

1925

State vs Harold Israel

Homer S. Cummings

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Recommended Citation

Homer S. Cummings, State vs Harold Israel, 15 J. Am. Inst. Crim. L. & Criminology 406 (May 1924 to February 1925)

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THE STATE *vs.* HAROLD ISRAEL

HOMER S. CUMMINGS¹

(Foreword by WILLIAM M. MALTBY²)

The Constitution of Connecticut, adopted in 1818 and since relatively unchanged in its main aspects, bears the impress of the Federalist sentiment then so strong in New England. It originally provided that the judges of the higher courts should be "appointed by the General Assembly, in such manner as shall by law be prescribed," and that manner was then and for many years continued to be by concurrent vote of the two houses. In 1880, however, the Constitution was amended so that the appointment by the General Assembly could only be made upon nomination of the Governor. The people of the state have been jealous of any attempt to subordinate its judiciary to the influence of political factions and the result has been that appointment to the bench of these courts, while by law only for a term of eight years, has in effect given a life tenure. Ever since the adoption of the Constitution, the state's attorney in each county, who is the prosecuting officer before those courts, has been appointed by them or by the judges qualified to hold them. Whatever may be the theoretical soundness of such a governmental system, practically it has been of the utmost benefit to the state. The method of appointment of the state's attorneys has made that office one of high honor, and, despite the small salaries provided by law, the very leaders of the bar have been willing to assume its onerous duties; so it has removed the office from the stress of politics and the vagaries of popular feeling and given opportunity for the untrammelled exercise of independence in judgment and action. Wide powers have also been vested in the state's attorneys, and with them has gone a high feeling of responsibility on their part. The result has been that the people of Connecticut have become accustomed to look to those who have held that office with respect and with the expectation of the highest practical idealism in the performance of their duties. The Honorable Homer S. Cummings, state's attorney for Fairfield County, takes worthy rank among those who have from time to time held that office.

One of the general powers imposed in the state's attorney is that which permits him to enter a nolle virtually at his own discretion in

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cases which he feels ought not to be prosecuted. It is not unusual, however, when a case is of unusual importance or has attracted much attention for the state's attorney to make a statement to the court in explanation of his own action in entering a nolle, or in order to secure the advice of the court as to the course he ought to take. The following pages contain the statement made to the Superior Court for Fairfield County by Mr. Cummings in connection with his action in entering a nolle of a charge of first degree murder. The prosecution grew out of the murder of Father Dahme in the City of Bridgeport. Father Dahme was a man well known and influential in Bridgeport, with many friends and few, if any, known enemies; he was shot down in cold blood on a street close to the business center of the city in the evening, when many people were still about, and the nature of the case was such as to arouse much comment and feeling in the city. The accused was charged in the City Court with the murder, and was bound over to the Superior Court upon a finding of probable cause. The coroner for the county made his investigation and came to the conclusion that the accused was guilty, and so reported. Thus the case came into the field of operation of the state's attorney's office and the subsequent steps taken are recited by the state's attorney. His statement is interesting because of the nature of the case; it is valuable because of the methods followed by him in analyzing the evidence, because of the suggestions it contains for other prosecutors, but more because of its splendid exemplification of that cardinal principle which our Code of Ethics states, as follows: "The primary duty of a lawyer exercising the office of public prosecutor is not to convict but to see that justice is done," and which the state's attorney himself puts in these words: "It goes without saying that it is just as important for a state's attorney to use the great powers of his office to protect the innocent as it is to convict the guilty."

<i>State</i> v. <i>Harold Israel.</i>	}	Criminal Superior Court, Fairfield County. May 27th, 1924. HON. L. P. WALDO MARVIN, Judge.
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STATEMENT MADE TO THE COURT WITH REFERENCE TO THE ABOVE
ENTITLED CASE BY HOMER S. CUMMINGS, STATE'S ATTORNEY

If Your Honor please:

I would like to call to your attention this morning the case of
State v. Harold Israel.

On the 15th day of February, 1924, this accused was bound over
to this court by the City Court of Bridgeport on a charge of murder

in the first degree, growing out of the death of Rev. Hubert Dahme, pastor of St. Joseph's R. C. Church of this city.

The facts disclose that on the 4th day of February, during the evening, Father Dahme, in accordance with his well-established custom, was taking a stroll, and, in the course thereof, passed along the westerly side of Main street, going in a northerly direction. The map which is over there to Your Honor's right shows the location. Main street, as Your Honor will observe, is a long thoroughfare running diagonally to the left through that portion of the city shown on that map.

Father Dahme was proceeding northerly along this street, and evidently passed the Stratfield Hotel, passed the corner of Congress street, and presumably passed the corner of Arch street and reached the intersection of High street and Main street. The electric lights were burning as it was dark.

When he reached the southerly side of High street, at its intersection with Main street (the corner I have just pointed out), a man approached from the rear and, raising his right hand, placed the muzzle of a revolver close to Father's Dahme's head and fired a fatal shot. Father Dahme immediately fell to the ground and died without regaining consciousness about an hour later, in St. Vincent's Hospital. The murder was committed about 7:45 p. m.

The weight of the testimony indicates that immediately upon firing the fatal shot the assassin turned westerly into High street and, running up the hill, disappeared. In other words, the assassin who had committed this crime at this corner, which I now point out, ran up this hill to High street. It is quite an elevation. The upper part of the street where it joins Washington avenue is very much above the level of Main street. It is a constant ascent. There were several eye-witnesses to the shooting, and there were other witnesses who saw a man fleeing westerly on High street. Indeed there were quite a number to that general effect. None of these witnesses recognized the assassin. I must say that their descriptions of him vary in certain particulars. The weight of the testimony indicates, however, that the slayer was of medium height, comparatively young in years, wore a gray cap and a dark, three-quarter length overcoat with a velvet collar. Now, there are some witnesses whose descriptions do not tally with the description I have just given, but I have followed the description which most of the witnesses, or the more dependable witnesses, give.

On account of the tragic nature of this murder, the well-frequented spot where it occurred and the prominence of the victim, an

unusual amount of public interest was aroused, and the police department stirred itself to great activity in an attempt to secure the arrest and conviction of the perpetrator of this cowardly crime. Witnesses were discovered who seemed to be of the opinion that a person answering the description of the assassin had been seen walking with Father Dahme on several occasions, a week or ten days prior to the murder. Other witnesses were found who saw two men running away from the scene of the murder in a southerly direction along Main street.

A very excellent witness, a very intelligent young woman, who, with her mother and brother, was passing along in an automobile going in a southerly direction on Main street, intending to go to the Palace Theater. As they got near the junction of High street, they heard a report which the young man thought was a blow-out or a back-fire, but which the girl thought was a pistol shot. Anyway, they did not stop but went right on, going at 15 or 20 miles an hour, to the Palace Theater. The mother got out and the young lady started immediately and ran back towards the scene of the murder, and when she reached the Majestic Theater two men running very rapidly and with all their might were going in a southerly direction and nearly bowled her over. A calculation of time would indicate that it was possible that two men running, as described, from the scene of the murder at the time the automobile passed, would have been met by the young lady about opposite that theater. I merely mention that as indicative of some of the puzzling circumstances that have developed in connection with this case.

Other witnesses were interviewed whose testimony seemed to indicate the possibility that Father Dahme had been slain as the result of some grudge or enmity. In fact, Your Honor, a large number of conflicting and inconclusive facts were assembled. Persons interested in the administration of justice offered a substantial reward for any information that might lead to the detection of the criminal.

Now, an autopsy of course was held and disclosed that Father Dahme came to his death from a gunshot wound in the brain. The bullet had entered at a point in the lobe of the left ear, passing in the rear through the cerebellum upward through the cerebrum and stopping on the right side. It did not seem to have been deflected in its course. Its final lodgment was on the upper right side of the cerebrum on the periphery thereof. In other words, it had passed inward and upward.

Assuming that Father Dahme was walking in a normal position at the time of the shooting, the weapon which caused his death must

have been pointed upward at an angle of substantially 40 or 45 degrees. X-ray pictures verify these conclusions. It is not perhaps worth while at this time to examine this series of X-ray pictures showing the lodgment of the bullet in the brain of the deceased. These photographs are taken from different angles, so that one is able, by studying them somewhat intelligently to gather with reasonable accuracy the general direction taken by the bullet. They also indicate that a small fragment was detached from the main body of the bullet and not removed from the head of the deceased. The major portion of the bullet was, however, removed and recovered, and there seems to be no doubt that it was a bullet of .32 caliber.

Various ingenious suggestions were made to account for this tragedy. It was suggested that as Father Dahme was accustomed to take his evening stroll over substantially the same route every night, he was probably assassinated by someone familiar with his habits, who lay in wait for him at the spot where he was killed and made his escape into the relative darkness of High street. Up to the present time, however, no satisfactory evidence of any kind or description has been found which would supply a motive for the assassination.

At the time of the shooting three persons, to wit: Jennie Boynton, Hilda Baer and Frank Roter, were walking together in an easterly direction on the southerly side of High street. They heard the fatal shot and shortly thereafter saw a man running up High street toward them. He was running in the street, and, as he approached them, turned to the right and went on to the northerly side.

I will now point out St. Augustine's Church on the map. It is in plain sight of this court house over the tree tops.

Edward Flood, who came out of St. Augustine's Church at about 7:55 p. m., saw a man running across the junction of Congress street and Harrison street, who stumbled upon the curb and continued running in a generally southerly direction down Washington avenue, in a breathless conditon. This was substantially the situation of the case up to the time of the arrest of the accused Harold Israel. No suspicion was directed toward Harold Israel until one week after the shooting.

On Monday night, February 11th, or Tuesday morning, February 12th, very early—in other words, about midnight or shortly thereafter—a police officer in Norwalk observed a man acting in a rather peculiar manner. He ultimately engaged this person in conversation and took him to the police station. There was found upon his person a .32 caliber revolver. Four chambers of the revolver were loaded

and the other chamber was entirely empty. This person gave his name as Harold Israel, said that he had lived in Bridgeport, that he was on his way to his father's home in Pennsylvania, that he had come from Bridgeport Monday evening and was entirely without funds or a place to sleep. Upon being asked whether he knew anything about the murder of Father Dahme, he said that he had heard about it and that his two companions or "buddies" had been near the scene of the murder at the time it occurred. I will say in passing, by the way, that this statement turned out to be correct. The accused was sentenced to jail for carrying concealed weapons, and on February 12th was sent to the county jail at Bridgeport. He maintained that he knew nothing as to the cause of the death of Father Dahme.

Thereafter the accused was taken to the station house in Bridgeport to be interrogated. He continued his protestations of innocence and maintained that he knew nothing about the cause of the death of Father Dahme. He stated in substance that he had previously been living at 354 Stratford avenue in Bridgeport and that he roomed there with two friends—Charles Cihal and Nick Cardullo; 354 Stratford avenue is also shown on the map, Your Honor, right over here (pointing). You have to cross the bridge over the Pequonnock River to reach that place. It is, however, only a short walk, as you see, from the center of the city. That is where he said he had been living, and it turned out to be true that he had been living there. He had been living there with the two men whom I have just described. It appeared that these three young men had occupied the same room and that Israel had previously been in the United States army and was at one time stationed at Panama, where he became friendly with Cihal and Cardullo. They had also had army experience. After his discharge he had by various stages come to Bridgeport to join his friend, Charles Cihal, with whom he lived until his accumulated earnings had become exhausted. He had some money at the time, an accumulation of perhaps \$300, and he remained until that was exhausted and then Cihal continued to stake him to some extent. Later, the pair were joined by Nick Cardullo and the three continued to occupy the same room together. This room was located at the address given, above the Philadelphia Lunch, so-called. In other words, their apartment was over this restaurant.

Certain of the witnesses heretofore referred to were called in at the police station and some of them identified the accused as the person seen running away from the scene of the crime. Knowledge of this

charge was soon known throughout Bridgeport and a report thereof was published in the newspapers.

At this point another witness against the accused, Nellie Trafton, appears in the case. At the time of the shooting of Father Dahme Nellie Trafton was a waitress in the Star Restaurant in Bridgeport. This restaurant is located at the northwest corner of Main and Arch streets. The murder was committed, as you remember, on the southwest corner of Main street and High street. In other words, the Star Restaurant was in the same block, and only one block from the scene of the murder. Miss Trafton had been employed in the Star Restaurant for two or three days prior to the death of Father Dahme. Before that she had been employed in a similar capacity in the Philadelphia Lunch, where she became acquainted with the accused and his two friends. Your Honor will recall that there was a lunch room located under the apartment of these three young men. This girl had previously worked there as a waitress and in that way had seen these young men and knew them all, although not intimately at that time.

When the arrest of Harold Israel for the murder of Father Dahme became known, she was heard, while in the Star Restaurant, to say that she knew Israel and that she thought he was guilty, as she had seen him pass the restaurant shortly before the murder, and that upon a previous occasion, when she was at the Philadelphia Lunch, he had exhibited a revolver to her and had said that he was going to kill somebody with it. A customer in the restaurant, overhearing her conversation, telephoned police headquarters and an officer was sent down to request her attendance at police headquarters, where she related her story and identified Israel as the person she saw pass the restaurant on the night in question.

Harold Israel up to this time had maintained his innocence. He was informed and knew of the identifications which had been made, and he was subjected to questioning by various members of the Bridgeport Police Department. There is no evidence that he was subjected to any physical violence or any form of torture or inquisition commonly associated with what is known as "The Third Degree." He was, however, subjected to prolonged and vigorous interrogation, continuing for hours at a time. This process was continued at intervals from about noon on February 13th to 4 p. m. on February 14th, during which Israel made sundry conflicting statements, finally admitting that he had killed Father Dahme on the night in question in the way described and that he had fled over the course which the escaping

assassin was supposed to have taken. This confession was reduced to writing and signed by Israel.

When asked where the fatal cartridge could be found, he informed the police that it could be found in the toilet-room in the place where he had previously boarded. An examination of the place in question by the police resulted in the discovery of a discharged cartridge, and it was assumed that this cartridge was the one that was used in the killing of Father Dahme.

Thereafter, during the evening, he was taken in an automobile over the course of his supposed flight, and it is claimed by the officers that he pointed out the course he had taken and the place which he saw the man and the two women on High street and the corner of Congress avenue and Harrison street where he stumbled. The following morning he was arraigned in the City Court of Bridgeport and bound over to this court, as heretofore stated.

Subsequently thereto the police department got in touch with Charles J. Van Amburgh, formerly an engineer in the ballistic department of the Remington Arms Company. Prior to that, he had had army experience, was an instructor in markmanship and ordnance work, and was familiar with firearms and the manufacture of various forms thereof. He has removed to Boston and is connected with the state police department there. He was shown the revolver which had been taken from the person of the accused and the bullet which had been fired through the Israel revolver. After making certain experiments he reached the conclusion that the fatal bullet had been fired through the Israel revolver. Subsequently thereto the coroner conducted an investigation and the facts which I have heretofore outlined, together with many other facts of a less important character, were brought to the attention of that official. Under the circumstances, there was no alternative open for Coroner Phelan except to make the finding which he did, holding the accused for the murder of Father Dahme.

This coroner's report was submitted on the 25th day of February, 1924. Summarizing the case against Israel, the coroner very logically divided the case into ten points, which in substance are as follows:

First—Israel was seen by an acquaintance, Nellie Trafton, within a block of the place of the shooting from five to ten minutes before the shooting.

Second—The slayer wore a gray cap and a brown overcoat, the latter having a black velvet collar.

Third—The witnesses, Frederick W. Morris and Ralph Esposito, saw a man wearing a gray cap and overcoat shoot the deceased and run westerly up High street.

Fourth—Jennie Boynton and Hilda Baer, eastbound on High street, heard the fatal shot and saw the fleeing slayer cross High street about one hundred feet west of Main street, wearing a gray cap and brown overcoat, Hilda Baer noting the velvet collar.

Fifth—Edward Flood saw a man apparently exhausted, wearing a gray cap and dark overcoat, running at the junction of Washington avenue and Congress street and Harrison street ten minutes after the shooting, and observed him when he stubbed his toe at the curbing, but continued his journey westerly on Washington avenue.

Sixth—The witnesses, Esposito, Boynton, Baer and Flood, identified Israel at police headquarters as the person they had thus seen fleeing from the scene of the shooting.

Seventh—Israel made a statement in writing admitting the crime.

Eighth—Israel, accompanied by members of the police department, went over the course of his flight and designated the various spots above referred to.

Ninth—Israel informed the police where the empty shell of the fatal bullet was placed by him in his room, where it was subsequently found by the police.

Tenth—The revolver found on Israel was a .32 caliber of Spanish manufacture, and it was the gun from which the bullet found in the head of the deceased was discharged.

The functions of the City Court and of the coroner having been discharged in due course, the matter naturally came under the jurisdiction of the state's attorney's office for action. The case against the accused seemed overwhelming. Upon its face, at least, it seemed like a well-nigh perfect case, affording but very little difficulty in the matter of successful prosecution. In fact, if Your Honor please, it seemed like an "annihilating" case. There did not seem to be a vestige of reason for suspecting for a moment that the accused was innocent. The evidence had been described by those who believed in the guilt of the accused as "100 per cent perfect."

Despite these facts, however, there were many people who, without any particular assignable reason, felt that the accused was innocent and that he had been the victim of a most extraordinary combination of circumstances. Unfortunately some considerable feeling seems to have developed which has rendered the task of the state's attorney's office all the more difficult.

My own view necessarily was that if the facts above stated were subject to verification, the accused was undoubtedly guilty, but there were sufficient circumstances of an unusual character involved to make it highly important that every fact should be scrutinized with the utmost care and in the most impartial manner. It goes without saying that it is just as important for a state's attorney to use the great powers of his office to protect the innocent as it is to convict the guilty.

From the time that the murder was committed the state's attorney's office has been following the development of events with deep interest. For a long time my very able and conscientious assistant, Mr. Garlick, has been studying the matter and conducting inquiries along lines suggested either by him or by myself. More recently I have taken upon myself the burden of this case. I have endeavored to approach it without any preconceived notion and for the purpose of arriving at a conclusion which should be in accord with the high purposes to which I hope the state's attorney's office is devoted.

In the study of this case I have not spared myself. I have interviewed personally every person of consequence who had anything to say for or against the accused. I have studied the great mass of testimony which has been accumulated, thousands of pages. This is only a part of it which you see here upon the desk. I have made a careful scrutiny of all of the exhibits. I have interviewed the accused himself and have interrogated him in the presence of Mr. Deforest, the public defender, who has been representing him and who is in court at this present moment. In addition to this, I have had the benefit of the advice of several reputable physicians and I have studied the ballistic aspects of the case to the best of my ability with the assistance of gentlemen who are skilled in matters of this kind.

I have personally interrogated all of the key witnesses and I have personally gone over the scene of the crime and the supposed course of flight of the murderer, and I placed myself in the position of the witnesses who identified the escaping criminal under conditions as nearly as possible like those which existed on the night in question. It has been a long, tedious and exacting experience, but I have reached certain definite conclusions which, with Your Honor's permission, I shall now proceed to develop.

On Friday, the 15th of February, when Harold Israel was bound over from the City Court of Bridgeport, he was interrogated at length by Mr. Garlick. He was examined by three physicians—Dr. John H. Finnegan, Dr. Frank W. Stevens and Dr. John C. Lynch, designated by the state's attorney's office for that purpose. They also questioned

him. They have united in a written report to the effect that on the day in question the accused was in a highly nervous condition, physically and mentally exhausted, and was incapable of making a dependable statement on said day or on the previous day, Thursday, the 14th. His answers are extremely interesting. I have a stenographic report of all these proceedings. He both admitted and denied the crime. The physicians also reported that on February 18th, that is, three days later, and after physical and mental rest, the accused was competent to confer with a representative of the state's attorney's office and with his own counsel and with physicians. Up to that time it was their judgment that he was totally incapable of rendering a coherent, dependable statement.

When in this somewhat restored condition the accused was interrogated. He denied his guilt and reasserted his innocence, and has maintained his innocence ever since. When asked why he had confessed, he said, in substance, that it was because he was so tired that he was willing to admit anything in order to get a rest and because everything was against him. In subsequent conferences with the physicians in question and with Dr. George Garlick I ascertained that it was their unanimous opinion that the accused was a person of low mentality, of the moron type, quiet and docile in demeanor, totally lacking in any characteristics of brutality or viciousness, of very weak will and peculiarly subject to the influence of suggestion. It was the opinion of the physicians that any confession made by the accused was totally without value, and they were of the opinion also that if they cared to subject the accused to a continuous and fatiguing line of interrogation, accusation and suggestion in due course he would be reduced to such a mental state that he would admit practically anything that his interrogators desired. They further stated that this was a common phenomenon with certain types of people, and that where such people are subjected to interrogatories, accusations or suggestions from persons of stronger will, the lesser mind will ultimately succumb and accept the conclusions of the more powerful intellect. Whether or not this particular situation existed in the present case, I was not entirely prepared to accept, even upon the statement of the physicians. I have carefully read, however, all of the statements made by the accused, which may be summarized as follows:

First—His preliminary statements, in which he denied his guilt.

Second—His subsequent statements, in which he admitted his guilt.

Third—His final statements, in which he reasserted his innocence.

I do not find in all of this evidence any fact or statement on the part of the accused, made by him voluntarily, of an incriminating character which added any information or supplied any fact that was missing from the state's case. To put it another way, all of the admissions of an incriminating character were admissions with reference to facts already known to the police prior to the examination of the accused and presumably related to the accused during the period of his examination.

This is a tremendously important factor in weighing the conclusion of the physicians and deciding the question of whether or not the so-called confession is of any probative value. I think the conclusion is inevitable that the so-called confession is without value, and if any attempt were made to use it before a jury it could easily be rendered nugatory when attacked by competent counsel. Why, Your Honor could see practically how such a thing would operate. If I were trying the case and desired to put in this confession for the purpose of incriminating the accused, all the defense would have to do to shatter this confession would be to call these physicians, and in a moment the confession would disappear from the case as not having any probative value.

The conclusions which I have reached with regard to the confession are likewise applicable to that set of facts which are in reality part thereof and which deal with the circumstances of the trip taken by the accused in the company of the officers over the route of the supposed flight of the slayer. I thus eliminate and lay aside from the case Points 7 and 8 in the coroner's summarization.

Now, if Your Honor please, perhaps at this point, and as illustrative of the manner in which "appearances are deceitful," I call attention to the ninth point in the coroner's summary. This point, Your Honor will recall, deals with the finding of the empty shell in the toilet room where the accused lived. It was supposed to be an important circumstance that when asked where the fatal shell was (and this was during the period of this intensive interrogation), the accused told the officers where it could be found, and they subsequently found it at the place he designated. The coroner founds one of his essential points upon this situation. Great discredit is placed upon the significance of this incident by the experience of the landlady in charge of the room in question. After the police had found the supposed fatal cartridge the landlady herself found another cartridge, also empty, at substantially the same location. It appears that the accused and his companions occasionally used the pistol in shooting

practice in the woods and carelessly threw down the empty shells wherever they chanced to be and sometimes threw them in the toilet-room. More conclusive, however, if Your Honor please, than this fact is the further fact that the examination of the empty shells found as above described (that is, these two empty shells) discloses that they were exploded by a trigger point which was relatively dull, whereas the trigger point on the weapon found in the possession of the accused was comparatively sharp. Test shots fired with the Israel revolver indicate clearly upon the percussion cap the character of the impact of the trigger. Inquiry discloses that two weeks prior to the murder Charles Cihal, the friend of the accused, and at the request of the latter, took the revolver to the carpenter shop where he was employed and caused the trigger point to be sharpened, thinking that it would thus operate more effectively. It is thus clear that the supposed fatal cartridge, which it was assumed had been the cause of the death of Father Dahme, had actually been exploded long before the crime was committed. An experience of this kind accentuates the necessity of scrupulous care in the weighing of circumstances of this type.

Thus we are forced to eliminate from the state's case the ninth point, so-called.

We now turn to the testimony of Frederick W. Morris and Ralph Esposito, referred to in the third point of the coroner's summary. Mr. Morris is a man of undoubted probity. He witnessed the murder. He stood within six feet or thereabouts of Father Dahme at the time of the shooting. He was, in fact, of all the witnesses the nearest eyewitness to the scene of the crime. He speaks of seeing a little fellow back of a big fellow and describes vividly the shooting of Father Dahme. He did not, however, see the revolver in the hands of the slayer, and, curiously enough, he is of the impression that the slayer and his victim stepped around the corner from High street. In other words, the man of all others of undoubted character who stood nearest to the scene of the crime, within six feet of it, saw or thought he saw the slayer and the accused come around the corner of High street into Main street. Now, I haven't the least doubt in the world that Mr. Morris is telling the thing exactly as he remembers it, or is giving accurately the impression which it created upon his mind, but this runs counter to the testimony of other witnesses, and, I am free to say, it runs counter to the probabilities of the case. I merely mention it for the purpose of showing how easy it is for reputable eyewitnesses to describe the same transaction in varying forms. This witness saw the slayer flee up High street and says that he wore an overcoat and a

cap. Although he was nearer to the assassin than any other witness, he was unable to give a more definite description and was unable to identify the accused after he had been placed under arrest.

The other witness, Ralph Esposito, is a young man who was standing near the scene of the crime and saw the deed perpetrated. He was some little distance away—20 or 30 feet. He states that he did not get a good look at the face of the slayer. He says that the assassin wore a dark cap and a dark coat, whereas practically all of the other witnesses say that the accused wore a gray cap. These are some of the discrepancies in the description of the slayer to which I referred a little earlier in my statement to Your Honor. As a matter of fact, the cap of the accused is neither gray nor dark. It is of a slightly greenish or olive tinge. (The cap worn by Israel is exhibited to the court.) This is the cap, Your Honor. It would hardly be called gray and hardly would be called dark. That is the cap of Israel. The witnesses say that the escaping criminal wore a gray cap.

The witness Esposito also makes a rather remarkable and possibly significant statement. He says that he thinks that the revolver was "one of those black pistols," and adds that "it did not shine," and I am quoting his exact words as he testified before the coroner. Now, it so happens that the Israel revolver is nickel-plated, and under electric lights, had it been used, it is quite likely it would have glittered. It is rather remarkable that one of the witnesses upon whom the state would have to depend in the event of a trial says that it was "one of those black pistols." (The Israel revolver is exhibited to the court.) That, if Your Honor please, is a nickel-plated revolver and is the revolver that was found on the person of the accused when he was arrested in Norwalk and is the revolver that, in the event of a trial, the state would be forced to claim was the revolver that was used in killing Father Dahme. It is very likely that a revolver of that type used under the electric light would have glittered, but even that might have passed the observation of the witness, but when the witness voluntarily states that it was a black revolver, "one of those dark colored revolvers," and when you remember that Esposito would be one of the witnesses that the state would have to primarily depend upon, it presents a very interesting situation which would in itself prove quite embarrassing to the state in the event of a trial.

The witness Esposito, when asked to identify the accused, rather hesitatingly did so, but he identified him from his back and his overcoat and not from his face. He also attempted to strengthen his identification by describing the manner in which the slayer ran up the

street, saying it was sort of a "Jewish run." This was his shorthand description of the appearance of the slayer as he disappeared into the darkness. The police accommodated the witness and caused Israel to run around in the police station so that this witness might observe him and see whether he had a "Jewish run" or not. No comment is necessary to justify the assertion that an identification based upon this ground is without value. I therefore am forced to lay out of the case the third point in the summary.

Let me now take up the fourth point in the coroner's summary. This point, Your Honor will recall, deals with the testimony of Jennie Boynton and Hilda Baer. These two women were proceeding down the hill on High street going toward Main street at the time of the firing of the fatal shot. They heard the shot fired. They were, at that time, on the south side of the street near the church, which is some considerable distance from the corner. This is quite interesting, Your Honor. These two ladies, in company with Mr. Roter, were coming down High street, coming down hill on the southerly or right-hand side. When they reached the church, which is near there, and I should say, estimating, perhaps one hundred yards from the corner, they saw a man running up High street toward them. One of these women said the man was running in the center of the street and that as he approached within a measurable distance he sheered off to the right across the street to the northerly side. She saw only the side of his face, estimating the distance practically the width of the street, and then he disappeared in the darkness.

Now, Frank Roter, who was with these two ladies, is totally unable to identify the accused as the person then seen running.

Jennie Boynton asserts that the assassin wore an old stiff overcoat which looked like a German overcoat. She was struck by the pallor of the accused, but saw only the side of his face. When first taken to the police station to attempt to identify the accused, she stated that she could not do so, and returned to her home without making any identification. She returned the next day, however, and identified the accused. Her explanation is that when she first saw him at the police station she recognized him but was so nervous that she feared her nerves were "playing her a trick" and she did not feel justified in identifying him. She "worried about it" in the night, so she told the coroner. In the meantime, however, it was published in the paper that Israel had confessed. This seemed to dissolve her doubts and she returned and made the necessary identification. Even so, her testimony is of dubious value because she uses such phrases as this: "I

haven't much doubt about it," "He looks like the same man," "Yes, I am pretty sure it is the same person."

The witness Hilda Baer is a niece of Jennie Boynton. She speaks through an interpreter and she did not identify the accused in the police station, nor does my survey of the notes submitted to me indicate that she made any identification until she appeared before the coroner. There are circumstances in connection with this identification which would cause me to hesitate to accept it. She speaks of the accused as having a long nose, as if this were the most striking thing about him. There is nothing abnormal about the nose of the accused. Moreover, at the time the coroner's hearing was held, the picture of Israel had been published repeatedly in the local newspapers. Some of the papers carried a very excellent picture of him.

I turn to a more important consideration with reference to the testimony of these two witnesses. I myself made repeated experiments at the place where these two witnesses are supposed to have seen the fleeing assassin. I have no doubt that they did see the fleeing assassin, but I am perfectly satisfied that it was utterly impossible for either of these witnesses to identify the assassin under the conditions that existed at that time. I personally was unable to distinguish the features of a person I knew well at such a distance and under the given circumstances. I could not even tell a friend of mine within the distance that these ladies say they identify a stranger whom they saw running. And it passes all credulity that witnesses, seeing a running person they had never seen before, for a fleeting moment, could in that dim light carry an impression which would enable them to identify that person a matter of nearly two weeks thereafter. I have no hesitancy whatsoever therefore in placing out of the case the identification of Jennie Boynton and Hilda Baer as set forth in the fourth point.

This brings me to the fifth point, dealing with the testimony of Edward Flood, who saw a man about 7:55 p. m. on the night in question fleeing across Congress street toward Harrison street. The witness came out of St. Augustine's Church and has excellent reason for fixing the time of the occurrence. He saw that the person was pale and colorless and describes his momentary stumble at the curb. He describes the person as wearing an overcoat with a velvet collar, and in his testimony before the coroner adds that the fleeing person wore a cap. In his preliminary statements he did not seem to remember about the cap. His memory has apparently been strengthened between the time when he identified the accused at the police station and the time when he testified before the coroner. We find

him describing the fleeing person as having "furrows in his brow" and seeming to be "in deep trouble." The witness also tells of looking up and down Congress street and up and down Pequonock street to see whether there was any trolley car which the running person might have been trying to catch.

There is a tinge of the imaginative about the testimony which leads me to doubt its probative force. Moreover, I personally experimented at the corner in question, not only with an assistant who went through the motions supposed to have been gone through by the fleeing person, but I waited for passers-by to come along to see whether I could sufficiently fix their features in my mind so as to permit me to identify them subsequently. There is an electric light about fifty or sixty feet from the place in question. The fleeing person must have run diagonally so that this light did not fall fully upon his face. If the person were running, the range of vision within which it would be possible to distinguish his features would be the length of time that it would take him to cross a distance of say ten or twelve feet. In other words, a witness would have to fix the features of the accused in his mind within a period of three or four seconds, and all this in a dim light. I confess that I am shocked when I think that any person would, in a case of this character, assert a positive identification based upon such circumstances and taking place two weeks thereafter with reference to a person the witness had never seen before.

I have no hesitancy in asserting that I could not, upon my conscience, ask any trial court or jury to place credence upon an identification of this character. I, therefore, lay the fifth point out of the case.

And now, Your Honor, let me call attention to an incident which actually happened subsequent to the arrest of this accused and while he was in jail. During the February term of court, immediately following the murder, there was a large attendance of persons apparently drawn here by the possibility that the Israel case would come up for consideration. We formed a practice of looking into the crowd of spectators with a view to see how many people who sat on the benches resembled Harold Israel, and many interesting and illuminating experiences were gathered in that way. On one day, for instance, the sheriff picked out seven people, and another person, after a conference with the state's attorney, picked out eight people. Seven of the eight were identical, that is, they picked out the same people all as resembling the accused.

Then another very interesting thing happened. I saw in the court room here one day a man strikingly like the description of

Harold Israel, so we sent for him and brought him into the state's attorney's office. He was interrogated as to the reason for his presence in the court room. He showed signs of extreme terror, distress and anxiety. He nearly fell on the floor and collapsed when asked why he was in the court room. He could not give any reason, but finally admitted he was there on account of the Israel case, and exhibited symptoms which, under ordinary circumstances, would cast grave suspicion upon him. Then we looked on the table where he placed his coat and cap, and lo and behold, there was a gray cap and there was a coat, a three-quarter length dark coat, and there was a velvet collar on that coat. At this time Harold Israel was in jail. That actually happened, and it shows how easy it is for similarities in appearance, and especially similarity in clothes, to be made the basis for a mistaken identification.

I now turn to the first point in the coroner's summary, which is the testimony of Nellie Trafton. This testimony would seem to be the most important testimony against the accused so far as identification is concerned. This witness had the advantage of knowing the accused for some time prior to the murder. The presumption is that if she saw him again she would recognize him because she would see him not as a stranger, but as a person she had previously known. As you will recall, she worked in the Star Restaurant, located a block from the scene of the crime. Her duties momentarily brought her to the front of the store to use the cash register. She looked at the clock which is located near there and fixed the time as about 7:35 p. m. She remembers this because she had an appointment at 8 o'clock. As she approached the cash register she glanced out of the window to the sidewalk on Main street, and there, passing in a leisurely manner, was the accused. The accused waved his hand to her and she waved her hand in reply, and he passed on out of her sight, going in the direction of the scene of the crime. All this occurred a matter of ten minutes before the murder.

Standing by itself this testimony would, of course, be of no importance, as Nellie Trafton did not see the shooting and there is nothing necessarily from her testimony which connects the accused with the crime. However, it is important in this respect, namely: The accused claims that he was nowhere near the scene of the crime at the time it happened. In fact, he states he was in a moving picture house known as the Empire Theater at the time in question, that he had gone to this theater about 7 o'clock and that he left the theater shortly after 9 o'clock. If his story is correct, he could not have been at the scene

of the crime. If the story of Nellie Trafton is to be relied upon, his statement of his movements is false and, therefore, suspicion is cast upon him because of the falsity of these statements.

It will be remembered also that Nellie Trafton, when she was working at the Philadelphia Lunch, saw the pistol which she says was exhibited to her at one time by Charles Cihal and at another time by the accused, the latter saying that some day he would kill somebody with it. In weighing the testimony of Nellie Trafton, we must remember that she made no complaint to the police and, in fact, made no statement to the police about it until after this particular individual, Harold Israel, had been arrested. It will also be recalled, for what it is worth, that there was a substantial reward offered for any testimony that might lead to the conviction of the assassin, and I must say, in passing, that this particular witness, through an attorney, has made application for the reward.

It is quite likely that the accused did show Nellie Trafton the pistol in question. It is probable that he made the remark referred to. It will be remembered that he had been in the army and that a revolver was not a remarkable object to him. Although Nellie Trafton admits that she thought he was joking at the time, it is very possible that the incident made some impression upon her. In fact, she says that when Father Dahme was killed, she thought that perhaps Israel had done it.

I thought, therefore, that it was important to ascertain what real opportunity Nellie Trafton had to identify the accused if he passed the restaurant as she described. I have done a good deal of strolling, Your Honor will observe, about the streets of Bridgeport lately. I therefore went to the Star Restaurant, and I created somewhat of a sensation there I will admit. I placed myself as nearly as I could in the position that she must have occupied at the time. I then found, somewhat to my surprise, that it was very difficult to distinguish any person passing on the sidewalk. The reason is this: Inside the window there is a glass partition separated from the front window by a distance of perhaps a couple of feet. This space between the two windows is evidently used as a place to exhibit fruit and other things sold in the restaurant. On the window there are printed letters, and between the two windows there is a bright light. At the present time this light is very vivid when it is turned on in the night season. After interrogation of the woman who runs the restaurant, I learned what kind of lights were in the window at the time of the murder. These lights were not so bright as the lights which are there now. I tried it both ways and

also without any lights at all, and while it is possible to see persons passing in the street and, by looking intently, to note their features, it is very difficult to do so on account of the distortion caused by the double windows, and I am satisfied that any identification made under such circumstances is of little value. I not only made the experiment, but the assistant state's attorney, Mr. Garlick, who was with me at the time, made similar experiments and he reached the same conclusion that I did. I thought, therefore, it was desirable to interrogate Miss Trafton, and I talked with her at some considerable length. I found that she was by no means certain of her ground. Moreover, she admitted that there was nothing strange in the fact that a man passing on the sidewalk had waved to her or even that she had waved back to him. This sometimes happened even in the case of total strangers. With a measurably good-looking girl, approaching the window, some gay stranger passing by might very easily wave his hand to her, and, if she were of a flirtatious disposition, she might respond.

After eliminating from the case, by the necessities of logic, the other identifications, this solitary dubious identification, standing by itself, is totally worthless. Moreover, there are at least ten other eye-witnesses who had equal opportunities for identifying the assassin and who do not identify Israel as the slayer of Father Dahme. Point 1 is therefore dismissed from further consideration.

That eliminates from this case, Your Honor, every point set forth in the summarization made by the coroner except the tenth point, and this, I may say, is the crucial point in the case. The tenth point in the coroner's summary deals with the testimony of the ballistic engineer, Mr. Van Amburgh. It will be remembered that this witness states that in his opinion the fatal bullet was fired through the Israel revolver. If this opinion is well founded, then Israel is guilty, no matter what we may think of the character of the other evidence to which I have already referred. If, on the other hand, the testimony of this witness is not reliable and if it should appear that the mortal bullet was discharged through some weapon other than the Israel revolver, then Israel is innocent.

This brings us to a general consideration of that class of expert testimony which deals with the identification of a bullet with a particular weapon where both are available for experimentation. In this case we have the Israel revolver and we have the mortal bullet. (Bullet is shown to the court.) Of late years there has grown up a system of examination in such cases which is based upon scientific theories, supplemented by actual experimentation. It has come to be a very def-

inite science. Men qualify themselves by experience in dealing with such matters. Sometimes it is described as the science of "finger printing bullets." Of course, it is obvious any bullet discharged through a particular weapon will bear the marks of the weapon through which it has passed, and if the bullet be recovered and is in sufficiently good condition to be examined, it will often bear unmistakable traces of its previous history. Ordinarily, in such cases, witnesses measure the width of what are known as the "lands" and "grooves" on the bullet. They then make a cast of a portion of the barrel of the suspected weapon and make duplicate measurements. They then discharge experimental shots through the suspected weapon and recover the bullets thus fired. These bullets are usually fired into soft substances like cotton. The recovered bullets are then measured in the same manner and compared by means of the microscope and enlarged photographs with the suspected bullet. In addition to this, the experimental bullet is inspected for characteristic marks. If any are found, these are measured and located. The suspected bullet is then examined for similar marks. Consideration is given to the number and dimensions of lands and grooves, to the direction or twist of the rifling in the barrel and the caliber of the bullet. Consideration is given as to whether the bullet is upset on impact or otherwise disturbed. The weight of the bullet is considered and the question of the presence or absence of what is known as a grease groove.

These characteristics are searched for. Sometimes one element is missing and others are found to exist. The condition of any bullet under examination is sometimes such that many of these marks of identification are destroyed. It so happens, however, that in a majority of cases where the fatal bullet is recovered and the suspected weapon is available, it is possible for experts to say definitely whether the bullet came out of the suspected weapon or not.

In this case I have sought the advice of the most experienced men who were available. I have had the benefit of the opinion of the following:

(a) Thomas A. Campbell of New Haven, a graduate of Yale University, who had experience with the Winchester Repeating Arms Company, Inc., and has been connected with the Remington Arms Company, Inc., for five years as metallurgist.

(b) Egbert C. Hadley of Bridgeport, who received his education and obtained his degrees in various institutions of learning, including the Harvard Graduate School of Arts and Sciences and the Massachusetts Institute of Technology. He was employed in the mechanical

laboratory in the New York Navy Yard and became connected with the Remington Arms Company, Inc., in November, 1915. Since August, 1916, he has been connected with the ballistic department, having to do with the technical side of the manufacture of ammunition. In July, 1919, he was appointed ballistic engineer, and is at present ballistic engineer of the U. M. C. Bridgeport works of the Remington Arms Company.

(c) George H. Garrison of Bridgeport, who has had many years of experience in connection with the manufacture and sale of guns and ammunition. He has been connected with the Remington Arms Company since 1904 in various capacities. In 1918 he became quality engineer of the Remington Arms Company and has designed and patented guns, gun devices and improvements in firearms and ammunition.

(d) Merton A. Robinson of New Haven, Conn. He entered the employ of the Winchester Operating Arms Company in 1904 and was employed in the ballistic laboratory. In 1911 he was appointed head of the laboratory, a position which he retained until 1917, when he was transferred to the Central Engineering Division and given the title of ballistic engineer. It has been his duty as head of the laboratory and as ballistic engineer to supervise all routine and experimental tests of guns and ammunition and to specify standards as to powders, priming mixtures, bullet composition, gun chamber sizes, twists of rifling and the proper co-ordination of dimensions between gun and ammunition. During a long period of years it has been his practice in connection with his work to fire and recover various types of bullets from various arms and examine the recovered bullets with the aid of microscopes. In August, 1918, he was appointed by the United States Ordnance Department as a member of a commission to visit the principal small arms ammunition plants in England, France and Italy to study methods of manufacture and to observe and to determine the quality of ammunition being furnished to the American troops.

(e) J. A. Dickerman of Bridgeport. He is a graduate of the Cornell University of Engineering and has had a wide experience in designing and building various kinds of machinery. In 1916 he became connected with the Remington Arms Company, Inc. He has had charge of all experimental work in connection with tools and processes and war contracts. He was a member of a committee sent abroad to investigate European methods of manufacture. At the close of the war he became process engineer, and has had a wide experience in connection with shells, primers and bullets of all sizes and kinds and secured several patents in connection therewith.

(f) William A. Jones of New York. He was a member of the Police Department of the City of New York from 1887 to 1919. He was in charge of the school of pistol practice from 1895 to 1911. In 1908 he was assigned to the Homicide Bureau to investigate all shooting cases. In connection with this experience he visited the scene of many crimes and attended autopsies, worked with detectives on cases and testified as firearms expert in many trials. He has had a wide experience with different kinds of arms and cartridges and powders used in loading them. He has qualified as firearms expert in trials conducted in eleven different counties in New York State, and in trials in Maine, Connecticut, New Jersey, Pennsylvania, Virginia, West Virginia, North Carolina, Washington State and Washington, D. C., and Canada. He has been firearms expert for the Police Department and the district attorneys of the five counties in New York City for the past twenty years. During his experience he has actually given testimony in probably a thousand cases or more.

Now, all of these gentlemen are men of undoubted character and of wide experience and reputation. They are frequently consulted in similar cases and they are peculiarly well qualified to give advice in the pending matter. They were chosen to aid the state's attorney's office after careful investigation of their qualifications.

These gentlemen have carefully examined the mortal bullet. They have examined the Israel revolver. They have conducted sundry experiments. They have carefully compared the recovered bullets with the mortal bullet. They have examined the photographs of all the bullets thus used as well as the mortal bullet, and they have examined the experimental bullets fired by Capt. Van Amburgh. They have carefully considered his findings and they have examined the matter at great length and with the most painstaking care. Now, this has been a rather difficult matter for me to follow, Your Honor, but I have followed these discussions and the line of reasoning to the best of my ability. Apparently the contention made by Capt. Van Amburgh rests upon three propositions:

(A) He calls attention to the cups or depressions in the base of the mortal bullet as compared with similar depressions in the base of test bullets fired through the Israel revolver. I discussed this point at length with him and he frankly states that it is of very minor significance and without probative value. In other words, we talked about the point for half an hour, perhaps longer, and at the end of it he said it was a matter of no importance. Now, as a matter of fact, the other experts told me that similar appearances are produced by

many different kinds of bullets, and the matter is of no importance whatsoever.

(B) Measurements made of markings on the mortal bullet as compared with markings on the test bullets. It is his contention that it is possible to detect certain similarities in this respect. He does not, however, place much weight upon his assertions in this respect, preferring to rest his proposition upon his third and last point.

(C) This point deals with comparisons made between a photograph of the fatal bullet and a photograph made of a recovered bullet fired through the Israel revolver. By superimposing these photographs, he asserts that he is able to trace certain lines of similarity. It is upon this that he rests his whole case.

Here is an illustration, Your Honor. This is the photograph made under the direction of Captain Van Amburgh. The mortal bullet, that little bullet that was here on your desk, magnified many times, is this one. This is a photograph of a bullet which was fired through this revolver which you also see on your desk. Now the question is whether in any respect these two photographs thus many times enlarged disclose any resemblances to each other with reference to tracing of lines or marks which appear upon the surface.

In order to develop his argument, he first, with a sharp knife, cut a slit in this photograph. He inserts through that slit the strip picture of the recovered bullet, and, pushing this up and down, finally reaches a place where he says the lines coincide.

Well, I worked at that for two hours one day, and yesterday, in the presence of Captain Van Amburgh, worked on it for more than an hour. It took Captain Van Amburgh 15 minutes to find the point of junction himself—well, say five minutes, it will be more conservative. It is only with great difficulty that he, himself, is able to place these photographs in a position that is satisfactory to him.

Then a peculiar thing developed. I called his attention to it, and he had absolutely, so far as I could see, no answer to it. I asked him to put the photographs in the position which he claimed demonstrated his point, and he got them to that position. Then I said, "Now, lift up the flap and look and see what is under it," and I thought somewhat reluctantly the flap was lifted and on the under picture we saw a scene totally different from that which we saw on the upper picture. I asked him whether it was not perfectly logical to assume that if the two pictures had been superimposed—that is, if the other picture was transparent and placed over the other—that there ought not to be a continuous similarity in the surface appearances. He admitted that that

was logical, and I never could get a satisfactory explanation for the discrepancy.

I am free to say that I am unable to make any such deduction. I examined these photographs with extreme care and, in my judgment, they do not bear out his contention. I examined them in his presence and with the aid of every suggestion he was able to give. It seemed obvious to me that instead of demonstrating that the mortal bullet had been fired through the Israel revolver, it demonstrated that the mortal bullet had not been fired through the Israel gun. These photographs were submitted to the six gentlemen whom I consulted and whose names I have just mentioned, and their conclusions were that these photographs, if of any value whatsoever, proved the incorrectness of the Van Amburgh contention.

They are not only of the opinion that there is no evidence that the mortal bullet came out of the Israel revolver, but they are clearly of the opinion that the mortal bullet came out of some other unknown weapon. I have in my records a written opinion signed by all six of these gentlemen, relating to the general character of their tests, the conclusions which they have reached and the reasons for these conclusions.

Briefly stated, the primary ground upon which their opinion rests is that the mortal bullet came out of a weapon in reasonably good condition. There is upon the mortal bullet well-defined evidence of a land and grooves. By way of explanation, let me say that the land is the elevated portion of the rifling on the inside of the barrel. The groove is the space between. As a bullet passes through such a barrel, the lands and grooves make marks upon the bullet, the land, of course, making a depressed place on the bullet and the groove an elevated space.

Let me direct Your Honor's attention to the photographs made under the direction of the experts whom the state's attorney's office employed. These were largely magnified photographs of the mortal bullet. Here is another photograph of it and that is the supposed mortal cartridge which has the firing pin point I have mentioned. I don't care to refer to that except for the two large pictures. This is a picture of the mortal bullet. This is a picture of a bullet fired through the Israel gun. This is another one fired through the Israel gun. This is a .32 caliber bullet fired through a Smith & Wesson gun, and this is a bullet fired through a modern gun, and this is a picture of the cast made. These are similar pictures.

Now, Your Honor can see easily with your own eyes without the

aid of a microscope this indentation here, this indentation here and this indentation here, indicating the presence of what are known to be land and grooves. You can see that with the naked eye and you can see it in this small picture. If you turn to the pictures of bullets fired through the Israel revolver, there are no such marks. If you turn to the bullets fired through any other gun of modern make, you see these marks. It is perfectly obvious by mere scrutiny.

As I have just stated, the mortal bullet in this case shows clear evidence of such marking. All of the experimental bullets fired through the Israel revolver are without trace of any comparable land marks or grooves. The reason is this: The Israel revolver is in a bad state of repair and for a substantial distance midway in the barrel it is encrusted with rust and other accumulations, which have perceptibly choked the bore of the revolver. The result is that a bullet which will pass through the opening midway in the barrel will rattle loosely when inserted at either end of the barrel. The experimental bullets demonstrated this fact beyond question. A bullet fired through the Israel revolver will begin to rotate when it strikes the first rifling of the barrel. It then comes to the choked portion of the bore, and, in order to go through, it is squeezed and elongated. Practically all of the marks made by the initial rifling are eliminated and the elongated bullet emerges from the muzzle without bearing the marks of the rifling at that end of the barrel. From looking at the weapon, the experts could say that they would not expect a bullet fired through this weapon to bear any perceptible mark of lands or grooves, and as a matter of fact the experimental bullets fired through the Israel revolver do not bear any such perceptible marks. The marks on the mortal bullet, however, as above stated, clearly disclose the presence of a land and grooves. This in itself is sufficient to demonstrate that the mortal bullet did not pass through the Israel revolver.

There is, however, another bit of important and corroborative evidence. The mortal bullet does not show any evidence of a grease groove. A grease groove (perhaps Your Honor knows, but I had to learn) is a circular depression near the base of the bullet and in that part thereof which is inserted in the cartridge shell and in which grease is placed so that when the bullet is fired there will be a minimum of friction as it passes out of the shell and through the barrel of the weapon. If a weapon is in good enough condition to clearly mark on a bullet discharged through it the evidence of land and grooves it would retain the impression of the grease groove if the bullet originally had a grease groove. In the present case, the mortal bullet is without any

evidence of a grease groove, and there is no reason to believe that it ever had a grease groove. On the other hand, all the Israel and identical bullets fired through the Israel revolver for experimental purposes show the evidence of a grease groove. That also fortunately is visible to the naked eye. Your Honor will see those parallel lines. This is very clear and here is the place. There is none on this bullet. All the experts agreed that there is none. Taking a bullet and firing it through the Israel revolver as these were fired, it shows the evidences of a grease groove. That is uncontroverted. Now, we have a situation where the bullets fired through the Israel revolver contain grease grooves and the mortal bullet did not have a grease groove.

Moreover, Your Honor, I was not quite satisfied with that and I asked them to take some of the bullets that were found in the possession of Israel and open them to see whether the grease groove was in those bullets, and that actual experiment disclosed the presence of a grease groove. Moreover, all the Israel cartridges in the possession of the state undoubtedly contain grease grooves, not only because of their known make, but because several of them were opened for the purpose of ascertaining whether this was the fact or not. It is thus apparent that the mortal bullet had no grease groove, whereas the Israel bullets did have grease grooves.

These circumstances amount to a demonstration that the bullet which killed Father Dahme did not pass through the Israel revolver.

There are other matters of a lesser nature which might be commented upon. For instance, the Israel revolver frequently misses fire. This failure to function is accentuated when the revolver is held at the angle at which the murderer probably held his weapon. You take this revolver here to shoot it off, and you will find that it misses fire more than 50 per cent of the time. Sometimes the chamber or cylinder doesn't revolve, and the reason it misses fire is because of the malalignment between the trigger point and the firing pin. We took the weapon, elevated it to this elevation indicated by the course of the bullet through the brain of Father Dahme, actually tried it and it missed fire eighteen times in succession.

After conferring at length with all of the ballistic engineers and having compared their opinions, I have no hesitancy in accepting the conclusions reached by the six gentlemen to whom I have referred. Of course, the acceptance of that conclusion marks an end to the case. In the face of such an opinion it would be preposterous to contemplate a trial, and, moreover, it would be an injustice even to longer suspect Israel of murder.

Of course, I could have rested my entire conclusion upon the opinion of the six ballistic engineers to whom I have referred, and I would have been entirely justified in so doing. In other words, if there were nothing in behalf of the defense except the testimony of these six men, it would create a reasonable doubt of the guilt of the accused. In fact, I regard it as the turning point of the case; but on account of the other remarkable circumstances which I have analyzed at length heretofore, I thought it best to consider them because, unless I did so, many persons would desire to know how these apparently incriminating facts could be reconciled with a conclusion of innocence.

There are many other circumstances which sustain the conclusion that Israel is not guilty. I do not pause to dwell upon them all. There is one, however, I would like to draw to the attention of the court. During the course of his statement to Mr. Garlick the accused was interrogated as to his movements on the night of the murder. In the course of this statement he said he had been at the Empire Theater, which he had entered shortly after 7 o'clock and where he remained until about 9 o'clock. He was asked what pictures were being shown at the time. He named four pictures, as follows: "The Fighting Skipper," "The Mystery Girl," "The Leather Pushers" and the "Ghost of the Dungeon." It is scarcely conceivable that he had any premonition that this question was to be asked of him or any opportunity to prepare his answer. Furthermore, he was asked what picture was being presented at the time he entered the Empire Theater. He replied that "The Leather Pushers" was being shown and that he saw the last part of it and that he remained in the theater until "The Leather Pushers" was shown again, and thus remained until he had seen that full number.

Subsequently Mr. Garlick obtained from the manager of the theater a statement of what the facts were with regard to the presentation of the program of the evening in question, with the approximate time when each picture was shown, which disclosed the following situation, and I may say that we are informed that the actual variation in time would not exceed two minutes either way. "The Leather Pushers" began at 6:50 p. m. and terminated at 7:10 p. m. "The Mystery Girl" was the next number, continuing until 8:10 p. m., a full hour. There was then an intermission of about five minutes. The next number was "The Fighting Skipper," which continued until 8:37 p. m. The next number was "The Ghost of the Canyon" (not Dungeon), continuing until 8:57 p. m. The next number was "The Leather Pushers," terminating at 9:17 p. m. This schedule exactly checks up with the

story of Israel's movements that evening as related by him. It is obvious that if he was in the Empire Theater on the evening in question and saw the last half of "The Leather Pushers" when it was first presented and the remaining part of it when it was next presented, he saw the full program and was in the theater at the time the murder was committed. Your Honor will recall the murder was committed at 7:45 p. m. At that moment, if he was in the theater, he was witnessing the performance of "The Mystery Girl."

In view of what I have said about every element of the case, I do not think that any doubt of Israel's innocence can remain in the mind of a candid person.

Israel was bound over not only on the charge of murder, for which he has been awaiting trial, but he was sentenced by the City Court of Norwalk to thirty days in jail and costs for carrying a concealed weapon. This latter sentence will have been fully served and the costs worked out by June 5th. In these circumstances it is my intention to enter a nolle in the pending case forthwith. So that, while Israel has been held for murder, he has been serving time on a sentence properly imposed and has not suffered any imprisonment during the period given over to the examination of the facts in this case. In other words, his sentence under the City Court with costs imposed has been running parallel to the period during which this case has been under investigation. Therefore, if Your Honor approves, as I trust you will, of my conclusions in this matter, I shall enter a nolle in the case of *State v. Harold Israel*.

THE COURT: The court has given very close attention to the state's attorney and followed the presentation of the case as closely as it could. It is perfectly evident that a great deal of painstaking care has been expended on this case and that the attitude of the state's attorney's office has been what it always should be, one of impartiality and a desire to shield the innocent as well as a determination to prosecute those who are guilty.

The court cannot help but feel that after the care that has been expended by those who are well qualified and the careful and exhaustive review of the case and the statements that are made, that the recommendation of the state's attorney is one that should be approved and carried out.

I feel that the state's attorney's office is entirely justified in the recommendation that has been made, and it is so ordered.

MR. CUMMINGS: I thank your Honor.