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CASE 624

COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEWYORK. PART II.

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-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-  
LEOPOLT ACKOVITZ.

-----X  
Before HON. THOMAS C. T. CRAIN, and a Jury.

New York, January 28th, etc., 1907.

Indicted for maiming, Section 206, Penal Code; assault  
in the first degree; Section 217, Penal Code.

Indictment filed October 23rd, 1906.

-----oOo-----

A p p e a r a n c e s .

For the People: Assistant District Attorney KEYRAN J.  
O'CONNOR.

For the Defense: MESSRS. EINSOHN & SIEGEL.

-----oOo-----

James E. Lynch,  
Official Stenographer.

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A jury was duly empaneled and sworn.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Tuesday, January 29th, 1907, at 10.30 o'clock A. M.

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New York, January 29th, 1907.

TRIAL RESUMED.

S A N D E R W E I S S , being called as a witness on behalf of the People, and duly sworn, testified through Official Interpreter Dollin, as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live? A 729 East Ninth Street.

Q In the County of New York? A Yes, sir.

Q What is your business? A Baker.

Q And where are you employed? A For five months

I have not been working.

Q Now, on the 15th day of September, 1906, where were you employed? A Rockwell's bakery.

Q Where is that? A East 75th Street, 429.

Q How old are you? A Twenty.

Q Do you know this defendant at the bar here, Leopolt Ackervitz? A Yes.

Q How long have you known him? A Nine months.

Q Did he work in Rockwell's bakery with you? A Yes, four months we worked together, in the bakery.

Q Now, on the 15th of September, 1906, did you have some trouble with Ackervitz? A Yes.

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Q Tell the Judge and jury what trouble you had with the defendant, and what took place between you two, if anything?

MR. EINSOHN: May I ask to have the District Attorney confine himself to the hour of the day?

MR. O'CONNOR: I do not know the hour of the day.

THE COURT: If the answer is not sufficiently definite, a further question can be asked.

A We had some difficulty in the bakery, and he beat me already in the bakery, and I came out of the bakery.

Q What time of day was it that you had the trouble in the bakery? A It was a quarter to three.

Q In the day? A In the night time.

Q No, no. A Well, in the morning.

Q A quarter of three in the morning? A Yes.

Q Three A. M.? A Yes.

Q Tell us what took place in the bakery between you and the defendant? A We were both cleaning the bakery, and all the sweeping that I did, he threw it back to me, and I did once throw the sweepings back to him; then he commenced to beat me.

Q With what did he beat you? A With the brush, that we used to put the flour together.

Q What did you do when the defendant beat you with the brush? A I didn't do anything to him.

Q Well, did you and the defendant remain in the bakery

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after he had struck you with the brush? A We remained until three o'clock.

THE COURT: I thought he said that this happened at three.

MR. O'CONNOR: A quarter of three, your Honor.

Q What time did you leave the bakery? A At three o'clock I finished and I went away.

Q Now, where did you go to? A I went home.

Q Did you go home, or did you meet the defendant before you got home? A yes, sir, I met him before I went home.

Q Where did he meet you? A I was standing at the door of the house where I lived.

Q Where did you live at that time? A 415 East 75th Street, where the bakery is, the same street.

Q In the County of New York? A Yes, sir.

Q Now, you say you were standing at the door; was the defendant there? A While I was standing at the house, for about five minutes, before he came--

Q Yes? A I remained at the door, because it was very warm, to get--

Q Never mind the reason? A I remained at the door, standing.

Q Did the defendant come up to where you were standing?

MR. FINSOHN: Objected to as leading.

Question withdrawn.

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Q Did you see the defendant while you were standing at the door? A Yes, sir, he came up.

Q He came up, and did he say anything to you when he came up to you? A He did not speak to me.

Q Well, did he do anything to you? A Not at that time.

Q Well, what happened? A He came with a man who is a witness here, and I asked him, the defendant, why he beat me. At that time he had a loaf of bread under his arm. Well, I did not say anything to him, and he threw that bread down near the door. Then he immediately stabbed me in the eye with a knife. I did not see the knife first.

Q Well, did you see the knife in his hand? A Yes; after I saw the knife in his hand.

Q Where were you struck?

MR. EINSOHN: I object to that. He is charged in the indictment merely with stabbing him in the eye, and impairing his eyesight, and with nothing else, and I object to any testimony as to other injuries.

THE COURT: If that is so I will sustain the objection.

MR. O'CONNOR: If your Honor please, I will read the second count in the indictment. The second count reads, "That said Leopolt Ackovitz, late of the Borough of Manhattan aforesaid, on the day and year aforesaid, did upon one Sander Weiss, make an assault, etc."

THE COURT: Yes, then I overrule the objection.

MR. EINSOHN: Exception.

BY MR. O'CONNOR:

Q I ask you the question, where did the defendant strike you; what part of the eye? A Here; (indicating) this left eye, he just stabbed it out with a knife.

Q Where else did he cut you with the knife? A First he stabbed me sideways in the eye, and threw the eye out, pushed the eye out; then he stabbed me from below near the nose, upwards to the eye.

Q And where else? A Then he stabbed me on the backside of my head twice, crosswise; it was sewed up, the wound was.

BY THE COURT:

Q How many times did he stab you altogether? A Six times.

BY MR. O'CONNOR:

Q Now, after you had been stabbed six times, what became of you? A I fell down on the sidewalk.

Q Were there any other persons around there at the time besides yourself and the defendant? A Only the witness who is here was with him, and nobody else.

BY THE COURT:

Q And when you say "him", you mean the defendant?  
A The defendat.

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BY MR. O'CONNOR:

Q Where did you go to after you fell down; did you get up? A The last stab he gave me was in the back with the knife, and he tried to stab me in the stomach, and I got up immediately. Well, I was dazed, and I ran away. Then I was calling for police, and a policeman came up.

Q When you saw the policeman, did you speak to the policeman? A yes.

Q Now, did you go any place with the policeman? A I was taken back to the bakery.

Q Was the defendant there when you went back to the bakery with the policeman? A No, he was home already.

THE COURT: Strike out "he was home already."

He was not in the bakery.

Q Were you taken to the hospital from the bakery? A An ambulance took me to the hospital.

Q When did you next see the defendant? A At six o'clock, in the hospital, where I was, and the detective brought the defendant there.

Q That was on the morning of the 15th. You do not understand English, do you? A Yes, I understand English.

Q Well, was anything said in English to you by the policeman in the presence of the defendant?

MR. EINSOHN: I object to what the policeman said.

THE COURT: I will allow it if it was said in the

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presence of the defendant.

A The policeman asked me if this is the man, meaning the defendant, in English. Before I answered the question he himself said, "I stabbedhim."

Q That is what the defendant said? A Yes.

Q How long did you remain in the hospital? A About six or seven days in the hospital.

Q Then, did you appear in the police court? A Yes, sir. I was bandaged yet and I went to the court.

Q Now, is your eye out? A I had an operation on the eye. There is no eye there. The eyeball is out.

CROSS EXAMINATION BY MR. EINSOHN:

Q How old are you, Mr. Weiss? A Twenty.

Q Are you sure you are not more? A No.

Q Do you remember the age you gave in the Police court?

A I don't recollect what I said, but I have my certificate of birth.

Q Didn't you say in the police court that you were twenty-five years old? A No, sir, that is a lie.

THE COURT: Strike out the answer except "no, sir."

Q How much do you weigh, Mr. Weiss? A I don't know; I did not weigh myself.

Q Have you any idea how much you weigh? A You may weigh me, then you will know it. I never tried to weigh

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myself.

Q Do you think you weigh 180 pounds?

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained. The jury and the Court see the witness and they can form some idea of his size from his general appearance.

Q How long have you been a baker? A Six years.

Q And how long have you been in this country?

A This is the third year.

THE COURT: I think it is proper for you, counsellor, perhaps to get upon the record, and it will be conceded by the District Attorney, that this man is a man of about a certain height and a certain weight.

MR. O'CONNOR: Yes. Stand up.

THE COURT: About five feet six inches; weight about 145 pounds.

Q How much salary were you getting, Mr. Weiss, in Rockwell's bakery? A When there was no holiday-- well, I earned \$14 a week.

Q Do you know how much salary Ackovitz was getting there? A I don't care. I didn't inquire.

BY THE COURT:

Q Just yes or no. A I don't know.

BY MR. EINSOHN:

Q Were your relations with Ackovitz friendly before

September 15th or not? A I was not friendly.

BY THE COURT:

Q Now, see if you understand the word "friendly". Sometimes the word "friendly", to a foreigner means "relationship". A Well, I did not associate with him. I never had a quarrel with him.

BY MR. EINSOHN:

Q Were you on good terms with him? A He walways tried to tease me, but I didn't givehim a chance.

Q Then, because he tried to tease you, you were not very friendly to him, were you? A I did not act to him friendly; did not act to him in an unfriendly way; I did not talk to him at all.

MR. EINSOHN: I ask to strike that out.

THE COURT: I think it is responsive.

Q Did you resent the fact that he used to tease you? A No, sir, I did not get angry about it.

Q On September 15th, at about the lunch hour-- when did you have lunch on September 15th? A At 6 o'clock in the evening, we had something to eat.

Q What part of the bakery are you employed in, near the place where Ackovitz works? A The place where I worked, he came sometimes to that place, but not always. He was not always in that place.

Q On September 15th, at lunch hour, did you have any

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conversation with him? A Yes, sir, we talked.

Q Did you have any dispute there? A Well, he tried to incite me again, at the meal.

Q Did you make any remarks in regard to what he was eating, as to what food Ackovitz was eating?

THE COURT: When was this counsellor, the same day?

MR. EINSOHN: The same day.

A He talked to me about it. I didn't say anything to him about it.

Q Did you say to him, "You are eating corned beef sandwiches; you are so thin why don't you eat something decent; why do you save your money?" Did you say that to him? A No, sir, it is none of my business; I didn't say to him anything about it.

Q Now, about a quarter of three, you say you began to clean up? A Well, we cleaned it together, but we did not finish it altogether.

Q Were you both cleaning in the same part of the room?

A Yes, sir, the foreman sent me there to clean, to sweep.

Q You say that he struck you with the brush, is that right? A Yes, sir, he hit me on my feet, with it.

Q You did not provoke that in any way, did you; did you sweep any of the dust on him? A As I said before, three times he threw the sweepings at me, and I threw the sweepings once back, as I said before.

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Q You are sure you was not the first to throw the sweepings on Ackovitz, are you? A He first threw sweepings at me three times, and then I threw it back once.

Q You stated on your direct examination that when he hit you with the brush, you did not say anything at all to him; you did not say to him, "Why did you strike me?" when he struck you with the brush? A He hit me on account, because I threw the sweepings back once. That is why he hit me.

Q And you did not try to hit him back then, did you?

A No.

Q Now, you stated that at lunch hour, you had some conversation with the defendant, some dispute. Will you state what that conversation was? A Well, he always talked to me, but I did not talk to him.

Q What did he say? A He made that (indicating) with his hand; that way (indicating) to ridicule me. He says, "You are eating a Jewish meal."

BY THE COURT:

Q What is that? A "You are eating a Jewish meal," and he made that with his hands, that way (indicating).

BY MR. EINSOHN:

Q What did you say? A I did not answer him. I was talking to the others. I did not answer him.

Q Whenever he acted, teasing you that way, you never

answered him, is that right? A I talked to the others, not to him.

Q Whenever he teased you, you paid no attention to him, but kept on disregarding him, and talking to other people, is that right? A Yes.

Q Now, at three o'clock in the morning, you left the bakery, is that right? A Yes.

Q When did you begin to work that night? A At two o'clock in the afternoon.

Q And you had therefore been working for thirteen hours, is that right, that day? A Yes, sir.

Q And how far from the bakery did you live? A Not a block. It is not the distance of a block.

Q Is your work in the bakery very difficult? A No. Not hard work; it is not hard work.

Q After working for thirteen hours, you were not tired at all, were you? A No, I was not.

Q And in working, do you have to take part of your clothes off on account of the extreme heat in the place? A We work only in a shirt.

Q And isn't it as a matter of fact, your work in the bakery, very difficult? A Well, it is not very difficult hard work there, because it is worked by machines.

Q But you had to attend to the machines right along in the thirteen hours? A No, I don't stand at the machine.

The machine is separate.

Q Well, what do you do; what were your duties in the place? A I formed the bread, rolls.

Q How long did you have for lunch? A Half an hour.

Q And for the rest, twelve and a half hours, you worked continuously baking bread that night, did you?

A Not bread; rolls; all kinds of rolls.

Q And you worked continuously there for twelve and a half hours, did you? A yes.

Q And therefore you were tired at three o'clock, when you quit the place, weren't you? A No, sir, I was not tired at three o'clock.

Q Do you mean to say to, this jury that after twelve and a half hours work in making bread, you did not feel tired at the end of that time? A I worked at other times eighteen hours, and I was not tired.

MR. EINSOHN: I move to strike out the answer as not responsive.

THE COURT: We will leave in the part which says "I was not tired," and strike out the balance.

Q Now, what did you do when you left the bakery; did you go right home? A Yes, I went directly to my door, and there I stopped. To the door where I lived.

Q You left Ackovitz in the place, did you? A He remained in the bakery.

Q How long were you standing there at your door?

A About two minutes.

Q And in what position did you leave Ackovitz when he was up in the place; was he all dressed ready to go?

A I didn't see him, because I was in a separate place.

Q You stated on your direct examination that you stood at your place for five minutes. Now, how long did you stay at your door, for five minutes or two minutes? A I did not time it. I did not have a watch with me to time myself. Maybe four minutes, maybe three minutes, maybe four minutes.

Q Are you sure it was not twenty-five minutes? A No, sir.

Q It was less than twenty-five minutes? A It was as much as I said.

Q Are you sure it was not ten minutes? A It was as much as I said before.

Q And how much did you say before that it was?

A Three minutes, or maybe four minutes.

Q Are you sure it was not five minutes? A I don't know for sure.

Q You don't know; it may have been five minutes then?

A No, sir, three or four minutes.

Q You stated a little while ago that it may have been five minutes, didn't you? A No; I don't know.

Q What were you waiting there for? A I used to stand

at the door always, when I went home, because in the bakery it is very warm, and I did not go immediately to bed, and it is not far from the bakery, so I stopped at the door, to cool off.

Q You stopped to get some fresh air, is that right?

A Yes, sir, I always stand there at the door when I come from the bakery.

Q Every night you stand by the door waiting to get fresh air when you come from the bakery? A Well, I can't tell exactly every evening, but most evenings I stand at the door. When it is very warm I always remained at the door a little while.

Q And do you make it a habit on every warm day to stand in front of your place? A Yes, sir.

Q You never miss a night? A I always do that when it was very warm.

Q Now, isn't it a fact, Mr. Weiss, that you were waiting there for Ackovitz to come out of the bakery? A No, sir, I did not wait for him.

Q Did not wait for him at all? A No.

Q And when he passed you, you state that he immediately took out a knife and went over to you and jabbed you in the eye, is that right? A He remained standing, when he was near me, and I was about to ask him-- I wanted to ask him what he wants with me, because he beat me already in

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the bakery.

Q Therefore, when you stated before that you were not waiting for Ackovitz, you lied, didn't you; you were waiting for Ackovitz? A Well, I was standing there, and he came up, and then I had the intention to ask him what he wants of me, what is the matter with him.

Q In other words, you were waiting for Ackovitz to ask him what he wanted of you? A No, sir, I did not wait there on that account.

Q Didn't you state a little while ago that you waited for Ackovitz to find out what he always wanted from you?

A No, I did not say so.

Q Did you have any conversation with him as he passed you? A Well, when he came up to me, I intended to ask him.

Q You intended to ask him something, and before you asked you anything, he went and pulled out a knife and jabbed you in the eye with it? A When I saw that he threw down the bread, then I did not want to ask him any more.

Q Did you have your coat off while you were standing there? A I was standing there without a coat.

Q You went out of the bakery with your coat, didn't you? A No. I did not go to the bakery with a coat, because I lived very nearby. I went there without a coat.

Q Did you have bread in your hand when you left the bakery? A No. I did not take any bread from the bakery.

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Q Isn't it a customary thing for the workmen to take two loaves of bread from the bakery every night when they leave? A I am a single person, and I did not need it, and so I did not take any.

THE COURT: Strike that out. It is not responsive. Repeat the question.

Q (Question repeated.) A It is not customary. In one place you may take bread, and in another place where you want bread you have to pay for it.

Q Did all the rest of the workmen take bread home from the bakery every morning?

MR. O'CONNOR: I cannot see the materiality of this, if your Honor please.

THE COURT: Counsel, I want to give you the very utmost latitude in your cross examination, because the liberty of the defendant may depend upon a thorough examination of the case, but I suggest to you that your present line of inquiry is seemingly immaterial. Now, if you have a good motive for it, the reason for it I will not ask you to disclose, and you can proceed. I do not ask you to disclose the reason. You may proceed a little further with this line, but there is a limit to it.

Q Did you take some bread home from that bakery that morning, and did you go upstairs and leave the bread in your

house, and did you come down afterwards and wait for Ackovitz? A No, that is not so.

Q Now, when Ackovitz approached you, as you were standing at the door, did you make any attempt to strike him?

A No, sir.

Q Did you, as a matter of fact, hit him back when he hit you in the eye with a knife? A I held my arm out, so that he should not stab me, to prevent him from stabbing me.

BY THE COURT:

Q Which arm did you hold out? A Both arms. I tried to save myself by both arms I put out.

BY MR. EINSOHN:

Q And notwithstanding the fact that you had both arms out this way (indicating) he struck you in the eye?

MR. O'CONNOR: Objected to. Counsellor asked him if after he had been cut in the eye did he hold his hands out. Now, the ~~witness~~ answers the question that after he had cut him in the eye he put both hands out to prevent him from stabbing him further.

THE COURT: Proceed.

Q Now, you saw him take out a knife from his pocket, did you? A I did not see when he took it out. He held the knife that way (indicating).

BY THE COURT:

Q And when you say "that way", you mean up the sleeve?

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A Well, I saw him take out his hands, bent to the sleeve, out of his pocket. He took it out that way (indicating); his hand was that way (indicating), bent to the sleeve.

BY MR. EINSOHN:

Q Did you see him opening the knife? A No, sir, he had it ready already.

Q He took the knife out of his pocket in an open condition, is that right? A He took it out open, the open knife from his pocket that way (indicating).

BY THE COURT:

Q What kind of knife was it? A It was a big pocket knife.

BY MR. EINSOHN:

Q Did you have a knife in your pocket when you left that bakery? A No, sir. Even now I have no knife.

MR. EINSOHN: I move to strike that out as not responsive.

THE COURT: Strike out the answer except "no, sir."

Q You say you never had a pocket knife with you?

A I never have a knife; never carry a knife.

Q I am not asking you whether you ever had such-- did you ever have a pocket knife with you? A The only time I carried a knife, I always lost it, so I don't carry any more knives, and whenever I need a knife I borrow it

from the workingmen.

Q Did you ever borrow your knife to Ackovitz-- I mean did you ever lend your knife, rather, to Ackovitz? A No, sir.

Q During lunch hour, did he ever ask you for your knife, and did you ever lend it to him, for the purpose of cutting his food? A No, sir, I did not.

Q Now, then, you mean to tell this jury that during all this time, while you were employes in the factory, and during all this time that you say Ackovitz was teasing you, you never resented it in any way whatsoever; is that right? A Well, I am not an excitable man, and when it was over, I did not care any more for it.

Q You never got angry, is that right? A No, I am not excitable.

H O M E R   F .   S W I F T ,   M . D . , being called and  
duly sworn as a witness on behalf of the People,  
testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are a physician and surgeon, are you? A yes, sir.

Q And attached to what hospital? A The Presbyterian.

Q From what medical college did you graduate?

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A The Bellevue.

Q And when did you graduate from Bellevue Medical College? A Last June.

Q And then you went from there to the Presbyterian Hospital? A Yes, sir.

Q And you commenced at the foot of the ladder, by being placed as an ambulance surgeon, is that right? A Not exactly at first.

Q Well, what was the first thing you did when you went to the hospital? A Well, I had the position of junior.

Q Then, afterwards, you became an ambulance surgeon, did you? A Yes, sir.

Q And were you so connected with the Presbyterian Hospital in the month of September, 1906? A I was.

Q Now, doctor, did you respond to an ambulance call at Rockwell's bakery, in East 75th Street, on the morning of the 15th of September, 1906? A That call was at First avenue and 75th street.

Q And when you got there, did you see the last witness who was on the stand, Sander Weiss? A I did.

Q Now, will you describe to his Honor and this jury the condition that you found him in; where it was and what you did? A He was in a livery stable; I believe, at the time, it looked as if it were a livery stable; it might have been the delivery department of the bakery. I don't

know.

Q Yes, sir? A At that time, he was bleeding from the head and from the face. I made a superficial examination, and bound up these wounds temporarily, and then took the patient to the hospital.

Q Now, where were these wounds, doctor? A I did not make a thorough examination until I got him in the hospital.

Q Go on? A Then, there was a scalp wound; I don't know what portion of the head, but I think on the back of the scalp. There was a wound in the temple, extending down through the left eye onto the face, at the left side of the nose, and the upper lip; there was also a slight wound on the back.

Q Now, did you see his eye? A I did.

Q Did you make an examination of the eye, doctor?

A I did.

Q Will you describe to the Judge and jury whether the eye was penetrated or not? A The eyeball was penetrated; part of the inside of the eye, one of the humors was exposed slightly.

Q What do you call it? A Humors.

Q Now, what is a humor; can you describe that a little plainer, so that the jury will understand it?

A It is a transparent substance, somewhat like gelatine.

Q Where is that? A That is the way you would

describe it so that anybody would understand it. It is a transparent substance, and it is one of the contents--

MR. EINSOHN: I do not think we should get, or should go all through this terrible testimony, about the loss of the eye. We concede that the eye was taken out, and taken out by the defendant. I do not see why the defendant should be prejudiced that way before this jury, by going over this terrible testimony. We admit it.

THE COURT: I think, if it is admitted--

MR. O'CONNOR: If it is admitted that he took the eye out, all right.

MR. EINSOHN: Well, why do you go all over it?

MR. O'CONNOR: Because I had no concession.

THE COURT: If you desire to concede upon the record that one of the stab wounds that has been testified to took out the eye of the complainant, why that will dispense with this testimony, but you want to consider carefully whether you wish to concede that upon the record.

MR. O'CONNOR: Do you concede that?

MR. EINSOHN: No.

BY MR. O'CONNOR:

Q Now, describe that, doctor; you say it is a jelly like substance? A A jelly-like substance, that is in the eye, and that was protruded through the wound that was in the

front part of the eye.

Q And was the eye hanging down? A The eye was not out; the eye was still in its socket.

Q Then, after that, was the defendant placed, or the complainant, placed in bed there or upon the operating table?

A He was placed in a bed, and an eye specialist was called to consider the advisability of operating to remove the eye or not, and his opinion was that the eye ought to be removed, that it was damaged beyond repair.

Q And was the eye removed at the hospital? A The eye was removed in the hospital.

Q Can you recollect how long the defendant remained in the hospital, doctor? A The defendant was in the ward from the 15th to the 20th. After that he was discharged, and returned to the accident ward of the hospital, I don't know how many times, for dressing.

THE COURT: Now, Mr. O'Connor, I am not entirely satisfied with leaving in the testimony as to what was the opinion of the doctor. I think that we will strike that out.

MR. O'CONNOR: Yes, sir. Just as to the fact that the eye was removed will remain in?

THE COURT: Yes.

MR. O'CONNOR: I agree with your Honor on that. Of course the doctor does not understand the rules of

evidence.

MR. EINSOHN: May I suggest that my colleague cross examine the doctor?

THE COURT: Yes.

CROSS EXAMINATION BY MR. SIEGEL:

Q Doctor, in your direct testimony in answer to the question of the District Attorney, you said the eye was pierced? A Yes, sir.

Q By that would you mean that the blow of a knife had penetrated through the eye? A I don't know what object it was that had cut, that had injured the patient, but the eye was cut through the anterior portion; as if you would take an apple or the end of your finger and cut it partially off; the whole anterior portion was not removed, but this object that had inflicted the wound had entered the eye very evidently.

Q Well, how deeply did you suppose this object had entered the eye? A I can't say. Probably a quarter of an inch.

Q Do you mean to state that one of the humors-- is that the expression you used? A Yes.

Q That one of the humors was visible? A Protruding through the wound.

Q Now, you are acquainted with the composition of the

eye, the physical makeup of the eye? A Somewhat.

Q Will you kindly tell the jury what the first layer, the outside layer of the eye is? A The white portion is the sclera, and the transparent portion is the cornea.

Q Is that as far as your explanation goes? A Yes.

Q Isn't it a fact, doctor, that the outside layer of the eye is the sclerotic? A The sclera or sclerotic layer.

Q That is very thin? A The sclerotic layer is the white portion.

Q And how thick is the sclerotic layer? A I can't recall the exact figures now.

Q Well, it would be about one-twelfth of an inch? A About that, I should say.

Q Well, behind that, what, if anything, would be found in the eye? A In what portion of the eye?

Q We are speaking of the front of the eye, looking directly at the outside eyeball? A The part you look through to see the color of the eye is the cornea; that is the transparent portion.

Q Just make clear to the jury, if looking at the eye directly, now, will you begin with the outermost layer, and go backwards, and name the parts of the eye, until you get down to the back part of the retina? A Looking through the scene portion of the eye, what you might call the glass, which is the cornea, which is somewhat like a watch crystal--

Q Exactly. A (Continuing) Then there is, back of that there is a watery substance called the aqueous humor; back of that is the colored portion of the eye, and through in the middle of that, is the pupil; back of that still there is a little aqueous humor; back of that is the lens, and back of the lens is this vitreous humor.

Q Now, you mentioned first this sclerotic layer, and then back of that is what? A Well, I started from the scene portion of the eye, which is called the cornea.

Q You say the first layer is what? A The cornea, and the sclera are continuous.

Q Now, back of that is what humor? A The aqueous humor.

Q How far back from the front of the eyeball is the aqueous humor? A From the front?

Q yes. A Why, it is about the thickness of the cornea. You said before one-twelfth of an inch.

Q In other words, an object does not have to be very long, or don't have to be very sharp to pierce the outer layer, in order to make the aqueous humor protrude?

A No.

Q In other words--

BY THE COURT:

Q Which humor was it that protruded, doctor?

A Well, the aqueous humor, would run out immediately, and

the vitreous humor, on account of its composition, would be that part that was retained.

Q And that is back of the lens? A That is back of the lens, but it is also directly back of the sclera, the white portion of the eye that you see.

BY MR. SIEGEL:

Q And starting with the cornea, the lens is the sixth substance back? A No, the cornea, the aqueous humor, and then the colored portion.

Q And the pupil in the middle? A The pupil in the middle.

Q And aqueous humor? A Which is continuous of the aqueous humor in front; then the lens; then the vitreous humor, and if you go in the white portion of the eye, or the sclera, by cutting directly through that, you will come down on the vitreous humor.

BY THE COURT:

Q So that the vitreous humor in certain parts of the eye is what you might call the second layer? A Well, the retina is between that. It is a thin nervous-- a layer of nervous tissue.

BY MR. SIEGEL:

Q What I want to get at is, all these parts you mentioned, are very small tissues, minute details of the eye, and that an instrument sufficient, that is, an instrument

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to be used sufficient to make this vitreous humor protrude, need not necessarily be a knife or any long instrument, but it could very easily be caused by a blow with any object; is that right? A Well, it usually takes some sharp instrument, although it may be caused by any object.

Q In other words, by your examination of the eyeball, you could not state just exactly what caused the injury, could you? A Not exactly.

Q Nor even state that it was caused by a very sharp instrument? A That is the way it looked, as if it was caused by a sharp instrument.

Q But you could not state certainly, could you?  
A Not absolutely.

Q At the time you examined the eye, you say the eye was not out of its socket, was it? A It was not.

Q But in reality, it was perfectly a sort of superficial wound in the eye? A Well, it had cut into the eye, into the interior of the eyeball.

Q But it did not go very deeply, as though the blow had pierced the eyeball, is that correct? A Not directly, no.

Q So, from your examination, there was no actual piercing of the eye with a knife or sharp instrument?

A Yes, sir, there had been.

Q Well, then, what do you mean by piercing?

A Why, the entering of some object into some other object.

Q Then, that is your definition. What I mean is this, was there an actual penetration, an actual going through of the entire eyeball by this instrument? A Do you mean clear through the posterior part of the eyeball?

Q Exactly, that is what I mean. A No, sir.

MR. SIEGEL: I believe the District Attorney was trying to create that impression.

MR. O'CONNOR: No, I create nothing. I only get the testimony.

Q You are certain that there was not a penetration by an instrument through the eye, the driving of an instrument through the posterior part? A I am not certain, but it did not look that way.

Q And the wound, if any, was a superficial wound in the eye? A It was deep enough in the eye to destroy the sight.

MR. SIEGEL: I move to strike that out.

THE COURT: Strike it out.

Q This wound in the eye, as I said, was only deep enough to make this vitreous humor protrude, is that right?

A It was deep enough for that.

Q And only a small part of this vitreous humor oozed out, is that right? A A small part.

Q In other words, the wound was only deep enough to just touch the vitreous humor? A I did not probe the

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wound to see how deep it was, but it was deep enough to make the vitreous humor protrude.

Q But not in great quantities; there was not any large quantity of vitreous humor exposed? A It was visible.

Q If there was a gash there, a wide gash, or a turning, if there was a penetration and turning, would there not have been a great deal of this vitreous humor visible? A I don't know. It depends on the extent of the wound.

Q Well, you say there was just a small part of vitreous humor visible, just to ooze out, you just saw it oozing out?

A I saw that it was vitreous humor, enough so that I could identify it.

Q And the vitreous humor is back of the eyeball, as you said, about one-twelfth of an inch, is that right? A It is in the eyeball.

Q In other words, if a sharp point of a stone, of a ring, came in contact with the eye, at about that spot, would such a wound be inflicted, do you believe? A Such a wound as was present?

Q Yes. A (No answer.)

BY THE COURT:

Q Now, leaving out of mind the other wound, and just fixing your mind on the wound in the eye-- A I hardly believe so.

MR. SIEGEL: You cannot say positively, can you?

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THE WITNESS: Cannot say positively, no.

BY MR. SINGEL:

Q Now, in regard to the other wound, doctor, were they all caused, at least were they all deep wounds or superficial wounds? A Well, what do you mean by "deep"?

Q Well, I understand in medical terms you would call even a scratch a wound, is not that a fact? A Yes.

Q And if a man fell on the sidewalk and received an abrasion, that would be called a wound too, wouldn't it? A Yes.

Q How many wounds in all did you count on the complainant? A There was one on the back, a scalp wound, and a wound in the temple which seemed to be continuous with the one in the eye, and as if the object inflicting the wound had gone down to the face. Then there was a slight wound of the upper lip.

Q You dressed the wounds on the back of the head, didn't you, doctor? A Yes, sir.

Q Did it impress you as though it was made by the impress-- or by a fall? A It impressed me as if it were made by some sharp instrument.

Q And was it a deep wound? A As I recall, I think it was down to the skull. I can't say for sure as to those wounds. I have so many of them that I can't recall them, the depths of all those wounds.

BY THE COURT:

Q Did you make any memorandum at the time of the occurrence, of the details? A yes, sir. Not of the details.

Q You are testifying now solely from recollection?

A I made a memorandum as to the number of the wounds and character of the wounds.

Q According to your usual custom? A According to my usual custom.

BY MR. SIEGEL:

Q Doctor, how about this wound on the back that you referred to; would you call it, speaking medically, a wound, or was it more than a scratch? A As I recall it, it did not have any more than a dressing. It did not require any suture.

Q Which would mean, doctor, that it was just skin deep, is that the idea? A I think so, yes.

Q And this wound in the lip, was that anything serious? A No.

Q Just a scratch, is that the idea? A Well, it may have been cut a little deep. I don't recall whether I sutured it or not.

Q And this continuation, was that very deep, near the nose? A The incision was rather parallel with the skin. I recall that very definitely. It did not go deep this way (indicating), but it laid like a layer of skin, back.

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Q Doctor, on the wounds that you saw at the time you made the original dressing, do you believe that such wounds were made by forcibly piercing with a sharp knife, then turning, and then with the same knife jabbing up from the lower part of the nose, upward, until it reached the eye? A That is very difficult to tell, but just how they were inflicted. It looked as if it had been inflicted by some sharp object.

Q But I ask you, doctor, whether it is in any way possible, from the wounds that you saw, that such a thing may have occurred; that is, a knife driven in through the eyeball, turned, and then pulled out, and then again pierced under here (indicating) and thrown up to the eyeball; to you believe it possible the wounds that you saw were such wounds, were inflicted in that way? A It is possible.

Q Well, doctor, to my former questions you answered that the wound was superficial in the eyeball, isn't that so? A Yes.

Q So it was impossible for the knife to have penetrated right through the eyeball? A I did not say before it had penetrated through the eyeball.

Q Well, I ask you now, is it possible, from the wounds that you saw, that such a state of facts could have occurred, that the knife could have penetrated through the eyeball and then twisted, and then jabbed again up through the eye; is it possible from the wounds you saw? A If it was in

the eyeball, it could not have been put into the eye again. It must have stayed there all the time.

Q Now, doctor, there is a man's liberty at stake. In all fairness to him, will you please answer my question. I say, from the wounds that you saw, and in view of what you said before, will you please tell the jury whether such a state of facts could have occurred from the wounds that you saw? Now, here is what I say: Is it possible, from the wounds that you saw and examined and dressed, that a knife could have been penetrated into the eyeball, back to the retina, twisted and taken out, then again stabbed down below the eye and upward? A To go into the eye again, do you mean?

Q Yes. A Why, such was not the condition.

Q You are positive that such was not the condition?

A That the knife entered again into-- a second time into the eye, being drawn up, is that your question?

Q Yes. A Such was not the condition.

Q And it was also impossible for the knife to have penetrated the eye all the way through back of the retina?

THE COURT: How do you mean to say it is impossible? Do you mean to say that that was not what actually happened, in view of the testimony as to the character of the injury, as given by this witness?

Is that so, counsel?

MR. SIEGEL: Well, the complainant, your Honor, testified that the knife was thrown into his eye, pierced his eye, was twisted, then drawn out and again jabbed in at the side of the nose, and up into the eye.

THE COURT: Well, very well. I thought your question was likely to be misunderstood by the witness, but if the witness understands it, all right.

BY MR. SIEGEL:

Q What I am trying to get at, doctor, is, to show what the complainant claims was done to him was absolutely impossible from the injuries that you saw there.

MR. O'CONNOR: I do not think there is any such testimony, that the witness said it was driven into his eye and taken out and twisted.

(The stenographer reads that portion of the complaining witness' testimony.)

BY MR. SIEGEL:

Q You did not find the eye outside the socket, did you? A No, sir.

Q It was not pushed out, was it? A No, sir.

Q And such a state of facts, in your opinion, was impossible from what examination you made? A It was not out when I saw it.

Q And the only injury that you saw of the eye was a slight piercing, enough to make the vitreous humor ooze out,

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is that the idea, and the vitreous humor is about one-twelfth of an inch behind the sclerotic layer? A About that.

Q In other words, it was a superficial wound in the eye? A Yes.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q And he lost the eye as a result of that injury, didn't he, doctor?

MR. SIEGEL: Objected to.

Q Well, in your opinion, from the examination made of the eye, was the sight lost?

MR. SIEGEL: Objected to.

MR. O'CONNOR: You made him your witness as an expert upon the eye.

THE COURT: I will allow the question, in view of your cross examination, counsel.

MR. SIEGEL: The District Attorney asks the doctor to testify as an expert, as to whether that injury caused the loss of the sight. The question is objected to on the ground that the doctor is not qualified as an expert in the matter, but simply testifies as an ordinary physician who first dressed the wounds, and therefore the question is objected to.

MR. O'CONNOR: The defendant's counsel qualified him as an expert. I did not question him as an expert;

I asked him as a doctor of medicine, a practicing physician and surgeon, duly qualified by the laws of the State of New York to practice as such, whether--

THE COURT: You can ask him whether he can express an opinion with reasonable certainty.

BY MR. O'CONNOR:

Q Can you express an opinion with reasonable certainty?

A As to what?

Q As to whether or not the wound that was inflicted, that you saw and examined, caused the loss of sight?

THE COURT: That merely calls for yes or no.

A Yes.

Q Did it, in your opinion, did it cause the loss of sight? A It did.

MR. SIGEL: Objected to on the ground that it is expert testimony, as to the knowledge of the witness.

Objection overruled. Exception.

T O N Y R I C H T E R , being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q MR. Richter, will you speak loud so that the gentleman can hear you here? A Yes.

Q Where do you live? A 509 East 82nd street.

Q What is your business? A Baker.

Q Where are you employed; where do you work?

A Down at Rockwell's.

Q Rockwell's bakery? A Yes.

Q At 400-- A 429 and 431 East 75th street.

Q In the County of New York? A Yes.

Q And were you working there on the 15th of September, 1906? A Yes.

Q How long have you been working in the Rockwell bakery? A Now it is going on seventeen years.

Q Do you know Sander Weiss, the witness that was on the stand here this morning? A Yes, sir.

Q And do you know the defendant here, Leopolt Ackovitz? A yes, sir.

Q Did you see them in the bakery on the morning of the 15th of September, 1906? A Yes, sir.

Q You are the foreman, are you, in the bakery? A yes, sir.

Q Now, what time did they leave the bakery that morning, if you can recollect? A They left the bakery some time; they was through with me at three o'clock in the morning.

Q Did you see any trouble between this defendant Ackovitz and Weiss, while they were in the bakery that

morning? A I didn't see it. I heard it, and I heard an argument.

Q Well, you did not see it? A No, only I heard arguments.

Q But you did not see any trouble? A No.

Q Nor, Mr. Richter, did you go out of the bakery that morning, out on the street? A Yes.

Q Did you see Weiss or Ackovitz while they were on the street in East 75th street? A Yes.

Q Now, you just tell the Judge and jury what you saw take place, if anything, between Weiss and Ackovitz?

A Well, Sander Weiss, he went out before Ackovitz, about ten minutes before Ackovitz, and then came up Petrowitch and Ackovitz, after Sander Weiss, and I followed Petrowitch and Ackovitz, about three or four minutes later. Sander Weiss, he stands by his house, on the door and Ackovitz and Petrowitch, they were passing, and Sander Weiss was talking three or four words to Ackovitz.

MR. EINSOHN: He stated that they went before he did.

THE COURT: Counsel, this witness is testifying. Have you any objection?

MR. EINSOHN: He is testifying to a conversation which he does not state he heard.

THE COURT: He is testifying, as I understand it,

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to no conversation.

MR. EINSOHN: Petrowitch and the defendant went out first, and passed the place where Weiss was standing, and they had a conversation; he is testifying to that.

MR. O'CONNOR: No, he said he followed out three minutes after Ackovitz and Petrowitch, and as Ackovitz was passing Sander Weiss said something.

THE WITNESS: Sander Weiss says about three or four words to him.

BY THE COURT:

Q Well, were you there when that was said; did you hear what was said? A No, I could not. Only I saw when he talks.

Q You saw they were talking together? A Talking together, but I could not say what it was, and Ackovitz turns around and hit him in the face.

BY MR. O'CONNOR:

Q Hit him where? A Right in the face.

BY THE COURT:

Q Whom did he hit? A I could not see all of it.

Q What was the name of the man Ackovitz hit?

A Ackovitz hit Sander Weiss.

BY MR. O'BONNOR:

Q Where did he hit him? A That I could not see when he hit him, right in his face, that is, because I was a

little too far away; I was about ten or fifteen feet away at that time.

Q Did you see how many times Ackovitz hit Weiss?

A Well, after the first strike he done against him, then he grabbed him and they fell down in the street, and then he hit him three or four times after that; then they was lying in the street.

Q You said after Weiss fell down in the street, that the defendant struck him three or four times while he was on the street? A Yes.

Q Then Weiss lay on the street? A Weiss was lying on the street.

MR. EINSOHN: I object to this as leading.

Objection sustained. Strike out that answer.

Q Now, what did you do, if anything, while you were there, Mr. Richter? A Well, it was going so quick I couldn't do anything at all, and I would not mix me in it. I had nothing to do with it outside.

Q Did you go over to where Weiss was lying on the street?

THE COURT: Ask him what he did.

MR. O'CONNOR: The trouble is this, his poor English.

THE COURT: I know. If it is agreeable to the defendant, I think it would be preferable that, while

the witness understands English, we should have an interpreter. The witness understands English, but he finds it difficult to express himself. He expresses himself poorly on that account. Now, it would seem that it would be to the interests of the defendant, that the testimony should be given in a clearer way than he gives it in English, and I suggest, therefore, to counsel for the defendant, that the witness be permitted to give his answers in German, his own language, through the interpreter.

MR. EINSOHN: I accept the suggestion of your Honor.

Q (Through Official Interpreter Dollin.) What did you do after you saw Weiss lying on the ground? A I did not interfere.

Q Did you go over to where Weiss was and look at him? A No, sir.

Q Do you know who removed Weiss from the street? A Weiss went alone away. They both jumped up and Ackovitz ran away and Weiss also ran away.

Q Did you see Weiss' face or his head? A I saw Sander Weiss' face when he was standing at the drug store ringing the bell for the druggist.

Q And what did you see, if anything, on his face? A Well, his face was all full of blood. I could not say

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anything else.

CROSS EXAMINATION BY MR. EINSOHN:

Q Mr. Richter, did you see who struck the first blow, whether it was Mr. Ackovitz or Mr. Weiss? A Mr. Ackovitz hit first.

Q Are you certain of that? A Yes.

Q Do you remember the conversation that you had with me on or about November 8th, Election Day, at your house, in regard to this occurrence? A Yes.

Q Do you remember stating to me on that occasion that you came--

MR. O'CONNOR: Objected to as incompetent, immaterial and irrelevant, counsel asking a witness for the People if he had a conversation with him at his house. Now, what is the purpose?

THE COURT: The purpose is to show that on another occasion this witness may have made a statement inconsistent with the evidence he is giving now.

MR. O'CONNOR: Well, if that be the theory.

THE COURT: Proceed, counsel.

Q Do you remember stating to me upon that occasion that you did not see who struck the first blow? A No, I did not say so to you.

Q Didn't you state to me that you came there when they

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were both lying on the floor? A No, sir. While they were on the ground I was there already.

THE COURT: The answer to the question is either yes or no. Repeat the question.

Q (Question repeated.) A I was at the persons, already, when they were on the ground. I was already near them.

THE COURT: Strike that out as not responsive. The question is whether he did or did not say it.

THE WITNESS: I did not say so.

BY MR. EINSOHN:

Q Do you swear to that? A Yes.

Q How long after Weiss left the place did you leave it? A About ten or twelve minutes.

Q Who left the place first? A Weiss left the place first, then Ackovitz and Petrowitch.

Q About ten or twelve minutes before you? A Weiss, yes.

Q Are you sure it was not more than ten or twelve minutes? A No, I didn't take so long to dress myself.

Q And then who went out? A Petrowitch and Ackovitz.

Q And how long after Weiss went out did Petrowitch and Ackovitz go out of the bakery? A They followed about two minutes after Weiss went out.

Q And how long after Ackovitz and Petrowitch left

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did you go out? A After Ackovitz and Petrowitch left, about two or three minutes, I went out.

Q Now, as you went out of the bakery, whom did you see standing by the door where Weiss lived? A When I came out, Petrowitch and Ackovitz were going up to the house of Weiss, but they were not there yet when I came out; they were just going up.

Q Did you reach Sander Weiss' door at the same time with Ackovitz and Petrowitch? A No, sir.

Q Ackovitz and Petrowitch came up to Weiss' door before you? A Before me, yes.

Q Did you notice were they talking when you came up; did they have any conversation? A No, I didn't hear nothing.

Q Well, what were they doing? A Well, they didn't do anything. They were walking together, Petrowitch and Ackovitz.

Q Did you notice did Ackovitz carry anything in his hands?, A No, sir.

Q You are the foreman of this bakery, are you?  
A Yes.

Q Is it customary for the workmen to take bread home every night? A Well, it is permitted. They have permission, each man to take one loaf of bread.

Q Do you know on that night did Ackovitz have a loaf

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of bread in his hand? A Yes, Ackovitz had bread with him.

Q Do you know did Mr. Weiss take some bread away from the house that night? A That I can't say.

Q And you want to state to this jury positively that Ackovitz was the first one who struck Sander Weiss, is that right? A Yes.

Q You swear to it? A Yes.

Q Did you see Ackovitz use a knife? A No.

Q Did you see Weiss use a knife? A No.

Q Well, when Ackovitz struck Weiss, did you notice that his face was immediately covered with blood? A I did not see that.

Q You did not know that his face was covered with blood-- after Ackovitz struck Petrowitch, did you notice immediately his face covered with blood? A I could not notice it because immediately they caught each other, caught hold of each other.

THE COURT: I think, counsel, in your last question you used an advertently wrong name; you used the name of Petrowitch, when you intended to use the name of Weiss.

MR. BINSOHN: Yes, thank you.

Q And when Ackovitz struck Weiss, did Weiss attempt to strike back at Ackovitz? A Well, I can't tell. Maybe he tried, but he didn't come to that.

Q Did you see Weiss make an attempt to strike Ackovitz? after Ackovitz struck him? A Well, of course he tried to defend himself.

Q And then they had a fight, and they both fell on the floor? A Well, they clinched and fell to the ground.

Q And how long were they fighting on the floor this way? A About two or three minutes.

Q And did you make any attempt to separate them?

A No.

BY THE COURT:

Q Now, when you say "floor", do you mean inside of the building, or do you mean out on the sidewalk? A Outside, on the sidewalk.

BY MR. EINSOHN:

Q It was none of your business; you didn't care to interfere; it was merely a fight? A No, I did not interfere.

Q And you waited there to watch them fight, is that it? A I slowly went away; I slowly left and went on my way.

Q Did you wait until they got up from the floor, or from the street? A I passed about two houses when they jumped up, when they jumped up from the ground.

Q You left them lying on the ground and you walked ahead? A I did not touch them. I passed by and did not

touch them, I did not care.

Q Do you know what they were doing with each other on the floor, or on the ground? A Ackovitz was on top of Weiss. Ackovitz hit Weiss about three or four times, hit him while they were on the ground.

Q Didn't they turn over? A I can't tell for sure.

BY THE COURT:

Q Was Weiss on top at any time? A No, Ackovitz was first on top of Weiss, when they fell down.

Q All the time? A All the time. They might have turned afterwards.

Q Never mind what they might have done. While you were looking at them, Ackovitz was on top of Weiss all the time that you were looking at them? A Well, immediately when they fell down, Ackovitz was on top of Weiss. Then they struggled. They went on struggling.

BY MR. EINSOHN:

Q Didn't you observe that while they were lying on the ground, in this way, that at one time Weiss was lying on top of Ackovitz; didn't you notice that? A I did not see that. I was going away then.

Q Is your memory very good? A Yes, pretty well.

Q And you cannot swear positively, can you, that Weiss was not on top of Ackovitz during part of this fight? A I could not swear to it; I am not sure.

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Q Well, did you notice Weiss strike Ackovitz while they were on the ground? A Well, I saw that there was a beating while they were lying on the ground, and the one that was underneath could not beat.

Q Did you notice Weiss take hold of Ackovitz's head and bump it against the sidewalk while they were lying that way? A No, sir.

Q The only thing that you saw then, was Ackovitz lying on top of Weiss, that is all? A As they fell down I saw that Ackovitz was on top of Weiss.

Q And you saw them fighting and you went away; it was none of your business? A And I went on my way.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock P. M.)

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AFTER RECESS.  
TRIAL RESUMED.

W I C T O R        P E T R O W I T C H , being called and  
duly sworn as a witness on behalf of the People,  
testified through Official Interpreter Dollin,  
as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live?    A 320 East 81st street.

Q What is your business?    A Baker.

Q Where are you employed?    A At Rockwell's bakery,  
East 75th Street.

Q Do you know Sander Weiss?    A I know him as long  
as we wwork together.

Q And do you know the defendant at the bar here,  
Leopolt Ackovitz?    A yes, only since the time we are  
working together.

Q And did you and Ackovitz, and Sander Weiss work in  
Rockwell's bakery on the 15th of September, 1906?    A Yes.

Q Now, what time did you leave the bakery on the  
morning of the 15th of September, 1906?    A 10 minutes past  
three.

Q And who left the bakery with you?    A All four of

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us were together dressed, and Weiss went out just a few paces ahead of us.

Q And whom did you go out with? A With Leopolt Ackovitz.

Q Where did you go to with Leopolt Ackovitz? A Home-- well, we went in 75th street, towards First Avenue.

Q Did you meet Weiss on your way? A I saw him at his door, where he lives, about three houses from the bakery he lives.

Q Did you see anything take place between Sander Weiss and the defendant Ackovitz at that time? A Yes.

Q Tell the Court and jury what you saw take place, if anything, between Sander Weiss and the defendant Leopolt Ackovitz? A Ackovitz was with me. We passed by Weiss' house, and when Ackovitz saw Weiss standing there, he had a loaf of bread with him, Ackovitz, and as soon as he saw Weiss he threw the loaf of bread to the ground. Weiss stood there, and as soon as Ackovitz saw Weiss standing there, he threw his bread down to the ground and went towards Weiss. Then Weiss said a few words to Ackovitz, but he had no time to finish his sentence. While he was saying, as soon as he said those few words, Ackovitz hit Weiss, and I saw exactly that he hit him on his left eye, and immediately the blood was oozing from the eye, and then they clinched and they both fell down. While they were rolling on the

ground, both, I and Foreman Richter, we went ahead, and they were on the ground yet. Then I saw they both got and they both ran away, Weiss and Ackovitz.

Q Did you see Weiss after that? A Yes, sir. We saw him later on at the drug store.

Q And did you see his face? A There was a heap of blood, but I did not see what it was.

CROSS EXAMINATION BY MR. SIEGEL:

Q How long are you working in Mr. Rockwell's bakery?

A Two years.

Q You remember that during that time both the defendant and Weiss were working there too? A I never saw them until that evening; never saw them before.

Q Where had you worked in this bakery? A I have the inside work.

Q What part of the work do you do? A On the bench; I make bread on the bench.

Q Do you mean to tell this Court and jury that you never saw these men before this night? A Yes, sir, we worked together. Before he commenced to work in the bakery, I never saw him, but while he was there I saw him.

Q But while they were working there, you saw them both in the bakery, didn't you? A Yes, I understood before that you asked whether I knew him before he worked in the bakery.

Q Well, they were working there, and you saw them both in the bakery, didn't you? A Yes, sir, in the bakery I saw him.

Q The defendant used to work near Weiss, didn't he? A Yes, sir.

Q I suppose they had conversations between each other? A yes, sir, they talked.

Q Did you ever notice that they had a quarrel some times? A No, I didn't see a quarrel.

Q You never knew that they quarreled, did you? A No, I didn't know that.

Q Did you know, or do you know whether on September 15th the defendant and Weiss had a quarrel? A I don't know that.

Q You say you left the bakery when? on September 15th? A Ten minutes after three, I left the bakery.

Q Was it exactly ten minutes after three? A Well, I calculate, I worked until about three o'clock, and to dress myself I calculate about ten minutes later.

Q But you are not certain as to the exact time, are you? A No, not to the minute, but I know I worked until three o'clock.

Q Then it might have been fifteen minutes past three? A Maybe twenty, or so; I am not correct about that.

Q You say you went out of the bakery in company with

the defendant, didn't you? A Yes, sir.

Q And what side of the street is this bakery?

A The uptown side.

Q When you went down the street, wasn't it dark outside? A It was dark, but there are street lamps there.

Q What street number is this bakery? A I don't know exactly.

Q Do you know what number Weiss lives in? A I don't know that.

Q How many houses did you say is it to the bakery to Weiss' residence? A I think it is the third house.

Q Do you know that the bakery is No.429 and Weiss' house is 415? A No, I don't know that.

Q And you sure it is only three houses away? A About; I don't know exactly.

Q Isn't it four or five, or perhaps six? A About; I think it is about three houses away.

Q Is it perhaps four or five or six, as far as you know? A Well, I don't know exactly; maybe; I think three or four houses away.

Q Well, about what part of the block is it?

A In the middle of the block. The bakery is in the middle of the block.

Q How far away from the bakery is Weiss' residence; give me in the part of the block? A From where he lives

it is not the corner of the block; there are several houses yet from Weiss' house to the corner, and the bakery is in the middle of the block.

Q Well, about how many feet is it from the bakery to Weiss' residence? A About thirty paces.

Q That would be thirty feet, is it?

THE COURT: No, paces.

Q How many paces do you suppose is the measure of one house? A I don't know that. I never measured it.

Q Well, about how much? A I don't know. Some houses are larger and some are narrower; I don't know.

Q You say Weiss was standing in front of his house, wasn't he? A Yes, sir.

Q How do you know that was Weiss' house? A I very often went, when he left the bakery, we went home together, and I know that he lived there. Very often I went with him from the bakery, and I know he lived there.

Q Well, did you often go out together with Weiss from the bakery? A Not often. Well, only Friday and Saturday we go together from the bakery home.

Q You were accompanying, you said, the defendant, is that right? A Yes.

Q How far away were you from him as you were walking along with him? A Side by side, together.

Q And when you came near Weiss, how far were you away

from him? A About two paces, maybe not so much.

Q Well, show here about how far away; two paces are not definite. A (Indicating) About from here to where I am standing.

Q That is about two and a half feet, or two feet?

A Suppose they stand here where this post is; I was so far away. (Indicating)

Q Now, you said that Weiss said something to the defendant, but you did not hear what he said; is that right?

A Well, I did not understand what they said, but he said only two words, and made--

Q You did not understand what they said? A No, I did not understand what they said.

THE COURT: He heard, but he did not understand, he said.

Q You say the moment that he said those words, then what happened? A Ackovitz hit Weiss immediately.

Q Where did he hit him? A I saw it very fully, that he hit him here on the left side (indicating), and immediately the blood was streaming down his face.

Q Are you sure he hit him on the left side? A Yes, sir.

Q You are positive of that? A Very precisely. I saw it very fully.

Q You remember that he positively hit him on the left

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side? A yes.

Q You remember that? A Not that I remember. I saw it. I know exactly that he hit him there.

Q Well, what happened then? A Then immediately they clinched, and they fell down to the ground, and Ackovitz was on top of Weiss.

Q Did you see whether anything was the matter with Weiss' eye? A His eye was already out, and the blood was streaming down.

Q The eye was all the way out, wasn't it? A Well, I didn't see exactly that the eye was out, but as the blood was streaming out, it must have been.

THE COURT: Strike out "it must have been, etc."

Q I ask you what you saw, what was the matter with the eye; did you see the eye out? A I did not see it, because they clined and they fell down.

Q When they fell down what happened down there?

A When they fell down to the ground, I saw that Ackovitz hit him a couple of blows yet, and we went away.

Q Yes, that Ackovitz was hitting Weiss all the time?

A Yes.

Q And Weiss was not doing a thing to Ackovitz?

A Then they got up and ran away.

BY THE COURT:

Q Did they both run in the same direction, or did they

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run in different directions? A They both ran in the direction of First Avenue.

Q Which one was ahead? A Weiss was ahead.

Q And Ackovitz was behind Weiss? A Ackovitz was behind Weiss, because Weiss was running to the drug store.

BY MR. SIEGEL:

Q When they fell down and clinched, I ask you if Ackovitz was hitting Weiss all the time; was he? A I didn't see what they did afterwards, but I saw that he gave him a couple of blows; further on I did not see what they did.

Q And you did not see Weiss strike one blow on Ackovitz? A I did not see it.

Q In other words, you saw Ackovitz strike Weiss, and Weiss did not even strike back once, is that right?

A I did not see that, even once.

Q You said, when they fell down, they rolled around, and then you did not want to mix in, and walked away; is that right? A Yes, sir; from the sidewalk, they fell down over the gutter, into the street.

Q But you are sure they rolled around, didn't they, when they fell down? A I didn't see it exactly how they acted. I only saw that they were moving, shaking, both of them.

Q In other words, they were fighting while they were on

the ground, isn't that right? A Well, I didn't see that, but most of the time Weiss was underneath.

Q And you stood by there and saw these two people fighting and did not make the least attempt to interfere?

A Well, I did not interfere, because I did not think, I did not know that it was dangerous, that there was a knife; did not know that.

Q Did you see any knife used by anybody? A I did not see that.

Q Did not see any knife at all? A I did not see a knife.

Q Why didn't you interfere in this fight? A I thought they shall do it as they like; I don't interfere.

Q Didn't you say because you did not think it was a serious matter, and you simply walked away? A I did not know that it was so dangerous.

Q And still you say that you saw that face all blood, and the eye out? A Well, I saw that, that the blood was coming out, but I did not know that he knocked his eye out.

Q You did not see the eye out, did you? A No. I was not so close by. I saw that he hit him on the eye, but I was not so close by to see it, to see if the eye was hanging out or not.

Q Did anybody ask you to come here and testify against the defendant, so that he would receive a severe verdict;

anybody besides the District Attorney? Did anybody except the District Attorney ask you to come here and testify against the defendant? A No one.

Q Isn't it a fact that the sister of Mr. Weiss, the complainant, called to see you several days ago? A That is not true.

Q You never saw Weiss' sister? A Never. After we have been here three or four times, then I saw the sister.

Q Didn't the sister ever speak to you at all? A No, nothing.

Q Didn't speak to you here any word, nothing at all? A No. She did not talk to me. She does not know me; she never saw me before.

BY THE COURT:

Q And when you say before, you mean before you saw her here in the courtroom? A That is so.

BY MR. SIEGEL:

Q Isn't it a fact that she came to you and said to you, "Mr. Petrowitch, won't you please come down to court and see that this Ackovitz gets a good, heavy sentence for what he did to my brother"?

MR. O'CONNOR: Objected to as incompetent, immaterial and irrelevant.

THE COURT: They are trying to show bias on the part of this witness, I suppose.

MR. O'CONNOR: Objection withdrawn.

A No, I will swear three times yet that it is not so.

Q Answer yes or no. A No, it is not so.

Q You went out with the defendant from the bakery; was anybody else with you? A Richter came out about three paces behind us.

Q Three feet behind you? A Three paces.

Q Well, how far is that; what are paces? A I think a pace is four feet, the length of four feet.

Q You are sure Richter was only three paces behind you, is that right? A It was not more.

Q Did you turn around to see whether Richter was behind you? A I did not turn around to see Richter, if he is behind me, but when we stopped there, at Weiss' house, then Richter was already near us.

Q When the defendant struck the alleged blow, was Richter up to you already? A Yes, sir, he was there; he saw it.

Q And the two of you stood by and watched this fight?  
A Yes, sir.

Q And when Richter says he was not there at the time the blow was struck, that is a lie, is it? A He saw it.

Q Answer the question. I say when Richter says he was not there at the spot or the same place that you were--

THE COURT: He says that is not so.

<sup>1</sup>  
*John F.*  
~~FRANCIS~~ B O N S E R, being called and duly sworn

as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York? A Yes.

Q Attached to what precinct? A The Fifth Inspection District.

Q In the monthn of September, you were attached to the 25th Precinct, were you? A Yes.

Q Were you doing citizen's clothes or uniform duty at that time? A I was doing citizen's clothes.

Q Now, did you make the arrest in this case, officer?  
A Yes sir.

Q When did you make the arrest? A About 9 A. M. that same morning.

Q On the 15th day of September, 1906? A The 15th day of September, 1906.

Q Had you seen this man Weiss before you made the arrest? A Yes sir.

Q Where did you see him? A At the hospital.

Q What hospital was he at? A The Presbyterian.

Q Did you have a talk with him there? A No.

Q Did you see any of these other witnesses before you made the arrest? A Yes sir.

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Q Whom did you see? A Riehter, or Richter, whatever his name is, the foreman of the place.

Q What did you do after talking with Richter? A I went out looking for Ackovitz.

Q Did you find him? A Yes sir.

Q About nine o'clock that morning? A Yes.

Q Where did you find him? A At his home.

Q What did you say to him, officer, when you went in?  
A I asked him -- no, I asked him after I placed him under arrest, I told him what I wanted him for.

Q Tell us what you said to him? A I said to him: "Where is that knife you cut this fellow with?" He denied at first having a knife.

THE COURT: Strike out what he denied.

Q What did he say? A He says "I ain't got no knife", and I says; "certainly you got a knife; tell me where it is".

MR. SIEGEL: If your Honor please, there is nothing to make these statements admissible, because the defendant at the time of his arrest, I understand, was not warned that this evidence would be ever used against him.

THE COURT: I do not understand that it is necessary that he should be, where the conversation is between the defendant and a police officer. It

is necessary before a Magistrate.

(Objection withdrawn.)

Q Go on? A I says "Oh yes, you had a knife; go on and tell me where the knife is", and after a little wrangling, he says, "well, I threw the knife in the street".

Q Did you ask him about whether he had any row there?

A Yes, I said, "What was the trouble?" He said, "Well, him and I had a fight in the bakery before we quit work; he wanted me to do some work and I wouldn't do it, and we had some words over it, and he said he would lay for me when I went outside", and he said "wehn I went outside he was at his door waiting for me, and I passed by", and he says "he is a bigger man than me, and he came up to me, and as soon as he did I got a right to defend myself". I says, "What did you do then?" And he says he cut him.

Q Did he tell you where he cut him? A No, he didn't tell me. He didn't know that his eye was out at that time.

BY THE COURT:

Q He said "I have a right to defend myself"? A Yes sir.

BY MR. O'CONNOR:

Q And that he cut him? A Yes.

Q Now, then, did you take the defendant to the hospital where Weiss was? A I took him first to the station

house, took his pedigree there, and from there to the hospital, to be identified by the complainant.

Q Well, what was said in the presence of the complainant and the defendant? A Well, I brought him up before Weiss, and Weiss was in bed there, and I asked Weiss if he knew anyone present in this room. I said "Do you know anybody present in this room?"

BY THE COURT:

Q What language did you use? A I said: "Do you know anybody present here?"

Q What language did you speak in? A English.

BY MR. O'CONNOR:

Q And what did he say? A He said, he shook his head. I said: "Do you know this man here?" And he says "Yes".

Q Referring to whom? A To Ackovitz.

BY THE COURT:

Q When you say, officer, that he shook his head, what do you mean? A He shook in the attitude of saying "yes", and then I said "Do you know this man here", pointing to Ackovitz; "is this the man that cut you"? He says "Yes, that is the man that cut me."

Q He said that in English to you? A Yes, well, he said "That is the man that cut me", pointing to his eye.

BY MR. O'CONNOR:

Q Did he say "That is the man"? A He said "That is the man that cut me". I believe those are the words; I can't exactly say it.

MR. O'CONNOR: Well, we will strike that out.

THE WITNESS: Well, he identified the prisoner.

THE COURT: Strike that out as a conclusion.

BY MR. O'CONNOR:

Q What did Ackovitz say when he was brought to the hospital? A He didn't say nothing.

CROSS EXAMINATION BY MR. SIEGEL:

Q All these statements you just made, officer, are all simply matters of as much as you can remember; simply from memory, isn't that so? A Just what I know took place.

Q You do not use the exact words, but just what you recollect in effect that he said; is that right? A Well, it is to that effect, yes.

Q That is what you believe to be to that effect; is that right? A Well, I guess there is no believing about it. I think it is just what exactly took effect. It is with regard to what Weiss, saying he cut -- I can't remember whether he said "cut" or whether he said "stab", but he

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pointed to his eye and identified the prisoner. I only brought him up there for identification.

Q You said that the defendant said certain things to you. Do you pretend that those are the exact words he said to you? A The words I stated here are the words he said to me.

Q The exact words? A Well, about the exact words, yes.

Q Did you find that he could speak English fluently enough to have a conversation with you? A Oh, yes.

Q And those were the exact words he used to you? A Well, I say about the exact words.

Q So what you are stating is practically what you believe he said to you, but they are not the exact words?

A Well, I think they are the exact words.

Q You are sure of it? A I am almost positive.

Q But you are not altogether positive, are you?

A Well, he might -- there is one word there that probably he did not say, that I might have misconstrued.

Q Do you for a moment understand the situation here? There is a man's liberty at stake, and you get up here and make assertions of which you are not positive? A Yes, anything I say here I will swear to.

Q You will swear these are the exact words he said

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to you? A Yes, I will swear they are the exact words.

Q Every word of it? A Yes.

Q And your memory, you believe, is so good that you can remember it, the complete conversation? A In a case of this kind I could, yes.

Q There is not one word in that testimony that you just gave that is possibly wrong? A Relative to the defendant and myself, no.

Q And every word that you said the defendant said to you is exactly the way he said it? A Just exactly.

MR. SIEGEL: May I ask the stenographer to read that testimony again?

MR. O'CONNOR: I do not see the object of reading that testimony.

THE COURT: Your best test, counsel, is to ask him to repeat the conversation.

Q Will you kindly repeat the conversation held between you and the defendant? A I arrived at his house and went up to the top floor and knocked on the door, and got no response, and I --

Q Wait. You were asked to repeat the conversation you had. You did not testify -- A (interrupting) I am bringing it to the time I entered his room. I entered his room and had a fellow that was in the employ of Rockwell's

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-- I don't know who he is, some employee, a driver there, to identify this prisoner as Louis Ackovitz, the one I was looking for.

Q Hold on? A I omitted that in the beginning.

BY THE COURT:

Q All you are asked to do, officer, is to repeat the conversation you had with Ackovitz? A I said to him "Where is that knife you cut him with?" He said: "I had no knife". He denied having a knife, and I says "Yes, you did; come on now, tell us where that knife is", I said, "what was the trouble between you?" He said they had some words in the bakery about lifting something, or doing some kind of work, and that Weiss said he was going to lay for him when he would go home, and he said when he went out, that Weiss was at the doorway, and was waiting for him, and they had a quarrel, and he said he had a right to defend himself, and I asked him where the knife was, and he said he threw it in the street, and he said that after he cut Weiss, he threw it in the street.

BY MR. SIEGEL:

Q That is exactly the conversation, is it? A Yes, just about the conversation; that is the conversation. I can't put it sentence after sentence, but that is the conversation that took place.

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Q That is the conversation exactly that you had with the defendant? A Yes.

Q You are positive? A Positive.

Q There is nothing else he said to you? A I had a talk with him going down in the car, and he kept --

Q Just a minute; is that all that the defendant said to you? A He told me that he cut him, and he said he had a right to defend himself; that Weiss had threatened him, and that he was waiting at the door, and that he was bigger than he was.

Q Oh, you put that in now?

MR. O'CONNOR: No, he said that before, in the first conversation.

THE COURT: Counsel, he cannot answer you fully, if you interrupt him before he is through. If you want the full conversation you will have to let him answer.

MR. SIEGEL: Pardon me, your Honor.

Q Officer, do you pretend that you remember the conversation you held with all persons that you arrest?

A In a serious case of this kind I always do. I do not pick up cases of this kind every day in the week, so it is very easy to remember this.

Q Do you want to make this jury of twelve men and his

Honor believe that you can remember conversation verbatim, word for word? A Well, word for word, it is just about the way I gave it out; that is the conversation that took place between us, and there was nothing -- I remember, because there is not so much to remember.

Q What I want you to admit, officer, is, that you simply testified truthfully and to the best of your knowledge and the best of your memory, in effect, to what he said to you? A Yes.

Q That is what I want you to state? A Yes, that is what I am stating, just what passed between us, and nothing more and nothing less.

Q But you cannot say that you know exactly the words he spoke to you, can you? A Well, they are the words that were said, that I am after testifying to twice, that took place between us, that passed between him and I.

Q Does he speak English well? A Well, well enough for me to understand it.

Q Doesn't he speak with a foreign accent? A Well, a little bit, yes.

Q Doesn't he have to use some foreign words to make himself understood? A He did not use any with me.

MR. O'CONNOR: The People rest.

MR. EINSOHN: I move to dismiss the indictment

in this case, if your Honor please, and to direct the jury to acquit the defendant, on the ground that the People have not proven the indictment; they have not proven that a knife was used upon the occasion in question by the testimony of any of the witnesses for the People outside of the person who was assaulted; nor have they proven any intent whatever to kill on the part of the defendant; nor have they proven that there was any intent on the part of the defendant to maim the complainant or to disfigure or disable him; nor have they proven that there was any lying in wait by the defendant for the complainant, but, on the contrary, the evidence in this case shows that the complainant was lying in wait for the defendant, and on these grounds I ask your Honor to direct the jury to acquit the defendant.

MR. O'CONNOR: Does your Honor desire to hear me upon that?

THE COURT: No. I will just look at the section of the Code. The Code provides that the infliction of the injury is presumptive evidence of the intent. I will allow the matter to go to the jury and deny your motion.

MR. EINSOHN: Exception. I ask your Honor fur-

therefore, to compel the People now to elect as to which count they intend to go to the jury on, because in this case, maiming and assault in the first degree are entirely separate and distinct crimes. The elements of maiming are, that there must be an intent to disfigure; the element of assault and battery in the first degree are that there must be an intent to kill; two entirely different crimes, and it appears to me that the People ought to be compelled to elect upon which count they intend to go to the jury.

THE COURT: The intent in an assault in the first degree may be to commit a felony upon the person of the one assaulted, as well as an intent to kill.

I will deny your motion, and give you an exception.

MR. EINSOHN: Exception. Also that they have not proven any felony, have not proven any intent to kill.

Motion denied. Exception.

DEFENSE.

LEOPOLD ACKOVITZ, being called and duly sworn as a witness on behalf of the defense, testified through official interpreter Fischer as follows:

THE INTERPRETER: The witness says he would like to speak English, so as to show the Court how he speaks English, because the officer says he spoke good English.

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THE COURT: I suppose the witness has the right to use the English language if he wants to use it.

MR. O'CONNOR: Oh, yes.

MR. EINSOHN: In order to save time, I prefer to have an interpreter in the case.

MR. O'CONNOR: Well, this is an official interpreter.

MR. EINSOHN: May I have the defendant and the complaining witness stand together, so that the jury may see the difference in size and appearance?

THE COURT: Yes, I will allow that.

(The complaining witness and the defendant accordingly are confronted with each other in the presence of the jury).

DIRECT EXAMINATION BY MR. EINSOHN:

Q Where do you come from, what country? (In English)

A Hungary.

Q Have you a father and mother living? A No, my father is dead.

Q Have you any mother living? A Yes.

Q Where is she? A In Hungary.

Q Have you got brothers and sisters there? A I have got two brothers here and I got three sisters and one brother there in Hungary.

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Q How old is the oldest? A The oldest, the sister is the oldest.

Q How old is she? A 13 years.

Q When did you come to this country? A In March.

Q How long ago? A Three years, it will be in March.

Q (Through the official interpreter) Did you come here all alone? A Yes.

Q Have you got any relatives in this city? A Yes, I have uncles.

Q Have you got a brother? A Yes, two.

Q How old is your oldest brother? A Going on 17 years.

Q Did he come here on his own expense?

MR. O'CONNOR: I object to this line.

THE COURT: I think that is irrelevant.

Q How old are you, Aekovitz? A On the 17th of July I will be 20 years old.

Q Since you came to this country, at what occupation did you work? A I learned the trade of carpenter at home, and I became a carpenter since I came here.

Q How long did you work at Rockwell's Bakery? A From the 10th of May to the 15th day of September.

Q Leopolt, how much salary did you get in Rockwell's? A My wages were \$14 a week.

Q Did you ever tell Sander Weiss how much you were getting in salary? A Yes, I told him.

Q And was Sander Weiss employed in the place while you were there? A He works in the same factory, but not exactly in the same place.

Q Do you know whether Sander Weiss was getting the same salary as you were, although he had more experience than you had in the business? A He did not receive any more; probably less.

Q Do you know that he ever expressed to you any jealousy regarding the salary that you got? A Yes.

Q What did he say? A He said to me, he often told me, he says "You work overtime and you work on Saturdays, and receive 30 cents per hour and on Saturday \$3".

Q You frequently worked night work, did you? A I worked steady nights.

Q Was there any particular reason why you worked night work? A Because I was needed for night work.

Q Well, why did you work overtime? A Because I started later than Sander Weiss.

Q Prior to September 15th were you and Sander Weiss friendly? A We were not good friends.

Q Did you often have arguments together? A Yes. He never left me alone.

Q What do you mean by "he never left you alone"?  
A I worked on the side, inside, which is called chomez; I

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made bread; that means, making bread in a pan.

Q What I want to know is in regard to what did you and Sander Weiss have arguments? A The foreman, Mr. Richter, always sent me out when they were late, to help along with the rolls, and Sander Weiss was working at that place where the rolls were being made. Whenever they were using these rolls, that is, making them nice and round, they were putting eight times eight into a box; then he used to disarrange the rolls, and then blame it on me, that I did not do the work right. Then he showed the bench foreman, Mr. Steuch, and showed him that I had done wrong work, but I told Mr. Steuch I did not do it, that he did it. Then Mr. Steuch said to me, "You do it right", and then Mr. Sander Weiss says to me "If you have such a big mouth I will throw you out of here".

Q And you had these arguments very frequently, did you?  
A Yes, always. He always used to come inside to where I was working.

Q Now, on or about September 15th, 1906, what time did you go to work there? A Two o'clock.

Q In the afternoon? A Yes, in the afternoon.

THE COURT: No, he means after 12 a.m.

THE INTERPRETER: He says 12 o'clock, the same as now, in the afternoon.

Q That was on the 14th, wasn't it? A Friday was the

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14th; Friday, I started at 2 o'clock; that is about an hour sooner than the time is now. It was in the afternoon.

Q And what time did you have your meal in the place on that day? A 7 o'clock.

Q Did you have any argument while you were eating your lunch with Sander Weiss? A Yes.

Q Did you eat your lunch on the same side of the bakery as Weiss? A Yes.

Q And you say you had a dispute then, is that so?  
A He had a dispute with me.

Q What was the dispute about? A He used to start with me a few days previously to that, because I was saving money; I had saved more money than he. When he came towards me and says to me "What dirty stuff must you eat." I said to him "That is none of your business." He says to me "What, you say it is none of my business, you eating such stuff; how can a man eat such stuff." I was eating corned beef; then he says to me "Why don't you eat what I do, meat and soup?" Then he asked me "How much money have you saved already?" I told him "That is none of your business", and I told him "What money I have belongs to me; it does not belong to you"; then I asked him to please leave me alone "I want to have no dispute, no fight; I am not used to running from one job to another; I want to remain steady in one place; I have a good

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place and I want to keep it".

Q Did you tell him what you did with your money that you saved? A Yes. He asked me "What are you doing with your money that you are saving?" I said, "I have a mother with four children to support, sisters".

Q Now, Leopolt, at about a quarter to three on September 14th, or September 15th, rather, on Saturday, did you have any further dispute with Sander Weiss? A I had a dispute with him. It was about five or ten minutes of three.

Q Is that the time you generally are supposed to clean up the place where you worked? A No.

Q Is that the time you generally clean up? A We always wait until we are through with our work. If we are through sooner, then our usual time, we clean up, otherwise not.

Q What time did you begin to clean up that place?  
A At five or ten minutes before three.

Q Was Sander Weiss engaged in cleaning up in the same place where you were? A Yes.

Q Did anything separate you, the place you were cleaning up and the place where Sander Weiss was cleaning? A There was a long, a wide bench standing in the bakery. I took the brush and I went towards that bench to sweep. It was very hot, very hot, in the summertime then, and I worked without a shirt; even Mr. Richter worked without a shirt; everybody was there working without a shirt.

Q And you say Sander Weiss was engaged in cleaning up on the opposite side, is that right? A Not under the bench; much further away from the bench; he was sweeping up the dirt.

Q Was he standing while he was sweeping? A Well, while he was sweeping the dust, he was sweeping it towards me, where I was standing; I was on my knees, with a small bench brush, I was sweeping.

Q And did Sander Weiss sweep part of the dust on you? A All the dirt, and the dust from the bread, he swept towards me. My mouth and everything was full of it.

Q What did you say to him? A I got up from behind the bench and says "What do you do; don't you see that I am working behind here?"

Q Did he stop then? A No, he did nore then; he did it worse.

Q What did you say to him then? A I was angry, and I said to him "You son-of-a-bitch, what are you doing?" Then he laughed, and he says "Can you help yourself?" He says to me, "I will show you to-day, I will make you to-day or to-morrow, I will make you cold".

Q And who left the place first that morning? A When I was through with my work I did not see him any more in the bakery.

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Q Do you know what time he left the place? A Well, it was about 2 or 3 o'clock in the night-time, or two or three minutes after three in the night time, early in the morning.

Q And how long after did you leave the place?

A About a quarter of an hour later.

Q With whom did you leave the place at that time?

A With Victor Petrowitch.

Q Did you also leave the place with Mr. Richter, the foreman? A Mr. Richter was several steps behind me.

Q How far away is the bakery from the place where Sander Weiss lived? A About three or four houses.

Q You are not sure of that, are you? A I don't know it exactly, but I think it is three or four houses.

Q You say you were walking along with Petrowitch, is that right? A Yes.

Q And Richter was behind you, is that right? A Yes.

Q Were you carrying anything in your hand? A Two loaves of bread.

Q Did you have an overcoat on? A No. I had an old suit, dressed as I am now, only I had no vest on.

Q And as you passed along that street there, did you notice Weiss? A I did not see him. I looked around and I did not see him.

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Q When did you see him? A When I went, left the bakery, and went towards the house, I saw him jump from the hall.

BY THE COURT:

Q Jump from what hall? A Where he lived.

BY MR. EINSOHN:

Q Had you passed that hall already, the hall of that house? A I had passed that house. I didn't know he lived there.

Q You were walking along with Petrowitch; where were you, nearest to the roadway or nearest to the building line?

A I was nearer the side of the street.

Q Nearest to the roadway? A Yes.

Q And to the right of you was Mr. Petrowitch? A Yes.

Q What first made you aware of the fact that Weiss was there? A I heard the door being moved, and a noise, and I seen him jump out.

Q And did he have his coat on? A No, he did not. He had his sleeves rolled up.

Q Did you notice Weiss coming out of the hall? A All I seen is, when he came down and jumped down three steps, and he was on top of me already.

Q Did he begin to speak to you, and if so, what did he say? A I told him in the bakery that he was a son-of-a-bitch, and he raised up his hand and he says "Who is a son-of-

a-bitch?"

Q Did he attempt to strike you? A He had a kniffe in his hand. I did not notice it first off, but afterwards I saw it.

Q And did he make an attempt to strike you? A Yes, he pulled it out of his back pocket.

BY MR. O'CONNOR:

Q Pulled what? A A knife.

BY MR. EINSOHN:

Q And he made an attempt to strike you with the knife?

A Yes.

Q And what did you do? A I was frightened, scared. I went to, I struck his hand and held it tight, and while doing so I struck him in the face with my hand.

Q And what happened then? A He wanted to tear himself loose, and he got his hands out of my hand, but I held on tight to the knife, and he rolled me and turned me around in the street, and while I was holding his hand he slipped and he fell. Then I fell on top of him. When I fell on him I don't know where I hit him, but I had his hand with the knife in my hand, and I struck him with it. Then he allowed me, or let me take the knife into my hand.

Q Now, Leopolt, you tell this jury, was that knife your knife, or did you have a knife when you went out of the bakery?

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A I never carried a knife.

Q Did you ever have occasion to borrow the knife of Sander Weiss while you were employed in the bakery? A Whenever I had to eat my lunch I asked several to lend me their knives, and several times also from Sander Weiss.

Q Did you intend to take out the eye of Sander Weiss?

A No.

Q Did you intend to kill Sander Weiss, or ever tell Sander Weiss that you would kill him? A No, I did not want to do anything to him.

Q Did you ever tell him you intended to assault him?

A No, he told me so.

Q Did you expect to meet Sander Weiss standing by his door when you went out of the bakery that time? A No, I did not.

Q Did you carry bread under your arm? A Yes, two loaves of bread.

Q Did you merely intend to protect yourself from the assault of Sander Weiss? A Yes, certainly.

Q What became of the knife? A When I had the knife in my hand, I was lying on top of him. Then he turned me and he got on top of me. Then I threw him again. Then he got on top of me again, and we were rolling around. Then he jumped off me and ran away somewhere. I was lying on the floor

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when he ran away from me, and I sat up, and I was afraid he might call somebody and would assault me later.

BY THE COURT:

Q Did you run after Weiss, after Weiss ran away?

A No, I did not. I remained lying down.

BY MR. EINSOHN:

Q While you were lying on the floor there, did Weiss hit you in any way? A Yes, with his hand, going towards the sidewalk.

Q You heard Mr. Petrowitch and Mr. Richter testify in this court here to-day, didn't you? A Yes.

Q Did you hear him state that during the time you were lying on the floor --

THE COURT: When you say "him", which one do you refer to, Richter or Petrowitch?

Q Did you hear Mr. Richter state that while you and Weiss were lying on the floor you were always on top of Weiss? A He testified that I was rolling around.

Q Did you know that you had struck Weiss in the eye with a knife? A I did not know what I did to him.

Q Did the knife catch him in the eye while you were on the floor, or before you fell on the floor?

MR. O'CONNOR: On the street, counsel.

Q On the street? A At the time he fell down I did not

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know where it hit him.

Q You are sure then, that the knife caught him in the eye while you were rolling on the floor, trying to take the knife away from him, is that right? A At that time I had the knife in my hand.

Q When did you take the knife away from him, while you were on the ground? A After he was cut, then he allowed me to take the knife, he let go.

Q Did he bang your head against the sidewalk?

A Yes, after he got on top of me the second time.

Q And was your head bruised for a long while thereafter?

A Yes.

Q Now, again, Leopolt, will you tell this jury, did you leave the bakery, Rockwell's factory on September 15th, 1906, with a knife in your pocket? A No, sir.

Q Did you have it anywhere on your person? A No, I had no knife.

CROSS EXAMINATION BY MR. O'CONNOR:

Q What did you do with that knife? A With the knife I took away from him, I don,t know where --

Q I am asking you, what did you do with the knife that you stabbed Sander Weiss with? A I had no knife in my hand at the time he was cut.

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Q Why didn't you testify here that you took the knife out of his hand, and that you cut him? A No, I did not say that.

Q Well, how did you cut him?

THE COURT: I think the witness is right, that he did not so testify. I think he is right in saying that he did not testify that he had cut him with the knife. That is my recollection of the evidence.

MR. O'CONNOR: Well, I will ask him what he did cut him with.

Q What did you cut him with? A (No answer)

MR. O'CONNOR: As I understand the testimony of this man, Weiss had a knife in his hand, and that he took it, and he wrenched it out of his hand, and then he punched him in the eye, and that they fell down, and that he could not tell where he was struck, or striking him with the knife.

THE COURT: You are wrong, Mr. O'Connor.

MR. O'CONNOR: Well, if I am, that is what I want to see.

Q Now, did you cut this man in the eye? A I don't know where I cut him.

Q Well, did you cut him? A Well, he might have got that cut while we were wrangling. He had a knife in his hand and I

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fell on top of him.

Q Oh, that is it; you were holding his hand and he might have cut his eye and cut his face and cut the back of his head? A I held his hand, and in that way I fell on top of him, and we fell together.

Q Well, can you describe how he got the cut in the back of the head? A He may have got that perhaps while we were rolling around, and I held the knife in my hand.

Q Now, will you describe to me, while you were holding his hand, this way (indicating) and rolling around -- do you understand me? A I did not roll around at that time.

Q Well, when did he get the cut in the back of the head and the cut in the back? A I don't know whether he received a cut; I didn't give it to him.

Q Well, you heard him describe here, and the doctor, that he was cut on the back of the head and cut in the back of his body? A Yes, I heard it.

Q Well, who cut him then, in the back of the head and in the back? A I may have cut him while we were rolling around, and after he allowed me to take the knife, when he let go.

Q Well then, you did have a knife in your hand? A Yes, after we had rolled around, and he let me take the knife.

Q Now, where is that knife and what did you do with that knife? A I don't know where that knife is.

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Q What did you do with it? A I didn't do anything with it. May be he took it along; may be it has been left lying in the place. I was scared and excited.

Q What did you do with that knife after you cut this man in the back of the head and in the back of his body?

A I don't know what became of that knife. I didn't do anything with it.

Q Didn't you tell the police officer that you threw it away? A No, I did not say that.

Q Now, how did this man get the cut in the eye, the cut on the lip and then the cut under the eye? A He no doubt got it while I was rolling around, and while I was bending his hand, holding it with my hand, and I was rolling on top of him.

Q Well, if you were acting in self defense, how is it that he got all the cutting up, if he were the aggressor?

A Because I held so tight he could not do anything to me.

Q Then, you are a stronger man than he is? A I don't know whether I am stronger than he.

Q Well, but you were acting in self defense, and he got all carved up, and you had nothing done to you?

A I was wounded on the head.

Q Well, you did not have any cut on the back of your head? A No, I had no cut.

Q But he had his eye gouged out, his lip cut, his eye

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cut, and the back of his head and the back of his body cut, in self-defense? A Can he now show that, that his lips were cut? Let him come here and show it.

Q You called this young fellow a son-of-a-bitch in the place that day, didn't you? A Yes, while he was throwing the dirt on top of me.

Q And you felt angry with him? A I was not angry, but I told him that.

Q And he did not say anything to you then, did he?

A When?

Q When you called him a son-of-a-bitch? A Yes, he said to me, pointing his finger at me, "I will show you today who is a son-of-a-bitch; I will make you cold."

Q And you went out there prepared to meet him, didn't you, in the evening or early morning? A No, I didn't know anything.

Q Well, didn't he tell you he was going to knock you cold? A He said that several times, but he never bothered me.

Q He never bothered you, and you had been teasing this young fellow, all the time, hadn't you? A No, I did not tease him. He teased me.

Q Now, you never had any trouble with Petrowitch, did you? A No.

Q You never had any trouble with this foreman,

Mr. Richter, did you? A No, never.

MR. EINSOHN: I object as incompetent, immaterial and irrelevant,.

THE COURT: I think it is proper. You have addressed, counsel, to both these witnesses, questions for the purpose of indicating that they had some bias. Therefore it is allowable for the District Attorney to show, if he can, by this witness, if there was not any ill feeling between this defendant and those witnesses.

Q Now, did you hear that testimony of Petrowitch and Richter, that you struck this young fellow Weiss in the side of the face first? A Richter did not say that. That is not true.

Q That is not true? A Richter only said that I struck him with my hand.

Q And that you struck the first blow? A When he came towards me I got hold of his hand and hit him.

Q And that afterwards you knocked down Weiss, and that you began to strike him three or four times while he was lying upon the ground? A I did not throw him down. I did not hit him.

Q Didn't you hit him while he was on the ground?  
A No, I did not hit him.

SAMUEL VRABEL, being called and duly sworn as a witness on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR. SIEGEL:

Q What is your profession? A I am an attorney and counsellor at law.

Q Do you practice generally, or have you a particular line? A No, I represent the New York Telephone Company in the Municipal Court, First District.

Q Do you recollect accompanying Mr. Einsohn, when Mr. Einsohn was visiting Mr. Richter, a witness who testified previously here? A Yes.

Q Do you remember the conversation that was held between Mr. Einsohn and Mr. Richter? A I do.

Q In your presence? A Yes, sir.

Q When was that? A On Election Day, November 8th, 1906.

Q What time of day was it? A Somewhere around noontime. I should say between 11 and 12 o'clock.

Q Will you please state to the jury and Court what occurred; at least, the conversation that took place?

A Originally, this defendant came to my residence, but I am unfamiliar with the trial of a criminal case, so I told him I would retain a friend of mine who was more familiar; that I did not think I could try a case in the Court of General

Sessions. I spoke to Mr. J. S. Einsohn, who represents the deferdant now, and I had him-- I had met him down at the East Side Civic Club, one evening, and I said that it would be a good thing to see these witnesses and learn the truth, as Leopolt Ackovitz said that he was willing to stand by what they said, that he has no doubt but what they will tell the truth, and that if they did tell the truth he does not fear the result. So therefore, after I had voted, about eight o'clock, Election Day, I took a Second avenue train up as far as 72nd street, I think, and met Mr. Einsohn there by appointment.

We called upon Mr. Richter, and we commenced to talk about this case. He met us in a very friendly spirit, and I told him just to tell us the truth, that that was all we were there for, and, "We will do our best for the prisoner," and I told him, "Mr. Einsohn is attorney engaged to try the case," and I told him who I was; I spoke to him in his native tongue; I am familiar with German, and I asked him to tell us how this occurred. I said, "It is a very serious matter, and we wanted to prepare the case in the best possible way." So I told Mr. Richter, "Go ahead and tell us," so he proceeded as follows:

He said that very much about the matter he cannot tell me, because he had left a few moments or so after the prisoner left with Mr. Petrowitch, and that it is quite a

stantially what he told you? A No, I will repeat, if you wish.

Q yes, that he was about 75 feet away? A Something like that, yes.

Q Now, you do not know anything about criminal law, do you? A Well, except what I have stated, what I studied in law school.

Q Well, that is very little, is it not? You did not know at that time that this witness, Mr. Richter, had been a witness for the People, did you, a witness for the People, did you? A Well, I don't know that I can answer directly. I will explain it, if you will let me.

Q I will let you explain. A I was retained after the matter, I believe, was up in the Magistrate's Court, and this prisoner was represented by some attorney by the name of Nugent, who had trouble with Mr. Jerome, the Grand Jury and so forth. So Mr. Ackovitz said to me, and some other young man who accompanied him, that they were present in the Magistrate's Court, and Magistrate Whitman, before him, but that they did not testify, and I believe they said that, and I say now, that we went there in good faith, in my client's interests, and not--

Q Oh, you acted in good faith, but you did not use this witness? A I asked him whether he would testify.

THE COURT: I think I will exclude that question,

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because it is not shown that, for the purpose of this now pending case, this witness occupied such a relation to it.

Q Are you interested in the defense of this case, Mr. Wrabel? A (No answer.)

BY THE COURT:

Q Well, are you one of the attorneys for the defendant in this case? A I am not. I have no financial interest in the matter.

BY MR. O'CONNOR:

Q But you have an interest in the case, in so far as you would like to see the defendant acquitted? A Well, from the circumstances that he told me, I thought it would be a good thing for him to be acquitted.

Q Now, I only want to state to you this: You did not believe at the time you consulted with Richter, that you were violating any-- A (Interrupting) Well, I went there to ask him to give me the real facts in the matter, and if he told us the truth, just the way it is, we would let the matter go that way; just to tell us the truth, and to use him as a witness, even if his testimony was against the prisoner.

Q Well, you heard him testify here to-day? A Not all of it.

Q Well, I substantially stated what he told you, but I only wanted to set you straight, that you did not believe

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that you were violating any rule. A No, I only went there in the interests of Mr. Ackovitz.

Q And as a general thing, you understand, that it is not the right thing to go to the People's witnesses to find out what they know? A Had he been a witness for you, Mr. O'Connor?

Q Yes, he was, but I do not think you meant anything by it. I only wanted to set you straight, counsellor.

A No.

W I L L I A M F R I E D M A N , being called and duly sworn as a witness on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR. EINSOHN:

Q Where do you reside? A 227 East 100th street.

Q What is your occupation, Mr. Friedman? A Up to the present, I have been in the jewelry business.

Q Do you know the defendant here, Leopolt Ackovitz?

A Yes.

Q How long a time have you known him? A About two and a half years.

Q How did you become acquainted with him? A He lived by a friend of mine about two and a half years ago, and in last April he moved with me, he lived with me.

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Q Boarded with you? A Yes, sir.

Q During the time he boarded with you, did you observe his habits and conduct? A Yes, sir.

Q And his temper? A Yes, sir.

Q Did you notice any particular spirit of aggressiveness about him?

MR. O'CONNOR: Objected to, as not the proper way of proving a man's reputation or character.

Objection sustained.

MR. EINSOHN: May I not, or am I not entitled to prove in the case that the defendant was not of an aggressive nature?

THE COURT: You can prove that, if you ask proper questions. It is the form of your question that is objected to.

Q Did you notice, did he ever get into fights while he was living with you?

Objected to. Objection sustained. Exception.

Q Did you notice any bad habits about him?

MR. O'CONNOR: Objected to as to form.

Objection sustained.

Q What is his general reputation?

MR. O'CONNOR: No. The question should be: Do you know the defendant, and do you know other people that know him in the community in which he resides,

and then, what is his general reputation for peace and quietness.

THE COURT: Put the question substantially that way, counsel, and then you will bring out what you want, and that will obviate any objection.

BY MR. EINSOHN:

Q What is his general reputation-- is that it?

MR. O'CONNOR: No. Does he know the defendant; how long he knows him; does he know other people that do know the defendant, and then if he knows what the defendant's reputation is.

BY THE COURT:

Q Now, do you know other people who know this defendant? A Yes, sir, I do.

BY MR. EINSOHN:

Q What is his general reputation, if you know, for peace and quietness? A Well, I never heard him to be in trouble with any other fellow.

Q Is it good or bad? A Good.

MR. O'CONNOR: No cross examination.

(It is conceded by the District Attorney that the defendant was never convicted of crime.)

MR. O'CONNOR: I am not attacking the defendant's

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character.

MORRIS WINETSKY, being called and duly sworn as a witness on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR. EINSOHN:

Q Where do you reside? A 1895 Third Avenue.

Q What is your occupation? A Baker business.

Q Do you know the defendant Leopold Ackovitz? A Yes, he used to work for me.

Q How long have you known him? A About two years. He worked last year with me.

Q How long did he work for you? A Five months.

Q And during that time did you observe his habits?  
A He was a nice fellow.

Q Do you know people who know Ackovitz? A No, I don't know the people, only him.

Q Did you know anybody at all who knew Leopold Ackovitz? A I know his brothers.

Q And do you know what the general reputation of Ackovitz was for peace and quietness? A He was a nice fellow.

Q Was it good or bad? A He was good.

MR. O'CONNOR: No cross examination.

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J . S O L O N E I N S O H N , being called and duly sworn, as a witness on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR. SIEGEL:

Q Mr. Einsohn, you are an attorney or you are the attorney of record for the defendant Leopolt Ackovitz?

A I am.

Q You heard the witness Richter testify on the stand here? A I did.

Q Do you recollect a certain conversation you held with the witness Richter on Election Day at his house? A I do.

Q Will you state to what effect, or, if you can repeat the conversation, that you had with this witness Richter at the time and place? A I did not want to be bothered with any criminal case, unless I was absolutely sure that my man was innocent--

MR. O'CONNOR: I move to strike that out.

THE COURT: Strike it out. Get right down to the conversation.

A (Continuing) I had heard that Richter--

MR. O'CONNOR: I move to strike that out.

THE COURT: Strike it out.

MR. SIEGEL: The former question is withdrawn.

Q You called on the witness Richter? A I did.

Q Why did you call on him?

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MR. O'CONNOR: Objected to.

THE COURT: Sustained as immaterial.

A I called upon Richter and I asked Richter whether he knew anything about the assault upon Mr. Weiss, and he said, "No, I do not; the only thing I know about it is that I worked in the same bakery, with Sander Weiss and Leopolt Ackovitz, and that on September 15th, 1906, I left the place, the bakery, after Ackovitz and Petrowitch, and when I came up to the house where Sander Weiss was living, the entire affair was over," and I thereupon asked him whether he saw Ackovitz strike Weiss, and he said, "No." I said-- I state that upon my oath as an attorney and counsellor at law.

MR. O'CONNOR: Well, that does not make it any more so than if you were not.

CROSS EXAMINATION BY MR. O'CONNOR:

Q You are the attorney in this case, the attorney of record, Mr. Einsohn; is that right? A Yes.

Q Well, you wanted to use Mr. Richter as your witness, didn't you? A Certainly.

Q Did you subpoena him to come here as your witness? A No.

Q Why? A Because I found out he didn't know anything about the matter.

Q And did you know he had been a witness for the People, in the court, up in the District Court? A I didn't know he ever was up in the District Court.

Q Did you go to Petrowitch to find out what he knew?

A Yes.

Q And you did not call Petrowitch as a witness?

A I found out, he told me he was already a witness for the People.

Q And did not the other man tell you he was already a witness for the People? A No.

Q He did not know anything about being a witness?

A I don't know what he knew, or did not know.

Q Do you mean to say that Petrowitch told you he was a witness for the People? A Yes.

Q He said, in those words, that he was a witness for the People? A No, not "Witness for the People."

Q Well, what did he say to you; now, tell us?

A That he was a witness, that the District Attorney had called him, or something of that kind; I cannot remember just what he said.

Q Well, did he not tell you what he saw take place there? A Yes.

Q He told you that he saw Mr. Ackovitz strike Mr. Weiss, didn't he? A Yes.

Q You did not call him for your witness, did you?

A (No answer.)

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Wednesday, January 30th, 1907, at 10.30 o'clock A. M.)

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New York, January 30th, 1907.

TRIAL RESUMED.

MR. SIEGEL: The defence rests.

MR. O'CONNOR: The People rest.

MR. EINSOHN: If your Honor please, I again renew the motion to compel the People to elect upon which count they intend to go to the jury -- not on which count, but rather on which crime.

There are two separate crimes charged in the indictment: one, maiming; the other, assault in the first degree. The elements of maiming, according to the code, are that the defendant must have an intent to commit a felony. I do not believe the People have shown any intent whatever to commit any felony-- or to injure, disfigure or to disable --- I do not think they have shown any intent upon the part of the defendant to disfigure or disable, outside of the ~~presumptive~~ evidence as provided by the statute of the infliction of the injury itself.

In a case of this kind, where there is no evidence whatever of any previous preparation on the part of the defendant to perpetrate a crime, in view of the testimony offered by the defence, I do not

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believe the testimony is of sufficient character or weight to even take it to the jury; and I move to dismiss, on the ground that the People have not, therefore, proven the elements of the crime of maiming.

I move to dismiss the indictment on the ground that the People have failed to show the elements of the crime of assault in the first degree. The Penal Code provides --section 217 -- that the defendant to be convicted of this crime, must be shown to have an intent to kill a human being -- of course, nothing of that kind is shown here --- or to commit a felony upon the person or property of the one assaulted. No felony is shown to have been intended by the defendant, outside of this casual occurrence, which really was a fight, a street brawl, and the code further provides that a person with such intent, either to commit a felony or to kill a human being, assaults another with a loaded firearm -- of course that is not in the case -- or any other deadly weapon, or by any other means or force likely to produce death.

The People have certainly not shown that the defendant went to the place where the complainant was

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assaulted with any loaded firearm, or with any deadly weapon. In fact, the only testimony on the part of the People of a deadly weapon being used, was the testimony of the complainant himself. The other witnesses called for the People, two of them eyewitnesses of the occurrence, state positively that they did not see any knife in the possession of the defendant.

Under those circumstances, it appears to me that the People have certainly failed to prove the crime of assault in the first degree; and they should also be compelled to elect upon which count they will stand: maiming, or assault in the first degree, and I make my motions separately as to each count, and to compel an election.

THE COURT: I will deny your motion, Counsel.

MR. EINS OHN: Exception.

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