Q. Would you please tell us the interpretation, the purpose, and the result of this test as administered by you on the defendant, Rollins?

A. On the face of it, most people will laugh, perhaps—it would seem as if one couldn't get anything out of response to ink blots themselves, but the test has been in existence fifty years and it is accepted in our profession, and it is accepted by the medical profession as being able to differentiate between brain damage and normal brain functioning, between the severe mental illnesses and the lack of severe page 395] mental illnesses and the allied disorders.

In this particular case, the patient was very cooperative in giving a full and complete Rorschach protocol. He was extremely cooperative and no suspicion of malingering was entered.

I believe the patient cooperated fully in giving extremely fine responses to these ten cards.

Arthur Centor

When these responses were evaluated and analyzed and studied, it was my opinion that there was no evidence on the basis of his performance on this test of any brain damage affecting intellectual functioning or of any mental disorder. There were no signs of any residuals of any mental disorder, and that the type of responses that he gave to this test were indicative of a diagnosis of sociopathic personality disorder, anti-social reaction.

Q. Was this opinion and diagnosis reached on the sole basis of the Rorschach or your other tests and history, and so forth?

A. Well, the protocol itself, when you say protocol, you mean the test itself, the responses to the test, were indicative of this diagnosis.

After all, it is only a test and you tend to relate this to the life experience of the individual and tests can be wrong.

page 396] But when the picture that emerged from all the psychological testing and the picture that emerged from my interview with the patient, and the picture that was apparent from the history of this patient, there was no conflict at all. So that the history, clinical interview, and test results pointed to one diagnosis.

Q. And you reached an opinion as to that?

A. That is my opinion.

Q. What is that opinion?

A. The opinion is that the patient was not now mentally ill, not now suffering from any type of mental illness; showed no residuals, or nothing remained of any previous mental illness, no signs of it; and that apparently the patient has been and was, at the time of testing, an individual that we categorized by the term, sociopathic personality disturbance, anti-social reaction, which, in *essense*, is the *termwe* offer to individuals that are not suffering from any mental disturbance, but who engage in acts that are against the commonly accepted code of society. And that is what we mean by sociopathic; ill, in terms of society. They would go against the codes and laws, mores of our society.

Q. What was your diagnosis?

A. Sociopathic personality disturbance, anti-social reaction.

Arthur Centor

The major category of sociopathic personality
page 397] disturbance, the personality part of the diagnosis
tells you that it is not a psychosis or a neurosis.
This automatically eliminates any type of several mental illnesses.

The sociopathic personality disturbance is a disturbance of character, a disturbance of, a way of behaving in society. It is not a mental illness in the terms of psychosis or neurosis. It is a personality disorder manifested by illness in terms of society, and the particular category of this larger group would be anti-social reaction. That is, the behavior manifested, the type of behavior that he shows, would be in the direction against society; anti-social.

Q. Is this considered as a mental disease, this diagnosis?

A. We do not consider such individuals committable to state institutions. These people are suffering from a personality disorder and not from any type of mental illness that would allow him to be committed for mental illness to any institution.

The Court: He didn't answer your question.

The Witness: Well, we have it categorized in this manual of mental disorders, and as such his behavior is due to all of the things that make up an individual. His mental attitude is such that he doesn't, such individuals, he or she, doesn't
wish to conform, doesn't elect to conform, doesn't
page 398] want to conform to the laws of society. As such
it is a type of willful mental problem, because
such individuals will continuously be in trouble; but it is not a mental illness.

The Court: That wasn't the question he asked you. He asked you if this was a mental disease. I don't know whether there is any distinction between mental illness and mental disease or not, but that is the question.

The Witness: I equated it, the mental disease. It is not a mental disease.

By Mr. Gallucio:

Q. Would a psychosis be a mental disease?

A. Yes.

Q. Neurosis, would that be?

A. That would be a mild mental disease.

Q. Now, someone with sociopathic personality disturbance, anti-social reaction, is he one who is able to tell the difference between right and wrong?

A. Under most circumstances, there may arise situations in which he is—now, let me give you an example. You asked for a broad yes or no. But if the individual is under self-administered or not self-administered drugs or alcohol, or is suffering from a high fever or is suffering from a blow on the head, or develops some type of brain injury, at such times he may not be; but except for these circumstances, such

page 399] individuals know the difference between right and wrong, know the nature and consequences of their acts, are able to conform; elect not to.

Q. Doctor, in arriving at your diagnosis, did you have hospital records from St. Elizabeth's?

A. We had a report from St. Elizabeth's. We didn't have the complete; we didn't have all of the records, no, sir.

Q. You were well aware of the diagnosis and prognosis of St. Elizabeth's?

A. Yes, sir.

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page 400]

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ARTHUR CENTOR,

resumed *and* the stand and testified further on his oath as follows:

DIRECT EXAMINATION (Resumed)

By Mr. Gallucio:

Q. When we left off last, we were talking about records from St. Elizabeth's. I believe you said you had a report from St. Elizabeth's?

A. That's right.

Q. Were you aware of the diagnosis of St. Elizabeth's as to the defendant, Mr. Rollins?

A. Yes, I was.

Q. What was that diagnosis?

A. Schizophrenic reaction, paranoid type.

Q. Going back to your psychological testing, and your interviewing and your history and so forth, was there anything, or did you, with that diagnosis in mind, feel that the facts and your diagnosis should be changed in any respect?

A. No.

page 401] Q. Would your test and your examination and history disclose symptoms, or symptomology of Schizophrenia?

A. Yes.

Q. And what nature would they disclose this?

A. In the test, there would be evidence of a thinking disorder in this particular type of psychiatric disorder. That is, in this particular case, what is disturbed is thinking, essentially.

Q. In which case are you talking about?

A. Schizozphrenic reaction, paranoid type.

Q. You found no evidence of—

A. No evidence at this time, nor did I find any residuals, which means that there are instances where individuals are apparently or clinically recovered or improved and yet, in their test material on such projective tests as the Rorschach or ink blot test, there will still be indications or residuals or sub-clinical indications that the individual has suffered recently some type of severe mental disorder; is now apparently or clinically improved to all observation, but there is still something—we call them residuals—remaining, which are just confirmation that the individual has suffered such a disorder.

Q. I believe you gave these tests, did you state, on the 9th of August 1963?

A. Correct.

page 402] Q. Doctor, assuming that someone with schizophrenia, paranoid type, had an episode—and I think that is the word generally referred to, is it not; how is that explained, an episode?

A. An episode is just a period of time, mental disease during a period of time. He had a psychotic episode, meaning encapsulating a certain period of time—it could be a twenty-

year episode or a one-day episode.

Q. Psychotic episode would be—

A. Period.

Q. A period where the symptom or the symptomology manifested itself; is that correct?

A. That's correct.

Q. Assume that someone with schizophrenia, paranoid type, had a psychotic episode on May 11, 1963; would it be probable or improbable that at the time of testing, at a date of August 9, 1963, that there would be some—did you call it residue or residuals, apparent in your test?

A. Under the circumstances you just state, I have to answer that I can't tell. I would have to know more than whether this episode was a one-day episode or not.

You see, if you are asking an individual who suffered a one-day episode on May 11 and no other, not on May 10th and not on May 12th, would there be residuals on the page 403] day of testing. I say I cannot be sure.

Q. What is the probability of that?

A. I cannot answer that, but there is practically no such thing as a one-day episode of paranoid schizophrenia. I have never heard of a one-day episode.

Q. What would be the shortest episode?

A. In this particular category, you expect it to be of long-standing, over many years. An individual suffering from paranoid schizophrenia is thought to be ill in terms of a half-year, at least, show symptoms of this for at least a half-year.

Q. So, if someone were, and assuming again that if someone were diagnosed as a schizophrenic, paranoid type, on or about November 1962, and this disorder or disease was constant, with some improvement, but minimal improvement, to May 11, 1963, if you had occasion to test them on August 9, 1963, do you think you would find any residuals of this disorder?

A. Yes, sir. Not only residuals; I would find very important manifestations of this, if it lasted that long.

Q. Perhaps, Doctor, it would be a good point at this time, on the basis of your knowledge of the defendant's history, and the diagnosis of sanity, would you explain the sympto-

mology of his disease?

page 404] A. As they made the diagnosis?

Q. As they made the diagnosis.

A. Their diagnosis was based solely on what they left was a delusional system regarding the police or police representatives, such as detectives. They felt that because he made such statements as, "The police are out to get me," or, "The police are picking on me," or "Every time there is something wrong in the District, the police come and question me," that this type of thinking was delusional and therefore, because of this, indicative of a severe type of mental illness. This is about all that I could find that they based their diagnosis of paranoid schizophrenia on.

As a matter of fact, in many instances, they said so flatly: No hallucinations, no other evidence of delusional thinking. Just centered around his being picked on by the police, his feelings of being picked on by the police.

Q. In making your diagnosis, did you take this statement and the circumstance of being picked on by the police into account? And how does that, in the bounds of your diagnosis, what meaning did that have to you, or what explanation?

A. Well, see, a delusion is a belief in something that most people find irrational or not sensible.

Now, it is not just a peculiar idea, but it is that most people recognize as being unusual or irrational.

page 405] That is a delusion.

If there is any basis for the belief, you have to be very careful before you say it is a delusion.

For example, ordinarily somebody who says, The FBI is following me, ordinarily you would consider this a delusion because it is a common symptom in this type of disorder; but it may be true that the FBI is following him, in which case it is not a delusion; it is based on a reality.

If the thought or belief, though exaggerated, is based on reality, it is not a delusion.

In my evaluation of what he took to be a delusion, I found that they were specially naive in this instance, because the facts of the case were that he was being followed by the police; he was being picked on by the police; every time something happened, he was questioned by the police. It wasn't a delusion. It was real. And I can't see how they could base

a diagnosis of paranoid schizophrenia on the belief which is not a delusion but which is real.

Q. Doctor, assuming that there was, in examining the records, did you find occasion of other reported delusions?

A. They made the most of this: There was a report that while he was at D. C. General, before he came to—let me say this: He was charged with a crime, spent a certain number of months, some three months, in the D. C. Jail,

page 406] was then sent to D. C. General from jail; was there a period of time; was two months in D. C. General, and from there sent to St. Elizabeth's.

Now, one brief item in regard to his treatment at D. C. General was that the doctors gave him an injection at D. C. General, and the police and the doctors were in collusion to kill him with this injection. That is the extent of what I can determine to be the basis of their diagnosis.

Q. How did you interpret this circumstance?

A. Well, that is a rather difficult thing to say. I didn't observe the patient at that particular time, but certainly, had I observed him at that moment, I would certainly have considered three different possibilities:

One was that it was a delusion, that he did think that people are trying to kill him.

Another would be that it was true that the police didn't like him because of what he had done to them, or the difficulties he had with them before, and they would not have minded if something happened to him.

And, three, that this was a malingered statement, intent on getting him out of the charges of that particular time, with the express purpose of getting a long sentence, convincing somebody that he was mentally ill.

This is, of course, 1956.

I would have examined all three points rather

page 407] carefully before jumping to any conclusion.

Q. I see.

Now, Doctor, after, I believe, you said you had a report of St. Elizabeth's, when you made your diagnosis. Since that time, have you had made available to you the records of St. Elizabeth's?

A. I did receive the records.

Q. Have you examined those records?

A. I had.

Q. Did you attempt to compare your psychological testing—that is, *you* intelligence tests and Rorschach test — I am not sure—

A. Rorschach.

Q. —with the test, any test of similar nature administered in St. Elizabeth's?

A. A careful examination of the files that I have in my possession fails to reveal any psychological tests administered at St. Elizabeth's, other than aptitude test given sometime in 1962. These are not psychological tests in the ordinary meaning of the term. Aptitude test means test to find some vocational fitness. If he had psychological tests at St. Elizabeth's, it is one of the best-kept secrets I have ever heard of.

Q. You were unable to—

page 408] A. Unable to find an indication on any report or any summary or report of such a test.

Q. Assuming, Doctor, from the diagnosis at St. Elizabeth's, someone was schizophrenic, paranoid type, and that the type was such that there was a delusion of persecution by people in authority, notably policemen and hospital authorities; then assume further that this person leaves St. Elizabeth's on or about March 31, 1963, and on April 31, 1963, purchases a pistol. Thereafter he meets an old childhood friend and recognizes him from some 25 years previously, and explains that he is from New York and wants a place to live, and his friend, this neighborhood friend, agrees that he can spend a short time with him; that for some three or four weeks the defendant or this subject lives with this friend, and from various social contacts he is described as affable, with a good vocabulary, a terrific sense of humor.

Further assume that on May 10, 1963, at 2 p.m., he is seen with pistol in his hand.

Assume further that on the afternoon of that day he becomes aware that one of his social acquaintances, through his neighborhood friend, has made a bet on a horse which won and is due to receive $1500.

Assume further that in the late afternoon or early evening

of May 10, he meets this acquaintance who won
page 409] this horse bet and another social acquaintance,
all stemming from this acquaintanceship with his friend. Again he knows that the man who won the horse bet is going to be paid off that evening at the Red Coach *in*—I am sorry; at a tavern.

Assume further that he eventually joins this party at this tavern, where someone comes in with the money, and they sit around a table, are social, and the money is paid off to the winner.

Assume again that the five—there are five persons there at that party, including the subject—assume further that the five subjects leave and go over to an apartment building, where three persons leave, the man who won the money remains in the front seat of the car and the subject remains in the back of the car.

And assume that these two people drive on and the winner of the money is driving the automobile with the avowed purpose of, or a purpose of delivering the subject to some other destination.

Then assume that the subject or the winner is found dead at six o'clock in the morning, the following morning, and that a doctor has stated that he performed an autopsy at one o'clock that afternoon—that would be the 11th—and established death as twelve hours earlier.

Now, assume further that on the morning of
page 410] May 11, it is 6 a.m., the subject delivers money
to his wife and then proceeds to York, Pennsylvania, and from there to New York, where he is later apprehended with $980 on his person.

Now, going back to the premise that this man is a schizophrenic, paranoid type, in your opinion, if this man had shot and killed the winner of the money, would that act arise from the schizophrenia, paranoid type?

A. Well, under the circumstances that you relate, assuming all of what you say, I would say such an individual, though diagnosed, or though having such a condition of schizophrenic reaction, paranoid type, would, under these circumstances, have known the nature and quality and consequences of his act, and have known that what he was doing was wrong.

Manifestly, you can reach such a conclusion by the very fact

that such an individual attempted to evade detection; the very essence of evading detection would indicate that he knew that what he was doing was wrong.

Q. Would there be this schizophrenia, paranoid type, as described as delusion of persecution by people in authority, would that have any relation to a social acquaintance who was neither a policeman nor a doctor?

A. It hasn't, no, no. An individual has what is sometimes called a monomania or fixed idea about a particular segment of society, would not extend it ordinarily to

page 411] other members outside of that group.

Mr. Gallucio: No further questions.

CROSS-EXAMINATION

By Mr. Ahern:

Q. You say he wouldn't extend it to others outside that group?

A. Ordinarily, I would say; ordinarily.

Q. Directed toward a policeman?

A. I said, ordinarily an individual with such, who has restricted his delusions to a specific category or members of society, would not ordinarily extend his delusions to members outside of that group.

Q. Suppose this particular individual had, in the past, stated that a janitor at the hospital had peeked into his mother's bedroom through the transom, and for that reason he was getting cancer?

★ ★ ★ ★ ★

By Mr. Ahern:

Q. Suppose that same individual had, in the

page 412] past, formed a belief that a janitor at the hospital had peeked through a transom in his mother's room and, as a result of peeking into that transom, the janitor was getting cancer. Would you say that was confined to a particular group?

A. Sir, I would have to examine the statement, as to whether it was self-serving, whether it was real, or whether it was

part of a delusional system.

You see, just the fact that someone says that this is so doesn't make it a part of his true beliefs.

Now, if everything else were examined and this were a part of his true beliefs, fitting in with the total psychological and psychiatric picture, I would call that an evidence of delusional thinking; yes, sir.

Q. You say that he didn't have delusions, that the police were actually following him? How do you know that the police were actually following him? Did you make a check with the police?

A. My understanding from the history involved, from people who have given us information, is that he was in trouble with the police since age, at least since 11 years of age; that he has had difficulty with them insofar as assaultive behavior is concerned; that he was not especially favored in their eyes, and that it was true that they were picking on him.

Q. Well now, you have made an unequivocal statement.

page 413] A. From the history available.

Q. From the history available, that it was true that the police were following him. It wasn't a delusion?

A. Didn't say, following him. And he never claimed that the police were following him.

Q. What did he claim?

A. From their report, he claimed that every time something went wrong in the District or in the area, the police came to question him about it; that he was entirely innocent of all the charges ever made against him; that he was an innocent victim, and that they were just picking on him.

Q. Now, you knew that he had been in St. Elizabeth's Hospital for a period of about seven years, did you not?

A. Yes, sir.

Q. Did you ever bother to talk to any of the doctors over there?

A. Yes, sir.

Q. How did you talk to them?

A. Talked to Dr. Platkin.

Q. Did you talk with Dr. Robertson, who was on his service?

A. No, sir.

Q. Did you ever talk with Dr. Julian?

A. No, sir; my understanding is that Dr. Julian
page 414] is out of the country; that was my understanding.

Q. Was Dr. Julian out of the country at that time?

A. My understanding was that she was.

Q. Now, I believe you said the first time you examined him, he appeared to be withdrawn?

A. No; uncommunicative.

Q. What did you say?

A. Uncommunicative.

Q. And uncooperative?

A. Uncommunicative.

Q. What do you mean? What's the difference between that and uncooperative?

A. Uncommunicative is just he didn't want to speak; didn't want to give any information.

Q. Did he cooperate with you?

A. At that time, he wasn't fighting.

Q. Was he uncooperative?

A. I don't know.

Q. I am not trying to play with words. He did not cooperate with you, so would you say he was uncooperative?

A. I wouldn't say that.

Q. When was the first time you talked with him?

A. The day after he came into the hospital, July 2.

Q. When is the next time you talked to him?
page 415] A. July 28.

Q. What did he do then?

A. Wouldn't answer any questions.

Q. Was he uncooperative?

A. He wouldn't answer any questions.

Q. Can't answer my question, Doctor?

A. I don't know what you mean, uncooperative. He was asked to be seated; he cooperated. He sat down. He wasn't—

Q. Was he uncooperative in that he was willing to assist you with your examination or was not willing to assist you with your examination?

I believe you said you were waiting for your Ph.D. You know what the word "uncooperative" means?

Mr. Hassan: I am going to object to his arguing with witness.

The Court: Objection sustained.

The Witness: You see, sir, I can't tell whether he was, what his motives were for not communicating with me. As far as I was able to determine, he was making a flat statement that he was not going to give me any information, period. That, as far as that is concerned, that was his prerogative and his right and I don't see that he was not cooperating. This was—

page 416] By Mr. Ahern:

Q. That was the second visit, is that right, Mr. Centor?

A. Yes.

Q. Now, when was the next visit you had with him?

A. August 9.

Q. What did you do then?

A. I interviewed him for over two hours and then tested him.

Q. What kind of testing did you do?

A. Gave him the intelligence test that I have described this morning, and the Rorschach.

Q. When is the time you showed him the banana and the orange?

A. I didn't show him any banana and orange. I asked him similarity between a banana and an orange.

Q. The difference or similarity?

A. In what way are a banana and an orange alike.

Q. Did he know in what way a banana and an orange are alike?

A. Yes.

Q. What did that mean? That he was of sound mind?

The Court: Which question do you want to ask him?

By Mr. Ahern:

Q. Did that mean he was of sound mind?

page 417] A. Well, this is part of an intelligence test, and any one response in itself would not be indicative or lead to conclusion as to a diagnosis, but it would have played a part.

Q. What did it mean to you, when he said he knew the difference or knew the similarity between a banana and an orange? What did that mean to you?

A. This would indicate that he was in essential contact with reality; that there was little likelihood of any brain damage affecting intellectual functioning; and that his thinking was, for the most part, at least insofar as this response was concerned, intact.

Q. What did he tell you was the similarity between a banana and an orange?

A. Both have got Vitamin C.

Q. Suppose he said they both had skins on them?

A. That would be correct.

Q. That would be all right.

Suppose he said they weren't alike?

A. I would have to give him the answer. I would tell him in what way they were alike, and go on to the next one.

Q. If he didn't answer it, you would answer it?

A. I would tell him.

Q. What would that mean to you?

A. If he didn't answer?

page 418] Q. Yes.

A. I don't know. I would have to evaluate in terms of the entire history, clinical, and test results.

Q. But you would give him the answer?

A. I would give him the answer to that particular question.

Q. What was the next thing you asked him?

A. After that?

Q. Yes.

A. In what way are a coat and a dress alike.

Q. What did he say to that?

A. They are clothing.

Q. And that was satisfactory?

A. Perfectly.
Q. Was that the right answer?
A. Correct.
Q. Was there any other answer to that?
A. Yes.
Q. How many other answers were there to that?
A. Several.
Q. Several?
A. Several correct answers.
Q. But if he had answered any one of the correct ones, —where do you get these correct answers?
page 419] A. There is a manual.
Q. What do you call it?
A. Manual for Wechsler Adult Intelligence Scale.
Q. Is that the Wechsler-Bellevue?
A. Wechsler Adult Intelligence Scale, the third in a series.
Q. What is the next thing you asked him?
A. In what way an ax and a saw are alike.
Q. What was his answer to that?
A. Both cut.
Q. What else did you ask him?
A. I asked him, in what way a dog and a lion are alike.
Q. What did he say to that?
A. They are both animals.
Q. Were there any other answers to that?
A. Yes.
Q. What are they?
A. They both have four feet; they both have eyes, tail; both have fur.
Q. So, if a person answers any of those questions along those lines, that you think he is pretty good, he is all right.
A. For that particular response, yes, sir.
Q. What else did you ask him?
A. In what way are north and west alike?
page 420] Q. What did he say?
A. They are both directions.
Q. All right, Doctor. How long did all this take, all these questions?
A. The entire testing period took two hours and ten minutes. I don't have them broken down to each individual test.

But the usual length of time for an intelligence test would be somewhat over an hour, say an hour and fifteen minutes. Then the Rorschach would have taken the difference.

Q. What is the Rorschach test?

A. This is a test in which the individual is asked to give his responses to ink blots, a standardized series of ten ink blots.

Q. Are these blots made by you or somebody else?

A. They are standardized, which means they are used in the profession; all psychologists who administer the Rorschach use the same ten ink blot tests.

Q. He gives interpretation of whether it is a bat or a bird?

A. He says what he sees, what it looks like to him, what it reminds him of.

Q. How long did that take?

A. I don't have the recording of the time for it, but I would say, looking at the times, some 45 to 50 minutes.

page 421] Q. You say, Mr. Centor, that you used, in connection with your test, the reports you had available from St. Elizabeth's Hospital?

A. That's correct.

Q. You state that the reports from St. Elizabeth's Hospital covering this seven-year period showed Mr. Rollins to be suffering from a schizophrenic reaction, paranoid type?

A. Correct.

Q. You say that you think the doctors must have been naive at St. Elizabeth's?

A. That is my opinion, yes, sir.

Q. You said, also, that you used, in connection with your evaluation, a report from Bellevue Hospital?

A. Yes, this is a report made of a two-week stay while he was at Bellevue in 1963.

Q. You have answered it, sir.

A. Yes, sir.

Q. What was the diagnosis from Bellevue Hospital?

A. Diagnosis was the same.

Q. Same as what?

A. St. Elizabeth's.

Q. What was the diagnosis?

A. I believe they have the report. If my memory serves

me correctly, it would be schizophrenic reaction, paranoid type.

page 422] Q. Schizophrenic reaction, paranoid type?

A. Yes.

Q. Would you say they were naive, too, at Bellevue?

A. My evaluation of this is that they received their report from St. Elizabeth's during the two-week evaluation, which included their diagnosis and their reasons for making the diagnosis, and that the diagnosis at Bellevue, of his two week's stay there, was based essentially on the diagnosis made at St. Elizabeth's.

Q. You don't think they did anything at Bellevue except take St. Elizabeth's diagnosis?

A. I have no indication that they did. We asked specifically for it, and there is no indication that other than relying upon their report from St. Elizabeth's and examination that they made during this period, no other tests, as far as I can determine, were administered.

Q. Now, Mr. Centor, you testified before lunch that this man, in your opinion, Rollins, you tell us what you said he was suffering from.

A. In my opinion, he is not suffering from anything, but he has a personality disorder known as a sociopathic personality disturbance, anti-social reaction.

Q. Now, is that classified as a mental illness or disease?

page 423] A. It is classified as a mental disorder.

Q. You say it is not classified as a mental illness or disease?

A. I would not consider it a mental illness or disease in the ordinary meaning of the term.

Q. Are you familiar with the psychiatric journal known as the Standard Nomenclature of Diseases, issued by the American Psychiatric Association, which is used by psychiatrists to classify?

A. The only manual for the diagnosis and classification of mental disorders that I know is the one I have here, known as the Diagnostic and Statistical Manual of Mental Disorders, by the American Psychiatric Association. I believe we are talking about the same thing.

Q. Are you familiar with the, it is called Standard Nomenclature of Diseases?

A. Well, I have notes prepared on Nomenclature and Statistics of the American Psychiatric Association, but my knowledge is that the name of it is, Diagnostic and Statistical Manual, Mental Disorders.

Q. The book that you have, does it list the disturbance of which you spoke?

A. Yes, sir.

Q. You say it does not list it as a mental disease?

page 424] A. Mental disorder.

Q. Mental disorder.

Did you say, in response to a question, that a person suffering from the mental disorder could at times not know the difference between right and wrong?

A. Yes, sir.

Q. Could that person, even knowing the difference between right and wrong, under certain circumstances, have an irresistible impulse to commit an act in violation of the laws of society?

A. Yes, sir.

Q. Did this patient appear withdrawn?

A. To me?

Q. Yes.

A. No, sir.

Q You say that he did not communicate with you?

A. That's correct.

Q. Did he appear to be of normal intelligence?

A. Yes, sir.

Q. Is it or is it not true that many people suffering from a schizophrenic reaction, paranoid type, are of normal intelligence or better than normal intelligence?

A. Quite true.

Q. So intelligence really doesn't have too much

page 425] to do with it, does it?

A. No, sir.

Q. Your primary purpose in examining this individual in August was to determine whether or not he was competent to stand trial, wasn't it?

A. That's correct.

Mr. Ahern: I have no further questions.

REDIRECT EXAMINATION

By Mr. Gallucio:

Q. Doctor, I believe the question was asked of you by counsel if you had discussed the case with Dr. Platkin?

A. That's correct.

Q. At St. Elizabeth's?

A That's correct.

Q. Was the defendant in the service of Dr. Platkin at any time?

A. Yes.

Q. How long? Do you have any idea?

A. My recollection is that Dr. Platkin came into a position of authority at Howard Hall sometime after the patient was admitted, but that he was in direct supervision of this department at some period of time while the patient was there.

Q. I see.

With regard to irresistible impulse, what does
page 426] that mean to you as a psychologist, and from
your knowledge of mental disorders and so forth?

A. There are certain conditions in which an individual who loses entire control of all inhibitions, if I use the word, berserk, I think everybody understands what this means; but this is just a common understanding of the condition in which the individual vents his fury and his anger against friend and foe alike. He perhaps may know what he is doing is wrong, but cannot control himself; and no conceivable force will stop him from the execution of his acts.

Q. I notice you use the term, impulse, all through this?

A. Yes.

Q. What do you mean by an impulse?

A. Ordinarily, an impulse would mean something that arises over a brief period of time, something that was not planned, something that emerged spontaneously, something that came over the individual at some period in his life.

Q. This spontaneity, if it were an impulse, there would be no controlling it, I believe you said, the inhibitions—

Arthur Centor

A. In the ordinary understanding of an irresistible impulse, it is an impulse that there is no planning to it, it could occur at any place in the presence of anyone, no attempt at concealment would be made.

page 427] The action itself, whatever it may be, would be perpetrated against friend and foe alike.

Q. Could you have an irresistible impulse and then plan to carry out that impulse?

A. It is inconceivable.

Q. Again, I believe you were asked if someone who had a sociopathic personality disturbance, anti-social reaction, that there are times when they would know, would not know right from wrong; under what conditions would they not know right from wrong?

A. When you say, know right from wrong, you are talking about a specific act. We are not interested in whether he knows the entire body of the law, but any specific act, whether that is against the law.

Now, it is conceivable that an individual with this diagnosis of sociopathic personality disturbance, may suffer from some sort of a condition in which some conceivable act would be carried out and which he didn't know that what he was doing was wrong. Such circumstances may be during a period of delerium tremens, for example, in which, after overindulgence in alcohol and withdrawal, he suffers from a type of delusional system in which he feels threatened and harassed, and during this period he may carry out an act in which he doesn't know that what he is doing is wrong.

page 428] This is a transitory period, easily recognized. It could happen in an individual of this disorder or any disorder.

It is also possible for an individual to suffer with this diagnosis, to suffer a psychotic episode of an acute type, in which case an examination of the particular act would determine whether it was perpetrated or carried out during a pschotic episode.

The fact that an individual has a type of, one type of diagnosis, doesn't mean that he cannot become mentally ill, like anyone else.

Q. In this type of mental disorder, with the psychotic

episode, would the psychotic episode manifest its way in this type conduct?

A. If the individual were suffering from an acute schizophrenic episode, it would be immediately recognizable to lay people. In such a disorder, the conduct of the individual is of such easy detection that anyone can detect that he was mentally ill at that time.

Q. Would such a person under a psychotic episode be able to carry on a normal conversation and discuss matters with people and without—

A. An individual with an acute schizophrenic reaction, during which period he was carrying out action that he did not know what he was doing was wrong, would page 429] not, except in very rare instance, not be able to carry out conversation, because he would be, carry on a conversation because he would be confused and disoriented and upset to such a degree, that individuals would recognize he was suffering from some type of mental illness.

Mr. Gallucio: No further questions.

RECROSS-EXAMINATION

By Mr. Ahern:

Q. Suppose, while this individual that we are speaking of was with another group, drinking at this tavern during the evening—we don't know how much they had to drink; but they were at the tavern, and left the tavern after one o'clock in the morning; and supposing that that individual had said at the tavern, "Don't talk so loud; there is a man in the corner with a bulge in his pocket." Would that indicate anything to you?

A. Yes.

Q. And everybody just ignored his remark.

A. Yes, sir.

Q. What would that indicate to you?

A. Three things:

One, that it has no particular importance, it is just made as a statement; one, that it is real; that there is a man with

a bulge in his pocket. This individual was sensitive to being detected.

page 430] Three, that it was a delusion.

Q. Delusion?

A. That's right.

Mr. Ahern: I thank you.

FURTHER REDIRECT EXAMINATION

By Mr. Gallucio:

Q. Could it be a fourth thing?

A. At this particular moment?

Q. This person was not in a psychotic—

A. It could be real, an individual who is in fear of being picked up, in fear of being arrested.

Q. Which individual are you referring to?

A. An individual who was sitting at a bar with friends, who is carrying on a normal conversation.

Q. The one who made the statement?

A. "Don't talk so loud; there is a man sitting there with a bulge in his pocket," may be testing reality very well, because he is fearful of being arrested, and a bulge in a pocket might mean he is a person with some authority who, if he attracts attention, would automatically arrest him, take him in.

Mr. Gallucio: No further questions.

Mr. Ahern: I have nothing.

The Court: Are you through with this witness?

page 431] Step down.

You are excused.

You want this witness released?

Mr. Hassan: Yes, sir; I would like to have him released.

The Court: Do you desire to have him remain here?

Mr. Ahern: No, sir.

The Court: You are released.

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JOSEPH R. BLALOCK, M.D.,
was called as a witness by and on behalf of the plaintiff in rebuttal and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Joseph R. Blalock, M.D., physician, psychiatrist, Superintendent of Southwestern State Hospital.

Q. Doctor, have you a specialty?

A. Yes, sir.

Q. What is that specialty?

A. Psychiatry.

Q. How long have you been practicing psychiatry?

A. Since 1929.

page 433] Q. How long have you been Superintendent of the State hospital, Southwestern State Hospital at Marion?

A. Since Febraury 1938.

Q. What special training did you have in the field of psychiatry, Doctor?

A. I spent nine years at the Psychiatric Institute and Hospital, from 1929 to 1938, New York City.

And while there, I was placed on the staff of the Columbia College of Physicians and Surgeons. I was instructor, or associate, in psychiatry; in teaching.

Q. During the course of your practice of psychiatry, have you had occasion to testify in any courts?

A. Yes, sir.

Q. Have you testified as an expert?

A. I have.

Q. Over what period of time, in years, sir?

A. Since 1938.

Q. How many times, approximately, have you appeared as

an expert?

A. It varies per year. Ten to fifteen times a year, for twenty years, 25 years, 27 years.

Q. Doctor, directing your attention to the defendant, Eugene Williams Rollins —

Mr. Ahern: Just this one question. I am sure it
page 434] will be answered satisfactorily, but I assume he did get an M.D.

The Court: Said he was an M.D. when he first started out.

The Witness: M.D. in 1922, Johns Hopkins Medical School.

Mr. Ahern: I submit he is qualified.

By Mr. Hassan:

Q. Directing your attention to the defendant, Eugene William Rollins, did there come a time when you had occasion to make a psychiatric study and evaluation of that defendant?

A. Yes, there did.

Q. When was that, Doctor?

A. He was committed to our hospital for observation and report and was there for nearly a nine-month period. And in that time I participated wtih the staff in examining him.

Q. As the result of these examinations, did you come to a conclusion about his mental condition?

A. I did.

Q. What did you consider in arriving at that conclusion?

A. We considered the history which we obtained from various sources. We considered our examinations and our observations of him in arriving at the diagnosis.

Q. Did you have the benefit of the record from St. Elizabeth's Hospital?

page 435] A. I did.

Q. Did you have the benefit of the record from Bellevue Hospital in New York?

A. We had the benefit of an abstract from that hospital, yes.

Q. Did you consider these in arriving at your opinion?

A. I did.

Q. Did you have the benefit of psychological study?

A. I did.

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Q. Doctor, based upon your examination of the defendant and your study of his history and record, what is your opinion of his mental condition at the time of your examination?

A. My opinion, at the time of our examination and during his stay in the hospital, was that he was, had a character disorder which we designated as sociopathic personality disturbance, anti-social reaction.

Q. Would a person suffering from such a disorder know the difference between right and wrong and the consequences of his acts?

A. In nearly all instances, if no concurrent psychosis was present, such psychosis may occur in a sociopath.

Q. Did you see any evidence of that during the nine months you had him under observation?

A. No, I did not.

page 436] Q. Were you familiar with the diagnosis at St. Elizabeth's Hospital?

A. I was.

Q. That was schizophrenic reaction, paranoid type, was it not?

A. It was.

Q. Did you find any evidence of the existence of that condition during your examination?

A. During my examination, I did not find that. I found details of abnormalities in his personality makeup, which are in the nature of emotional instability, hostility, resentment against authority, a tendency to not stand frustration well.

These were traits which, and self-centeredness, or egocentricity. These were traits which were interfered, which interfered with his adjustment and presented a problem in his getting along with people.

Q. Did you consider that to be schizophrenic, paranoid type?

A. No, I did not. I gave consideration to the tendency to blame those in authority and police and a certain amount of sensitivity with his relationship to them. But I did not consider that to constitute a paranoid type of psychosis.

Q. Doctor, would schizophrenia, paranoid type, a person who was a schizophrenic, paranoid type, know the

page 437] difference between right and wrong and the consequences of his acts?

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A. The majority of them I don't feel would, but it would have to be based on the individual case.

Q. Let us assume, Doctor, that in May of 1962, the psychiatric evaluation board at St. Elizabeth's found an individual to be competent to stand trial, and his condition which had existed over a period of years was progressive and progress continued so that there was no backsliding to a condition prior to that of May 1962. Would that individual be capable of knowing the difference between right and wrong and understanding the consequences of his action?

Mr. Ahern: Your Honor, may I object to the question as it is phrased, unless he says as of what date. I think it is ambiguous, the way it is phrased.

The Court: I think the objection is well taken. We are talking about a particular incident here.

By Mr. Hassan:

Q. As of May 10, 1963?

A. Well, we have the situation that he was returned to court as competent to stand trial, and, accepting those findings, I would also agree, because they have a good competent staff there at St. Elizabeth's.

Q. If it was that staff's finding in May of 1962, and your finding in the year 1963, would you feel that during
page 438] that period of time, from May of 1962 until the time that you had examined him, that this subject knew the difference between right and wrong and the consequences of his act —

A. One would not be able to — a great deal transpired. That is over about two years, year and a half, two years. It would depend on his condition, of course, during all that period.

Q. Assuming a doctor who had him under his charge from November 1962 to March of 1963, said there was no backsliding but there was progress during that period of time, and he had been found competent to stand trial in May of 1962, had shown progress from November to March, and you examined him in August, would you say that during that period of time, from May '62 to August '63, he knew the difference between right and wrong, and the consequences of his act?

A. With the assumptions as you state them. I think it highly

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likely that he would be.

Q. You found in your examination no indication of any other condition, did you?

A. I found no indication of any other condition.

Q. You found, in your examination, no indication that he did not know the difference between right and wrong during that period of time, or the consequences of his acts during that period of time?

page 439] A. In my examination, that's correct, sir. I didn't find any evidence.

Q. There was no evidence of a psychological testing?

A. No, there was no evidence in the psychological testing as I read it.

Q. Now, Doctor, directing your attention to this period of time we have just been discussing, let us assume that during this period of time the subject, who has been progressing at St. Elizabeth's, leaves St. Elizabeth's without leave, purchases a gun, strikes up acquaintances, on the 10th day of May; is seen with a gun in his hand; and on the 10th day of May learns that one of his acqaintances is about to receive some $1500 in the pay-off of a bet, attends a dinner party where this pay-off is to be made; then, while at that party, witnesses the pay-off, leaves the party with his friends, goes to Arlington Towers where three of the five in the group depart; the individual who is paid off leaves to drive this subject somewhere, subject in the back seat of the car.

The following morning, at six o'clock, the friend who was driving the car is found dead, shot in the head; his money is gone; the subject is gone; the subject goes to another city, is identified there, and a gun which is identified as the gun which was in his hand on the afternoon of the 10th, and as the gun that was the murder weapon, is located.

page 440] Would this episode and activity of this individual, in view of your examination and your study of the records, indicate an individual who was suffering from sociopathic personality disturbance, anti-social reaction?

A. It would be in keeping with that type of personality because, as that diagnostic condition is described in the accepted description —

Q. Would the individual, at the time of this episode, know

the difference between right and wrong as to that act, and the consequences of that act?

A. Such an opinion, of course, would have to be based on conditions which, as you have related them, and I see nothing, no indication in the circumstances as you have related them, that would indicate the presence of a psychosis.

Mr. Hassan: Thank you, Doctor. No further questions.

The Court: I don't know whether he answered your question or not. The doctor said he equates something to something else. You asked him if he knew the difference between right and wrong as to this act. He said he didn't see any presence of psychosis.

I don't know whether he equates this or not as the other doctor said, but he didn't really answer the question.

page 441] By Mr. Hassan:

Q. When you say you find no condition of psychosis, do you mean that this individual knew the difference between right and wrong and the consequences of his act?

A. Yes, I do believe that, on the basis of what you said, described.

Q. Do I understand, then, Doctor, that an individual who plans and attempts to leave afterwards, knows the consequences of his act?

A. That is highly suggestive that he does, but to really decide, one would have to know more about the total picture.

Q. Did you have any of this information before you when you made your diagnosis?

A. We had no information concerning the sequence of events, the dinner, and the series of events there; we did not have that information which you have just related.

Q. As of August 1963?

A. No, we didn't.

Q. Now that you have had this information, does that change your diagnosis any?

A. No, it does not.

Q. Does it strengthen it?

A. Well, it didn't need strengthening in a way. In other

words, it was a fairly clearcut diagnostic position,
page 442] as I saw it.

Q. Then do I understand, Doctor, that you felt that at the time of your examination that the defendant knew the difference between right and wrong?

Mr. Ahern: I object to the leading question, Your Honor.
The Court: The objection is overruled.

By Mr. Hassan:

Q. The defendant knew the difference between right and wrong and the consequences of his act, and could assist in his trial as of August 19, 1963?

Mr. Ahern: Exception.
The Witness: I do.

By Mr. Hassan:

Q. And from your testimony, do I understand that the defendant, in your opinion, knew the difference between right and wrong and the consequences of his act as of May 11, 1963?

A. I feel that he did. There are gaps there where he was out of sight, and so forth, but considering the whole series of events on up to New York, I would feel that he was competent.

Mr. Hassan: Thank you, Doctor.

page 443] CROSS-EXAMINATION

By Mr. Ahern:

Q. Doctor, considering the statement that Mr. Hassan made to you, that the man was found competent to, the defendant was competent to stand trial in April 1962, and was thereafter returned to St. Elizabeth's Hospital a couple of months later, and that as of March 1963 the doctor who was on his service at the time stated that this defendant was still a very sick man, that there were residuals, that he was a very dangerous man, and that, in the opinion of this doctor, he was still suffering from a schizophrenic reaction, paranoid type, at

the time he escaped, would that change your opinion as to his condition shortly thereafter?

A. You are quoting the record which —

Q. No, sir; I am reporting. I am reporting that if this doctor had so testified in this court, the doctor upon whose service he was, — is that what you call it?

A. Yes, sir.

Q. — if that doctor who was treating him reported at that time he was still a very sick man — this is in March — that he was considered very dangerous and that he was suffering from a schizophrenic reaction, paranoid type, at that time, in March, would your opinion still be the same that he wasn't suffering from it two months later or a month and a half later?

page 444] A. I can't answer that yes or no. The fact that he was dangerous, was considered dangerous, that he was emotionally sick or sick, would not necessarily mean that he was psychotic. It would be the opinion of the physician, psychiatrist who examined him, who, as I remember it, is a very qualified person — but in light of the longitudinal, the continued developments, I would be somewhat doubtful about it.

Q. There is a doubt in your mind?

A. There is a doubt in my mind.

Q. Doctor, how many times did you examine this defendant?

A. Our examinations consisted of the examination of the hospital team, and I sat in on two staff meetings. I talked with him two other times, and that constituted — I saw him some other times in passing; but those were the four times that I had participated in conversations with him.

Q. How many times did you talk with him for the purpose of an examination, Doctor? Would you say two times or three times?

A. Three times.

Q. Do you recall the dates that you talked to him?

A. There were two staff meetings, a preliminary staff — I have to look it up — preliminary staff on July 19, and a staff meeting on August 15. Those were the staff meetings.

Joseph R. Blalock, M.D.

There were other discussions among the staff, but
page 445] he was not present in much of our discussion and
review of the records later.

Q. What I am attempting to find out, Doctor, is how many times did you talk to this individual for the purposes of evaluating him, not how many times you talked to somebody else? How many times did you discuss —

A. I discussed in connection with the evaluating of him, and his condition, twice. I talked with him two other times about *occurences* which came up in the course of his being at the hospital.

Q. How many minutes or hours would you say you spent with this man?

A. Not over three hours.

Q. A total of three hours?

A. Yes. It would be between two and a half and three hours, counting it all up. Perhaps three.

Q. Doctor, is a sociopathic personality disturbance considered a mental disease or disorder by psychiatrists?

A. As I understand it, in some areas it is. It is considered a mental abnormality. It is a disturbance of the personality. In that respect, I would consider it as a mental illness.

Q. You say there is a division of authority there as to
whether it is a mental disease?

page 446] A. There is a division as to whether it is a
psychosis. I think it could be considered a mental disease, but not necessarily a psychosis.

Q. It could be considered both, could it not?

A. Or insanity. It could be both, yes.

Q. As a matter of fact, it is defined as a mental disease in your psychiatric journal, is it not, the Standard Nomenclature of Diseases, the American Psychiatric Association?

A. Yes, sir; this is the diagnostic and statistical manual of the American Psychiatric Association.

The Court: You asked him about some magazine?

Mr. Ahern: It is called Psychiatric Journal, and then it is further called Standard Nomenclature of Diseases. Maybe I am talking about the wrong —

The Witness: I think you are referring to this that was

gotten out after World War I by the American Psychiatric Association. It is a standard nomenclature.

By Mr. Ahern:

Q. How does it define this particular term?

The Court: What was the term you used?

By Mr. Ahern:

Q. Sociopathic personality disturbance, anti-social reaction. I was quoting from the previous witness.

A. The anti-social reaction, this term refers to page 447] chronically anti-social individuals who are always in trouble, profiting neither from experience nor punishment, and maintaining no real loyalties to any group, person, or code. They are frequently calloused and hedonistic, showing marked emotional immaturity with a lack of sense of responsibility, lack of judgment, and an ability to rationalize their own behavior so it appears both reasonable and justified.

And then it goes ahead and gives some other categories it used to be called.

Q. Is that anti-social reaction or is that *socipathic* personality with anti-social reaction?

A. That is the paragraph covering anti-social reaction and the larger category of sociopathic personality.

Q. What does the larger category of sociopathic personality include?

A. The description of that heads up the several groups of which anti-social is one, and about ten lines here, which states concerning this whole group — individuals to be placed in this category are ill, primarily in terms of society, and of conformity with the prevailing cultural milieu, and not only in determination of personal discomfort and relations with other individuals.

However, sociopathic reactions are very often symptomatic of severe, underlying personality disorders, page 448] neuroses or psychoses, or occur as a result of organic brain injury or disease. Before a definitive diagnosis is employed, strict attention must be paid to the

possibility of the presence of a more primary personality disorder. Such underlying disturbance will be diagnosed when recognized.

Reactions will be differentiated as defined below.

Then he goes into the different groups.

Q. Under certain conditions, it can embrace a neurosis or a psychosis, is that correct, sir?

A. And if so, the diagnosis is made of that condition. But I might say this: Sometimes in anti-social group we find traits or suggestions of some of the other, such as neurotic trends or inadequacy. And put in parentheses, but if it is severe enough to make the diagnosis of psychoneurosis itself, or whatever seems justified.

Q. Would a person suffering with schizophrenic reaction, paranoid type, be uncooperative?

A. In general, that would vary. They tend to be suspicious; they tend to misinterpret reality and tend to be hostile.

Paranoid schizophrenics, a number of them, a few do very good work and get along very well in the hospital. But when their mental content is disagreed with, as you might say, they tend to not have any understanding of the differ-
page 449] ence of the reason they went wrong. They tend to resent correction.

Q. Would it be consistent with the fact that in a hospital he would refuse to talk to persons of authority, such as doctors or the psychologists?

A. That would reflect his attitude towards those around him who were in charge of him or in authority.

Q. Would it be consistent with the diagnosis?

A. It would be consistent with the — I think that would be more consistent with sociopathic personality; but it could go along with personality, schizophrenic, paranoid type.

Q. Could a person suffering from schizophrenic reaction, paranoid type, appear to be of normal or better than normal intelligence?

A. That particular group tends to be definitely more intelligent than the other schizophrenic groups.

Q. As a matter of fact, they are more intelligent as a group?

A. Their personalities are usually better preserved.

Q. They would have a better vocabulary than you would

think under the circumstances?

A. I will say yes to that, and go ahead and add that the diagnostic group, schizophrenic, paranoid type, is a very *braod* group, ranging all the way from the most bizarre delusions and loss of contact with their environment

page 450] to a person who covers up mighty well; and unless you could touch his unusual ideas and bring them out, many people might be unaware of them.

Q. There are many dangerous people classified as schizophrenic reaction, paranoid type; is that correct, sir?

A. In the study of patients charged with assault or murder, the largest percentage in our hospital over several years were schizophrenia, paranoid type.

Mr. Ahern: I have no further questions. Thank you, Doctor.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Doctor, if the defendant was suffering from schizophrenia, paranoid type, in March of 1931 and you examined him — I mean 1963, and you examined him in August of 1963, would you expect to find residuals of that condition that was diagnosed in March?

A. I think you would expect to find some residuals.

Q. Did you find any such residuals?

A. No.

Mr. Hassan: No further questions.

RECROSS-EXAMINATION

By Mr. Ahern:

Q. It could be that you would not find residuals?

A. Could be.

page 451] Mr. Ahern: That's all.

The Court: Are you through with this witness?

Mr. Hassan: Yes, sir; I am through.

The Court: Mr. Ahern?

Mr. Ahern: Yes, sir.

The Court: Doctor, you may be excused.

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ZYGMUND WEGIELSKI, M.D.,

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified on his oath as follows:

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DIRECT EXAMINATION

By Mr. Gallucio:

Q. State your name, sir.

A. Zygmund Wegielski, M.D.

The Court: You are going to have to speak up.

The Witness: Zygmund Wegielski.

By Mr. Gallucio:

Q. What is your profession, sir?

A. I am M.D., and I am employed as Clinical Director of Maximum Security Division in Southwestern State Hospital.

Q. And as an M.D., do you have a specialty, sir?

A. Yes, psychiatry.

Q. Could you briefly outline for us your educational background and your experience?

A. Yes, sir. Graduated from Warsaw University; licensed in the State of Virginia; fourteen years of psychiatric experience, including three years of approved psychiatric residence.

Q. How long have you been employed, where did you say you were employed — Southwestern?

A. Southwestern, yes, sir.

Q. How long have you been employed there?

page 453] A. Since January 1963.

Q. Where did you receive your medical degree, sir?

A. Warsaw University.

Q. Where did you do your specialization study?

A. Specialization study I did in United States. I had three years of approved psychiatric residence.

Q. Where, what place?

A. That was in Michigan State Hospital, Traverse City, and Central State Hospital, Virginia.

I am employed by the Commonwealth of Virginia, by Mental Hygiene Department, for nearly eleven years.

Zygmund Wegielski, M.D.

Q. Have you testified before in court as an expert?
A. Several times, sir.

Mr. Gallucio: Do you wish to inquire?
Mr. Ahern: I stipulate his qualifications.

By Mr. Gallucio:
Q. Now, Doctor, have you had occasion to examine the defendant, Mr. Rollins?
A. Yes, sir; I have.
Q. What was the purpose of the examination?
A. The purpose of examination was to establish about the mental condition of Mr. Rollins.
Q. When did this examination take place?
A. Examination took place on July 14.
page 454] Q. What facts, reports, records, and information did you have at your disposal in relation to your examination of Mr. Rollins?
A. At the time when I saw Mr. Rollins in my office, I didn't have sufficient information, which were coming slowly, and Mr. Rollins was quite uncommunicative, and he didn't want to establish any sort of communication with me. His answers were very brief and appeared quite disinterested in this interview.
Q. Did there come a time when you had other records and information at your disposal?
A. The information was coming later, and I was acquainted with them, and after, when we could consider there were sufficient amount of this information, and after our work was completed, from the point that he had X-ray of skull, brains, electroencephalogram, and psychological tests, he was presented before the staff.
Q. I believe you made reference to an electroencephalogram?
A. Yes, sir.
Q. What is that? What is its purpose?
A. Electroencephalogram, it is recording of minute electric current produced by the brain cells.
Q. What is its purpose?
page 455] A. The purpose is, it is to establish if there is any sort of damage to the brain tissue.
Q. Was any brain injury discovered as a result of this elec-

troencephalogram of Mr. Rollins?

A. No, sir. The impression of Dr. Van Howser, who is consultant in this field, is normal electroencephalogram.

Q. On the basis of, I believe you said you received this information from various sources—and psychological reports—what psychological reports were they?

A. Psychological report which was performed by Dr. Centor, for instance, didn't reveal any sort of psychosis, shall we say—I mean distortion, to the extent that person may lose touch with reality.

Q. Now, based on these conferences and your examinations and the records at your disposal, did you form an opinion as to the mental condition of Mr. Rollins?

A. Yes, I got the impression that Mr. Rollins is not suffering from any form of psychosis and clinical symptomology, which he displayed, are pointing to character disorder, or which is classified as sociopathic personality disturbance.

Q. Did you find any evidence of neurosis?

A. No, sir.

Q. And is psychosis, how is psychosis classified?

page 456] A. With regard to mental illness or mental disease, psychosis could be classified in this form because there are many definitions—a serious emotional mental illness, manifested by the departure from the normal pattern of thinking, behavior, and feeling, affect, shall we put it.

Q. How is neurosis clarified with regard to mental illness?

A. Neurosis would be classified in this way, that it is also emotional illness, but not to the extent like psychosis, because the person has pretty good grasp of reality. He is in good contact with reality. He may use some defective judgment from time to time.

Q. Now, sir, in the approved manual of the American Psychiatric Association, are there major topics in that manual? Is it subdivided into groups, major groups?

A. Yes, sir; there are several.

Q. What are the major groups?

A. Major group would be involved, like organic disorders, which are associated with impairment of brain tissue and function; psychotic disorders, and character disorders, or personality disturbance, how they call it.

Q. Now, what is the difference between those three major groups? We will leave out the first, the brain damage. What is the difference between character disorders and psychosis?

Zygmund Wegielski, M.D.

A. Psychosis is rather functional in nature,
page 457] without any organic basis manifested by the symptoms which, how I mentioned at the beginning, pointing to distortion, for instance, of reality, and changes in the thinking, behavior, and affect.

In reference to this sociopathic group, it is concerning the personality disorder which this particular type is mainly manifested by the difficulties to cope with the social code.

Q. A character disorder as compared to a psychotic disorder, is a character disorder considered a disease?

A. That is mental disorder.

Q. Is it a psychotic disorder?

A. No, sir; that is not psychotic disorder.

Q. Is a psychotic disorder said to be a disease?

A. You may call it this way. That it is mental illness, you know, which in general, for instance, the person is unable to take care of himself, requires hospitalization; and, for his own safety, he should be admitted to the mental institution.

Q. One with a character disorder, is he usually admitted to a mental institution?

A. No, sir.

Q. Now, Doctor, I believe you said you had an opinion as to the mental condition of Mr. Rollins?

A. Yes, sir.

page 458] Q. What did you call that again?

A. We call him, we will say in diagnosis established on our conference, sociopathic personality disturbance, anti-social reaction.

Q. With that type mental or character disorder, and the history and so forth that you had before you in arriving at that disorder, would you assume these facts, please:

That on April 3, 1963, the subject purchased a pistol;

A few weeks later he met an old acquaintance and made arrangements to stay with this acquaintance, and, as a result of this relationship, he met other people and became part, so to speak, of a social;

And during the period from the time he began living with this acquaintance, until May 11, 1963, his conduct during that period was typified as this, by these social acquaintances, as affable, his personality affable, terrific sense of humor; they saw nothing unusual about his conduct or his conversation;

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And then assume further that on May 10th, at 2 p.m., he was seen with a pistol in his hand;

Assume further that in the late afternoon of May 10th he came by some information that one of his acquaintances had won a bet on a horse race and was to collect money in the neighborhood of $1500;

And assume further that on the evening of
page 459] May 10, he was present in a party of persons
at a tavern or restaurant and that this place was
where the pay-off was to be;

Assume that the pay-off was made to his acquaintance, and that there were five persons in this group, including the subject;

And assume that about 12:30 that evening the five people or the five persons, left the restaurant and proceeded to the apartment where some of his acquaintances were living, including the person he had lived with;

Assume that three of them left, including the person he had been staying with;

Assume further that the subject and the acquaintance who won the money drove off, approximately one a.m. or thereabouts, on or before one a.m.; and that the friend who he was staying with went to his apartment and found all the personal effects of the subject removed;

Assume on 6 a.m. of the 11th day of May, the acquaintance who had the money was found dead, shot in the head;

Assume that an autopsy is performed at 1:30 p.m. on May 11th, which established death as occurring some twelve hours before;

Assume that the subject, at approximately 6 a.m. in the morning stopped by his wife's house and left some money;

Assume from there he went to York, Pennsyl-
page 460] vania, and registered under the name of Edward
Smith; and assume that on May 12th he left
York, Pennsylvania, and went to New York;

And on the 13th day of May, in New York, he was apprehended, and $980 was found on his person.

Assume further that the murder weapon, by ballistics test, was found in York, Pennsylvania, and that the fatal bullet was, by ballistics—or that the purchase on April 3 was found to tie the gun—skip that. Just strike that fact, that last fact.

Assume, for the sake of this hypothetical question, that the subject shot and robbed the acquaintance at one a.m. in the morning.

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On the basis of these facts, Doctor, do you have an opinion as to the mental condition of the subject at the time the shooting and robbery occurred?

A. In regards to your information which I just received, I may form the impression that he didn't appear to be psychotic at the time, based on his, shall we say, way of handling himself, sociability, and he didn't point to any abnormal sort of behavior.

Q. Do you have an opinion as to whether this subject knew the difference between right and wrong, and the consequences of his act, at one a.m. on the morning of the 11th when the alleged shooting took place?

page 461] A. It is my personal opinion that on the basis of what you mentioned, that he should know the right from the wrong.

Q. Did he realize the consequences of his act?

A. No. I believe that he received the consequences of his act, of the procedure of how he was going afterwards, leaving the place of the alleged crime, and so on.

Q. Do you have an opinion as to whether this act of shooting and robbery would be a result of an irresistible impulse?

A. No, sir; I doubt very much about including irresistible impulse in this case, but where the entire person is not suffering from a serious emotional illness, call it psychosis, and, besides, without regard if that is done with some form of planning before, I personally have to eliminate possibility of irresistible impulse.

Mr. Gallucio: No further questions.

CROSS EXAMINATION

By Mr. Ahern:

Q. Doctor, you knew that Mr. Rollins had been in St. Elizabeth's Hospital as a patient for approximately seven years?

A. Yes, sir.

Q. From your investigation. And you knew that for many of those years he was in a maximum security ward?

A. Yes, sir.

page 462] Q. You did. And you knew that St. Elizabeth's Hospital had diagnosed his condition?

A. Yes, sir.

Q. As schizophrenic reaction, paranoid type. And you do believe and will concede that the doctors at St. Elizabeth's

Hospital are considered competent psychiatrists, are they not?

A. Yes, sir.

Q. However, you disagree with their opinion?

A. Yes, sir.

Q. Do you believe that they were naive?

A. I didn't say that, sir.

Q. You don't believe they were naive, do you?

A. No.

Q. Many psychiatrists agree or disagree with each other, as lawyers do.

A. It could be their own interpretation of the symptomotology displayed by the person.

Q. But many psychiatrists would not always reach the same conclusion from the same patient?

A. It could be they may not reach conclusion. Always depending on their evaluation of the material available at that particular time.

Q. You know that Bellevue Hospital in New York reached the same conclusion that St. Elizabeth's Hospital reached?

page 463] A. Yes, sir.

Q. From their examination immediately after his apprehension on May 13?

A. Yes, sir.

Q. That they conducted an examination of approximately two weeks; and you were asked several questions about the sociopathic personality disturbance.

A. Yes, sir.

Q. As a matter of fact, according to your manual, sociopathic personality disturbance would include a neurosis or psychosis, could it not?

As a matter of fact, would you look at the definition in your manual, Doctor, and then would you answer the question of sociopathic personality?

A. I agree with you that sociopathic personality disturbance, a person could be psychotic. He may develop psychosis, too.

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ROBERT H. ROBERTSON, M.D.,
was recalled as a witness by and on behalf of the defendant and, having been previously duly sworn, was examined and testified further on his oath as follows:

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page 476] CROSS EXAMINATION

By Mr. Hassan:

Q. Doctor, you made no examination of the defendant since March of 1963, have you?

A. That is correct.

Q. Now, prior to March of 1963, when you made your examination, did you have the benefit of any psychological, clinical tests?

A. No, I did not.

Q. And, Doctor, in the diagnosis of sociopath, does the patient know the difference between right and wrong, and does he realize the consequences of his act?

A. Yes, he does.

Q. When a person diagnosed as schizophrenic, paranoid type, is competent to stand trial, does he know the difference between right and wrong and the consequences of his act?

A. I find it difficult to give a yes or no answer to that. I think that this individual is competent in all areas except where his delusional system interferes with his judgment.

Q. I believe the other day you said that this defendant's realization of reality was general; is that right?

A. In this particular instance, this man, at that time, when he was said to be competent to stand trial, actually was not considered still to be expressing delusions. To
page 477] make it specific—

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page 481] IN OPEN COURT

Mr. Ahern: I would like to have this marked for identification as Defendant's Exhibit 3 for identification.

Mr. Hassan: I object to it.

Mr. Ahern: Certified copies of record from the United States District Court of the District of Columbia.

The Court: Let me see it a minute.

Objection sustained.

Mr. Ahern: Note an exception, Your Honor. With that, we rest.

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MAURICE PLATKIN, M.D.,

was called as a witness by and on behalf of the plaintiff in rebuttal and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. If the Court please, Doctor, will you please state your name?

A. Maurice Platkin.

Q. What is your occupation?

A. I am a physician; I am licensed to practice medicine in the District of Columbia. I specialize in psychiatry.

Q. Are you associated with St. Elizabeth's Hospital?

A. Yes, I am on the staff.

Q. Over what period of time have you been there?

A. I have been at St. Elizabeth's Hospital since 1954.

Q. Doctor, where did you get your medical degree?

A. At the University of Geneva, in Geneva, Switzerland.

Q. Then where did you do your required work before being admitted to practice in the United States?

A. I took a one-year rotating internship at St. Elizabeth's Hospital, and following this I took a three-year residency in psychiatry at St. Elizabeth's Hospital; and I have been on the staff at St. Elizabeth's Hospital since 1954.

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Q. What special education have you had in psychiatry?

A. In addition to medical school, the period of three years' residency, which is the required period of training for that specialty.

Q. Are you a member of any psychiatric associations?

A. Yes, I am a member of the American Psychiatric Association, the Washington Psychiatric Society, and I am a

Maurice Platkin, M.D.

Diplomate of the American Board of Neurology and Psychiatry.

Q. Doctor, have you been qualified as an expert to testify in any courts?

A. Yes, I have.

Q. In what court?

A. In Virginia courts, from time to time; but principally in the courts of the District of Columbia.

Q. Doctor, during your time in the field of psychiatry, how many patients have you examined?

A. Hundreds, many hundreds.

Q. How many times have you testified as an expert here in court?

A. It would run into the hundreds. I don't keep count.

Mr. Hassan: Your Honor, I submit he is qualified.

page 486] Mr. Ahern: I have no questions, Your Honor.

The Court: Qualified.

By Mr. Hassan:

Q. Doctor, did there come a time when you had occasion to become familiar with the defendant, Eugene William Rollins?

A. Yes.

Q. When did you first know of the defendant?

A. I don't know the exact date. It was sometime, it would be sometime in 1957, when I was assigned to the Maximum Security Division at St. Elizabeth's Hospital, where the defendant was then hospitalized.

Q. For what period of time was he under your supervision and care?

A. From 1957, whatever the particular date was, until sometime in 1962.

Q. Doctor, did you have a diagnosis of this defendant as a patient of yours?

A. Yes.

Q. What was that diagnosis?

A. Schizophrenic reaction, paranoid type.

Q. Directing your attention to sometime in April or May of 1962, did there come a time when this defendant was found competent to stand trial?

A. Yes, there was such a time.

page 487] Q. What did that mean in terms of knowing the difference between right and wrong and the consequences of his act?

Maurice Platkin, M.D.

A. Competency to stand trial, as we interpret it in the District of Columbia, is awareness or appreciation of the particular charge which the individual has against him at the time, and the capacity or ability properly to consult with counsel with respect to that or those charges. This usually involves an awareness, adequate memory and awareness, of what allegedly occurred at the time of the crime or the alleged crime, where the individual may have been, what he was doing, and so forth.

Q. Doctor, do you have an opinion as to this defendant's mental condition in regard to knowing right from wrong and the consequences of his act?

A. And with respect to any given time, sir?

Q. During the time he was a patient of yours.

A. Well, other than some distorted ideas with regard to being pursued and harried, persecuted by the police, I have never known him to be out of contact with his environment. In all of my dealings he has been always correctly responsive. We talked often. We had a number of discussions. He was always polite and courteous and had a good contact and was well aware of what was under discussion, and was able intelligently to enter into the discussion.

page 488] Q. The question was, Doctor, do you have an opinion as to whether, during this period of time, he knew the difference between right and wrong and the consequences of his act?

A. I would say he did. I would say he did. In all respects, other than with respect to his feelings about the police. I think he was fully aware of the difference between right and wrong.

Q. Doctor, was there steady progress in his mental condition during the period of time he was under your supervision?

A. Yes, to the extent that he showed progressively less agitation and concern about his feelings of being persecuted by the police, even to the extent that there were times, I think, when he reflected that possibly his ideas may have been somewhat exaggerated. He lost his prior intense indignation and hostility and anger. He was more tractable. He was more pleasant in his manner. To that extent he had shown progress.

Q. Doctor, directing your attention to your diagnosis and treatment of this defendant, did you at any time find any indication that the defendant was suffering from any irresistible impulse?

A. No. I don't recall any incident, either while he was hospitalized or anything in the history, which would
page 489] have suggested an irresistible impulse.

Q. What is a delusion, Doctor?

A. A delusion is a belief that an individual carries, which is contrary to reality.

Q. If there is in fact basis for a belief of the individual, but he exaggerates it, is that a delusion?

A. Well, the line between exaggeration and delusion is a rather vague one. I think when the exaggeration becomes so extreme and so widespread and pervasive that the individual is no longer able to distinguish between the reality of the situation and his own ideas about it, I think we are then faced with a delusion. If it is a slightly amplified version of what really happened, I think we could call this an exaggeration.

Q. Directing your attention to the 11th day of May 1963, if this defendant became aware that a friend of his, who was an automobile salesman, was to be paid off some money, and arranged to attend a dinner party in a tavern where that payoff was to be made, and then rode with this friend and other friends that made a group for the evening, to a location in Arlington, where the other friends left, and this defendant arranged to have the automobile salesman drive him to some location, and this defendant then robbed and shot him; do you have an opinion as to whether this defend-
page 490] ant, under those circumstances, would know the difference between right and wrong, and the consequences of his act?

A. Well, the situation as you present it would suggest that he was perfectly aware of the consequences of his act.

Q. And that he knew right from wrong?

A. And that he knew right from wrong. This would suggest it, yes.

Q. If the defendant had been suffering from the delusions which you described, would they have, in any way, affected his conduct towards an automobile salesman?

A. I shouldn't think so. I can't give a definitive response; but it wouldn't seem to fit in with the picture of his delusions as you presented it.

Q. It would then be an entirely different case, had the actions of the defendant been directed towards a policeman?

A. I should think so. I think if it were directed toward a policeman, it would be consistent with these delusions; but the picture you present is a different one.

Francis Regis Riesenman, M.D.

Diagnostic Center, Temple, Texas, 1941 to 1947.

St. Elizabeth's Hospital, 1947 to 1962. Staff Psychiatrist.

Director of the Alcoholic Clinic in Falls Church, 1962 to date.

I specialized in neurology and psychiatry in private practice.

Q. Doctor, have you had occasion to qualify and testify as an expert?

A. I have.

Q. In what courts?

A. I have testified in Northern Virginia courts, Arlington, Falls Church, Alexandria, Fairfax. Also the courts in Maryland, the Federal Courts, the courts in Washington, D.C., over a period of about seventeen years.

Mr. Hassan: I submit the doctor is qualified.

Mr. Ahern: I have no questions.

By Mr. Hassan:

Q. Doctor, did there come a time when you had occasion to make an examination of the defendant, Eugene William Rollins?

A. I did.

Q. When did you commence your examination?

page 503] A. My initial visit with Mr. Rollins was on March 4, 1964. My last visit was April 16, 1964. I saw him a total of nine times.

Q. When you were studying him, did you have occasion to have the benefit of the study made by any other psychiatrists or hospitals?

A. I did.

Q What were they?

A. The reports were made available to me from the Southwestern State Hospital at Marion; from St. Elizabeth's Hospital, Washington, D.C.; from the National Training Home or School, and Social Service reports, and other pertinent reports in connection with the case itself, made available by the Detective Bureau, Arlington.

Q. Have you formed an opinion as to the mental condition of Eugene Rollins?

A. I have.

Q. Was that as to any specific times?

A. Would you repeat it, sir?

Q. Let me rephrase it.

Do you have an opinion as to his mental condition at the time that you examined him?

A. I do.

Francis Regis Riesenman, M.D.

Q. Do you have an opinion as to his mental con-
page 504] dition as of May 11, 1963?

A. I do.

Q. Do you have an opinion as to his mental condition over the period of time when he was a patient at the hospitals, whose records you examined?

A. I do.

Q. Now, what is that opinion, Doctor?

A. It is my opinion that Mr. Rollins is suffering from a sociopathic personality disturbance or disorder, with paranoid features.

Q. How did you arrive at that conclusion, Doctor?

A. From all the evidence that I was able to evaluate, from talking to the defendant, from talking to his wife, children, from talking to detectives involved in the case—from all the records I just cited from hospitals, from talking to Mr. Miller, who is involved in this case, and Margaret Klassett, Edwin Welch, Mrs. Tatleman, his attorney, and yourself, as well as the detectives.

Q. Doctor, are you aware of the diagnosis of other psychiatrists and hospitals?

A. I am.

Q. Does your diagnosis differ from those?

A. Not too much, no, sir.

Q. Would you explain what your diagnosis
page 505] means, in common language?

A. Mr. Rollins' condition from which he is suffering is somewhat unusual. He is not a clearcut sociopath; nor is he a clearcut schizophrenic paranoid. He is suffering from some components of both.

I consider him longitudinally through the years as a sociopath, by virtue of his whole history, habits, traits, character, his externalization of aggression and so on throughout the years, ever since about the age of nine. This particular pattern longitudinally is a pattern that we see of a sociopathic personality.

However, he has, in addition to this, a lot of paranoid features, a lot of temperamentality, impulsivity, extremely poor insight and judgment, and all these, coupled with sociopathic personality structure, makes for a superimposed paranoid or schizoid features. At one time he may be operating and manifesting clinically, cross-sectionally, a picture of a schizophrenic paranoid, cross-sectionally.

At another time, longitudinally, he reverts back to his pre-

vious personality pattern of a sociopathic personality. So that is why, when I examined him, and in talking with him, through the years, from the age of nine right up on through, in different experiences of his life, I tried to visualize from the history that I got, piecing them together, as to page 506] what particular category I would consider him clinically, expressing or manifesting at that particular period.

I did the same in connection with the particular charges, but the particular crime with which he is charged, as such, I felt that he was suffering at that time from the personality sociopathic disturbance with the paranoid features, with the poor insight and judgment.

Q. Doctor, do you have an opinion as to whether or not, from your study, that on May 11, 1963, whether he knew the difference between right and wrong and the consequences of his act?

A. Yes, I felt that at that time he did know the difference between right and wrong, was able to distinguish between such and was able to adhere at that time to the right.

Q. If he were in fact a schizophrenic, paranoid type, would he, in your opinion, have known the difference between right and wrong and the consequences of his act on May 11, 1963?

A. Yes, in connection with what he has been charged with, even though he were a paranoid schizophrenic, he would be considered one that would be considered legally responsible, would not negate criminal responsibility.

Q. Doctor, there has been some testimony about delusions. Did you find anything in connection with delusions, page 507] from your study of the records and the defendant?

A. No. He expressed, verbalized to me, certain things that were verbalized to me as, could be considered, delusions; but when I talked to him about them, I felt that they were in effect not delusions—that is, delusions of a nature that since the age of nine he has felt people have been against him, that authoritative figures have been against him.

As a result of this, he is very defensive and develops delusions of a persecutory nature, protective nature, a defense mechanism, if you wish, but these delusions he expressed to me were more or less in keeping with paranoid personality, sociopathic, who expresses paranoid delusions that are in keeping with reality situations.

In other words, they are not severe enough, the delusional content is not — it is a case of degree — are not severe enough to be considered that he would be irresponsible.

Francis Regis Riesenman, M.D.

He is still, while medically sick, legally responsible for this particular type of delusional pattern that he is manifesting.

Q. In your study of the defendant and his records, do you have an opinion as to whether or not he was suffering on May 11, 1963, from an irrespressible impulse?

A. There was no evidence of an irrepressible impulse operating at that time.

page 508] Q. Was there evidence of irrepressible impulse at any time in the record that you studied?

A. Yes. I would say that at times when he had difficulties with the law, where somebody was, he felt, being persecuted or picked on or taken advantage of by somebody else, particularly an authoritative figure, a police figure, who was having a rough time with somebody, he was trying to arrest, that he would go to his defense and beat up the officer to protect the individual.

I felt under those conditions this would be considered, this particular type of behavior on his part might very well be considered quite impulsive and even possibly to the point of where it might negate responsibility, because that is part of his entire personality pattern, longitudinally through the years.

Q. Doctor, if, on May 11, 1963, this defendant became aware that a salesman was to obtain a pay-off of a bet and arranged to attend a dinner where the pay-off was made, and then rode with that friend and others who were at the dinner together to Arlington, and then after the others left, arranged to ride with the salesman to some place in Arlington, and there robbed and killed the salesman; would that be, in your opinion, the product of an irresistible impulse in this defendant?

page 509] A. No, it would not. This particular type of behavior would have nothing to do with a product of emotional condition which he had been suffering from, or was suffering from. It would be separate.

Q. If he did those things, Doctor, do you believe, in your opinion, is it your opinion that he knew the difference between right and wrong and the consequences of his act?

A. He did; that's correct.

Mr. Hassan: Thank you, Doctor.

CROSS-EXAMINATION

By Mr. Ahern:

Q. Doctor, what are the paranoid features you talk about?

A. The paranoid features are the tendency for him to have

Francis Regis Riesenman, M.D.

projected through the years in difficulties, misinterpretations, misidentifications, misconstruction of things that have been going on in relation to him and his family being persecuted by the police department; other people being persecuted; he would go to their defense, go to bat for him, use all types of force if necessary to bring about justice, that he felt was needed for certain individuals, that he would be able to protect them.

Q. And you say he is medically sick?

A. Yes, there is no question about him being

page 510] medically sick and emotionally upset.

Q. Do you think he needs hospitalization?

A. He certainly needs hospitalization, psychiatric care. He is dangerous to himself. He is dangerous to others.

Even though he is legally responsible, he is still a sick person; there is a lot of gray in this picture; there is a lot of emotionalism.

The man, because of the superimposed factors of paranoid aspects and the impulsivity and his poor judgment, he does have emotional upsets. He does tend to suffer. He could benefit by some form of therapy.

The normal repressive mechanisms and restraints and inhibitions that the average person would utilize to prevent him from committing a crime of this nature, there was some impairment in the operation of these defenses. Therefore, there was definite diminished, I would consider it, I use the term diminished responsibility, although he is legally responsible.

Nevertheless, it makes for mitigating and extenuating factors in his case.

Mr. Ahern: I have nothing else.

The Court: Through?

Mr. Hassan: No further questions.

The Court: Does the Commonwealth have any other witnesses?

page 511] Mr. Hassan: That is the Commonwealth's case.

The Court: Does the defendant have any other witnesses?

Mr. Ahern: No, Your Honor.

The Court: The jury will retire to the jury room.

You are excused, Doctor.

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The Court:

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page 530]

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Now we are down to 30.

Mr. Hassan: No objection to 30.

I don't think it is a statement of the law, but I think this is a discretionary court action. I think the Court should object to it; it is the Court's discretionary action. The last sentence—

The Court: I think it is very important to get this part of it straight. You mean the jury doesn't have any jurisdiction to make a decision as to whether he should be discharged or not?

I have not checked it out. I don't know.

Mr. Hassan: They don't have any authority to make a decision as to whether he will be committed to the proper state hospital. That is discretionary with the Court, the last part of it there.

The Court: What section of the Code are we dealing with here?

page 531] Mr. Hassan: 19.1-239.

Mr. Carroll: Your Honor, the Commonwealth's attorney has read that. It says, If the jury so finds, the Court shall thereupon, if it deem him, his discharge dangerous to the public —

The Court: Let's see what section we are dealing with.

Mr. Carroll: 1-239.

Mr. Hassan: I don't think we are going to instruct the jury about the Court's discretionary duties.

The Court: When the defense is insanity or feeblemindedness of the defendant at the time the offense was committed, the jury shall be instructed, if they acquit him on that ground, to state the fact in their verdict.

I take it that is the end of the jury's business with this thing.

If the jury so find — if the jury so find — the Court shall thereupon, if it deem his discharge dangerous to the public

peace of safety, order him to be committed to the proper state hospital for the insane, as set forth in 19.1-228, and confine him there under special observation and custody until the superintendent of that hospital, and the superintendent of any other state hospital or colony — drawn in the conjunctive, isn't it — requires two superintendents

page 532] — shall pronounce him sane and safe to be set at large.

I think the objection is well taken. The instruction would cut off the point where the jury indicates the reason for the finding and not go into the rest of it.

So, instead of saying, if the jury so find, if they commit him on that ground, state the fact in their verdict.

It should stop at the period, at the end of the first sentence. The rest of it seems to me —

Mr. Carroll: Are we to note our exceptions now, Your Honor?

The Court: Yes.

Mr. Carroll: Exception.

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page 545]

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The Court: I have the indictment.

Bring in the jury.

(The jury resumed its place in the jury box.)

(The clerk called the role of the jury.)

The Clerk: All present, Your Honor.

The Court: Members of the jury, give me your attention, please.

The Court instructs the jury that under the indictment in this case, if warranted by the evidence, you must

page 546] find any one of the following verdicts, to wit: one, murder in the first degree; two, murder in the second degree; three, not guilty by reason of insanity; four, not guilty.

The Court instructs the jury that the defendant is presumed

to be innocent until proven guilty beyond all reasonable doubt, that the burden is upon the Commonwealth to prove his guilt and not upon the prisoner to prove his innocence.

The Court further instructs the jury that a doubt to justify an acquittal must be a reasonable doubt, and must not be a doubt engendered by sympathy or by dislike to accept the responsibility for convicting the defendant. It must be based upon the evidence or lack of evidence or be suggested by the evidence. It must be a doubt of material fact or facts necessary for the jury to believe to find a verdict of conviction, and not of immaterial or non-essential circumstances.

If, after an impartial consideration of all of the evidence in the case, you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

The Court instructs the jury that if they believe from all the evidence in this case, beyond a reasonable doubt, that the defendant, Eugene William Rollins, is guilty as charged in the indictment, then they shall further find whether page 547] he is guilty of murder in the first or second degree; that if they find the defendant guilty of murder in the first degree, then they shall fix his punishment with death or by confinement in a penitentiary for life or for any term not less than twenty years.

The Court further instructs the jury that if they find the defendant guilty of murder in the second degree, then they shall fix his punishment by confinement in a penitentiary for not less than five nor more than twenty years.

The Court instructs the jury that murder is the unlawful killing of another with malice which may be expressed or implied and is distinguished in Virginia as murder in the first and second degree. That every homicide in Virginia is presumed in law to be murder in the second degree. In order to elevate the offense to murder in the first degree, the burden of proof is on the Commonwealth.

The Court instructs the jury that even if they are satisfied from the evidence, beyond a reasonable doubt, that the accused took the life of the deceased, then the jury are instructed that the law presumes, *prima facie*, that such killing was murder in the second degree; and the burden is upon the Commonwealth to elevate the offense to murder in the first degree by proving beyond a reasonable doubt all the elements of that

crime as defined by other instructions.

page 548] The Court instructs the jury that murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of or attempt to commit abduction, arson, rape, robbery or burglary, is murder in the first degree; all other murder is murder in the second degree.

The Court instructs the jury that malice necessary to constitute the crime of murder may be either expressed or implied. the word "malice" in the foregoing definition of murder is used in a technical sense, and includes not only anger, hatred, and revenge, but every unlawful and unjustifiable motive. It is not confined to ill will to any one or more particular persons, but is intended to denote an action flowing from a wicked or corrupt motive done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them plain indications of heart, regardless of social duty, and deliberately bent on mischief. Therefore, malice is implied by law from any willful, deliberate and cruel act against another, however sudden.

The Court instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer without any or upon slight provocation is *prima facie* willful, deliberate and premeditated killing; it throws upon

page 549] the accused the necessity of proving extenuating circumstances.

The Court instructs the jury that the presumption of malice referred to in other instructions is not a conclusive presumption, but may be overcome by proof of extenuating circumstances sufficient to create a reasonable doubt in favor of the defendant, either as to the degree of the offense or as to his guilt or innocence. You are the judges of whether the weapon used by the defendant in this case was a deadly weapon when used in the manner and under the circumstances in which it was used, as disclosed by the evidence.

The Court further instructs the jury that in this case, under other instructions, there are two burdens of proof: On the question of sanity or insanity, the burden is on the defendant to prove to your satisfaction by the evidence the insanity of the defendant; if you find the defendant sane, then the burden of proof, under other instructions, is on the Commonwealth to prove by the evidence all the elements of the crime beyond

a reasonable doubt. If upon a consideration of the evidence, independent of the issue of insanity, you have a reasonable doubt as to whether the defendant acted with malice, you should find him — you should not find him guilty of murder.

The Court instructs the jury that every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is page 550] proven to the satisfaction of the jury. And even though you may believe from the evidence that the defendant was laboring under some type of defective mental condition at the time of the offense charged against him, nevertheless, if he was able to understand the nature and character of the act and to perceive that it was wrong, then the defendant cannot rely upon his defense of insanity. Every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proven to the satisfaction of the jury. Unless you are satisfied from the evidence that at the time of the alleged murder the defendant's mental condition was such that he was unable to distinguish right from wrong and understand the nature and character and consequences of his alleged act, then you shall find the defendant was sane.

The Court further instructs the jury that it is not sufficient that the evidence should be of such a character only as to produce doubt in your minds as to his sanity, but the burden is on the defendant, Eugene William Rollins, to prove such insanity to their satisfaction — their, to the jury's satisfaction.

The Court instructs the jury that the test for insanity under the law recognized as an excuse for the crime is that condition where the accused is laboring under such page 551] a defective reason from disease of the mind as not to know the nature and quality of the act he was doing or the consequences of his act; or, if he did know it, that he did not know he was doing what was wrong. As the term "irresistible impulse" is used in criminal law, it means an impulse to commit an unlawful or criminal act which can't be resisted or overcome, because insanity or mental disease has destroyed the freedom of will, the power of self-control, and the choice of one's actions. In this respect, the jury is instructed that if the act which is alleged to be the result of an irresistible impulse was planned in advance, then, as a matter of law, such act cannot be said to be the product of an irre-

sistible impulse. And, although the defendant may have been laboring under partial insanity at the time of the deed, if he still understood the nature and character of his act and the consequences, and had knowledge it was wrong and criminal, and had mental power sufficient to apply that knowledge to his own case, and had knowledge sufficient to know that if he did the act he was doing wrong and would receive punishment, then such partial insanity is not sufficient to exempt him from the responsibility to the law for his crime.

The Court instructs the jury that the defendant is presumed to be innocent until his guilt is established by the evidence beyond all reasonable doubt. It is not sufficient page 552] that his guilt is probable only, or even more probable than his innocence; nor can the defendant be convicted upon mere suspicion. No amount of suspicion, however strong, will warrant his conviction, but in order to convict him the evidence of guilt must be so strong that there can be no theory from the evidence consistent with his innocence. That every fact necessary to constitute the offense charged must be proven beyond a reasonable doubt; and if there is a reasonable doubt as to any fact, and such fact, the jury shall acquit him; that the result of the evidence must be to exclude every reasonable hypothesis of innocence and to be consistent only with the guilt of the accused, and the jury is not at liberty to guess; and where a fact is susceptible of two interpretations, one of which is consistent with the innocence of the accused, they cannot arbitrarily adopt the interpretation which incriminates him.

The Court instructs the jury that a reasonable doubt is one that excluded every reasonable hypothesis except that of guilt.

The Court further instructs the jury that a reasonable doubt is that state of the case which, after full consideration of all the evidence both of the Commonwealth and of the defendant, leaves the mind of the jury in the condition that they cannot say they feel an abiding conviction amount- page 553] ing to a moral certainty from the evidence in the case that the defendant, Eugene Rollins, is guilty of the charge alleged. If the jury has such a doubt, or if the conviction of the jury of the guilt of the defendant, Eugene Rollins, as alleged, does not amount to a moral certainty from all the evidence in the case, then the Court in-

structs you that you should acquit the defendant. Even if they believe from the evidence that the defendant killed Tatleman, as charged in the indictment, nevertheless, if the jury believes from the evidence that at the time of such killing the defendant was suffering from such insanity that he did not understand the nature and consequences of such killing, or that from such insanity he did not possess will power sufficient to restrain his impulse arising from a diseased mind, they must find the defendant not guilty on the ground of insanity.

That the character of the mental disease principally relied upon by the accused to excuse the prisoner is that he did the killing under irresistible impulse which was the result of a diseased mind. An irresistible impulse is a moral or homicidal insanity consisting of an irresistible inclination to kill or commit some other offense, some unseen pressure on the mind drawing him to the consequences which he sees but cannot avoid, and placing him under a coercion which, when its results are clearly perceived, he is incapable of resisting.

page 554] The Court instructs the jury that when the defense is insanity of the defendant at the time the offense was committed, and if they acquit him on that ground, to state the facts with their verdict.

The Court further instructs the jury that the failure of the accused to testify creates no presumption against him; and in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider.

The Court instructs the jury that in considering the weight to be given to the testimony of expert witnesses whose opinions differ, you may consider the ability and character of the witnesses, their actions upon the witness stand, the weight and process of the reasoning by which they support their opinions, and possible bias in favor of the side for which they testified, their relative opportunities for study or observation of the matters about which they testified, and any other matter which serves to illuminate their statements.

All right.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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