

Q Who is the House Surgeon? A At that time the House Surgeon-- I think it was Dr. Gillespie.

Q Do you see this man standing here at the rail?
(Pointing to a person at the rail.) A Yes, sir.

Q Do you know him by sight? A I have met him before.

Q Did you see him on the night of the 26th of June, 1906?
A Of that I am not sure.

Q Well, what is your best recollection? A I thin

MR. SULLIVAN: I think he has answered as well as he can.

MR. ELY: I object to counsel interrupting here. I have a right to ask what his best recollection is.

THE COURT: You may ask.

A I don't remember.

Q You have no recollection on the point, is that it?
A Yes, sir.

Q Your mind is a blank on that subject? A Yes, sir.

Q When you got the person that you have described into the accident ward, as you have stated, did you strip him?
A Yes, sir.

Q Yourself? A With the aid of others.

Q They assisted? A Yes, sir.

Q You then did what after you stripped him? A I examined him.

Q What did you find? A I found a bullet wound in the

back, the exact location was-- it was about the level of the sixth dorsal vertebrae, on the right side, about between three and four inches from the mid-dorsal line, that is, the middle line of the back.

Q Now, I show you this garment and ask you to take it and look at it. Did you ever see that garment before? (Handing witness a coat.) A Well, I may have seen it that night; I am not positive of it because I see so many, I could not swear to the exact garment.

Q Look at the nature of that garment and see if anything on the back of that garment, with respect to the position of anything that you may see there, refreshes your recollection at all. A Well, there is this hole on the--

Q Now, wait a minute. I did not ask you what it was at all. I asked you to please look at it. (Last question repeated.) A It does.

Q Now, having looked at the back of that garment and having had your recollection refreshed, can you tell me whether you ever saw that article before? A I cannot.

Q Tell us how it is that there is a place there that you say refreshes your recollection if you cannot recollect anything about that garment? A It merely refreshes my recollection as to the position of the wound.

Q Of what wound? A The wound on the person that I examined that night.

CASE # 631

Q Is that mark there on that garment which refreshes your recollection in the same position, with respect to the back of the garment, as the wound was with respect to the back of the body that you took from 28th Street and Seventh Avenue at 39 minutes after 1 o'clock, or thereabouts, on the night of the 28th of June, 1906? A Yes, sir.

Q Now, you say you assisted in undressing the person that you took from 28th Street. Now, can't you say, under those circumstances, whether that was the coat that was worn by the person that you took? A I cannot.

Q What is your best belief as to that? A I think it is.

MR. ELY: Now, may we have that marked for identification, please?

(The coat referred to is marked People's Exhibit No.2 for Identification.)

BY MR. ELY:

Q Now, I show you this article and ask you to look at it, examine it, and I ask you if you see anything there in the back which, in any way, recalls that article to your recollection? A There is nothing there that recalls the article itself.

Q What do you mean by that? A I cannot say that I have seen this shirt before; that is, I am not definite on it.

CASE # 631

Q What is your best belief on the subject? A I think I have seen this shirt before.

Q When do you think you saw the shirt before, for the first time? A I think I saw that shirt the first time the night or the early morning of June 28th.

Q When you saw the shirt for the first time on whose body was it, to the best of your recollection? A On the body of the man I brought in that morning.

Q From where? A From 28th Street and Seventh Avenue.

Q Is there anything on that shirt to assist your recollection as to its being the shirt that was on the body of the person you brought in from 28th Street and Seventh Avenue on the morning of the 28th of June, 1906? A Yes, sir.

Q What is it? A This hole, with the discoloration around it, on the back, on the right side.

(The shirt referred to is marked People's Exhibit No.3 for Identification.)

BY MR. ELY:

Q I show you this article and I ask you the same questions about it as I did about the other two articles? A I give the same answers.

Q Well, just give them in extenso. A I recognize the hole on the right side, with the discoloration around it, on the back of the shirt, and by that it refreshes my memory as being the shirt worn by the man I brought in on the early

CASE # 631

morning of June 28th from Seventh Avenue and 28th Street.

Q You recognize that then? A Yes, sir; I recognize it by that discoloration and that hole.

Q That discoloration (showing witness)? A Yes, sir.

Q As being the shirt that was on the body of the person you brought in that morning? A Yes, sir.

MR. ELY: I offer that in evidence.

MR. SULLIVAN: I object to its going in evidence.

MR. ELY: If, in the opinion of the Court, it is not sufficiently identified, I am perfectly willing to offer it for identification at this time.

(The undershirt referred to is marked People's Exhibit No.4 for Identification.)

BY MR. ELY:

Q Now, Doctor, you recollect helping undress this man?

A Yes, sir.

Q Did you know who he was? A Do you mean personally?

Q I mean to ask you if you know who he was. I don't suppose that he was your boon companion before that day.

A No, sir; I never saw him before.

Q Nobody supposed you did. You never saw me before to-day, but I suppose you know who I am now? A No, sir.

Q Well, then, I don't expect you to know very much. Were you told by anybody who he was?

MR. SULLIVAN: I object to that.

CASE # 631

MR. ELY: He has a right to say whether he was told.

I am not asking him what he was told.

THE COURT: Yes, that's right.

A Yes, sir.

Q When were you told that? A When I got his pedigree from the officer.

Q From what officer? A The officer that was on the beat.

Q What was his name? A I don't remember his name.

Q Didn't you take any notes of this at all? A Yes, sir.

Q Where are your notes? A They are not here.

Q Well, where are they, I asked you. A They are down in the hospital on record.

Q Didn't you consult your notes before you came here?

A Yes, sir.

Q But you don't remember what the name of the officer was on the beat? A We don't take those names.

Q You don't remember? A No, sir.

Q You don't know? A No, sir; I don't know.

Q How do you identify the officers then. You know there are several thousands of them in New York, don't you? A Yes, sir.

Q If you don't take the name do you take his number?

A Sometimes.

Q Well, what is the rule?

CASE # 631

MR. SULLIVAN: I object to what the rule is as incompetent, immaterial and irrelevant.

THE COURT: Yes.

MR. FLY: It hasn't any bearing upon this case. It is simply a matter that is interesting from the standpoint of--

THE COURT: I understood him to say that he took the officer's number?

THE WITNESS: No, sir.

BY MR. FLY:

Q Did you take his name? A No, sir.

Q You knew he was an officer because you saw he had a uniform on, was that right? A Surely.

Q What was he, a Holmes man? A What do you mean by that, sir?

Q Don't you know what Holmes men are? A No, sir.

Q How long have you been in New York? A Three years.

Q Now, Doctor, after having stripped the patient and taken him to the ward, the accident ward, what did you do next? You observed, as you have described, a wound on his back, didn't you? A Yes, sir.

Q Then what did you do next? A I went upstairs and told the officer to have him transferred--

Q You went upstairs and made a communication to somebody?
A Yes, sir; to the officer.

CASE # 631

Q Is that right? A Yes, sir.

Q And after that what happened? A He was transferred to the regular ward, Ward I.

Q Ward I? A Yes, sir.

Q If you know, how long did this person remain in Ward I, until he was taken out after he was dead?

THE COURT: Just a moment. Do you deny, Mr. Sullivan, the identity of the deceased person here?

MR. ELY: I can prove it.

MR. SULLIVAN: Our plea covers all that. The plea of not guilty covers all that.

THE COURT: Of course, you have a perfect right to the proof.

MR. ELY: He is denying it all and that is the reason why it is necessary to go into it.

THE COURT: The Court simply inquired to know whether or not you were going to maintain that absolute right, which is yours, to compel full proof on this subject.

BY MR. ELY:

Q Now, Doctor, do you recollect what bed in Ward I this injured person occupied? A At what time?

Q When you brought him up there. We are talking about the time he was transferred to the bed in Ward I, as you said he was? A He was in the last bed on the right side as you go into the ward.

CASE # 631

Q Did he continue to occupy that bed on the right side, the last bed on the right side as you go into the ward until the time you say he was taken from there dead? A No, sir.

Q Tell us where he was taken to? A He was transferred from that bed to the first bed on the same side as you enter the door.

Q When he was first taken in there he was at ^{one} the other end of the same room and at the other end of the same room when he was taken out, when he died? A Yes, sir.

Q Do you remember when the transfer was made from the bed at one end to the bed at the end nearest the door? A No, sir; I do not.

Q You know, of your own knowledge, that this man died, do you? A Yes, sir.

Q Do you remember what day it was he died on? A August 18th.

Q Did you see this gentleman who was in the witness chair before you? A I don't know who was in the witness before me, sir.

Q You do not? A No, sir.

Q Of course you did not see him. Do you know Dr. Schultze? A Yes, sir.

Q Did you see Dr. Schultze at the New York Hospital on the 19th of August, 1906? A No, sir.

Q You did not? A No, sir.

CASE # 631

Q Do you know anything about the autopsy that was performed on the body of this man that you took from 28th Street and Seventh Avenue? A No, sir.

Q Do you know what was done with him after he was dead, on the 18th of August, 1906? A No, sir.

Q Why, you know he was taken out of that ward, don't you? A Yes, sir.

Q Well, then, you do know that much, don't you, anyway?

MR. SULLIVAN: I object to this argument. This

He is leading the witness in this way.

BY MR. ELY:

Q Do you know where the man was taken after he was dead, taken out of Ward I? A No, sir.

Q Now, Dr. Burrows, was connected with the hospital, was he not, at the time that this person was brought in there?

A I don't know, sir.

Q Don't you know whether Dr. Burrows was connected with the hospital, the New York Hospital, at the time that you brought the man in from 28th Street and Seventh Avenue, on the night of the 28th of June, 1906-- was he connected there?

A No, sir; I don't know.

Q You don't know whether Dr. Burrows was connected there or not? A Somebody was on vacation; I don't know who was.

Q I am not asking you whether he was in the hospital, I said, "connected with the hospital". You are not at the

CASE # 631

hospital now, but you are connected with the hospital. A Yes, sir.

Q Kindly answer that question if you can. Is there any part of it you don't understand? A I don't know what you mean by connected.

Q Do you know now what I mean by connected? A Yes, sir.

Q Can you answer the question? A Yes, sir.

Q Pray do? A Yes, sir.

Q Dr. Burrows was connected with the hospital on the 28th? A Yes, sir.

Q What you meant to say was that you don't know whether he was actually at the hospital or on his vacation? A No, sir.

Q You were not on your vacation at any time between the 28th of June, 1906 and the 18th of August, 1906, were you?

A No, sir.

Q Did you ever see that man standing there? (Pointing to Officer Fogarty.) A Yes, sir.

Q You recognize the faces of people that you have seen? A Yes, sir.

Q After you took this person whom you got on 28th Street and Seventh Avenue, on the night in question, that is the 28th of June, 1906, around to the hospital, you then had no further charge of him after you had examined him and taken him up to Ward I, did you? A No, sir.

Q Whose charge did he come under, if you know?

CASE # 631

A The house physician and surgeon.

Q Can you tell us the name? A Dr. Burrows.

Q The man I have been talking about? A I don't know, the House Surgeon.

Q I mean the House Surgeon, Dr. Burrows? A I don't know.

Q You ought to know, you were there, the House Surgeon.

A I don't know who was House Surgeon at the time.

BY THE COURT:

Q Why did you say Dr. Burrows? A This man is confusing me.

Q What is that? A This man has confused me.

BY MR. ELY:

Q The Court has asked you why you said Dr. Burrows.

A Because in my mind I thought he was the House Surgeon at that time.

MR. ELY: That is all we wanted to know.

CROSS EXAMINATION BY MR. SULLIVAN:

Q As a matter of fact, do you know whether Dr. Burrows was the House Surgeon at that time? A No, sir.

Q Or was not? A No, sir; I am not positive, as a matter of fact I don't know whether he was or was not.

Q What is your best recollection as to who was the House Surgeon at that time? A My best recollection is that

CASE # 631

Dr. Gillespie was the House Surgeon.

Q At that time? A Yes, sir.

Q Now, when you brought in this person to the hospital you took him in the ambulance with you? A Yes, sir.

Q Put him on a table? A Yes, sir.

Q You had assistants there? A Yes, sir.

Q Your purpose was to examine his body? A Yes, sir.

Q Is that right? A Yes, sir.

Q You had him stripped? A Yes, sir.

Q Now, the stripping, the taking off of the clothes was done by your assistants, most of it? A Yes, sir.

Q Or entirely done by your assistants? A Mostly by my assistants.

Q In other words, while they were getting him ready to make the inspection, you were preparing to make the inspection?
A I was helping to take the clothes off.

Q As a matter of fact, have you any independent recollection now of having seen anyone of the clothes that was taken off that person, independent recollection, did you examine the coat at that time? A No, sir.

Q And as a matter of fact on that occasion, when these clothes were taken off, you did not notice any condition at all in reference to them, you did not notice the hole in the coat, for example, at that time? A No, sir.

Q You did not notice that hole until to-day when shown

CASE # 631

to you? A The recollection is what is missing.

Q What is that? A The recollection is what I have not.

Q Now, have you any recollection now? A (No answer.)

Q Have you any recollection now of having at that time inspected that coat and observed the hole in it? A No, sir.

Q So that, as a matter of fact, your mind is an entire blank on that? A Yes, sir.

Q Now, with reference to the shirt, have you now any independent recollection of having observed or noticed that shirt at that particular time? A No, sir.

Q And as a matter of fact, now, you have no recollection of what his condition was then? A Of the shirt? No, sir.

Q As a matter of fact, taking the undershirt, you have now no independent recollection, no recollection in your mind of having noticed the condition of that undergarment at the time it was taken off? A No, sir.

Q On that night? A No, sir.

Q So that you are not able, as a matter of memory, to compare the present condition of these garments with the condition they were in, if they are the garments,-- that they were in on this night? A No, sir.

Q When you made an examination of the man? A Yes, sir.

Q Then had him sent to a ward? A Yes, sir.

Q Is that right? A Yes, sir.

Q Who took him up to the ward, do you know? A I don't

CASE # 631

know.

Q You did not? A No, sir; I did not take him up.

Q In other words, you lost sight of him after you had examined him? A During the time that he went up to the ward I lost sight of him.

Q Did you go up to the ward afterwards? A Yes, sir.

Q When? A Well, about five minutes after.

Q Did you attend him after that? A For about five minutes.

Q For about five minutes? A Until I had turned him over to the House Surgeon.

Q Well, after you turned him over to the House Surgeon, you never went to see him after that? A I saw him as I went over, I saw him occasionally as I do all the patients that I am interested in.

Q Well, you did not have any professional--

MR. SULLIVAN: I move to strike out the last part of the answer.

THE COURT: Yes.

BY MR. SULLIVAN:

Q Now, you had no professional relationship to this person after he was taken into the ward?

MR. ELY: I object to that. He has already testified, two or three times, that he had not; that he turned him over to the House Surgeon, but that he saw him from

CASE # 631

time to time.

THE COURT: Answer the question.

A No, sir.

Q When was the last time you saw him? A I don't remember.

Q Was it in June? A It was later than June.

Q Was it in July? A It was later than July.

Q Can you fix the time? A No, sir.

Q Did you sit down and have a conversation with this man?
A No, sir.

Q Never spoke to him after he was taken up there?

A No, sir.

Q You never made any further examination of him? A No, sir.

Q Did you see that person that you took into the hospital taken out dead? A No, sir.

Q You never saw him dead? A No, sir.

Q You never saw him dead yourself? A No, sir.

Q As a matter of fact, then, from your own knowledge, you don't know whether the person whom you took to the hospital that day-- I am speaking now of your own personal knowledge, not from any hearsay-- whether that person died or not, I mean your own personal knowledge. A Personal knowledge, no, sir.

RE DIRECT EXAMINATION BY MR. ELY:

Q Now, Doctor, you saw this person on 28th Street, didn't you? A Yes, sir.

Q You did bring him in your ambulance, didn't you? A Yes, sir.

Q Do you know who was on the ambulance other than yourself and this man that you got on 28th Street on the night in question? A No, sir.

Q There was a driver on it? A Yes, sir.

Q There was a driver? A Yes, sir.

Q You know that? A Yes, sir; you asked whether I knew who he was?

Q I said, did you know whether there was anybody else on the ambulance other than yourself and this man? A There was.

Q Who? A The driver.

Q Don't you recollect there being an officer on the ambulance too? A I do not.

Q I believe that you said your mind was a blank on that subject. A Yes, sir.

Q But you then recollected that you took this man whom you found on the sidewalk in 28th Street on the night in question into the accident room, and afterwards you lost sight of him for five minutes, you say? A Yes, sir.

Q Now, when you saw him again, or when you next saw him he was in Ward I, wasn't he? A Yes, sir.

CASE # 631

Q In this little bed at the end of the first line as you enter through the door? A Yes, sir.

Q Then you went up to him, you say? A Yes, sir.

Q And examined him for five minutes, about, I believe, as I recollect it? A Something like that.

Q Now, you did, did you not, recognize this person as the person that you had seen on 28th Street, and that you had brought to the accident ward in the ambulance and helped to strip? A Yes, sir.

Q You are sure that it wasn't anybody else, weren't you? A I was absolutely sure.

MR. SULLIVAN: I object to the District Attorney testifying in this case. He is stating facts, giving testimony himself. I object to this method of examination.

THE COURT: You had better not lead. There seems, probably, to be some apparent necessity for questions which might throw more light upon this man's conduct on that night, and if there is the District Attorney, in a case of this character, ought to be entitled to ask questions which may have the appearance of leading questions for the purpose of refreshing the man's memory, and for no other purpose.

BY MR. ELY:

Q Having recognized this person as the person that you had brought from 28th Street and Seventh Avenue, on the night in

CASE # 631

question, in the ambulance and then assisted him undressing, and lost sight of for five minutes, and seeing him again in Ward I, you remembered him sufficiently well to know, when you saw him next, that it was the same man, did you? A Yes, sir.

Q You have never had any doubt on that subject?

A Never.

Q Why did you tell me a little while ago, in your direct examination, that this man died on the 18th of August, 1906?

A That was by memory merely from the hospital records.

Q That statement was made on the strength of the hospital records which you examined before you came here? A Yes, sir.

Q But you yourself personally do not know the date, the actual date of the death of this deceased? A No, sir.

Q But you were there up to the 18th of August yourself?

A Yes, sir.

Q Up to about the 18th of August you saw him from the time of his admission until that date?

MR. SULLIVAN: I object to this, if the Court please. He has not testified to that. The District Attorney is trying to bring him up to the 18th.

THE COURT: You may change the form of that question.

Objection sustained.

BY MR. ELY:

Q For how long a period of time did you see him after his admission? A I saw him quite a long time; I remember it

CASE # 631

was quite a long time.

Q Now, with respect to a certain date that you have said that you found in the hospital records, I ask you how long, from the 28th of June, 1906 you saw the deceased?

Objected to. Objection sustained.

Q You were in and out of that accident ward, weren't you?

MR. SULLIVAN: I object to that. He has answered that a hundred times.

THE COURT: No, I think this is quite proper.

A Yes, sir.

Q You were in and out of-- were you in and out of this ward I during the month of August? A Yes, sir.

Q Did you see this deceased in Ward I during the month of August?

MR. SULLIVAN: I object to that.

MR. ELY: This is perfectly competent and proper.

MR. SULLIVAN: That is the very proposition we are trying to find out.

BY MR. ELY:

Q Did you see the person whom you took from 28th Street?

A Yes, sir.

Q And up to what time in August did you see the person whom you took from 28th Street on the night of the 28th of June, 1906? A I am sure that I saw him about ten days, anyway, before he died; I am sure of that date.

Q Sure you saw him up to the 8th of August, are you?

A Yes, sir.

Q Now, what is your best recollection with respect to after that? A I may have seen him.

Q What is your best recollection, I am not dealing in futures or speculations? A It is my best recollection, the 8th of August.

Q I say, have you any recollection after the 8th of August? A No, sir.

MR. SULLIVAN: Now, I move that that part of the answer of the witness be stricken out where he says, "until he died."

MR. ELY: I agree to that and I also agree that this man's statement that it was on the record that this deceased died on the 18th be stricken out.

THE COURT: Yes; strike it out.

MR. ELY: I am perfectly willing. Have you any for this witness, Mr. Sullivan?

MR. SULLIVAN: Not from me. I move that the testimony of this witness, in reference to the garments be stricken out.

MR. ELY: Not at all. That is to be proved.

MR. SULLIVAN: The testimony is now, in cross examination, that he has no independent recollection of them at all.

THE COURT: Why should we strike it out?

MR. SULLIVAN: Because it appears here now that the District Attorney is going to claim that this witness undertakes to identify these as the garments that this man had on.

MR. ELY: Who said that the District Attorney was going to claim that on the testimony of this witness? If he was they would have been offered in evidence. If it is not connected it won't have any bearing. The jury does not take into consideration anything offered for identification; it is only when it is in evidence.

THE COURT: At the present stage, Mr. Sullivan, I shall deny the motion with leave to renew it later.

MR. ELY: Do you want me to go on with another witness at this time?

THE COURT: No. Gentlemen, you are admonished that it is your duty to refrain from conversing with each other, or with others upon any subject connected with the trial. The Court cannot too emphatically or earnestly request you to regard that admonition as sacred. You are not to express any opinion or form any opinion until the matter has been finally submitted to you.

(Recess until 2 o'clock.)

CASE # 631

AFTER RECESS - TRIAL RESUMED.

WALTER H. VOLCKENING, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Architect.

Q Architect and draughtsman? A Yes sir.

Q For how long a period of time have you been engaged in the business of architect and draughtsman? A Twelve years.

Q What if any is your firm? A I am the entire firm.

Q You are the whole show? A I am the whole show.

Q Where are you located in business? A 186 Remsen Street.

Q Is that in Brooklyn? A Brooklyn.

Q Did you at my request go to 28th Street and make a drawing of certain portions of 28th Street and Seventh Avenue, on or about the 7th of January, 1907? A Yes sir I did.

Q I show you this paper and I ask you if you ever saw that paper before? A Yes.

Q I ask you when you saw it? A I completed the draw-

CASE # 631

ing on the date named.

Q You had that paper on the 7th of January, 1907?

A Yes sir.

Q There are several lines on that paper, who made those lines on that paper? A I did.

Q There is some writing on that paper, who wrote the printing and writing on it? A I did.

Q What does that paper purport to represent? A That is a scale drawing, showing the buildings on West 28th Street, Seventh Avenue and West 27th Street.

Q You say it is a scale drawing, on what scale?

A Three sixteenths of an inch to a foot.

Q Is that a correct drawing of the parts of 28th Street, Seventh Avenue and 27th Street, which it purports to represent? A It is.

Q And does it show the exteriors of the parts of 28th Street, Seventh Avenue and 27th Streets, and the rears as well? A It does.

Q You say that is a correct representation of that part of 27th and 28th Street and Seventh Avenue that that drawing does represent? A I do.

Q And made by yourself? A Made by myself.

Q Three sixteenths to an inch? A To a foot.

MR. ELY: I offer the diagram in evidence.

CASE # 631

CROSS EXAMINATION BY MR. SULLIVAN:

Q Do you say that this diagram represents the rear buildings and rear yard? A Yes, that is a ground plan showing the rear buildings and the fences and the old fashioned privies.

MR. ELY: Do you make any objection Mr. Sullivan?

MR. SULLIVAN: No, I have no objection.

The diagram is received in evidence and marked People's Exhibit No. 5.

BY MR. ELY:

Q I show you another paper and ask you to look at that and ask you if you ever saw that before and if you know what it is? ~~say yes~~ if you ever saw it before and yes if you know what it is? A Yes, I saw it before and I know what it is.

Q Do you know who made the marks on that paper?

A I do.

Q Who was it? A I made them.

Q When did you make them? A The same time I made the --

Q The 7th of January, 1907? A 1907, yes.

Q What does that paper purport to represent? A That represents a street diagram of a part of the block of West

CASE # 631

28th Street between 6th and 7th Avenue, showing both sides of the street and the location of the buildings, curb lines, car track, electric light and fire hydrant along that street.

Q Is that a correct representation of the exterior of the portions of 28th Street with the buildings thereon that it purports to show? A It is.

Q And is it made of a scale? A It is.

Q What scale? A One sixteenth inch to the foot.

Q One sixteenth? A Yes.

Q And the other is three sixteenths, and that is one sixteenth of an inch to the foot? A Yes sir.

MR. ELY: I offer it in evidence.

MR. SULLIVAN: I object to its admission on the ground that it does not purport to state the condition of things at the time alleged in the indictment.

MR. ELY: We have to get these things by degrees and I press the admission at this time.

MR. SULLIVAN: I do not know what that is -- whether this is a diagram of the street, 28th Street, between 7th and 6th Avenue.

THE WITNESS: And part of the block up to the school house.

CASE # 631

BY MR. SULLIVAN:

Q Is that in the center? A That is about the center. I wouldn't want to say it is the exact center, but it is about the center.

Q Running from Seventh Avenue towards Sixth?

A From Seventh towards Sixth.

BY MR. ELY:

Q That is Seventh Avenue corners? A Yes, Seventh Avenue corners, going up towards Sixth, as far as the school house.

MR. SULLIVAN: I object to the details of the diagram going in evidence on the ground it does not appear to have been the condition of affairs at the time.

THE COURT: What details, Mr. Sullivan?

MR. SULLIVAN: I see for example an electric light marked here. That might have been there at the time he made it, but --

MR. ELY: This diagram, let it go in as correct as of January 7th, and we will prove the condition of the street as of the 28th of June.

THE COURT: I will sustain the objection, and while there is no necessity of any suggestion at all -- at the present time I do not think there has

CASE # 631

been quite enough of an identification of the place concerning the time.

MR. ELY: Then the exhibit is offered for identification.

Received for identification and marked People's Exhibit No. 6.

W A T E R S F. B U R R O W S, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business or profession? A Physician.

Q And are you duly admitted and licensed to practice?

A Yes.

Q Outside of hospitals, or have you passed your examination? A Yes, I passed the State Law examination, but have not registered in the County here.

Q How long have you been admitted to practice?

A Since 1904 -- June, 1904, the examination at that time.

Q What if any institution were you connected with on the 28th of June, 1906? A New York Hospital.

Q And were you at the New York Hospital on the 28th of June, 1906? A Yes.

CASE # 631

Q What was your official capacity at the hospital, the New York Hospital, on the 28th of June, 1906? A I was First Senior Surgeon on the First Surgical Division.

Q Were you on duty in the early morning of the 28th of June, 1906? A I was.

Q Now, you know a person by the name of Goehle? A I do.

Q Do you know what institution if any he was connected with on the 28th of June, 1906? A The New York Hospital.

Q Do you know what his detail was? A Examining Physician.

Q And as matter of fact did you receive any patient from Dr. Goehle, on the morning of the 28th of June, 1906? A I did.

Q And do you know who that patient was -- or did you subsequently ascertain, learn, the identity of that patient, yes or no? A Mes.

Q And when did you learn the identity of that patient, according to your best recollection? A The early morning of June 28th.

Q Do you know an officer by the name of Sofsky? A No sir I do not know him.

Q Do you say you do not know him or do not know whether you know him or not? A I do not know the name.

CASE # 631

Q Did you ever see this man here approaching the rail, look at him and see if you recognize his face?

A Outside --

Q I asked you if you had ever seen him? A Here in the court room, that is all.

Q You don't recollect him other than here in the court room? A No.

Q Now, do you recollect from whom you learned the name of the injured patient who was brought to the hospital on the 28th of June, 1906 by Dr. Goehle? A I do not.

Q Do you know what disposition if any was made of that injured person? A I saw him as he lay in the cot, in the bed, Ward I, in New York Hospital, after having been brought there.

Q Did you examine him? A I examined him at that time.

Q What did you find? A The picture is not very clear in my mind of that night. I found this man suffering from extreme shock, I remember that very distinctly, it was extreme shock, and paralyzed below his waist and his back had a bullet wound.

Q Do you know Coroner Dooley, Peter Dooley? A I do not know him. I do not know the name. I cannot connect the name of the --

CASE # 631

Q Did you see a Coroner there at the hospital on the night of the 28th of June, 1906?

Objected to.

Objection sustained.

Q You say that you examined this patient who was brought by Goehle into the hospital on that night?

MR. SULLIVAN: I object. It does not appear -- that has not been proven yet.

THE COURT: I understand the evidence is to the effect that he received a patient from Dr. Goehle.

MR. SULLIVAN: Not personally received him (a man is now brought to the bar).

BY MR. ELY:

Q Did you see this gentleman here, at the hospital, on the 28th of June, 1906? A I don't remember positively.

Q What is your best recollection? A I don't remember.

Q Don't remember positively first and now your mind is a blank on the subject? A I don't remember. I could not in any way connect his face with that night. I judge I have seen him before. I think I have. Whether it was then or not I do not know.

Q Do you know whose patient it was that was brought in, that you have described as having been put into Ward 1?

CASE 631

Objected to.

THE COURT: He may answer whether he knows or not.

A Whose patient it was?

Q Who was the ambulance surgeon who brought that patient in? A Dr. Goehle.

Q Then you do know? A I know from what he stated to me.

MR. SULLIVAN: I object and move to strike it out as incompetent and hearsay.

THE COURT: From what he stated to you?

THE WITNESS: Yes.

THE COURT: Then strike it out.

BY MR. ELY:

Q Where were you when Goehle brought this patient in?

A In bed.

Q What time was it that you got up on the morning of the 28th of June, 1906? A Early in the morning.

Q About what time? A About two or three, somewhere around there, two o'clock I should say, in that neighborhood.

Q When you got up did you see Goehle? A I did.

Q Did Goehle say anything to you, yes or no?

A Yes.

CASE # 631

Q After Goehle had said something to you, did you go anywhere? A I went to Ward I.

Q In Ward I did you see anybody? A I did.

Q Who did you see there? A I saw the patient Boyle.

MR. SULLIVAN: I move the name Boyle be stricken out.

Motion denied and exception.

BY MR. ELY:

Q Prior to communication that you received from Dr. Goehle, had you seen the patient Boyle in Ward I before?

A No.

Q And when you saw the patient Boyle as you say in Ward I, did Dr. Goehle say anything to you -- was Dr. Goehle present; yes or no? A I don't remember.

Q Did you see the patient Boyle in Ward I, after or shortly after two o'clock, in the presence of Goehle? A I don't remember.

Q Did you ever see him in the presence of Goehle, do you remember that? A I don't remember the time.

Q I did not ask you the time, did I? A I don't remember whether I have or not.

Q You don't remember whether you have ever seen the patient Boyle in the presence of Goehle, is that right?

A I think I did see him.

CASE # 631

Q Did Goehle ever make any communication to you with respect to the patient Boyle, yes or no? A I don't remember.

Q After you had examined this patient whom you describe as Boyle, on the evening in question, did you continue in charge of the case or don't you remember? A I did not.

Q For how long a time did you have anything to do with the case? A I took charge of the case the first of July and remained in charge until the time of the patient's death.

Q You took charge on the 11th of July? A I did.

Q When was it, if at all, that the patient was transferred from one bed to another, in Ward I? A He was transferred, but I don't remember when.

Q You can remember that it was between the 28th of June and the time of his death, can you not? A Yes.

Q Then you can approximate, can you not? A Yes.

Q You say that you saw him on the night of his admission? A Yes sir.

Q And did not then take charge of the case until the first of July, you have testified to that? A Yes sir.

Q On the first of July you took charge of the case, did you? A Yes.

CASE # 631

13

Q And then you were responsible for the case until the 18th of August, were you? A Yes.

Q On the first of July, when you became responsible for the case, was the patient Boyle in the same bed that he was when you saw him there on the night of his admission?

A I don't remember.

Q Do you remember his being in any other bed than the one you saw him in the night he was first admitted? A On the first of July.

(Question repeated.)

A Yes.

Q When did you see him in another bed from the one you saw him in when he was first admitted? A Some time between June 28th and the time of his death.

Q You told me that you did not see him between June 28th and the first of July? A I did not say that.

Q Is it not a fact that you did not? A I saw him several times.

Q But you were not in charge of the case? A I was not responsible for the case.

Q You were not in charge of it, is that so? A No.

Q Was it at or after the first of July when you assumed charge of the case and were responsible for it, that the patient was transferred from one bed in Ward I to an-

CASE 631

other? A I don't remember.

Q You say the patient died? A Yes sir.

Q When did he die, do you know that of your own knowledge? A Yes.

Q You are sure of that? A Yes sir.

Q When did he die? A August 18th.

Q What year? A 1906.

Q What bed was he in when he died? A He was in the first bed on the right hand side as you enter Ward I.

Q You know Dr. Schultz? A Yes sir.

Q Did you see Dr. Schultz on the 19th of August, 1906? A I did.

Q Where did you see Dr. Schultz on the 19th of August 1906? A In the Autopsy Room.

Q Was there anything on the autopsy table, if I may so describe the slab that you put people on? A Yes sir.

Q Was it alive or was it a person who was alive or a cadaver or body of somebody? A The patient Boyle dead.

Q And this patient Boyle was the person that you had seen on the night of the 28th of June, 1906, and whom you had attended in the bed, the first bed as you enter the hospital, Ward I, after the first of July, 1906; is that right? A Yes sir, some time after the first of July.

Q It does not make any difference what date? A Yes.

CASE # 631

Q But that is the bed he died in? A Yes sir.

Q What did you see Dr. Schultz do with respect to this patient Boyle whom you have named as Boyle? A I saw him do the autopsy.

Q Perform the autopsy? A Yes.

Q Did you see him remove anything from the body? A I saw him remove the spinal chord.

Q Did you see him remove anything else -- where is Exhibit 1 --

MR. SULLIVAN: I object to any exhibition.

MR. ELY: I am not exhibiting anything. I have a right to ask where my exhibits are.

MR. SULLIVAN: I object as leading.

MR. ELY: Point out to me where the witness has been led.

MR. SULLIVAN: You have led this witness all along, every question is a leading question.

MR. ELY: That is too general and I desire, as the interruption has been made, to have the objection made specific.

THE COURT: What objection do you make, Mr. Sullivan?

MR. SULLIVAN: I object now at this present time to the District Attorney presenting to this

witness any exhibits.

MR. ELY: Who has done so -- why does not Mr. Sullivan wait until some offer is made.

THE COURT: Has there been any such attempt made?

MR. SULLIVAN: I take it from the language of the inquiry, there is -- an attempt is in process now.

MR. ELY: Why do you not wait until it is made before you object?

THE COURT: The District Attorney will be instructed not to present any exhibit until the proper time arrives for the presentation.

MR. ELY: Yes sir, but counsel for the defense should be instructed not to make objections until the time to make them arrives.

BY MR. ELY:

Q Did you see him remove anything else? A I believe I saw him remove the organs from the abdomen and lungs.

Q You said that you saw some scar on the back, or some wound in the back of this person whom you have described as Boyle, when he was brought into the hospital, did you not? A Yes.

Q Now with respect to those wounds, did you see any-

CASE # 631

thing removed by Dr. Schultz? A I saw a bullet removed from its lodgment in the spinal chord.

Q You saw this bullet removed by Dr. Schultz? A Yes sir.

Q Did you look at the bullet? A Yes sir.

Q Presenting to you now People's Exhibit 1, I ask you if you recollect ever seeing that bullet before or one which strikes you as in all respects similar? A Yes sir.

Q With that at the time, as you say, that Dr. Schultz removed a bullet from the body of Boyle? A Yes sir.

Q Do you know what the cause of death was -- did you form an opinion after this autopsy that was performed by Dr. Schultz, as to the cause of death? A Yes sir.

Q What was it? A Severance of the spinal chord.

Q Produced by what? A By a bullet.

Q A bullet wound? A Yes.

Q Was that the direct cause of death? A Yes.

CROSS EXAMINATION BY MR. SULLIVAN:

Q When you saw the patient on the morning of the 28th of June, you say he was suffering from shock? A Yes sir.

Q When was your vacation, when did it begin? A I took a vacation in February.

BY MR. ELY:

CASE # 631

Q Of what year? A 1906.

BY MR. SULLIVAN:

Q So you were on duty during the summer? A Yes sir.

Q You slept there in the hospital? A Yes sir.

Q You were asleep at this time? A Yes sir.

Q On the 28th?

MR. ELY: What time on the 28th?

BY MR. SULLIVAN:

Q The morning of the 28th? A I was on the morning of the 28th.

Q You got up about three o'clock?

MR. ELY: I beg your pardon. He said two o'clock.

MR. SULLIVAN: He said two or three o'clock.

MR. ELY: He corrected it and said two o'clock.

BY MR. SULLIVAN:

Q What was the time you got up? A About two o'clock.

Q Didn't you say in your direct examination between two and three o'clock? A No.

MR. ELY: I object. The record speaks for itself.

BY MR. SULLIVAN:

Q Was the wound or injury or the shock accompanying

CASE # 631

the wound or injury that you found on the body of this person, at the autopsy, one that would be calculated to injure or interfere with the power of observation at the time it was inflicted?

MR. ELY: I object. The witness is not sufficiently qualified as an expert on bullet wounds to be asked that question.

THE WITNESS: What is the question again.

MR. ELY: I object as incompetent, irrelevant and immaterial and I object to the form of the question as well.

THE COURT: Yes, the form of the question is objectionable.

BY MR. SULLIVAN:

Q Would the powers of observation of a person subjected to such a shock, receiving an injury of this kind, be interfered with by a shock?

MR. ELY: I object to the form. That is improper.

MR. SULLIVAN: It relates to the testimony of this witness that he found the patient he speaks of suffering from shock on that morning.

BY MR. SULLIVAN:

Q The condition you found, and of the check which ac-

CASE # 631

compained the injury which you found to have been inflicted upon this person, would that interfere with the power of observation?

MR. ELY: Is that the question?

MR. SULLIVAN: Yes.

THE COURT: That is the professional observation of the physician?

MR. SULLIVAN: No, the power of observation of the man at the time.

THE COURT: Sight?

MR. SULLIVAN: Yes.

Objected to.--

Objection overruled.

THE COURT: What is the question again please.

(The question is repeated.)

MR. ELY: The form of the question is incompetent and there is no basis to rest upon, when propounded to this witness. He has not been qualified as an expert in that, and furthermore, it calls for the statement of a fact, while it simply could be an opinion of this witness. -- he could not state it as a fact and the question is bad in form.

THE COURT: Yes, I will sustain the objection to the form.

CASE # 631