

N O T E

The following pages are the transcript of the trial of Grace Fortescue, Thomas Massie, Edward Lord and Albert Jones for murder. These records are from the files of Governor Lawrence Judd, now in the Archives of Hawaii and are not a part of the official court record. This is the entire portion of the transcript in the Governor's File and missing pages cannot be located.

March 15, 1965

Agnes Conrad
State Archivist

(Follows Linn, Apl. 14, 1932.) 11:44 a.m.

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all
THOMAS HEDGES MASSIE,

one of the defendants, was called and duly sworn as a witness in his own behalf, and testified as follows:

DIRECT EXAMINATION

By Clarence S. Darrow, Esq.

Q Give us your name in full?

A Thomas Hedges Massie.

Q What is your age?

A Twenty-seven.

Q What is your position or business or calling, whatever you might call it?

A I am a naval officer.

Q How long have you been a naval officer?

A For almost five years.

Q Where were you born?

A In Winchester, Kentucky.

Q When did you first go to any naval school or military school?

A When I was fourteen I started to a military school in Kentucky.

Q Whereabouts did you go?

A At Millersburg Military School.

Q How long were you there?

A One year.

Q Then where did you go?

A I went to Porter Military Academy in Charleston, South Carolina.

Q How long were you there?

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A Three years.

Q Did that complete your course at school?

A Preparatory school, yes.

Q Then where did you go?

A I went to the Naval Academy for four years.

Q Annapolis?

A Annapolis, Maryland.

Q How long, - for four years?

A Four years.

Q That completed your course?

A Yes, sir.

Q Then what did you do?

A I was graduated in 1927 and I went into the Fleet.

Q What department of it?

A The aeroplane carrier "Lexington".

Q Any other department?

A The department of gunnery.

Q Were you with the submarine too?

A I later went to the submarine service. In 1929 I went to the class at New London, Connecticut for six months, and then was assigned to Pearl Harbor for duty with "S-43".

Q You are in that now, are you?

A Yes, sir.

Q When were you married?

A I was married in 1927.

Q You were then how old?

A I was then 22.

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Q And your wife was who?

A She was formerly Thalia Fortescue.

Q Lived in Washington?

A Yes.

Q What was her age?

A She was sixteen.

Q How long have you lived here in Honolulu, or about, will do?

A About two years.

Q Where else have you been as a sailor?

A I have been on the West Coast and on the East Coast of the Mainland.

Q Have you been constantly in service?

A Yes, sir.

Q When was it you came to Honolulu?

A June of 1930.

Q Do you remember an incident of going to a dance or party?

A I can't forget it.

Q How is that?

A I say I can't forget it.

Q When was that?

A It was in September.

Q Of what year?

A Last year.

Q Who went with you?

A My wife, Lieutenant and Mrs. Branson, and Lieutenant and Mrs. Brown.

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Q How long had you known them?

A Ever since I was at the Academy.

Q Do they live here too?

A Yes, sir.

Q Where was this dance?

A It was at the Ala Wai Inn on Kalakaua, in Honolulu.

Q Were they your guests or you theirs, or just happened to be together?

A That afternoon of the 12th, I think it was, I asked Mrs. Massie if she would like to go to the Ala Wai Inn to dance. I told her I had heard a lot of our friends were going there, and asked if she would mind asking two of our friends to come with us and bring their friends. She said she didn't care much about going that night, but I asked her if she would not, and she said "Yes", I could go ahead and call them up, and I called them up and they said they would be pleased to go, and later after dinner Mrs. Massie asked if she had to go to the dance. She said she didn't feel like it, and I told her I thought it was a bit late to call it off, since we had asked some other guests, so I persuaded her to go.

MR. KELLEY: At this time, if the Court pleases, I would ask counsel if it is his intention, as indicated by the testimony of Lieutenant Massie, to go into the so-called Ala Moana case?

MR. DARROW: I want to make this very brief, just to ~~perhaps~~ touch it, but I intend to go into this Ala Moana case to some extent.

MR. KELLEY: If counsel intends to go into the Ala Moana case I think the prosecution should be informed as to whether or not as to one or more of these defendants the defense is going to rely upon that of insanity. We wish to offer no unnecessary objections to this line of testimony, if the Court pleases, but it is well recognized there are only certain conditions under which it can be admitted, and the prosecution, - we feel at this time, has a right to know whether those conditions are going to be met.

MR. DARROW: I don't think they have the right to do it, but I am perfectly willing to answer the question. No use of disputing over matters we do not dispute. We do expect to raise the question of sanity of the moving one in the last part of this tragedy, - that is the one who shot the pistol.

THE COURT: I think that answers your question, Mr. Kelley.

MR. KELLEY: Partly. We object to any further testimony

of Lieutenant Massie on this subject, unless we are informed that the plea of insanity is to be presented in his behalf.

MR. DARROW: I don't think that makes the slightest difference. Of course counsel has stated many times to the jury that each one is responsible for what all did, if they were connected in an enterprise of this sort, which, perhaps, would be true if they had reason to foresee what might follow from their act. I don't think we need to go further at this time. The Court is familiar with it, and so is counsel. That statement was made openly and it is just exactly as we stated it.

MR. KELLEY: We have the right, if the Court pleases, - at least we feel that we have the right, in the event a plea of insanity is relied upon with reference to any of these defendants, relying upon further information that certain well-known psychiatrists have come here, ostensibly to testify in this case, - we have the right to know which defendant this plea is going to be presented for, and the right to examine by alienists, doctors, psychiatrists or other persons of the party who it is claimed was insane at the time the murder was committed.

THE COURT: Under our law, Mr. Kelley, the plea of insanity puts in issue the sanity of all. There is no special plea of insanity required.

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MR. DARROW: Counsel has been very accommodating to us, and if he says he wants some doctors to come in here and hear the testimony, why I would be perfectly willing to accommodate him by even calling another witness, although I would rather ~~finish~~ finish with him as I started. Nobody whom we claim is insane, - we may not see fit to submit them to his physician. That will come up later. But certainly they have the right to be here in court, and if he makes any such request we will try to meet him fairly in the matter.

THE COURT: Any reason why we should not proceed, Mr. Kelley?

MR. KELLEY: None on that score, but I should like a ruling on the first part of my objection to this testimony. I feel it is only admissible unless it is shown this is the defendant against whom the plea of insanity is going to be raised.

THE COURT: I think counsel has already informed you sufficiently. I will allow you to proceed, Mr. Darrow.

Q You were proceeding to tell who were your guests at that dinner, I think?

A Yes.

Q Who were they?

A Lieutenant and Mrs. Branson and Lieutenant and Mrs. Brown.

Q There were other people at the dinner and the dance?

A Oh, yes. There was quite a large crowd at the dance.

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Q Mostly Navy people?

A Quite a few Navy people, but many others. We got there about 9:30 I think and danced the evening, and about 11:30 Mrs. Rainer---

Q I will ask you one other question first. Was there any drinking there?

A Yes, sir, there was some.

Q What were you going to say about Mrs. Rainer?

A This was when Mrs. Rainer came up to me about 11:30, just after the orchestra had announced the last dance would be played at midnight, and she said "It is about time to go home." I said, "All right, we will get Thalia, Mrs. Massie, and go."

Q Thalia is Mrs. Massie, your wife?

A Yes. In the meanwhile, Lieutenant and Mrs. Rigby had asked several friends to stop in at their house, and I suggested we ~~xxxxxxx~~ get all our friends together and go there after the dance, and she agreed, and I started to look for Mrs. Massie and get her wraps, and we were downstairs on the dance-floor, and I asked a few people and we couldn't find her. So I looked all over the place, up on top and down below, and Mrs. Rainer was still looking when I got back, and I think Mr. Branson was with her, and he was helping her to see if he could find Mrs. Massie, and then I looked out on the grounds and I couldn't find her there and I came back and found Mrs. Rainer

still looking, and she said she thought we ought to telephone, and I thought she had probably gone home with Mrs. Rigby. Someone told me they had left the dance before it closed, and they suggested I call there, and I called Mrs. Rigby's and didn't get any answer, and I called my own home and didn't get an answer, and I called several other places of people we thought she had left early with, and couldn't find her. By that time it was about the end of the dance and we started away to the car, and Mr. and Mrs. Rigby and Mr. and Mrs. Branson and Mr. and Mrs. Brown all started for the cars, and I stated "We will find her at the Rigby's I am quite sure."

Q Let me ask a question. Was your wife especially fond of parties of this kind?

A No, I can't say that she was.

Q Had she ever before that time left any company?

A Yes, on several occasions I can remember when I was having a fairly good time she didn't want me to go home, but wanted to go herself. She would tell me she would like to go home, and would I excuse her.

Q Did she care anything for drinking?

A No.

Q Take it up where I broke in. You started out with whom?

A We started out to our cars, I think, with these six people I mentioned. There was quite a crowd and

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Lieutenant Branson said he would drive home with me to the Rigby's, and we would meet the others later, and he and I got in my car and we drove to the home of the Rigby's, and we got there and no one was there. I didn't know what to think. I didn't know where she could be then. So I called a maid and she told me Mrs. Massie had not been there with the Rigbys, so I went to the 'phone and called my own home, and Mrs. Massie answered. She recognized my voice and said: "Something terrible has happened. Please come home at once." I ran out of the house and drove home, and when I got to the front steps I could hear her crying. So I went into the house, and she was standing in the door waiting for me. She collapsed in my arms and I took her over under the light. Blood was coming from her nose and from her mouth. Her lips were crushed and bruised. Her eyes were swollen and there was a large bruise on the right side of her face.

Q Did she tell you what had happened to her?

A No. I thought a truck had run over her. I asked her what in Heaven's name had happened. "Oh", she said, "It is too terrible. It's too terrible!" She couldn't do anything but sob.

Q You mean that was her reply, - "It is too terrible; it is too terrible!"

A Yes, sir.

Q All right, go ahead.

A I said, "Please tell me what has happened?" She said, "I can't, it's awful, it's horrible." She kept sobbing and I asked her several times, and she said some men had dragged her into a car and beaten her and taken her to a place and ravished her. I said "Oh, my God, no!" She couldn't answer me then. I just sat there dazed. Finally she sobbed and said, "I want to die! I hope I die!" I tried to comfort her but I couldn't. I finally went to the 'phone and called the police and told them that my wife had been assaulted. I gave them my address and told them to come at once. I went back to my wife and got some wet towels and tried to get the blood away, but she wouldn't let me do anything for her. She just stayed there in my arms and cried and sobbed. She was completely broken. I then asked her if she had taken every precaution against conception and disease. She said "Yes, I have done everything I can". I stayed there with her until the police came. They came into the house and began questioning us. We told them what we could, and Mrs. Massie told them that her jaw was hurting frightfully. I asked them please to take us to the police station.

Q Station or hospital?

A To the hospital first. I told them that Mrs. Massie's jaw was hurting her and that she couldn't talk. They still questioned us, and finally another

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car came and I asked them to take us to the hospital. So they did. I got a comforter for Mrs. Massie and took her out to the car. We went down to the hospital and they took her in for examination. They wouldn't let me go in with her, so I stayed outside and waited and when she came back they took us to the police station and began questioning her all over. While I was there I saw Lieutenant Branson with a group of officers around him, and I walked over to him and asked what he was doing there. He said he didn't know; they were holding him as a suspect. I told the officers Branson had been with me all evening, and not to waste their time with him, let him go and go on with the investigation.

Q Had he been with you all evening?

A All evening, yes.

Q Did he leave when you left from the dance?

A I drove him to the home of the Rigbys. And they continued to question him. Finally after about an hour I called Captain Wortman and told him the circumstances and also told him they were holding Branson, and I called my own commanding officer, Lieutenant Pace, and told him, - told his wife I wanted to speak to him, but he was in bed with influenza and couldn't come to the 'phone. Finally after about two hours they drove us back home. I put Mrs. Massie to bed and tried to get her to sleep, and we couldn't go to

sleep that night, and she continued to ask me why they hadn't ~~kill~~ killed her. She couldn't understand it.

Q Well, you didn't sleep that night?

A No, sir.

Q What did you do the next day?

A The next morning I called my commanding officer, Lieutenant Pace, and asked him to please come over at once with his wife, and he came over and I told him everything that had happened, and Mrs. Pace went back to Thalia and tried to help her, and he suggested we go right out to see Captain Wortman. I told him we would, but I wanted to call the doctor first. So I called Doctor Porter and asked him to come at once. In the meanwhile we left Mrs. Massie with Mrs. Pace and went out to the home of Captain Wortman. We told him all that had happened, and he said he would do everything he could to help. We left there and he drove me down to the radio office in town, and I wired Mrs. Massie's family what had happened.

Q Who was the one you wired to?

A I wired Mrs. Fortescue.

Q All right.

A I came back to the house and Mrs. Pace told me that Dr. Porter had said she was in a critical condition, suffering from mental and physical shock, with a possibly broken jaw. He said "We will have to take

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her to the hospital. That afternoon, as soon as it was cooler, we took her to the hospital, that afternoon, and the people there couldn't encourage me. They said we would have to keep her quiet every minute and see that no excitement whatever occurred. I stayed with her that night until the nurses made me leave, and then I went back home and tried to sleep, but I couldn't sleep. The next day I went back to the hospital. I think it was on this day or one following that they brought four of the assailants in for identification.

MR. KELLEY: I object to the statement of the witness that the assailants were brought in.

Q Suppose we say "four men". Change it to that.

A The four people were brought in. They told Mrs. Massie before they entered not to show while they were in there if she recognized them, before they brought them in, and I was there. She questioned them all. She seemed to concentrate her questions on Kahahawai. Finally, about after fifteen minutes, the detectives went out and called me out and said "Go back and see what your wife says". I went back in and leaned over the bed and asked her what she thought. She said "They are the ones". I said "Please, darling, don't let there be any doubt in your mind, because you know what it means". The tears came into her eyes and she said "Don't you know if there was any doubt

*Sunday
From brought
to her home
She identified two
and change*

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in my mind I couldn't ever draw an easy breath as long as I live." I went out and told the detectives they were the ones.

Q What were the names of the four men she identified as being the ones who attacked her?

A Chang, Ida, Ahukuelo and Kahahawai.

Q Had she ever seen any of those men before as far as you knew?

A Not as far as I knew. The next day they took some X-rays of Mrs. Massie's face and they told me that her right jaw was completely fractured, and that her left jaw was partially fractured. They said they were afraid it might be necessary to draw a tooth that was in the line of the fracture, and would not let the bones come together, but they were hoping they might not have to. They put on some rubber bands and drew her jaws together, fastening the bands around the tooth so she couldn't open her mouth. Then a few days after another X-ray was made and they found the fracture did not close and they would have to draw that tooth. Mrs. Massie told me she would not go through with it unless I was there. They took her up to the operating room and gave her gas. She made me hold her hand and watch the whole thing. I thought she was asleep, but this tooth had never come through the gum, and they had to cut all the gum away so they could get to the tooth. She

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screamed. I asked them to give her ether and they told me she couldn't feel it. I thought she could. Finally ~~at~~ they did give her ether, and after a long time they got the tooth out and we put her back to bed. She cried all the rest of that day. It seemed that any little thing, no matter how small, would upset her and cause her to break down again, and I couldn't calm her. I stayed with her every night at the hospital as long as they would let me, and I would be back the next morning, and I would go between there and the police station. I wanted to learn something about these people, and when asking some of the authorities they told me that several of them had criminal records; that one of them had been convicted of rape; that another had a criminal record, something to do with robbery, and another was in another sex case.

Q When did you learn, if at all, about just what happened to her?

A She told me while she was at the hospital.

Q This was about this time?

A Yes.

Q What did she say?

A ~~She~~ couldn't talk to the detectives sometimes, so they made me go in and ask her all about it and come back and tell them. I asked her one night and she told me she had left the dance for a walk, and that she was going to walk to Fort DeRussey and back

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to the dance.

Q How far was that from the dance?

A I don't know, about a quarter of a mile, I suppose.

Q You don't know just how far?

A No.

Q All right.

A She said that when she got at the turn on John Ena road a car came up from behind her and two men jumped out and grabbed her. She said she screamed but they hit her and stifled her cries. She told me they dragged her into the car, and that she offered them money, telling them she had money in her purse, and she would give it to them if they would let her go. She told me one in the front seat x looked around and said "Get her purse." She said they grabbed her purse and found nothing in it, so they beat her all the more. She said every time she tried to talk to them they would beat her, and wouldn't let her say anything, but finally she told them if they would let her go I would give them money, but she said they laughed at her. She said they drove down the Ala Moana and turned off into the bushes. She told me what happened.

Q That she was raped?

A Yes. I asked her which one beat her mostly. She said that there were two that beat her, one was Chang and one was Kahahawai, but that Kahahawai had beaten

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her more than anyone. She said when Kahahawai assaulted her she prayed for mercy, and he answered by hitting her in the jaw.

Q When was it she told you all this?

A She told me a thousand times.

Q When was the first time?

A In the hospital.

Q ~~Was~~ Did she tell you whereabouts this was?

A They told me where it was. They took me down there.

Q Did you learn anything about any beads being found there?

A They told me they found some green beads there and asked me if they were Mrs. Massie's. I said I thought so, but Mrs. Massie had told me while she was at the hospital they had broken her beads. They told me to get her clothes and bring them to the police station, and I did, and on her dress I found a broken string of green beads that were hers.

Q Did the policeman show you the green beads they had found?

A Yes.

Q Did they correspond?

A They were the beads.

Q Well, what happened to her later as to her jaw?

A After they had drawn that tooth they wired her jaws again and put two metal splints, one on the top jaw, and wired it to the tooth, and one on the

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bottom, wired in the same way, and they wired these two splints together and clamped her jaws so she couldn't open them. She had to take all her food through a tube and when she would swallow for several days at the hospital she would almost scream with pain.

Q How long were they wired together?

A Six weeks.

Q I suppose she was fed some liquid food?

A Nothing but liquids.

Q Had you any directions about watching while her jaws were wired together?

A Yes, and we took her from--- When she had been to the hospital a week the doctor told me we could move her. She wanted to leave the hospital so she could be with friends, and Mrs. ^{Miles} ~~Moss~~ in town had told me she wanted us to come ~~xx~~ there, so we took her there, but she ran a temperature. It must have been from moving her too soon or something, and I called in Dr. Withington and he explained I would have to have a nurse with her constantly, that she was in a critical condition and it was dangerous not to have someone with her all the time. I had paid all my hospital bills then and I didn't have a great deal of money. So I got a day nurse and acted as night-nurse myself. They gave me a pair of wire clippers and told me that if she ever got sick at the stomach to cut

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all the wires as soon as possible, or she would choke to death. We were at the ^{Miles'} ~~Maws'~~ for two or three days but she didn't seem to be able to get any sleep with a high temperature of 105 and I had to give her a lot of sleeping medicine the doctor had prescribed. One night when I thought she was asleep, - I had been lying there and couldn't go to sleep; she had an ice pack on her head and I thought she was comfortable, but as I was lying there she suddenly rose up in bed and screamed and said "Don't let him get me! Don't let him get me!" I went over to her and woke her up and said, "It's all right, darling, nobody is here but me". She said yes there was, Kahahawai was her. I couldn't get her back to sleep that night. The next day when the nurse came all my firends advised me to go back to duty; it would take my mind off of everything. I thought I would try it, so I went off to duty; tried to work, but not with much result, as every time when I was still for a few minutes the whole thing would come back to my mind and I couldn't see ~~anythg~~ anything but that crushed face I saw in September. I couldn't accomplish much out at the Base because the whole thing preyed on my mind every minute, and I couldn't get rid of it, and then when I would come back and be up with her ~~at~~ at nights I couldn't be ready for duty the next morning, and I began to lose appetite.

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I couldn't sleep; I had to get up and walk the floor; I couldn't seem to get it out of my mind at all, and everything going over and over again, the whole picture of the thing.

Q Have you ever got it out of your mind?

A Never.

Q Did her mother come?

A That was later, after we got her well enough, with the fracture and infection that had set in in her jaw was fairly well cleared up she said she wanted to go home. She thought she would be easier in her mind at home. So we took her there and still had to have someone with her constantly. So I kept the nurse while we were there. Several nights Mrs. Massie would call me and tell me she her footsteps under her window. I thought she must be dreaming or imagining. She was always upset, and would cry most of the day, and I thought it was natural for her to imagine that she was frightened, but one night she called me and I didn't turn on the lights, I laid there and waited, and I heard footsteps under the window, and there couldn't be any doubt about it. I rushed out of the house with a gun and circled the house, but I didn't see anyone.

Q Does that window open onto a street?

A It opens onto the back yard.

Q You didn't see anybody?

A Didn't see anyone, but I know someone was there.

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Q Well, pass over that, did you go back to Dr. Withington?

A We kept Dr. Withington all the time.

Q How long was he treating her?

A For about two months.

Q How well had you known Dr. Withington?

A I knew him quite well. I had played water-polo with him on the beach for several months previous to that.

Q Did he ever treat you in any way during the time or tell you what to do or anything of that sort?

A He just advised me to try to get some sleep and get the whole thing off my mind, if I could. He said I was losing too much weight.

Q Did he ever give you any information about your wife's condition?

A I got that at the hospital. When I went down to the hospital Dr. Porter explained that we would have to expect two things that were possible, disease and conception. Those were the things that preyed on my mind every minute of the day, - worse than anything I could imagine.

Q Was Dr. Withington's attention called to Dr. Porter's statement?

A Yes, Dr. Withington said he was doing everything in his power, but he couldn't say one way or the other, but after Mrs. Massie's mother came we knew

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that an ~~mm~~ operation would be necessary to prevent pregnancy. This had a strange effect on my mind.

Q Was it done, the operation?

A Yes, I took her to the hospital, and Dr. Withington performed the operation.

Q Did you know or did she know that that pregnancy was due to you or not?

A There couldn't be any doubt that it wasn't.

Q Do you remember when that operation occurred?

A It was the first part of October.

(Adjourned to 9 a.m. Friday, April 15, 1932.)

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Massie

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
TERRITORY OF HAWAII

TERRITORY OF HAWAII,	}	
-vs-		
GRACE FORTESCUE, et al.,		Crim. No. 11891
Defendants.		

The above entitled matter came duly on for further hearing before the Honorable Charles S. Davis, Judge of the above entitled court, on Saturday, April 16, 1932, at 9:00^{A.M.}, all parties to the action being present in court, whereupon the following proceedings were had and testimony adduced:

THE COURT: Call the case.

THE CLERK: Criminal No. 11891, Territory of Hawaii versus Grace Fortescue, Thomas H. Massie, Edward J. Lord and Albert O. Jones.

MR. KELLEY: Ready.

MR. DARROW: REady, Your Honor.

THE COURT: Are the defendants present?

MR. DARROW: Present and have been always.

THE COURT: Will counsel stipulate that the jury is present?

(Counsel so stipulate)

THE COURT: Very well. Proceed with the trial.

THOMAS H. MASSIE, one of the defendants resumes the stand.

DIRECT EXAMINATION (resumed)

Questions by Clarence Darrow, Esq.

MR. DARROW: There seems to have been some little misunderstanding between the attorneys on the other side and ourselves and I want to set it right. We believe that the plea of not guilty puts this full question in issue and it is not necessary then or now to say who fired the shot; but we are perfectly willing to do it to save any more time or controversy on the subject. The evidence will show in this case that the defendant, Massie, now on the stand held the gun in his hand from which the ^{fatal} ~~bullet~~ shot was fired in this case.

Q Mr. Massie, we were speaking before we adjourned - - - I guess we got up to the point of the indictment in the old case. Were you present at the trial of that case?

A Yes, sir.

Q What's that?

A Yes, sir.

Q Were you there all the time?

A I would take Mrs. Massie down on the days when

she went and I waited outside for her and took her back home.

Q What was the result of that trial?

MR. KELLEY: At this time I object to the testimony of the witness and the answer to this question on the ground that it is incompetent, irrelevant and immaterial, having no bearing on the issues in this case. We will also move on the previous objection entered yesterday that reference to information supplied to him by his wife and others with reference to the Ala Moana case be stricken from the records on the ground that it is hearsay; we object to any further testimony on the same and additional grounds. The only purpose of this testimony, if the Court please, and the only theory under which it is admissible is the insanity of one or more of the defendants. Mr. Darrow has stated this morning that the defendant, Massie, will admit that he fired the shot that killed Kahahawai. Even under that theory or with that admission, this evidence is still inadmissible. We contend it is inadmissible to show motive, intent or in mitigation under our statutes; and that the only theory under which it can be admitted is the basis and theory that Massie or some other one of the defendants was insane at the time the

shot was fired. Unless that declaration is made at this time and unless we proceed on that theory we object to any further evidence by this defendant and move that his previous evidence be stricken.

THE COURT: It becomes necessary for the Court to inquire, in order to rule on the objection and motion, that counsel for the defense state at this time whether he is relying on the defense of insanity as far as the witness on the stand is concerned.

MR. DARROW: Your Honor, that is what we are relying on. We expect the evidence to show that this defendant was insane. I did not say that he would testify that he killed the deceased. We will show that the gun was in his hand when the shot was fired but that the question as to whether he knew what he was doing at the time is another question.

THE COURT: It now appears, Mr. Kelley, that the theory of the defense is that the witness on the stand is relying on the defense of insanity and that the theory of the defense is that the witness now on the stand fired the fatal shot.

MR. KELLEY: Then I would ask this further question: If the defense is ready to admit at this time that the defendant, Massie is sane; if he is not, he can't testify.

THE COURT: It is not necessary for the Court to rule upon evidence to require that statement from the defense. The defendant has already answered the question as I understand it.

MR. DARROW: There is always the presumption that insanity would of course exist at this time.

THE COURT: Do you still press the objection, Mr. Kelley?

MR. KELLEY: I think the objection has been met. In view of the fact, however, that counsel has admitted in open Court that the defendant was insane at the time that the shot was fired and in view of the fact that they will evidently produce medical testimony to corroborate that statement, we at this time feel that we are entitled to know the type of insanity that the defendant is alleged, or was laboring under at the time he fired the shot in order that we may meet any medical testimony that may be produced as to his condition at that time. We have in Court doctors whom we intend to use. They are entitled to know the type of insanity that the defendant and defense claims that this man was laboring under at the time he fired the shot in order that we may adequately meet that when the time arises.

THE COURT: Does counsel for the defense accede

to the request of the prosecution?

MR. DARROW: No, your Honor; I don't think anybody on earth can tell. People who are familiar with books and have made a study of the question know that doctors disagree as to type. There is nothing in the type except the name that different doctors give different symptoms. Of course, this may have occurred before but I have never heard of any such request being made. Doctors almost always disagree as to the name because they give the name that they think are the symptoms. There is no rule whatever as to that question.

MR. ULRICH: In connection with the question that the type of the insanity be designated, we are not particular about the name or nomenclature used in designating that insanity so long as there is indicated to us and our experts who should have now the opportunity of observing this insane man or former insane man that is testifying on the stand. The kind of insanity or psychosis that he claims he was laboring under at the time. I don't believe that Mr. Darrow means to suggest that there are any different kinds of psychoses. It may be that doctors do differ ~~xxx~~ as to how they differ but we have, for example, a condition of paranoia or condition of well-recognized psychosis,

it will be thoroughly necessary for our people to know that was being claimed so as to see that the symptoms indicated. It may avoid an examination of this witness.

THE COURT: Medical or legally?

MR. ULRICH: Beg pardon.

THE COURT: The legal category or medical?

MR. ULRICH: Well, the legal category is the matter of ability to know the nature of the act that was performed. But we are asking for a statement of the type of mental condition which it is claimed was existent in this patient at that time that brought him within the insanity.

(Argument)

MR. DARROW: Why no, I don't believe anybody on earth has any information on that subject on any particular individual we may classify as insane at that particular time. There are so many different kinds and so many different doctors disagree among themselves as to what class they fall in. It is quite impossible.

MR. KELLEY: I quite agree with counsel in that respect.

(Further argument)

MR. DARROW: That is all that we can give. That is all that the statute requires.

THE COURT: Very well, you may proceed then.

QUESTIONS BY MR. DARROW:

Q I believe that the last question was not answered, was it? What was the result of the trial in the rape case?

MR. KELLEY: We object to the question on the ground that it is incompetent, irrelevant and immaterial.

THE COURT: You have already stated that the objection was not well-founded.

MR. KELLEY: No, I objected on the ground at that time that there was no adequate reason for its being asked. I still object on the ground that it is incompetent, irrelevant and immaterial.

As I understand this testimony, if the Court please, it goes to the bearing it might have on the mental condition of the defendant.

(Argument)

THE COURT: I think that objection is well taken; although the question, I assume, calls for the answer as to whether or not the witness was informed as to the result of the trial. Until it appears that the witness knows what the result of the trial is, the question is objectionable in its present form.

MR. DARROW: I will clear that up.

Q Were you present in Court when the Jury returned?

A No, sir.

Q Did you learn what the verdict was?

A Yes, Mr. Darrow.

Q What was the result of the trial?

MR. KELLEY: I object- - - -

A (Interrupting) Mistrial.

MR. KELLEY: On the ground that it is incompetent irrelevant and immaterial. Move that the answer be stricken.

THE COURT: The motion is denied.

Q Do you remember when that result came?

A Yes, I remember it, Mr. Darrow.

Q Can you now tell the day?

A I don't know the date. I was at sea and my wife sent me a message,

Q You know about the day?

A It was about the first week of December.

Q Did you do anything after that?

A Yes, Mr. Darrow.

Q Consult any lawyers?

A I couldn't understand it.

MR. KELLEY: Object to that as leading.

THE COURT: THE Objection is overruled. Leading questions will be allowed to save time, except those calling for answers on matters which go to the averment of the defense. You may ask leading questions to save time. I'll allow them provided they are not of such character as to put

answers in the mouth of the witness.

MR. DARROW: I won't do that.

Q Did you do anything by way of consulting lawyers or doctors?

A Yes, sir.

Q As to the next step?

A I was perplexed. I couldn't understand it.

Q Who did you consult?

A I went to see- - - -

MR. KELLEY: Now, if the Court please,

A I went to see Mr. Beebe.

MR. KELLEY: Just a moment. There has been no testimony as to what that message was and the foundation of this testimony depended upon the message his wife sent.

(Argument)

THE COURT: I think there is sufficient from the evidence from which the inference what the message was can be ascertained.

Q Who did you consult afterwards?

A I went to see Mr. Beebe.

Q Beebe is a well-known lawyer here?

A I think so, sir.

Q Had he been connected in anyway with this case?

A Yes, sir.

Q In what way?

A I think he was legal advisor.

Q To whom?

A To the prosecution.

MR. KELLEY: I object to what he thinks. If he knows he can testify to it.

A I know he was legal advisor.

THE COURT: Mr. Massie, when an objection is interposed, you will kindly refrain from answering.

A I beg pardon.

THE COURT: Until the objection is overruled, and please do not make any volunteer statements.

A I am sorry.

THE COURT: Now the objection was what, Mr. Kelley?

MR. KELLEY: As to what he thought, and we move that the answer be stricken.

THE COURT: He corrected the answer to the effect that he knows or knew. That portion ~~which~~ with regard to what he thought has been sufficiently explained; it might as well remain.

Q You know by whom he was retained?

A Yes, by myself.

Q When did you see him after your return?

A I think it must have been about a week. I couldn't understand all that had happened. I knew some of the evidence that had been given and I knew all along about identical car-tracks that were found.

Q We went go into that. You consulted whom about a week after, you say?

A Yes, I went down to see what could be done about it.

Q What was your physical condition at that time?

A I don't know. I felt miserable.

Q How was you as to sleeping?

A I got so I couldn't sleep very much.

Q Were you under the care of any physician at the time?

A Dr. Withington was looking after me, sir.

Q Where did you see Mr. Beebe?

A I ~~went to~~ wanted to know what I could do about it. Next week I began to hear the vilest and lowest type of rumors about myself and my wife.

Q When ^{did} this began to come to you?

A Some before the trial, but mostly afterwards.

Q What were those rumors?

A I think the first one I heard after the trial was that I didn't believe my wife's own ~~revel~~ story and for that reason I had not attended the trial and that I was getting a divorce.

Q Any truth in those stories?

A Certainly not.

Q What other rumors did you know in circulation about it.

A I think one of the first ones I heard was that I came home after the dance that night in September and found my wife with a Naval officer and that I had thrown him out of the house and beat my ownwife up.

Q Was the name of any officer mentioned?

A Yes, sir.

Q What was the name?

A Lieut. Branson.

Q Where was Lieut. Branson that night?

A He was with me.

Q Was he with you all the time at the dance?

A Yes, practically all the time.

Q Where did he go afterwards?

A He went with me to the home of Lieut. and Mrs. Rigby.

Q Do you remember any other rumors that were circulated about you?

A Oh, yes.

Q What else?

A I think the next one I heard was that I had left the dance thatnight, - had become angry with my wife and had followed in my car and taken her and beaten her up. Then I heard that a crowd of Naval officers had taken her in a car and beaten her and assaulted her.

Q Did you notice any difference in, or imagine you did, ~~xxx~~ either way, in the treatment you received around the Naval Base?

A It seemed to me that I did, yes sir.

Q What?

A I got so I couldn't stand a crowd. It would make me nervous. Couldn't look people in the face with all these vile rumors going around. And then when I would go out to the Naval Base it would seem some of the enlisted men would shun me.

Q What do you mean by shunning you? How did you see that?

A I know that on several occasions groups of them would walk across to the other side of the street and avoid me when I came along.

Q Were there other rumors besides what you have related here?

A There was a worse one.

Q Well- - - -

A They said that - - - -

Q Never mind- - - -

A My wife had never been assaulted at all and that she was simply a seeker of notoriety and wanted to get into the headlines.

Q How frequently did you hear those rumors?

A Oh, they never ceased.

Q You do what you could to deny them?

A I did everything possible.

Q Do you know how long those have persisted?

A I don't think they ever all stopped.

Q What was your purpose in going to Mr. Beebe?

A I wanted to find out what I could do to clear my wife's name of all this vile and rotten gossip that was going around. I couldn't understand why it should be. No one that knew us was saying them, yet everyone that had never heard of us, it seemed, was saying it.

Q You know whether any of these stories got into the newspapers, or insuations, or did you know about it?

A I don't think I know sir.

MR. KELLEY: Now, if the Cour please, I would ask counsel if he knows that that rumor got into the newspapers. His inference to the jury is that t they did.

MR. DARROW: You don't want to ask me that.

MR. KELLEY: Yes, in the local papers.

MR. DARROW: I don't know anything as to the local papers.

THE COURT: Well, it doesn't appear that the witness knows anything about it.

Q Did you have a conversation ~~about~~ with Mr. Beebe as to what could be done or must be done or should be done in the case?

A I asked him what I could do; and he said

that he didn't understand why they should go around, so I asked him if I got some written evidence from one of those people if it would be evidence. He told me that it would provided no force was used and no marks would show on the one who gave it.

Q Did he say anything to you about a confession?

A Yes, sir.

Q What did he say?

A He told me that the case was in such a condition now that it would be necessary to have a confession.

Q In speaking of force or marks, was he referring to any particular matter that had occurred or was reported to have occurred?

A I think he must have been.

Q To what one do you think he referred?

A He must have been referring to the Ida case.

Q How long after that happened was that conversation of yours?

A Shortly after it, I think.

Q Did you begin thinking of what to do?

A Yes, I wanted to get an admission from one of these people so that I could clear my wife's name of these vile rumors that were going around and make them see there was no truth in them.

Q One of these people was the four men who

had been indicted and tried?

MR. KELLEY: Well, if the Court please, I don't want to make unnecessary objections; but if Mr. Darrow wants to testify in the case, let him take the stand and testify.

(Argument)

THE COURT: You may proceed, Mr. Darrow. There is nothing before the Court.

MR. DARROW: I certainly wouldn't have asked leading questions - -

Q Did you talk to any other people in reference to it?

A Yes, sir, I talked with everyone who was interested. When I came home from my patrol trial, after having received this message from my wife, - no, it was not my patrol trial; it was the trip to Hilo, - I found that due to the fear for myself and Mrs. Massie, after I had requested ~~Commander~~ Captain Watson to station guards at my home so I could make this trip, ~~XXXXXXXXXXXXXXXXXXXX~~ my commanding officer sent me on, I found that Jones had been stationed as a guard.

Q Where?

A At my home.

Q That is Jones who sits here in Court?

A Yes. I think it was the day I came back Jones was there and I thanked him for taking care of my

home while I was at sea; and he said he was only too glad to do it,- that he wished he could help me in any way. So Mrs. Fortescue and I started wondering how we could get some admission from one of the defendants so as to stop the rumors. It was simply driving me to a state where I could do nothing. There were times when I would go home and would like to have cut my brain out so I couldn't remember them. We thought of various plans in which we could get a confession; and later, I think it was in January, I heard at the Base that Kahahawai was getting shaky and he was ready to crack. So, that night,- I think it was two nights later,- I went down and told this information to Major Ross at the Territorial Police Office and I asked him if he could do anything about it,- if it was within his province, and he said I don't know, and asked me who I was and I told him. He was very sympathetic and said he would like to do anything to help and told me he would be glad to call this one that I had mentioned in, and see if he could get anything out of him. He stated that he was his former battallion commander and and he would like to talk to him as such and he said that he had planned to ask permission to have his service transferred to this case

and see what he could do. I thanked him and I gave him my phone number as he said he would call me in a couple of days, but he didn't - - -

Q Who else did you talk to?

A I talked with Mrs. Fortescue and finally I decided that there was only one thing left to do and that was for us to try to get it. Major Ross didn't call me, so Mrs. Fortescue said that she knew the defendants reported daily at the Territorial Building and she said she would find out the exact time. So she went down and came back with the information that it was around 8:00 o'clock. Then we planned to try to get one in a car down there and bring him up to the house and see if we could scare him into a confession. Mrs. Fortescue said that- - -

Q Let me ask you this question: During all the time that you were engaged in this - and the other defendants so far as you knew - had you any purpose or intent of killing the deceased?

MR. KELLEY: Now, if ~~the Court~~ the Court please,-

A Certainly not.

MR. KELLEY: Just a minute. I object to that as irrelevant and immaterial and calling for the conclusion of the witness.

THE COURT: The objection is overruled. As I understand the law, he is permitted to state as to his intentions. The record may show that the answer may go out for the purpose of the objection and the objection having been overruled will be reinstated.

Q Going back a little, -you know Captain Stewart?

A Yes, sir.

Q Who is he?

A He is a retired Army officer, -friend of mine.

Q Live here?

A Yes, sir.

Q How well did you know him?

A Quite well, I ~~have~~^{had} known him for months. We had played athletics together.

Q Did you see him during this period that we have just been going over?

A Yes, sir.

Q How often?

A He was over?

Q About.

A He was ^{very} ~~er?~~ much interested. He often dropped around to my house and I would go around to his.

Q Did you ever talk to him about this case?

A Yes, sir.

Q You know about how many times?

A Must have been about twenty times.

Q How long before the time of this plan was the last time you saw him,- about how long?

A I think it must have been two weeks; some where around there, possibly a little less.

Q When was the last time you say Dr. Withington before this plan?

A I always saw them every Sunday.

Q What's that?

A I saw both of them every Sunday.

Q Was the Doctor treating you in any way up to that time?

A He was giving me advice and he told me not to lie awake at nights but to go ahead and take some of the sleeping medicines he had left there for Mrs. Massie; she still had to take them. I couldn't get to sleep. Told me to eat more and suggested one or two things that I should eat.

Q You talked with Mrs. Fortescue, your wife's mother about the idea you had in your head as to getting a confession, did you?

A Yes, sir.

Q Did you repeat to her what was said to you about the big fellow beginning to crack?

A Yes, sir, I told her that and she agreed with ~~ix~~ me that we should do something. I didn't think I could stand the rumors any longer and

I think she felt the same way, and so I told her that I remembered Jones seemed very interested and it was about, - it was Thursday, the seventh of January when I was out to the Base I called Jones over to me and I told him that I had learned from reliable information that the big one was ready to crack and that I thought we might be able to get a confession if we tried and asked him if he would be willing to help. He thought it over and said "I think I will". I asked him if he knew of anyone else that we could count on and he said "yes, I'll take you up and let you see him and if you think it is all right we will bring him along". So he took me up to see Lord. We talked it over and decided we would drive into town together that evening. We left the Base sometime about three o'clock, drove in and stopped at the Y.M.C.A., where they changed into civilian clothes, and then we went back up to Mrs. Fortescue and she was there; and after a good while she came over to my house where we had gone. We were there talking it over and seeing what was the best plan. We four talked it all over and decided the only way we could easily get him into the car would be by a ruse. We thought we would make a summons and decided to make it look

official with a seal and some printed matter.

Q Where did the seal come from?

A It came off some papers of mine.

Q Do you know what was on the seal?

A Diploma, from Edgewood Arsenal, of mine, -

Q Was what?

A It was a diploma of mine from Edgewood Arsenal.

Q And the printed matter was taken out of the newspaper?

A Yes, sir.

Q Published that same day?

A I think it was. It was laying around the house there.

MR. DARROW: Withdraw that question. it is leading and suggestive.

Q It was a newspaper?

A Yes, sir.

Q And that is the way this summons or warrant, whatever you want to call it, came about?

A Yes sir.

Q Who furnished the newspaper clipping?

A I think Mrs. Fortescue cut it out.

Q Now, let me go back a little bit. You remember that rope that was introduced into evidence?

A Yes, sir.

Q You know where it came from? Did it come from your home? Where did you get it if you got it?

A Mr. Kelley was right. I got it out at the

Base.

Q When did you get it?

A About six months ago, I think, something like that.

Q How did it happen?

A I wanted a leader rope for my dog, - a runway. I had a wire up from the corner of my garage to a small pear tree in the front yard. When I first got my dog he was a little wild and I was afraid he would run away and until he got used to us I put this wire rope up. When Mrs. Fortescue came home one night and she walked between the pear tree and the garage I think she was knocked down with this wire rope or wire line and she asked me if I could put up a light rope so she could see it in the dark and I said "Yes, I think so". So I think it was the next day I went up to the Chief of my boat and asked him if he could give me several fathoms of line. I told him what I wanted it for. I took it home in a bundle and opened it up and I thought it was a little large and didn't put it up. By that time the dog was used to the home and stayed there.

Q You sure he liked living with you?

A I think he must have.

Q You didn't think of ever using it for whatever happened this day?

A No. It was around the house somewhere.

Q You remember a piece of tarpaulin offered in evidence here or don't you know about that?

A Well, I know- the information I had is that it was out to Mr. Blom's house in the garage.

Q Well that's hearsay to you isn't it?

A Yes, sir.

Q Had you ever seen it in the garage?

A No sir, I don't think so. I might have but I don't recall it.

Q What investigation was made as to the way to get in contact with the deceased?

A I didn't have time to take care of that and Mrs. Fortescue came down to the Territorial Building and found out all about it, I think.

Q At least, that's what she told you?

A She reported that to me.

Q Did you have any arrangement to meet at the Territorial Building or anywhere else?

A We thought it would be better to stay all together so we couldn't lose any time or have any hitches about getting together the next morning.

Q This building you are in now, is that the one you mean?

A I am wrong, yes; it is the Judiciary Building, I meant.

Q And this is where you were to meet?

A Yes.

Q The Territorial Building is the next one then?

A Yes, I suppose so.

Q It was not there; it was here?

A Yes.

Q You know or did you learn why you were to come here that morning?

A It was the best place we thought to pick him up.

Q To whom do you refer now?

A All four of us.

Q To pick up whom?

A To pick up the big one.

Q What was his name?

A Kahahawai.

Q And why did you could pick him up on this day? ar at this place?

A Mrs. Fortescue told us exactly what time he reported, or exactly what time she thought; but she was wrong.

Q He reported at what hour?

A At eight o'clock she told us.

Q To this building?

A Yes sir.

Q Did you or anyone for you or with you get a machine on the night before?

A Yes, all four of us drove down in Mrs. Fortescue's

car and we drove to some place at the intersection of King and Beretania where she has her car serviced and we thought we could get a car there but they did not have one. We drove around town and finally decided to leave it up to Jones. We ran into a man by the name of Gilkie and he said there's a fellow that might get us a car and I said "Go ahead and see if he can". He jumped out and saw Gilkie and then we left them at one of the service stations and told them to get us a car; and later on that evening Jones drove this Buick Sedan up to my home and asked me if I thought it was all right and I told him I thought so.

Q Did you go down to the garage where that car was hired?

A No sir.

Q Where did you stay that night?

A I slept at home.

Q How was your home from Mrs. Fortescue's?

A About four blocks.

MR. KELLEY: Three-tenths of a mile.

Q Three-tenths of a mile, I understand. I am going to take Mr. Kelley's word for that.

MR. KELLEY: We will admit that it is three-tenths of a mile.

A Three-tenths of a mile.

Q You stayed at home that night?

A Yes sir.

Q Do you know whether Jones and Lord, - where they stayed that night?

A I know they were there. I got there the next morning. I had to wake them up. They were at Mrs. Fortescue's.

Q Evidently had slept there that night?

A Yes sir.

Q Still sleeping when you got there?

A Yes sir.

Q What time did you get there?

A About seven o'clock, I think.

Q Which bed did Jones and Lord sleep in or bedroom, or don't you know?

A They slept in what Mr. Kelley calls No. 1 Bed-Room.

Q That's the one ^{where} ~~where~~ the double bed is?

A Yes sir.

Q You get anything to eat there, - anybody?

A I had breakfast before I went there. I had a cup of coffee and I came over and Mrs. Fortescue was there getting some kind of breakfast for the two men and I think they went out into the kitchen and had some toast and coffee. I went out and talked with them. We went over all our plans in the kitchen. After breakfast we were on our way to the

living-room and Jones started talking about how we were going to get him in and I told him we had this summons idea and he was a little uneasy. He knew this fellow was pretty big. He said "I have my gun here", and I said "You can't take it down". He asked me why, and I told him that Mr. Beebe had said that no force was to be used and no marks should be showing. He gave me his gun and I laid it on the kitchen side-board and so we went into the other room and I think it was then Mrs. Fortescue completed this summons and I helped her some. We decided where to go and where to meet ~~them~~ him. And I drove down with Lord.

Q Just a minute before you get to that. What was Jones' gun?

A Thirty-two automatic.

Q Colt?

A Yes sir.

Q Where was it out?

A On the kitchen side-board.

Q The kitchen opened up into the back yard?

A Yes sir, through the back-porch.

Q The back-porch and what was next to it?

A The back-yard was next to the back porch.

Q The other direction?

A The garage you mean?

Q After you went in the kitchen?

A The dining-room.

Q And then what room?

A Then the living-room.

Q There were two bed-rooms there?

A Yes sir.

Q And the bath-room?

A Yes sir.

Q What time did you leave that morning, - Mrs. Fortescue's house?

A I think it was twenty-five of eight, twenty or twenty-five of eight.

Q Did you have a gun?

A No sir.

Q You see any others there except the one Jones lugged?

A I brought my own gun over there that morning.

Q From your house?

A I left it there at Mrs. Fortescue's.

Q What did you do with it?

A I think I put it on the settee.

Q Do you know exactly where you put it?

A I can't say for sure.

Q And what was that gun?

A That was a forty-five service automatic.

THE COURT Pardon me, Mr. Darrow, we will take our recess for ten minutes now.

(Recess)

(April 16, 1932, 10:15 a.m. Follows Chill.

Massie on Direct Examination.)

L1

Q Mr. Massie, I want to ask you one or two things before we go further with the other. Do you remember when the wires were cut out of Mrs. Massie's wired jaws?

A Yes. They cut them, took them off, six weeks after they put them on.

Q Who did that?

A The dental surgeon, Dr. Askin.

Q Were you there?

A I was there, yes, sir.

Q Did it cause any pain, especially?

A It caused her more pain than anything so far that I can remember. We thought when they cut the wires off that she would be all right but her jaws and her teeth were so sore for two more weeks that she could not eat or use the jaws at all. This upset her all over again. She had been counting on getting back to normal feeling of her mouth, but it was not that at all.

Q Do you remember how long that rape trial took?

A It seemed years to me. It must have been two weeks or over.

Q You were in the court room practically all the time until you went out to sea?

A I had to wait outside.

Q You didn't hear the trial, much of it?

A Only part of it.

L. 2

Q On the morning of the 8th what time did you start downtown?

A I think it was about 25 to eight.

Q You spoke of that tarpaulin that was introduced in evidence?

A The tarpaulin?

Q Yes.

A Yes, sir.

Q Who was it that you said owned that?

A Mr. Blong, the owner, or the one who leased Mrs. Fortescue's home to her.

Q Had you ever seen it?

A I might have, Mr. Darrow, but I don't recall it.

Q What time did you get downtown?

A It must have been shortly before eight. I got down and I stopped opposite the Judiciary Building on the other side of the street and Lord got out and we decided that he was to watch at the back entrance of the side street, in case he came in that way; we didn't know which way he was coming in.

Q How long had you known Lord?

A One day.

Q How long had you known Jones?

A I met him one day when he was out at my home.

Q Is that the first time you ever saw him?

A Yes, sir.

Q So far as you know?

L-3

A As far as I know, yes, sir.

Q And he was sent there in your absence?

A I requested that two people be sent there, and he was one of them.

Q On what occasion was that?

A My Captain wanted me to go to Hilo on a war problem and he told me that he did not see how he could go shorthanded, and I went that morning to Captain Wortman and explained that I was quite upset about what might happen to Mrs. Massie and that I did not feel safe in leaving unless he would send someone out, so he said that he would send two people out, and I told my commanding officer that I thought I could go all right and feel safe.

Q Now then come back to the house. You drove from the house downtown?

A Yes, sir.

Q Who drove?

A I drove. I drove one car, the Buick, and I don't remember--

Q Who drove the other?

A I think Mrs. Fortescue.

Q What car was that?

A That was her roadster, the Durant.

Q Do you know about what time you got down in front of this building?

A

L-4

A It must have been shortly before eight. I parked on the other side of the street opposite this building and Lord got out and went to the rear entrance on the side street, and Jones was over by Mrs. Fortescue's car, so I circled around and parked directly in front of the post office, and we had arranged that when he came out that Jones would serve him with this summons, and explain what was wanted with him, though it was some wait before he came, and I saw him coming through the rear window in my car, and I saw that Mrs. Fortescue recognized him.

Q Do you remember just what it was--

A No, I don't, Mr. Darrow.

Q (Continued) That Mr. Beebe told you that you must not do?

A Oh, yes, sir.

Q What was it?

A He told me that we was to use no force whatever or that anything he said would not be counted.

Q Now you can go on.

A Well, I saw him coming, and I saw that Mrs. Fortescue recognized him. Jones was standing there near, and ~~he~~ he passed them and went into this building, and when he came out he came out by the front entrance and walked toward King street, and Jones followed him along close, and I started

L-5

my car and drove up to the curb just outside this building. When I got there they were in a group; there were three of them, and Jones was walking up to him and saying something and showed him this summons, told him to get in the car, that Major Ross wanted to see him, so he got into the car and I drove right off. We drove up King street and then turned up some street to the left that I don't remember the name of.

Q Did you have on a false moustache?

A No, sir.

Q Ever wear one?

A I have never worn any kind of moustache.

Q Have anything that might be considered as a disguise?

A I knew he could not recognize me down there, so I wore dark glasses and I had on gloves to make it seem like a chauffeur.

Q All right.

A Then I drove up this street that runs parallel to King street, going up to the left of it, and finally got on Beretania street, and we went to the intersection of King and Beretania, and turned up University Avenue and then drove ~~xxxxxx~~ direct to Mrs. Fortescue's home, and up into the garage, and I got out first and started into the house. They were

L-6

getting out of the car when I went there. When I got in the kitchen I remembered that I put this automatic on the side table, so I took it. It was in a holster.

Q That was a .32?

A A .32, yes, sir. And I called out and said "All right, come on in. Major Boss is here", and they came in, and while they came in, - while they were on their way in, I went over to one corner of the living room and took off my dark glasses and gloves and I heard Kahahawai sit down in the chair and I turned around and he was sitting down, and just at this time Mrs. Fortescue and Lord came in. I took the gun and ~~xxx~~ confronted Kahahawai.

Q Just a minute, before going on with that. Do you know where Lord went?

A He went over to the drining room table and leaned against it.

Q That is, Lord?

A Yes, sir.

Q All right.

A So I took the gun and went over to Kahahawai, pulled back the catch and let it flip in place. I wanted to scare him as much as possible. I said "Do you know who I am?" He looked startled and leaned back a little, and he said "I think so." I said

L-7

"Well, I got you up here to tell the complete story about what happened in September," and at that time he was sitting in a chair by the door, and Mrs. Fortescue wanted to close the door, so she told Jones to go out and wait in the car and see that we were not disturbed. She closed the door and told him to get up and sit on the long chair in the living room, and I went over and sat in the chair in the ~~living~~ dining room at his left, - it was practically in the dining room, near the table, and then I put the gun on him and said "You did your lying in the court room but you are going to tell the whole truth now, and you had better do it now." He looked nervous and trembled and said "I don't know nothing." I said "You know you know what happened and you are going to tell it, and you had better talk now." He looked more confused, and I said "Where were you on the night of twelve September?" He said "I was at the Waikiki dance." I said "What time did you leave?" He said "I don't know; I was drunk." I said "how did you get home?" He said "I went down Kalakaua Avenue to Beretania." I said "Where did you pick up the woman?" He said "We didn't have no woman." I said "You know you are not telling the truth." I said "I warned you you better tell it now." He

L-8

said "I don't know nothing." I said "Go ahead and tell where you drove home." He said "We went down Beretania", and he started naming a bunch of streets and I don't know their names, and I let him go ahead a little while. He was talking about the route he went home, and I suddenly said: "Who kicked the woman?" and he said "Nobody kicked the woman", and I said "Now, you are lying, you know you are lying, and you see I know it, but you are going to tell the truth right now. You said 'nobody kicked her' and if you were not there at the time how do you know that nobody kicked the woman. You must have been there," and he said "I don't know nothing", and Mrs. Fortescue got up from a ~~xxx~~ settee and said "There is no use fooling with him any long. He will sit there and lie all day." She said "Let's carry out our other plan," and I said "All right, we will, but I want to ~~ask~~ ask one other question."

Q Where was Jones?

A He went outside.

Q Where was he?

A He was outside in the car, Jones went outside to the car.

Q Where was Lord?

A He was there by me, at my left, leaning up against the dining room table.

Q That was toward the kitchen?

L-9

A Yes, sir, toward the kitchen, and I told Mrs. Fortescue I had another question to ask him. I said "You were a prize-fighter once, weren't you" and he nodded his head. I said "Well, that explains to me exactly how you knew where to hit a woman in one blow to break her jaw." He looked nervous and I think he wetted his lips, and was squeaming. I said "All right, you are not going to talk, are you? We will make you talk." I said "Do you know what happened to Ida?" He looked nervous and kept trembling and did not say anything. I said "Well, you know what he got, but that wasn't anything compared to what you are going to get if you don't tell the whole story now." He said "I don't know nothing." I said "All right, Lord, go out and get the boys. He will talk then", and then he began to move forward in his seat like that, and as soon as Lord had gotten out of the room I said "All right, I tell you what is going to happen to you. I know you are lying and you know I know it, and you had better talk now." I said "Ida talked and he told plenty on you" and he sort of quivered, and I said "Now you are going to talk. If you don't talk before those men get back in here they will beat you to ribbons." He ~~said~~^{sat} there trembling and I said "Now go ahead and tell the whole story. You know it, - you know your gang was there", and suddenly he

L-20

said "Yes, we done it". The last thing I remember was that picture that came into my mind, of my wife when he assaulted her and prayed for mercy and he answered with a blow that broke her jaw.

Q Did you have a gun in your hand when you were talking to him?

A Yes, sir.

Q Do you remember what you did?

A No, sir.

Q Do you know what became of the gun?

A No, I do not, Mr. Darrow.

Q Do you know what became of you?

A No, sir.

Q Lord was how far away?

A He went out in the kitchen. We had planned beforehand that day that if it became necessary to make that threat that he would go out and slam the door as if he had gone out.

Q Had he gone out?

A No, sir, I don't think so.

Q At the time he went out did you have him covered with the revolver?

A Oh, yes, I never took it away from him.

Q Do you remember the flight up to the mountain?

A Sir?

Q Do you remember the flight of the automobile

L-11

when you got away from there up toward the mountain?

A No, sir.

Q What is the first thing that you can recall?

A I remember being in a car, driving along on a country road.

Q Do you remember seeing anybody?

A I think I do.

Q Were you driving?

A I don't think so.

Q Do you remember who was driving?

A No, sir, I do not.

Q Do you remember how you got into the car?

A No, sir.

Q Or do you remember who was with you and what was with you?

A No, sir.

Q What was the first thing you are sure of remembering? Sure you did do?

A I remember, - I think I remember a bunch of people coming up to us, and some of them were in uniform and they talked about a body. I remember that word.

Q Don't you remember who these people were?

A No, sir.

Q Any of them?

A No, sir.

Q Do you think some of them were in uniform?

L-12

A I think they were, yes, sir.

Q Do you remember being taken to the police station?

A I remember it hazily, Mr. Harrow.

Q When was it you referred to, - or what time did you refer to when you referred to prowers around your house?

A That was back in December, and also before then.

Q Do you know whether you told anybody that?

A Oh, yes.

Q Who?

A I told Mr. and Mrs. ~~Rxxxxx~~^{Rosario} and Mr. and Mrs. Rigby and they all decided to, - I also told Mr. and Mrs. Wood.

Q Did you tell Mr. Wight?

A I told Mr. Wight or people associated with Mr. Wight. At least I think the information got to him.

MR. DARROW: That is all.

CROSS EXAMINATION

BY MR. KELLEY:

Q You at no time, Mr. Massie, entertained an idea of killing Kahahawai?

A No, Mr. Kelley.

Q Or any of the other defendants in the Ala Moana case?

A No, Mr. Kelley.

Q You did not entertain it after the day in the hospital when your wife identified these four men?

L-13

A I might have felt like it, Mr. Kelley, but I never thought of it. I knew that that was no way.

Q You didn't feel then like going out and getting a gun and killing these men that your wife had identified as her assailants?

A I don't think so, Mr. Kelley.

Q The men she identified as having raped her?

A No, sir.

Q And you never entertained that idea from that time until the day that you took Kahahawai to Mrs. Fortescue's house?

A No, sir.

Q I believe you stated that you were born in Kentucky?

A Yes, Mr. Kelley.

Q And you are proud of your native state?

A Very proud of it.

Q You also testified that you were a graduate of the Annapolis Naval Academy?

A Yes.

Q And you are proud of that fact, are you not?

A I don't know whether you can state it that way or not.

Q Well, will you state it. Are you or aren't you?

A I am a graduate of the United States Naval Academy and I am most proud to be in the Navy.

Q And you are very proud of being a Southerner, aren't you?

A I would not say that.

MR. DARROW: Objected to.

A (Continuing) Now there is--

MR. DARROW: Wait a minute.

THE COURT: The answer may go out for the purpose of a ruling on the objection. What is the objection?

MR. DARROW: What has a "Southerner" got to do with it. Why he is proud of being a Southerner over a Northerner. What is the purpose of it?

~~THE COURT: I think it is entirely inadmissible.~~

MR. KELLEY: I don't know. I just want to find out.

MR. DARROW: Yes, but I think I do know, and I think he has a very definite reason for it.

MR. KELLEY: Is the question admissible or inadmissible, your Honor?

MR. DARROW: I think it is entirely inadmissible. I am making my statement to the Court and asking you, quietly, what is the purpose of it.

MR. KELLEY: If Mr. Darrow knows what the reason is the Court and the jury are entitled to know it.

MR. DARROW: That is not correct. The jury is not entitled to hear it. I think that the purpose of the question is perfectly evident, and it has no place in the case. I think the purpose of it is to create prejudice.

THE COURT: What are the grounds of your objection?

MR. DARROW: It is irrelevant, immaterial and asked

L-15

for the purpose of creating prejudice in the mind of some of these jurors, and it has no bearing upon this case, and no bearing upon the direct examination.

THE COURT: Although great latitude will be allowed on the cross-examination of this witness, the objection will be sustained on the grounds made, for the reason that whether or not, - especially upon the ground, that whether or not the witness be proud of any definite fact has no bearing and is immaterial to the issues in this case, - his attitude.

MR. KELLEY: We are concerned here with a man who claims he killed a man by reason of insanity. We have given every latitude to counsel for the defendant in his examination, - in fact, I felt at times too much latitude. On the motivating impulses that lead this man to become insant, we can trace back into the ~~xxxxxx~~ cradle, and we so desire. I submit this is entirely proper cross-examination, under the theory that the defense is based upon.

THE COURT: I am inclined to agree with you, but as to his attitude and as to whether or not the witness is proud of any given fact in his life, Mr. Kelley, I don't think it has a bearing on that particular issue, unless you can show me that it has. I don't think you should pursue the question of whether or not he was or is proud of any particular thing.

L-16

I don't think that elucidates the issues in this case.

MR. KELLEY: Doesn't that create a condition of mind, your Honor?

MR. DARROW: If your Honor has any doubt about the purpose of this--

THE COURT: I think that is rather remote from the issue, Mr. Kelley. I will allow reasonable latitude on cross-examination. I will sustain that objection to that question.

Q Mr. Massie, you say that you got this rope out at Pearl Harbor about six months before the killing of Kahahawai?

A Something like that, Mr. Kelley. I don't think it was six months.

Q You said it was six months?

A I possibly did, as an estimate. It was quite awhile ago.

Q And you advanced as the reason for getting that rope the fact that Mrs. Fortescue had caught herself up on a wire that you had strung across the backyard, is that correct?

A I think, if I remember it, Mr. Kelley, - I think Mrs. Fortescue hit the line with her head one night when she walked in, and she asked me to get something that she could see.

Q When did Mrs. Fortescue arrive in the Territory of Hawaii?

L-17

A Sometime in October.

Q And when was it that Kahahawai was killed?

A January.

Q So it could not have been six months before that that you got this rope?

A If I recall, Mr. Kelley, I don't know whether I gave my reference point from January or from now, but if you ~~ask~~ asked me what my reference point is I would say from now that it was six months.

Q It was not six months before you killed Kahahawai?

MR. DARROW: I object to that question, your Honor. The witness has told how this happened, - whether he did it or not, in the sense of doing it, is a question for the jury, and it should not be referred to in this way. If he says "before they met and came down here, and all the other incidents occurred" I have no objection. He says "Before he killed the deceased", which is more of an argument than anything else.

THE COURT: The objection will be overruled. I think it is legitimate cross-examination.

MR. WINN: We note an exception, your Honor.

Q It was not six months before you killed Kahahawai?

A It was in October, Mr. Kelley.

Q When you got this rope?

L-18

A Yes, sir.

Q And you got it at the Base, the Submarine Base at Pearl Harbor?

A I got it from my own submarine.

Q Doctor Withington is a very good friend of yours, is he not?

A I hope so.

Q Well, you believe so, don't you?

A I only hope so.

Q You believe it, don't you?

A No.

Q You don't?

A I don't think I believe it, I merely hope so, Mr. Kelley.

Q Hasn't he evidenced his friendship to you in many way?

A I think so.

Q You know so, do you not?

A I think so, Mr. Kelley.

Q You don't know it?

A I know that he has been very kind.

Q And you have met him many times, not professionally but socially?

A I meet him every Sunday practically, - I used to.

Q And I believe you stated on your direct examination that you had been in the habit of playing

L-19

water polo with him?

A That is correct, Mr. Kelley.

Q And he has visited at your house?

A He has been in attendance for Mrs. Massie there, a long while.

Q Did he ever visit at your house socially?

A I don't think so.

Q Did you ever visit his house socially?

A No.

Q Did you ever discuss this case with him, upon numerous occasions?

A Yes, sir.

Q And also the case referred to as the Ala Moana case?

A Yes, sir. I withdraw my former statement, Mr. Kelley; I have not discussed this case, the present one.

Q Not at all?

A No.

Q Not since the killing of Kahahawai?

A No. I have not seen him except in the court room, outside.

Q You referred to some other plan that you had in mind and stated that if the plan to force a confession out of Kahahawai did not succeed you were going to put in effect this other plan?

A That is right, Mr. Kelley.

L-26.

Q What was that other plan?

A To threaten him by sending Lord out to get a bunch of boys that we had waiting there, and to impress in his mind the belief that they were going to cut him to threads by a beating.

Q You had no plan in mind of tying him up and torturing him?

A No, Mr. Kelley.

Q How did that rope get from your house over to Mrs. Fortescue's house?

A I only know what I have heard, Mr. Kelley.

Q You did not bring it over there?

A No, sir.

Q How did it get there?

A Shall I tell you what I heard.

Q Yes. You have told us a lot about what you heard in this matter.

MR. DARROW: I object to the statement of counsel.

Oh, let it go in.

THE COURT: This statement, the voluntary statement of counsel, may be stricken.

MR. DARROW: Yes.

THE COURT: That may be stricken. Proceed.

Q Go ahead, Mr. Massie.

A I am to tell you what I heard, Mr. Kelley?

Q Yes.

L-21

A Mrs. Fortescue several days later told me that while we were in the house ~~with~~ that Jones wanted some shirts and that he asked her to go over and get them and before she went he told her, - he asked her if she had any rope in the house, and she told him "no," that she didn't think so; that she hadn't seen any. He asked her where they could get some, and she told him that she thought there was some in my house, that she had seen it once, so she said she brought it back over when she brought some shirts.

Q Did she state the purposes for which Jones wanted this rope?

A No, sir, I don't remember.

Q In any event you did not bring the rope over there yourself?

A No, sir.

Q Now, Mr. Massie, as an officer in the United States Navy you are accustomed to carrying side-arms?

A Carrying when Mr. Kelley? On duty?

Q Yes, on duty?

A On duty, yes, sir.

Q And the gun you are accustomed to using is a .45 automatic, is it not?

A Why I have used a .45 some on rifle ranges and

I-22

things like that.

Q And when you carry a side-arm it is a .45, isn't it?

A The only time when we ever carry a side-arm is when we have patrol, and I haven't had patrol duty.

Q Well, when you do carry a gun it is a .45, isn't it?

A Yes.

Q Your .45 was in the Fortescue house that morning, was it not?

A I am almost sure it was.

Q You left it there, did you not?

A I think I remember bringing it over and leaving it there.

Q What was the purpose of your bringing that gun over that morning?

A That was to scare him.

Q And the .45 is a very impressive looking weapon, isn't it?

A I imagine a lot of people would think so.

Q Much more so than a .32?

A Not necessarily.

Q You don't think so?

A A gun is a gun to me.

Q Now during the discussion that you all had the

L-23

night before it was agreed that you were going to get a confession out of Kahahawai?

A That is what we hoped for, Mr. Kelley.

Q And you undertook and laid plans to get him up to Mrs. Fortescue's house?

A Yes, sir.

Q And as part of that plan you prepared this so-called warrant, which is Prosecution's Exhibit Number 1, in this case, is that correct?

A Yes, sir.

Q And in order to give it a semblance of authority you used a seal taken from a diploma of yours?

A That is right, sir.

Q And it was put upon that warrant for the purpose of making it impressive, is that correct?

A I think it was put upon there, as much as anything, to make it a warrant.

Q To make it official?

A No, to make it a warrant.

Q And you thought that a seal would make it look more like a warrant and make it look more official?

A I don't know that I thought of that, Mr. Kelley.

Q You had no such an idea?

A I don't know that I had; I don't recall any.

Q Was any suggestion made to that effect by anyone there that night?

L-24

A I can't recall any.

Q On whose suggestion was it that the piece taken out of the newspaper was put on there?

A I don't remember. Someone spoke up and said we should have some printing matter on it. That is all I know.

Q Did Mrs. Fortescue tell you that she had seen something in the newspaper that morning that was rather appropriate to the purpose of this warrant?

A No, Mr. Kelley, she hadn't mentioned it.

Q Was it just by chance that this article here, "Life is a mysterious and exciting affair" was put on this warrant?

A If you are asking for my opinion, I would say yes, it was entirely by chance.

Q Just by chance? And the suggestion was not yours?

A I don't recall. It might have been; it might not have been. I never have thought of it before.

Q Did you ever see that tarpaulin around Mrs. Fortescue's house?

A Not that I can recall.

Q Was it ever around your house?

A No, I don't think so.

Q It was not taken from your house and brought ~~me~~ over to Mrs. Fortescue's house?

A No.

L-25

Q Who produced that tarpaulin the morning that Kahahawai was killed?

A I don't know, Mr. Kelley.

Q When did you first see the tarpaulin?

A When was it you gave that as an exhibit, the other day? When you gave it as an exhibit.

Q That is the first time you had seen it?

A The first time.

Q You did not see it out at Koko Head that morning?

A I might have, but it certainly did not register.

Q Do you remember talking to any officers out at Koko Head that morning?

A No, sir, I do not, Mr. Kelley.

Q Do you remember requesting one of the officers for a cigarette?

A I can't recall it.

Q You don't remember getting it and smoking it?

A No, sir.

Q Were you conscious of the fact that anyone took your photograph out there that morning?

A I think I remember it. I think I vaguely remember that.

Q Do you remember what you did when that photograph was being taken?

A No, I don't think I do.

L-26

Q (Counsel hands witness a photograph) Showing you a photograph, included in Prosecution's Exhibit 11.

A Is this I?

Q Is it?

A I don't know.

Q You don't know?

A It looks something like I, - like me.

Q You don't remember hiding your face when that photograph was taken, do you?

A No, I do not.

Q You don't recall having any idea that you did not want to be photographed out there?

A No, sir.

Q Do you recall the body of Kahahawai being taken out of the car, that Buick car?

A Here is the way it was, Mr. Kelley. It was all vague. I could see figures and I think I knew they were people, and I could tell something about the distinction in dress, but it was all very vague.

Q Do you remember Percy Bond coming up and talking to Harbottle?

A No, sir.

Q You don't remember congratulating yourself when he said "Nice work, kid" to Harbottle?

A No, sir.

Q Were you present at the time M when Mrs. Fortescue

L-27

was interviewed by a newspaper man from New York out at Pearl Harbor?

A For part of the time, yes, sir.

Q Were you present when Mrs. Fortescue said that the only regret she had was that they bungled the job?

A No, - at least I certainly do not recall that.

Q You did not hear that?

A No. I think I do remember the word "bungle", but she did not say that.

Q Didn't you ever read this article in the Honolulu Star-Bulletin, about Mrs. Fortescue's interview with Mr. Russel Owen, staff correspondent of the New York Times?

A I don't know whether I have or not.

Q Will you look at that article? (Handing a newspaper clipping to the witness)

(Whereupon a recess was taken.)

(Jordan follows Linn, Ap. 16, 1932. Bk.1084)
Massie, Cross ex. contd.

Q You have read this article, have you?

A I read to that word you talked about; yes, sir.

Q The word "blundred"?

A "Bungled."

Q Do you recall this conversation?

A I can't say that I recall the conversation, but I do know what happened. Afterwards I talked with Mrs. Fortescue and asked her what she had said to Mr. Owen, and she said she had used that in reference to the trial, I think, - I remember, and several other things she told me.

MR. DARROW: Just about this article.

Q Were you present when she was asked this question: "But didn't you realize the danger of driving through the City streets in that way, Kahahawai's body being in the car?" and she answered, "No, I didn't think they knew the car number, and it never occurred to me that we were being followed. Now, of course, we realize we bungled dreadfully, although at the time we thought we were being careful"?

A No, I am sure I wasn't present then; not when she talked about the car.

Q You talked about the conversation?

A I came in just before Owen left, I am quite sure.

Q Did you hear her say, "I made the mistake of pulling the shade down in the car. I should not

J

have done that."?

A No, I didn't hear her say that.

Q You knew that Kahahawai was a boxer?

A I had heard that.

Q You had seen him yourself, hadn't you?

A About four times, I think.

Q That was during the trial of the Ala Moana case?

A No, it was during the,-- I might have seen him then, I think I did, but this was during the three identification scenes that took place that I saw him more than any other places.

Q You testified yesterday that the first time your wife identified him was at the hospital?

A Did I say the first time?

Q I believe so?

A I am wrong if I did say that.

Q It was not the first time?

A No.

Q Where was the first time?

A At my home.

Q Did you have a gun in the house then?

A I don't remember.

Q Were there any guns in the house?

A I don't remember, Mr. Kelley.

Q And then again she identified him at the hospital?

A Yes, sir; twice.

Q He was by far the largest of any of the five

J

defendants in the Ala Moana case, was he not?

A Not impressively so.

Q Well, he was a big, strong, husky individual?
Didn't you think so?

A I never thought much about him, Mr. Kelley.

Q From what you saw of him was he in physical
appearance big, strong and husky?

A He looked healthful.

Q A man about five foot ten inches, would you say?

A Five foot eight or ten, somewhere along there.

Q Weighing about 160 or 170 pounds?

A I don't know much about his weight.

Q Just judging from what you saw?

A 150 or 160.

Q You referred awhile back to what happened to
"Ida" as you call him, ~~and~~ "Eda". Were you implicated
in that kidnaping also?

A No, Mr. Kelley.

Q You were not there with a false moustache that
night?

A I have never worn a false moustache, and I wasn't
there.

Q You are quite sure of that?

A I was never more positive of anything.

Q You had been advised by Mr. Beebe that a confess-
ion obtained from any of these defendants by force

J

could not be used, is that correct?

A He made particular reference to not beating him.

Q And did he say anything about threatening him with a gun?

A I don't remember.

Q Did he tell you that force could be exerted by the threat of killing?

A I don't recall that.

Q Which would render any confession as inadmissible as if you beat him?

A I don't recall that, I say.

Q In any event, all you had in mind when you took Kahahawai from in front of this building on the 8th day of January, 1932, was to get him ~~km~~ up to Mrs. Fortescue's house and get a confession out of him?

A That's all, Mr. Kelley, for this reason, I had gotten so sick of these rumors I didn't see how I could stand it any longer.

Q Did you ever make any effort to run down these rumors?

A Why should I make an effort to run them down.

Q Well, they were false and they were against your wife. Wasn't that sufficient reason?

A It was sufficient reason for me not to run them down, as I knew they were utterly false.

Q But you felt that getting a confession out of

J

any of these defendants would relieve that situation?

A I thought it would clear the name of my wife.

Q Were you not informed that Ida had made a confession?

A I heard it.

Q To what extent did you go to verify it?

A I don't recall much of any extent, because Mr. Beebe had told me if force was used it would not be any good, so I knew that.

Q And you felt if you could get a confession out of Kahahawai by threatening him with a gun that could be used?

A I thought that.

Q You received no information to the contrary?

A No.

Q Did you make any use of the purported confession of Ida?

A No, I heard it, and went down to see Mr. Thompson right away, and told him I heard they had a confession and what could we do about it, and would it be any good; couldn't we publish it and see if it couldn't be admitted and Mr. Beebe explained I was all wet; nothing could be done about that.

Q Did you endeavor to use that purported confession in an effort to stop these wagging tongues?

*

A Not that I can recall.

Q You were in attendance at the trial of the Ala Moana case for several days, I believe you stated?

A I was actually in the trial room only once.

Q You were here in the court house when Mrs. Massie took the witness stand?

A For about ten minutes, I think.

Q And you saw the defendants here at that time?

A I think I saw them.

Q And among them was Kahahawai?

A I don't recall him as a particular one.

Q Now, Mr. Massie, will you just tell us what was the last thing that Kahahawai said before you had this mental lapse?

A I will, Mr. Kelley. I will never forget it.

Q Will you tell us.

A "Yes, we done it."

Q That's all he said?

A That's all I can remember.

Q He didn't go into any of the details of the assault?

A No.

Q He didn't tell you what part he himself had taken in the assault?

A No.

Q And you were convinced, were you not, Mr. Massie,

from the time your wife told you about that assault that Kahahawai was one of the persons that assaulted her?

A I think so.

Q And all that he added to your knowledge were the words "we done it"?

A That's all, Mr. Kelley.

Q And then what happened?

A I don't know.

Q Did you ever have one of these spells before?

A No. The only thing similar that I can recall, -
know
and I don't ~~remember~~ whether I remember this very clearly, was once I had an operation and bled internally and they found out I was bleeding quite a good bit later, and I foolishly told them I could walk down the stairs; they said they wanted to take me back to the hospital. So I walked down and got half way and I fainted and I remember when I came out of that faint the sensation, - I don't know what you would call it; sensation or feeling or what but it was very similar.

Q And when you came out of that faint you were able to recognize the people that were around you?

A No, I wasn't.

Q How long was it afterwards that you were able to recognize people?

A I don't remember.

Q Was it several days?

A No, I don't think it was.

Q A matter of hours or minutes?

A It must have been a matter of hours. I don't know.

I was at the-- on the way to the hospital, I think.

When I--

Q When you were operated on you were given an anaesthetic?

A Local.

Q Have you ever taken a general anaesthetic?

A No, I don't think so; I don't recall.

Q During the time you had this local anaesthetic were you able to recognize persons around you?

A I think so. I was suffering greatly. I don't remember anything much about it.

Q Will you kindly tell us what was the first thing that you recall after this lapse that you had up at Mrs. Fortescue's house that day?

A That is something that has baffled me. I can't recall the first thing. I have thought a great deal about it. Everything was vague and blurred at times and then I would clear up and blur again.

Q Do you remember being up at the City and County Attorney's office?

A I think I remember that vaguely.

Q Do you recall who you talked to up there?

A Some men.

Q Did you know any of them?

A I had never seen any before that I talked to.

Q Do you recall seeing Mrs. Fortescue up there?

A I think I do.

Q Do you remember seeing Ulii up there?

A I don't remember. I might have.

Q Do you remember his pointing you out as the person who drove the car?

A Not clearly. I think he did.

Q You have some recollection?

A Here is my situation at present,- I am mixed up because I can't remember what was told me as a fact and what I remember as a fact.

Q Of course you make no claim you are laboring under any mental hallucinations at this time?

A I don't know how I am at this time.

Q Are you the same you were when you went into this lapse at the Fortescue house?

A My opinion is I am not.

Q You don't feel the same?

A No, I don't think I do.

Q You are able to understand everything that is going on here?

A Yes, sir.

Q And you understand the nature of the testimony you are giving?

A Oh, yes, sir.

Q No question about that?

A Well, I can understand English words, Mr. Kelley.

Q And the thoughts you are expressing in words, you understand those?

A I hope so.

Q Where did you say that this .32 automatic Colt was when you picked it up?

A It was in the kitchen, in the sideboard.

Q How did you know Jones was carrying that gun?

A Because when I said that morning, as I remember it, that no force could be used, he mentioned a gun he was carrying, and I made him give it to me and put it down.

Q When did you bring that .45 automatic over to Mrs. Fortescue's house?

A That morning.

Q I believe you stated awhile ago you are not in the habit of carrying a side arm?

A I wouldn't call it a habit. I have carried them.

Q What was the purpose of bringing that gun over that morning?

A I told you I wanted to scare him.

Q And you had your own gun in mind when you formed that plan?

A Not particularly that gun. I knew a gun would be necessary to scare him.

Q You took your own gun over for that purpose?

A Possibly.

Q Didn't you just say you did?

A I don't know. If the reporter will read that.

Q I will ask you again, did you take your .45 automatic over there for the purpose of using it if you got him up there at that house, to scare him?

A I guess I did.

Q Did you?

A Yes, if you ask me "yes" or "no", I will say "yes".

Q Thanks. And you had never seen that rope around Mrs. Fortescue's house?

A Never.

Q After you got Kahahawai into the car down here on King street in front of this building did you or Jones tell him where you were going to take him?

A Jones talked to him all the way. He told him he was going to take him to the home of Major Ross.

Q Did Kahahawai say anything?

A I think he asked him once what it was all about, and Jones told him he just wanted to investigate his activities Saturday night, and he could go and tell the story about Saturday night.

Q He didn't question your taking him to some other place besides the Armory?

A I don't remember.

Q Did anyone cover him with a gun on that trip up

to Manoa?

A No.

Q He went voluntarily?

A Oh, yes.

Q Upon the assumption he was going to Major Ross' house?

A Yes.

Q And when you got to the house you drove the car into the garage?

A Yes, practically in.

Q Part way, was it not?

A I don't remember.

Q Which way did you go into the house, back door or what door?

A Back door.

Q You went in first?

A Yes.

Q And Jones came along with Kahahawai?

A Yes.

Q Was Mrs. Fortescue in the house when you got there?

A No, she came just afterwards.

Q Kahahawai went in through the back door?

A Yes.

Q Walked in through the kitchen?

A Yes.

Q And through the dining room?

A Yes, he must have.

Q Into the front room?

A Yes.

Q And you say you were over in the corner when he came in the front room, is that correct?

A I was about at the bath room door, the hallway leading to the bedroom and bath room.

Q You were not in the front room?

A Oh, yes.

Q Standing in the door leading into the hallway?

A Just about there.

Q And when you came in through the kitchen you picked this .32 automatic up off the shelf?

A Yes.

Q Where did you leave your .45 before you went out?

A What do you mean, Mr. Kelley?

Q You say you brought the .45 over to Mrs. Fortescue's house that morning. Where did you leave it?

A I told you I thought I remembered I left it on the settee when I came into the house early that morning. I am not sure of that.

Q When you say the settee, do you refer to the davenport? marked 3?

A This one. (Indicating on Prosecution's Exhibit 23) Yes, sir.

Q Prosecution's Exhibit 23. And when Kahahawai came in where did he sit down?

A In this chair, I think.

Q Referring to a chair to the right of the front door?

A I am almost sure that is where it was.

Q And he was sitting in that chair when Mrs. Fortescue came in?

A I think he was.

Q Which way did Mrs. Fortescue come in?

A This way. (Indicating on plan)

Q Through the front door?

A Yes.

Q When she came in did you have Kahahawai covered with a gun as he sat in that chair?

A It was either then or just a minute later; just a second later.

Q Just what?

A Just a short while later. I don't remember whether I did or not then, but just as soon as she came in I would say it was almost a coincidence; I walked over and covered him.

Q And you came out of the door leading into the hallway?

A No, from about here. (Indicating)

Q Indicating a place in front of the door. Was Lord in the room at that time?

A He came in just after Mrs. Fortescue.

Q Was Jones in the room?

A Yes, he was until Mrs. Fortescue came in, and

told him to go out to see we were not disturbed.

Q Which way did he go out?

A This way. (Indicating)

Q Was Lord in the room when you were talking to Kahahawai?

A He must have been. I didn't pay much attention to him. I think he was there.

Q About how long did he sit in that chair?

A Not very long. As soon as Mrs. Fortescue came in she told him to move.

Q Where did he move to?

A Over to here. (Indicating the chaise lounge on plan)

Q Did you keep him covered with the gun when he moved?

A All the time.

Q Did he turn his back to you when he walked over to that chaise lounge?

A I don't recall.

Q He didn't make a break for the front door?

A No.

Q Did he say anything?

A No.

Q You say he was trembling?

A Yes.

Q Appeared very much frightened?

A Yes.

Q Did he plead for mercy?

A No.

Q Didn't beg you not to shoot?

A No.

Q Did you tell him you were going to beat him up if he didn't confess?

A I told him he would be beaten.

Q Did he beg you not to do it?

A No.

Q Said nothing?

A He might have. I don't recall.

Q Do you recall his saying anything else that morning except the words "Yes, we done it"?

A No, I don't, Mr. Kelley.

Q And he was sitting on that chaise lounge when you shot him?

A He must have been.

Q He didn't make a break for the front door?

A No.

Q He didn't put up any fight?

A No.

Q And you got what you wanted out of him, a confession?

A No. I wanted a written confession.

Q Did you have paper and pencil there?

A Yes.

Q Where were they?

A Mrs. Fortescue was going to take care of that.

Q Did you see the paper and pencil there?

A Not that I can recall. She always has plenty around, though.

Q Envelopes?

A I don't know.

Q You state now your purpose was to get a written confession out of him?

A A confession.

Q You said a written confession?

A We hoped to.

Q What preparations did you make to get this written confession?

A None whatever, except what I have told you.

Q You personally don't know whether there was any paper available?

A I know every house in the world has paper in it.

Q Writing paper?

A I know Mrs. Fortescue writes letters.

Q Did you see any writing paper there?

A I don't remember.

Q Did you see any pencils or pens there?

A I don't remember.

Q There was none laid out on the table so it could be available if you succeeded in getting a confession out of Kahahawai?

A No, but Mrs. Fortescue knew where they were. -431-

Q You didn't make any plan as to that yourself?

A The afternoon before, on the 7th, we talked that over and Mrs. Fortescue said she would write it down, as I recall.

Q Write what down?

A Anything he might say.

Q Before you saw Kahahawai did she make any preparations to do that?

A I don't know.

Q Who prepared this warrant? (Referring to Prosecution's Exhibit "1")

A I think Mrs. Fortescue.

Q Did you get the seal off your diploma?

A Yes.

Q So you helped prepare this?

A Yes.

Q Did Mrs. Fortescue print this "Territorial Police, Major Ross commanding"?

A I think so.

Q Did you know that Mrs. Fortescue had a gun?

A I think so.

Q Did you ever see it?

A I have seen it when Mrs. Fortescue carried it.

Q That was the .32 Iver Johnson in evidence here?

A It looked like it.

Q Did you see that gun around the house the day?

A Not that I can recall.

Q Didn't see it in the kitchen anywhere?

A Not that I recall.

Q The day that Kahahawai was killed?

A I don't think so, Mr. Kelley.

Q Did you see Mrs. Fortescue with that gun on that day, January 8th?

A No.

Q You didn't see the gun around the house anywhere?

A Not that I can recall.

Q Who put that rope under the cushion of the davenport?

A I don't know, Mr. Kelley. That is hearsay again.

Q You didn't put it there?

A No.

Q You are sure of that?

A I am not sure of it. I don't know what I did.

Q You were going to say "I am positive I did not" were you not?

A No, I don't think I was going to say that. In fact I am sure I wasn't.

Q When did Jones come back into the house?

A I don't know, Mr. Kelley.

Q You do recall that Lord didn't go out of the house; he stopped in the kitchen?

A I don't know about that. I know if he carried out the plan he didn't.

Q Did you see him in the kitchen?

A No.

Q By the way, how were you dressed that morning?

A I had on a sort of a grey suit.

Q Showing you prosecution's Exhibit 7, consisting of a coat and hat, did you own this coat and hat?

A I know I own that hat. It looks like my coat.

Q Have you looked at the coat. Your name is in the sleeve of it?

A Yes, sir, that is Finchley's.

Q You were wearing that hat and coat when you came downtown that morning to the Judiciary building?

A Yes.

Q What kind of shirt were you wearing?

A I don't remember, Mr. Kelley.

Q Did you have any clothes of yours over to Mrs. Fortescue's?

A No, sir, not that I can remember.

Q What size shirt do you wear?

A When I am up to weight I wear a fourteen and one-half.

Q Did you ever wear a fifteen?

A I might have. I don't know.

Q Take a look at this shirt, prosecution's Exhibit 29, Is that your shirt?

A (Examining shirt) I don't know, Mr. Kelley.

Q Did you go to a show on Thursday night, January

7th?

A No.

Q Did you go to a show any night that week?

A I am sure I don't remember.

Q What is the last show you remember attending or going to before Kahahawai was killed?

A I don't know, Mr. Kelley.

Q Did you go to a show on January 6th, Wednesday night?

A I can't remember that..I can't remember whether I did or not.

Q Did you go to the Princess any night of the week preceding Kahahawai's death?

A Not that I remember.

Q I show you this seat slip I just took out of the pocket of Exhibit 29, the shirt. Does that refresh your recollection any?

A Not in the slightest.

Q You don't know whether this is your shirt or not?

A No, I don't.

Q Did you change your shirt at Mrs. Fortescue's house that morning?

A I am sure I don't know.

Q Were you in a struggle with anyone at Mrs. Fortescue's house that morning?

A Not that I remember.

Q You might have been?

A No, I don't say I might have been.

Q Do you deny you were?

A I don't know. There is a space there that I don't know what happened.

Q But that space began at or immediately prior to the time you fired the shot?

A I don't know.

Q You remember Kahahawai saying "Yes, we done it"?

A I remember that.

Q You don't recall hearing any noise like the sound of a gun going off?

A No.

Q You do recall, however, loading that gun, that is working the mechanism so a short went into the magazine?

A Yes, that is when Mrs. Fortescue came in.

Q And with an automatic that same motion cocks the pistol, doesn't it?

A I think so.

Q You know it, don't you. You have handled lots of guns?

A Yes.

Q So you were standing there with a loaded gun with the hammer back when you were talking to Kahahawai?

A From everything that happened I must have been.

Q Do you remember having your finger on the trigger?

A I cannot recall it.

Q When Mrs. Fortescue came in do you remember having your finger on the trigger?

A I never thought of it. That is the logical place for a person to have his finger on when he is trying to scare someone.

Q And in all probability you did?

A I don't know. I was thinking of only one thing and that was to make the man tell his story.

Q And all the story you got out of him was "We done it"?

A That's all.

MR. DARROW: "Yes, we done it."

Q You referred to an operation you had performed. When was that?

A About 12 years ago.

Q What has been the condition of your health since?

A Splendid, except since September.

Q And outside of this operation you generally enjoyed good health?

A Yes.

Q Haven't had any diseases that you remember?

A No.

Q After September the 12th, which was the date

of the Ala Moana incident, from that time up to the time that Kahahawai was killed you were very much depressed, were you not?

A Any man would be, Mr. Kelley.

Q Did you engage in any social activities during that time?

A I tried to avoid them.

Q Did you engage in any social activities during that time?

A I remember one night Mrs. Fortescue said she thought it would cheer both me and Mrs. Massie up if we went out to the Waialae dance. It was around Christmas. We went out there and I never spent as miserable a night in my life.

Q That was in December?

A Sometime around there.

Q Were you at any dances during the month of January?

A Not that I recall.

Q You might have been?

A I don't know.

Q You might have been?

A I don't know, Mr. Kelley.

Q Did you go to any parties at any friend's house during that time?

A Not that I can recall.

Q You take a drink occasionally, do you?

A I have been known to.

Q Being from Kentucky, I would naturally expect that you would. You are, in fact, a drinking man, are you?

A I don't think so.

Q Did you have any drinks on the morning of January 8, 1932?

A Not that I can recall.

Q Did you have any drinks on the night of January 7, 1932?

A I don't think so.

Q Were you over at Mrs. Fortescue's house on the afternoon of January 7th?

A Yes.

Q Were Lord and Jones there with you?

A Yes.

Q Have any drinks there at that time?

A Not that I can remember. I am sure it ~~xxxx~~ would have made an impression on me. I don't think I did.

Q Impression or effect?

A Impression.

Q Don't you remember going out in the kitchen and making up a batch of cocktails in a pitcher?

A No.

Q There being no cocktail shaker in the house, you mixed them in a pitcher. You don't remember

that?

A No.

Q During the interval from September 12, 1931, to January 8, 1932, did you do any extensive drinking?

A I know one night I did. A friend asked me to come out and have a meal with him. He said I was acting like a fool; that I wouldn't eat anything. So I went out and there were several people there and I couldn't do much, I just sat around and didn't like to talk to anyone; felt miserable.

Q Was Mrs. Massie there?

A No; and they made me take several drinks; said it would make me go to sleep. I took them.

Q Did it?

A I think so.

Q And that is the only occasion you recall during that period when you drank excessively?

A Excessively, yes, sir.

Q Did you ever have dinner over at Mrs. Fortescue's house with Jones?

A Not that I can remember.

Q Did you ever play bridge with Jones, either at your house or Mrs. Fortescue's house?

A No.

Q Did you ever have Jones to dinner at your house?

A No.

Q Did you ever see your wife and Mrs. Fortescue playing bridge with Jones?

A No, I heard when I came back from my cruise to Hilo that Jones had tried to play bridge and trumped his partner's ace, but I don't think he got shot.

Q Was there a gun in the house at that time?

A I don't know.

Q Probably there wasn't, or he would have been shot.

MR. KELLEY: For reasons, some of which I stated this morning, I should like to take an adjournment now without completing my cross-examination of Mr. Massie.

MR. DARROW: There is no objection.

(Adjourned to 9 o'clock a.m., Monday
April 18, 1932.)

*Mr
Linn
Eugene M. Lee
Gordon R. Lee*

A No sir.

Q Did she assign any reason for that?

A No sir; just didn't feel like it.

Q And you insisted that she go?

A Yes, I persuaded her.

Q She tried to back out at the last minute but you stated inasmuch as other people had been asked you thought it was too late then for her to back out?

A Yes sir.

Q Did you bring any liquor with you to the Ala Wai Inn?

A Do I have to answer that, sir?

Q I am asking you the question.

A I took a pint sir.

Q Did Bronson have any liquor with him?

A Not that I know of.

Q Did Mr. Brown have any liquor with him?

A Not that I know of.

Q Did you people meet any particular place before you went out there?

A At my home.

Q Was liquor served there?

A One drink, yes sir.

Q Did everyone have a drink?

A I can't recall.

Q Now, during the evening down at the Ala Wai Inn, you danced?

A Yes sir.

Q How many times did you dance with your wife?

A I think it was twice, sir.

Q And did you go upstairs, at all?

A Yes, sir.

Q Did you join another party up there?

A I wouldn't call it join. I sat down and talked to a party there.

Q Did you have any drinks there?

A No sir.

Q Were they serving liquor up there?

A I don't recall. All that time- - -It was like this, when I went upstairs, it was after an intermission and I poured out one drink down below. That is all I remember of having. I might have had more but I don't think so. After that intermission I took what was left in the flask and went out to the orchestra and said "That's fine music, boys. Here's something to help you along. How about playing 'Pal O' Mine' for me?" And they said "Fine, we'll do it". And the next dance was "Pal O' Mine".

Q And you gave the liquor to the orchestra?

A What was left, yes sir.

Q By the way, did you see your wife upstairs when you went up there?

A Yes sir.

Q She was with some friends?

A Yes.

Q Naval officers? and their friends?

A Yes sir. I don't remember whether there were other people there or not. Some of them I didn't know.

Q What time was that?

A I don't know sir.

Q Well, assuming that the dance stopped at 12:00 o'clock, how long before the end of the dance was it?

A I wasn't very much interested in time. I was enjoying myself.

Q Did you see Mrs. Massie again at the dance after you saw her upstairs?

A I don't remember, sir.

Q What time did you say that it was that you missed her?

A It was ~~kk~~ between 11:30 and 12:00, I think.

Q How did you know what time it was?

A Mrs. Rainer told me later, - the next day.

Q You had no recollection of it yourself?

A Not myself, no.

Q It could have been earlier and it could have been later?

A I don't know.

Q It could have been, could it not, so far as you know?

A Mrs. Rainer is the only one who could answer that question.

Q You have no independent recollection yourself as

to what time it was?

A No sir.

Q At 11:30 that night, Mr. Massie, were you intoxicated?

A No sir.

Q Was Lieutenant Bronson?

A I don't know.

Q You saw him, didn't you?

A I wasn't interested whether a person was intoxicated or not.

Q Isn't it a fact that he was so drunk his wife left in disgust?

A It is not a fact?

Q Isn't it a fact that you had to drive him home?

A No, I didn't.

Q It is not true?

A It is not true.

Q None of the other persons in your party were drunk?

A It might have been. I didn't see any person quite drunk.

Q You were capable of observation at that time?

A I think so.

Q But you didn't observe any other member of the party under the influence of liquor?

A I didn't make a particular point of observing them.

Q And you didn't observe it?

A I observed one man that was drunk, yes sir.

Q Was that Bronson?

A No sir.

Q Who was it?

A I hope I don't have to say that, Mr. Kelley.

Q Well, I'll save you the trouble. Now what time was it when you got up to Rigby's house?

A Going back to the time when we left the dance, it must have ten or twenty minutes later.

Q Do you know what time it was when you got to Rigby's house?

A I don't know exactly. I didn't see a clock.

Q Do you know that it was nearly one o'clock?

A I think it was after one.

Q So that it would have been at least 12:30 before you left the Ala Wai Inn?

A It must have been later.

Q It was later. And how long before you left the Ala Wai Inn that you noticed that your wife was missing?

A A good bit.

Q Matter of ten or fifteen minutes?

A No, longer than that.

Q Now, Mr. Massie, you stated here the other day that your wife had walked out on one or two other parties and went home before you?

A I said that she had excused herself; not "walked out," Mr. Kelley.

Q Well, adopting your language, she had excused herself from that?

A That is correct.

Q Did you take her home?

A Once I remember I did; and at another time, we were three houses away from my house, and she walked home alone.

Q Did she ever leave a party out at Diamond Head by herself and go home alone?

A Not that I recall.

Q Do you recall if her excusing herself from these parties was not on account of your condition?

A I hope not.

Q- Did you see Lieutenant Bronson in the vicinity of your house before you came down to the Police Station?

A No sir.

Q You didn't speak to him up there?

A No sir.

Q He was not brought there to your house by a police officer?

A Not that I can remember, Mr. Kelley.

Q Do you recall having any conversation with him up in Manoa after the dance?

A No.

Q You went home- - -

A (Interrupting) Mr. Kelley, that night I wouldn't recall an earthquake after what I knew.

Q I am talking about before you knew.

A Will you please state your question again?

Q Did you see Bronson around anywhere before or

after you left Rigby's house, and before Mrs. Massie told you what happened?

A I drove Bronson to the house of the Rigby's and went directly home from there, leaving him there and saying nothing to him.

Q And the next time you saw him was down at the police station?

A Yes.

Q Was he intoxicated?

A I don't think so.

Q Was he fully dressed?

A I don't recall; although he had his coat off. I'm not sure.

Q Had his coat off. Now do you recall how long you stayed at the Rigbys after you got there?

A Couldn't have been over a minute.

Q Not over a minute. And then you went right over to your house?

A Right over to my house.

Q And that would be when, as to time,--when you got at your house?

A Somewhere around one thirty, I would say. That's my best estimate.

Q Somewhere around one thirty?

A Yes.

Q So, that an hour-- --A period of two hours had elapsed from the time you last saw your wife at the Ala Wai Inn until the time you saw her at your home?

A I don't know how much time had elapsed.

Q You stated that the last time you saw her down there was about 11:30, didn't you?

A No, I don't think I did. I stated that I didn't know what time it was that I had seen her last; and I stated that Mrs. Rainor had told me later that it was 11:30 or about when we started looking for her.

Q She was missing at that time?

A She must have been. At least, I couldn't find her.

Q So that, if Mrs. Rainor is correct, it must have been at least about two hours?

A If she is correct.

Q You said that you recalled being in attendance at the trial of the Ala Moana case once?

A Yes sir.

Q You were in the Court Room?

A Yes sir, for about ten minutes.

Q You saw the five defendants in there?

A I think so.

Q You knew them all by sight at that time?

A I had seen them several times before at the hospital.

Q And also at your house?

A No sir, I did not see them there. I knew they were there.

Q You didn't see them there?

A No sir.

Q Were you at a party New Year's Eve anywhere?

A Yes sir.

Q Where?

A At the Waialae dance.

Q You sure it was at Waialae?

A Yes sir.

Q Were you ever out at a party at the Deering place on Kalkaua Avenue after September 12th and before January 8th?

A I have been to a party out there but I don't know when it was. I don't recall if it was or not. I don't think so.

Q Take anyone to the dance at the Moama after it opened this year?

A Not that I can recall.

Q You might have?

A No, I don't think so, I couldn't do that.

Q You do recall being at a party at the Deering place though?

A At some time. I don't recall that it was between September and January, however.

Q This forty-five automatic that you have, or had; how long have you had that gun?

A I don't know.

Q Well, can't you give us an approximate idea as to how long; two years, six months or did you get it on January 8th?

A I have had that,- I have, since about,- I would rather find out and be accurate. I can find out.

Q Give us an approximate date?

A Quite a long time.

Q Do you know the serial number of it?

A No sir.

Q Never looked at it?

A Might have looked at it; but I didn't try to remember it.

Q By the way, were you in a collision the night of the party at the Ala Wai Inn?

A No, not a collision.

Q What was it?

A Before we went to the dance, that is while we were on our way to the dance, there was a car in front of us; and when we got to the end, toward the end of Kalakua Boulevard and the land breakes there where the trees are planted, a car swerved out in front of the car in front of us, and the car in front of us had one of our friends in it, and he jammed on ^{our} ~~his~~ ~~brakes~~ brakes,-We were going quite closely together as we wanted to arrive at the dance at the same time,- my brakes were very poor and I touched bumpers with his in the rear.

Q Any damage?

A None.

Q Were you carrying insurance on your car?

A Yes sir.

Q Who with?

A The United Service Automobile Association, I believe it is.

Q Did you try to collect insurance for that accident?

A There was no damage, and I didn't try to collect when there was no damage done.

Q Were you in an automobile accident a short time after that night?

A No sir.

Q Now, Mr. Massie, you stated that you were at sea over at Hilo when the Ala Moana case terminated?

A No, not at Hilo. I was on my 8-day patrol trial.

Q Were you at sea?

A Yes.

Q And you received a wire from you wife?

A Yes sir.

Q When you returned to Honolulu, you, among other things sought legal advice?

A Yes sir.

Q Now, before you went to Hilo, had you heard any of these disgusting rumors, or before you went on this 8-day patrol?

A Referring to which ones?

Q The ones you told us about so extensively the other day?

A I don't know.

Q You stated that you began to hear vile rumors about you and your wife?

A I did.

Q Was that before or after you came back from the 8-day patrol?

A I remember, - to be as accurate as I can, I'll put it this way: I heard more afterwards than I did before.

Q And you stated, I believe, that these rumors were not coming from people that knew you but from people you did not know?

A I don't think anyone who knew us was repeating them. It might have been.

Q Then how did you happen to hear about them?

A My friends were telling me.

Q Your friends were repeating them, was that it?

A No, they were telling me what they had heard, and asked me what we ought to do about it.

Q Asked you what you were going to do about it?

A No, they asked me what they all could do to help.

Q That is you friends were volunteering their aid? construed

A Yes, I ~~remembered~~ it as that.

Q And when you referred to friends you refer particularly to people in the naval service?

A I don't know, I heard them from many of my friends, both in the service and in Honolulu.

Q And you finally went to Mr. Beebe?

A Yes.

Q And spoke to him about it, is that correct?

A Yes.

Q And you asked him what you could do about it?

A The reason I went to Mr. Beebe was when I heard the rumor about the confession that Ida had made, I wanted to know what he could do about that; and I was quite encouraged. I thought it could be published and made public in a large way, and it would stop a lot of them. Then I asked him later, when he told me that I was wrong what I could do; and when I was speaking about everything that happened, he told me that the case was in such a condition now that a confession would be necessary.

Q And you asked him if you got some written evidence from one of those people it would be evidence and he told you that it would provided no force was used and no marks would show on the one who gave it?

A If that is my testimony there.

Q Is that true?

A Exactly, that is true.

Q Did you ask Mr. Beebe if the unwritten law could be invoked in the Territory of Hawaii?

A I don't think so.

Q Will you deny that you did?

A I don't know.

Q Will you deny at this time that you did?

A I couldn't deny it and be accurate because I do not know.

Q Will you affirm that you did?

A No, for the same reason.

Q You might have?

MR. DARROW: I object to the question as being answered. He said he didn't know. He says he doesn't know either way rather.

THE COURT: Well, counsel has the right to press the witness for an answer on cross-examination. The objection will be overruled.

Q You might have asked him if the unwritten law could be invoked in the Territory of Hawaii, but you don't recall it now, is that correct?

A Yes, I suppose so. I don't recall it; I know that is true.

Q Do you know an artist here, by the name of Luquines?

A It doesn't register. I don't know anyone by that name.

Q You don't recall knowing any person who is an artist or an etcher?

A Is it a lady?

Q No, its a man. First name Huck?

A It doesn't register with me. I am not saying that I do not, but at the present time I can't recall him.

Q Did you tell anyone two or three days before Kahahawai was killed that you ought to take him out and shoot him?

A Not that I can recall.

Q Do you deny that you did?

A I give you the same answer. I have before, Mr. Kelley.

Q You don't remember?

A I do not.

Q There was nothing wrong with your mental set-up then, was there?

A I never was as miserable and up-set and nervous and sick at heart in my life.

Q Was that mental or physical?

A I don't know.

Q Did you ever tell Mr. Beebe that you felt like taking Kahahawai out and killing him?

A Not that I can recall.

Q You might have?

A My same answer, Mr. Kelley. I want to be accurate.

Q Now, on this 8th day of January, 1932, when you all were up at Mrs. Fortescue's house, -by you all, I refer to Mrs. Fortescue, Lord and Jones and yourself, - Jones told you that this fellow, referring to Kahahawai, was pretty big, did he?

A When do you mean?

Q On the morning of January 8th.

A I don't recall it.

Q Do you recall testifying as follows on Saturday: "We went over all our plans in the kitchen. After breakfast we were on our way to the living-room and Jones started talking about how we were going to get

him in and I told him we had this summons idea and he was a little uneasy. He knew this fellow was pretty big"?

A That was right after breakfast, yes.

Q On January the 8th?

A Yes sir.

Q And coupled with that knowledge was the fact, I believed you testified before the other day, that you knew Kahahawai was a boxer?

A I had heard that.

Q And Jones said "I have my gun here; and I said 'You can't take it down' and he asked me why and I told him that Mr. Beebe had said no force was to be used and no marks should be showing". Do you recall testifying to that?

A Yes sir.

Q Did you tell or show Jones that gun you had place on the davenport?

A No sir, not that I recall.

Q By the way, you referred to this gun being placed on the settee, -is that the same piece of furniture as we have been referring to as the davenport in the front room?

A (Witness indicates on Prosecution's Exhibit No. 23).

MR. KELLEY: Please mark it "B".

A To the best of my memory I think that is where it was.

Q And the place where Kahahawai walked over and

sat down from the chair near the door was to the chaise-lounge?

A There. (indicating on chart).

Q Will you indicate on the davenport the position about where you placed your gun?

A I think I just pitched on the davenport when I came in the door.

Q So, that it was right on top of the cushions and in plain sight of anybody who happened to look over that way?

A No, I don't know whether it was or not.

Q Was there anything there to obscure it?

A There was some pillows.

Q Showing you Prosecution's Exhibit No. 27, this is the davenport or the settee that you refer to?

A Yes sir, it looks like it.

Q Were the pillows in about the same position they are now on the davenport on that day?

A I didn't use my knowledge of the pillows ~~from~~ being there from that day. I use it from other days. I know this: Mrs. Fortescue uses this davenport and she didn't use anything that didn't have a lot of pillows on it.

Q And this is the davenport you pitched the gun over on when you came in?

A It looks like it.

Q When did you next see that gun?

A I don't remember of seeing it again.

Q You testified that you were informed by Mrs. Fortescue that Jones asked her to go over to the house and get him some shirts and rope?

A That's right.

Q Where did you keep that rope around your house?

A I don't remember. I think I moved several times. I moved it last,- or the maid might have.

Q Do you recall when you last saw it in your house?

A Had not seen it for a long while.

Q Mrs. Fortescue was not living with you at that time, Jan. 8, 1932?

A She lived with us for about two weeks after she came here.

Q Was that on Kahawai Street?

A Yes.

Q And then she moved over to Kolowaln Street?

A Yes.

Q And she arrived here in October?

A Yes sir.

Q Did she tell you why Jones wanted some shirts?

A I think so, sir.

Q Why?

A Said he had some stains on his cuff, and he had to tear it off.

Q He had some stains on his cuff. What were they, blood stains?

A It must have been.

Q When did you bring these leg-irons to your house

that was found there on January the 8th, 1932?

A- I didn't bring them there.

Q You see them there?

A I knew they were there.

Q Who brought them there?

A They were in the back of the car that Mrs. Fortescue had rented from a man at the Base, named Ball; and sometime, I don't remember just when, he asked me to bring them back to the Base, - asked me if I had seen them in the back of the car and asked me to bring them back to the Base, and so I think I put them in the house somewhere?

Q When was that?

A Which?

Q That you put them in the house?

A I don't remember.

Q Well, it wasn't this year; it was last year, wasn't it?

A I really don't know.

Q They had been in the house some considerable time before the 8th of January 1932, were they not?

A Might have.

Q You don't recall?

A No sir.

Q These leg-irons had nothing to do with the plan you had in mind of kidnapping any of the defendants in the Ala Moana case?

A Not a thing.

Q They had nothing to do with any idea you had of getting a confession out of anyone of them?

A Not a thing. Come to think about it, it couldn't have; because as far as I know there are no keys for them.

Q You know whether they are locked or open now?

A Locked, I think when I saw them.

Q They were locked when you saw them? You might be mistaken in that?

A I don't think so.

Q You didn't tell Mrs. Fortescue where this rope was at your house?

A No.

Q And outside of this conversation about the rope, that is all you know about what happened after you had this mental lapse up there?

A That's correct.

Q Do you know who undressed the body of Kahahawai?

A- I know what I have heard.

Q I think you just said all you were informed of was about that rope?

A No, I didn't make that statement.

MR. KELLEY: (to the reporter) Read the question and answer.

(Reporter reads third preceding question and answer)

Q Do you know who stripped the body of Kahahawai?

A I would like to get that question straightened out first.

MR. DARROW: Is there any statement you want to make about that?

A Yes, I would like to say that as far as that answer to his question is concerned, I withdraw it because it is not all I know. I don't think I knew what he meant at the time.

Q Were you told who stripped Kahahawai's clothes off him?

A Yes sir.

Q Who did it?

MR. DARROW: I object to that as to who told him.

A Jones told me.

Q What did he tell you?

A He said "the stains wouldn't come out; so we took the clothes off."

Q The blood stains wouldn't come out of Kahahawai's clothing and so they took his clothing off?

A I made be wrong but that is what I understood.

Q Did he tell you they were thrown into the bathtub, - the clothes?

A Might have.

Q Anyone tell you that?

A Might have.

Q Did anyone tell you they washed Kahahawai's clothes out to remove the blood stains?

A I don't recall.

Q Did Mrs. Fortescue's tell you what Jones' first purpose was in asking her to get that rope?

A If I remember correctly, it was something about

so that the sheets would not come apart.

Q About wrapping up the body with the rope?

A I suppose so.

Q Did anyone tell you who wrapped the sheets around the dead body of Kahahawai?

A No.

Q Did anyone tell you where he died?

A Yes.

Q Who told you?

A Mrs. Fortescue.

Q Where was it?

A (Witness indicates on chart).

Q On the chaise-lounges?

A Yes sir.

Q Did she or anyone else tell you how long it was after he was hit with this shot that he died?

A Not that I can recall.

Q Did anyone tell you what they did with him after he died? Did they bring him into the bath-room or not?

A I think somebody told me that.

Q What?

A They took him into the bath-room.

Q Who told you that?

A I don't know.

Q How long after the 8th day of January was it that you were told that?

MR. DARRON: I object to that,--he has not said it

was after the 8th day of January.

Q Was it on the 8th day of January that they told you?

A Not that I recall. I don't know when it was.

Q You don't know how long after the 8th day of January 1932 it was that you were told?

A Not off hand.

Q Do you know where it was?

A No sir.

Q Did anyone tell you who carried the dead body of Kahahawai out and put it in the Buick Sedan?

A They told me a lot of things. I think that is one of them.

Q Who is they?

A The three defendants.

Q The three other defendants besides yourself.

A The three other defendants.

Q Did they tell you what their purpose was in taking this body out and putting it in the Sedan?

A Told me everyone there except myself was so darn excited, no one knew what to do or how to do it and the most everybody did was to run around in circles and shout.

Q Who did all the work?

A The logical deduction is that Jones and Lord must have.

Q Khhhhawai was a pretty heavy man, wasn't he?

A Those two fellows are pretty strong men.

Q One of them is a boxer?

A I think so.

Q That's Lord?

A Yes.

Q And the other is histrainer and second, that's Jones?

A Yes sir.

Q Did they tell you whether or not Kahahawai struggled after he was shot?

A No sir; I think they would have if he had, but they didn't tell me.

Q Do you remember getting into the Buick Sedan?

A No sir. For all I know I might have gone to China and back.

Q Too bad you didn't. Did anyone tell you how you got into the car?

A I think Mrs. Fortescue spoke of that once.

Q What did she tell you?

A Said Jones pushed me in.

Q Jones pushed you in the car. Did anyone tell you the route the car took to the place it was stopped out at Kokohead?

A No sir, I don't think anyone knew.

Q Did Jones ever give you a reason why he didn't go in that car?

A Yes. Said Mrs. Fortescue left him there to straighten out the rest.

Q And among the straightening up was to mop the blood up off the bath-room floor, was that correct?

A You might ask him, Mr. Kelley.

Q Did he tell you?

A Yes sir.

Q Did Jones ever tell you what time he got over to your house after Kahahawai was killed?

A No sir.

Q Did your wife ever tell you?

A No sir.

Q When Jones told you that he was afraid of this fellow because he was, or that he knew this fellow was pretty big and that he had a gun there, was he drunk or sober?

A Sober as a judge.

Q Did you have any drinks in Mrs. Fortescue's house that morning?

A Not that I can recall.

Q Did Lord have any drinks?

A I didn't see him have any.

Q Now, Mr. Massie, do you want us to understand that all that Mr. Beebe told you was that if you got a statement or confession of any of these defendants and you used ~~any~~ no force in getting it that it could be used to stop these vile rumors that was going on about you and your wife?

A That's practically what I remember, Mr. Kelley.

Q Then you never had at any time any intention of getting any confession to use in a subsequent of the Ala Moana Case?

A I was interested in one thing those days and that was to clear the name of my family. You would have been too.

Q Did you ever consider that the most effective way of doing that would be to get a confession that could be produced in the trial that would result in the conviction of the defendants?

A I wasn't worried about the trial.

Q You worried about the previous one?

A I worried about my wife.

Q You worried about the previous trial and its result, didn't you?

A In so far as it affected her, yes sir.

Q Your attitude then, all through this matter, was personal?

A Was what?

Q Was personal.

A I don't understand your question.

MR. DARROW: I object to that, - the inference that it was personal. I don't know just what it means.

THE COURT: Has the question been answered?

(Reporter reads answer).

THE COURT: The question has been answered Mr. Dar-
row.

MR. KELLEY: He said he didn't understand it.

Q Your purpose, Mr. Massie, in getting a confession, according to your testimony here the other day, was to clear your wife's name and to subdue those rumors that were going around about herself and yourself?

A Right.

Q And have nothing whatever to do with bringing these alleged defendants to justice?

A If it did I don't know now; but I know the predominant thing in my mind was what I told you.

Q When you went over to the Fortescue house on the morning January 8th, 1932, about what time was it?

A That I got over?

MR. KELLEY: Yes.

A It must have been about seven.

Q And I believe you stated that Jones and Lord were asleep in No. 1 bed-room?

A Yes.

Q That is where the double bed is?

A This one. (indicating on chart).

Q You also stated that Mrs. Fortescue started to prepare them some breakfast. Did they eat breakfast there that morning?

A They had something to eat, toast and coffee, I think.

Q About how long were you there before you left?

to go down town?

A I think we left about twenty-five o'clock.
That's my best guess.

Q When you left the house were the shades in
the front room drawn?

A I don't recall.

Q Were the shades in the dining-room drawn?

A I am sure I don't remember. I wasn't worrying
about the shades.

Q Did you notice anyone draw them?

A No.

Q Did you notice anyone close all the windows?

A No.

Q Were any of the doors opened while you were in
there?

A I don't remember.

Q So that it is possible that you were sitting
a house with windows closed, all the doors closed
and the shades all drawn?

A It didn't feel like it. There was fresh air.

Q You recall that?

A I suppose so. I would have recalled it if
there had not been fresh air.

Q Now, when was it, Mr. Massie, that the plan
with reference to threatening Kahahawai with a gun
in order to get a statement out of him was discussed
with the other defendants?

A I think the afternoon before.

Q Was that at your house or Mrs. Fortescue's house?

A Both.

Q So it was there agreed that a gun would be used in order to scare him into talking?

A Yes sir.

Q And you felt that a greater degree - - -Withdraw that. You felt that it would be more impressive and he would become more frightened if you in front of him went through the motions of loading that gun?

A I hoped it would. That and his recognizing me.

Q He gave no signs of recognizing you in the trip from this building up to 2574 Kōlowalu Street?

A No.

Q And throughout you sat in front of him all the way up there?

A That's correct.

Q And you got out of the car first when you got to the house?

A Yes.

Q In order to get out the car, did you get off on the driver's side or did you slide across and get out through the right front door which was nearest to the kitchen?

A I don't recall.

Q You drive the car partially into the garage?

A I think that was right.

Q You remember Mrs. Fortescue pulling down that shade before you started off?

A No sir.

Q And it was not until you turned around and came out of the position you were at nearest the entrance to the hall-way there and confronted Kahahawai, that he recognized you.?

A No sir. I made it a point of his not being able to recognize me. I didn't turn my head toward him at any time on the trip or in the back yard or anything. I had that much sense.

Q You carefully avoided doing that?

A Absolutely.

Q Of course, you didn't go to the extent of wearing a false mustache?

A No sir.

Q When you went into the back-door, referring again to Prosecution's exhibit No. 23, before you went in through the back-door, you crossed the back-yard from the garage?

A Yes sir.

Q To the steps indicated here? (indicating on the chart/).

A Yes.

Q And came in through here, the pantry, back where the ice-box is?

A Yes.

Q And into the kitchen?

A As I came in the kitchen I went over to this cupboard here.

Q And that was where you picked up the Colt Automatic?

A Yes.

Q And you came in through the door into the dining-room and walked across to a position near the hall leading to the bedroom?

A Yes. First I hollered out something about Major Ross being here, "Come on in".

Q That's while you were in the kitchen?

A I think so.

Q And at that time Kahahawai and Jones were in the automobile outside?

A They were either in or getting out or something; I didn't see them.

Q Did Mrs. Fortescue and Lord reach the house in the blue Sedan?

A No.

Q How long after your arrival did they come in?

A Just a short while.

Q Which way did they come in?

A This door here. (indicating)

Q The front door. Which one came in first?

A Mrs. Fortescue.

Q Followed by Lord?

A Yes.

Q Did they close the front door after them?

A No.

Q When they came in where was Kahahawai?

A Standing about here, I believe, and then he came over and sat down on this chair. (Indicating).

THE COURT: Mr. Kelley, are you going to be much longer on cross?

MR. KELLEY: Yes, your Honor.

THE COURT: Better take our recess of ten minutes.

(Recess)

(Linn relieved Chillingworth)

(Apr. 18, 32, 10:20 a.m. Linn rel. Chill.)
Mr. Massie on Cross.)

L-1

Q Were you ever told by any of the other defendants, Mr. Massie, what happened to the gun that you had in your hand when Kahahawai was shot?

A Yes, sir.

Q Who told you?

A Jones.

Q What did he tell you?

A He said he took it over to my house afterwards.

Q Do you know what happened to it over there?

A He left it there.

Q Did anyone ever tell you who took it out of your house?

A No, they would not tell me who took it out. There were only two people who could have, I think.

Q You were told, however, that it was taken out, - I mean out of your house?

A Yes, sir.

Q Did any of the three defendants ever tell you what you did after this shot was fired?

A Yes, they spoke of it, yes, sir.

Q Who?

A All three of them.

Q Well, what did Mrs. Fortescue tell you in that respect?

A She said I just stood there like a bump on a log, and she talked to me and I would not answer her, and she finally took me into the kitchen and

tried to make me drink some oke and I would not do that and she sat me down on a chair and I think she said I stayed there.

Q Did Jones tell you what your actions were after the shot was fired?

A Jones was not very complimentary.

Q Why? Because you only shot him once?

A No, sir.

Q What did he say?

A He said I acted like a dam fool.

Q Jones, by the way, is an enlisted man in the Navy, isn't he?

A I resented it just as much as you are going to say I did.

Q I don't know whether you did or not?

A I did.

Q What did Lord say or tell you with reference to what you did?

A He, Lord, does not talk much. You have to ask him, and I never asked him.

Q And he has never told you?

A No, not that I can recall.

Q Did Mrs. Fortescue ever tell you why she took this particular route out to Koko Head?

A I think she has been trying to figure it out herself ever since.

Q I did not ask you that. Did she ever tell you?

A No.

Q Did she ever tell you whether or not it was suggested by either Jones or Lord?

A As far as I can recall I think so.

Q What did she tell you in that respect?

A She said that somebody said "Go for the sea".

Q And she told you that the purpose of going for the sea was to dispose of the body?

A Yes, sir.

Q Did she also tell you that you were taken along to be of assistance in doing that?

A No, she did not tell me that.

Q So that in the car at Koko Head, with the body that was to be disposed of, was just Mrs. Fortescue, yourself and Lord?

A I don't know.

Q You were told ~~x~~ that afterwards, were you not?

A It is logical to believe it, but I don't remember it.

Q Well, my question is: Someone of the three defendants told you that afterwards, that you were in the car with Mrs. Fortescue, Lord and the dead body of Kahahawai at Koko Head?

A I don't remember it so I will answer "no", Mr. Kelley.

Q Were you told that?

A That is what I mean, I don't know whether that

was told me or not.

Q Do you at this time know that was the situation out there?

A I at this time think it was.

Q And you haven't anything in your mind that would lead you to believe otherwise, have you?

A I can't think of anything now.

Q And you were in such a condition that you could not help dispose of this body?

A I don't see how I could have.

Q I believe you x did state that you were informed that Jones and Lord put the body in the car at the Fortescue home?

A Yes, sir. I know why I went now. Jones told Mrs. Fortescue to take me along and get me fresh air. I remember his saying that.

Q That is the reason you went?

A That is the reason they sent me.

Q When you talked to Mr. Beebe, I believe you stated that that was after the Ida kidnapping?

A Yes, sir.

Q And did you discuss with Mr. Beebe any plan or plans whereby the statement or confession could be secured?

A No, sir, I merely went to him and asked him for his advice in a legal manner.

Q How long a conversation did you have with him?

A I don't know. Five minutes, I suppose.

Q More than once?

A Not about that ~~examining~~ more than once.

Q And nothing was discussed then about taking Kahahawai for a ride?

A No.

Q Who was it suggested the idea to use Major Ross' name in connection with kidnaping Kahahawai from in front of this building?

A Myself or Mrs. Fortescue, I don't remember.

Q Did you have any particular reason for using Major Ross' name?

A I thought that it was logical. I had learned that this person had been in Major Ross' batallion and I didn't see but how he could think that it was logical for Major Ross to call him in, in view of the fact that he was at that time employed by the Territory.

Q You knew that Kahahawai had formerly been a member of the National Guard?

A Yes, sir.

Q And had been in Major Ross' batallion?

A Yes.

Q And you had discussed with Major Ross the advisability of getting Kahahawai in for questioning?

A Yes, sir.

Q When was that?

A It was about Tuesday or Wednesday of that week, the 8th of January.

Q It was on the 6th or 7th of January?

A I think so.

Q 1932? Do you recall when you had this conversation with Beebe, - Mr. Beebe, with reference to getting a statement or confession from one of the defendants?

A Do I recall the episode?

Q No, when it was, the time?

A No, sir.

Q Was it before or after the New Year, if you can recollect?

A I think it was before.

Q Before the New Year. How long after the Ida kidnapping was it?

A It must have been somewhere around there.

Q Shortly afterwards?

A I don't know whether it was shortly afterwards or not; it was somewhere around there.

Q Mr. Massie, have you ever been implicated in a kidnaping plot before that time?

A No, sir.

Q Quite sure?

A Quite sure.

MR. DARROW: I want to take an exception to that question. From anything that appears it is directly

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prejudicial, irrelevant, and should not have been asked. I simply want to take an exception to it.

THE COURT: Exception may be noted.

Q Where were you in 1927?

A Naval Academy.

Q Do you remember where you were on the afternoon of August the 27th 1927?

A No, sir.

Q Did you ever visit Mrs. Granville Fortescue's house on Long Island while you were going to the Naval Academy?

A Yes, sir.

Q The name of her home was "Wild Home", is that correct?

A Correct.

Q State whether or not on or about that date, near Bayford, Long Island, you assisted in the kidnaping of a baby?

A I would rather tell the whole thing.

Q Answer my question "yes" or "no"?

A I was not implicated in any kidnaping of a baby; never have been and never will be.

Q Were you arrested?

MR. DARROW: That is objected to.

A I was asked to come to---

MR. DARROW: I object to the question "Was he arrested".

Q Were you arrested on a charge of kidnaping?

A No.

MR. DARROW: Objected to on the ground that arrest does not mean anything.

THE COURT: Objection overruled.

Q "Yes" or "no", Mr. Massie?

A The question again, please, Mr. Kelley?

Q Were you arrested on a charge of kidnaping?

A What was or what might have been a charge of kidnaping was later proved to be not that.

Q All right. Before we get to that later period, were you arrested on a charge of kidnaping?

A I don't think it was an arrest.

Q Were you taken to a police station?

A We were taken to an office. Miss Fortescue, then, and I, were at a movie in Patch Hall, Long Island. The movie was quite dull. We left and decided to take a drive. When we came outside there was a little baby sitting by the box, the ticket box, in a carriage, crying. Mrs. Massie said something about "Oh, the poor little thing. I will roll it down to the block and back and maybe it will hush crying" and when we got about half-way down there a woman came screaming and shouting and said "You are kidnaping my baby." We went to the police station, as you call it, - it might have been, and were questioned. I think she was an Italian lady was up there and found out what it was all about and Mrs. Fortescue was called and as I remember

the Italian lady came up to Mrs. Fortescue and said "Well, you give me five dollars and I won't say anything about this," and Mrs. Fortescue laughed at her; she knew that there was not going to be anything to it, and the next morning they held an investigation and dismissed the charge that you call kidnaping.

Q You said something yesterday, Mr. Massie, or, rather, Saturday, about being avoided by the enlisted men out at Pearl Harbor. Now when did you first start it to notice that?

A Along in December, the latter part.

Q That was about the time you conferred with Mr. Beebe?

A Probably.

Q You also stated that you talked the matter over with some of your friends, that is the advisability of getting a confession out of one of the defendants?

A Will you read my part where I say that for me, please?

Q Well, did you discuss it?

MR. DARROW: I suggest the question be asked over again.

Q Did you discuss the advisability of endeavoring to get a statement or confession from any of the defendants in the Ala Moana case, with your friends?

A At this moment I cannot recall if I did or not,

but I will admit I probably did.

Q Do you recall ever having discussed it with any of your fellow officers?

A No, not at this moment.

Q You may have?

A I will have to admit that I may have.

Q You did, however, discuss the Ala Moana case generally with them, naturally?

A Not generally. When they would bring the subject up I would talk to them.

Q And you felt, did you not, that there was an atmosphere of, - well, let us say, disregard for you at but at the Naval Station at that time?

A I don't know what I felt. I just know I felt, if everyone will pardon me in this court room, - like hell.

Q Well, you said you felt like shunning crowds, do you remember saying that?

A I do.

Q And you felt that some of the enlisted men were trying to avoid you?

A Yes.

Q Whether that is true or not, you felt it. Isn't it a fact that also when you would go into the mess-room there would be a silence from your fellow officers?

A No.

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Q And you felt that something should be done about the matter?

A As I told you, Mr. Kelley, the only thing I ever had in mind that day and ever is how it was affecting my wife.

Q Now would you say that this was pretty close to Christmas time?

A Which time?

Q That you felt as though you were being avoided and shunned out at the Navy Yard?

A By the enlisted men. It was probably around Christmas time or sometime before.

Q Had you at that time read or heard of a wire that was sent by Admiral Pratt to Admiral Sterling on the 20th of December, 1931, in which he said---
(Interrupting)

MR. DARROW: I object. I would like to see the copy of the wire, of what he is intending to read, first.
(Counsel is handed a paper)

MR. DARROW: I would ask the Court to recess and if it is proposed to be offered I would like to be heard on it, in the absence of the jury. This is what is proposed to be asked of the witness, whether he knew of that statement by some officer. (Handing paper to the Court)

THE COURT: Now what is the situation?

MR. KELLEY: I was about to read, as part of my question,

from that purported copy of a wire from Admiral Pratt to Admiral Sterling, under date of September 19, 1930, and ask the witness if he knew or had heard of that language being used by the Chief of Staff of the United States Navy.

MR. DARROW: How could that possibly bind this defendant. It is not his statement. It is inserted in this because it evidently might be prejudicial to ask him whether he knew of it. It does not appear he heard of it at all, and if he did it would not mean that he approved of it, and it is a matter of quite serious prejudice if it is admitted. I insist it is incompetent as to this defendant.

THE COURT: It will not be necessary to interject that into the case unless it appears that the witness has read it or knows something about it. Therefore I will not permit it to be read, unless it first appears that the foundation is laid for it; that the witness knows it or has read it, prior to the 8th day of January, 1932.

MR. KELLEY: It appeared in all the papers.

Q I will show you this piece of paper, Mr. Massie--

MR. DARROW: There has been no showing here that it appeared in the papers.

THE COURT: Nothing but a statement by counsel, Mr. Darrow.

MR. DARROW: There should be more evidence of it, if it is based on that.

Q Will you read the language marked there. Just read that paragraph? (Counsel indicates on document handed to the witness)

A (Witness looks at paper)

Q Before the 8th day of January, 1932, did you ever read that Admiral Pratt had sent a wire containing that statement, or were you ever apprised of it by anyone?

A From the way that wire reads it is confidential matter, and I am not permitted to read confidential matter.

Q Well, did you ever read it?

A Not that I can recall.

Q Were you ever informed of it?

A I don't think so.

Q Do you know whether or not the text of Admiral Pratt's wire was published in the local papers?

A No, I do not.

Q You never read it there?

A Not that I can recall.

Q Do I understand you to say then, Mr. Massie, that prior to the day that Kahahawai was murdered you never knew of any language or of the language that you just read being sent out by Admiral Pratt?

MR. DARROW: Just a minute. I will make another objection to that question, to the statement that

Kahahawai was murdered. That is what we are determining here. He was killed, but so far it has not been determined he was murdered.

THE COURT: Is that language used in the question?

MR. DARROW: That language, yes, and that is what I object to. If he said "the defendant who was killed" why that would be all right, so far as this question is concerned, in that regard.

THE COURT: Does counsel accept that?

MR. KELLEY: Yes, I will change the word "murdered" to "killed".

THE COURT: Very well, proceed.

MR. KELLEY: Read the question changing "murdered" to "killed".

(Question read by the reporter as follows:

"Do I understand you to say then, Mr. Massie, that prior to the day that Kahahawai was killed you never knew of any language or of the language that you just read being sent out by Admiral Pratt?")

A I cannot say definitely that I heard anything about it before at all, but I do think that I have heard something since.

Q You would not deny at this time, would you, Mr. Massie, that you had heard of it before Kahahawai was killed?

A I believe I would.

Q Do you deny it?

A The only way I can answer that is, if you force me to say "yes" or "no", I would say "Yes, I have not."

Q Did you read any of the newspapers published in Honolulu in December?

A Some.

MR. DARROW: What is the date of the publication?

MR. KELLEY: The date of the publication in the local papers?

MR. DARROW: Yes. Doesn't the paper show it?

MR. KELLEY: I haven't the papers. This is a copy of the message.

MR. DARROW: We should have the paper, or at least they should be able to tell us what the date of it was.

Q Did you at any time before January the 8th, 1932, read the purported text of Admiral Pratt's despatches to Admiral Sterling in any of the papers?

A I don't think so.

Q Did you ever talk this Ala Moana case over with Admiral Sterling?

A Yes.

Q More than once?

A I don't recall but once now.

Q When was that?

A Before the trial.

Q How long did you say that you had known Jones

before the 8th of January, 1932?

A I met him one day.

Q Just once?

A Yes.

Q And when was that with reference to January 8th?

A It must have been about, somewhere, about the 20th of December.

Q Somewhere around the 20th of December. You had seen him around the Navy Yard out there at the boxing matches?

A No.

Q Did you know that ~~kk~~ he was a trainer and second, - I am referring to Jones now?

A No.

Q And did you suggest on the 20th of December that he help you out in any undertaking you had in mind then?

A Nothing was mentioned.

Q Well, then, when did you see him the next time?

A On Thursday, January the 7th.

Q You ^{had} had a conversation with him?

A Yes.

Q Where was that?

A At the Submarine Base.

Q What did you tell him?

A I told him that I had heard from reliable authority that this person was shaky and ready to

crack.

Q Who do you mean by "this person?"

A Kahahawai.

Q Did you mention his name?

A I think I did. I don't know. I told him that these rumors were getting just about as vile as anybody could stand, and I wanted to see if I could not pick him up and get a confession out of him.

Q And what else did you say?

A I reminded him of the fact that he had once stated in a casual way at my home when I met him when I came back from a trip to Hilo he was quite sympathetic.

Q Did he tell you at that time that he fellows should all be taken out and shot?

A No.

Q He never expressed any feeling like that at any time whatsoever to you?

A No.

Q Now I asked you, Mr. Massie, what else was said. Did you tell him that you wanted some further aid in carrying out this plan?

A I told him that I thought the plan would be better if we had two men.

Q Besides yourself?

A Yes.

Q And he suggested the name of a third man?

A I

A I asked him for the name of a third man.

Q And what did he say?

A He said "I think I know someone and I think he would be willing to help us."

Q Did he tell you who it was?

A Not at that time.

Q Without referring to him by name did he tell you that this fellow was a scraper out there?

A No.

Q And then when did you see Lord?

A Right away.

Q That same day, in the afternoon?

A Just after my conversation with Jones.

Q That was in the afternoon?

A Yes, sir.

Q He introduced you to Lord?

A He took me up and pointed him out and he said "There is a mighty good friend of mine."

Q You were on the S-43 at this time?

A Yes, sir.

Q What boat was Jones on?

A I don't know. I think it was on the Base.

Q What boat was Lord on?

A I didn't know at that time.

Q You didn't know either of these two boys out at New London, Connecticut?

A No, sir.

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Q Did they ever tell you that they were there along about 1927 or 1928?

A They have recently.

Q Did either one of them serve on the same boat that you did?

A No.

Q Were you on the S-22?

A No.

Q What other subs have you been on besides the S-23?

A The R-13.

Q Was Jones on the R-13?

A No.

Q Lord?

A No.

Q When were you at New London, Connecticut?

A In 1929.

Q I believe you stated the other day that at no time did you ever play bridge with Jones there at your house, or Mrs. Fortescue's?

A That is correct.

Q You never did?

A Never.

MR. KELLEY: That is all.

MR. DARRROW: Your Honor, I think it is about recess time.

May we take it now?

(Whereupon a recess was taken.)

(Apl. 18, 1932, 11:15 a.m. Jordan relieves Linn)

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IRVING BLOM

was duly called and sworn as a witness for the defendants, and testified as follows:

DIRECT EXAMINATION

By Clarence S. Darrow, Esq.

Q What is your name?

A Doctor Irving Blom.

Q And you are practicing here in Honolulu?

A Yes, sir.

Q Did you ever live in a house that was afterwards rented to Mrs. Fortescue?

A Yes, sir.

Q Kolowalu street, 2574?

A Yes, sir.

Q When did you move away from there?

A November seventh.

Q Last?

A 1931.

Q Did you have a tarpaulin that was used somewhere in the house?

A Yes, sir.

Q Where did you get it?

A When I moved in the house there they had an old shower curtain there and I asked for a new one, and they gave me one and I took this old one to the garage.

Q You got a new shower curtain for the shower?

A Yes.

Q And you put the old one in the garage?

A Yes, sir.

Q And didn't take it away with you when you left?

A No, sir.

Q I show you State's Exhibit 15. Do you recognize it? Do you want to see more of it? (Showing Exhibit 15 to the witness)

A That looks like the original one we left there. It is a pretty good substitute, if it is not.

Q Would you say it is the same one, to the best of your opinion?

A To the best of my opinion I would say it is exactly the same one.

Q I believe you said you put it in the garage?

A Yes.

Q And that is the last you ever heard of it until this case?

A Yes.

MR. DARROW: That's all.

CROSS EXAMINATION

By John C. Kelley, Esq.

Q Did I understand you to state, Doctor, you got a new one because this was worn out?

A Because it was mildewed to the extent it is.

Q And this was, -- When was it you got the new one?

A I don't recall the exact date, but I imagine it was around May or June sometime.

Q May or June of 1931?

A Yes, sir. I imagine the Trent Trust Company could tell you the exact date.

Q Did you take this used tarpaulin out of the shower bath yourself?

A Yes, sir.

Q And put it right in the garage?

A Folded it up and put it in the garage and put it over the rafter.

Q Folded it up over the rafter?

A Folded it up and put it over the rafter.

Q Do you know where the new one came from, what tent and awning company?

A No. They are ready made. The owner got it for me.

Q Whom do you refer to as the owner?

A Mr. Seelig.

MR. KELLEY: That's all. I had an understanding, -at least I thought I did, with Mr. Winn, that Lieutenant Massie was to be withdrawn in order that Dr. Blom could testify, and, in the event that they had not finished with him, on the stand, I am going to reserve the right to recall him later on for further cross-examination.

MR. DARROW: We misunderstood him. We thought he rested on him, but, if he wants any further cross-examination, it should be had now. -- All right. We will call another witness. We have agreed on this matter.

Q Were you chief quartermaster on the S-43, - you have been there about eight months?

A Yes.

Q Did there come a time when Lieutenant Massie talked to you about any rope of any kind?

A Yes, sir.

Q When and under what circumstances did he speak to you?

A About the middle of October he came to me and asked me if I had in mind or could make a runway, - for a dog, and I said "yes, I had some small line" and I sent a man below and told him to give him about ten or twelve fathom of line, and this man made it up and left it in Mr. Massie's room. That was about the middle of October.

Q What did you do with it after you got it?

A Just coiled it up and put a piece of paper around it and laid it in his room.

Q Will you look at Prosecution's Exhibits Numbers 16 and 30 and tell the Court and Jury if that is the sized rope or if you can in any way identify it?

A Yes, sir; that looks like the line I gave Mr. Massie.

Q It has been testified to here that ^{is} a 15 strand rope. Will you look at it and see what it is?

A No, sir, that is three-strand rope.

Q Did Mr. Massie speak to you after that or in any way about the rope?

A Yes, about two or three days later he came in and said that line was pretty big and asked if that was the smallest I had.

Q What did you say?

A I said "Yes, sir, that is the only small line I had aboard ship."

Q By the way, did you have anything to do with this dog prior to that time?

A Yes, around the 1st of October Mr. Massie brought the dog aboard the boat and said it was too good a dog to let run around, and I told him I could fix him up a wire runway, so if he put the dog on the chain it could run around in the yard.

Q Did you do so?

A Yes, we made a wire out of seasoned wire, as we call it, a very strong wire, with a loop-hole.

Q That was at Mr. Massie's home?

A Yes.

Q What kind of a dog was it?

A A brown and white bird dog.

CROSS EXAMINATION

By John C. Kelley, Esq.

Q And where was Mr. Massie living?

A As far as I know, in Manca valley.

Q Do you know the number of the house or the street?

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A No.

Q He came back and told you this rope was too large?

A Yes.

Q You had fixed up a wire before that?

A Yes.

Q Did you figure this rope was too large for the purpose he wanted?

A No, sir.

Q Showing you Prosecution's Exhibit 43, did you have any of the smaller kind shown in that exhibit at Pearl Harbor?

A There may have been some in the store-room, but not on the boat.

Q Did you ever get any of that at the store-room at the sub-base?

A No, sir.

Q Neger saw any there?

A If I had looked I might have got it, but I never drew any.

Q You couldn't say whether it was there or not?

A I couldn't say yes and couldn't say no.

Q In any event, you did n't make any effort to get a smaller-sized rope when Lieutenant Massie said the rope you had furnished him was too large?

A No, sir; he didn't ask me for any more rope.

Q You say this is a 3-strand rope, Exhibit 16 and 30?

A Yes.

Q How many threads has it?

A Fifteen thread.

MR. KELLEY: That's all.

REDIRECT EXAMINATION

By George C. Leisure, Esq.

Q You didn't have this small-sized rope, Prosecution's Exhibit 43, on your boat, is that it?

A No, sir.

RECROSS EXAMINATION

By John C. Kelley, Esq.

Q How do you fix this date?

A The only thing we used in the Navy Yard. We couldn't leave the Submarine Base and we died up to the Ten-Ten dock in the Navy Yard.

Q How long were you tied up?

A Approximately a month.

Q From what time to what time?

A Around the latter part of September until about the first of November.

Q Have you talked to anyone about this case?

A No, sir.

Q Not a soul?

A Only my family, sir.

Q Have you ever talked a to anyone about what you were going to testify to here?

A No, sir.

EUGENE H. BEEBE,

was duly called and sworn as a witness for the
defendants, and testified as follows:

DIRECT EXAMINATION

By Montgomery Winn, Esq.

Q Your name is Eugene H. Beebe?

A It is.

Q You are associated with the firm of Smith, Wild
& Beebe?

A I am.

Q You were formerly associated with the firm of
Thompson, Beebe & Winn?

A Yes.

Q When did you leave the latter firm?

A The 15th of January, of this year.

Q How long had you been associated with that firm
prior to that time?

A Since the 19th of November, 1921.

Q Do you know Lieutenant Thomas H. Massie?

A I do.

Q When did you first meet him?

A I should say sometime in October of the year 1931.

Q Under what circumstances?

A Well, prior to my seeing him he had seen Mr.
Thompson and there was a question, or, rather, an
endeavor at that time being made to have someone
assist in the prosecution of the Ala Moana case, and
Judge Masseo came to see me after others had turned

it down.

Q Lieutenant Massie, you mean?

A Yes, Lieutenant Massie came to see me after others had refused to assist, and asked if I would assist, and I told him I would.

Q What part were you to take in the prosecution of the Ala Moana case?

A At the time I expressed a willingness to go into it I was to assist the prosecution in the actual trial of the case.

Q Later on did your plans change?

A The prosecution refused to allow me to assist, and the plans were changed.

Q And after that what did you do?

A Looked up the law, assisting in looking down rumors of confessions and statements and things of that kind, interviewing witnesses; also prospective witnesses.

Q You did interview witnesses?

A I did, then, yes.

Q Did you assist in the investigation of the facts surrounding that case, the rape case?

A Yes.

Q Do you remember approximately when you were retained, the approximate date?

A The retainer came through Mr. Thompson.

Q I imagine so.

A So it was some few days prior to the time I ever spoke to Lieutenant Massie.

Q Can you give us about some idea when you saw Lieutenant Massie the first time?

A I should say that it was before the 15th of October or around that time.

Q When you first saw Mr. Massie in what physical condition was he?

MR. KELLEY: We object to Mr. Beebe, while known and as learned as he was, testifying as to what physical condition he was in. He can testify as any layman what his appearance was.

MR. WINN: I withdraw the question.

Q What was his appearance, that's all we want.

A Well, he was nervous, and I don't know how to put it, - he was apparently laboring under stress.

Q Do you know what that stress was, from your conversation with him?

MR. KELLEY: Objected to as calling for a conclusion of the witness.

MR. WINN: Question withdrawn.

Q What were your conversations with him?

A My conversations all along were about the Ala Moana case, about rumors that were being circulated about various aspects of the Ala Moana case.

Q Rumors about what?

A About his wife.

Q Did he discuss with you these rumors or you ~~was~~

with him?

A Yes.

Q Did that cause him, so far as you could observe, to be nervous at the time you were discussing them?

A Well, he was nervous and I assumed his nervousness was due to that.

Q How many times did you see him, say between the middle of October and the last of December?

A Fifteen or 18 times, I should say.

Q On these occasions would your conversations be about the Ala Moana case and various rumors circulated about his wife?

A Yes.

Q Do you recall an article in the ~~XX~~ paper with regard to a confession made by one of the Ala Moana defendants, Ida?

A Yes.

Q Do you remember having any conversation with Lieutenant Massie after that picture and article appeared in the paper?

A Yes.

Q Will you state what the substance of that conversation was?

A He came into the office after the so-called Ida case and was very much elated; told me he had heard a confession had been obtained from Ida, and I told him I had read the newspaper accounts and seen the

pictures in the newspaper which showed bruises across the boys back, and I told him a confession obtained under the circumstances of that case was not admissible in Court.

Q Did you discuss with him at all a confession obtained under coercion or duress?

A No.

Q Was that brought up during the conversation?

A No, that was the sole conversation, the Ida kidnaping case and the conversation as to that.

Q As you observed him from October 15th up to the time he finally visited you did you observe any change in his appearance?

A Yes.

Q Will you tell us what change there was?

A Well, when he first came into the office he would sit in a chair and talk to me for a considerable period of time, and after it had gone along he became increasingly nervous; would pace up and down in the room when I was talking to him. He had a twitching of his face, as I recall, and I would say he lost weight. I don't know though but I am sure his cheeks caved in.

Q Was he pacing the floor a good deal, Mr. Beebe?

A Yes.

CROSS EXAMINATION

By John C. Kelley, Esq.

Q Have you ever paced the floor, Mr. Beebe?

A Yes.

Q When was the last time he called at your office, Mr. Beebe?

A It was before Christmas. I am rather sure of that, Mr. Kelley.

Q You didn't see him around New Years?

A No, sir.

Q After you agreed to assist in the trial of the Ala Moana case that seemed to have a very beneficial effect on him; he was glad your services were secured?

A That day he expressed himself as satisfied and I told him to arrange with Mr. Wight so I could appear, and he said he would see Mr. Wight that night and would notify me in the morning. Well, he didn't show up for a couple of days and I drew the conclusion the arrangement had not been very satisfactory so far as the prosecution was concerned, and then he came in and told me they refused to permit me to assist.

Q But that you could assist in preparing the law and consultive work?

A Yes.

Q That was in what month?

A I think it was in October, Mr. Kelley.

Q Then do you recall the date of the Ida kidnapping, not the exact date?

A I know it was a Saturday. I say I know it because

I went up to play golf one Sunday morning about ten o'clock and on the corner of Nuuanu and School street there was a boy with an extra, and I got that extra.

Q That was in December, was it?

A I should say so, yes.

Q And after that fact became known--- Of course you got your information in reference to that out of the newspapers?

A I read the newspapers.

Q And after that fact became known Mr. Massie came to your office?

A Yes.

Q And he was very much elated on account of the fact a reported confession had been obtained?

A Yes.

Q And he wanted to know whether or not that confession could be used in Court?

A No, that wasn't the way it came up. He told me a confession had been obtained, and I in effect told him right off the bat that confession was no good.

Q It was inadmissible in Court, that was the language you used on direct examination?

A That was the effect. I might have used that exact language.

Q Did you ever have any other conversation with him subsequent to that time with reference to a confession or a statement?

A

A No.

Q And the time you have referred to subsequent to the Ida kidnaping is the only time you talked to him about a confession?

A No, I talked to him about a confession before that time, but after there had been a mistrial in the Ida case.

Q That conversation was with reference to what?

A There had been some statements in the newspapers, as I recall, that Mrs. Massie was going to leave the Territory or had left the Territory, and, as I recall, the Chamber of Commerce called me up, or some member of the Chamber, - I believe it was Mr. Hayward, I am not definite on that, - and asked me if there was any truth in those rumors. So I got in touch with either Lieutenant Massie or Mrs. Massie, and on the day following Mrs. Massie, Mrs. Fortescue, I believe her younger daughter, and Lieutenant Massie came into my office, and I asked them whether or not there was any truth in the rumor that they were going to leave. Mrs. Massie told me no, she was going to stay and stick it out, and the conversation then drifted, as I recall, to a retrial of the case, and they asked me what I thought about a retrial and I told them that in view of what had been in the newspapers and so forth, the best chance

of obtaining a conviction was either by getting additional evidence or a confession.

Q That makes two times you have referred to confessions?

A Yes.

Q Were there any others?

A Not that I recall, Mr. Kelley.

Q On either one of these occasions were any methods discussed as to how a confession could be obtained?

A No.

Q You are quite sure of that?

A Yes.

Q Did you at any time tell Lieutenant Massie that if he got a written statement or confession from any of the defendants in the Ala Moana case "he", meaning you, "told me that it would be all right to get it provided no force was used and no marks would show on the one who gave it"?

Did you tell him anything like that?

A No, the only time we ever talked about force was with reference to the Ida case, and at that time I told him the evidences were plain in effect that force had been used; there were bruises, marks and so forth on his back,- but we never talked about the law of confessions, Mr. Kelley.

Q And you never talked with him about the best method of going about getting one, did you?

A No.

Q Did you ever say anything to him, Mr. Beebe, from which he could reasonably infer from your language---

MR. DARROW: Objected to.

MR. KELLEY: I haven't finished it yet.

Q (Continuing) That it would be perfectly all right for him to carry one of the defendants in the Ala Moana case off and endeavor to get a confession from him by threatening him with a gun?

MR. DARROW: Objected to. He can say what he did say.

THE COURT: Objection overruled.

MR. WINN: Exception.

A No.

Q And you never at any time told him that it would be all right to get a confession but to leave no marks on the one that gave the confession?

A No. The only conversation we had was about the Ida case, and we talked about the marks and bruises on Ida's body, and I told him that was no confession and it would not be received in evidence.

Q And the purpose for which this confession was to be obtained was to strengthen the Ala Moana case on a retrial?

A I think at that time it had a two-fold purpose, for he was very much upset about these rumors.

Q About Mrs. Massie going away?

*
616
517

A No, about Mrs. Massie's relationship with some Lieutenant, Bunson or Brannigan or--

Q Branson?

A Lieutenant Branson.

Q That was as to the necessity and desirability of getting a confession to be presented in Court?

A I should say that was the case, yes.

Q Was any other method discussed with you and Lieutenant Massie as to how a confession could be used to clear his wife's name other than by being presented in a court of law?

A I don't get that.

Q (Question read by the reporter as follows: "Was any other method discussed with you and Lieutenant Massie as to how a confession could be used to clear his wife's name other than by being presented in a court of law?")

A There was no such discussion as that. We did not talk about methods at any time.

MR. DARROW: Will you read that last part.

THE (REPORTER: (Reading: "We didn't talk about methods at any time.")

REDIRECT EXAMINATION

By Montgomery E. Winn, Esq.

Q When do I understand you talked to Lieutenant Massie upon two occasions about confessions, the second occasion was two or three days subsequent

to the purported Ida confession?

A It might have been later than that.

Q You had seen the picture of Ida in the newspaper?

A Yes.

Q And from that picture you could tell he had been severely beaten across the back?

A Yes.

Q You knew as a lawyer such confession couldn't be admitted in evidence?

A Yes.

Q And you didn't discuss the question of duress or coercion or anything else?

A We didn't discuss the law of confession at all.

Q You said you told Mrs. Fortescue and Mrs. Massie and Lieutenant Massie a conviction by a second trial would be somewhat difficult without a confession or additional evidence?

A Yes.

Q Why did you have that feeling?

MR. KELLEY: Objected to as calling for an opinion and conclusion of the witness.

MR. WINN: He has given the conclusion. I want his reasons.

MR. KELLEY: It is absolutely immaterial and irrelevant.

THE COURT: Objection sustained.

MR. WINN: Exception.

Q Did you discuss with Lieutenant Massie the reasons for your conclusions?

A Yes.

Q What were those reasons?

MR. KELLEY: Objected to on the same grounds.

THE COURT: Objection overruled.

A I told Lieutenant Massie that because of conditions in the police station where one-half of the police department was apparently working against the other half, Lau and even the cook reporting to Bill Heen and the other attorneys, you couldn't hope for anything from the police station, and to my mind that was the only way a conviction could be had.

- - - - -

MR. LEISURE: We had anticipated that the cross-examination of Lieutenant Massie would take most of this session, so we subpoenaed only four additional witnesses, and I am afraid we shall have to take a rest at this time unless a recess is taken to give us an opportunity to use the telephone.

THE COURT: Does counsel desire to adjourn now?

You have another witness here present.

GORDON C. ROSS

was duly called and sworn as a witness for the defendants, and testified as follows:

DIRECT EXAMINATION

By Montgomery E. Winn, Esq.

Q You are the High Sheriff of the Territory in Hawaii ?

A I am.

Q How long have you occupied that position?

A I was appointed on the 21st of January, this year.

Q In December, the latter part of December, 1931, what position did you occupy?

A I was purchasing agent of C. Brewer & Company.

Q Did you occupy any other position?

A No.

Q You were, I believe, head of the National Guard at one time?

A No, I am a Major in the National Guard. I command one battalion.

Q You were chief of the Territorial police?

A Yes.

Q When did you assume those duties as chief of the Territorial police?

A January 2nd, this year.

Q Do you know Thomas H. Massie, one of the defendants?

A Lieutenant Massie came in at my quarters one night and introduced himself.

Q Do you remember what date that was?

A That was either the 5th or 6th of January.

Q Where was that?

A National Guard Armory.

Q Did you have any conversation with him at that time?

A Yes.

Q Tell us the substance of that conversation?

A Lieutenant Massie came in and said that Kahahawai was about ready to crack and wanted to know if I would call him in there and question him. I told him that was sort of a big order for me at that time, as my commission as chief of the Territorial police was to try to capture the escaped convict Lyman, and I told him Kahahawai was in one of my companies, in my battalion, and if it didn't interfere with the civil authorities and if he would drop back in a couple of days I would tell him if I could do that, and I think that was Wednesday night prior to the time Kahahawai was killed.

CROSS EXAMINATION

By John C. Kelley, Esq.

Q How long did you converse with Mr. Massie that night?

A About a minute and a half; not longer.

Q He introduced himself to you?

A Yes sir.

Q You told him you would let him know?

A I asked him if he would come back inside of two or three days and I would let him know if I could

do it without interfering with the procedure of the civil authorities.

Q Did he show any signs of nervousness?

A No. He impressed me with a straight-forward story. He stood up and I didn't ask him to sit down. He had a nice firm grip that impressed me very much.

Q Nothing to indicate he was laboring under any strain?

A No, sir. I hadn't seen the Lieutenant before. He impressed me quite a bit.

Q From what you saw that night?

A Yes, sir.

THE COURT: Has counsel any more witnesses to call?

MR. WINN: No, your Honor.

THE COURT: You have 25 minutes to use up.

MR. WINN: We subpoenaed Beatrice Nakamura, the maid of Mrs. Massie, but she went home the subsequent day and I am afraid we shall have to resubpoena her.

MR. DARROW: We have one or two witnesses we didn't want to use at this time, but we could use one of the medical witnesses. They should have more time to prepare. There are several witnesses that we expect to call. We will be ready for them after this adjournment. If the Court thinks we should go on we could put this witness on out of order.

THE COURT: Are you ready to proceed with your further cross-examination with the defendant Massie at this time?

MR. KELLEY: Not at this time, your Honor.

THE COURT: Be prepared with your witnesses to go ahead and use up the available time, if you please.

(Adjourned to 9 o'clock a.m. Tuesday,
April 19, 1932.)

- - - -

Winn
Mr. Paul Bowers
Mr. Bob Jones

11891

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
TERRITORY OF HAWAII

TERRITORY OF HAWAII,

vs.

GRACE FORTESCUE, THOMAS
H. MASSIE, EDWARD J. LORD
and ALBERT O. JONES,

Crim. No. 11891

Defendants.

The above entitled matter came duly on for further hearing before the Honorable Charles S. Davis, Judge of the above entitled Court, on Saturday, April 23, 1932, at 9:00 A.M., all parties to the action being present in court, and the following proceedings were had and testimony taken:

THE COURT: Will counsel stipulate the jury is present?

MR. WINN: Yes, your Honor.

MR. KELLEY: Yes, your Honor.

THE COURT: The defendants are personally present?

MR. WINN: Yes, your Honor.

THE COURT: Very well, proceed.

MR. KELLEY: At this time, if the Court Please, we would like the record to show that we have made a request upon the defense in this case to be permitted to examine the defendant Massie by psychiatrists and experts for the purpose of their testimony in this case, and that request was refused; and, at

this time, we wish to renew that request.

MR. DARROW: Was that made for the Court or counsel, - the second part of it?

MR. KELLEY: Counsel.

MR. DARROW: They did ask us for permission to examine him. I don't know for what purpose, - and we did not consent.

THE COURT: Let the record show that the defense has refused the request and does, I assume.

MAPUANA PETERS, recalled as a witness for the prosecution, having previously been sworn in this case, testified as follows:

DIRECT EXAMINATION

Questions by John C. Kelley, Esq.

Q Miss, Peters, you have already testified in this case before?

A Yes.

Q Have you any notes with you of certain questions asked the defendant Massie at the City and County Attorney's office on the 8th day of January 1932, at the hour of 12:10 P.M.?

A Yes sir.

Q Will you kindly produce your notes?

A Do you wish me to read it?

Q Will you please read?

A This is a statement made in the office of the City and County Attorney, January 8, 1932, at 12:10 p.m., - statement made to Mr. Wight, in the presence

of Sheriff Gleason, Captain McIntosh, Mayor Wright, Lieutenant Davis of the Military Police, County Attorney Gilliland. (Reading) Question: Your name? Answer: Lieutenant Thomas H. Massie. Question: You are a Lieutenant in the United States Navy? Answer: Yes. Question: Did you go out to Pearl Harbor this morning? Answer: I have no statement whatever to make, sir. Question: Do you want to account for your actions this morning in any way whatsoever? Answer: Nothin, none of my actions whatsoever. Question: All right, I'll have to put you under arrest.

Q Did you observe Mr. Massie while he was in the room that morning, for that period?

A Yes.

Q What was his demeanor?

A Well, he was tense as we all were, but he seemed quite calm.

Q Did you notice him when he answered those questions?

A Yes.

Q How were the answers made?

A Well, he seemed to know what he was talking about, in a calm, level, tone of voice.

MR. KELLEY: That is all.

MR. DARROW: THAT'S all.

DR. PAUL E. BOWERS, called as a witness for the prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Barry S. Ulrich, Esq.

Q Will you state your name, Doctor?

A Paul E. Bowers.

Q Where do you live, Doctor?

A Los Angeles, California.

Q And your profession?

A Physician.

Q Are you licensed to practice medicine?

A Yes sir.

Q Where did you take your collegiate or medical work? From what college did you graduate?

A I received a diploma from Indiana University in 1907; Master of Arts, - Science rather, Valparaiso University; Doctor of Laws, Loyola University.

Q Do you specialize in any particular branch of the medical profession?

A Yes.

Q How long have you specialized?

A Twenty-four years.

Q How long have you practised medicine at your present place of practice, that is in California?

A Ten years.

Q Did you, during that period of time, specialize in your speciality of psychiatry?

A Yes.

Q Were you ever connected with the Government Hospital for the Insane in Washington, D.C.?

A I was a member of the Government staff in the Government Hospital for the Insane in Washington, D.C.

Q When did you hold that position and how long?

A In the years 1909 to 1911.

Q What was the nature, what kind of work did you have to do in connection with that?

A I was a member of the staff of the institution doing medical, mental and nervous work; was in charge of a department in this institution. My department had about 800 cases.

Q What type of patients did they have there? Where did they come from?

A They were soldiers and sailors and seamen of the Merchant Marine.

Q That is, members of the military forces?

A Yes sir.

Q Were you connected with a hospital in Indiana for the insane?

A I was superintendent of the Indiana Hospital for insane criminals.

Q And that Hospital handled cases of the criminally insane?

A Yes.

Q How long were you superintendent of the Indiana

Hospital for insane criminals?

A About 8 years.

Q You had entire charge of the hospital?

A Yes sir.

Q Had occasion to attend to the matter of examination of patients admitted and observation of cases while under treatment?

A Yes sir.

Q Your patients came to you from the criminal courts, from the prisons and other places where the criminal insane were?

A Yes.

Q What period did you say, - a period of how many years?

A About 8 years.

Q During what time, - what 8 years?

A From 1911 up to the war period.

Q You were superintendent, I believe, of another hospital for the insane in Indiana, were you not?

A The Northern Hospital for the Insane.

Q Where was that located?

A Logansport, Indiana.

Q Where is the Indiana Hospital for Insane Criminals where you were for a number of years?

A Michigan City, Indiana.

Q Are you now a member of the Lunacy Commission of California?

A Yes sir.

Q How long have you been a member of that body?

A About 8 years.

Q What are your duties as a member of the Lunacy Commission?

A I am called upon to pass upon the sanity or insanity of individuals charged with crime in the County of Los Angeles, and make a report to the Judge of the Lunacy Court of that city.

Q And you say you have been a member of that Commission for about 8 years?

A About 8 years.

Q You are a member, I believe, of the Staff of the Los Angeles General Hospital?

A Yes. A member of the Neurological Staff of the Los Angeles General Hospital.

Q Cases of psychosis are treated there, are they not?

A Yes.

Q Are you now connected in any way with the Federal Government?

A I am a consultant in Neuro-psychiatry, that is nervous and mental diseases, for the United States Public Health Service.

Q Where?

A For the State of California.

Q Have you written books on mental diseases?

A I have, three.

Q What are they?

A One, "Manual of Psychiatry"; two "The Relationship of Insanity to Crime", and the third one, "Instructions for Medical Officers of the Public Health Service," Army and Navy, for Diagnosing Nervous and Mental Conditions"; a number of articles for journals, probably about fifty.

Q Have you done post-graduate research or work in connection with mental diseases?

A Yes.

Q What has it been?

A I was for a short while at McAfee Cameron's Clinic, the Harvard Medical School for a course of psychiatry for mental and nervous diseases. Later I took a course in nervous and mental diseases at Westminster College Hospital in London under Frederick Stewart and later at Vienna University a course in Neuro-psychiatry, that is mental and nervous diseases.

Q Have you been called before state and federal courts as a medical or psychiatric advisor?

A Many times.

Q What does your work consist of on such occasions?

A Appointed by the judge of the Court to examine individuals charged with crime and submit a report to him and a duplicate report to the attorneys, both for the defense and prosecution.

Q And that has happened on many occasions: in connection with criminal trials in California?

A Yes.

Q And elsewhere?

A Yes. In Arizona, a number of times.

Q Have you made any particular study of criminals and persons charged with crime from the point of view of psychiatrists?

A Yes.

Q What particular study?

A I made a study of individuals in Indiana State Prison and Indiana Hospital for Insane Criminals, I should say.

Q You hold any teaching positions now in your particular line for any University?

A I teach at Loyola University, Los Angeles; Special Lecturer at the University of California; teaching at the School of Police Science in Los Angeles, the subject of abnormal psychology.

Q The courses you ~~ref~~ have given at the various institutions you referred to, have to do with mental conditions?

A Yes.

Q You have testified, have you not, as an expert witness in many criminal trials?

A In a number of criminal trials.

Q Testified both for the prosecution and for the defense; as to the opinion you had?

MR. DARROW: I object to whether it is according to

his opinion. He has testified for the defense and prosecution,- I don't object to that.

MR. ULRICH: I'll put the question this way:

Q You have testified, have you not, both for the prosecution and for the defense on various occasions?

A Yes sir.

Q What had lead you to testify for one side or the other?

MR. DARROW: I object to that. General statement of his being a judge of it himself.

THE COURT: The objection is sustained on the grounds that the question calls for an answer which is immaterial to the issues.

Q In approaching the matter of testifying as an expert on mental conditions in a trial, what is your method of procedure?

A My method of procedure is to secure - - -

MR. DARROW: I object to that question as to what his method of procedure is when approaching a trial.

(Argument)

THE COURT: The objection is overruled.

MR. WINN: May we have an exception, your Honor.

THE COURT: The exception may be noted.

MR. DARROW: The question is general, covering all of his experience.

THE COURT: The witness was asked to describe the method by which he approached a problem of this

kind.

MR. WINN: May we have an exception.

THE COURT: Exception may be noted.

A My method is to secure the family and ordinary history of the individual concerned, to make inquiries into whether or not there is insanity, feeble-mindedness, epilepsy, pernicious habits or constitutional diseases in the antecedents of the individual charged with crime; then to secure a detailed history, as far as possible, from all sources, from the individual concerned and from his relatives and from those who know him, concerning his physical and mental health, his education, his environment, his habits and all things that touch upon his life in relation to his community; then to make a physical examination of the individual to determine his state of health, and then a neurological examination, - an examination of his nervous system including the brain, the spinal cord peripheral nerves or nerves of the body, and then to make a mental examination to determine the operation of his mind, and then to make a written report of all those findings and a conclusion as I interpret them.

Q Now, in the present case, Doctor, have you

been able to examine the defendant?

A No sir. I have not.

MR. DARROW: I object to that question.

MR. ULRICH: Have you examined the defendant?

That is a proper question. I'll withdraw the first question.

Q Have you examined the defendant, Massie?

A No sir.

Q What preparation for testifying here have you gone through? What have you examined?

A I have examined the transcript of the record.

Q You read through the entire testimony of the defendant Massie as it was given here in this case?

A Yes.

Q And also others, developing facts bearing upon his appearance or condition at different times?

MR. DARROW: I object to that. Tell me what that means.

THE COURT: That may be cleared up on cross-examination.

MR. DARROW: It probably can your Honor.

THE COURT: The objection is overruled.

(Exception noted)

Q Have you read portions of the transcript as to what happened on the occasion of his capture on Kokohead Road?

A Yes.

Q Have you read portions of the transcript indicating what had happened to him prior to the kil-

ling of the deceased in this case?

A Yes sir.

Q Of the various experiences that he had gone through and what had been told him from time to time?

A Yes.

Q You read Mrs. Massie's testimony?

A Yes.

Q Doctor, just by way of preliminary explanation so that we may more fully understand the conclusions that you have reached, will you define for the jury what you mean by the term "insanity"?

A Insanity is a hard term to define, but I will do my best. Insanity is ordinarily construed, as I understand it, as a more or less legal or social term. Therefore, I will try to define it in this manner: Insanity is a disease, - is a disorder of the mind, dependent upon diseases of the brain, or other organs of the body or a disfunctioning of the functions of the body which is manifested in a more or less prolonged departure from the individual's general manner of thinking, feeling and acting, and resulting in a lessened capacity for the individual to adjust himself to the environment in which he lives.

Q Now, Doctor, you have given us a definition of insanity, as I understand it, from the point of view of a psychiatrist, - is that correct?

A That's approximately correct.

Q Do you have in mind the meaning of the term "insanity" from the point of view of the lawyer or from the point of view of the criterion for criminal responsibility ~~is~~ under the law of this Territory?

A Well, I believe I have, - I may not, as I understand it.

MR. DARROW: I object. He was asked what insanity means from the standpoint of the law. I expect the judge will tell the jury what the law is in that respect.

THE COURT: The objection is sustained.

Q In reaching a conclusion as to whether the defendant was insane or sane at any particular time, have you reached that conclusion with reference to the meaning of insanity as a condition which prevents the ability to discern the nature ^{and criminality} of acts committed?

A Yes, I have considered that.

Q Doctor, what do you mean by consciousness?

A Consciousness is a state of awareness on the part of the individual of himself and of his environment.

Q How may consciousness as such be disturbed?

A Consciousness may be clouded, - may be confused, it may be incomplete. That is, the individual doesn't fully recognize all the circumstances or facts of

his environment. The individual may be in a dreamy state or he may be in a state of somnambulism, a condition that resembles sleep, somewhat. The individual may be in a stupor in which he is not in entire awareness of his environment and things about him. Apparently sleepy, very much asleep or he may be in a comatose condition in which he is not conscious of his environment or of himself at all.

Q What are the principle causes of conditions of insanity or psychosis?

A There are a number of varieties, - a number of factors that act to produce insanity; no one factor acts alone. We have a factor of heredity- - -

MR. DARROW: I object to that. If we had alleged various causes of insanity then - - -

MR. KELLEY; We found that out the other day.

MR. ULRICH: I think we have a right to lay a reasonable basis for the doctor's testimony.

(Argument)

MR. ULRICH: I'll withdraw the question.

Q Doctor, there has been some considerable testimony in this case about the glands; the endocrine glands ^{or} ~~and~~ the adrenol glands, their effect upon a man in producing what has been described as chemical insanity. Will you tell us something about those glands and their functions, and the part that they play, if any, in connection with

producing or being present with a condition of psychosis?

A The endocrine gland or the ductless glands of the body are the set of glands that have to do with keeping up the nutrition of the body. They have to do with the regulation of metabolism. That is the whole process that builds up the body and keep it built up, and that is the process of metabolism, - those processes that tear down the organs and tissues and regulate the functions of the body. There is a gland in the neck called the thyroid gland which pours out a secretion that has to do with the regulation of the body metabolism or the body function. Sometimes this gland pours out too much of a secretion and the individual develops what is known as exophthalmic goiter. Usually attended by an enlargement of the neck, popping of the eyes, rapid pulse, great prostration, general weakness, marked action of the heart, - increased action of the heart, - and sometimes this condition is attended by false beliefs and delusions, by hallucinations and by an excited mental state; a condition of insanity that is called thyroideal insanity because the gland is pouring out too much secretion. We have an individual, - an individual may suffer from this type of disease and not be insane. Many people have goiters - - -

MR. DARROW: We object to that as to how many people have goiters.

MR. ULRICH: We'll let it go at that.

Q Is it perfectly true, is it not, that many people have disorders of this gland and have no insanity at all?

A Many people have disorders of the ductless gland and have no insanity at all.

Q And on the other hand there are many insane people who have no disorders of the gland at all?

A Yes.

Q Doctor, we have had testimony in the case as to amnesia. What is amnesia?

A Amnesia is a state of forgetfulness, having its origin in some type of mental disease or neurosis, a nervous state.

Q What do you mean by anterograde amnesia?

A Anterograde amnesia is a type of forgetfulness which occurs after the onset of an illness. An individual has had an illness, and then he forgets the things that occur after that.

Q In that type of amnesia, is it true that the things which have been forgotten are things which occurred during a period of complete consciousness?

A Yes.

Q In other words, the mere fact that you have a patient who does not remember things that occurred at the time is no indication that he didn't remember facts when his memory remained clear?

MR. DARROW: I object to that question. The ques-

tion is very leading.

Q I'll put the question this way. Is it not true that if a patient indicates anⁱⁿ⁻ability to remember things that occurred over a period of time is no indication of the fact that he may not have been perfectly conscious of what might have happened at that time and subsequently forgotten it, - the memory is faked. Is not that true?

A That is true. The cause of the mental conflict that goes on in a man's mind about something that may have occurred that is exceedingly unpleasant to him, he may consciously or unconsciously try to bury the remembrance of that experience and blot it out from his memory as far as the east is from the west, to get away from the situation. It may be unconsciously done or it may be^a deliberate attempt or it may be both.

Q We have had a definition in this case of what has been termed delirium with ambulatory automatism. What is delirium?

A Delirium is a state of more or less incomplete orientation. That is, the individual more or less knows where he is, who he is and the time of day, month or year, but is not completely orientated with regard to time, place or person or he may be absolutely disorientated. He may not know about

it at all. And this condition of disorientation is attended by hallucinations. In other words, he is disorientated and hallucinated, and this condition is brought about by toxic status, by fevers that may occur before the fever, and during the fever or after it; and most of the emotional qualities of the mind indicate a state of fear usually.

Q Now, doctor, in a condition of delirium, what type of behavior do you have?

A You have a bizarre, strange, unregulated behavior. Behavior without any definite purpose.

Q That is in the condition of delirium you wouldn't expect a person to accomplish a definite purposeful result or end?

A No. The individual didn't carry out a definite purposeful result because they are disorientated, because they are hallucinated.

Q Was there anything in the case which indicated that Lieutenant Massie was suffering from delirium?

A I found nothing in the records that I read that he was suffering from any delirium.

Q At the time of the killing of the deceased?

A At the time of the killing of the deceased or at any time of which I have read.

Q Doctor, what character of behavior would you expect from one in a condition of automatism or ambulatory automatism, if I may use that term?

A In a state of automatism, the individual carries

an act or acts or movements which resemble acts, or movements or behavior which the individual carried out when he was in a state of normality. For instance, should a carpenter be in a state of automatism, if he should use a saw or hammer or the tools which carpenters employ during a state of automatism, then this would be illustrative or this would be in accordance of automatic movements; but should the carpenter do other acts, such as going to a library to study a book on anthropology or take up some act that did not resemble normal consciousness, that would not change the automatism of the carpenter as being due, - or we would say that those acts were not due to automatism. A dancer might in a state of automatic action, in that state continue to dance and to perform movements that were characteristic of her usual behavior and her occupation.

Q Doctor, in a state of automatism would you expect acts of extraordinary or unusual violence or anything of that sort?

A We might. An individual who suffers from epilepsy, - say he was a butcher and suffers from epilepsy, he might in a state of automatism kill somebody and dismember the body as he might dismember the body of a hog. As a matter of fact, that has occurred in my experience. A fellow, following an epileptic seizure, killed a man - - -

MR. DARROW: I object to that.

MR. ULRICH: We wont go any further with that.

Q Have you seen any indication of epilepsy in this case?

A There was no indication of epilepsy in the case, as far as I saw.

Q Have you ever found automatic acts to be the sole symptom of Hysteria?

A No, you would never expect to find automatic acts to be the sole symptom of Hysteria or any other mental disorder.

Q Did you find any evidence of anything, - in the transcript of any hysteria or mental disorder?

A No sir. I did not.

Q Now, doctor, I am going to ask you whether or not as a result of your examination of the transcript and record in this case, the evidence of Lieutenant Massie and the other evidence you have studied in the case, you have reached a conclusion and formed an opinion as to whether Lieutenant Massie was sane or insane at the time of the killing of the deceased, Kahahawai in this case?

A Yes. I have.

Q In your opinion was the defendant, Massie, at the time of the killing or shooting of Kahahawai the deceased in this case, sane or insane?

A He was, in my opinion, sane.

Q Would you like to explain that opinion?

A If I may.

Q Do so.

A The records of the case show in substance the following: An individual apparently who has no defect in his family tree which relates to insanity or mental disorder of any kind; an individual who has attended two military schools and then graduated from the United States Naval Academy at Annapolis; an individual who served in the Navy of the United States without any record so far as I am concerned of a lack of mental capacity to serve the Government efficiently and well; a record of having lived in Honolulu for nearly two years or approximately two years with no record of any abnormal act or lack of efficiency in his service to the United States Government, a general normal reaction in his behavior throughout this period. I had the opportunity to get the information that this man's wife suffered from a dreadful experience.

MR. DARROW: I object to that part of the answer and move to have it stricken out.

MR. ULRICH: This man certainly has a right to state that. That's what they are claiming.

MR. DARROW: I withdraw it. Go ahead, Doctor.

A Thank you. That his wife suffered from a dreadful experience; that the memory of this experience worried him, annoyed him and preyed upon his mind; that there was a trial about this experience that his wife had; that there was a

disagreement by the jury hearing the case; that this disagreement annoyed Lieutenant Massie as it may have annoyed other persons in the community; that he heard unpleasant rumors concerning himself and his wife which likewise annoyed him; that he, in my opinion, felt that the law may have failed in doing duty to him, - proper duty to him and his wife; that urged on by suggestions that might have come from himself or others and by the violent effect of memory and meditation about the whole affair that he deemed it proper to make an attempt to secure a confession from the individuals who were charged with the action of this dreadful experience and that in the course of trying to secure this confession that might relieve his mind and his wife's mind, and probably the mind of the community in general of rumors that were more or less afloat, that he took precautions, made a plan, executed the plan with some precision and deliberation to secure said confession and during the course of the execution of this plan, that an individual was killed. The killing of this individual was a part of the plan which I feel was quite well laid down, carried out consecutive, sequential and logical fashion. That the individual who carried it out had a knowledge of the possible consequences of this plan and took deliberate and premeditated steps to meet whatever

consequences there might come from the carrying out of this plan. That the instinctive mechanism of self-protection or protection of the family was in this individual's mind; that there might have been some spirit of avengement or getting even. In other words, a primitive type of reaction that might occur in individuals who, feeling that they were not satisfied by the law and that the crystalized opinion of the people of the community whose opinion had been worked into the law, had been the intricate machinery, -
to take care of ^{the needs of} his family and himself; that the individual measured, weighed, considered the natural consequence of his act; that the steps in the plan of securing an automobile, of taking an individual to an officer's residence, of wearing gloves, goggles, of being prepared with guns if it was necessary to use it, and after having committed this act, of making preparations and taking steps to dispose of the body of the crime, or to dispose of the body of the individual who suffered death by reason of the execution of this plan, - that at no time in the reading of the record of this case did I find any indication of the types of insanity or any of the symptoms of insanity. Therefore, I concluded and have concluded that the individual was in a normal state of consciousness, -

that he knew what he was doing at the time he did it.

Q Doctor, did you find anything in the evidence relative to the condition in which he was found after the killing when he was apprehended on the country road here which would either strengthen your opinion or weaken your opinion one way or the other?

A His condition which was existent at the time, after the crime was discovered on this road, was that of a normal individual to my mind. He was suddenly confronted with the fact that he had been discovered. It was an unpleasant experience to be discovered in the perpetration of crime, and his reaction was that of surprise.

Q In your opinion, therefore, Lieutenant Massie, at the time the shot was fired in this case was sane?

A Yes sir.

MR. ULRICH: You may cross-examine.

MR. DARROW: Your Honor, we might take the intermission now. I want to consider one or two things.

THE COURT: Recess for ten minutes.

(Recess)

(Linn follows Chillingworth)

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CROSS EXAMINATION

BY MR. DARROW:

Q Doctor, I assume that you have either been paid or expect to be paid for coming down here and giving your testimony?

A Yes, I expect to be paid.

MR. DARROW: That is all.

(Witness excused.)

- - -

THE COURT: A little less noise in the court room, please.

DR. ROBERT B. FAUS

was duly called and sworn as a witness for the prosecution in rebuttal, and testified as follows:

DIRECT EXAMINATION

BY MR. ULRICH:

Q State your name.

A Robert B. Faus.

Q What is your profession?

A Physician and surgeon.

Q Practice here in Honolulu?

A I do.

Q How long have you been practicing as a physician and surgeon in Honolulu?

A Since July the 5th 1921.

Q And before that time where did you practice?

A I had served as an intern, Cook County Psychopathic Hospital, Chicago, six months, prior to my coming here.

Q Where did you get your degree of medicine?

A At Rush Medical College, University of Chicago.

Q Have you made any particular study of psychiatry?

A I have.

Q What experience have you had in connection with that line of work?

A Well, my experience as an intern at the Psychopathic Hospital, Cook County Psychopathic Hospital, in Chicago, and after my arrival in Honolulu I later assisted or made a mental examination of the patients in the Territorial Hospital at the request of Dr. Trotter, assisting him in preparing recommendations for removal of the Territorial Hospital, then on School street, to another site with a new institution. I became associated with the police department as a police surgeon having to do with the commitment of cases to the Territorial Hospital, at the then emergency hospital in the police station. That was about six years ago. For the past six years I have examined and committed to the Territorial Hospital most of the patients applying from this Island.

Q You were connected, were you not, with some institution handling mental cases in Chicago?

A I was an intern at Cook County Psychopathic Hospital under Dr. Namen.

Q What were your duties in that connection?

A The examination, physican and mental examination, of the patients committed day by day there. There were two interns. They admitted between thirty or forty patients a day.

Q And in connection with the performance of your duties there you had occasion to examine and care for many cases of mental disorders of various kinds?

A Yes, we had charge of the care of patients there as interns, held for the period of observation prior to their commitment to the three hospitals in Northern Illinois, Kankakee, Elgin and Dunning.

Q It was sort of a clearing house?

A Yes.

Q You have testified, have you not, in various trials as an expert on mental conditions?

A I have, locally.

Q In Hawaii?

A In Hawaii.

Q Dr. Faus, you have been present here in the court room throughout this entire trial, have you not?

A I have.

Q You have heard all of the evidence that has been produced in the case?

A I have.

Q You have had connection to observe and have observed the defendant, Massie, in the course of his giving his testimony as a witness in this case?

A I have here in the court room only.

Q And also generally about the court room, you have seen him, - had occasion to observe him?

A Yes.

Q And did observe him?

A I did.

Q And you carefully noted all of the testimony that he has given in this case?

A I have.

Q And the other testimony as well?

A I have.

Q I will ask you, Doctor, whether or not, basing your opinion upon what you have had occasion to observe, what you have heard, from the testimony in the case and upon the evidence that has been produced here in Court, from your observation of the man himself, you have reached a conclusion and formed an opinion as to whether or not the defendant Massie was sane or insane at the time of the shooting and killing of the deceased, Kahahawai?

A From my opinion?

Q Have you reached an opinion?

A I have.

Q And now will you state whether or not in your opinion the defendant Massie was sane or insane at the time of the killing of the deceased in this case?

A In my opinion, from my limited observation of the man, I believe the man was sane at the time the act was committed.

Q That is your opinion?

A That is my opinion.

Q And now will you explain that opinion, Doctor?

A Well, in my observation I note that he was well oriented as to time, place and person. His memory for past events and present events was good. His calculation seemed good; that is assumed that a graduate engineer from a military academy necessarily could not have reached his position unless his calculation was good. His judgment seemed clear, cool, calculating, normal. His mental attitude, and I have only been able to observe that here in the court room, seemed to be that of sober tenseness. I did not see sufficient evidence in the record to indicate that he was suffering from hallucinations, illusions, or delusions of a persistent character, repeatedly, or any other of the psychotic insane reactions that normally completes an observation of this kind.

Q And for those reasons, and as a result of your

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observations and knowledge of the facts in evidence in the case, it is your opinion that at the time of this shooting and killing the defendant, Lieutenant Massie, was a sane man?

A He was.

Q And knew the nature and criminality of the act being then performed by him?

A I believe he did.

Q That is your opinion, is it, Doctor.

A It is.

CROSS EXAMINATION

BY MR. DARROW:

Q Doctor, how long were you studying psychiatry in Chicago?

A Just six months.

Q You mean by that taking lectures?

A No, I was living in the hospital as an intern.

Q You were living in the hospital as an intern?

A Yes.

Q With the insane people?

A They were not on the floor that I was living on, but they were in the same building, yes.

Q All insane people there,- I don't mean the interns, Doctor,- I am not trying to be smart with you,- I mean the patients?

A The patients were brought there for observation,

Mr. Darrow, Most of them were insane; a few, naturally, would not be found insane and would be discharged by the Court. Does that answer your question, Mr. Darrow?

Q I think so. How many patients did they have, as a rule?

A Well, Thursdays, the day that Court was held,- I have forgotten whether it was Thursday or Friday,- I believe it was Thursday,- the building would be full. There would be about three hundred or three hundred and fifty, and then they were cleared out; the street car came right to the institution and we loaded them in street cars and moved them to Dunning, Elgin and Kankakee, whichever they were destined for.

Q That is on the days the County Judge came there to pass on the insanity and sanity of the people?

A Pardon me?

Q That is on the days the County Judge came there to pass on the sanity or insanity of the people who were brought before him?

A Yes.

Q Well, that is clearing house day?

A Yes.

Q It came once a week?

A Yes.

Q And were those all from the hospital where you were an intern?

A Well, that was the Cook County Psychopathic Hospital. They received insane from the City of Chicago there,- northern Illinois.

Q You never made a specialty of psychiatry to any extent?

A I never have limited my practice to it, Mr. Darrow.

MR. DARROW: That is all.

(Witness excused.)

MR. KELLEY: The next witness, if your Honor please, is not here, but should be here in a few moments. I am afraid we shall have to ask for a recess.

THE COURT: Is this your last witness?

MR. KELLEY: Yes, your Honor. He will be here in ten minutes.

THE COURT: We will take a recess for ten minutes.

(Recess from 10:21 a.m. to 10:56 a.m.)

THE COURT: Counsel have requested a continuance until Monday morning at 9 o'clock. Counsel will have their instructions prepared and be ready to exchange Monday morning at 9 o'clock, and hand your instructions to the Court at that time.

MR. KELLEY: Yes, your Honor.

(Adjourned to 9 o'clock a.m., Monday,

April 25, 1932) * - -

Dr. Cotton
Dr. 1306 7ms

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
TERRITORY OF HAWAII

TERRITORY OF HAWAII,)
)
 vs.)
) Crim. No. 11891.
 GRACE FORTESCUE, THOMAS)
 H. MASSIE, EDWARD J. LORD)
 and ALBERT O. JONES,)
)
 Defendants.)

The above entitled matter came duly on for further hearing before the Honorable Charles S. Davis, Judge of the above entitled Court, on Monday, April 25, 1932, at 9:00 A.M., all parties to the action being present in court, and the following proceedings were had and testimony taken:

THE COURT: Will counsel stipulate the jury is present:

MR. LEISURE: Yes, your Honor.

MR. KELLEY: Yes, your Honor.

THE COURT: Let it appear of record that the four defendants are personally present.

MR. KELLEY: At this time we file our instructions as requested by the Court.

DR. JOSEPH CATTON, a witness for the prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Barry S. Ulrich, Esq.

Q Will you state your name?

A My name is Catton, - Joseph Catton.

QQ Where do you reside?

A In San Francisco.

Q What is your business or profession?

A I am a physician, sir.

Q Are you duly licensed to practice medicine?

A Yes.

Q Have you specialized in any particular speciality of your profession?

A I specialize in nervous and mental diseases and disorders.

Q How long have you specialized in that line?

A I have given special attention to that line of work ever since I was in the University and Medical School, and I have limited my professional career to that line of work since 1918.

Q Have you practiced continually in California?

A Well, practically all of my practice has been in California; but I have also practiced in Oregon, Nevada and Arizona. That is, I have been in cases in those states, both professionally and some in contact with court work. And my practice has been

continuous in California with those exceptions, and with the exception of about two years at the time of the world war.

Q Have you been in Government Service?

A Yes, when the war was on, I was in the Medical Corps, serving most of the time in the Medical Department, as a Major. I was in the Medical Department in both this country and in France. I was most of the time in this country and in San Francisco.

Q Are you attached to any medical school?

A Yes, I carry the title of associate professor of medicine, assigned to the Department of Social and Mental Diseases in Stanford University Medical School.

Q Do you give lectures in connection with conducting your classes?

A Yes, I am in charge of the giving of lectures and conducting classes in neurology, which means diseases of the nervous system, and psychiatry which is mental diseases; and I also have the duties in that school of teaching the young men studying medicine the legal aspects of medicine concerning such cases as we are now in here.

Q Do you hold any hospital assignment?

A Yes, I am visiting psychiatrist to the San Francisco City and County Hospital. That is, I am one of the men, - there are two of us in charge of

all the various indigent cases in San Francisco; I am also connected with Mary's Help and in Lane University and in Stanford University.

Q Are you attached to any Governmental Body?

A I have a definite attachment to some and periodic attachment to others. I am am a consultant of nervous and mental diseases to the United States Veterans' Bureau, out of San Francisco District; I am consultant in nervous and mental diseases to the United States Employees' Compensation Commission out of Washington; I am periodically engaged in giving service to the Government, both to the United States Federal Judges and the United States District attorneys, and the Judges of the Superior Court of various parts of California and district attorneys as certain cases arise, giving opinions thereon; next to make reports and to watch the prosecution and to be prepared in a great number of recent years to advise the Court.

Q You have been an advisor to the Court in psychiatry, - to the Courts, themselves, in California?

A Yes sir.

Q Have you made any particular study of criminals and persons charged with crime?

A Yes, in connection with work I have just referred to, in Court; and in addition I have given

much though and time myself to the matter, and I did for a period of three or four years, some eight years back, run what was known as a psychopathic clinic in connection with the San Francisco City and County Jails in which I oversaw and directed and laid down surveys in which I took part. I was appointed five years ago to the best of my recollection to one of the Rockefeller Foundation Surveys to help in a national survey of felons, that is criminals charged with major crimes. They made a survey of a hundred and they gave me six cases on the Pacific Coast.

Q You testified, have you not, as expert witness in many criminal trials?

A Yes, I have.

Q I believe the last trial you testified in in such capacity was the Judd trial in Arizona?

MR. DARROW: I object to where he testified last, and to the reference to the Judd trial.

THE COURT: The objection is sustained.

Q Doctor, have you examined any of the defendants in this case?

A I have not. I requested and was informed - - -

MR. DARROW: Wait a minute. You answered the question. The question is did you examine any of the defendants.

THE COURT: The question has been answered.

(Argument)

THE COURT: It already appears in this case there has been a refusal. There is no occasion to go further in the matter.

Q Have you examined any of the records in the case now on trial?

A I have, yes sir.

Q What have you examined?

A I have read in their completeness as furnished to me in transcript by the Attorney-General and yourself, the complete testimony of Lieutenant Massie, of Mrs. Massie, of Dr. Oberson, of Dr. Williams, of Dr. Withington, and Officer named Von Oswald, Officer Bond, Reporter Wright, Detective Takei, Detective Cluny and Mr. Seymour, and Deputy Sheriff Hoopai.

Q Doctor, as a result of your examination of the records in the case and of your study of the facts, as shown by those records, have you formed an opinion as to the sanity or insanity of the defendant, Thomas Massie, at the time of the killing of the deceased, Joseph Kahahawai in this case?

A I have, yes sir.

Q Have you, as a matter of fact, furnished to the Attorney-General of this Territory a report including the results of your finding in that connection, and stating your opinion?

MR. DARROW: I object to whether he furnished a report to the Attorney-General. It has nothing to do with this case.. Whom he furnished it to

doesn't matter. He has not furnished it to us.

THE WITNESS: I have another copy.

MR. DARROW: It is too late as you know.

(Argument)

THE COURT: I don't think it is material whether the witness has furnished a report. He is here to testify.

Q Now, Doctor, I am going ask you to state to the jury and to the Court the opinion which you have reached in this connection, first indicating the facts or basis upon ^{which} that opinion has been based, and then your opinion with your reasons therefor?

MR. DARROW: May I ask you to speak a little more slowly than you have, - just so I can follow you.

A Preparatory to forming an opinion, I read all of the evidence - - -

MR. DARROW: I object to that, because we have heard it.

MR. ULRICH: I think this witness should be allowed to testify in a reasonable manner. He has a right to give the basis upon which that opinion is formed.

(Argument)

THE COURT: If the Doctor has admitted anything as to what he has read he may add to it now. If it is a reiteration of former testimony, it is not necessary.

Q Without stating what you have read again, proceed and tell the jury the facts upon which you base your opinion, and your opinion and reasons therefor?

A From this record I learned of certain things which gave me an adequate picture of the mental state of Lieutenant Massie on January 8, 1932, at the time of the killing of Kahahawai. I further learned as relating to his mental condition at that particular time the influence which his previous mental status bore to that and also read from the record and formed an opinion which I have with reference to the mental condition immediately after the killing of Kahahawai, as part of his mental condition as to sanity or insanity at the time of the killing, it is my opinion that as a part of the mental makeup of Lieutenant Massie at that moment was written into his mental condition a long series of facts which I have in my mind as part of my opinion. I believe, and it is my opinion that Lieutenant Massie was at the time of this killing, a man 27 years of age who found himself, - - - pardon me on the age, 1905 - - -

MR. DARROW: That's correct.

A (continuing) --a man 27 years of age who had been born in Kentucky and who had gone to one military school and to another military school and then went to the United States Military

Academy at Annapolis for four years, where he graduated in 1927. Also in my opinion as part of this man's mental makeup at the time of this killing he was a man who had married a girl by the name of Thalia Fortescue who was at that time 16 years of age in 1927, and from then on he and his wife had been travelling about together depending on his assignment. I have learned further that the last two years of their living together previous to this episode was in Honolulu. It had been the custom of Lieutenant Massie and his wife to go out socially; it had been Mrs. Massie's custom which Lieutenant Massie knew and which was a part of his anxiety on the day of this killing; that Mrs. Massie was not always so anxious to go to these parties as was the Lieutenant, and that when she went to these parties it was her habit to want to go home early, at which time she would excuse herself or he might take her home himself. In September last year, I believe September 12th, such a party was attended by Lieutenant Massie and Mrs. Massie, the circumstance being that he had suggested going to this party at the Ala Wai Inn at first, and they talked about who was going and finally they decided to go and they arrived there. Lieutenant Massie described in detail the time of arrival, the people who were there and the parties they were

with, and the events as they progressed. During the evening Lieutenant Massie had a half a drink on one occasion and later on another portion of a drink. On going upstairs he found Mrs. Massie sitting with another party. He had already danced twice with her that evening. On his going downstairs again that was the last he saw of Mrs. Massie until he returned home. At about 11:30 Lieutenant Massie says it was announced by the orchestra that 12:00 o'clock would be the last dance. That statement was made in connection with the fixing of the time of the disappearance of Mrs. Massie. However, I have no accurate statement of the time she was missed because in another portion he says Mrs. Rainer told him the next day it was 11:30.

MR. DARROW: I object to the whole recital of this testimony. The jury have heard it, and it has no special bearing on this case, - all these details, - that he had had a drink here or had a drink there or how old Mrs. Massie was. It is almost a verbatim recital of the testimony that has taken days to put on.

(Argument)

THE COURT: Do you intend to show that all this forms the basis of the Doctor's opinion?

MR. ULRICH: Yes, your Honor.

THE COURT: With that understanding I'll allow it.

MR. DARROW: Your Honor, just one suggestion; this witness has said he had read every word of this testimony, the jury has hear every word of it, does he ^{need} ~~intend~~ to tell the jury every word or just the fact that he has read it? To have him recite here again this long story is not at all necessary.

THE COURT: Well, if it is necessary to form a basis of his opinion, as the Doctor so testifies, - He has not given his opinion yet?

MR. KELLEY: That is true.

THE COURT: Do I understand that this is necessary as a basis of the Doctor's opinion?

MR. ULRICH: This is necessary in the Doctor's opinion as a basis of his opinion and enables him to properly explain the jury to the jury. Counsel has stated that he has read the transcript. He has not read the transcript. I feel that we have a right to indicate to the jury that portion of the evidence which the Doctor feels pertinent to indicate the bearing it had on his opinion and that it is furnished as a basis of the Doctor's opinion.

THE COURT: If it forms the basis of his opinion, he may state the basis of his opinion, but if it does not, it is subject to be stricken out.

(Exception noted)

A (Continuing) Lieutenant Massie began a search and decided to go home and begin a search for his wife. Others joined in the search. She was not found. It was suggested that Lieutenant Massie telephone and on telephoning to the house of one Rigby, where it had been planned to go after the party, and there was no answer. He telephoned to his own house and there was no answer. He made other telephone calls but could not locate her. He remained at the Inn until 12:30 mid-night and then he took a friend to the Rigby's place. The Rigbys were not home. Lieutenant Massie then once more called his home and his wife answered the phone and said to her husband "Something terrible has happened" - and her husband went home as soon as he could and when he got there his wife was crying; she was in a state of collapse and she said to him something terrible has happened, - she seemed to hesitate to tell the story and finally broke down and told him the whole story which had an effect at that time and which he carried right up to the time of the killing of Kahahawai; that she had left the Inn and gone for a walk because she was tired, and that an automobile with two persons had come along and the two men left the car and forced her into the car. One man whom she identified as Kahahawai had struck her and that another man that she later

identified as Chang pushed her and Kahahawai pulling her, she was taken into this car; that she offered money to them and that was laughed at. They took the purse and saw what was in it and that was all. These men took this unfortunate woman and drove along in various directions and finally entered the bushes. There then appeared to be other members of the group besides Chang and Kahahawai. She was dragged into the bushes, and Kahahawai struck her again and again. She was assaulted by certain of these men and prayed during one of the assaults, she pleaded with Kahahawai to let her go, and he told her to shut up; she told her husband that she said to Kahahawai "You've knocked some of my teeth out",- and he made some other remark and struck her again; she told her husband that her string of beads had been broken at the time; she told her husband at the time of telling this story that immediately upon coming home she had taken precautions against pregnancy and disease. Lieutenant Massie heard this story and he immediately got in touch with the authorities, and the police came, and Mr. Massie was there and had written into his mental life the picture of the police talking to his wife and examining her. And also down at the police station Mrs. Massie was examined and cross-examined; and at the police

station they found a brother lieutenant who was being held there in connection with the report made by Captain, - Lieutenant Massie at home. Lieutenant assured the police that Lieutenant Bronson had been with him all evening.. Mrs. Mrs. Massie, at the time, she told her husband was found to have bruised lips, swollen eyes, and to be bleeding from the nose and from the mouth, and in addition she had contusions or swellings on the right side of her jaw, and it was necessary to have medical treatment. Mr. Massie was present when his wife had medical treatment at the hospital. He nursed her at the hospital. He nursed her at home. He was present when her tooth was extracted under anesthetic and all through this he was made more nervous, more worried and he was under a tension. As a matter of fact, as time went on he lost weight, and could not sleep very well. Doctor Withington, who was attending to hiswife, prescribed also, not as a patient, but told him to take some of his wife's medicine and to get some rest. As time went on, Lieutenant Massie awaited the trial of these alleged assailants. He also began to hear rumors around - - -

MR. DARROW: I object to the word "alleged". The witness assumes that the story is true and told in good faith. Some say it was not true.

THE COURT: The matter is subject to cross-examination. The objection is overruled.

A (Continuing) I will say this: He awaited the trial of those he believed to be the assailants. And the trial arrived, and the assailants, the alleged assailants, in the eyes of the law, were tried. And Lieutenant Massie went with his wife, that is, he was the driver of the car all through that early portion of the trial, bringing her here and coming down to get her and on one occasion comes in and sits for ten minutes during the course of that first trial; that he was sent away on duty, and while away he learns that the jury has disagreed as to whether these assailants are the assailants and as to whether the assault took place. Following that, Lieutenant Massie states he discussed it with one, Stewart, one, Attorney Beebe, one Attorney Thompson, one Mrs. Fortescue, one, Admiral Sterling and one Major Ross, as to what might be done as to certain relations. He conceived the idea that if he could get a statement or a confession from Kaha-hawai the rumors which were going around would be stopped. And he states that he was informed by Attorney Beebe that a confession or statement gotten with a threat or where marks were made on the body of anybody or left on the body it would not be valuable. Mr. Massie also considered the

matter, - in the record he states that he felt for some time that he should kill Kahahawai. He doesn't deny nor does he affirm but says he does not remember whether he told Attorney Beebe and one other person three or four days before the killing that he should take Kahahawai out and kill him. When asked by Doctor Orbison why he had not killed him sooner, he gave three reasons for not killing Kahahawai: one, that he was raised in Kentucky; two, that he had Naval training which led him to respect law and order; three according to the advice of Admiral Sterling to the effect that he should do nothing which would hurt him, it, the case or his wife. Following this trial that I referred to, the rumors were being more persistent and more prevalent and Lieutenant Massie, in his nervous state had brought to him rumors of this sort and had these on his mind. 1. That as a matter of fact, there had been no assault and that his wife was lying about ^{it} and seeking not tirety. 2. That it was actually said some Navy men had attacked his wife at that time. 3. That Lieutenant Bronson and his wife were together at the Inn. And another, that there had actually been a fight between Massie and his wife and that she had left the Inn, and that he had gone himself and had beaten her up; and then another one, that there was

no assault at all. Lieutenant Massie learned all these things. Then Mrs. Fortescue having arrived from the coast, he and Mrs. Fortescue discussed the advisability of picking up one of the defendants, Kahahawai, and getting a sort of a statement. Mr. Massie went to one, Jones, and spoke to him about the plan, and he told Jones that he thought he needed two men rather than one, besides Massie, and Jones arranged for them to meet one, Lord, and they called on him and then there were four of them and they met and made the plans. The record shows and it is a part of my opinion of what was on Massie's mind. These four persons met and planned the night before the killing. They met once at Massie's house and once at the Fortescue house at which time it was decided that Mrs. Fortescue should signify who the man was that was wanted. Another was to show a fake summons, - this summons having been prepared by Massie and Mrs. Fortescue, - Massie taking a seal from a diploma and Mrs. Fortescue a portion of a newspaper, someone writing in ink certain data including the name of the Territory of Hawaii, or some official looking paper. It was planned that they should do that. It was also planned that they should not use their own cars but should rent a car, and the four

of them attempted to rent a car and not being successful, rode around town and finally turned this job over to Jones to secure a car, which he did, and Lieutenant Massie said it was satisfactory. The morning of the killing of Kahahawai, there was another meeting between seven and eight. Jones and Lord had stayed at the Fortescue house the night before. Lieutenant Massie had brought to the Fortescue house that morning his gun and threw it on a divan, or settee. The night before it had been decided by the four persons, including Massie that a gun would be used in the transaction, - that a loaded gun would be used, and Massie had the idea in mind that to cock the gun while holding it over Kahahawai would scare him more and do the job better. In the morning, however, Massie brings his gun to the Fortescue house. Jones says something about Kahahawai being a large man and that he had brought his gun. And Massie recounts to him that Attorney had said that to use force means to make the confession weak, and so he takes Jones' gun away from Jones, and places it on the table or shelf, two guns being brought there that morning, and I see from the record there was already one gun at the house available. There was made available at the house a rented car.

MR. DARROW: I object to that there was made "available at the house a rented car". It summarizes what he has already gone over.

(Argument)

THE COURT: The objection is overruled.

A (Continuing) Lieutenant Massie and the others had made available at the house two guns and a rented car.

MR. DARROW: I object to that.

THE COURT: Same ruling.

(Exception noted)

A (Continuing) A fake summons. Lieutenant Massie had supplied himself with some dark glasses and some gloves and there became available at the house during the transaction a piece of tauparlin and a rope which Lieutenant Massie says which rope had been secured as a run-line for his little dog, but that his dog grew to like him and to stay home, and it didn't have to be used for that purpose. The people went down town, Kahahawai was pointed out, one of the others asked him to get into the car. Lieutenant Massie placed the glasses and gloves on himself so as to appear as a chauffeur and drove along with either Lord or Jones, I have forgotten, without refreshing my memory, and drove Kahahawai to the Fortescue house. In the meantime Kahahawai was told that he was

going to Major Ross. Lieutenant Massie got out of the car and went into the house and removed his glasses and the gloves and took the Jones gun in his hand and announced that it was all right; that Major Ross was there or something to that effect, and to come in. Then Lieutenant Massie described in detail the manner in which the people entered the house, the position they took, and where Kahahawai and he Massie was and then he described in detail the questions he put and the answers Kahahawai gave. And he tells as part of my picture of his mental state at that time that he told Kahahawai among other things that he lied on the witness stand "But you are going to tell the truth now"; and that he held this gun as he says on Kahahawai and then he cocked the gun and loaded it and held it pointed towards Kahahawai; that he also told Kahahawai many other things "You know about the kidnapping of Ida and you know what he got and he told plenty on you, and what he got is nothing to what you are going to get if you don't tell the truth"; and consistently Kahahawai said, in effect, that he knew nothing about it.

MR. DARROW: I move to strike out the word consistently.

THE COURT: It may be stricken.

A (Continuing) At a certain stage, Mrs. Fortescue said in effect "There is no use in going on. He is going to lie all the time. We had better go on with our other plan." Lieutenant Massie said, "No, I have another question to ask." And then he said, "There are some men outside, and if you don't tell the truth in a minute, they will come in here and cut ~~to~~ you to ribbons." And then he said to Kahahawai which influenced my opinion of his mind at that time. He asked Kahahawai, "Why did they kick the woman?" and Kahahawai said "They didn't kick the woman" and then he said, "That shows you were there when this thing happened." And then, finally at the end of all this threatening, Massie says Kahahawai said, "We done it."

MR. DARROW: You mean Kahahawai said it?

A (continued) Kahahawai said "We done it." And there came to Massie's mind a picture of his wife being assaulted by Kahahawai, a picture of his wife praying and Kahahawai beating her, and Lieutenant Massie says that is the last thing he remembers; that he does remember certain statements being made by one of the men to Mrs. Fortescue that he, Massie, should be taken out and given some fresh air; he remembers not the trip on the road but he says he remembers the stopping of the car and that there were some

people about, and that some of them may have been in uniform; he remembered being in the City and County Attorney's office but is hazy as to what took place there. He was noted, however, at the time of the apprehension to be pale; he was noted to stand, - to sit in a position looking straight upwards; he was noted back at the house by Mrs. Fortescue for a time to look like a bump on a log. Mrs. Fortescue took him in the kitchen and offered him a drink and he refused. And Mrs. Fortescue asked him questions which he did not answer. He was noted by Lord, I believe, - either Lord or Jones, - at the house after the killing, to be acting like a damn fool. Those were the witness' words. He was noted out at the place of apprehension when an attempt to photograph him was made, to place his hand over his face. He was asked by a reporter if he was Lieutenant Massie and he answered "Yes." He was asked by the reporter if that was his mother-in-law or Mrs. Fortescue, and he said "You had better ask her." He spoke to one detective there and said. "Hello big boy" or something to that effect, "Haven't I seen you at the police station?" And when an officer said to another "Good work, kid," and before anything further might be said, Lieutenant Massie

clasped his hands and shook them and said, back toward the officer, "Thank you very much." He accepted a cigarette from some one, - asked for a cigarette and accepted a light and later asked for another one. He got out of his car when requested; he got into the radio patrol when requested. At the office of the City and County Attorney, when asked to make a statement or if he would make a statement concerning what had happened, he said he would make no statement nor would he give any accounting for what he had done that morning. I find later also from the story as a part of the mental picture of Lieutenant Massie that just before the apprehension the car was pursued by officers and that shots were fired at the car and the car finally brought to a stop, and the officers faced Lieutenant Massie and the other parties. I have searched the record very carefully and I find that there is no evidence in the record, - there is no evidence of any hereditary nervous or mental diseases, - there is no testimony in the record of Massie's past life.

Q May I interrupt. I understand that you have now given in general the facts upon which your opinion was based, - your opinion and explanation.

A That was the only exception that in his, Lieutenant Massie's past life, in his family tree, I found that there is only one thing that

points to mental or physical disturbance, namely that some years ago he had a minor operation with a local anesthetic, following which he bled, and then he fainted, and that when he came out of the faint, he for a period, for hours, failed to recognize those around him. Then without refreshing my memory from my notes, there are mental behavior factors which run through the record which I have referred to, the ones that I used in arriving at an opinion.

Q And now, Doctor, based upon those facts and upon the record you have read in this case, I understand your testimony to be that you formed an opinion?

A Yes.

Q (Continuing) As to the sanity or insanity of Lieutenant Massie at the time of the killing of Kahahawai?

A Yes.

Q I am now going to ask you what that opinion is and to give your reasons which led you to arrive at that opinion?

A Well, my opinion consists of four short parts and the reasons for this opinion describe the type of condition that I found present and are necessary to properly state what my opinion is. Number 1, It is my opinion based upon the data that I have received that at the time of the killing of Kahahawai

Lieutenant Massie was sane in the medical sense. That is he had no psychosis, that is the medical man's term for insanity. Number 2, It is my opinion that at the time of the killing Lieutenant Massie had no brain disease which led to a mental derangement which prevented his ability to discern the nature of the criminality of the act, action, of the transaction out of which came the killing of Kahahawai. It is my further opinion that Lieutenant Massie's mental was such at that time that he is in a mental condition in which he might orient himself or understand himself in relation to the crime with which he is charged, and that he might prepare a just and rational through his attorneys. Number 4, There is much in the evidence that explains exactly the mental condition of Lieutenant Massie and the manner in which the unfortunate episode could happen and the manner in which they pull down his mental reserve and the manner in which this occurred was apparent to him. That these occurrences all way down the line are capable of being expressed by me as part of my opinion. That thing there would form the picture of a man without the details.

Q To summarize your conclusion, is it your opinion that at the ^{time of the} killing of Kahahawai, Lieutenant Massie both in the medical and legal sense was sane or insane?

MR. DARROW: I object to the question. He stated his conclusion of what he was in the medical sense and certainly not what he was in the legal sense.

THE COURT: You have asked him whether he is insane in the legal sense.

MR. ULRICH: I'll withdraw the question.

Q I asked you, Doctor, whether or not in your opinion at the time of the killing of Joseph Kahahawai, Jr., Lieutenant Massie was in such mental condition that he was capable of discerning the nature and criminality of the act of killing Kahahawai?

A In my opinion he was in such a mental condition.

Q And now, Doctor, will you state the reasons which have led you to reach the conclusion you have stated?

A Yes, the reasons are these: The data which I have just reviewed indicates to me that before September 12, 1931, Lieutenant Massie was an average normal sane person. In my opinion when he learned all through the story of his wife and believed that an assault had been committed against her he was made nervous and put under a tension; his emotions were disturbed as would be those of any sane man.

MR. DARROW: I object to that part of the answer "as would be those of any sane man".

MR. ULRICH: He is testifying as to his opinion of mental condition.

THE COURT: Those words may be stricken. We are only concerned here with the mental condition of Mr. Massie. There is no necessity of interjecting other propositions.

MR. ULRICH: Doctor, you can't refer to any other men.

A (Continuing) Yes. Then came a period when Mr. Massie was in ^{close} ~~int~~ touch with his wife's sufferings and which he heard repeated over and over and over her story of what had occurred, and because of this he, as a sane man was more nervous and more upset, and his anger-fight mechanism were brought into play, - the instinct of anger and the behavior that goes with anger, that is fight, not meaning fighting with fists or guns, but the whole matter of fighting a proposition that brought it about. And with that he begins to make the first move to call the police that they might be able to deal with the situation in the hope they might get retaliation for the act that had been committed and the honor of his wife's name has been restored. And as time goes on, Lieutenant Massie, ~~he~~ as a sane man, does lose weight; he does lose sleep; he does become in water-polo who formerly was a good player is now a weaker player; he does become a man

who talks over with his wife's doctor certain symptoms and as that doctor told him to take some of Mrs. Massie's medicine and that he must have rest. I think I said he does lose sleep. In addition, he doesn't go out socially any more and as time goes on he finds that rumors begin to start, and he finds that his friends apparently were of the opinion as I stated before, and told him of these rumors which had been circulated around. That Massie's anger-fight mechanism toward authority and law, he awaits the result of law and the trial of these men whom he believes to be the assailants, and the trial comes and following this trial and the verdict of disagreement he is perplexed and doesn't know how such a thing could ever have happened, and he has found and there has been woven into his mental life at the moment the definite feeling and believe and the duties in relation to it that his theory that Kahahawai assaulted his wife and should be apprehended and should be punished is not the theory of the populace in general and was not the theory of the jury which tried them, and he began to learn that in many ways his friends bringing the information that rather than Lieutenant Massie's belief, as being the proper one, some of the people believe there had been no assault.

MR. DARROW: I move to strike that. He has no right to testify to his opinion as to the feeling of the populace or of the jury that disagreed, and it is not necessary that he should.

MR. ULRICH: The doctor has a right to go into this opinion feeling that it is necessary that he should in order to give the nature of his conclusions.

THE COURT: Well, I don't know, the doctor is evidently trying to analyze or giving his analysis of the mental condition of the person in mind, Mr. Darrow.

MR. DARROW: I object to his stating what the community is here, or was here. The doctor is testifying about the popular opinion of the assault case. This Doctor comes from California and knows no more about that than if he had been in Australia. All he knows is what he had heard since he has been here from talking with the attorneys.

(Argument)

MR. DARROW; May I have the question and answer read? We may as well have the recess now to give me an opportunity to get the question and answer.

THE COURT: Very well we'll take our recess.

(Recess)

(Linn follows Chillingworth)

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Q Will you proceed, Doctor, with your answer.

A It is my recollection we were in the middle of some question or some answer, were we not?

MR. DARROW: I will save an exception to the Court's ruling and let it pass.

THE COURT: Very well. Proceed, Doctor.

A Yes, sir, just a moment. May I have repeated my last few lines to tie my case together?

MR. DARROW: I object to the repeating. I object to the question being repeated.

THE WITNESS: Then I will request, please, that my last answer be read to me.

MR. DARROW: I object.

THE WITNESS: I do not recollect it, sir.

THE COURT: What do you mean, the whole answer?

THE WITNESS: I mean the last paragraph or the last few lines, so that I may know where to continue from.

(Reporter reads last part of preceding answer to the witness).

A (Continuing) He believes that some of the people believe that there has been no assault. He believes that some of the people believe that he followed his wife and a man of the party; he believed at this particular time I am referring to that some of the people believed that Lieutenant Branson and his wife were together; he believes that some of the people believing the story---

MR. DARROW: (Interrupting) Just a moment, your Honor. The witness has been all over this.

THE COURT: I don't think so, Mr. Darrow, no.

MR. DARROW: About Lieutenant Branson, that there had been no assault and so on, and that some of the people followed her.

THE COURT: Not this particular portion of it. He is describing the mental condition, or the state of mind, of the defendant Massie.

MR. DARROW: I will withdraw the objection.

A Contrasting in his mind his own belief that in Kahahawai there is the real assailant with his beliefs that the public is divided as to its beliefs as to whether Kahahawai is the assailant or whether there has been any assault at all. Then we find Lieutenant Massie at this stage of the proceeding acting as a sane, a normal, an average and rational being, and who is using and has used good judgment, but at this stage of the proceedings it is my opinion that Lieutenant Massie in his mind believed that he could not depend on the force of law and order to work out the case the way that he believed it should work out and still as a sane, a normal and a rational man he makes his first step away, in my opinion, at that moment, from his previous average, normal behavior and its beliefs, and that he then chooses to himself become the agent who will deal with Kahahawai rather than taking the

chance of leaving it to society by orderly process of law and order to make the determination for him. Not only does he make this new judgment but he begins to act on that judgment, and, without repeating it in detail, he makes approaches to different people and undertakes to bring to his own mind certain plans, programs and activities for looking them over and for making judgment in relation to them. He considers kidnaping, or, to use another term, he considers picking up Kahahawai and taking him somewhere. He considers at this time the matter of getting a statement from him. His attitude of mind at the moment, as regards the killing of Kahahawai, is this, at that moment, - he feels that he might kill Kahahawai; he doesn't remember, but neither will deny, nor affirm, that he told at least two people that he ought to kill Kahahawai, and working out this new line, of satisfaction to Massie rather than satisfaction to society, to law and to order, he engages in a transaction which includes the getting together first with Mrs. Fortescue and then with Jones and then with Lord and the development of a complete plan of action which includes certain other elements that I read in Massie's mental condition at that time. At that time I see his anger-fight mechanism still

in force as he makes his choices as to plan, and now he becomes the agent, he will deal with Kahahawai, and he will determine what shall be done in making these plans. I see his fear-flight mechanism,- and by anger-fight I simply mean that is the influence, that when a man's anger is aroused he puts into motion a mechanism to deal with the thing that has made him angry, and by fear-flight mechanism I mean that the man puts in motion certain behavior because he is afraid of a certain situation that he faces, and I read out of Lieutenant Massie's mental condition at that time those things,- anger-fight, leading him to draft a plan and to enter into the plan, and fear-flight,- and fear-flight is evidenced to me because he uses a car other than his own and because he puts on gloves and gets a pair of glasses and intended to disguise himself as a chauffeur, and because he takes part in the making up of a fake summons, and because the act being over, and found out on the highway, he covers his face when a photograph is tried to be taken,- when someone tries to take a photograph of him; because he showed this pallor and paleness, which I will deal with in a moment, and because when he gets to the City & County Attorney's office he says that he will make no statement which accounts

for the actions of that day. I see normal, natural, sane, usual reactions to anger fight and to fear-flight coming into that whole picture, and no sign of hysteria ~~or~~ or evidence of insanity. Now I have examined this record most carefully for the facts, not for the opinions in the record, and I have searched carefully---

MR. DARROW: I object to his emphasizing this as to how often he has examined the record and how carefully he has searched it and all the rest of it.

THE COURT: I think the objection is well taken, Doctor.

A (Continuing) I found no evidence in the record of the presence of delirium, from one end of the record to the other, and I found no suspicion of the presence of delirium. I felt it, - as forming part of my opinion, I had to have an idea of whether there was delirium or not. I found none. In my study of the case, and in the formation of the opinion of the mental condition of Massie at the time of the killing, I found no evidence or suspicion of any kind of a period of automatism. Looking over the record very carefully I found no evidence of the presence of epilepsy. I found no evidence of the presence of alcoholic intoxication of a certain type. I found no evidence of---

MR. DARROW: Objected to. Is he going to tell us all the things that he found no evidence of. I object to the question.

MR. ULRICH: He certainly has a right to state what he looked for, that is things that indicate a condition of automatism and their absence. A doctor can testify as to whether he reaches a certain conclusion from the absence or presence of certain things.

THE COURT: I believe so, I believe he can do that, giving the basis of his opinion, finding the absence of certain things, certain indices that point one way or the other.

MR. DARROW: He can explain it, no doubt, or say anything pertaining to the condition, but not in the nature of argument to the jury.

THE COURT: Quite true, Mr. Darrow, I suppose he can.

MR. DARROW: I will save an exception.

A I found no evidence of a condition of hysterical neurosis or psychosis,- that means a nervous condition or a mental condition relating to hysteria.

Those three latter conditions that I say I did not find are the causes of automatism.

MR. DARROW: I object to the manner of the witness. Why can't he sit in his chair like any other witness instead of making an argument to the jury,- he might just as well stand up. This is not the manner of a

witness who is trying to enlighten the jury or who is trying to give honest testimony before a jury.

THE WITNESS: Have I any right to say anything in reply to an allegation made that I am not honest in offering this proof.

MR. DARROW: I did not say you were not honest; I said that is not the proper attitude to take on the witness stand.

THE WITNESS: You used the word "honesty" and I resent it.

MR. DARROW: All right, come down and resent it.

THE COURT: Cease arguing back and forth. That will accomplish nothing. These remarks between counsel and the witness will be disregarded by the jury. Doctor, try to compose yourself as much as possible and continue your evidence.

THE WITNESS: Yes, sir. I am sorry.

A (Continuing) I found no evidence of the presence of automatism, nor did I find any evidence of these conditions of automatism. I found no evidence of chemical insanity. I do not know of the existence of chemical insanity, I have never heard of it, and I looked for a disturbed chemistry---

MR. DARROW: Just a moment. He says he does not know what chemical insanity is.

THE WITNESS: Yes.

MR. DARROW: And he never heard of it.

THE WITNESS: No.

MR. DARROW: Then I ask to have his answer stricken out that he found no evidence of it. He said he found no evidence of chemical insanity and he also said he didn't know of any such thing.

MR. ULRICH: There can be no such thing as chemical insanity. That is a chemical condition that is found alike, which is common alike, to insanity and to people in a normal condition.

MR. DARROW: How can he say he found no evidence of chemical insanity and in the next breath say "I don't know what chemical insanity is and I don't think there is any such thing?"

MR. ULRICH: That can be brought out on your cross-examination.

THE COURT: I think we will let the witness finish first, Mr. Darrow.

MR. DARROW: But he will never finish.

THE COURT: I think so.

MR. DARROW: I think this should all be stricken out at this time.

MR. ULRICH: Let's hear what he says.

A (Continued) It is my belief that when this anger mechanism,- the anger-fight mechanism and the fear-flight mechanism, were brought into play that there

were changes in body chemistry and there were changes in these gland activities; that in Lieutenant Massie there then worked, as a necessary part of fear-flight and as a necessary part of anger-fight, the spilling into the blood of a little more sugar,- the spilling into the blood of a little more adrenalin. The very nature of Lieutenant Massie's behavior required---

MR. DARROW: I object to the witness' manner again. I don't think he needs to lecture the jury nor argue the case. In that way he shows he is terribly interested in this case. He is just giving them a lecture on something not in answer to a question, which is not like a statement coming from a witness who is not interested, as it should be given.

THE COURT: That is an ideal condition, but people have different mannerisms, I suppose. I will ask the Doctor to compose himself as much as possible and give the testimony without gestures,- perhaps that will be better. Proceed.

THE WITNESS: I will make the effort, your Honor. Part of my speech comes out through my hands as well as my tongue.

MR. DARROW: You might put them in your pockets.

THE WITNESS: No, sir, that is not a habit of mine, to put them into the pocket. May I have the last question?

THE COURT: The last portion of the last answer will be read.

(Last part of last answer read by the reporter as follows: "that in Lieutenant Massie there then worked, as a necessary part of fear-flight and as a necessary part of anger-flight, the spilling into the blood of a little more sugar,- the spilling into the blood of a little more adrenalin. The very nature of Lieutenant Massie's behavior required--")

A (continued) Required these body processes to take place. That is the way the body runs itself, or run it in Lieutenant Massie; that is what made him able to be up and about, to have,- to be angry and to have fear. There is no indication of any insanity to me when these normal body processes are working. I found no insanity related to the paleness of Lieutenant Massie. I found no amnesia as the cause of the paleness of Lieutenant Massie. In my opinion what was on Lieutenant Massie's mind and as a part of his mental life at the time he was pale, out on the highway, he had in his mind at that time the complete comprehension that he had been in a transaction starting with the picking up of Kahahawai, with the threatening of him with a loaded gun, the transaction which did lead to the killing of Kahahawai, and that he was

at that time in a car with certain other persons and that the dead body of Kahahawai was there, and that that car was pursued by authorities and that shots were fired at the car in which Massie was, and that suddenly,- engaged in this transaction which in my opinion at that time Lieutenant Massie knew to be unlawful,- that suddenly faced with police, law, authority, Lieutenant Massie became pale, and in my belief he became pale because he was afraid, and I think he became pale, just as it was said he was, he was afraid,- that he was white as a sheet, and I believe that the body chemistry was responsible for his becoming pale, because that is the way each and every person becomes pale when he becomes pale. He was "standing like a bump on a log." I see no insanity in his standing like a bump on a log. It is my belief that his mental condition at that time--

MR. DARROW: I object to his making such a long talk on each thing that was said about him. There should be no dissertation on paleness.

(Argument)

THE COURT: These are the elements which have been dwelt upon in this case, and the witness has a right to testify as to his conclusions. He can testify on the absence or presence of the various indications

which are related to the case.

MR. DARROW: I would like to have an exception noted, your Honor.

THE COURT: An exception will be noted. Proceed.

A (Continued) It is my belief that standing like a bump on a log did not indicate insanity nor amnesia, and that it was a sane thing for a man to do, following or being in a transaction such as has been described, to for a moment, or for several moments, stand in a position relatively inactive and make no particular motions in either direction, and in the same way it is not my opinion that Lieutenant Massie was insane as evidenced by his acting, as one of the men said, like a damn fool. It is also reasonably certain to me and it is my belief in this case that Lieutenant Massie, as a sane man, should, following the killing of Kahahawai, go about and act in a manner which might be referred to as acting like a damn fool. It is my opinion that on this occasion when a photograph was attempted, or the photographing was attempted, in covering his face, that is not an indication to me of insanity but is an indication to me of a sane, rational, normal man, with fear-flight mechanisms, attempting to protect himself and hide his face. I think, in my opinion, without going

into more detail, I would like to state that I have in mind as my opinion that, weighing each one of those acts of behavior, and all that I have read from the record, on analysis by me, indicated not the actions of an insane man but the actions of a man who was not insane.

Q Doctor, you have had occasion to deal with cases involving the feigning of insanity?

A I have, yes, sir.

Q When it is not present. I will ask you to state whether or not, from the picture that you have before you of Lieutenant Massie in this case, you feel that the story that he has given relative to a period of unconsciousness, or an automatism, bears the indication in your mind of being a true story or a feigned or fabricated story?

MR. DARROW: I object to the question, your Honor. He has taken their story and given his opinion, and told us he is not insane.

(Argument)

THE COURT: The objection will be sustained.

MR. ULRICH: May I put one more question and take the Court's ruling?

Q Experts for the defense have testified from their experiences with similar situations that in their opinion it would be very difficult for a patient or subject, or a defendant, to attempt to

state a fabricated story of a period of amnesia.

I will ask you what your opinion is in that regard?

MR. DARROW: To that I object.

THE COURT: Was that developed on the direct examination of the experts for the defense or on the cross-examination?

MR. ULRICH: I think on both.

MR. DARROW: No, it was on the cross-examination by the defense.

THE COURT: My recollection is that it was developed on cross-examination. If that is so, the objection will have to be sustained.

MR. ULRICH: That is all.

CROSS EXAMINATION

BY MR. DARROW:

Q Doctor, can you tell us about how many times you have testified in Court?

A I can approximate it, Mr. Darrow.

Q All right.

A I would say about once or twice a month, looking back through the last two years, and before that less often. Now that is speculation. If I had time I could go and count them.

Q Well, you don't need to.

A No, sir.

Q Fifty times in the last two years?

A Fifty times?

Q You said once or twice a month, did you?

A Yes.

Q Yes.

A Yes, I would say that would be a fair estimate.

Q How long before that did you begin testifying?

A I believe 1919,- that is about the first time that I was called.

Q How often did you testify between 1919 and the last two years?

A Well, I don't believe there has ever a year gone by,- as a matter of fact, I don't believe there has ever four months gone by without my being wanted somewhere to testify in Court.

Q You have covered a considerable portion of the country, haven't you?

A No, sir, not yet. This is my farthest away from home.

Q You could not get much further from California without getting to the Atlantic ocean?

A I don't know the mileage. I don't know whether Hawaii or New York are farther away, as a matter of fact.

Q You could not get much farther East unless you went to New Foundland or Nova Scotia?

A Yes, New York, unless I could get up to Newfoundland. No, sir, I have not been there yet.

Q You have not been there yet?

A No, sir, the places I told you about previously,-
Arizona, Oregon, California,- not Hawaii, Nevada.

Q I did not ask the question, but I should have
remembered it. Those are the only states you have
testified in?

A Yes, sir.

Q Where did you begin practice?

A San Francisco.

Q When was that?

A In May, 1913.

Q Did you go to any other state to practice?

A No, I have not gone to any other state and been
a resident there, as a practitioner. I have gone
into other states in consultation.

Q You have never had an office in any other state
then?

A No, sir.

Q What is your age?

A I will be forty-two August 10th this year.

Q Do you know there is such a thing as amnesia?

A Yes, sir, quite well.

Q You have read of and probably seen cases of it?

A Yes, sir.

Q Can you give us a definition of insanity?

A I can try to give you one, which does not even
satisfy myself.

Q

Q All right, Doctor.

A Insanity is a condition in which, because of disturbed function or disturbed structure of those portions of the brain that have to do with what is known as mental life, the individual is prevented thereby from continuing a form of action and behavior which allows him, with his own choice, to fit in and adjust himself to persons and things and conditions about and in the particular community in which he lives.

Q All those cases are insanity, are they? I mean all such cases as you refer to?

A Well, that is as near to an accurate definition of insanity as I can get.

Q Is there any way of giving an accurate definition of insanity that you know of?

A No more than it is to give it between physical health and disease. When a man has a headache he is ill, but is one who has a slight headache suffering from a disease? If he has typhoid or pneumonia, that is different, and we know it is a disease. If a man is violently insane, then there is no doubt about it, but when we get down to the border-line conditions it is just as difficult to draw a line between basic normality and abnormality as between physical health and physical disease.

Q Is there any time since the night that Massie

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went to the dance and today when he had a disturbance of a function of the mind?

A Yes, he had physiologically an expected and usual disturbance, and the usual routine of mental activity because of the situation in which he found himself.

Q He had for a long period of time, didn't he?

A Yes, sir, in my belief.

Q A long period of time, accompanied by stress and trouble, and that adds to the disturbance, doesn't it?

A Yes, sir.

Q You would not have expected Mr. Massie to go out and kill a man the day before that dance occurred, would you?

A Not with the facts that are in the evidence that I have read; there is no indication that I should expect should a thing.

Q You would only have expected it after a long period of stress and trouble?

A On the one hand, and on the study of Lieutenant Massie's particular reactions to it on the other; the two things were necessary.

Q You believe in cause and effect?

A Rather, yes, sir.

Q And you believe that runs through the physical and mental world?

A Yes, sir.

Q And there is no condition of the human mind or human conduct for which a cause would not be found if we were wise enough to find it and had the information?

A Correct.

Q And the killing of Kahahawai by Massie was the result of a long series of causes, wasn't it?

A Yes, sir.

Q Beginning the night that his wife told him the distressing story that you have heard?

A Yes, sir, that is correct.

Q A distressed condition of mind appearing for a long enough time will bring on a disturbance of the functions of the mind?

A Yes, sir.

Q You have testified sometimes for the defense, haven't you?

A Yes, sir, I have testified for the defense and prosecution and Court. For example, in Arizona---

Q I didn't ask for an example. I don't want any.

A All right. I hope they remember that, because it is important to me.

Q Are you especially interested in this case?

A I am especially interested in the answer to your last question.

Q Are you especially interested in it? These

lawyers here have an opportunity to ask you if they care to.

A I am interested in that answer, yes.

Q Why?

A Because you did not give me an opportunity for a full answer or a proper answer.

Q Are you interested in having Massie convicted?

A I am interested in telling the medical evidence as I read them, but nothing else.

Q Can't you trust these lawyers to bring out the proper questions?

A No, sir.

Q I don't mean our side,- I mean these lawyers?
(Indicating counsel for the prosecution)

A No. Where I am concerned, and where I haven't been able to answer, I would not trust anyone.

Q You think you could not trust them.

A It is not a matter of trust. This is a matter that concerns myself personally. It is something that they might forget.

Q There is no danger of you forgetting something?

A I don't remember what I ate for breakfast last Thursday morning. I have had amnesia about it. I had breakfast last Thursday morning, I am certain.

Q And you had amnesia, a point beyond a loss of memory?

A The same sort that everybody has, I have had,

yes, sir.

Q Well, now, Doctor, you believe that a man's actions are controlled or at least affected by what is emptied into the blood?

A Yes, sir, I believe it works both ways; that mans' mental activities and actions affect the substance in the blood, and that in turn those affect his behavior. I think there is an inter-relation.

Q You have been told about a certain time in Massie's experience when a good deal of sugar was emptied into his blood?

A No, sir, that is not in the record as a fact.

Q Did you give that as an opinion?

A I only base my opinion on the facts in the record, not on the opinions.

Q I didn't ask you that. Did you give that as your opinion in your testimony?

A Yes, in my opinion some extra sugar was, yes. I don't know the facts. It is reasonable to suppose and it is my belief that some was emptied into his blood.

Q And that caused activity?

A Yes, that is the way we act. We have to have sugar come into our blood to come up to this stand, to walk up here.

Q And that act is caused by emotions?

A Yes.

Q And emotions may come about in all sorts of ways?

A Yes, sir.

Q You remember a case where you testified, I suppose, of a man named Harlow?

A Yes.

Q He killed his wife, didn't he?

A Yes, sir.

Q You testified he was insane at the time, didn't you, in your opinion?

A Yes, sir.

Q How long ago was that?

A Oh, eight or nine years ago, to the best of my recollection.

Q Whereabouts was it?

A Down in the valley, California.

Q Did you express your opinion of the Guiteau case?

A Yes, sir.

Q You expressed your opinion he was insane, didn't you?

A Guiteau, - yes, sir.

Q Yes.

A Yes.

Q And have that opinion now?

A Yes, sir.

Q He is the man who killed President Garfield?

A Yes, sir.

Q If it would be any satisfaction, I would be inclined to agree with you on that.

A I think we would agree on a lot of things if we were not in the trial of a case, sir.

Q I am quite sure we would. The jury found that Guiteau was sane and they hung him?

A Yes.

Q You didn't testify for Mr. Guiteau?

A No.

Q But they found Harlow insane?

A I wonder did they? I thought they found him guilty of manslaughter,- I may not be correct.

Q I cannot be sure. I got a telegram about it. They say otherwise.

A I don't recollect, Mr. Darrow, but I recollect the case very well. The man found a man in bed with his wife and came in and dealt with the situation. There was a long period before that of illness, nervous illness.

Q The man had a long state of illness before that?

A Yes, nervous illness.

Q And he found a man in bed with his wife, and he had had a course of illness?

A Yes. The best of my recollection is,- I don't know how far the mental disturbance went, whether

to hysterical disassociation,- but I can't recall. To the best of my recollection it was psychoneurosis rather than psychosis.

Q Possibly if you did recall the jury and us lawyers would not understand it. He was insane? Was it not insanity?

A I don't recollect the full details, but I do remember the case, and I think it lead to a verdict of manslaughter, and I think there were very mitigating medical circumstances in the case.

Q Well, anyhow, that man had been ill for some-time?

A Yes.

Q And then he found a man in bed with his wife?

A Yes.

Q And he shot him and killed him?

A Yes, sir.

Q And you testified that he was insane?

A I don't recall the exact testimony, but I testified in the case, and I was of the belief that his nervous illness and the double situation lead me to believe that he was not responsible.

Q Yes, you know that is the way you testified. There is no argument about that, is there?

A No, there is no argument, because I haven't looked at that case in eight or ten years.

Q You have forgotten it?

A I have forgotten large portions of it, sir.

Q Have you forgotten? which side paid you in that case?

A No, sir.

Q Which side did?

A Mr. Harlow's attorneys paid me.

Q They would not have paid you for swearing he was sane?

A Yes.

Q You say they would have paid you to say that he was sane?

A Yes. Yes. I was paid for a case in Arizona for testifying against a man in the West case, following the Judd case, I would be paid whether I said he was insane or sane.

Q Did I ask you about Arizona or who paid you in this case?

A No, but I am stating an example; that I didn't have to testify in one way to be paid. I didn't have to get on this stand to be paid.

Q Mr. Harlow or his attorney who was defending this man for murder paid you, did n't he?

A Yes.

Q Do you think they would have paid you if you testified that he was sane?

A I know they would have paid me on the rendition of my report, whether I testified or not.

Q

Q Would they have used you on the stand do you think?

A Nobody has ever used me, in the sense of using me.

Q I mean, put you on the stand, if you would testify that he was sane?

A I don't know. I have been put on the stand in such cases.

Q Do you mean to say when you have testified for an attorney you would have been put on the stand without knowing which way you were going to testify?

A No, sir, that is not the fact. It was almost the fact in this case Saturday.

MR. DARROW: I object to that statement, and move to have that stricken out.

MR. ULRICH: We object to having it stricken out.

MR. DARROW: I ask to have that answer stricken.

THE COURT: If not responsive, it may go out.

Q Now will you tell this jury whether or not in your opinion now you decided that man was insane?

A This Harlow man?

Q Yes, when he killed his wife?

MR. ULRICH: I object to that question as already asked and answered.

MR. DARROW: Well, how did he answer it?

MR. ULRICH: He has given the answer; he said he does not know whether it was a condition of psycho-

neurosis or a condition of psychosis.

A It is my best judgment that---

MR. ULRICH: May I interpose my objection. At the time of cross-examining their doctors I endeavored to go into other cases in which testimony had been given by Dr. Williams, and so forth, and your Honor ruled on the objection from Mr. Darrow that I could not go into this matter,- I have overlooked a lot of this and permitted this examination without objection but I feel it is being carried to unreasonable lengths and I object to any further testimony from this Doctor, testifying to any other cases and what the jury did or did not find in those cases.

MR. DARROW: Counsel is certainly wrong about the other cases. We objected to their asking about testimony in the Judd case and your Honor overruled me and they asked the question and asked about other cases.

(Argument)

THE COURT: I will allow cross-examination to the extent of what cases he has testified in. There is no question about that being legitimate cross-examination, but as to the particular results of the particular case, if objected to, I sustained that objection. The result of the Judd case was not put in evidence in this case on cross-examination. It was objected to and ruled out, if I remember

correctly.

MR. DARROW: I think your Honor is wrong.

THE COURT: I will allow you to cross-examine this witness as to what cases he has testified in, but as to the results of the particular case, if objected to, I will have to sustain that objection.

MR. DARROW: All right, your Honor.

Q Well you call this,- I haven't got it right at hand,- fighting complex and neurosis?

A What is that, sir?

Q What name did you give to it?

A Anger-fight mechanism.

Q Anger-fight mechanism?

A Yes, sir.

Q There are other kinds of mechanisms, aren't there?

A Yes.

Q And all kinds of mechanisms, many kinds?

A Yes, sir, many kinds.

Q That means "pattern" doesn't it?

A It is referred to sometimes as pattern.

Q Yes. Perhaps it means the operation of the body, or part of that, doesn't it, mechanisms?

A Yes.

Q A man's acts, acts of mechanism, mechanical urges, in whatever he does?

A Up to the point of bringing it before his consciousness and making a decision in reference to

them, yes, sir.

Q Is there anything with reference to making a decision about them?

A Yes.

Q What?

A Well, for example, shall I stay in this seat or get off? The easy thing is to sit there. I decided to get off and I have made a decision after two mechanisms. (Witness gets up from witness-stand, walks down before jury, and returns and resumes his seat.)

Q You got off to illustrate your point, didn't you?

A Yes.

Q Then there is a reason for getting off?

A Yes, there is a reason for everything done in the whole world. If the reason is adequate it excuses the thing you do or do not do, if sane, and in another direction it indicates insanity for what he does or doesn't do.

Q There is nothing one can do save for some reason?

A That is correct, sir.

MR. DARROW: That is all.

MR. ULRICH: May we take a recess now.

THE COURT: Yes. With regard to the reception of facts by this witness, is there anything further

in the way of counsel desiring a ruling on that?
The Court reserved its ruling until the testimony
was all in.

MR. DARROW: Is there anything further we desired
a ruling on? I don't recall anything, your Honor.

THE COURT: The Court reserved a ruling on the
recitation of facts by this witness preliminary
to his giving an opinion, upon the assurance of
counsel that it would be shown that that recita-
tion of facts formed the basis for his opinion.

MR. DARROW: I don't care to urge it.

THE COURT: If counsel desires to move to strike that
evidence I will consider the motion.

MR. DARROW: The jury heard it, and I can't see it
will make any difference now. I am willing to waive
it.

THE COURT: Very well. We will take a recess for ten
minutes.

(Recess)

11:15 a.m.

ROBERT B. FAUS

was recalled as a witness in rebuttal for the Territory, and testified as follows:

DIRECT EXAMINATION

BY JOHN C. KELLEY, ESQ.

Q Do you recall testifying with reference to the nature of the wound that you found upon the body of Joseph Kahahawai, Junior---

A I do.

Q (Continuing) When you made your autopsy on January 8, 1932?

A I do.

Q In your opinion how long after Kahahawai was shot would it take before death would ensue?

A It was reasonable to assume that he retained consciousness from three to five minutes, and it would be from 15 to 20 minutes before he could be pronounced dead.

Q And during that three to five minutes of consciousness would he be able to move about?

A He might be.

Q A man of Kahahawai's build, as you found it, would he be able to struggle?

A He would.

CROSS EXAMINATION

By Clarence S. Darrow, Esq.

Q You say he might be able to move about?

A Yes, he might be able to.

Q And he might not?

A Yes, there are many factors that enter into that.

Q You couldn't say, sitting in the witness chair, how long he would live or what he could do, could you?

A Pardon?

Q You would not say with any certainty what he could or couldn't do or how long he could live?

A I would say I don't know what he did or didn't do. I say it was reasonable to assume he could.

Q You know that counsel said in the beginning there was no evidence of any struggle?

A Yes.

Q You don't know of any evidence of any struggle?

MR. KELLEY: There is certainly evidence in the case from which the jury could assume a struggle at some time, and that is the exhibits in the case.

A The torn shirts and so on?

MR. DARROW: That wasn't his shirt. You said in the beginning of this case there was no evidence of any struggle?

MR. KELLEY: Up to the time of the shooting.

MR. DARROW: If I am wrong about it---

THE COURT: Proceed. Do I understand you make an objection? Answer the question.

Q (Question read by the reporter)

J 4

MR. DARROW: I will withdraw the question. That's all, Doctor.

(Witness excused.)

MR. KELLEY: Prosecution rests.

MR. DARROW: There is no surrebuttal, and we rest.

THE COURT: Both sides rest?

MR. DARROW: Both sides.

THE COURT: The jury may retire.

(Jury retires from court room.)

THE COURT: When does counsel desire to settle the instructions?

MR. KELLEY: 1:30 this afternoon.

THE COURT: Very well. Argument to the jury tomorrow morning at nine o'clock?

MR. KELLEY: Yes, your Honor.

THE COURT: Does counsel desire to limit the argument?

MR. LEISURE: We had hoped your Honor would not limit us.

THE COURT: Very well. Unless counsel agree, the Court will not limit the argument. The matter of instructions will be given to the jury before or after argument?

MR. KELLEY: I would prefer to have them given before, but it doesn't make any great difference.

THE COURT: If counsel can agree on that, the Court will accommodate counsel.

MR. DARROW: Both of us have been in the habit of

having them come afterwards.

THE COURT: That has been the usual practice. Sometimes they are given before the argument.

MR. KELLEY: Well, we will agree they may be given after argument.

THE COURT: The Court will also accommodate counsel to that extent.

MR. KELLEY: Thank you, your Honor.

THE COURT: And we will take a recess until 1:30 this afternoon. Settle the instructions in Chambers. This matter will stand over until tomorrow morning at 9 o'clock for further trial.

(Adjourned to 9 o'clock a. m. Tuesday,
April 26, 1932.

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CROSS EXAMINATION

BY MR. DARROW:

Q Doctor, I assume that you have either been paid or expect to be paid for coming down here and giving your testimony?

A Yes, I expect to be paid.

MR. DARROW: That is all.

(Witness excused.)

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THE COURT: A little less noise in the court room, please.

DR. ROBERT B. FAUS

was duly called and sworn as a witness for the prosecution in rebuttal, and testified as follows:

DIRECT EXAMINATION

BY MR. ULRICH:

Q State your name.

A Robert B. Faus.

Q What is your profession?

A Physician and surgeon.

Q Practice here in Honolulu?

A I do.

Q How long have you been practicing as a physician and surgeon in Honolulu?

A Since July the 5th 1921.

Q And before that time where did you practice?

A I had served as an intern, Cook County Psychopathic Hospital, Chicago, six months, prior to my coming here.