Q. Very seldom?

A. Mostly women, or a husband and wife she had known for a long time, like Mr. and Mrs. Watts.

Q. Didn't she have any gentlemen callers?

A. No.

Q. You never saw any?

A. No, she never did have, I am sure of that.

Q. Have you ever seen any men go in her apartment and visit with her at all?

A. No, even with her business she would go downtown, to her banker or her lawyer. She never had anyone come to the apartment.

Q. She did have guests, however, from time to time?

A. Occasionally. She belonged to a foursome, and some guests in the apartment house would come to her apartment occasionally.

Q. Had you ever seen her go out with any gentlemen?

A. I never have.

Q. You never saw any men go into her apartment?

A. No; I am sure of that.

Mr. Safier: That is all.

Mr. Roll: That is all. May the lady be excused?

The Court: She may be excused.

[fol. 513] Mr. Roll: I was going to excuse this lady, but counsel indicated he wanted her mother back for some additional questions. In excusing her I was going to have her tell her mother to come in. Do you want her, Counsel?

Mr. Safier: No.

Mr. Roll: You may be excused.

(Witness excused.)

[fol. 514] WILLIAM H. BRENNAN, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name.

A. William H. Brennan.

Direct examination.

By Mr. Roll:

Q. Your full name is William H. Brennan?

A. Correct.

Q. You are a police officer of the City of Los Angeles?

A. Yes, sir.

Q. Attached to the Wilshire Detective Bureau?
A. Yes, sir.
Q. On the Homicide Detail there; is that correct?
A. Yes.
Q. Were you working as such on the date of the 24th of July, 1944?
A. Yes, sir.
Q. Who was your partner?
A. Sergt. G. H. Wiseman.
Q. The gentleman seated here at my right?
A. That is correct.
Q. On the evening of that date did you receive a call to go to 744 South Catalina Street?
A. I did.
Q. About what time did you arrive there, Mr. Brennan? [fol. 515] A. I arrived there approximately at 8:15 p. m.
Q. Did you go to apartment 410?
A. I went to apartment 410.
Q. Was Mr. Long already there, the officer who just testified here?
A. Yes, Mr. Long was already there.
Q. Do you recall whether any other officers were there or not?
A. Yes, there were two officers from downtown, officers McGary and Brown, I believe.
Q. Now, at the time you arrived there, with reference to the condition of the room, I show you People's Exhibit 8; is that a fair representation of what you observed in so far as the lady whom you later learned to be Mrs. Blauvelt, is concerned?
A. Yes, that is a fair representation.
Q. All right. Now, were you there when the coverings were taken off of the body?
A. I was.
Q. Were you also there when the pillows were taken off?
A. I was.
Q. Now, can you describe, sir, with reference to the pillows what you observed concerning the pillows and any substance on the pillows and where it was located?
A. Well, I noticed when I removed the large pillow, which is a pillow that appeared to have come off an over- [fol. 516] stuffed chair—it was a heavy cushion—I noticed on the bottom side of the cushion a spot of what I thought

was blood, which appeared to be blood to me and on the top of the pillow there was none. I removed the pillow, set it to one side, and I noticed then that on the top of the second cushion, which was a red cushion, there was no stains that I could observe from the naked eye. I removed the second cushion, uncovering the base of the body, and on the bottom of the red pillow I noticed another spot of blood, or what appeared to be blood, a brown substance.

Q. With reference to the blood that you observed there, what was its condition to whether it appeared to be wet or dry or sticky?

A. The blood on the large cushion was thoroughly dry, I say what appeared to be blood, and on the second—on the bottom cushion it also appeared to be quite dry.

Q. Now, People's Exhibit 33 I now show you here, showing the top portion of the body of Mrs. Blauvelt; is that the way it appeared in so far as the top portion is concerned after you did remove the pillows?

A. This is after the pillow and the coat was removed. There was a brown coat over the lower portion of the body.

Q. This photograph here, the view which is taken, People's Exhibit 33, only gives a portion of the left arm, it does not show the light cord which runs under there I don't believe either, does it?

[fol. 517] A. No, it does not.

Q. Can you describe in your own language with reference to the appearance of the face and neck, what you observed after you got the pillows off?

A. When the pillows—when I removed the pillows I noticed just over the neck underneath the pillows was a brown mesh rag, very often used as a dish rag, and in removing the dish rag I noticed underneath that a cord wrapped around the neck three times and tied in a knot; the right arm was extended upward in this manner (indicaating), with the palm up; the left hand was at right angles to the body in this manner (indicating).

Q. Now, with reference to the left hand—and I believe it is depicted here one People's Exhibit 8—I notice on the lefthand there appears to be a wrist watch; did you observe that?

A. I observed the wrist watch, and I noticed the band—the band of the wrist watch was open; it had a black cloth band on it, and this band was open, or the catch on the

band was open, and I noticed the watch had stopped at 10 minutes past 2.

Mr. Safier: I did not hear the last part of that answer.

A. The wrist watch had stopped a little after 2; I believe it was 10 minutes after 2.

By Mr. Roll:

Q. Directing your attention to the left hand, what if [fol. 518] anything did you observe with regard to any rings on the left hand?

A. The left hand was closed with the palm up, and it had a wedding ring, yellow band wedding ring on the ring finger.

[fol. 519] Q. No diamonds whatsoever?

A. None whatever.

Q. This picture here, People's Exhibit No. 8, fairly depicts the left hand there, the watch and the one ring; is that correct?

A. Yes, that is just like it was when I arrived.

Q. Now, I notice on People's Exhibit No. 8 that there is some cloth of some kind or character over the body. What is that?

A. Well, that is a coat, a lady's tan or light brown coat.

Q. And that is the one which was thrown over the body here, you mean?

A. That is right.

Q. With reference to—

The Court: Let me clear that up. Was that coat over the body at the time your first saw it, Mr. Brennan?

A. Yes, it was over the lower portion of the body.

Mr. Roll: This is the one he refers to, the tan or brown coat (exhibiting photograph to the jurors).

Q. Then there is another coat that Mrs. Blauvelt had on; is that correct?

A. Yes, there was.

Q. And that is reflected here in the top portion of People's Exhibit 33?

A. Yes.

[fol. 520] Q. Do you remember the color of that coat?

A. It was a blue coat, a navy blue coat made of some kind of light material like rayon or silk; it was not really silk; it was more of a rayon coat.

Q. This is the one you refer to here?

A. Yes, sir.

Q. Now, with reference to the chair, People's Exhibit 11, does that photograph fairly depict what you saw when you arrived there?

A. Yes, that is exactly as it was when I arrived.

Q. I notice there is a purse there; is that correct?

A. That is correct.

Q. Now, was there a coin purse around there somewhere?

A. There was a coin purse open—sitting right in the opening of the large purse.

Q. Are the shoes depicted there?

A. The shoes are there as they were.

Q. I notice there is a package up there. Do you know what was inside of that package?

A. Two ears of corn.

Q. There is a small mark, just on the edge, down here; is that another package?

A. Yes, as I recall, there was one package that had an ear of corn—pardon me, there was one package with a can of some kind of corn or peas and another can that had something in it, a quarter pound of butter, and then there [fol. 521] was a small package, I don't recall, it was some kind of fresh vegetables in it, string beans or something of that nature. I am not too clear on that, but it seems like there was a third package, a small package.

Q. Now, with reference to the light cord which you have described as some of it being around the neck of Mrs. Blauvelt, and a portion of it going to her body, when you got down to the other end of this light cord, not the end around the body but the other end, was that actually attached to something, or had it been jerked loose from something?

A. No, it was attached to a stand lamp, and in examining the stand lamp I noticed that the top ball of the lamp was broken off.

Q. What do you mean by the top ball of the lamp?

A. Well, the shade on the top of the lamp, there is a ball which screws on the top, and the top of that was sort of some kind of ornament, and that had been broken off and it looked freshly broken.

Q. With reference to this lamp, it would be over in this location somewhere?

A. Yes, right near the door, the door leading into the hallway that goes to the kitchen.

Q. People's Exhibit 17, does that show at least the top portion and base of the lamp?

A. Yes, it does, right there it shows it.

[fol. 522] Mr. Roll: If I may indicate that to the jury? He is indicating the top portion and this is the base down here (exhibiting photograph to the jurors).

The Court: What number exhibit is that, Mr. Roll?

Mr. Roll: No. 17.

The Court: I think I will mark that in evidence.

Mr. Roll: I thought it was.

The Court: No. 16, 17, 19, and 20 are not in evidence. They are all marked in evidence.

Mr. Roll: This is the top portion of the lamp, and the base of the lamp and the cord (exhibiting photograph to the jurors).

Q. Now, Mr. Brennan, with reference to after the garment, the coat, the tan coat, was removed from the body there, we will now take the lower portion of the body of Mrs. Blauvelt, and I will ask you this first, with reference to shoes or stockings, did she have any shoes or stockings on?

A. She did not.

Q. With reference to her dress itself, what was the condition of her dress? Was it pulled down as far as her knees or was it pulled up or what?

A. It was up around her waist with her panties showing.

Q. With reference to what we might—could you indicate possibly by pointing on me, along my leg here, about how high the dress came, wherever it was?

[fol. 523] A. About right here, it was on a slant.

Q. Indicating on the left side, one side at least about the hip bone; is that correct?

A. Yes, and then down lower, about 4 inches, on the other side.

[fol. 524] Q. With reference to the undergarments that Mrs. Blauvelt had on, were those also pulled up?

A. The panties was torn at the crotch, that is the crotch was torn out and laid up over the top of the dress.

Mr. Roll: I have here a photograph, if the court please, that I ask be marked People's Exhibit next in order for identification.

The Court: That will be 34.

By Mr. Roll.

Q. I direct your attention to People's Exhibit 34: Does that fairly illustrate, Mr. Brennan, the torn condition of the pants that you have referred to in your testimony?

A. Yes, it does on the left side.

Q. If I understand you correctly in so far as the dress is concerned, the dress was as you have described in your testimony here to me a little lower; is that correct?

A. Yes, sir, I remember the dress was a little lower than that pictured. That dress was pulled up slightly to get a better picture of the panties that were torn.

Mr. Roll: I offer this in evidence, if the court please.

The Court: Marked 34 in evidence.

By Mr. Roll:

Q. About how long would you say you were around there, Mr. Brennan?

A. I should say about three hours.

Q. Were you there when the fingerprint man was there?

A. I was.

[fol. 525] Q. Did you make any search there of the premises then or later on for any rings?

A. We did.

Q. Did you make any search that night?

A. We did.

Q. Where did you search?

A. We searched through the writing desk, through the dressers, in her purse and in the clothes closet and where we found her jewelry boxes; we looked through the jewelry boxes and we found considerable jewelry, mostly what appeared to be costume jewelry to me, but found no rings of any kind.

Q. Now, did you either at that time or later on make a search for a key to the apartment?

A. We did.

Q. Did you find any key at any time?

A. We were unable to find any.

Q. Did you accompany the administrator and his wife over there, Mr. and Mrs. Watts?

A. Yes, we did.

Q. That was about the 31st of July?

A. Approximately, yes.

Q. Was there a search made at that time in their presence?

A. There was a search made at that time and they searched the apartment. Mrs. Watts did know the type [fol. 526] of rings and she was looking for the particular type. I may correct myself. I said rings of any kind. I mentioned there was some costume jewelry, cheap rings like green settings and so on, but no diamond rings is what I was referring to, no diamond or white stone rings about the place. At the time that Mr. and Mrs. Watts and their attorney was there we made another complete search of the apartment that took us approximately an hour and a half or two hours and we were unable to find any rings, that is any white stone rings or diamond rings.

Q. Did you find any key to the apartment?

A. No, not any.

Q. Now, at the time you arrived there, Mr. Brennan, that particular evening on the 24th, was it dark or light at that time, as you remember?

A. It was dark.

Q. I take it the lights were on in the apartment; is that true?

A. The lights were on in the apartment.

Mr. Roll: Would this be a convenient place to take our recess, your Honor?

The Court: We will take a recess at this time. The jury will keep in mind the admonition hereofore given not to talk about the case or form or express any opinion until it is finally submitted. Recess until 1:45.

(Whereupon a recess was taken until 1:45 o'clock p. m. of the same day, Monday, November 20, 1944.)

[fol. 527] Monday, November 20, 1944; 1:45 o'clock P. M.

The Court: Let the record show the jury, counsel and defendant present. You may proceed. Mr. Brennan was on the stand.

WILLIAM H. BRENNAN, recalled:

Direct examination (resumed).

By Mr. Roll:

Q. Now, Mr. Brennan, with reference to the body of Mrs. Blauvelt lying there on the floor after the object which you described as having the appearance of a dishrag was removed from the neck, did you see a portion of a strand of beads?

A. Yes, I did.

Q. In addition to the portion of the strand of beads that were around the neck, were there any other loose beads there on the floor?

A. Yes, the strand of beads that was around the neck had been broken and there was quite a number of the beads scattered about the floor.

Q. Were you there when the body was actually moved?

A. I was not.

The Court: By the way, I do not think that Exhibit 7 ever was identified. I do not think Exhibit 7 was particularly identified at any one time. It was referred to, that is the beads marked Exhibit 7, but they have not been particularly [fol. 528] identified by anyone.

Mr. Roll: That is correct, and also the light cord.

The Court: That is No. 5.

By Mr. Roll:

Q. I am going to show you here a light cord, Mr. Brennan, which Dr. Webb brought in. Is that the light cord in this case?

A. Well, I did not mark the light cord at the time, but it is a light cord similar and identical with the one that was around the neck.

Q. Well, do you know this, Mr. Brennan, whether the light cord that was found there was brought into the preliminary examination and introduced in evidence there?

A. I believe it was, but I don't know.

The Court: I see. All right.

By Mr. Roll:

Q. I will show you here a strand of beads which have been marked People's Exhibit 7 for identification. Does

that give the appearance of the beads or a portion of them around the neck of Mrs. Blauvelt?

A. Those here look exactly like the beads that were around her neck.

Mr. Roll: I now offer the beads in evidence, if the court please, and also——

The Court: 7 in evidence.

Mr. Roll: And also the light cord.

The Court: 5 in evidence.

By Mr. Roll:

Q. Now, with reference to the purse or pocketbook, [fol. 529] Mr. Brennan, did you see the pocketbook there in the position which is shown in the photograph here?

A. Yes, I did.

Q. What, if anything, did you notice with reference to the pocketbook or purse?

A. I noticed that the pocketbook was opened, that is, the large pocketbook was opened and it had a small coin purse right at the entrance of it and it was opened and appeared to be empty. The articles from the pocketbook were strewn on the chair. In addition there was a handkerchief with some blood on it on the chair, or what appeared to be blood.

Q. Now, one other thing with reference to this dishcloth or dishrag which you have testified was on the face of Mrs. Blauvelt, down around the neck as shown here in the photograph, at any rate, did you look at that to see whether or not that had the appearance of having or not having any blood on it?

A. Yes, I examined it very closely and there was no indication that there was any substance on it that appeared to be blood.

Q. Now, Mr. Brennan, directing your attention to the defendant, do you know on what day the defendant was arrested?

A. The defendant was arrested on August 24, 1944.

Q. Did you see him shortly after he was arrested?

[fol. 530] A. I saw him within an hour after he was arrested.

Q. Where did you first see the defendant on that occasion?

A. I first saw the defendant at the University Police Station.

Q. About what time?

A. Approximately 3 a. m.

Q. On what charge was he booked at that time?

A. He was booked on suspicion of murder.

Q. Was there any conversation you had with the defendant at that time concerning his booking slip?

A. Yes, there was.

Q. Go ahead and relate it.

A. When the defendant was booked the desk sergeant asked, "What is the charge?" and the booking—the man who booked him, Officer Towns, said, "Suspicion of murder." The defendant says, "Oh, not me." They went ahead and booked the defendant and the defendant was searched; after the defendant was searched the slip—booking slips were torn out of the machine and one copy of the booking slip was handed to the defendant on the desk and he pushed it away and he says, "Oh, no, you aren't going to put no murder on me," and he threw the booking slip on the floor.

Q. Now, Mr. Brennan, I am going to ask you concerning some conversations, and in relating those conversations would you give just the facts as they pertain to this case? [fol. 531] Is that clear, sir?

A. Yes.

Q. Directing your attention to later on, on the 24th, at the Wilshire station, or it may have been University, did you have some conversation with him?

A. We had no further conversation at the Wilshire police station, but on the way—well, just before we left—at the Wilshire police station he was asked—not the Wilshire but University police station, Sgt. Wiseman asked the defendant what his address was, and he said 911 North Beverly Drive, Beverly Hills. Then we went out and got in the police car and took the defendant back to the Wilshire division for rebooking into the Wilshire station, and at that time Sgt. Wiseman asked him what his address [fol. 532] was again, on the way over, and he stated that he lived at 855 East 28th Street, I believe was the address.

Q. Go ahead.

A. That was about all the conversation that we had pertaining to this case with him on that evening, or that morning, before booking him and turning him over to the jailer at Wilshire.

Q. Now, directing your attention to the daytime—you said you saw him around 3 a. m., the daytime of that same day, did you have occasion to have the defendant in an automobile in the vicinity of the apartment house here located at 744 South Catalina?

A. Yes, we did.

Q. On what street were you in a car with the defendant?

A. At that time we put the defendant into a car from the Wilshire Station and we drove to several locations on the west side, pertaining to other matters, but at one time we drove to Eighth and Catalina.

Q. All right. What happened when you got at Eighth and Catalina?

A. At Eighth and Catalina I stated to the defendant, I said, "Have you ever been on this street? Are you acquainted on this street?" He said, "What street is this?" I said, "This is Eighth and Catalina." I said, "I am speaking about the apartment house at 744 South Catalina. Was you ever at that apartment house?" He said, "I [fol. 533] wasn't." Sergt. Wiseman further asked him if he had ever worked there as a janitor or had any acquaintance there, and he said he had not, that he had never been on that street, nor had he ever been on Catalina Street. I further asked him if—if on his way—if he lived on the east side, I said, "If on your way to Beverly Hills to work, didn't you have occasion to cross Catalina Street?" "Well", he said, "I might have crossed it but," he said, "if I did, I don't know."

Q. All right. Now, after that occasion when was the next conversation you had with the defendant?

A. The next conversation we had with him was in front of 855 East 28th Street, where he had told us—previously answered that he had lived. While there in the car at that place, Sergt. Wiseman had stepped out of the car and had went up to the door to speak to the people who lived there, who we later learned were his wife, and at that time, why, he told me that he had had a death at his—a half-brother or his step-brother—I have forgotten which—had died;

and I asked him where he was buried from, and he said he was buried from the Peoples' Funeral Parlors. I asked him what his name was, and he said his name was Nissy Ross. That was about the extent of the conversation we had at that time.

Q. All right, go ahead.

A. We then had other conversations pertaining to other [fol. 534] matters. On the way back—we went back to the Wilshire Police Station——

Q. All right, go ahead. We took the defendant upstairs into the Wilshire Police Station, and at that time Sergt. Wiseman and myself and the defendant was present in—there was a couple of other officers around; I don't recall their names at this time—at that time the defendant was asked again if he didn't have another address that he was living at the present time, and he said that he didn't have any other address. But just before we took him upstairs, if I may retrace my steps—just before we took him upstairs he stated before we got out of the car, "well," he said, "I made one mistake. I told you my brother—my step brother's name," and he said, "You will go to the funeral parlors and find out all about my relations, anyway, so I might just as well tell you the fact." But he didn't tell us where he lived——

Mr. Safier: I did not hear that.

By Mr. Roll:

Q. Talk a little louder.

A. He didn't tell us where he lived nor did he tell us where his relations lived. Then we went upstairs into the detective bureau, and at that time I asked the defendant if he was ready to tell us the whole story and he said, "I haven't got anything to say," so I then told him that in the apartment at 744 South Catalina that we had found fingerprints in the apartment that corresponded with his, [fol. 535] and that they were his fingerprints and he must [fol. 536] have put them there if they were his prints. "Well," he said, "I never was in that apartment, and they are not my prints, and if they correspond to my prints somebody else put them there, because I was not in that apartment." I said to him, I said, "Well, you must have been in the apartment because there isn't anyone else could put your

prints in there but yourself and'' I said, ''they are definitely your prints.'' He said, ''No, they are not my prints because,'' he said, ''if they look like mine,'' he said, ''somebody else put them there.'' I then went over and got the door, I think it is People's Exhibit 6——

Q. 6, the one here in evidence.

A. People's 6 in evidence, and I took the door out of my locker and I took the door and I sat it down in front of him, and I pointed out the prints to him on the door, and I said, ''Those are your prints,'' and he said, ''No, they are not my prints at all.'' I set the door down, and at this time Sgt. Wiseman showed the defendant the picture—I know it is in evidence but I don't know what number it is, it is a picture of the kitchen showing the garbage disposal door.

Q. I presume it was a smaller size than the one introduced in evidence here.

A. It is a small picture; not the enlarged picture, but a small one.

Q. A smaller size of People's Exhibit No. 18, is that cor-
[fol. 537] rect, this one here?

A. That is correct. This picture here, Sgt. Wiseman showed this picture to the defendant and pointed out this garbage disposal door here, and he said, ''That is how you got into that apartment, you went through the garbage disposal door, that is how you got into the apartment to burglarize it.'' He said, ''Well, that is not so, I was not in the apartment.'' The defendant said, ''Well, when was this murder, anyway?'' ''Well,'' I said, ''you should know that better than anybody else;'' I said, ''you was present.'' He said, ''I was not,'' that was his answer. Sgt. Wiseman then showed him the pictures—I don't know the numbers of them——

Q. When you refer to them I take it you mean a smaller size?

A. A smaller size but this is the enlargement here. He showed him this picture here.

Q. That is Exhibit No. 33?

A. He laid the picture down in front of the defendant, that is this picture here, and he says, ''Have you ever seen this party before?'' and he wouldn't look at it, he pushed the picture away and it fell on the floor. Sgt. Wiseman then threw the rest of these pictures all in a bunch down in front of the defendant and told the defendant to go ahead and

look at it. The defendant refused to look at them and I said, [fol. 538] "What's the matter, can't you stand it?" He said, "I don't like to look at dead people." That was his answer to it. I believe that is about all the conversation we had at that time.

Q. You started to say he asked something about what date it happened on. Did you tell him when it happened?

A. Yes, Sgt. Wiseman said, after I had said to him, "Well, you should know," Sgt. Wiseman then spoke up and he said, "Well, as far as we can figure it out, it happened on July 24th some time in the afternoon." The defendant says, "Well, what day was that?" Sgt. Wiseman said, "That is on a Monday." "Well," he said, "I don't have to worry about Monday," he said, "because I will have my witnesses," he says, "and I can account for my Mondays," he says, "all summer, I know where I was, and when the time comes I will have my witnesses there to prove it."

Q. I did not hear the last part.

A. He says, "When the times comes I will have my witnesses there to prove it, and I will be defended by one of the best attorneys in Los Angeles."

Q. Now, with reference to the defendant, when was the next time you had some conversation with him as far as pertains to the facts in this case?

A. The next conversation that we had with the defendant was on the morning of the 28th of August.

Q. Let me ask you this before we get into that one: Did you yourself see him on the date of the 27th, the Sunday? [fol. 539] A. I did.

Q. At the station?

A. At the Central police station.

Q. Had you previously been to a room on South St. Andrews?

A. I had.

Q. What address was that?

A. 2460 South St. Andrews, on the third floor.

Q. And in that room, among other things, did you find a fountain pen?

A. I did.

Q. And when you saw the defendant on the morning of the 27th did you have the fountain pen with you?

A. I did.

Q. And did you exhibit that to the defendant?

A. I exhibited that pen in addition to another pen that was found in his room, a green colored pen.

Q. And was there anything said by him at that time in words or substance concerning where he lived?

A. Yes.

Q. All right, what was said as to where he lived?

A. When I first went in to the defendant I said, "Dewey, are you willing to tell me where you live now, where your room is at?" and at that time I had the pen in my hand like this, both pens in my hand like this. However, I never said anything about pens, I just held it in my hand. The defend- [fol. 540] ant looked down at the pens and he said, "Well, it looks like you already know where I live," and I said, "Yes, that is true, Dewey," I said, "we do know where you live; you live at 2460 South St. Andrews," and there was some other conversation but it does not pertain to this case. [fol. 541] Q. On this day before that you had gone to this room?

A. Yes, on a Saturday before.

Q. Were you taken there by either Mr. or Mrs. Reyes?

A. Mrs. Reyes.

Q. That is the landlady there, is that correct?

A. That is the landlady of the apartment.

Q. When you were taken there did she point out a room to you as being the room of the defendant?

A. Yes, she took us to the room and let us in.

Mr. Roll: I have here, if the court please, an envelope which contains a portion of three stockings which I ask be marked People's Exhibit next in order for identification.

The Court: 35.

By Mr. Roll:

Q. Directing your attention to the People's Exhibit 35 for identification, Mr. Brennan, I will ask you to examine that and state when and where you first saw those stockings?

A. It was on Saturday evening which would be August 26th, I believe. Sergt. Wiseman found this stocking on top of the dresser in the room at 2460 South St. Andrews. I saw him when he picked it up and he handed it to me to look at it.

Q. I am not very good on colors.

A. It is a lighter color.

Q. All right, the lighter color. Go ahead.

A. These are the two I found in the dresser drawer, in [fol. 542] the bottom dresser drawer with some other things, some stockings and socks that were in there.

Q. Now, with reference to the condition of these stockings, I notice each of the stockings has at the end which is away from what we might call the top a knot or knots tied in the end of each stocking. Was that the way they were found up there in the room of the defendant on the day of the 26th of August, 1944?

A. Yes, that is exactly the way they were when we found them.

Mr. Roll: Now, I will now offer in evidence these stockings, if the court please, Exhibit No. 35.

The Court: 35?

Mr. Safier: I object to them as incompetent, irrelevant and immaterial, having no bearing on the issues in this case.

The Court: Marked 35 in evidence.

By Mr. Roll:

Q. Now, Mr. Brennan, directing your attention, I believe you stated the 28th is when you had the next conversation?

A. Yes, on the 28th of August.

Q. All right, go ahead.

A. At that time we picked the defendant up at the Central Police Station—no, we got the defendant at the County Jail upstairs that morning on the 28th. We took the defendant to Division 4 for preliminary hearing.

Q. Now, I believe the preliminary hearing—that was the [fol. 543] date of the arraignment, wasn't it?

A. Yes, that is right, it was on the 28th, that would be the date of the arraignment, correction, that is right on the 28th, the date of the arraignment which was down on the 28th.

Q. The preliminary hearing, I believe, was held on the 1st of September?

A. On the 1st of September.

Q. Did you have some conversation with him on the date of the 28th?

A. We got him that morning, picked him up at the Central Police Station and brought him to Division 4. After he was arraigned in Division 4 on the way back to the elevators to take him upstairs to book him into the County, the defend-

ant stated,—I said, "Well," I said, "Dewey, you have to go stand trial for this, anyway" and he said, "Well, that is all right." He said, "I will have my attorney and all my alibi witnesses there when the time comes." That is about the substance of the conversation.

Mr. Roll: Will you read that answer, Mr. Reporter?

(Answer read.)

By Mr. Roll:

Q. Have you had any later conversation with the defendant pertaining to the facts in this case other than that?

A. We had another conversation with him—we had the conversation with the defendant, I called at the County Jail [fol. 544] on the 31st of August. At that time we passed greetings in the County Jail, and the defendant, before we had a chance to ask him any questions, I asked him about something not pertaining to this case, and then the defendant spoke up and he said, "Well, you fellows are just wasting your time talking to me." He said, "You have your witnesses up there at the time and I will have my witnesses and my attorney and," he said, "you are just wasting your time talking to me so," he said, "you might just as well leave" so we left.

Mr. Roll: Cross examine.

Cross-examination.

By Mr. Safier:

Q. Mr. Brennan, you testified that you had some conversation at the Wilshire Police Station at which time you had these pictures present. When was that?

A. That was on the morning of the 24th—I should say, the afternoon of the 24th. I don't know the exact time but it was around 2 or 3—between 2 and 3 in the afternoon.

Q. The 24th of what? August?

A. The 24th of August.

Q. Who all were present at the time of that conversation?

A. Sergt. Wiseman, the defendant, myself, and there was another officer or two; I don't recall their names; it seems as I recall now it was Sergt. Powers and Sergt. Swan. [fol. 545] I wouldn't swear as to those officers. There was

a couple of other officers standing there present; it was in the squad room.

Q. Was this conversation in a little, small room?

A. No, it was in a big room, practically as big as this courtroom.

Q. How far away from the defendant were you when you talked with him?

A. Just across the table.

Q. Did you show him the pictures at that time?

A. Sergt. Wiseman laid the pictures down at that time and told him to look at them.

[fol. 546] Q. He told you he didn't like to look at dead people?

A. Yes.

Q. You had this garbage disposal door at that time too?

A, That is right.

Q. You showed him that at the time?

A. I did.

Q. As a matter of fact, at that time was there not a whole palm impression somewhere on that door?

A. I don't recall of any palm impression. There was a lot of fingerprint powder on it. I didn't pay any particular attention to a palm print or anything like that.

Q. Do you remember anything about an entire hand impression being on the door?

A. No, I don't recall seeing that on there.

Q. Now, what did you say to him when you showed him the door?

A. I pointed out the prints, and I said, "You see those prints on the door?" and he said, "Yes." I said, "Those are your prints.." I said, "The only way they could get there," I said, "is you put them there."

Q. Did he pick the door up and look at the prints, at that time?

A. I did not get the question.

Q. I say, did the defendant pick the door up and look at it at that time?

A. No, he did not.

[fol. 547] Q. Did he look at the door?

A. He looked at it.

Q. How far away from the defendant was the door at that time?

A. About 2 feet.

Q. About 2 feet?
A. Yes.
Q. How long was the door within 2 feet of the defendant?
A. I don't know; maybe a minute or two.
Q. As a matter of fact, he picked it up and looked at it, didn't he?
A. No, I don't recall. He looked at it; I don't recall him touching it, no.
Q. Are you able to testify that he did not touch the door?
A. Yes, I will testify that he did not touch the door.
Q. I see. Did you have your hands on it all the time?
A. I did.
Q. You did not let it go out of your hands?
A. I didn't allow him to touch the door at all.
Q. I say, was the door out of your hands at any time during that conversation?
A. I set the door up on the table like this and had my hand on the top of it, and just pointed out the prints on the door to him.
Q. You are certain the defendant did not pick the door [fol. 548] up and look at it?
A. I am positive.
Q. Was there anything between the defendant and the door at that time?
A. Nothing at all.
Q. Several other officers were walking around there, weren't they?
A. There was.
Q. Or standing around the door?
A. No, they weren't standing around the door, but they were within hearing distance; you might say, spectators.
Q. Is that the first time you showed the defendant the door?
A. It was.
Q. Did you show it to him on any other occasion?
A. No, I don't recall showing it to him.
Q. You had the door at the preliminary hearing in this case?
A. It was, yes.
Q. It was?
A. Yes.
Q. You had it in the courtroom downstairs?
A. Yes.

Q. The defendant was present at that time, wasn't he?

A. Yes.

Q. Now, at the time of the preliminary examination in [fol. 549] this case how far was the door from the defendant?

A. Oh, I don't know; I couldn't say how far it was. It was on the table. I wouldn't even estimate how close it was to him.

Q. The defendant might have touched it at that time, might he not?

A. No, he did not.

Q. Was it out of your posesssion at that time?

A. No.

Q. You testified at the preliminary hearing, did you not?

A. I did.

Q. Did you have the door with you on the witness stand?

A. No, but it was in the possession of my partner when I didn't have it.

Q. You didn't——

A. It was not out of my sight, no.

Q. But the defendant was sitting at the same table with his counsel, wasn't he?

A. Yes, he was.

Q. The door was on the counsel table?

A. No, it wasn't.

Q. Where was it?

A. Leaning against the end of the counsel table.

Q. Leaning against the end of the table?

A. As I remember, it was leaning against the end of the counsel table.

[fol. 550] Q. At the same table at which the defendant and his counsel were sitting?

A. Yes, but the other end.

Q. Now, you have talked to a number of the neighbors at this apartment house at 744 South Catalina Street—strike that. You have talked to the tenants or a great number of them that live in that building at 744 South Catalina Street?

A. Yes, I think I talked to pretty near all of them.

Q. They are all white people, aren't they?

A. Yes, they are.

Q. There wasn't any of them that told you that they saw this defendant or any other colored man——

Mr. Roll: I object to that as being hearsay.
The Court: Sustained.

By Mr. Safier:

Q. You did get a report, did you not, that a strange woman had been seen around the building?

Mr. Roll: I object to that on the ground it is hearsay.
The Court: Sustained on that ground. If there is any such report, the report itself would have to be brought in.

By Mr. Safier:

Q. Well, in your investigation, Mr. Brennan, did you discover any evidence that a strange woman had been seen around the building?

Mr. Roll: Just a moment.
The Court: Just a minute. Sustained on the ground it calls for a conclusion and also calls for hearsay. In other [fol. 551] words, if anybody saw a strange woman around there, the person to testify to it is the person who saw her.
Mr. Safier: The difficulty is, your Honor, we do not know which of the tenants it was that made the report.
The Court: We do not know there was anybody. The jury is instructed at this time not to draw any inference from the statement of counsel that there was such a person.
Mr. Roll: I assign that as misconduct.
The Court: The very fact you do not know of any person who made the statement indicates there was not any such statement.

By Mr. Safier:

Q. What time did you get to the apartment that evening?
A. About 8:15 p. m.
Q. Was Mr. Wiseman with you?
A. I met Sgt. Wiseman as I entered the lobby, and we went up to the apartment together.
Q. You and Mr. Wiseman entered the apartment together?
A. That is right.
Q. You and Mr. Wiseman were the first to arrive, or were some police officers present when you got there?
A. There were some police officers present when we arrived.

Q. Who was it that was present when you arrived?

A. As I recall, Sgt. McGarry and Sgt. Brown, of the Central Homicide Squad, was there, Sgt. Long, Sgt. [fol. 552] Woodhall, of the Wilshire Detective Bureau, were there; that is the only officers that was there, as I recall.

Q. Now, the door to the garbage compartment, was that unhinged from the compartment itself——

A. Yes, it was.

Q. —when you first saw it?

A. Yes, it was.

Q. Mr. Brennan, you testified in your search of the apartment you found some jewelry; what did you find?

A. There was in the dressing room off of the bathroom—there were several boxes of custom jewelry; just ordinary jewelry that you might buy in any dime store or department store; there was necklaces, pins, brooches, and there was quite a quantity of—there was eight or ten strings of beads, various kinds, pearls, glass beads, red beads, green beads and blue.

Q. You observed that Mrs. Blauvelt had a watch on at the time you found her?

A. I did.

Q. Did she have any ring on?

A. She had one ring on.

Q. That was a gold band, wasn't it?

A. That is right.

Q. What day was it that you found those stockings, Mr. Brennan?

A. On Saturday, August 26, 1944.

[fol. 553] Q. You had been in the defendant's room prior to that date, had you not?

A. I had not.

Q. Did you ever show the stockings to the defendant?

A. I don't believe so, no.

Q. You never showed him that?

A. No.

Q. Did you ever show him the lamp cord?

A. No.

Q. You showed him the pictures and you showed him the door; did you show him anything else?

A. Well, ——

Mr. Roll: Do you mean in so far as it pertains to this case?

By Mr. Safier:

Q. That is right, in so far as it pertains to this case.

A. I believe that was all.

Q. The defendant at all times denied to you that he had committed this murder, did he not?

A. That is right.

Q. Do you know who unhinged the garbage disposal door from the garbage compartment?

Mr. Roll: Just a moment.

A. I don't know.

Mr. Safier: I will reframe that.

Q. Do you know whether any of the police officers [fol. 554] involved in this case unhinged the door from the garbage disposal compartment?

A. The only way I could answer that question would be that when I arrived Sgt. Long informed me that nothing had been disturbed in the apartment, that he had allowed no one to enter the apartment at all.

Mr. Shafier: I think that is all.

Redirect examination.

By Mr. Roll:

Q. One or two questions, Mr. Brennan, with reference to the place there where the garbage disposal door fit. Did you yourself after the photographer got through go out into the kitchen and look at the siding there where the hinges had been?

A. Yes, I did.

Q. On which side was it actually hinged?

A. The door—I took the door and sat it against here, and the hinges were on this side; that would be the right side of the door; the screws that fit in the holes on the side or wall—on the side of this board, were still in the hinge, and some of the loose wood that appeared to have come out of the holes was still adhered to the screws that was still in the hinge of the door. The hinges were on the outside of the door.

Q. This is the portion of the door on this side where the door was hinged; is that correct?

[fol. 555] A. That is correct.

Mr. Roll: He has indicated here is the casing the door was hinged onto, on this side over here (exhibiting photograph to the jury).

Q. Next to the wall, is that correct?

A. Next to the wall.

Q. Now, with reference to the time which you have testified to, that you had a conversation with the defendant concerning the prints on the door, I will ask if at that time the prints which have been testified to here were at that time covered with Scotch tape?

A. They were.

Q. And there at the time you picked the door up—you testified you picked the door up, I understand, after the fingerprint man got through?

A. Yes.

Q. At that time was the Scotch tape on the prints?

A. It was.

[fol. 556] Mr. Safier: Just a moment. I move to strike out the last two answers, if the court please, as being a conclusion and opinion of the witness.

The Court: It wouldn't be a conclusion. He certainly could see the pieces of Scotch tape.

Mr. Safier: He could see the Scotch tape, but he doesn't know whether it covered the same fingerprints we are talking about here.

The Court: I think he could tell that. I do not think there is any confusion about it. I think he could see with his own eyes. It would be direct testimony on his part and not a conclusion.

By Mr. Roll:

Q. In so far as this door is concerned, Mr. Brennan, the door was not introduced into evidence at the preliminary hearing?

A. I don't believe so. I wouldn't say for sure. I don't remember. But it didn't seem to me like it was.

Q. With reference to the piece of Scotch tape opposite the arrow "A" and the piece of Scotch tape opposite the arrow "B" and the piece of Scotch tape opposite the arrow "C", on the reverse side of the door, the metal side, were those pieces of Scotch tape on there when you picked the door up there in the apartment on the night of the 25th?

A. Yes. This piece of Scotch tape here (indicating), I saw Officer Ferguson take a picture and put that tape there myself.

[fol. 557] Q. You refer to exhibit C?

A. "C." These other tapes he put on there when I was not present. But when I picked up the door these two pieces and the other one were still on the door.

Q. They were on there at all times since then?

A. To my knowledge, and the door has not been out of our possession.

Mr. Roll: Cross examine.

Recross examination.

By Mr. Safier:

Q. Officer Brennan, at the time the door was removed from the apartment, how many pieces of Scotch tape were on it?

A. Three, to my knowledge; there were three different places with Scotch tape.

Q. Three?

A. Yes, sir.

Q. How many pieces of Scotch tape were on there at the time you showed the door to the defendant over at the police station?

A. Three.

Q. I understand your testimony is that you had the door at the preliminary hearing and it was not introduced in evidence?

A. I am not sure. I would not want to swear either way to that; I don't know.

[fol. 558] Q. But you do know that you had it there?

A. We had it but I don't remember whether it was introduced into evidence or not.

Q. Did you have stockings there at that time, too?

A. I believe we did.

Q. You are not certain?

A. I am not certain, no. I do not think we did have the stockings there—no, I am quite sure we did not.

Q. You are sure now that you did not have the stockings?

A. I don't think we did, no.

Q. And you never at any time told the defendant about the stockings?

A. No, I don't believe we ever mentioned the stockings to the defendant.

Mr. Safier: I think that is all.

Mr. Roll: That is all. Take the stand, please.

[fol. 559] G. H. WISEMAN, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is the name, please?

A. G. H. Wiseman.

Direct examination.

By Mr. Roll:

Q. With reference, Mr. Wiseman, to the door which has been marked here as People's Exhibit 6 in evidence, were you present at the time there was some discussion with the defendant concerning the door over in the Wilshire Station?

A. I was.

Q. And did the defendant touch that door at any time?

A. No, he did not.

Q. With reference to the door itself either on the 24th or 25th of August, whatever day it was there, was the Scotch tape already on the door?

A. Yes, it was.

Q. Now, at the preliminary hearing was the door introduced into evidence or not?

A. It was not introduced into evidence.

Q. Was it taken back to Wilshire Station?

A. That is right.

Q. And kept in a locker?

A. That is right.

Q. And brought down here for the trial in Superior Court?

[fol. 560] A. That is correct.

Mr. Roll: Cross examine.

Cross-examination.

By Mr. Safier:

Q. At the incident in the Wilshire Police Station you had the door present and the defendant was present and who else was present?

A. Sergt. Brennan was holding the door and I was standing alongside of the defendant and the defendant was seated at a table and there were two other officers present in the room, and I believe that was Sergts. Powers and Swan.

Q. How far away from the defendant was the door?
A. I would say about 2 feet.
Q. For how long a period of time?
A. Oh, just a few minutes. I would say a couple of minutes.
Q. You were not holding onto the door all that time, then, were you?
A. No; Sergt. Brennan had hold of it.
Q. You did not have hold of it?
A. No, sir.
Q. You were by the defendant?
A. That is right.
Q. The defendant might have touched the door at that time, might he not?
A. No, I am quite sure he did not.
[fol. 561] Q. You are quite sure he did not? And you had the door at the preliminary hearing?
A. We did.
Q. And you had it at the same counsel table at which the defendant and his counsel were seated, didn't you?
A. We had it up at the other end from where the defendant was seated.
Q. Well, the room where you held this preliminary examination, so far as the counsel table, the bench and everything is very similar to this one, is it not?
A. That is right.
Q. When you said you had it at the other end where the defendant was seated you mean you had it at the end of the counsel table where Mr. Roll is seated?
A. That is correct.
Q. Did you have it on the table?
A. As I remember it was leaning up against the end of the table on the floor.
Q. Standing on the floor?
A. That is right.
Q. Did the defendant come by that way when he came in?
A. No, I don't believe so.
[fol. 562] Q. Which way did the defendant come into the courtroom?
A. Well, he passed that way from the prisoners' box.
Q. He did pass that way?
A. He passed that way, yes, sir.
Q. Immediately next to the end of the table the prosecuting attorney was seated, wasn't he?

A. That is right.

Q. Were you seated next to the prosecuting attorney?

A. I was.

Q. Was some other police officer seated there, too?

A. Sgt. Brennan was sitting in a chair directly in back of me.

Q. Directly in back of you. That door was in your possession during the entire preliminary examination?

A. As well as I can recall.

Q. The defendant also walked past there when he left, didn't he?

A. I believe he returned to the prisoners' box after the preliminary hearing was completed.

Q. I see, going around where the door was?

A. Yes.

Mr. Safier: That is all.

Redirect examination.

By Mr. Roll:

Q. The defendant was represented at the preliminary hearing by Mr. Ward Sullivan out of Mr. Giesler's office, wasn't he?

[fol. 563] A. That is correct.

Mr. Roll: No further questions.

Mr. Safier: That is all.

Mr. Roll: There are two exhibits here, if the court please, which Mr. Rogers brought into court, which are photographs of the drawings there on the board which I would at this time—I will ask to have marked People's exhibit next in order I believe it will be 36.

The Court: I wonder if it would not keep our record a little better if we substituted them for the blackboard drawing, substituted that for the blackboard drawing?

Mr. Roll: Yes, your Honor, that will be perfectly satisfactory.

The Court: Don't you think it would be better?

Mr. Safier: I think so.

The Court: Because the blackboard drawing is likely to get smudged and we cannot carry it up into the jury room and make it a portion of the record. I will have to catch that and see what the blackboard drawing was.

Mr. Roll: I do not think either one was marked, your Honor.

The Court: Well, this photograph, then, ten figures on the blackboard drawing, using the large demonstration of the fingerprints which was on a separate blackboard and — which a part of the fingerprint is reproduced in chalk on the blackboard and has numbers running from 1 to 10, mark [fol. 564] that 36 in evidence. Then the photograph on the other blackboard which has been used by several witnesses, both Mr. Larbaig and Mr. Rogers, will be marked 37 in evidence.

The Clerk: What was 35?

The Court: The stockings were 35. We have a few other exhibits, while we are talking about exhibits, that are not in evidence. I will catch those in a minute for you. 31 and 32, which are photographic enlargements made by Mr. Rogers.

Mr. Roll: I will now offer those into evidence.

The Court: They will be marked in evidence. 28, 29 and 30—28 and 29 were enlargements which Mr. Larbaig produced.

Mr. Roll: I will offer those in evidence.

The Court: 30 was a fingerprint card which Mr. Rogers wrote. All marked in evidence.

Mr. Roll: That is the People's case, your Honor.

The Court: I think we will take our recess a little early before we go into the question of defense. The jury will keep in mind not to talk about the case, or form or express any opinion. Take our recess. That puts all exhibits thus far marked with any numbers at all, all are in evidence.

(The jurors left the courtroom and the following proceedings were had in their absence:)

Mr. Safier: I want to make a motion at the bench.

[fol. 565] MOTION TO STRIKE

(The following proceedings were had at the bench:)

Mr. Safier: I make a motion to strike from the evidence the handkerchief and the two napkins that were found in the search of the apartment on the grounds they are incompetent, irrelevant, immaterial, and have not been connected up in any way.

The Court: Well, with the exception of one handkerchief, they were all directly connected with the scene of the alleged offense. As to those, the motion will be denied. Now, there was an orange—a handkerchief which you referred to in Mr. Pinker's testimony, which was on the large overstuffed chair by the purse, No. 14, and that is found directly on the scene of the crime. Exhibit 15, the orange-colored handkerchief, was found in the dresser and bore the same name, "Carrie," as the handkerchief which was found on the chair. As to that the motion is denied. I think that is admissible as tending to show possession and ownership in the same individual of two separate handkerchiefs, in other words, it has some tendency—it may not be a great deal, but it has some tendency to show the handkerchief found by the purse was owned by the same person who owned the handkerchief found in Mrs. Blauvelt's dresser drawer. The napkin is 16, and that was found right on the scene of the offense.

Motion For Advised Verdict

Mr. Safier. The next motion will be made for an advised verdict on the ground the evidence is not sufficient to go [fol. 566] to the jury.

The Court: That motion will be denied on two grounds: One is, I think the evidence is sufficient to go to the jury, and the other is I never instruct the jury until both sides rest.

(Short recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Safier: May we have just one moment, your Honor?

The Court: Yes.

(Conference between defendant and his counsel.)

Mr. Safier: The defendant rests.

The Court: You may proceed with the argument.

Mr. Safier: May we approach the bench first, your Honor?

The Court: Yes.

(The following proceedings were had out of the hearing of the jury:)

RENEWAL OF MOTION FOR ADVISED VERDICT

Mr. Safier: The defendant at this time renews his motion for an advised or directed verdict on the ground of the insufficiency of the evidence.

The Court: Motion denied.

Mr. Safier: Very well.

(The following proceedings were had in open court:)

The Court: You may proceed with the argument.

(Argument.)

[fol. 567] (After argument to the jury by respective counsel, and the instruction of the court having been read, the jury at 3:30 p. m., November 24, 1944, retired to deliberate upon its verdict.)

Wednesday, November 22, 1944; 2:35 o'clock P. M.

The Court: The record in the case of People vs. Admiral Dewey Adamson, No. 98734, will show the defendant present, counsel present and the jury present. Have you agreed upon a verdict, Mrs. Dickie?

The Forewoman: We have, your Honor.

The Court: You may hand it to the bailiff.

(Verdicts handed to the court by the bailiff.)

The Court: The clerk may read the verdicts returned by the jury.

(Verdicts of jury read by the clerk.)

Mr. Safier: I ask the jury be polled.

The Court: The clerk may poll the jury. Possibly this next procedure may be somewhat new to some of the jurors. You have already been asked whether this is your verdict, your individual verdicts, and the verdict of the jury. There is a procedure known as polling the jury. The clerk will call each of your names and ask if this is your verdict, and you will answer if it is or is not your verdict.

[fol. 568] (Jury polled by the clerk.)

The Court: You may record the verdicts.

The Clerk: They do not have to be recorded.

The Court: They still have to be recorded. This will conclude your services in this particular case, ladies and gentlemen.

(Jury thereupon retires from courtroom.)

Mr. Safier: At this time we give notice of a motion for a new trial.

The Court: What was that other date?

The Clerk: Friday, the 24th.

The Court: Do you want to put this on Friday with the other case, for the same time, and hear the two of them together?

Mr. Safier: It would suit me better to have it Monday.

The Court: Set this matter down for Monday, the 27th, for judgment and sentence.

Mr. Safier: And have the other one go to Monday too.

The Court: The motion for a new trial?

Mr. Safier: Both at the same time.

The Court. Yes. At the request of the defendant, this consolidated case, 98734 and 98859, is also continued, on motion of the defendant, until Monday, November 27th, at 9 o'clock a. m.

Mr. Roll: With reference to the other case, is it within the statutory time?

[fol. 569] The Court: When it is at the request of the defendant the statute does not operate.

[fol. 570] Monday, November 27, 1944; 9:00 o'clock A. M.

JUDGMENT AND SENTENCE

The Court: Admiral Dewey Adamson, you were heretofore arraigned under Information 98734, charging you with the crime of murder in count one and burglary in count two. The information also alleged that you *had* previously convicted of the crime of burglary in February, 1920, and the crime of first degree robbery in June, 1927, both convictions having been suffered in the State of Missouri, and both having punishment inflicted by the service of terms of imprisonment in the State Prison of that State. These prior convictions were admitted by you and were not submitted to the jury. The issues of fact being submitted to the jury on counts one and two, the jury returned a

verdict finding you guilty of the crime of burglary of the first degree, as charged in count two, and found you guilty of murder in the first degree under count two, without recommendation, the verdict carrying with it the death penalty. This is the time set for judgment and sentence, and any further proceedings on the motion for a new trial made on November 24, 1944.

Mr. Safier: On the motion for a new trial we urge the evidence is insufficient as to the murder count and as to the burglary count; that the only evidence in the case tending to connect this defendant at all was the fingerprint evidence, and that evidence did not directly connect him [fol. 571] with the crime of murder. The record is silent as to how long prior to this crime those fingerprints might have been placed there, and it is not a circumstance that directly connects this defendant with the crime of murder. I submit it without further argument.

The Court: Well, the motion for a new trial is denied. The record will show that the court is fully appreciative of the entire situation here and the seriousness to the defendant. The court has absolutely no doubt of the guilt of the defendant of both of these offenses. The record might also show this question has been already approved in our courts, People v. Ramirez, 113 Appellate, 210, the court specifically holding that the finding of the fingerprints of a defendant at the scene of a burglary was sufficient in law to connect the defendant with the offense and sustained the conviction. Is there any further legal cause why sentence should not now be pronounced?

Mr. Safier: None, your Honor.

The Court: Let the record show that this defendant is charged by information filed on September 14, 1944, with the crime of murder, in count one, and burglary in count two, and three other counts of burglary which were thereafter severed and joined with another information and tried separately. The information alleged two prior felony convictions, to-wit, the crime of burglary in the State of Missouri, for which, in February, 1920, the defendant was [fol. 572] sentenced to serve a term of imprisonment in the State Prison, and the crime of first degree robbery in the State of Missouri, for which, on or about the 30th day of June, 1927, the defendant was sentenced to serve a term of imprisonment in the State Prison. Originally the defendant denied these prior convictions, but prior to

trial admitted the prior convictions, and the information was submitted to the jury merely upon the pleas of not guilty of the defendant to the charges of murder in count one and burglary in count two.

The cause came on for trial on the 15th of November, 1944, and after hearing the evidence and the instructions of the court, the jury retired and returned verdicts on the 22nd of November, 1944, finding the defendant guilty under count one of the information of the crime of murder in the first degree, and making no recommendation in their verdict as to the matter of penalty. The jury also found the defendant guilty of burglary of the second degree under count two of the information. It further appeared, at the request of the defendant, further proceedings for passing on judgment and sentence were continued to and set for the 24th of November, 1944, at the hour of 9 a. m., at which time a motion for a new trial was made, and at the request of the defendant was continued for further proceedings to this, the 27th day of November, 1944. At that time the motion for a new trial was heard and argued and by the [fol. 573] court denied.

It is now the judgment and sentence of this court, for the crime of murder of the first degree, of which you, the said Admiral Dewey Adamson, have been convicted under count one of Information 98734, the verdict carrying with it the extreme penalty of the law, that you, the said Admiral Dewey Adamson, be delivered by the Sheriff of Los Angeles County to the Warden of the State Prison at San Quentin, and to be by him executed and put to death by the administration of lethal gas in the manner provided by the laws of the State of California; and the Sheriff is directed to deliver the said Admiral Dewey Adamson to the Warden of the State Prison at San Quentin within ten days from this date, to be held by said Warden pending the decision of this case on appeal; the Sheriff is further commanded to take the said Admiral Dewey Adamson to the State Prison at San Quentin and deliver him into the custody of the Warden of the State Prison, and the Warden is commanded to hold the said Admiral Dewey Adamson pending the decision of this cause on appeal, and upon the judgment becoming final to carry into effect the said judgment of this court at a time hereafter to be fixed by the order of this court within said State Prison at which time and place said Warden shall then and there put to death the said

Admiral Dewey Adamson by the administration of lethal gas.

It is the further judgment and sentence of this court, [fol. 574] for the crime of burglary of the first degree, of which the defendant has been found guilty under count two of this information, after said prior convictions, the said Admiral Dewey Adamson be imprisoned in the State Prison of the State of California for the term prescribed by law. The sentences just imposed to run concurrently with one onother, and to run concurrently with the sentences imposed under Information 98859 and 98734, which were consolidated, and for which the defendant has just been previously sentenced.

Mr. Safier: I ask for a stay of proceedings now, so the defendant may be here for a while so he will be available for conference.

The Court: Not under this statute. The statute provides the defendant must be taken to the State Prison within ten days.

[fol. 575] Reporters' certificate to foregoing transcript omitted in printing.

[fol. 576] In Superior Court of Los Angeles County

[Title omitted]

Judge's Certificate

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that the objections made to the transcript herein have been heard and determined and the same is now corrected in accordance with such determination, within the time allowed by law; and the same is now, therefore, approved by me this 9th day of Jan., 1945.

Chas. W. Fricke, Trial Judge.

[fols. 577-578] In Superior Court of Los Angeles County

[Title omitted]

Judge's Certficate

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that no objection has been made to the within transcript by either the defendant or his attorney, or the District Attorney, within the time allowed by law; and the same is now, therefore, approved by me this 9 day of Jan. 1945.

Chas. W. Fricke, Trial Judge.

[fol. 579] In the Superior Court of the State of California, in and for the County of Los Angeles

Department 43. Hon. Charles W. Fricke, Judge

No. 98734

The People of the State of California, Plaintiff,

vs.

Admiral Dewey Adamson, Defendant

Reporter's Supplemental Transcript

Appearances:

For the People: S. Ernest Roll, Esq., Deputy District Attorney;

For the Defendant: Milton B. Safier, Esq.

[fol. 580] Monday, November 20, 1944; 9:30 o'clock A. M.

Mr. Roll: May it please your Honor, counsel for the defendant and members of the jury: I will say at the outset of this case, as in any case of importance, that in approaching the case, discussing with the jurors, as I comment upon the evidence and I quote as being the testimony in the case something which, according to the record in the case, does not appear to be in the testimony, I ask you to disregard

my statement as being the evidence and take only the record of the witness' testimony, and chalk it up as an inadvertence on my part. And if, during the discussion of questions of law which will be involved in the case, you find I make any statement as to what I believe his Honor will instruct you concerning the law, and it comes time for the instructions, you hear them, and the court instructs you otherwise, I ask you to disregard what I have told you I believe the court will give you, and follow implicitly the court's instructions.

You learned at the outset of this case, while you were being questioned as jurors,—you were asked this question either by the court or by one counsel or the other, that the only evidence that you would consider is that which you would hear here in court, and the only law you would consider is that given you by the court. And I ask you to bear that in mind as we approach this case.

I do not stand here, members of the jury, in the capacity [fol. 581] of representing any private client. I stand here in the capacity of a sworn officer of the law, a part of the District Attorney's office, for the purpose of presenting the facts available to you, intending to see that a proper verdict is arrived at. My obligation is to the People of the State of California and to the defendant in this case. I do not owe any obligation to a private client.

Let us approach this case first with reference to the nature of the charges involved. You heard at the outset that this defendant is charged with two offenses: one, the offense of murder, and, second, the offense of burglary. It is alleged in the information which has been filed against the defendant that these two offenses which occurred on the date of the 24th of July, 1944, as far as the count of burglary is concerned, it reads that the apartment of one Stella Blauvelt, 744 South Catalina Street, City of Los Angeles, County of Los Angeles, State of California,—now, the court will instruct you, I believe,—taking the offense of burglary,—that every person who enters a room, apartment, house, dwelling of another with the felonious intent of committing either grand or petty theft, is guilty of the offense of burglary. The court will further tell you, in order to convict a person of this offense, there must be shown specific intent. In other words, a person must have that intent at the time entry was made, and the court will also, I believe, instruct [fol. 582] you that the intention with which an act is done

by a particular individual is manifest by the circumstances surrounding the commission of the offense in the sound mind and discretion of the accused. Those, generally, will be the instructions which I believe the court will give you concerning the offense of burglary.

Now, in so far as the offense of murder is concerned, the court will give you a definition of what goes to make up and constitute the offense of murder. Murder, I believe the court will tell you, is the unlawful killing of a human being with malice aforethought, the unlawful killing of a human being with malice aforethought. The Legislature has seen fit to divide murder into degrees, divided it into first and second degree. And in so far as making the division of murder is concerned into those two degrees, the law says that anyone who commits a murder during the perpetration of certain offenses, one of them being burglary, is guilty of the offense of murder of the first degree.

Now, with reference to the interpretation of those instructions, in view of the testimony that has been introduced into this case, eliminating entirely from—at this time from the question as to the identity of the perpetrator, I think that under the testimony in this case the evidence shows that the only reasonable conclusion, the only conclusion which has been proven beyond any reasonable doubt, is that the murder was perpetrated in the commission of a burglary. That being so, it would be a murder [fol. 583] in the first degree.

We find from the testimony—I will go into it in detail a little later—of Dr. Webb as to the cause of death, we know that Mrs. Blauvelt died by the primary reason of strangulation. We know from the nature of the testimony, what we find there, it certainly was not self-inflicted; it was done by some other person. We know in addition to that, in talking about the degree of the murder, that Mrs. Blauvelt did have in her possession and wore—we have gone as close as 11:30 on the morning of the 24th, by Mrs. Turner, the lady who was employed at Bullock's, placing the diamond rings on her finger. We know those diamonds were missing from her apartment and from her person when her body was found. In addition to that we know, unquestionably, that entry was made into this apartment by means of going into this servidor or garbage disposal unit. Now, that evidence of the diamonds being missing and the evidence of the manner in which the entry was made goes to

this question of the intent of the person that made the entry; that is evidence of their intent.

For example, if you members of the jury, some of you would be so unfortunate this evening as to go home and find that a screen had been cut, that a window had been forced and you got into your bedroom and you found that numerous articles were gone from your own personal belongings, you would know there had been a burglar in that [fol. 584] house. Just the same in this case, we know that the person that made the entry through the servidor, the rings being gone, and the manner of entrance, that person went in there for one purpose and that purpose was to commit burglary. So I say, leaving out the question of the identity of the perpetrator, that the only conclusion we can come to is that the burglary was one which occurred—the murder was committeed during the burglary, and it was first degree burglary.

Now, let us look at the testimony in this case. Up to this noon we had a number of pages of testimony, and that does not include this afternoon—441 pages of testimony in this case. But let us start out and trace, first, Mrs. Blauvelt's actions prior to the time of her decease. In tracing that, I am going to read to you from my notes, excerpts I have taken of the testimony here. I can pick out the books and go through them, but it would take a little longer. I am going to try to do it the shorter way.

So, we will start out with Saturday, the 22nd day of July, 1944. If counsel desires to check me on this I will refer him to the volume and page where this testimony is found. We find on Saturday morning—this is in Volume 3 at page 122,—Mrs. Vandiver, the lady who lived downstairs in the apartment, saw her that morning. She says that she came to her apartment on the way downtown, and she stayed ten or fifteen minutes. On cross examination counsel asked her—this is in Volume 3, page 132,—"What [fol. 585] time of day did you see her at that time? A—Well, I would say about 10; between 10 and 11. Q—Did you have quite a little visit at that time? A—Oh, about ten or fifteen minutes; I don't know." Then we find out from Mrs. Watts, Maud B. Watts, that on Saturday Mrs. Watts met her in the city of Los Angeles at the tea room, which is described in her testimony; that they went to see a picture called "Mark Twain", and after that they went to Sheetz at Seventh and Hill Streets, she leaving her at

4:30 or a quarter to 5 on Saturday afternoon. That appears in Volume 2, page 45.

"Q—With reference to the date of the 24th of July, 1944, which date, I believe, was on a Monday, when had you last seen her previous to that time? A—On Saturday, the 22nd, we were together— Q—Saturday, the 22nd of July? A—Yes, all day. Q—Where did you meet her that day? A—At Bullock's, up in the tea room, and we had lunch together, went across the street and saw a Mark Twain picture and then visited afterward. Q—About what time did you leave her on that day? A—I left her about 4:30 or a quarter to 5." Then she mentioned leaving her at Sheetz.

Then, on Sunday, the 23rd of July, we find out from Mrs. Bailey, the lady who had previously been a neighbor of hers for some period of time prior to Mrs. Blauvelt's moving to the apartment there on South Catalina—that [fol. 586] on that Sunday afternoon she saw Mrs. Blauvelt at her home. Page 220, Volume 4.

"Q—About what time did you see her? A—She came about 2 o'clock in the afternoon. Q—How long did she remain at your home, Mrs. Bailey? A—Until a quarter of 5."

You recall the lady said that she took her in her car, it was just a short distance from where she lived, and drove her up to the apartment and let her out. Now, that accounted for Sunday.

Let us get down to Monday, the 24th day of July, in the morning, Monday, the 24th day of July. It appears in Volume 2, page 71. Mrs. Massey, the apartment house manager, saw her twice on the 24th. I will refer to one time, and then I will take up these other times later on. Page 71: "Q—About what time would you say that you saw her? A—I saw her once at 10 o'clock; she was ready to go down—to come downtown, and about 3 or 3:30 she came back."

Now, we find out from Mrs. Turner, the lady that worked at the lending library at Bullock's Downtown, that she, Mrs. Blauvelt, was in there that day of the 24th about 11:30, as I recall her testimony, in the morning, and that she then took out a book, which the lady produced here in court, called "D-Day," and that was the last time she saw her alive.

[fol. 587] We then come back to the apartment and we find Mrs. Blauvelt coming into the apartment, according to Mrs. Massey and according to Miss Massey, who testified here today, some time between the hour of 3 and 3:30. Mrs. Massey was asked these questions on page 71, about the return: "Q—Now, will you state where you were when she came back? A—Right opposite the elevator, counting the linens, the laundry and linens, and putting it in the closet, in the linen closet. And I talked to her. I opened the elevator—she had a few packages, so I opened the door of the elevator so she could get in easy. That is the last time I saw her."

We find that she was dressed in blue.

"Q—What kind of coat did she have on? A—Well, it was something like this, but blue."

You recall Mrs. Massey at that time had a coat on, and she said, "Something like this, but blue." We find out from her daughter, with reference to the attire that she had on, that is, particularly the outer coat that she had on when she was found by the officers, that was the way she was attired. So we have traced her actions up to the time she entered the apartment.

With reference to the testimony of Mrs. Turner concerning the book, it is interesting to note just a little detail that sometimes may be overlooked and which is shown by the photographs. One of the photographs introduced here [fol. 588] in evidence to show the living room of Mrs. Blauvelt as discovered by the officers the next day—I refer now to People's Exhibit No. 8, just to show you how the testimony can tie in. If you will look on the table shown there in the background, right on this table here, you can see the book "D-Day" sitting right on the table. That is certainly corroboration of the testimony of Mrs. Turner that the lady was in there and that she did procure that book.

Now, let us go back and trace what the evidence discloses concerning the rings as worn by Mrs. Blauvelt. We have the testimony of Mrs. Watts, who gives a rather comprehensive description of the rings. You remember, she is the lady that had known Mrs. Blauvelt for some period of time; she is the lady whose husband was appointed administrator of the estate. And here is what she said about the rings, page 49 of the transcript, Volume No. 2, giving you a description. She said one was a gold wedding ring. "A—

The next ring was a large solitaire, and I judge, by my own ring that I had, that it was about a carat and a half or a carat and a quarter. It was gold underneath, but the setting, the prongs were platinum. "Q—You describe this stone you call a solitaire as being a diamond? A—A diamond, a very blue, white, very clear diamond." "Q—Now, with reference to the third ring? A—Well, the solitaire in the center, that was all platinum, the whole ring was platinum and had been designed so that it was raised a little, and [fol. 589] the center stone was about the same size as the engagement or the other stone, the single; and then the surrounding stones were not chips; they were whole diamonds, but smaller."

Now, she gives a rather comprehensive description of those rings. And from the testimony of Mrs. Watts, I think that we can all say that these were rather valuable rings, particularly the stones.

Now, in so far as the possession and wearing of the rings by Mrs. Blauvelt, Mrs. Watts' testimony, which I indicated before, shows she saw her on Saturday, the 22nd of July, at the tea room at Bullock's, went to see the Mark Twain picture and left her at Sheetz's. She was asked whether she was wearing the gold wedding ring and the two diamond rings, and she said that she was. This lady also testified that she saw her at least once a week for the last six years, and she said that she always wore them except one time she had the one with the large stone off and she gave the reason, but the reason for that was stricken.

Mrs. Vandiver, the lady who lived downstairs, said that she was a resident of the apartment and she had been a friend of Mrs. Blauvelt's for a considerable period of time, and since the War she and Mrs. Blauvelt had been down to the Red Cross Tuesdays and Fridays, and I believe the place they attended was downtown in the Telephone Building, and although they did not start out together in the morning to go to the Red Cross on those days, they used to meet [fol. 590] at the street car, went downtown together and came home together. She was asked these questions with reference to her wearing rings, Volume 3, page 130: "Q—Now, Mrs. Vandiver, with reference to Stella Blauvelt, have you seen her wearing some diamond rings? A—I have. Q—More than once? A—All the time. Q—Do you recall any occasion when you saw her when she was not wearing them? A—No."

Now, let us see what Mrs. Bailey, the lady whom I previously mentioned,—Mrs. Blauvelt had gone over to her home on Sunday, the 23rd,—said about the rings.

"Q—About how long had you known Stella Blauvelt prior to her death? A—I think about twenty-five years." This is Volume 4, page 219. She said, further on, that she had been a neighbor of hers up until the time Mrs. Blauvelt sold her home, she said, approximately two years ago, and that since that time she saw her quite frequently. She was the lady that said during the club season she saw her at least once a week, and I believe she said on Mondays, when the Ebell Club meets. And I believe counsel asked her when the club season was, and she said from July to October. She said that on this date, the 23rd, she was there from 2 until about a quarter to 5. Page 220 of Mrs. Bailey's testimony: "Q—Did you notice whether on that day, at your home, meaning the 23rd of July, on Sunday, that she was wearing any rings? A—Yes, sir, she was. Q—Did you see them? A—I did."

[fol. 591] Then, on page 221: "Q.— Over the period of years that you have known her, we will say, the last three or four years, limit it to that time, so far as her wearing rings are concerned, did you notice her wearing rings frequently, all the time, or what? A.— I never saw her without those rings."

And then we have the little lady that testified here this morning, Mrs. Turner, from the lending library, who says that she observed her rings on the morning of the 24th. So we have actually traced her, practically right to the door of that apartment, wearing those rings.

What happened to the rings? You know, the testimony indicates that Mrs. Vandiver, the lady who she was accustomed to going to the Red Cross with on Tuesdays, and did go to the Red Cross, that Mrs. Blauvelt was not there on this particular Tuesday, which would be the 25th; that when she returned home, after dinner, she went up to the apartment, and, getting no answer, she went down and got the landlady, went back upstairs and observed what she has testified to here in the testimony as being fairly represented by the photographs here.

We find the officers coming; there are no rings there; a diligent search is made for the rings and they cannot be found. There is no testimony in this record whatsoever

to indicate that the rings were taken other than by this burglar. We put them in there but they are missing. [fol. 592] Where do we hear next a question of a ring mentioned? By uncontradicted testimony, that is, the testimony of Frances Jean Turner, the woman that came into court here and testified that during the month of August, 1944, and she said that it occurred between the 10th and the 14th of August, 1944,—counsel asked her to fix the date,— she said that she contacted a man. "Who," counsel asked her, and she gave him his name, and as to having a conversation with him. She said she was able to place it between the 10th and the 14th of August—it was during the first two weeks of August. She said she was at this Colony Club at 29th and Western Avenue in the city of Los Angeles, she was seated at the bar, and she testified that she overheard this defendant say to another colored man, in substance,—here is what she testified to, page 230: "A.— Well, I just happened to overhear him ask this man if he would be interested in buying a diamond ring. Q.— What, if anything, did the man say? A.— He said no, he was not interested."

Counsel, at page 237, on cross examination, asked her with reference to the identity of the defendant: "I asked you if you may be mistaken about he being the man you saw at the Colony Club that evening. A.— No. Q.— You could not be mistaken? A.— No, I am positive it was him."

We have a positive identification. She testified, in response to some of counsel's further questions, that she had seen him previously. If you recall the testimony, some [fol. 593] place along in the record, we have them, in turn, calling each other by their first names, positive identification by someone that previously had known the defendant, as to hearing him make the statement to this man. The defendant has not taken the stand; he has not denied that; it is uncontradicted in the testimony. There he sits, not getting on the stand, not giving you what his version of the situation is. You have got the right, members of this jury, to consider the fact and consider that four hundred and some odd pages of testimony are uncontradicted from the lips of this defendant. Why? For example, during the time that Frances Turner was on the stand—it happened here in the courtroom—the defendant and his counsel went into a huddle, and then came up with some questions

about a juke box. You remember that. He was there. That conversation happened. He has not denied it; it is uncontradicted.

So, I say that we have put the rings on Mrs. Blauvelt, put them on her on Saturday morning, unquestionably, and put them on her—it is a reasonable inference—at the time she went into the apartment.

Now, as near as we can, by the evidence in this case, come to the approximate time of her death by three witnesses. You recall the testimony of Mrs. May, who was living at the apartment right across the hall on this date. She testified that she was home on that day. And also by the testi- [fol. 594] mony of Mr. Heck, the gentleman who was engaged down at the Southern California Telephone Company, who said that was his first day of vacation and he was downstairs in the apartment directly below the one which would be next door to Mrs. Blauvelt's had it been on the same floor. Now, in Mrs. May's testimony, I believe on cross examination, it appears in the record—my recollection of it—that counsel asked her, after she heard what she described in the testimony as being a frightened voice, of Mrs. Blauvelt saying, "What do you want of me?" Counsel asked her if she could fix the time, and she fixed the time at 3:30. My recollection is that she testified that she looked at the clock. That ties in with the testimony of Mr. Heck. Mr. Heck says, in so far as voices were concerned, he was not able to distinguish the voices, but he heard a scream. That is the way he described it, as being a scream. Mind you, he is downstairs.

I think from that testimony it is reasonable to assume, in view of the other testimony in this case, and particularly the fingerprints, and particularly what we heard Mrs. May say that she heard before she heard this voice say, "What do you want of me?" she heard some pounding, that this defendant, Dewey Adamson, gained entrance to that apartment by going in through this door; he was there in the apartment; that the people downstairs put her coming upstairs between 3 and 3:30, as best they can—Mrs. Massey [fol. 595] and her daughter—she comes up there and inserts the key in the lock; the defendant is in the apartment and he grabs her. You have seen the results in the photographs; you have seen that the rings were missing.

Now, with reference to the cause of death I am going to read just what Dr. Webb says; I will have to go back to the

testimony of Dr. Webb. The autopsy on Mrs. Blauvelt was performed on the date of the 26th, and as I recall his testimony, along some time about 11 o'clock or 11:45 in the morning. This is reading from page 13: "Q.— Doctor, I believe you testified that you saw her on the 26th of July at what time, please? A.— I saw the body on the 26th day of July at 11:48 a. m. Q.— And, Doctor, could you express an opinion based on your experience as to how long, approximately, at that time Stella Blauvelt had been dead, in hours? A.— The body was in pretty fair condition and she had been dead possibly close to forty-eight hours."

Figuring back forty-eight hours, approximately, and I think you will come to approximately the time.

On page 18, counsel, on cross examination, asked the doctor this question: "Q. Now, you testified, Doctor, that the woman had been dead, in your opinion, close to forty-eight hours? A. Yes, sir. Q. Could it have been longer than that? A. Well, the indications wouldn't lead you to suspect longer, other than it might have been an hour longer or an hour or two less. But I couldn't state right [fol. 596] to the minute. Q. It wouldn't vary within an hour or two either way? A. I wouldn't think so."

The doctor does not tie himself down to exactly forty-eight hours, by any manner of means, but that testimony of the doctor ties right in with this 3:30 occurrence on the date of the 24th.

Now, with reference to the cause of death—I am not going to read all of it, but here is what the doctor testified, as far as the pertinent points are concerned, of the autopsy performed by him: "There is extensive ecchymosis around the left eye, over the left side of the face extended upward into the left side front of the head and over the left ear. The lips are bruised and have a swollen appearance. There are three superficial bruised grooves, three-eighths of an inch across, extending around the upper neck region. An electric extension cord was removed from around the neck. On the left side the groove is slightly excoriated. From these findings it was determined that the immediate cause of death was strangulation due to constriction around the neck. Other conditions contusion of the brain due to trauma to the head."

The doctor was asked with reference to the bruise on the face, this question, page 14: "Q. And have you ex-

pressed any opinion as to how a bruise of that type or character might have been caused, Doctor? A. It is very [fol. 597] hard to state the method of causing a bruise like that which is extensive over that side. All that I can state is that either some object hit that head or the head hit some object, and that object was not a sharp or cutting object."

So we find that in so far as the cause of death is concerned, it was due to strangulation.

Going to some of the other testimony in this case, Mr. Pinker testified to making certain observations there and finding certain things at the scene. He is the witness that testified that he was there when the Coroner deputies removed the body, and when the body was removed, underneath the body he found the foot portion of this stocking, and that was introduced here into evidence. We placed in evidence the tops of three stockings found in the room of the defendant. From the appearance, I think it is readily determinable that they are women's stockings. They are tied at the top. We have the top part of the stocking that Mrs. Blauvelt had on, missing, and the whole stocking she also had on the other leg missing. Counsel on cross-examination of one of the witnesses—I believe it was Miss Massey, one of the women that saw her on that date, last saw her alive, and asked her if she was wearing stockings, and she said she was. The defendant has not seen fit to explain what these stockings are doing in his room. It is rather an unusual situation where we find stockings gone and three women's stockings in the room of the de- [fol. 598] fendant. This might be a little homely expression, but possibly would come into the same category, as the man that went out to sell and did sell some chicken feed, and we find out that that man had chickens when he got home and would have use for that. Or you take another example. You find in the burglary of a store having painters' supplies, one particular type of painting equipment is used by a person and that is gone, and you go over to the individual's home who is accused of it and you find that item there. Now, I do not say that the type of stockings found in the room of the defendant are from the same stocking that was found underneath her. The evidence does not indicate that. I will say to you, frankly, they are not. But we do have this circumstance of finding those stocking tops there in the room of the defendant. When I was a kid, long before I started to get bald-headed—

maybe that is one of the reasons I am bald-headed, coupled with several other factors,—I can remember of getting some old stockings, taking the top off and making a stocking cap. Now, once in a while young people do that, and once in a while older people do it. At least, we have those in the possession of this defendant. No explanation; nothing said or testified by him as to what they are doing in his room. The record is silent.

Now, let us go down to the time that the body of Mrs. Blauvelt was discovered. We have, as I mentioned a few [fol. 599] moments before, Mrs. Vandiver, her friend, meets her at the Red Cross on Tuesday, coming to her room and she testified that she observed the Times newspaper at the door, that she went downstairs and she got Mrs. Massey, Mrs. Massey came up, put the key in the door, opened the door and went in the room, and their primary attention was directed, naturally, as anyone would, to the person lying there on the floor. Now, these photographs which were introduced here in evidence, and which were shown to Mrs. Vandiver—at least, some of them were—she said they fairly depict what she observed when she went in the room there; possibly not exactly from this angle. But we have the garment over the body; we have the two pillows over the body. It is interesting to note, even in this picture, you can see, on the left hand, there is a ring there, which is unquestionably a wedding ring. No other ring shown on the photograph. That is what these two ladies saw; they left; did not go back to the room, and 'phoned the police.

We placed Mr. Long here on the stand, and he testified as to what he saw there. He identified the pictures and said they were fair representations of what he observed there. After Mr. Long arrived he made some calls to other officers and those other officers came. He told you that with reference to these two pillows he picked up the top pillow and on the bottom side of that top pillow was a substance which appeared to be blood. He then said, with [fol. 600] reference to the top side of the pillow underneath, that there was no appearance of blood on that, but when he got on the bottom side of it there was an appearance of blood there. It was either Mr. Long or Mr. Brennan that testified that with reference to that blood—I believe it was Mr. Brennan—he observed the same condition as far as the pillows are concerned and that at that time it

appeared to be dry. That in itself, with reference to the condition of those pillows there, appearing to be blood, indicate that the defendant had remained in that apartment for some considerable period of time; a considerable period of time; unquestionably those pillows were changed. Why, I don't know. The man over here knows, but he does not tell. We have, in addition to the situation on the pillows—when I say a long period of time, that statement is corroborated by the testimony of Mrs. May, the lady across the hall. Now, she is, you will recall, that afternoon seated on the divan, and then later on, I believe she said around 5:30 or 6 o'clock, she went to bed. She is not definite as to the time. Counsel read it from the transcript of the preliminary hearing, and I think her time was some place between 6:30 and 8:30; somewhere in that vicinity. She says she heard a key in the lock and then she heard someone go down the back stairs. We know the key is missing; the key is gone, too. Mrs. Blauvelt, unquestionably, had the key to get in the house. The key is gone. This [fol. 601] situation with reference to those pillows corroborates that testimony of Mrs. May——

The Court: I think we will take our recess, Mr. Roll; we have got to break somewhere. The jury keep in mind you are not to talk about the case or form or express any opinion. Take a recess until 9:30 tomorrow morning.

(Whereupon an adjournment was taken until Tuesday, November 21, 1944, at 9:30 o'clock a. m.)

[fol. 602] Tuesday, November 21, 1944; 9:30 o'clock A. M.

The Court: In the case on trial the record will show the jury, counsel and the defendant present. You may proceed with the argument, Mr. Roll.

Mr. Roll: May it please your Honor, counsel for the defendant and members of the jury: At the recess last evening we were discussing something with relation to the pillows on the body of Mrs. Blauvelt, as found there by the officers. In People's Exhibit 8, which you have seen and which has been testified to here, reflects what the officers observed so far as the pillows were concerned. They have testified there were two pillows there, the large pillow being the one on top, and I think by looking at the chair which

is shown in the photograph you can see that the large pillow came from this chair over here; it is the same material. It is one of those chairs that the back can be taken out. Now, both Mr. Long who, apparently, was one of the first officers there, and Mr. Brennan, testified that in taking these pillows off, when they got to the bottom side of this first pillow, there was a substance which had the appearance of blood on the bottom side; that there was no appearance of blood on the top side of the smaller pillow underneath, but when they removed the smaller pillow off the face there was a substance which had the appearance of blood on the [fol. 603] inner side of the small pillow. You know and I know that it would take some period of time for blood to dry. For example, if this larger pillow, without the blood having been comparatively dry, had been placed on top of the smaller pillow—naturally, it would be placed there with the blood on the inner side—it would have left some blood on the top side of the smaller pillow. But none was observed; none was found. I think it is a reasonable deduction to say that this larger pillow was apparently dry before it was placed back on the body. Now, there is one explanation for that, and the reasonable explanation would be this: That one of these pillows was used to stifle or snuff the breath out or cause Mrs. Blauvelt to remain quiet.

Going back to the testimony of Dr. Webb. We find that the face, as depicted in the photograph, is in pretty bad condition. Dr. Webb said that that condition was caused either by some object hitting the face or the face hitting some object. I think it is reasonable to assume that the pillow was used to momentarily snuff out the breath of Mrs. Blauvelt, and then as the final thing that was done to remove the breath of life from Mrs. Blauvelt, was to jerk off this light cord that is attached to the lamp and wrap it around the neck three times, as shown in this photograph here.

Now, while we are talking about this lamp cord causing her death by strangulation, I desire to direct your atten- [fol. 604] tion again back to an instruction which I believe his Honor will give you, as I stated to you yesterday, as to the degrees of murder. I believe I told you yesterday that the court would instruct you that murder is the unlawful killing of a human being with malice aforethought. When we get into the degrees of murder, the court will tell you that all murder which is perpetrated by means of poison

or by lying in wait or by torture or in the perpetration or attempt to perpetrate rape, robbery, arson and a couple of other things, is murder in the first degree. Now, I direct your particular attention to that portion of the law which says that all murder which is perpetrated by means of torture is, in and of itself, murder in the first degree. And I state to you, members of this jury, that using this cord to snuff out that life by strangulation was unquestionably and undoubtedly murder by torture. So, that is another theory separate and apart from the theory of burglary, which makes this effectually and actually first degree murder. I think that is reasonable, and I think the law bears me out when I say that when a murder is perpetrated by means of strangulation, such as was done here, it is a murder by torture. Now, I directed your attention to this situation with reference to the pillows for the purpose of showing you that a considerable period of time elapsed there in the room while this defendant was in there.

Now, there is in evidence here, and you can consider [fol. 605] that when you get into the jury room, and I am going to show you the pictures now and ask you to look at them later on, when you get into the jury room—this is Exhibit No. 34. You remember when Mr. Brennan was on the stand I asked him to describe the condition of the clothing of Mrs. Blauvelt there after they had taken the coat off of her body, and I had him point out on me, roughly, with reference to the appearance of the dress and the apparent location of the dress, how it was pulled up. As I recall his testimony, he indicated about my hip bone on one side and on the other side about 4 inches below. This photograph will depict that partly, but, as I recall, Mr. Brennan testified that that photograph was taken for the purpose of showing that the under garments or pants that Mrs. Blauvelt had on were t*u*rn across the crotch. Now, by looking at People's Exhibit 34 you can see in that exhibit what appears to be a portion of a woman's garment used for the purpose of holding up the stockings. We know from the testimony that the stockings are taken off. We know that the shoes are off when the body is found. We know that the lower portion of her body, when the brown coat is removed, is entirely exposed up to the position that Mr. Brennan said. Now, the defendant has not explained that. He has not told you why. I would have liked to find out, if he had gotten on the stand, and I think you would

have liked to have known why. I ask you, when you get [fol. 606] into the jury room, to look at People's Exhibit 34.

Now, going back—and I referred to this yesterday—to the testimony here in the record of Catherine May. I will read to you some of her testimony. Reading from page 307: "Early in the afternoon I heard a hammering in the hallway, and still a little later I thought someone was knocking at my door, my door kind of rattled, and I listened again and heard another sound, but I knew definitely it was not my door anyone was knocking at, and still later in the afternoon, about 3:30, I heard—Q—Wait a minute. Now, let me ask you with reference to this hammering: Can you fix that approximately, what time the noise that sounded like a hammer to you? A—Well, I could not say the definite time, but I would say it was, oh, perhaps an hour before 3:30 when I heard Mrs. Blauvelt, an hour or an hour and a half. Q—Now, you started to mention approximately at 3:30 you heard something. What did you hear at approximately 3:30? A—I heard Mrs. Blauvelt say, 'What do you want of me?' Q—Where were you in your apartment at that time, do you remember? A—I was on the divan. Q—On the divan? A—Yes. Q—Did you hear any audible words in reply to Mrs. Blauvelt's voice saying, 'What do you want of me?' A—No, I just heard a low mumble; I could not distinguish what it was. Q—You say you heard a low mumble but you could not distinguish the [fol. 607] words? A—No, I could not distinguish the words. Q—Can you describe the tone of Mrs. Blauvelt's voice? A—She sounded frightened; her voice did not sound natural. Q—What, after that, was the next thing that you recall hearing? A—Well, later that evening I heard a key used in the lock of her door and, still later, I heard someone come out of her door and go down the back stairway. Q—Now, is there any way you can fix the time of those two instances? A—Well, I can't tell definitely. I would say it was after 6:30 and before 8, or around 8, that I heard the key used, but it was later than that that I heard someone going down the back stairway."

I will go over to page 312, the cross examination as to some of these times. This lady could not fix the times. Counsel, on page 312, on cross examinaiton, asked her this question: "Q—Now, what time was it you heard Mrs.

Blauvelt's voice say, 'What do you want of me?' A—That was at 3:30 in the afternoon."

This is the only approximate, definite time that she actually fixed.

"Q—How do you fix that time? A—I looked at the clock. Q—You looked at the clock after you heard the voice speak or before? A—Well, that I don't remember. It was probably after, because I wouldn't have looked before."

Then, further on: "Q—Now, what was the next thing that [fol. 608] you heard that was unusual? A—The key being used in the lock—that was not unusual; I just noticed it after hearing the remark in the afternoon. Q—Then, about what time was it you heard the key in the lock? A—The time I am not sure of. It could have been any time between 6 and 8 o'clock. Q—I am sorry; I did not hear. A—I said it could have been any time from 6 until 8 o'clock. The time I didn't notice. Q—It was some time between 6 and 8 o'clock. Well, can you tell us about how much time elapsed from the time that you heard Mrs. Blauvelt's voice until you heard the key in the lock? A—No, I can't."

Now, going over further on that same subject to page 319 of the transcript, still on cross examination by Mr. Safier: "Q—Can you give us an approximation of the time that elapsed between the time you heard the key in the lock and the door close and the footsteps? A—No, I cannot; I haven't any idea what time elapsed. Q—Well, would it be a matter of five or ten minutes, or a matter of an hour or two hours? A—I don't know; I don't remember."

Now, we do know, however, that a considerable period of time elapsed before the room was left.

Now, let us talk about the manner of entrance, how this defendant got in the place. You all remember Mr. Frick, the rather small gentleman who said, in response to counsel's questions, that he did things at the order of his [fol. 609] wife; he is the man that worked there as janitor. Counsel wanted to know, after he had testified as to the facts that he had gone in there, why he went in there, and he started to tell about a lock being changed, that they didn't have the key, and then counsel wanted to know at whose suggestion he went in, and the witness said, "My wife," and the court said, "That settles that." I think you all recall Mr. Frick. I am going to read some of his testimony here concerning this door and some of the mat-

ters connected therewith. You recall that after I found out his occupation, how long he had been there, and his general duties there, I asked these questions, reading from Volume 3, at page 161: "Q—Now, with reference to that garbage disposal unit, I am going to ask you some questions, Mr. Frick. How tall are you, sir? A—Pardon? Q—What is your height*h*? How tall are you? A—5 foot 7½. Q—What is your weight? A—130. Q—Do you want to step down here, Mr. Frick, right alongside of where the defendant is seated? A—Yes." You remember at that time he walked over and stood in this position, and I said, "I will ask if the defendant might stand, please." And the court said, "The defendant will stand for the purpose of identification." You remember that the defendant stood right alongside of Mr. Frick, and from that observation you could very easily see there was not practically any difference in the size and [fol. 610] approximate weight of these two individuals.

Mr. Frick was then asked these questions: "Q—Now, did you have occasion, Mr. Frick, some time after the date of the 25th of July, 1944, to yourself try and—not try, but crawl through that garbage disposal unit, from D-1 to D-2?"—and pointed it out on the board, the position of D-1 comes from the hallway into the kitchen. His answer is: "Yes, sir. Q—Just tell us what you did. Did you get through or did you get stuck? A—No, sir, there was plenty of room. Q—You did get through? A—Yes, sir. Q—About when did you do that, do you know? A—Oh, about six weeks ago."

Now, going over to page 165: "Q—Now, directing your attention, now, sir, to the date on which Mrs. Blauvelt's body was found, the morning of that date, the 25th day of July, 1944, did you on that morning have occasion to go up on the fourth floor and do anything with reference to the garbage in Apartment 410? A—Yes, sir. Q—What, if anything, did you do, sir? A—Pardon? Q—What did you do with reference to that? A—Well, I found that the garbage tin was not in the place where Mrs. Blauvelt usually kept it. Q—Where was it, sir? A—It was in the corner, in the other corner, I would say, the southwest corner of the service board. Q—About how large a garbage container was that, can you indicate with your hands how big a container it [fol. 611] was? A—Oh, the container is about 8 or, I will say, 9 inches, the container about 12 inches high. Q—About 12 inches high and 8 or 9 inches across? Yes. Q—And in

so far as the garbage itself was concerned, did you pull the can out that morning? A—Yes, sir. Q—Do you recall whether there was any garbage in there or whether there was not? A—Yes, sir. Q—Well, what was the situation? A—There was nothing in it. Q—Nothing there? A—No, sir. Q—Now, in doing that, Mr. Frick, can you tell me when you reached in to get the garbage out, did you bend down to do it, or do you do it from a crouched position or get down on your hands and knees, or how do you do it? A—Well, I would say a crouch. Q—Now, did you look into the unit at the time, or just reach in and get the can and pull it out? A—I just pulled it out; I didn't look. Q—You didn't pay any attention? A—I didn't pay any attention only to where the tin was located. Q—So you are unable to say anything with reference to the door there on the inside? A—No, I don't know about that. Q—You did not look for that at all? A—No, sir, I did not look."

Now, we will go to page 170, Volume 4; this is on cross examination; page 170, line 13: "Q—Now, was there a shelf in that garbage compartment at the time you made that experiment? A—Yes, sir. Q—Did you crawl—you did crawl through there, didn't you? A—Yes, sir. Q—Did [fol. 612] you crawl under or over the shelf? A—Under. Q—Under the shelf. Are there some pipes in there in that compartment? A—No, sir. Q—No pipes in that——. A—Just lined with tin."

Now, reading on page 185—these questions were asked on redirect examination: "Q—Mr. Frick, counsel asked you with reference to the locks. Did you have any complaint from any source around the 24th or 25th of July or, we will say, the 22nd, about that lock being out of order?"

There had been testimony concerning the lock on the door, by Mr. Frick, as to how the lock would open; you could push a little tumbler on the side of the lock; I think you recall that.

"A—No, sir. Q—Did you have any complaint about that door there, the inside door, which you marked on the diagram as D-2? Anything being wrong with that? A—Leading to the kitchen? Q—Yes, sir. A—No, sir. Q—Did you have any complaint about that? A—No, sir."

Now, from that testimony as given by Mr. Frick, we can say that in so far as that door is concerned at the time Mrs. Blauvelt lived there, that door unquestionably was intact. There is no complaint made about any condition of the

door in the kitchen, and this gentleman is, apparently, the one that does minor repairs, does the work around there, and the man who would know about it if there was [fol. 613] something wrong. So we know that from that testimony that door was intact.

Now, with reference to the door itself. We find from the testimony of Mr. Long, the first officer that arrived there, and he testified concerning People's Exhibit No. 18, that this door was approximately in this position at the time that he arrived there. With reference to the papers under the door, he said that the papers were not under the door. Counsel examined him quite extensively concerning that. I don't know whether counsel has forgotten it. Mr. Ferguson, the gentleman that dusted the prints, had testified concerning how the papers got under the door. Mr. Ferguson says that he put the papers under the door there so that the dusting powder would not get on the floor.

Now, let us see, in view of some of the subsequent cross examination of some witnesses yesterday, what Mr. Ferguson has to say as to what occurred there, what he did, what transpired. I am reading from page 198: "Q—Directing your attention to this photograph, Mr. Ferguson, I will ask you to examine that photograph and state whether or not that is a fair representation of the kitchen in apartment 410 at 744 South Catalina Street. A—Yes, it is. Q—Now, I notice in that photograph that there are some newspapers there on the floor. Were those papers there when you arrived? A—No, I put those papers on the floor myself to keep the black powder from getting on the floor. [fol. 614] Q—I notice in the photograph, right in the forepart of the photograph, what appears to be a door. Where was that door there in the apartment when you first saw it? A—Approximately the same place it is now in the photograph."

Going over to page 200: "Q—Now, with reference to People's Exhibit No. 6, did you do what you call dust People's Exhibit 6 out there at the apartment itself on the evening of the 25th of July, 1944, for the purpose of determining whether or not there were any fingerprints on that door? A—I did. Q—And did you find some fingerprints on the door? A—I did. Q—What did you do after you found the prints on the door? A—After I found prints I made labels, placed them next to the print where they

would show in the photograph, placed the camera over the label and the print, and photographed the print and the label on the door. Q—How many different photographs did you take of fingerprints on the door there? I mean, different locations. A—Three different photographs of prints on the door. Q—And then later on—I will get into this later—later on did you cover over that area with this Scotch tape, where you took the photographs? A—I did."

Reading from page 202: "Q—Do you have in your possession at this time the negatives of those pictures that you took? A—I do. Q—And do you also have smaller [fol. 615] developed pictures from there with you, or not? A—I do."

He then produced the smaller pictures which were marked into evidence. They were marked, as I recall, 19-A, B and C.

Reading now from page 210—this is cross examination by Mr. Safier—page 210, lines 8 to 16: "Q—You testified that you placed the papers that appear in this picture, Exhibit 18, underneath the door? A—I did. Q—Did you handle the door in doing that? A—I merely touched the edges very carefully while I was placing the papers under it. Q—You touched the edges of the door? A—I touched the edges only."

Now, we find from his testimony that there at the scene on the night of the 25th he took and dusted this door and took what he describes to be only three prints that could possibly be identified, two on the front side of the door and one on the reverse side of the door, and puts a label on the door—and it is shown here in the pictures—so that film itself could be easily identified, as to what portion of the door it came off of, on all three positions. Then, in addition to that, he did what he called—took a lift print, which is introduced here in evidence. Now, so there won't be any question whatsoever, and there can not be any question whatsoever, with reference to these enlargements and these photographs as being the ones that came from the door, [fol. 616] you will recall the testimony of Mr. Rogers—I will go into it in detail later on—and I think I should point out, at least, in two places in the transcript where Mr. Rogers testified that he received the negatives, those being the negatives that Mr. Ferguson first, apparently, took there that night. He received those negatives and he compared the negatives and the small pictures from those negatives

with the actual prints on the door. That was the first things he did. And he said those negatives—those photographs were pictures of the prints on the door.

Now, the reason I am covering this at this time in some detail is due to several factors. Counsel spent considerable time yesterday questioning about the possibility of forging prints. That was the first thesis. We find out from the testimony there was no forgery whatsoever. Then, the second attack that he made was when Mr. Brennan and Mr. Wiseman were testifying. You remember Mr. Brennan testified that the door was brought out there in the police station, shown to the defendant, the prints pointed out to him, and then he wants to know if the defendant did not touch the door. Grasping at straws; trying to explain away these prints. We find out that he did not touch the door at the station, and he has not testified here on the stand that he ever touched the door there at the station. The record is silent as to that. That is the reason I am going into some [fol. 617] of this in detail, with reference to those prints there on the door. This may be diverting a little bit at this time, but this is not the only occasion when there has been a grasping at straws in this case.

You remember, when Mrs. Vandiver was on the stand, counsel in cross examination asked her about some stranger, some newsboys being in there. She said yes, there was one there. Well, to let you see, we brought in Kenneth Osmon, the fifteen year old boy. Grasping at straws; trying to pin it on somebody else; trying to get away from these fingerprints. I am glad I brought him in. I wanted you to see him.

Now, going back to the fingerprints. Mr. Ferguson testified with reference to taking the prints. Then we placed Mr. Larbaig on the stand. Mr. Larbaig testified that on the date of the 31st of August, 1944, he himself rolled two fingerprint cards of this defendant. They have been marked in evidence as People's Exhibits 22 and 23. He said, with reference to the time that he rolled People's Exhibit 22, which appears right on the face of the card, that was done at 8-31-44, at 2:10 p. m.; and with reference to People's Exhibit 23 in this case, that was rolled at 2:12 p. m., on the same date. Now, I am going to show you something interesting with reference to some of the questions counsel asked with reference to possible differences in [fol. 618] prints. Now, mind you, these prints were rolled

under ideal conditions. I am going to pick out one print that is involved here, the one on the back of this door. Here are two prints rolled within two minutes of each other, and there is a difference between those prints and this print here in several respects. If you will notice, a portion of the top of the print does not show quite as much as it does down here. We can all see that. Just notice those prints, the similar portion, here and here, and then the prints down here. It appears to be a little more full in the bottom also. But in so far as what we call the pattern area is concerned, we certainly have the pattern area there. At any rate, Mr. Larbaig testified to rolling these prints. He then testified that from the rolled card—I believe No. 23—either one of the two of them—either 22 or 23; it may have been 22—he made the enlargement which has been marked People's Exhibit 25. This is the one, you remember. He also caused to be made an enlargement of the print which is on the back side of the door here, which is People's Exhibit 24. He testified at considerable length. He explained to you the points of identity. He said that in his opinion the two prints were identical and were the prints of the defendant. Now, here is People's Exhibit 26; here is the blown-up picture of the negative in evidence; what Mr. Ferguson testified that he placed on there at the time he made it, a card [fol. 619] in his own handwriting. It shows up pretty well in this other picture. With reference to 26 and 27, we have these photographs enlarged by Mr. Larbaig. He testifies that these photographs are photographs of the right ring and right little finger. He makes a comparison and shows you in detail how they compare. He said that they are the prints of one and the same person and the prints of the defendant. That is two more prints—that is three. Then, we have in evidence here the next two photographs, Nos. 29 and 28, one being the blown-up print, taken on the door there by Mr. Ferguson, and so labeled on it; the next print being the blown-up from the fingerprint card of the defendant. He makes a comparison and indicates those fingers are the fingers of one and the same person, the fingerprints of the defendant. I then asked Mr. Larbaig to place there on the blackboard the relative position—indicated up in this corner—of those prints on the door. This indicates the front part of the door, the door knob and the hinges down here, and he indicates where those fingers were. Now, taking this door—I will place it down here—we will

get the same relative position as this top photograph—and bear in mind this situation with reference to the door—I think it is fairly well shown here on the photograph of the kitchen—I cannot find it—Well, at any rate, we have the photograph here. Wait a minute. Here it is. You [fol. 620] recall the testimony is that with reference to the hinge section of the door, which is over here against the wall—in other words, there is a small space here, which is against the wall, the hinge part of the door there on that side. In other words, the wall, in the photograph, comes right out at an angle; if we can assume that; this is the wall coming right out here on this side of this door. Now, just look at that door with respect to the position of the fingers, and considering where this wall comes out here, and taking this side over here, the left index finger, left middle, and left ring—index, middle and ring—now, watch the location there. If you are on the outside, if you put them on this way, as I have got them here—I don't know whether you can see me or not—I will get this door up higher——

The Court: If you want to come up here, Mr. Roll, it is all right.

Mr. Roll: No, I don't think so, your Honor. Can you hold it here Mr. Davis?

(Mr. Davis does as requested.)

Mr. Roll: Also in this connection—it is shown on the photographs—we have the tips of the fingers over in the center area. The trouble is, we blocked that off. Maybe this will be better. You still have to put this wall up here, and bear that in mind also. Now, if I come on the face side of the door and start putting my fingers there that [fol. 621] way—I have got them headed the wrong way, because the tips are in this way—if I get around on this side, I have got the wall there. See? The left index, left middle and left ring. You can do the same thing with reference to that door, closed, with reference to the other side. So we have the door fitted onto this place here. With the door shut I say it is a physical impossibility to put those fingerprints on there, standing in front of that door; you cannot put them on in that position, and I don't care if you are a contortionist. We have to have fingerprints on the inside of the door.

Now, going into the testimony of Mr. Rogers. Mr. Rogers was appointed by the court and is known as the court's witness. He was appointed under the provisions of Section 1781 of the Code of Civil Procedure. The court has the power and can in any case, either civil or criminal, in a matter involving expert testimony, either on his own motion or on motion of either side, appoint a qualified expert to make an examination and come in and testify. When a man is appointed the court's expert, he is the court's witness; he is not a witness for one side or the other. The theory being to get someone entirely impartial and removed. And I say that in so far as Mr. Rogers is concerned, he was entirely impartial and removed as far as the testimony in this case is concerned. Let us look at the transcript in this case, so far as Mr. Rogers' testimony is concerned. I [fol. 622] think you will find several places in the transcript where he tells you that—let's see if I have it marked here. Page 358: "Q—In so far, Mr. Rogers, as your appointment in this case is concerned, you were appointed by the court; is that correct? A—Yes, sir. Q—You have not consulted, or have you consulted with Mr. Larbaig concerning this whatsoever? A—No, sir. The Court:—You really did not know what the case was about until it was handed to you? A—No, I didn't know the circumstances of the case. In fact, I had forgotten the details of the case. I knew nothing of it until the court handed me the exhibits yesterday afternoon."

So, from Mr. Rogers' standpoint, he came in here, you might say, cold, with reference to any knowledge of the fingerprints or anything; he made comparisons and he came in here and he testified. As I say, he at first said that he checked the negatives and checked the small prints against the actual pictures of the prints on the door and said they were pictures of the prints on the door. He rolled the prints of the defendant, People's Exhibit No. 30, and made an enlargement of one of the prints, which has been marked here People's Exhibit 31. This is an enlargement of the print on the reverse side of the door. He testified in detail as to making a comparison between those two prints, and he used the diagram on the blackboard, and I think all of us got a good lecture on fingerprints not only from Mr. [fol. 623] Rogers but from Mr. Larbaig. He told you all of his experience, all of his background, and said in his

opinion these prints were the prints of the defendant. Now, not only these, but with reference to the other prints, they were the prints of the defendant.

I happened to be working on this case, just as a little side line, last night, and being married, my wife likes to listen to the radio—I have no control of that situation—sometimes, subconsciously, you are working on something and listening to something else. Dr. I. Q. was on the radio last night, and I heard him ask this question, which I knew immediately what it was, and I thought to myself, "Well, all the jurors would be able to answer the question that was asked." They asked this question of some individual there—and I think they got $22.00 for answering it—they didn't answer it correctly—they said, "If you went to a police station and saw some individual at the police station who was interested in a subject, and he said, 'Loops, whorls, arches and tented arches', what particular type of work would that man be in?" Well, the man didn't know the answer. I think you and I, and anyone else in the courtroom would certainly be able to answer that question last night. That is just the way it passed, and I happened to be working on the testimony of Mr. Rogers when that matter was discussed on the radio.

I think all of us would agree, with reference to both of [fol. 624] those gentlemen who testified here, that they each went to great pains to explain fingerprints generally, how they are made, went into details concerning how you make comparisons, how you classify prints, and told you all about them.

Now, fingerprints are something that the most of us have general knowledge of. We know generally what some of the uses are. They are used in many ways other than in police work. They are used out among industries, particularly those who are engaged in defense work. Practically all the individuals working out there have fingerprints made. You take everyone that is in the armed service—we have some 12,000,000 men in the Armed Service—the fingerprints of all those men are taken before they go into the service, and they are used. Some of your banking institutions at this time use fingerprints. You people that have a California driver's license—I do not know whether they are still doing it, but they did do it for a while, and it is voluntary on your part, if you desire, you can have your

print placed on your driver's license card. The Armed Service use these prints in several ways. If there is a lost man or a man goes A. W. O. L. or something like that and they want to identify the individual, they do it by means of fingerprints. With reference to your driver's license, it comes in handy there, and with reference to your defense plants it comes in handy there. The Federal Bureau of Investigation has, unquestionably, on file lots of prints. [fol. 625] Everyone, for example, working under Civil Service, at least in the State and local Government, is fingerprinted. I do not know how many times they have taken my fingerprints, sent them back to Washington and kept them there. It is a method that is readily and easily recognized as being a proper and correct method of identification.

We found out from these two witnesses, both Mr, Rogers and Mr, Larbaig, if I were to ask them to put the figures there on the board as to how someone mathematically figured out the possibility of two persons having like fingerprints, I don't think there would be enough room on the board to get all those ciphers or zeros on it, because it is just a possibility.

So, I say, so far as the fingerprints in this case are concerned, they were positively and definitely identified as being the prints of the defendant. That being so, we know the defendant came in through that garbage disposal door; we know he was in the apartment; no question about it.

You were questioned here with reference to direct and circumstantial evidence. You were asked if you had any objection against circumstantial evidence, and you all said that you did not have.

You take the testimony in this case up to the time of 3:30 —between 3 and 3:30, or whatever time these two ladies, [fol. 626] Mrs. Massey and her daughter, put Mrs. Blauvelt as coming into the apartment; that testimony was direct evidence. The testimony of Mrs. May and the gentleman downstairs, as to what they heard; that is direct evidence. You take it up to when the officers came in there—even before they came in there—when Mrs. Vandiver and Mrs. Massey came up there and saw what they testified they saw; that is direct evidence; and from there on.

With reference to the fingerprints, I say that is real, tangible evidence.

Just supposing, for example, that Mrs. May, the lady that lived across the hall, had on some occasion on this date, the 24th, say on the occasion that this defendant left the premises, come out of the door and saw a fleeting glance or glimpse of this defendant leaving, and she would come in here and testify with reference to her possible identification of this man. You have to take the conditions under which she identified him. And assume from the evidence in this case—we can properly assume it—she never knew the man before, she never had seen him before—she was in a different category from Mrs. Turner, who saw him down there in the Colony Club, had seen him at previous times, knew the man, was acquainted with him—if she just had a fleeting glimpse and she came in here and said the man looked similar, or she was positive as to his identification, counsel would cross examine, and correctly so, "How much [fol. 627] time elapsed from the time you first saw him?" "I don't remember the time." "How was he dressed?" "I don't know." "What size was he?" "I don't know."

We can go further than that and suppose that the Masseys had seen someone going out that back door. I wouldn't trade that testimony for those fingerprints. I say those fingerprints are better than an identification by an individual. You know and I know that individuals can be mistaken in identity. It all depends on the conditions under which they see them, and how long they are with them, the individual that is testifying.

For example, if there is a case which is prosecuted in court, for example, a robbery case, there may be ten robberies before we can get someone that is able, out of ten people, to identify the man. You eliminate a lot of them there. But you cannot get away from these fingerprints. There is not one of them. There are one, two, three, four, five, and one in the back is six. And they are still right there on the door.

I do not know, but maybe Providence had something to do with this case. We know Our Maker, in His infinite wisdom, gave us all something that was different, He fingerprinted us. Those fingerprints were left on that door just as a beacon light would be left searching for someone. Those fingerprints were pointing to one man, the defendant. He was there. He did it. That is what those [fol. 628] prints tell us.

The Court: We will take a recess at this time. The jury will keep in mind that you are not to talk about the case or form or express an opinion.

(Recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Roll: I have said all I desire to say about fingerprints, in my opening argument to you. I will now pass to another little phase of the case which I think some of the physical evidence indicates.

You recall the testimony of the landlady and her daughter with reference to seeing her at the time she came into the apartment; you remember the landlady said she was working around the linen closet or near the vicinity there, and they both told you that she was attired in a blue coat. We find from the photographs there that the coat that she had on—one lady described it as smart in appearance, the coat she had on. We further find from those two ladies she was carrying some packages at the time she came in. We find from the photograph which has been marked People's Exhibit 11 and from the testimony of the police officers that the packages are there, one in the chair, one on the seat. My recollection of the testimony concerning the contents of those packages, particularly one of them, was some corn in one, and I believe the [fol. 629] officer said butter and a can of something in the other. From those physical facts we can deduct that Mrs. Blauvelt would be met right at the door; she did not have an opportunity to get very far in the apartment; this thing happened simultaneously with her being right there at the entrance to the apartment. We find the packages are not in the kitchen. This thing happened quickly. We find the purse is open, the small coin purse is open. We find that the rings are gone. All of those physical facts with reference to the packages indicate that this attack occurred on her simultaneously with her coming into the door. That is a reasonable deduction from the testimony.

Now, let us pass to the testimony of Mr. Brennan, who testified here as to the conversations he had with the defendant. He testified yesterday, but I am going to read to you some of that testimony. You recall Mr. Brennan testified where he first saw the defendant, about talking to the defendant and asking him where he lived, about giving

him one address and then he gave another address, and he finally located, after a few days, the correct address of the defendant. He testified that on the 24th, I believe it was, of August, that this defendant, himself and Mr. Wiseman were in an automobile, and they were in the vicinity of Eighth and Catalina. At page 447 Mr. Brennan says, in response to this question: "Q—What happened when you got at Eighth and Catalina? A—At Eighth and Catalina I [fol. 630] stated to the defendant, I said, 'Have you ever been on this street? Are you acquainted on this street?' He said, 'What street is this?' I said, 'This is Eighth and Catalina.' I said, 'I am speaking about the apartment house at 744 South Catalina. Was you over at that apartment house?' He said, 'I wasn't.' Sgt. Wiseman further asked him if he had ever worked there as a janitor or had any acquaintance there, and he said he had not, that he had never been on that street, nor had he ever been on Catalina Street. I further asked him if—if on his way—if he lived on the east side, I said, 'If on your way to Beverly Hills to work, didn't you have occasion to cross Catalina Street?' 'Well,' he said, 'I might have crossed it but', he said, 'if I did, I don't know.' "

The officer then testified that they went down to the other address, 855 East 28th Street, Mr. Wiseman got out of the car, and he had some conversation about the half brother or some relative by the name of Ross, who died and was buried from the People's Funeral Parlors, and a conversation with reference to other matters, and said then, when he got back to the station, the defendant with reference to telling about the funeral parlor, made this statement to him, reading from page 449: " 'I made one mistake. I told you my brother—my stepbrother's name,' and he said, 'You will go to the funeral parlors and find out all about my relations, anyway, so I might just as well [fol. 631] tell you the fact,' but he didn't tell us where he lived—he didn't tell us where he lived nor did he tell us where his relations lived. Then we went up stairs into the Detective Bureau, and at that time I asked the defendant if he was ready to tell us the whole story, and he said, 'I haven't got anything to say,' so I then told him that in the apartment at 744 South Catalina that we had found fingerprints in the apartment that corresponded with his, and that they were his fingerprints and he must have put them there if they were his prints. 'Well,' he said, 'I never

was in that apartment, and they are not my prints, and if they correspond to my prints somebody else put them there, because I was not in that apartment.' I said to him, I said, 'Well, you must have been in the apartment because there isn't anyone else could put your prints in there but yourself and,' I said 'they are definitely your prints.' He said, 'No, they are not my prints, because,' he said, 'if they look like mine,' he said, 'somebody else put them there.' I then went over and got the door, I think it is People's Exhibit 6— Q—6, the one here in evidence. A—People's Exhibit 6 in evidence, and I took the door out of my locker and I took the door and I sat it down in front of him, and I pointed out the prints to him on the door, and I said, 'Those are your prints,' and he said, 'No, they are not my prints at all.' I set the door down, and at this time Sgt. Wiseman showed the defendant the picture—I [fol. 632] know it is in evidence but I don't know what number it is, it is a picture of the kitchen showing the garbage disposal door. Q—I presume it was a smaller size than the one introduced in evidence here? A—It is a small picture; not the enlarged picture, but a small one. Q—A smaller size of People's Exhibit No. 18, is that correct, this one here? A—That is correct. This picture here, Sgt. Wiseman showed this picture to the defendant and pointed out this garbage disposal door here, and he said, 'That is how you got into that apartment, you went through the garbage disposal door, that is how you got into the apartment to burglarize it.' He said, 'Well, that is not so, I was not in the apartment.' The defendant said, 'Well, when was this murder, anyway?' 'Well,' I said, 'you should know that better than anybody else;' I said, 'you was present.' He said, 'I was not', that was his answer.''

He goes on and describes about showing the defendant pictures of Mrs. Blauvelt and asking him if he had ever seen her before, and the defendant refused to look at them. This is page 452. ''I said, 'What's the matter, can't you stand it?' He said, 'I don't like to look at dead people.' That was his answer to it. Q—You started to say he asked something about what day it happened on. Did you tell him when it happened? A—Yes, Sgt. Wiseman said, after I had said to him, 'Well, you should know,' Sgt. Wiseman [fol. 633] then spoke up and he said, 'Well, as far as we can figure it out, it happened on July 24th some time in the afternoon.' The defendant says, 'Well, what day was

that?' Sgt. Wiseman said, 'That is on a Monday.' 'Well,' he said, 'I don't have to worry about Monday,' he said, 'because I will have my witnesses,' he says, 'and I can account for my Mondays,' he said, 'all summer, I know where I was, and when the time comes I will have my witnesses here to prove it.' ''

Now, going over further, to age 458, we find this conversation transpires, I believe, on the date shown you: ''Q—Did you have some conversation with him on the date of the 28th? A—We got him that morning, picked him up at the Central police station and brought him to Division 4. After he was arraigned in Division 4, on the way back to the elevators to take him upstairs to book him in to the County, the defendant stated—I said, 'Well,' I said, 'Dewey, you have to go stand trial for this anyway,' and he said, 'Well, that is all right.' He said, 'I will have my attorney and all my alibi witnesses there when the time comes.' ''

What has hapened? In one answer there he asks what day this happened on. The officer says, ''You know what day it happened on.'' He replied it happened on the 24th, and he wants to know what day of the week it is, and he told him it was Monday. He said, ''I know where I was Monday.]fol. 634] I will have my witnesses and I can prove it.'' Again he says, ''I will have my attorney and all my alibi witnesses there when the time comes.'' Have you heard from the lips of the defendant or a single witness called by the defendant where he was other than in that apartment? If he had alibi witnesses that would testify, they would be up here testifying.

Counsel asked this question: ''The defendant may or may not take the stand''—you remember that—''In the event he does not take the stand, will you view that in the light of the presumption of innocence?'' You were asked this question by myself: If the court instructs you that you can consider the fact of the failure of the defendant to take the stand, his failure to explain or deny anything, if you would do that, and you said you would. Now, the defendant does not have to take the stand in any case. He didn't take it here. He did not call, however, any witnesses. He tells the officers, ''I will have my alibi witnesses.'' Where are they? Where are they? You know what stopped him. Those fingerprints; those fingerprints. Not one single witness did they call to the stand. You heard yesterday, ''The People rest,'' and the defendant said, ''The defense

rests." I say, why didn't they have them? The reason is, fingerprints; powerful evidence. So far as this defendant is concerned, as I said before, he does not have to take the stand. But it would take about twenty or fifty horses to [fol. 635] keep someone off the stand if he was not afraid. He does not tell you. No. Now, one more thing and I will conclude.

You were advised by the court in his questions to you and by counsel, with reference to the question of penalty. Now, with reference to the question of penalty, the court will instruct you that that is a matter entirely for your determination, and it is just exactly that. There are types of first degree murder where the evidence clearly warrants the imposition of a life imprisonment penalty. You can clearly think back over what you have read in the papers and what you have heard with reference to certain types of cases where that is a proper verdict. There is no question about that. There are certain circumstances in mitigation; a killing occurs, say, in a fit of anger, or something like that, sudden provocation. That is one situation. But in determining this question of penalty, in determining whether or not you should give this defendant any mercy, I ask you to see from this evidence, from these photographs that we have put here in evidence, from this strangulation, this death by torture, this death that occurred during the perpetration of a burglary, how much mercy this defendant gave the deceased, Mrs. Blauvelt; and I ask you to give to him just exactly the same amount of mercy that he gave to Mrs. Blauvelt. I ask that, realizing that it is entirely for you to determine, and I want you to consider it and [fol. 636] consider it carefully.

In conclusion I will say that from the evidence in this case, presented here in court, and based solely on it, the defendant is guilty of murder and guilty of murder in the first degree.

I thank you for your kind and courteous attention during this entire trial, during my argument to you, and at the proper time I ask you to go out and do your duty, and have the moral courage to bring in the proper verdict.

The Court: You may proceed, Mr. Safier.

(Argument by Mr. Safier.)

The Court: We will take our recess at this time. Keep in mind the admonition heretofore given, not to talk about

the case or form or express any opinion. Return here at 1:45.

(Whereupon an adjournment was taken until 1:45 o'clock of the same day, Tuesday, November 21, 1944.)

[fol. 637] Tuesday, November 21, 1944; 1:45 o'clock P. M.

The Court: The record will show the jury, the defendant and counsel present. You may proceed.

(Argument by Mr. Safier.)

Mr. Roll: Ladies and gentlemen of the jury: I am going to take up some statements made by counsel here in his argument to you. I was making notes as we went along.

Counsel, in starting out, tells you about the presumption of innocence and the doctrines of reasonable doubt. He says that the defendant is clothed with the presumption of innocence. In so far as that statement is concerned, that is true. And the court will give you an instruction on the doctrine of reasonable doubt. I asked you at the time you were sworn in here to be jurors in the case—at the time you were answering questions, to take that instruction by its four corners, the whole of it, and consider the whole thing. I will say—this is a proper comment to make on it—that part of it which says if you have an abiding conviction of the truth of the charge you find the defendant guilty. Reasonable doubt is not a possible doubt or imaginary doubt, because everything relating to human affairs is subject to some imaginary or possible doubt. So I ask you to take that instruction in its entirety when you consider it and weigh it. It is true that not only this defendant but every [fol. 638] defendant is presumed to be innocent, and the doctrine of reasonable doubt applies; it applies at all stages of the case; starting with the time of arrest, the matter is brought down to the District Attorney's office, a complaint is filed and then it goes through a preliminary hearing, an information is filed, it goes through that, and comes up for trial in the Superior Court. And here we started out in this case with the defendant, as counsel says, clothed with the presumption of innocence. But as this testimony moved forward piece by piece, bit by bit, article by article, this testimony stripped this defendant of that presumption of innocence, and finally, at the conclusion of the People's

case, when he did not take the stand or did not put any witnesses on the stand, he stood here with that presumption removed, based on the evidence in this case.

Counsel comments on People's Exhibit No. 34. I said in my opening argument—I asked you to examine it—he said it was brought here for the purpose of inflaming you, prejudicing you against this defendant. That is not a true, is not a correct statement, and I challenge that statement. You recall when Mr. Brennan was on the stand I had him testify as to the condition of her garments, and that picture was brought here for the purpose of showing particularly the condition of the undergarment and the torn place in the undergarment, which you can see in the picture. And I want you to look at it for that purpose. You as [fol. 639] jurors have a right to see how the body of Mrs. Blauvelt was left there.

Counsel, in his argument to you, says—he used the words, "There are a lot of mysterious things in this case." We have placed here, from the prosecution's standpoint, to use a slang expression, our cards on the table. We have brought exhibits in here, we have brought photographs in here, we have brought witnesses in here, we have shown you what our side of the case is. You have seen it. If there is any mystery that has occurred in this case, it is a mystery from the defense side of this case. Did the defense clear up any mystery? The answer to that is "No."

Counsel comments on Mrs. Massey and on Miss Massey. We know from the testimony there in the record—counsel says that Miss Massey was out in the back yard that day. Well, the transcript indicates that she was in the basement in the morning washing, and that she did go out in the back yard on several occasions to hang clothes on the line; she was back and forth. That is in the morning. We also found out that she had her lunch with her mother up in the apartment. Naturally, they could not see everybody that came in and out of the apartment.

Then he talks about Mr. Frick. I just looked at the transcript when he was arguing. I could read it to you, but I am not going to take the time to do it. But Mr. Frick testified on the 24th, and he even gave you the apart- [fol. 640] ment number—on the morning of the 24th he was in an apartment on the fourth floor around 9 o'clock in the morning for approximately forty-five minutes using a vacuum cleaner. You recall the testimony. I asked him

the type of vacuum cleaner and he said it was a Hoover vacuum cleaner. I asked if it was a large or small one and he gave you the answer to that, and I asked him with reference to the noise. That is the testimony in this case concerning those individuals and where they were.

Now, counsel asked you with reference to the watch; why these diamonds were missing and why wasn't the watch taken? Some of you ladies have diamonds, and probably have had them for a long time, but unless they are of an unusual nature, of such a type that they are easily describable—I have in the past known of some cases where a diamond expert has been put on the stand, given an unusual stone, one which is marked in catalogues, and they can with their instruments positively identify it. But you take an ordinary carat or carat and a half diamond that you get out of a settng, you, I nor no one else could ever identify that stone. That is one of the reasons that diamonds are easily disposed of by people who sell them.

We come to a watch. A watch is something different; somewhere on a watch is a number. Sure, they change the cases. But you look at your own watch, if you have a watch on here now, and you will see it not only has one [fol. 641] number, it has got numbers on the outside and numbers on the inside. It is much easier to peddle diamonds removed from a setting than it is a watch.

Counsel comments upon the testimony of Mrs. Vandiver, criticized her for not seeing the packages there. But place yourselves in the position of those two ladies, Mrs. Vandiver and Mrs. Massey, who came in there, went to that apartment there. Well, the photograph here of the room indicates the light is just inside the door, just around the corner. Their particular attention, as well as anyone's attention that went in there, would be directed merely to one object, and that is the person on the floor. Those women, unquestionably, were frightened. We know they never went back to the apartment. Even when the police came they gave them the passkey to the apartment to get in there. There is an answer in Mrs. Vandiver's testimony to the effect that her particular attention was directed to that.

Counsel wants to know what the napkin is doing in this case. You will recall, when the photograph was introduced here in evidence, it showed—and it is here; you can look at it—it showed under the shoes a napkin. He starts out

wanting to know what that object was and who put it there. Mr. Pinker was called to the stand to identify the napkin. We find that the napkin was under the shoes. That is what this object was. He is the one that brought [fol. 642] it up; I did not bring it up. He wanted to know what that object there was, and we showed it to him.

Counsel says he does not know who crawled through the disposal unit, and he made some other statements that were rather extraordinary in his argument. He even went so far as to say he did not want to touch that door, "because I might leave my prints on it," and then says, "I don't know whether it was taken off by some police officers or not." I say to you, members of the jury, that that statement was not justified by the evidence in this case; it is not borne out by the evidence in this case, and that it is not a fair statement to make from the facts in this case.

We know at the time Mr. Long got there where the door was. He testified where it was. We know when the fingerprint man got there where the door was. We know he was the one that put newspapers under it, and then counsel says he does not know whether the police officers moved that door or not. I think you know and I know from the evidence in this case that the defendant crawled in that apartment through that garbage disposal unit.

Then counsel says, if the defendant wasn't there, what has he got to tell you? He says, "If he wasn't there, what has he got to tell you? Well, there are a lot of things he could tell us. If he wasn't there, where was he? Where was he? Was he by himself or was he with somebody? Where are these alibi witnesses he talked about? He could [fol. 643] explain how his prints got on there, and he could explain what he was trying to do when he was selling or attempting to sell a diamond ring. He could have done that. Neither he nor witnesses did it. Those are matters which all have been testified to and are here in this case.

Now, counsel goes into some detail with reference to the testimony of Mr. Frick, and I commented on that a little while ago. He thought it funny Mr. Frick couldn't tell where the other garbage cans were. Counsel got one answer on cross examination—he said, "I will take you out and show you." You remember that. "I will take you out and show you."

Counsel wants to know why Osmon was here. He said, "I don't know what they brought him in here for." Let

us look at the testimony of Mrs. Vandiver, Volume 3, page 140, cross examination by defense counsel: "Q. Were you home on July 24th? A. I was. Q. All day? A. Practically. Q. Had you seen any peddlers in the building on July 24th? A. Any what? Q. Peddlers. A. I don't know whether you would call a solicitor for a newspaper a peddler or not, but one came to my door Tuesday night. Q. Soliciting newspapers? A. Los Angeles Examiner. Q. You say on Tuesday night—— A. Yes. Q.—or Monday night? A. Tuesday. Q. I am referring to Monday, the 24th. A. Oh, no, not Monday. Q. You did not see anybody on Monday? A. No. Q. You did not see anybody soliciting for the news- [fol. 644] paper on Monday? A. No. Q. Now, this boy that came to solicit for the papers, was he a stranger to you? A. He was. Q. And you now say that that was on Tuesday? A. Yes. Q. Now, you remember testifying in this matter at the preliminary hearing, do you not? A. I do."

Then counsel takes the transcript here, lets her read it, and then reads it out loud. "Q. I will ask you to read your testimony on page 14, lines 24 to 26. Will you just read that to yourself? Have you read this, Mrs. Vandiver? A. Yes. Q. I will ask you if this question was asked you and if you gave this answer: 'Q. Do you have any peddlers call at the apartment? A. Well, Monday night I had a young boy soliciting for the paper, but that is all.' Was that question asked of you and did you give that answer? A. Evidently I did."

I again say that that is a straw that was thrown in here to cast suspicion away from this defendant. We brought the young boy in here and put him on the stand so you could see him. Counsel wants to know what he was in here for. She was cross examined before he was ever brought in on that subject. He is the one that brought it up. That is the reason Mr. Osmon was brought in here. We were putting our cards on the table so you jurors could see them.

Now, counsel criticizes Mr. Ferguson with reference to several matters. In one breath he says he does not know [fol. 645] whether the prints were on the door out there or not, and in the second breath he says Mr. Ferguson dusted the door and the glasses and the articles of furniture there in the front room, and that he did not try for any prints on the doorknob. Well, you heard the fingerprint man here testify in order to get fairly clear prints you have to

have a fairly clean surface; that you cannot get prints that are of any value off of one where there are other prints on them, others superimposed. Take the doorknob there, like the one right there on the door. I think I know enough from the fingerprint testimony that I heard here in the record that if you would try to get a print off that doorknob right now you could not do it. There is no use trying to do the impossible. He got prints, he got six prints, and he got them out there at the time.

Mr. Safier: Mr. Roll, I don't like to interrupt you, but I don't believe I said anything about the doorknob.

The Court: You mentioned the door.

Mr. Roll: You mentioned the door.

The Court: Without specifying what part of the door, and doors do have doorknobs. When you refer to the entire door you include all parts of it. I think the argument is permissible.

Mr. Roll: With reference to this statement made by counsel—he said, "I don't know the significance of the rings." "I don't know." Well, I think you know and I [fol. 646] know the significance of the rings. Counsel has been sitting here during this trial, and he has heard these various people testify that this lady wore the rings. He said he does not know the significance of the testimony of Mrs. Turner, the lady that was from the bookstore at Bullock's. He didn't know what she was brought in here to prove. She was brought in to prove at 11:45 the same day that Mrs. Blauvelt was killed, she was wearing these diamond rings. We put them on her person at that time. And that is what these other people were brought in here for, to show ownership, possession and custom in wearing them, and to show that when she was found that the rings were missing.

Now, counsel comments on the testimony of Mrs. Turner. He makes this statement: "I do not know whether she was in condition to know what the conversation was. She said she had had five drinks of beer." Let us see what the testimony is in the case. "Q. And you were sitting at the bar, were you? A. Yes, sir. Q. Were you drinking? A. I had a few glasses of beer but I had not even been served beer at the time that I heard the conversation. I had just come in."

Now, is that a fair statement to make in reference to the lady, when he says, "I don't know whether she was in

condition to know what the conversation was''? And then counsel goes on to say she did not know how he was dressed, [fol. 647] and he mentioned a mustache, and then went on to read the testimony, but he did not read one question which was, I think, quite pertinent. ''Q. Are you able to say as to that particular evening that you had that conversation whether Mr. Adamson was wearing a mustache or not? A. He probably was. I can remember that he has had a mustache.''

Then he read this question: ''The Court: Can you tell, looking at him now, whether he has a mustache from where you are looking at him? A. I really never observed the man enough; I was never interested.''

Counsel does not read this one to you: ''The Court: Look at him right now and tell me whether he has a mustache right now or not. A. It doesn't look like it from here.''

I may be getting bald-headed, but I still, fortunately, have good vision. I have what is known as 20-20 vision, and I would have to look quite closely at the defendant to determine whether or not he had a mustache. Some people call things mustaches when they are not. I think, maybe, I can qualify as an expert on mustaches.

Now, coming to the question of fingerprints. Counsel did not spend a great deal of time on the fingerprints. He made several comments. He said both of the men who testified concerning the fingerprints are police officers. Well, is there anything wrong with being a police officer? One [fol. 648] of these men was appointed as the court's expert. Did counsel dispute those fingerprints? Did he bring in his own experts? If he was not satisfied with those men he could bring in his own, ask the court to appoint somebody else. He knows as well as you know and I know that in so far as any reputable expert is concerned, there would not be any disagreement with reference to these fingerprints. There are six of them there. They were given careful consideration. If you remember Mr. Rogers' testimony, he even went so far as to say that when a fingerprint man was going to testify in court it was not the individual judgment of that fingerprint man but they brought somebody else to look at it and check their work. That is how careful they are. I have seen witnesses go on the stand before, not only experts but other people, where they have been asked the question, ''Have you ever made a mistake?'' Well, there is

no human living being that has not made a mistake at some time or another. Counsel probably has got an eraser on the end of his pencil right there; that is the reason they make erasers, because we make mistakes. That was an honest and that was a true answer when those gentlemen said that they had made mistakes. But there wasn't any mistake made in this case.

Counsel says that he could not see the similarity when Mr. Rogers was testifying. Well, I ask you, as just ordinary lay people, to take these enlarged prints, follow [fol. 649] through all the points of identity, bearing in mind the testimony here, and I believe that you will come to exactly the same conclusion that Mr. Rogers did, and Mr. Larbaig did, that conclusion being the prints on the door are the prints of the defendant.

Counsel said, after discussing the testimony of those two gentlemen, that there were two opportunities for the defendant to have placed the prints on the door: One, at the station; two, at the trial here. Then he follows it up by saying that if there are two reasonable interpretations to be placed on the evidence, two reasonable interpretations to be placed on the evidence, one pointing to guilty and one pointing to innocence, you are to adopt the one pointing to innocence. But he does not tell you that that particular rule only applies when there are two reasonable interpretations. So, let us take what he says and apply that as he wants us to apply it, to the fingerprints on the door. Is it a reasonable interpretation of this evidence because the defendant may have had an opportunity to place his fingerprints on the door, to say that those fingerprints were placed on the door by the defendant there at the preliminary hearing when Mr. Wiseman and Mr. Brennan were talking to him? Now, the defendant does not say, from the witness stand here, "I put my prints on the door there at the preliminary"; and he does not say, "I put my prints on there at [fol. 650] the police station." And in making that statement he asked you to utterly disregard the testimony of the officer who took the prints out there at the scene. So, I accept his challenge to us and say: Do apply that rule and you will find there is a reasonable interpretation and an unreasonable one. The reasonable one points to guilt.

The Court: I think we will take our recess, Mr. Roll. It is apparent we cannot conclude shortly. We will take

a little recess at this time. Keep in mind not to talk about the case or form or express any opinion.

(Recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Roll: Going back to the testimony of the experts concerning the fingerprints on the door. You will recall the testimony of Mr. Ferguson. We placed in evidence here what he called lift prints. Now, taking all of counsel's argument, he has not explained the lift prints which Mr. Ferguson says that he took there at the scene. Another thing, we find from the testimony of Mr. Ferguson that he put this Scotch tape over those prints out there at the time for the purpose of preserving them, and they were there on that door then and they are on the door at the present time with that Scotch tape on there. I do not know how you could put those prints on there in the location they are.

Now, with reference to the testimony of Mr. Larbaig and [fol. 651] Mr. Rogers. If there was ever any evidence of any case in the Superior Court where they have testified, where there was any mistake made, any dispute concerning their testimony, counsel would have had that record here in court and cross examined about it. He had nothing, nothing whatsoever, concerning it here in this case. Their testimony is here in the record undisputed.

Counsel talks about the testimony of Mrs. May with reference to the time—I am going to read it to you. This is from page 319, cross examination: "Q. Can you give us an approximation of the time that elapsed between the time you heard the key in the lock and the door close and the footsteps? A. No, I cannot; I haven't any idea what time elapsed. Q. Well, would it be a matter of five or ten minutes, or a matter of an hour or two hours? A. I don't know; I don't remember."

I cannot see how you could fix any definite time when her testimony throughout the entire transcript was along that situation, so far as time is concerned. We know this from the testimony of Mrs. May, that she said, "What do you want of me?" That voice that was described as a strained and frightened voice, in the testimony here. Unquestionably, in close proximity to the door, she was grabbed. What happened to the key, whether she had got the key out of

the lock, I don't know. They key, after the door shut, may have remained in the lock. The defendant may have [fol. 652] gone out later and taken the key out of the lock. It may have been the sound that the witness heard of the key coming out of the lock and the defendant after that going down the stairs.

Counsel says that there is one other point that I neglected to mention with reference to the prints, when counsel tells of the probability or possibility of the defendant having touched the door afterwards. Well, look at it from the standpoint of reason. In the first place, the defendant is told by the officers that this is the door, these are his prints on the door. The testimony in this case is uncontradicted. Do you think he would be silly enough, foolish enough, to go ahead and handle that door, when he knew from what the officers had told him, that that door and those prints were going to be used against him? Does that seem reasonable?

Counsel says to you that the defendant was not lying to Mr. Brennan. Mr. Brennan said—I read you his testimony this morning, and I won't read it again—but he testified that on this date of the 24th of August he and Mr. Wiseman were in the car and they came to Eighth and Catalina, and the defendant was asked if he had ever been in the apartment at 744 South Catalina Street, and the defendant said, "No, I have never been in that apartment." Mr. Wiseman asked him if he had ever worked there, and he said, "No, I have never worked there." Now, we know [fol. 653] from the fingerprints that he certainly was not telling the truth when he made that statement. Counsel says that he told the truth when he said that he may have passed Eighth and Catalina. Well, do you recall that Mr. Brennan said that one of the addresses the defendant gave was 911 North Beverly, and in this conversation he asked him if he may not have passed across Catalina Street in going to 911 North Beverly Drive, and the defendant said, "Yes, I might have." Now, that is the way that situation came in. I say that he did not tell Mr. Brennan the truth when the opportunity was presented to him, when he was told that his prints were on the door. You recall what I read to you this morning, what the testimony was.

You recall in your examination as jurors that counsel was asking some questions with reference to whether or not

the defendant would or would not testify. Some place along the line there there was an objection made and the court said, "If you will reframe your question so that you place it in the position of a determination of whether he should or should not testify, the question would be proper." The question was reframed and you were all permitted to answer. I think you all remember that.

Now, counsel tries to lift from the defendant and place on himself the reason for the defendant not getting on the stand. He says, "Put the blame on me." That is what he told you. Well, I again repeat the statement I made this [fol. 654] morning: that this defendant had the right to take the witness stand; it is a privilege afforded to him, and he did not do it. You can consider that with all the testimony in this case, and I ask you to consider it.

In conclusion, I am going to just make this one statement to you: Counsel asked you to find this defendant not guilty. But does the defendant get on the stand and say, under oath, "I am not guilty"? Not one word from him, and not one word from a single witness. I leave the case in your hands.

[fol. 655] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 656] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that the objections made to the supplemental transcript herein have been heard and determined and the same is now corrected in accordance with such determination, within the time allowed by law; and the same is now, therefore, approved by me this 30th day of April, 1944.

Chas. W. Fricke, Trial Judge.

[fol. 657] In Superior Court of Los Angeles County

[Title omitted]

Judge's Certificate

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that no objection has been made to the within supplemental transcript by either the defendant or his attorney, or the District Attorney, within the time allowed by law; and the same is now, therefore, approved by me this 30 day of April, 1945.

Chas. W. Fricke, Trial Judge.

[fol. 658] Due service of the within and receipt of a copy hereby admitted this 17th day of April, 1945.

Fred N. Howser, District Attorney, by James Gibbons, Deputy, Attorney for Plaintiff and Respondent.

Due service of the within and receipt of a copy hereby admitted this 6 day of April, 1945.

Morris Lavine, Milton B. Safier, by Milton B. Safier, Attorney for Defendant and Appellant.

Due service of the within and receipt of a copy hereby admitted this 2d day of May, 1945.

Robert W. Kenny, Attorney General, by Frank Richards, Deputy.

[fol. 659] [File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

In Bank

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ADMIRAL DEWEY ADAMSON, Defendant and Appellant

OPINION—Filed January 4, 1946

Defendant was charged with murder in count I of an information by the District Attorney of Los Angeles County, and in counts II, III, IV, and V, with four separate crimes of burglary. He pleaded not guilty and was tried before a jury on counts I and II. He was tried in a separate consolidated case on counts III, IV, and V. He admitted two prior felony convictions and was adjudged an habitual criminal. The defendant did not testify and produced no witnesses. He was found guilty on count I of murder in the first degree, without recommendation, and guilty on count II of burglary in the first degree. This appeal is automatic from the judgment on count I (Penal Code, sec. 1239). Defendant also appeals from the judgment on the burglary count and from an order denying his motion for new trial.

The body of Stella Blauvelt, a widow 64 years of age, [fol. 660] was found on the floor of her Los Angeles apartment on July 25, 1944. The evidence indicated that she died on the afternoon of the preceding day. The body was found with the face upward covered with two bloodstained pillows. A lamp cord was wrapped tightly around the neck three times and tied in a knot. The medical testimony was that death was caused by strangulation. Bruises on the face and hands indicated that the deceased had been severely beaten before her death.

The defendant does not contend that the evidence does not justify a finding that murder in the first degree had been committed. (Penal Code, sec. 189.) The sole contention of fact that he makes is that the evidence is not sufficient to identify him as the perpetrator. The strongest circumstance tending to so identify the defendant was the

finding of six fingerprints, each identified by expert testimony as that of the defendant, spread over the surface of the inner door to the garbage compartment of the kitchen of the deceased's apartment. (See 2 Wigmore, Evidence, 3rd ed. 389.) After the murder, this door was found unhinged, leaning against the kitchen sink. Counsel for defendant questioned witnesses as to the possibility of defendant's fingerprints being forged, but the record does not indicate that any evidence to that effect was uncovered. The theory of the prosecution was that the murderer gained his entrance through the garbage compartment, found the inner door thereof latched from the kitchen side, and forced the door from its hinges. It was established that defendant [fol. 661] could have entered through the garbage compartment by having a man about his size do so. The fact that the key to the apartment could not be found after search and the testimony of a neighboring tenant as to sounds heard indicate that the murderer left the apartment through the door thereof and made his exit from the building down a rear stairway.

The tops of three women's stockings identified as having been taken from defendant's room were admitted in evidence. One of the stocking tops was found on a dresser, the other two in a drawer of the dresser among other articles of apparel. The stocking parts were not all of the same color. At the end of each part, away from what was formerly the top of the stocking, a knot or knots were tied. When the body of the deceased was found, it did not have on any shoes or stockings. There was evidence that on the day of the murder deceased had been wearing stockings. The lower part of a silk stocking with the top part torn off was found lying on the floor under the body. No part of the other stocking was found. There were other stockings in the apartment, some hanging in the kitchen and some in drawers in a dressing alcove, but no other parts of stockings were found. None of the stocking tops from defendant's room matched with the bottom part of the stocking found under the body.

In reply to questions by the police, defendant denied that he resided or had ever been at the apartment house identified by testimony as his residence. At different times he gave two other addresses as his residence. When shown a [fol. 662] picture of the murdered victim, he refused to look at it, stating that he did not like to look at dead people.

The theory of the prosecution was that the motive of the murder was burglary. Testimony revealed that the deceased was in the habit of wearing rings with large-sized diamonds and that she was wearing them on the day of the murder. The rings were not on the body and search has failed to uncover them. A witness, positively identifying the defendant, testified that at some time between the 10th and 14th of August, 1944, she overheard defendant ask an unidentified person whether he was interested in buying a diamond ring.

From the foregoing evidence a reasonable jury could conclude that beyond a reasonable doubt defendant committed the murder and burglary. (See People v. Ramirez, 113 Cal. App. 204; 2 Wigmore, supra, 389.) Testimony that the screws were still in the hinges of the door when it was found and that fragments of wood that appeared to have come from the screw holes were clinging to them, indicating a forced removal, served to discount the possibilities that at some previous date the door had been taken from the apartment for some unknown reason and at that time handled by the defendant, or that defendant had handled the door during some earlier visit to the deceased's apartment. Testimony to the effect that the garbage pail was not in its customary place when found after the murder further tended to substantiate the prosecution's theory as to time and mode of entrance.

Defendant contends that error was committed in the ad- [fol. 663] mission of the testimony of part of a conversation in which he asked an unidentified person whether the latter was interested in purchasing a diamond ring. Conceding that this evidence, though hearsay, was admissible in so far as the hearsay rule is concerned as an admission (People v. Ferdinand, 194 Cal. 555, 568; People v. Britton, 6 Cal. 2d 10, 13; People v. Chan Chaun, 41 Cal. App. 2d 586, 593), defendant contends that it was irrelevant. The rule is well settled that a witness may testify to part of a conversation if that is all that he heard and it appears to be intelligible. (People v. Luis, 158 Cal. 185, 194; People v. Ramos, 3 Cal. 2d 269, 272; People v. Tarbox, 115 Cal. 57, 64; People v. Daniels, 105 Cal. 262, 285; People v. Montgomery, 47 Cal. App. 2d 1, 19.) People v. Rabalete, 28 Cal. App. 2d 480, 485, is not contrary to this rule. The fragment of the sentence there held inadmissible, "242 to

show'', was held to create merely a suspicion of the meaning of the entire sentence. (People v. Jacquaino, 63 Cal. App. 2d 390, 393-4.) The part of the conversation here admitted, however, in view of the evidence indicating that the motive of the murderer was the theft of diamonds, tended to identify defendant as the perpetrator.

To be admissible, evidence must tend to prove a material issue in the light of human experience. (See 1 Wigmore, supra, 407.) The stocking tops found in defendant's room were relevant to identify defendant because their presence on his dresser and in a drawer thereof among other articles [fol. 664] of wearing apparel with a knot or knots tied in the end away from what was formerly the top of the stocking indicates that defendant had some use for women's stocking tops. This interest in women's stocking tops is a circumstance that tends to identify defendant as the person who removed the stockings from the victim and took away the top of one and the whole of the other. Although the presence of the stocking tops in defendant's room was not by itself sufficient to identify defendant as the criminal, it constituted a logical link in the chain of evidence. (People v. Graves, 137 Cal. App. 1; People v. Billings, 34 Cal. App. 549, 553.) Evidence that tends to throw light on a fact in dispute may be admitted. The weight to be given such evidence will be determined by the jury. (People v. Mooney, 177 Cal. 642, 655; People v. Graves, supra; People v. Billings, supra; see 7 McKinney's Dig. 54.) Codification of this rule as applied to demonstrative evidence is found in section 1954 of the Code of Civil Procedure: ''Whenever an object, cognizable by the senses, has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item in the sum of the evidence, such object may be exhibited to the jury * * * The admission of such evidence must be regulated by the sound discretion of the court.''

It is contended that the admission of the stocking tops deprived defendant of a fair trial and therefore denied him due process of law. Defendant states that their admission could serve no purpose except to create prejudice against [fol. 665] him as a Negro by the implication of a fetish or sexual degeneracy. No implication of either was made by the prosecutor in his brief treatment of the evidence in oral argument. Moreover, except in rare cases of abuse, demon-

strative evidence that tends to prove a material issue or clarify the circumstances of the crime is admissible despite its prejudicial tendency. (People v. Antony, 146 Cal. 124; People v. Hawes, 98 Cal. 648; People v. Haydon, 18 Cal. App. 543; see People v. Colvin, 118 Cal. 349, 351; see People v. Bolton, 215 Cal. 12, 20; 8 Cal. Jur. 140 et seq; ibid. 76, sec. 177; 4 Wigmore, supra, 251, 254; 21 Mich. L. Rev. 935; 31 Yale L. J. 107.)

The prosecuting attorney commented repeatedly on the failure of the defendant to take the stand. By statute or by decision, the majority of jurisdictions prohibit such comment. (See 8 Wigmore, supra, 412; 31 Mich. L. Rev. 40.) In 1934, however, following studies made by the American Law Institute and the American Bar Association (9 Proc. Am. L. Inst. 202-218; 56 Reports A. B. A. 137-152), Article I, section 13 of the California Constitution was amended to provide that "* * * in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury * * *" Similar provisions are found in section 1323 of the Penal Code. Article I, section 13 of the California Constitution also provides that "No person shall be * * * compelled, in any criminal case, to be a witness against himself * * *" It is contended that this provision and the [fol. 666] 1934 amendment are inconsistent and that therefore both cannot be effective. Before the 1934 amendment, it was the rule in California that commenting on the defendant's failure to take the stand or advising the jury that it could draw inferences unfavorable to him on that account violated the privilege against self-incrimination. (People v. Tyler, 36 Cal. 522.) The 1934 amendment limited but did not abolish this privilege. A person still cannot be compelled in any criminal case "to be a witness against himself," but the privilege no longer extends so far as to prevent comment upon or consideration of his failure to explain or deny evidence against him. The practical effect of the 1934 amendment may be that many defendants who otherwise would not take the stand will feel compelled to do so to avoid the adverse effects of the comments and consideration authorized by the amendment. (See 26 Yale L. J. 464, 466.) Such a coercive effect, however, is sanctioned

by the amendment, which, being later in time, controls provisions adopted earlier.

It is contended that in so far as it limits the privilege against self-incrimination, the 1934 amendment to the Constitution and section 1323 of the Penal Code violate the due process clause of the Fourteenth Amendment to the United States Constitution. Although there has been much discussion as to the wisdom of allowing comment upon and consideration of a defendant's failure to deny or explain incriminating evidence (see 8 Wigmore, supra, 419; 31 Mich. L. Rev. 40; Ibid, 226; 22 Cornell L. Q. 392; 26 Yale [fol. 667] L. J. 464; 9 Proc. Am. L. Inst. 202-218; 56 Reports of A. B. A. 137-152 3 Jour. of Crim. Law and Criminology, 770; 13 ibid. 292; 26 ibid. 180), the freedom from federal constitutional limitations of state provisions allowing such comment and consideration was settled in Twining v. New Jersey, 211 U. S. 78. (See 31 Mich. L. Rev. 40, 45; ibid. at 228; 22 Cornell L. Q. 392, 393; 8 Wigmore, supra, 414, sec. 2272, n. 2.) In that case the defendant, who was convicted in the courts of New Jersey, had not testified in his own behalf. The trial court, in accordance with New Jersey decisions, commented on this fact. The court decided that such comment did not constitute a denial of due process, holding that the due process clause does not protect a person against self-incrimination. The fact that the comment in the Twining case was by the court rather than the prosecutor is immaterial. (State v. Ferguson, 226 Ia. 316; see 8 Wigmore, supra, 1943 Supp., 30.) Twining v. New Jersey also held that the privilege against self-incrimination is not protected by the privileges and immunities clause of the Fourteenth Amendment.

It is clear from the terms of the constitutional provision that the consideration and comment authorized relates, not to the defendant's failure to take the stand, but to "his failure to explain or deny by his testimony any evidence or facts in the case against him" whether he testifies or not. The constitutional provision thus makes applicable to criminal cases in which the defendant does not testify, the established rule that the failure to produce evidence that is within [fol. 668] the power of a party to produce does not affect in some indefinite manner the ultimate issues raised by the pleadings, but relates specifically to the unproduced evidence in question by indicating that this evidence would be adverse. (State v. Callahan, 76 N. J. L. 426; State v. Sgro,

180 N. J. L. 528; McDonald v. Smith, 139 Mich. 211, 224; Mooney v. Davis, 75 Mich. 188, 193; Harrison v. Harrison, 124 Ia. 525, 526; see Cal. C. C. P. secs. 1963 (5), 2061 (6), (7); 2 Wigmore, supra, 162; ibid. 176; ibid. 179.) "All evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other to contradict." (Mansfield, C. J. in Blatch v. Archer, Cowp. 66, see 2 Wigmore, supra, 162 et seq., and cases there cited. The Code of Civil Procedure codifies this rule by providing that the jury is to be instructed by the court on all proper occasions: "6. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict;" (Code Civ. Proc., sec. 2061(6)), and that it is to be presumed "that evidence wilfully suppressed would be adverse if produced;" (Ibid. sec. 1963(5).) The basis in common experience for this rule as applied to criminal cases has been set forth in State v. Grebe, 17 Kan. 458: "The instinct of self-preservation impels one in peril of the penitentiary to produce whatever testimony he may have to deliver him from such peril. Every man will do what he can to shield himself from the disgrace of a convic- [fol. 669] tion of crime, and the burden of punishment. We all know this. We all expect it. Whenever therefore a fact is shown which tends to prove crime upon a defendant, and any explanation of such fact is in the nature of the case peculiarly within his knowledge and reach, a failure to offer an explanation must tend to create a belief that none exists." Therefore the failure of the defendant to deny or explain evidence presented against him, when it is in his power to do so, may be considered by the jury as tending to indicate the truth of such evidence, and as indicating that among the inferences that may reasonably be drawn therefrom, those unfavorable to the defendant are the more probable. Respondent cites People v. Dukes, 16 Cal. App. 2d 105, 109-110; People v. Pianezzi, 42 Cal. App. 2d 265, 267-269; and People v. Dozier, 35 Cal. App. 2d 49, 59-60, as holding that failure to testify directly affects the ultimate issue of guilt by raising an "inference or presumption of guilt." The instruction refused in the Dukes case was in part to the effect that the members of the jury were "not to consider or permit [themselves] in anywise to be influenced by the fact that the defendant has not seen fit to

offer himself as a witness before you." A similar instruction was refused in the Pianezzi case. The instruction refused in the Dozier case provided that failure to deny or explain testimony "should not create a prejudice or unfavorable inference in the minds of the jury; no inference can be drawn against the defendant from his failure to testify." In these cases the court was clearly correct in [fol. 670] holding that the instruction would destroy the effect of the 1934 amendment.

The failure of the accused to testify becomes significant because of the presence of evidence that he might "explain or deny by his testimony" (Art. I, sec. 13, Cal. Const.), for it may be inferred that if he had an explanation he would have given it, or that if the evidence were false he would have denied it. (State v. Grebe, supra; Mooney v. Davis, supra, 193; see Code Civ. Proc., secs. 1963(5), (6), 2061 (6), (7).) No such inference may be drawn, however, if it appears from the evidence that defendant has no knowledge of the facts with respect to which evidence has been admitted against him, for it is not within his "power" (Code Civ. Proc., sec. 2061(6)) to explain or deny such evidence. (Ibid. sec. 1963(5); Parker v. State, 61 N. J. L. 308; Caminetti v. United States, 242 U. S. 470, 494, 495; Blatch v. Archer, supra; R. v. Burdett, 4 B. & Ald. 122; see People v. Albertson, 23 Cal. 2d 550, 585.)

It was never intended, of course, that the 1934 constitutional amendment should relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt by admissible evidence supporting each element of the crime. (People v. Sawaya, 46 Cal. App. 2d 466, 471; State v. Callahan, supra; see Bruce, (One of the draftsmen of the American Bar Association resolution that preceded the adoption of the California provisions), *The Right to Comment on the Failure of the Defendant to Testify,* 31 Mich. L. Rev. 226, 229, 231; 2 Wigmore, supra, 179; 4 Cleveland Bar Journal 12; 3 Jour. of Crim. Law and Criminology 770, 774.) Nor can the defendant's silence be regarded [fol. 671] as a confession. In so far as People v. Pianezzi, 42 Cal. App. 2d 265, 268, holds that the prosecutor may properly characterize the defendant's failure to testify as tantamount to a confession, it is disapproved.

Of its own volition the trial court gave the following as the only instruction with respect to the right of the prosecution to comment on and of the jury to consider defend-

ant's failure to explain or deny the evidence against him: "It is the right of court and counsel to comment on the failure of defendant to explain or deny any evidence against him * * *; yet the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of witnesses." In stating merely that court and counsel may comment on defendant's failure to explain or deny incriminating evidence, the instruction encompasses a rule of concern solely to the court. Respondent cites People v. McKenna, 11 Cal. 2d 327, 336, and People v. Boggs, 12 Cal. 2d 27, 35, as upholding the instruction given. In the McKenna case, no comment was made on the failure of the defendant to testify, and it was held that an instruction in the general language of the Constitution was not prejudicial. The Boggs case likewise rested merely on the ground that the instruction there given was not prejudicial. The jury, however, is concerned with the scope and nature of the consideration that it may give defendant's failure to explain or deny incriminating evidence, and in the present case should have been instructed that the defendant's failure to deny or explain evidence presented against him does not create a presumption or warrant an inference of guilt, but should be considered only in relation to evidence that he fails to explain or deny; and that if it appears from the evidence that defendant could reasonably be ex- [fol. 672] pected to explain or deny evidence presented against him, the jury may consider his failure to do so as tending to indicate the truth of such evidence and as indicating that among the inferences that may reasonably be drawn therefrom, those unfavorable to the defendant are the more probable.

The failure to give such an instruction was not prejudicial, however. It appears from the evidence that defendant could reasonably be expected to explain or deny all evidence presented. Thus the jury could infer from the evidence concerning the fingerprints either that defendant handled the garbage compartment door in the perpetration of the burglary and murder or that they were placed there at some other time. The defendant could reasonably be expected to know whether or not he had handled the garbage door and if so, on what occasion. The evidence that he solicited someone to buy a diamond ring is susceptible of an inference either that he was attempting to sell the victim's rings or rings that had no connection

with the crime. The defendant could reasonably be expected to know whether or not he had done such soliciting and, if so, with regard to what rings. His failure to explain or deny this evidence by his testimony could have been considered by the jury as indicating that the evidence was true and that the inferences unfavorable to the defendant were the more probable.

The defendant contends that the court erred in refusing the following proposed instructions: "You are instructed that it is the policy of the law to zealously protect the innocent. In a criminal case the law clothes the defendant [fol. 673] with a presumption of innocence and casts upon the people the burden of proving guilt beyond a reasonable doubt. The defendant is not obliged to prove his innocence or offer any proof thereon, and if the defendant elects not to take the witness stand but to rest upon what he believes to be the weakness or insufficiency of the People's case, he has a right to so do and no inference or presumption of guilt arises from his failure to take the witness stand." "You are instructed that the burden of proof rests on the prosecution and the failure of the defendant to take the stand raises no presumption or inference of guilt." There was no error in the refusal to give these instructions. The court gave ample general instructions elsewhere on the presumption of innocence and burden of proof. The bare statement, moreover, that "the failure of the defendant to take the stand raises no presumption or inference of guilt," is deficient and misleading in that it fails to point out what consideration can be given the circumstance. The court may properly refuse to give a proposed instruction that is misleading because it only partially states the law.

The following proposed instruction, however, should have been given: "You are instructed that the fact that the prosecutor has a right to comment on the failure of the defendant to take the stand does not relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt and by competent and legal evidence." Although a general instruction on burden of proof had been given, because of the likelihood of misconstruction of the weight and effect to be given the circumstance, the defendant was entitled to a specific instruction that failure to deny or [fol. 674] explain incriminating evidence does not impose upon him the burden of persuading the jury of his innocence.

In view, however, of the fact that the jury was instructed thoroughly on burden of proof generally, it is improbable that the verdict would have been different had the instruction been given.

The following instruction was also proposed: "You are instructed that the right of the prosecution to comment on the failure of the defendant to take the stand cannot be used to supply a failure of proof by the prosecution." Since the circumstance of the defendant's failure to testify serves only to assist the jury in determining the credibility of and the inference to be drawn from evidence that is capable of being but is not explained or denied by his testimony, where no such evidence is presented in support of an essential element of the crime, this circumstance clearly cannot alone support a finding on that element against the defendant. (People v. Sawaya, supra; State v. Callahan, supra; see 2 Wigmore, supra, 179; 26 Yale L. J. 464, 469; 31 Mich. L. Rev. 226, 229, 231; 4 Cleveland Bar Journal 12; 3 Jour. of Crim. Law and Criminology, supra.) Defendant was therefore entitled to an instruction that his failure to testify may not by itself support a finding against him on an essential element of the crime. The refusal to give the proposed instruction, however, was not prejudicial. Ample evidence supporting each element of the crime was presented. Moreover, the strength of the evidence against the defendant makes it improbable that the jury could have disbelieved all the positive evidence supporting any essential [fol. 675] element of the crimes charged, thereby leaving defendant's failure to testify the sole circumstance in support of that element.

Defendant contends that the rational connection between a fact proved and the fact presumed required by the due process clause of the Fourteenth Amendment (People v. Scott, 24 Cal. 2d 774, 779 and cases there cited; Tot v. United States, 319 U. S. 463, 467) does not exist between the failure to deny or explain incriminating evidence and the inference of the credibility and unfavorable tenor thereof that these provisions permit the jury to draw. Defendant argues that reasons other than lack of power to explain favorably to himself or to deny such evidence, for example fear of disclosure to the jury of prior crimes through impeachment (Code Civ., Proc., sec. 2051; see 3 Wigmore, supra, 538; ibid 380) or fear of creating a bad impression by being a "poor witness," may prompt a de-

fendant not take the stand. In view of the even poorer impression normally created by not taking the stand (State v. Grebe, supra; see Bruce, 31 Mich. L. Rev. 226, 229, 231; 8 Wigmore, supra, 410; ibid. 424; 3 Jour. of Crim. Law and Criminology, supra), fear of creating a bad impression because of being a "poor witness" is not an impressive explanation of a defendant's silence. (See 22 Cornell L. Q. 392, 395, et seq.; 13 Jour. of Crim. Law and Criminology, 292, 293.) It is true that defendants convicted of prior crimes often do not take the stand because of fear that upon cross-examination their criminal record will be given to the jury. (See Code Civ. Proc., sec. 2051; 22 Cornell L. Q., supra; 9 Proc. Am. L. Inst. 202, 204, 207; 56 Reports of A. B. A. 137, 142, 144; 13 Jour. of Crim. Law and Crimi-[fol. 676] nology, 292, 295.) Clearly, however, the inference authorized need not be the only plausible one that can be drawn from the proved fact, to be rational under the due process clause. The inference is rational if the proved fact is a warning signal according to the teachings of experience. (People v. Scott, 24 Cal. 2d 774, 780; Morrison v. California, 291 U. S. 82, 90.) It is common experience that the failure to explain or deny adverse evidence that a defendant may reasonably be expected to explain or deny tends to show the credibility of such evidence and renders more probable the unfavorable tenor thereof. (Code Civ. Proc., secs. 1963(5), 2051(6); State v. Grebe, supra; see 2 Wigmore, supra, 164 et seq.; 31 Mich. L. Rev. 226, 229.)

There has been much criticism of the present state of the law, which places a defendant who has been convicted of prior crimes in the dilemma of having to choose between not taking the stand to explain or deny the evidence against him thereby risking unfavorable inferences, and taking the stand and having his prior crimes disclosed to the jury on cross-examination. (See 22 Cornell L. Q. 392, 395; 31 Mich. L. Rev. 40; 9 Proc. Am. L. Inst., supra; 56 Reports of A. B. A., supra.) In the present case defendant admitted two prior felony convictions for which he served terms of imprisonment in the Missouri state prison. The fact of the commission of these crimes was not offered or introduced into evidence and would have been inadmissible under the general rule with respect to prior crimes. (People v. Albertson, 23 Cal. 2d 550, 576, and authorities there cited.) [fol. 677] Had defendant taken the stand, however, the commission of these crimes could have been revealed to the jury

on cross-examination to impeach his testimony. (Code Civ. Proc., sec. 2051; People v. Braun, 14 Cal. 2d 1; see 28 Calif. L. Rev. 222; 3 Wigmore, supra, 380.) Since fear of this result is a plausible explanation of his failure to take the stand to deny or explain evidence against him (see 22 Cornell L. Q. 392; 13 Jour. of Crim. Law and Criminology, 292, 295; 9 Proc. Am. L. Inst., supra; 56 Reports of A. B. A. supra), the inference of the credibility and unfavorable tenor of such evidence that arises from this failure is definitely weakened by this rule of impeachment. This weakness, however, could not be revealed to the jury by counsel or court without prejudicing the defendant through the revelation of past crimes. Court and prosecutor are left no alternative but to comment on defendant's failure to deny or explain evidence against him as though the sole reason for his silence was that he had no favorable explanation. Any change in the law in this respect, however, must be made by the Legislature.

The prosecutor commented seven times in oral argument on defendant's silence. Defendant did not object below to these comments. In the absence of such objection it is the general rule that misconduct of the district attorney cannot be urged on appeal. (People v. King, 13 Cal. 2d 521, 527; People v. Boggs, 12 Cal. 2d 27, 40; People v. Hight, 37 Cal. App. 2d. 498, 501.) Moreover, in the majority of [fol. 678] instances these comments were properly limited to specific parts of the evidence that defendant could reasonably be expected to explain or deny. The prosecutor approached the borderline of permissible comment, however, when he closed his oral argument as follows: "In conclusion, I am going to just make this one statement to you: Counsel asked you to find this defendant not guilty. But does the defendant get on the stand and say, under oath, 'I am not guilty'? Not one word from him, and not one word from a single witness. I leave the case in your hands." This statement could be construed as a declaration that the jury should infer guilt solely from defendant's silence, and if defendant had objected thereto, he would have been entitled to have the jury advised that his silence could not be given such construction. It is improbable, however, that the jury was misled. The prosecutor's statement followed his review of the evidence and could be construed in connection therewith as a conclusion that although the evidence established guilt, the defendant failed to explain or deny

it. A major part of the testimony and of the prosecutor's oral argument concerned the presence of six of defendant's fingerprints on the garbage compartment door. Fingerprints are the strongest evidence of identity of a person and under the circumstances of the present case they were [fol. 679] alone sufficient to identify the defendant as the criminal. (People v. Ramirez, 113 Cal. App. 204.)

The judgments and the order denying a new trial are affirmed.

Traynor, J.

We concur: Gibson, C. J.; Shenk, J.; Edmonds, J.; Carter, J.; Schauer, J.; Spence, J.

[fol. 679a] [File endorsement omitted.]

[fol. 680] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed January 18, 1946

The defendant was charged with the crime of murder by an information filed with the District Attorney of Los Angeles County. He was found guilty by a verdict which carried no recommendation and judgment of death was, therefore, pronounced.

He has appealed from the judgment of conviction of murder, and this Court on the 4th day of January, 1946, rendered judgment affirming his conviction. He now petitions for rehearing in this Court for the reasons to be given, and upon the following grounds:

I

The Decision of the Supreme Court of California Incorrectly Construes and Applies the California Constitutional Amendment in Holding That the Provisions Thereof Are Not in Violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 681] II

The Court Errs in Holding That the Evidence Justifies the Verdict and Is Not Contrary to the Law and the Evidence.

III

The Court Errs in Holding That the Evidence In Support of the Judgment Is So Strong That It Is Improbable That But For Said Error the Jury Would Have Failed To Find the Defendant Guilty.

These grounds will be presented in the order above set forth.

I

The decision of the Supreme Court of California incorrectly construes and applies the California Constitutional Amendment in holding that the provisions thereof are not in violation of the Fourteenth Amendment to the Constitution of the United States.

The decision and opinion of this court regards Article I, Section 13 of the Constitution as not compelling the accused to testify, but merely allowing the court and counsel to comment upon his failure to explain or deny evidence against him and the jury to consider such failure.

The reasoning in People v. Tyler, 36 Cal. 522, applied to the present Section 13, shows in a realistic manner that the real effect of the provision is to coerce persons accused of crime to testify in their defense.

[fol. 682] The opinion cites "one of the draftsmen of the American Bar Association's Resolution which preceded the adoption of the California provisions", to the effect that the Constitutional provision was never intended to relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt.

Petitioner insists that good intentions cannot make an unconstitutional law valid, and that said provisions are so plain and free from ambiguity as to exclude their amendment by judicial interpretation.

No one will question the erudition of Mr. Bruce or his associates but this seems to be a superb example of exquisite folly, resulting from wisdom too finely spun.

It is believed that in holding that the California code and constitutional provision in question do not infringe due process under the decision in Tot v. United States, 319 U. S. 463, 87 L. Ed. 1519, this court has overlooked vital and necessary implications which should be given consideration.

In view of the utterly indefinite character of the provision in placing no limitation as to the effect to be given by proof of the basic fact it accords to the jury *carte blanche* in the matter of the weight to be attached to the defendants having stood mute. Therefore, he must convince the jurors of his innocence or his testimonial denial or explanation may be of no avail. There is no middle [fol. 683] ground to be characterized as "some evidence", or even as sufficient to "balance the scales."

(Paul Brausman, "The Statutory Presumption," 6 Tulane Law Review, p. 193.)

There are two special and novel factors which remove any possible fancied connection which might be conceived on that comparison alone.

These are, the manner by which it compels the defendant to rebut the People's case and the all-embracing scope which his testimony is required to cover.

1. The ultimate fact of guilt, which Article I, Section 13, authorizes the jury to infer, pushes into oblivion whatever evidence the defendant may have offered, regardless of its weight and convincing force.

These provisions compel the defendant to testify by bludgeoning him with the alternative that if he fails to testify and explain the evidence against him, no matter how many witnesses the defense may have called, and regardless of the convincing character of the proof that he may have produced by such witnesses, merely because he personally does not testify, the jury may infer his guilt.

2. But an equally unreasonable factor and capricious element is that the defendant must not only take the stand and testify to facts of which he may have knowledge if he would avoid the risk of the jury's inferences from his failure to do so, but he must "explain or deny any evidence [fol. 684] or facts in the case against," whether or not he has any knowledge concerning such facts and has had no opportunity to acquire such knowledge.

The opinion herein holds that said provisions do not require the accused to explain or deny evidence against him as to which he cannot reasonably be expected to have knowledge and that if the jury is so instructed no harm to him can result.

However, the provisions contain no exception to justify this interpretation. The language is plain and all-inclusive, and any instruction to the contrary would violate that language.

The salient points in these constitutional and code enactments are:

1. The accused is given the option to testify or to remain mute.

2. The jury may "consider" the failure of the accused to testify.

3. Even if he testifies, the jury may "consider" his failure to "explain or deny" any item of fact or evidence tending to incriminate him.

4. The jury may consider such failure for any purpose and as bearing upon any issue or element in the case, including the ultimate question of guilt or innocence.

5. The defendant is required to go forward by his own testimony, after the People rest their case, at the risk [fol. 685] of being found guilty on the inference or presumption to be drawn from his failure to explain or deny.

6. Consideration of the defendant's failure to explain or deny facts or evidence against him is not limited to matters as to which it has been shown that he must have personal knowledge.

7. The defendant is required to go forward and rebut the People's evidence by his own testimony to avoid the inference or presumption of guilt, even though by other evidence he may have adequately explained or otherwise rebutted the plaintiff's case in part or as a whole.

Each of these outstanding consequences are inherent in the statutory and constitutional provision with which we are concerned, because of the all-embracing language which they employ and the absence of any limitation upon the weight to be accorded or the purposes for which the jury may regard the defendant's failure to take the stand and personally rebut the People's case against him.

The fact which may be presumed or inferred, namely, that the defendant is guilty, has no rational connection with the fact or circumstance from which it may be inferred or

presumed, to-wit, that he "failed to explain or deny by his testimony evidence or facts in the case against him."

The basis and guide for determining the verity of the assertion in the above caption is judicial knowledge. In the leading case, Tot v. United States, 319 U. S. 463, 87 [fol. 686] L. Ed. 1519, it is said that the test of the validity of a statutory presumption is that to be valid, there must be "a rational connection between the facts proved and the fact presumed," and that "where the inference is so stained as not to have a reasonable relation to the circumstances of life *as we know them* it is not competent for the legislature to create it as a rule governing the procedure of courts." (Emphasis added.)

The basic facts in the presumption or inference authorized by the instant constitutional and code provisions are: The accused has been charged with having committed a crime; evidence in some degree tending to support the charge has been introduced by the People; the defendant failed to testify and did not attempt to personally explain or overcome the evidence produced by the state.

The ultimate fact to be presumed or inferred is: The defendant is guilty.

In People v. Brown, 81 Cal. App. 226, 242, the special prosecutor made an argument to the effect that had the defendants dared to do so they would have testified and that the failure of the defendants to testify "loaned undying strength to our charge." This argument was condemned by the court of appeal and it said: "Such is often not the reason for one declining to take the stand when charged with a public offense."

On petition for hearing in the Supreme Court it was [fol. 687] said that a holding of the court of appeal respecting the admissibility of certain evidence to impeach a defense witness was erroneous, and the Supreme Court adds: "In all other respect, however, we are in accord with the decision of the District Court of Appeal."

There are several reasons other than consciousness of guilt and the consequent fear of cross-examination and impeachment.

The consideration of the entire situation as it occurs practically in all the courts of this state, is sufficient answer. Defendants *usually* take the witness stand unless they have had a previous conviction of a felony. It is not because they are guilty of the crime charged that they refuse