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Jul 4-5-6

COURT OF GENERAL SESSIONS OF THE PEACE.
CITY AND COUNTY OF NEW YORK. PART VI.

9696

THE PEOPLE

-against-

Before:

JULIUS ROSENWASSER,
Impleaded with
ABE KEPALOFF, alias
ABE KAPLAN,
BENJAMIN KONNER and
JOHN DOE.

HON. ALFRED J. TALLEY, J.,
and a Jury.

Tried, New York, June 21st, etc. 1921.

Indicted for Murder in the First Degree.

Indictment filed February 25th, 1921.

Appearances:

ASSISTANT DISTRICT ATTORNEY JAMES E. McDONALD,
for the People.

MESSRS. JOSEPH S. ROSABSKY and THOMAS I. SHERIDAN
and FRANK GOLDBERG,
For the Defense.

-Transcript of Stenographer's Minutes.-

Frank S. Beard,
Official Stenographer.

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(A jury was empaneled and sworn).

(Assistant District Attorney McDonald opened the case for the People as follows:)

May it please your Honor,
and Gentlemen of the Jury:

This defendant is indicted for murder in the first degree. He is indicted with one Abe Kepaloff, and one Benjamin Konner, and another man not arrested.

The People will prove that, on the 29th of January 1921, the defendant Rosenwasser, the defendant Konner and the defendant Kepaloff and the unknown man went to the home of Rosenwasser, and there attacked the deceased, Jacob Mazzura, for the purpose of robbery, and that Jacob Mazzura resisted, and that one of these four men fired a pistol shot at Mazzura, striking him about five and a half inches to the right of the middle line, just above the shoulder clavicle, the point of the clavicle.

Now, in the room at the time was another man, or two men, one by the name of ~~Sahank~~ Sevak, and another by the name of Vasil Gustyak.

They had gone to Rosenwasser's rooms to meet a sister of Rosenwasser, who had come from their home town in Russia, and they were on their way back to their home town in Russia.

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Vasil Gustyak had drawn about \$3,000. from the State Bank, and had it hidden in his clothes, and the other man, Mazzura, had drawn \$1,000. from the bank, and also had it hidden in his clothes.

They went to the house of Rosenwasser at the request of Rosenwasser, for the purpose of meeting his sister. He said that this sister would give them all the information about their home town, and about conditions over there.

When they arrived there, the defendant Rosenwasser was not in, but his wife was. It was the home of the defendant, at 123 Stanton Street. The wife was there with a child. They asked for the defendant, and the wife went away, and came back in a few minutes, and said that he would be back soon.

Soon afterwards the defendant came upstairs to the room with Kaplan and this unknown man, who was not arrested. They then sat down for a minute or two, and Rosenwasser sent his wife out of the room. She was told to go to the Doctor's with the child, and she left.

Almost immediately the man who was not arrested yelled, "Hands up," in English, and the defendant Rosenwasser and Kaplan also yelled "Hands up", in Russian.

Jacob Mazzura, the dead man, refused to hold his hands up, and made an attempt to get out of the door, but they grabbed him and proceeded to run their hands over his

PP clothing this way (illustrating), and he was still
struggling, when the shots were fired.

Vasil Gustyak, having done as directed, held his hands up, and while they were holding, or grabbing or touching the body of the deceased, whose hat had fallen to the floor, Vasil ran past them, and, as he ran downstairs, one of the men fired a shot at him, striking him on his right arm, the bullet going through to the leg (indicating), and just bruised the skin on the leg.

They called for the police, and the police finally came. Sevak, who had brought these men there, and who was also a distant relative of one of these men, namely, Hoochek, ran out at the cry of "Hands up", and he said that he started calling for the police.

The ambulance surgeon was called within a few minutes after the police arrived, and then the ambulance surgeon pronounced Jacob Mazzura dead.

When the body of Jacob Mazzura was searched, there was found over \$1,000. fastened to the lower part of the right leg with a handkerchief or wrapped up in the big heavy boots that he wore, mostly consisting of two \$500. bills.

On the body of Vasil was found sewed in his coat, something like \$2,018. and some cents.

The People will prove that this was a robbery, planned by Rosenwasser, some time previous.

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On the night before, on the Friday night preceding, it was that Rosenwasser invited the witness Sevak and the witness Vasil, who had drawn over \$2,000. from the State Bank that day, up to his house, and it was then Rosenwasser told the witness Vasil and the witness Sevak that his sister had just arrived from her home town in Russia, and that the purpose of inviting them up there was to rob them; and, in a few minutes after Rosenwasser and his confederates entered the room, and the wife has gone out at his command, they attacked these two men, and Jacob Massura, resisting the robbery, was shot and killed.

If the People prove these facts beyond a reasonable doubt, we will ask for a conviction of murder in the first degree.

THE COURT: We will suspend now until two o'clock.

The law requires me, gentlemen of the jury, at each adjournment of a case, to admonish the jury, as I now admonish you, not to talk about the case among yourselves, or with others, and not to form or express any opinion about the case until it is finally submitted to you.

Now, you will hear that same admonition at each adjournment of the Court, but you must not, therefore, think that it is a trite and formal thing. It is a very substantial thing, and the purpose of it is very plain. And it is that jurors should keep an open mind upon the

TP guilt or innocence of the defendant, until they hear the entire case. 6

So, bearing in mind that admonition, gentlemen, return and be in your seats promptly at two o'clock.

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A F T E R R E C E S S.

TP MR. ROSALSKY: If your Honor please, we ask that all the witnesses be excluded.

THE COURT: Yes, all the witnesses on both sides will step out of the court room, and remain within call.

TP BENJAMIN SCHWARTZ, M. D., called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you are a physician, licensed to practice medicine and surgery? A Yes, sir.

Q In the City and State of New York? A Yes, sir.

Qx And from what medical school were you graduated?

A Cornell.

Q And when did you graduate? A 1907.

Q And have you been practicing your profession since that time? A Yes, sir.

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Q Since your graduation you have occupied various public positions? A Yes, sir.

Q And what positions have you occupied? A Coroner's Physician and Acting Chief Medical Examiner of the City of New York.

Q And that is the position that you now hold, the last one that you have mentioned? A Yes, sir.

Q And, in the discharge of your duty in those two offices, what was your principal duty, doctor? A To perform autopsies and examine cases to determine the cause of death.

Q And about how many autopsies have you performed?
A About 4,000.

Q And are you able to tell with a reasonable degree of certainty, the cause of death? A Yes, sir.

Q Now, did you perform an autopsy upon the body of Jacob Mazzura? A Yes, sir.

Q When? A January 30th, 1921.

Q This body was identified to you by whom? A By officer John Sullivan, of the 15th Precinct, and by John Mirpilsky, a friend of the deceased.

Q Where did you perform the autopsy? A At the City Morgue.

Q And what did you find, doctor? A There was an extensive burning of the clothing. There was a large burn on the overcoat, in the region of the shoulder.

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There was a bullet wound of entrance on the right side of

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the chest, adjoining the shoulder, five and a half inches to the right of the middle line of the body, and two inches below the outer side of the right collar bone.

BY THE COURT:

Q Will you indicate on your own person, if you please, doctor, where the wound of entrance was? A About here (indicating).

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Q Where your right hand is pointing? A Yes, sir.

Q Was there a point of exit of the bullet? A No, sir.

BY MR. McDONALD:

Q Now, then, did you find the bullet? A Yes.

Q And where was it? A The bullet was lodged in the seventh dorsal spine, just to the right of the middle line.

BY THE COURT:

Q Do you mind standing up, and showing the jury, doctor?

A About here (indicating).

BY MR. McDONALD:

Q Where your thumb is pointing? A Where my middle finger is pointing.

Q Your middle finger? A Yes, sir.

Q Have you got that bullet with you? A Yes.

Q Is this the bullet (indicating)? A Yes.

Q You removed that yourself? A Yes, sir.

Q Is it in the same condition now as it was when you removed it from the body of Jacob Maazura? A Yes.

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MR. McDONALD: I offer in evidence this bullet. 9

(It is admitted without objection, and marked People's Exhibit 1).

Q What was the track of this bullet, doctor? A The bullet went through the second rib on the right side, in front, and went through the right lung, and was lodged in the seventh dorsal vertebra.

Q Did you form an opinion as to the cause of death? A Yes.

Q What was the cause of death? A Hemorrhage in the chest cavity, and bullet wound in the right lung.

Q Do you know what calibre bullet it was? A Yes.

Q What calibre? A .38 calibre.

Q How tall was this man? A He was five feet eight inches in height.

Q And about how old was he? A 50 years of age.

Q And about what weight? A He weighed 184 pounds, by scale.

Q By the way, did you visit the premises 123 Stanton Street?
A Yes.

Q About what time was that? A 4.30 P.M., January 29th, 1921.

Q Did you there see the body of the deceased? A Yes, sir.

Q Just describe the position of the body at the time that you saw it? A He was lying two flights up, in the rear. The head and part of the body were out in the hall. The legs and

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part of the body were inside of the apartment. He was lying upon his back.

Q I show you this picture, and ask you if that approximately shows the position of the body at the time that you saw it? A Yes.

MR. McDONALD: May I have it marked, if your Honor please, at this time, for identification?

THE COURT: Yes.

(It is marked People's Exhibit 2 for Identification).

BY MR. McDONALD:

Q I show you another photograph, and ask you if that correctly represents the position of the body when you reached 123 Stanton Street? A Yes, sir.

MR. McDONALD: May I have that also marked for identification?

THE COURT: You may.

(It is marked People's Exhibit 3 for Identification).

BY MR. McDONALD:

Q Just describe how the body was clothed when you arrived there? A The body was fully clothed. There was a large, heavy overcoat, with a fur collar, very heavy shoes, and there was a hat alongside of the body, a soft hat.

Q While you were there, did you see any police officers there? A Yes, sir.

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Q And were you there when the police officer also searched-- withdrawn. Did you order the clothing removed? A Yes, sir.

Q And, when the clothing was removed, did you see anything?

A Yes, sir.

Q What did you see? A There was \$1,000. wrapped about his right lower extremity.

Q Do you mean near the ankle?

BY THE COURT:

Q Indicate on your own person where the money was found. Was it found on the right leg? A Yes, sir, the right leg. It was wrapped in a handkerchief, about there (indicating).

Q How was it fastened to the leg? A Tied to it in a knot.

Q By means of a handkerchief? A Yes, sir.

BY MR. McDONALD:

Q Did you examine the clothing? A Yes, sir.

Q ~~Was~~ Was there an overcoat on the man at the time that you saw him? A Yes.

Q I show you this overcoat, and ask you if that was the overcoat that you saw upon the dead man? A Yes, sir.

MR. McDONALD: May I have it marked for identification?

THE COURT: You may.

(It is marked People's Exhibit 4 for Identification).

Q Did you examine the under coat? A Yes, sir.

Q I show you this under coat, and ask you if that is the under coat that this dead man wore at the time you were there?

A Yes, sir.

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Q Did you examine all the clothing? A Yes, sir.

MR. McDONALD: May I have it marked for Identification, this coat?

THE COURT: Yes.

(It is marked People's Exhibit 5 for Identification).

BY MR. McDONALD:

Q I show you this vest, and ask you if that is the vest that the deceased wore at the time? A Yes, sir.

MR. McDONALD: May that also be marked for identification?

THE COURT: Yes.

(It is marked People's Exhibit 6 for Identification).

MR. ROSALSKY: It will be conceded, if your Honor please, that this bundle of clothing is the clothing that was worn by the deceased.

THE COURT: Then it may be offered in evidence?

MR. ROSALSKY: Yes, sir.

MR. McDONALD: Then it is all offered in evidence.

THE COURT: And why not mark all the clothing, which you say was worn by the deceased, as one exhibit?

MR. ROSALSKY: Yes, the entire apparel of the deceased.

THE COURT: Yes. It is now offered and received in evidence as the clothing worn by the deceased at the time the body was found.

(All the clothing is marked People's Exhibit 4 in evidence).

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8-9
BY MR. McDONALD:

Q You made some mention of finding a burn upon the overcoat.

A Yes, sir.

Q What do you mean by that, doctor? A Well, there was a distinct burn, there was a large hole in the fur collar, on the right side of the overcoat.

Q And what relation did that hole in the overcoat and the other clothes bear to the ~~wound~~ wound which you have just told us was on the body of the deceased? A It was in the same vicinity.

THE COURT: Now, you had better have the doctor point out the precise holes and burns he has reference to, because when you come to refer to them, the doctor will not be here,

MR. McDONALD: Very good, sir.

BY MR. McDONALD:

Q Take the overcoat first, doctor. A This is the burn I have reference to (indicating).

You
Q /Point to the hole in the fur collar on the right hand side? A Yes.

Q And so with the undercoat? A This is the bullet hole, on the right side of the body of the coat, in front (indicating).

Q And where is that with regard to the hole in the fur collar? A Well, the hole in the fur collar is larger. That is due to a burn. But that is immediately beneath it.

Q Now I show you the vest. A This is the bullet hole

in the vest (indicating).

Q And the undershirt? A This is the hole in the shirt, on the right side, beneath the hole in the coat and vest (indicating).

Q You made an examination of the entire body of the deceased, did you? A Yes.

Q And were the other organs normal? A Yes.

Q Would death ensue rather quickly from the wound that you have described? A Yes.

MR. McDONALD: I think that's all, Doctor.

MR. ROSALSKY: No questions.

THE COURT: Step down, doctor.

R JOHN L. SULLIVAN, of the 15th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Department? A Yes.

Q And you were ~~examined~~ such on the 29th day of January, 1921? A Yes, sir.

Q And to what precinct were you attached? A 15th Precinct.

Q And on what post were you between the hours of 8 and 4 in the daytime? A On the Stanton Street post, and that runs east and west from Clinton Street - that is, the west side of Clinton Street - to the east side of Orchard Street, half a block

north and south.

Q And did you have occasion to go to 123 Stanton Street at any time during the afternoon of that day? A I did.

Q And what time was it you arrived there? A About 2.50 or 2.55.

Q And before you went into 123 Stanton Street, did you see anybody? A I did.

Q Where were you when you were first attracted to 123 Stanton Street? A I was on Stanton Street, midway between Suffolk and Norfolk.

Q Is that east of 123? A It is east.

Q Do Norfolk and Suffolk run north and south? A Yes, sir.

Q And Stanton Street runs east and west? A Yes, sir.

Q Now, what caused you to go to 123 Stanton Street?

A I was approached by a little boy --

Q And this little boy told you something? Yes or no? A Yes.

Q Now, after this little boy told you something, did you do anything? A Yes.

Q What did you do? A I went to the premises 123 Stanton Street.

Q Now, then, did you see anybody when you arrived at the premises 123 Stanton Street? A Yes, sir.

Q Whom did you see? A I saw a number of people gathered in front of the premises 123 Stanton Street, and then I went into the building.

BY THE COURT:

Q Was this 2.50 in the afternoon? A Yes, sir, about 2.50 or 2.55

Q In the afternoon? A Yes, sir.

BY MR. McDONALD:

Q Before you went into the building, did you have a talk with anybody? A Not at that time.

Q Well, after you went into the building, what part of the building did you go to? A I went to the third floor, rear, east side, where I observed a man lying on his back, and I went over to him, and I see something had happened, and I then ran downstairs to call an ambulance, and I then had a conversation with a man known to me now as Vasil Gustyak.

Q Now, did you notice anything the matter with this man that you were talking to? A Yes; this man known to me as Gustyak was bleeding from his -- that is, I thought --

MR. ROSALSKY: I object to that as immaterial, irrelevant and incompetent.

MR. McDONALD: It might be, at this time, sir.

THE COURT: Very well. Sustained.

BY MR. McDONALD:

Q Now, did you notice -- just answer this question yes or no -- did you notice anything the matter in the physical appearance of this man whom you now call Vasil Gustyak?

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MR. ROSALSKY: I object to that, as being incompetent

and immaterial and irrelevant under this indictment.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A Yes, sir.

BY MR. McDONALD:

Q Now, after you had a talk with this man, what did you do? A I then told this man to come with me.

MR. ROSALSKY: I object to that.

THE COURT: Objection sustained.

BY MR. McDONALD:

Q No. You said something. You can't tell any conversation you had with him. A I had a conversation with him.

Q And after that, did you do anything? A I did.

Q What did you do? A I then called an ambulance -- before I had a conversation with this man, I called an ambulance, and after having the conversation with the man, I went back up into the apartment on the third floor, east side, rear, and got a hold of somebody, whom I didn't know, that talked very little Russian, for the time being, and I asked the man --

MR. ROSALSKY: One moment, please, I object.

THE COURT: Objection sustained.

BY Mr. MC DONALD:

Q You asked him something? A Yes, sir.

Q And then what did you do? A I then -- then Sergeant McNamara came, also a sergeant of the 15th Precinct, and we had

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some more conversation with this man, and then the doctor from the Gouverneur Hospital had arrived, and pronounced the man that was lying on the floor, dead; that he had been shot.

Q Now, then, when you were up there the first time, did you notice anything about the clothing of the man that the doctor pronounced dead? A Yes.

Q What did you notice? A I noticed that he had a very thick coat on, and a seal collar, and I saw it was smouldering, and starting to burn, and I got some water in a glass from a sink in the room, and stopped the little smouldering that was there by throwing the water on.

Q Now, I show you this overcoat, and ask you if that is the overcoat that you saw upon the body of the deceased, and that you saw smoldering? A It is.

Q You say that you got some water from the inside of the apartment? A From inside of the apartment, in a glass, and I believe I threw two glasses on that, the part which was burned there (indicating).

Q Now does People's Exhibit 2 for Identification show fairly correctly the position of the body, at the time that you first went up into the premises 123 Stanton Street?

MR. ROSALSKY: I object to that, as being incompetent.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A It is. He was lying there, but one boot was on, and it had

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been removed a little before the picture.

BY THE COURT:

Q Otherwise the position of the body is the same as when you saw it? A Yes, sir.

Q And the condition of the body? A Yes, sir.

Q With the exception of a boot on one of the feet? A Yes, sir.

Q And how does the picture differ with respect to that boot, from the appearance that you observed when you first got there?

MR. ROSALSKY: I object to it, as being incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A The picture doesn't differ. The position in which he is lying was just the way he was when I arrived there.

gnd
g Q You stated that, but you said there was some difference as to one of the boots. A Well, the boot had been taken off, and not put back on again. When I first saw the body, the boots were all the way on, and here the boot is half off.

Q And that is the only difference? A Yes, sir.

BY MR. McDONALD:

Q And that is also true of People's Exhibit 3 for Identification? A Yes, sir, the same thing.

Q Now, how was this body clothed that you saw there?

A I didn't hear that question.

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Q How was it clothed? A The man lying on the floor--

MR. ROSALSKY: If your Honor please, I want to see the photographs which were put in for identification, because the witness is being interrogated about those photographs.

THE COURT: No, only with respect to identifying the photographs marked for Identification, as being a correct representation of the body as he found it.

MR. ROSALSKY: And also speaking of the condition of the body.

THE COURT: But that has no relation to the photograph. He is asking now how the body was clothed.

MR. ROSALSKY: Yes, sir, but with reference to the photographs the witness testified from something that was only marked for identification, and the defense contends that we are entitled to see what the witness was shown.

THE COURT: Oh, I think you will have plenty of opportunity of seeing the photographs.

MR. McDONALD: As matter of fact, it was really only a technical objection.

THE COURT: Then why don't you show him the photographs?

MR. McDONALD: No objection, sir. He may have them.

BY MR. McDONALD:

Q How was the body clothed? A It was fully clothed, with the exception that he had no hat on.

Q Did you afterwards remove the clothing from the body of the deceased? A I did not; that is, I did not, on that ~~day~~ day.

Q Did you afterwards take the clothing of the deceased somewhere? A I did.

Q And was that part of the clothing worn by the deceased, this overcoat (indicating)? A It was.

Q And this undershirt? A It was.

Q You marked all these articles with your name? A I did.

Q Were these also worn by the deceased, these inner boots? A Yes, I believe they call them Russian felts.

Q And are these the shoes that he wore? A Yes, sir, these are the rubber boots or shoes that go over the Russian felts.

Q And is this also part of the clothing worn by the deceased, this shirt? A It is.

THE COURT: There is no use of identifying all those, Mr. McDonald. They have been admitted in evidence as the clothing worn by the deceased.

MR. McDONALD: I just want this one thing. Two pairs of trousers were found on the body of the deceased, and that may be considered unusual.

THE COURT: All right.

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BY MR. McDONALD:

Q I show you two pairs of trousers, and ask you if they were worn by the deceased? A They were.

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Q And were these socks also worn by the deceased, or parts of the socks, I guess they are? A Yes, sir.

Q Was there anybody in the premises at the time that you arrived there? A There was not.

Qx What kind of premises are they? A They are a five story building, the first floor occupied by stores.

Q And the premises in which you found the body of this deceased; what kind of premises are they? A The apartment or the premises?

Q The apartment. A A two room apartment.

Q And how do you get into the place, or this two room apartment? A Through a door leading ~~int~~ from the hall.

Q From the public hallway? A From the public hallway.

Q And what does that lead you to? A To the kitchen and living room; it is kitchen and living room, used as both. It is a two room apartment.

Gal 89/2
Q And the other room is used as what? A Bedroom.

Q And did you find out afterwards who was the owner or tenant of those premises? A Yes, sir.

Qx And who was it? A Mr. Rosalsky: I object to that, as only hearsay.

THE COURT: Objection sustained. He is hardly the best witness on that subject.

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BY MR. McDONALD:

Q Have you told us where the body was lying? A The body

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was lying across the door leading from the public hall to the two room apartment. From his hip to his head he was lying out in the public hall, and from his hip to his feet was lying in the apartment. He was about half way across the door.

BY THE COURT:

Q The head was in the hall? A Yes, sir.

Q And the feet were in the apartment? A Yes, sir.

BY MR. McDONALD:

Q Did you notice the appearance of the apartment inside?

A I did.

Q Will you describe to us just the physical appearance of the room? A Well, in the kitchen -- that is, there was very little furniture in the apartment -- in the kitchen was a ~~table~~ table and two chairs, and tubs and a sink, and a mantle and a dish closet and a baby carriage. And the bed.

Q Was the baby carriage in the kitchen? A Yes, sir.

Q And the bed was in the kitchen also? A No, sir, in the bedroom.

Q And was there a sofa in the kitchen, too? A Yes.

BY THE COURT:

Q There were a kitchen and two rooms? A No, sir, a kitchen and one room.

Q A kitchen and a room, with a bed in it? A Yes, sir.

Q Now, what else was in the bedroom, besides the bed?

A I didn't particularly notice that.

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BY MR. McDONALD:

Q Now, how did you get into the kitchen; after you went in the kitchen, how did you get into the bedroom? A There was a doorway that leads from the kitchen to the bedroom.

Q And was there another door in that bedroom? A There was, leading to a front apartment, which was occupied separately from those two rooms.

Q I see. This was originally a five room apartment, was it?

A Yes, sir, and they let them out, three rooms to the front tenant and the other two rooms were occupied by a rear tenant.

Q And this was the rear apartment of the entire apartment?

A Yes, sir; that is, it is a five room apartment, divided up into two apartments.

Q And the kitchen was the rear apartment, or room of those five rooms? A Yes, sir.

Q Now was this man whom you saw lying on the ground, on the floor, was he alive or dead at the time you arrived, as far as you know? A As far as I knew, he was dead.

Q Did you afterwards see the body of this man? A I did.

Q Did you identify him to doctor Schwartz, the Coroner's physician? A I did.

Q And that was at the Morgue, was it? A Yes, sir, at the Morgue, on the following day.

Q Did you search the clothing of the deceased? A I did not.

Gal 10-11-12 CROSS EXAMINATION BY MR. ROSALSKY:

Q Were you present when the clothing of the deceased was searched? A I was not.

MR. ROSALSKY: That is all.

PP V A S I L G U S T Y A K, of 238 East 7th Street, a witness called on behalf of the People, being duly sworn, and examined through the official interpreter, Mr. Rosenthal, testified as follows:

DIRECT EXAMINATION BY Mr. McDONALD:

Q Where did you live on the 29th day of January, 1931?

A In the samehouse. I have been living there for seven years.

Q What do you work at? A I work in a hotel.

Q Where did you work just previous to the 29th day of January 1931? A In a hotel on 32nd Street.

Q Did you know Jacob Mazzura? A Yes, sir.

Q How long did you know Jacob Mazzura? A Four years we worked together in an ammunition factory.

Q And where was that ammunition factory? A The Dupont Company.

Q In New Jersey? A Near Philadelphia, Pennsylvania.

Q When did you leave there and come to New York? A When the war was ended.

Q Did Jacob Mazzura come to New York also? A Yes, sir.

Q From the time that you left Philadelphia, and came to New York, did you see Jacob Mazzura frequently? A Yes, I used

to see him once in a while. He worked in a cemetery.

Q Was he a grave digger? A He was cleaning around, and attending to the grass, and so on.

Q Did you know where Jacob Mazzura lived while he was in New York? A Yes, sir.

Q How much money did you earn a week? A Where? In the ammunition factory or here?

MR. ROSALSKY: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

MR. McDONALD: I can't show how this man came to have this money, except by showing, ~~xxxx~~ in a preliminary way what he earned and what he did with it.

THE COURT: Did you say in your opening that money was found upon the deceased?

MR. McDONALD: Yes, sir, and now I am asking this witness here, how much he earned.

THE COURT: Objection sustained. He may know how much the deceased earned, if they worked together; although, if the money was found upon the deceased, I do not see that it is at all material how he came by the money.

MR. McDONALD: Except this, that I may not have made myself clear, if your Honor please, in my opening. I said that this witness was with the deceased, at the time of the shooting, and had some \$2,000. with him, and it was part of

the conspiracy to rob both of these men.

THE COURT: Well, you can show that he had certain money in his possession, but the objection which counsel makes is to the earning capacity of this witness or the deceased, which would have no bearing on the matter, as I see it.

MR. McDONALD: Very good, sir.

Q Did you have a bank account?

MR. ROSALSKY: I object to that, as immaterial.

THE COURT: The contention of the People is that this killing was committed in the course of a robbery, is it?

MR. McDONALD: Yes, sir.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

BY MR. McDONALD:

Q And where did you have your bank account?

MR. ROSALSKY: The same objection.

THE COURT: Over ruled.

MR. ROSALSKY: We take an exception.

A In the State Bank, on Grand Street.

BY MR. McDONALD:

Q Now, on Friday, January 28th, 1921, did you draw any money from the State Bank?

MR. ROSALSKY: Objected to, as being immaterial.

THE COURT: Objection overruled.

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MR. ROSALSKY: We take an exception.

A Yes, sir.

BY MR. McDONALD:

Q How much money did you withdraw from the State Bank, on Friday, January 28th?

MR. ROSALSKY: Your Honor, without objecting to every question, I will object to this line of testimony, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: Well, you will have to object to each question if you desire to object to it. The objection is overruled.

MR. ROSALSKY: Exception.

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A \$2,018.15.

BY MR. McDONALD:

Q Did you draw this money out for any purpose?

MR. ROSALSKY: The same objection.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A In order to purchase different things to take to Russia, because they don't need money in Russia, they need ~~scertain~~ articles.

MR. ROSALSKY: I move to strike out the answer, as irresponsible to the question.

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THE COURT: Well, it does not hurt very much, but I will strike it out. The last part of the answer, the part which defines the purpose of the withdrawal, that he drew it

out to take certain things to Russia, may stand.

MR. ROSALSKY: We take an exception.

BY MR. McDONALD:

Qx Had you made application to go to Russia ?

(Objected to; allowed; exception.

A I made an application through a bank in 8th Street, and I paid to get a passport.

Q And, when you drew your money, was there anybody with you?

A Yes, Andrew Sevak and Mazzpura was with me.

Q Now, what did you do with the money that you withdrew from the bank?

(MR. ROSALSKY: The same objection.

THE COURT: The same ruling.

(MR. ROSALSKY: Exception.

A I ~~made~~ sewed it in the left side pocket of my overcoat, the inside pocket of my overcoat.

Q Did you sew the entire amount of \$2,000. in there? A No, not all the money. I paid \$162. for the steamer ticket.

Q Now, when you left the State Bank, on Friday January 28th, where did you go? A I went to the place to pay for the steamer ticket.

Q Did Jacob Mazzpura go with you? A Yes, sir, and he also paid \$10. on a ticket.

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Q Did Sevak also go with you to the place where you paid the money for these passage tickets? A Yes, sir.

Q By the way, is Sevak a relative of yours? A No, sir.

Q How long have you known Sevak? A Two years.

Q After you had paid a certain amount of money for your passage, what did you do? A I went home to sleep.

Q Did Jacob Mazzpura go with you? A He went to his house.

Q Did Sevak go to your house? A No, he went to his own house.

Q Did you see either Jacob Mazzpura or Andrew Sevak, on that day, after they left you, and went home to sleep? A The same Friday?

Q Yes. A No, I didn't see them.

Q Where did you eat, that night, the night of Friday the 28th of January? A On 5th Street.

Q Did you see Sevak there? A Yes, sir.

Q Did you eat at this place? A Yes, sir.

Q Did Sevak also eat there? A Yes, sir.

Q Did he seat himself at the same table as you? A No, he sat at another table.

Q Did he come over to where you were sitting, or did you go over to where he was sitting, at any time while you were in that restaurant? A No, he didn't come to me, nor did I go to him.

Q Did you see a man named Yiddle while you were in that restaurant, on the night of the 28th of January? A Yes, sir.

Q Do you see Yiddle in court now? A Look around the court room. A Can I stand up and look around?

Q Yes, stand up and look around. A (the witness stands up and looks around the court room).

MR. McDONALD: Tell him to come down from the stand and look around.

THE COURT: Yes. Step down there. Now, look at everybody in the court room.

A That man (indicating the defendant, Rosenwasser).

THE INTERPRETER: The witness indicates the defendant, Rosenwasser.

BY MR. McDONALD:

Qx What name did you know this defendant by? A His countrymen there called him Yiddle.

Q Yiddle? A Yes, sir.

Q Had you seen the defendant, whom you knew as Yiddle, before the night of January 28th, in that same restaurant? A Once.

Q Did you see him the day that you took the money out of the bank? A Yes, on that Friday evening.

THE COURT: Just a moment.

BY THE COURT:

Q Do you mean in the restaurant? A Yes, sir; Friday evening, in the restaurant.

Q That is the only time, that day, that you saw him?

A Yes, sir.

BY MR. McDONALD:

Q Now, then, did you have any talk with him, or did he

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say anything to you that day? A Sevak was at my right, and Yiddle was at my left, and he said to both of us, "Tomorrow, my sister will come from Brownsville, to visit me, and she has come from the old country, and she will tell us everything, about the old country."

Q All right. What else did the defendant say? A He didn't say anything. I went away and Sevak remained there.

Q Well, didn't he tell you where to come?

MRE ROSALSKY: I object to that, as leading.

THE COURT: The witness has said that he did not say anything else. His recollection may be refreshed, but it should be done in another way. Objection sustained.

BY MR. McDONALD:

Q Did he tell you ~~xx~~ where his sister would be? A He said "In my house."

Q Now, tell us all that he said about that, about the sister being at his house? A He said, "My sister will be at my house, tomorrow. Come over, and she'll tell you all about the old country."

BY THE COURT:

Q When you say "my house", do you mean the house of Yiddle's sister? A No, I mean the house of Yiddle.

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MR. McDONALD: May it be understood, that, when he speaks of Yiddle, he speaks about the defendant Rosenwasser?

THE COURT: Yes. And I now understand that the

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defendant, Yiddle, said that his sister would be at his ,
the defendant's, house?

MR. McDONALD: Yes, sir.

BY THE COURT:

Q Did he say where that house was? A Sevak told me that
he got the address, but I didn't see it.

BY MR. McDONALD:

Qx Now, did you have any further conversation with the man
that you knew as Yiddle? A No.

Q Was the deceased, Jacob Mazzura, there? At that time?

A No, sir.

Q Did you see him again, that night, Jacob Mazzoura?

A No.

Q About what time was it that you left the restaurant,
on Friday, January 28th, 1921? A I don't think it was later
than seven o'clock.

Q Where did you go then? A At home, to go to bed.

Q At the time you were in the restaurant, did you have any
money with you? A Yes, sir.

Q Was it sewn on the inside of your coat? A Yes, sir.

Q Now, then, did you see Jacob Mazzoura again, the following
day? A Yes, sir.

Q Where did you meet Jacob Mazzoura the following day,
Saturday, January 29th? A In his house. 9696

Q Did you go to Jacob Mazzoura's house with anyone? A Yes,

with Sevak. Mazzoura had asked us to come to his house on Saturday, because he was afraid to go to the bank and draw his money, alone.

Q When was it he told you that? A On Friday, he told us.

Q About what time was it that you met Mizzoura on Saturday, the 29th? A About nine o'clock in the morning.

BY THE COURT:

Q Where was Mazzora's house? A I don't know the name of the street, but it was Rivington Street, or something like it.

Q Did you and Sevak go together to Mazzoura's house? A Yes.

Q And where did you go, after you went to Mizzoura's house?

A To the bank.

Q What bank did you go to? A The State Bank.

Q Where is the State Bank? A On Grand Street.

Q That is the same bank that you had drawn your money out of, the day before? A Yes, sir.

Q Well, what happened at the State Bank? A He took out money.

Q Who took out money? A Mizzoura.

Q And about what time was it that you left the bank?

A About eleven o'clock.

Q Where did you go then? A To 4th Street, to a restaurant, to eat.

Q The three of you, you, Mizzoura and Sevak? A Yes, sir, we three.

Q And how long did you remain there? A It seems to me no more than half an hour, and Sevak said, "I have the address of Yiddle. Let's go to his house."

Q Now did you leave that restaurant? A Yes.

Q Where did you go then? A To Yiddle's house.

Q Did you go direct to Yiddle's house from the restaurant in Fourth Street? A Yes, sir, directly from the restaurant to the house of Yiddle.

Q Did you go to the dentist, on that day, to have your ^{teeth} ~~teeth~~ fixed? A That was earlier.

Q That was before you went to the bank? A Yes, before.

Q From this restaurant in Fourth Street, who left with you, to go to Yiddle's house? A Mazzoura, Sevak and I. We three went there.

Q Had you been to Yiddle's house before that Saturday? A No, never.

Q When you got to Yiddle's house, where did you go? A We came to that house, and Sevak said, "You wait down here on the street, and I will go in, and find out."

MR. ROSALSKY: One moment. I object to that. However, objection withdrawn.

THE COURT: Proceed. The objection is withdrawn.

BY MR. McDONALD:

Q All right. What happened then? Did Sevak go upstairs?
A Yes, sir.

Q Did he come down again? A He said, "Come up. I found the house."

Q And did you go up? A Yes, sir.

Q And where did you go? A Into the house.

Q Well, now, did you see Yiddle when you went into the house? A Yiddle wasn't there; only his wife was there.

Q Just answer this Yes or no. Did you or Sevak, or Mazzoura, say anything to this lady, that you saw in Yiddle's house? A Yes, we did.

Q And what happened then? A We asked where Yiddle's sister was.

MR. ROSALSKY: One moment. I object to any conversation had in the absence of the defendant.

THE COURT: Objection sustained. He may state what he did, he may tell, after the conversation, what happened.

A She went out to the street for the sister.

BY MR. McDONALD:

Q Did you get inside of the room?

MR. ROSALSKY: I move to strike out that last answer, if your Honor please.

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THE COURT: Yes. Strike it out, and the jury will disregard it. The answer, "she went out," that part may remain in, but the witness doesn't know what she went out for. All that he can testify to is the woman who greeted them when they entered the house, went out. That is all.

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MR. BOSALSKY: Exactly, sir.

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BY MR. McDONALD:

Q Did you get inside of a room? A Yes, sir.

Q And what did you do when you got into the room? A I and Mazzoura sat down on chairs, and Sevak stood near the door.

Q Now this room that you entered, was that leading right from the hall into that room? A Yes, sir.

THE COURT: You mean that it was the first room that you entered from the public hall?

MR. McDONALD: Yes, sir.

Q Was there a stove in this room where you were sitting?

A Not a stove, but some gas arrangement, on which you can make tea.

Q I see. Now you say that after you had a conversation with this woman, she went out; is that right? A Yes, she went out.

Q Did she come back again? A Yes, sir.

Q Did she come back before anyone else came back? A She came back first.

Q Now, then, did she say something to you? Just yes or no. To you, Sevak or Mazzura?

THE INTERPRETER: The witness repeats exactly what the woman said.

THE COURT: We do not want to hear what the woman said.

BY THE COURT:

Q Did the woman speak to you when she came back? A Yes, sir.

THE COURT: That is the end of it.

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BY MR. McDONALD:

Q Now, did you still remain seated there, after she came back? A Yes, sir.

Q Now, then, did anyone else come in after that? A Soon after Yiddle came, and two others.

Q Now, where did they come? Into what room did they come? A They came into the room in which we were sitting.

Q Now, then, did the defendant say anything? A He said, "I will put a kettle of water on the stove, and I will treat you to a glass of tea."

Q Did he say anything else? A And to the wife he said, "Hurry up. Take the child. The child is sick. Take the child, and go to the doctor."

Q Now, then, what happened? A She went out. As soon as she left, one of the men took out a revolver, and Sevak ran out of the house, through the door.

Q Now, at the time that the woman went out of the room, how many men were in that room? A Six.

Q Who were they? A Sevak, Mazzura, I, and Yiddle, and the two murderers.

THE INTERPRETER: He calls them murderers.

MR. ROSALSKY: I object to that, and move to strike out that word.

THE COURT: Yes, strike that out.

BY THE COURT:

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Q Do you mean Yiddle and two other men? A Yes, sir.

BY MR. McDONALD:

Q Had you ever seen those two men before that time? A No, never.

Q How soon was it that Yiddle and these two other men appeared, after the woman came back? A I don't believe it was more than three minutes.

Q How long did the woman stay before she went out -- I mean after Yiddle came? A She only bundled up the child, and immediately left.

Q Now, when she left, where was Yiddle, and where were the other two men? A Yiddle was busying himself near the table where he was preparing tea, and the two others were standing close to the wall.

Q Now, what happened then? A Those three, Yiddle, and the two others, holæered "Hands up".

Q And what happened? A Then Masura and I got up from the chair on which we were sitting, and Mazzura ran towards the door and opened it, but they caught him.

Q Who caught him? A Those three, Yiddle and the two others.

Q Now, at the time that you heard the cry of "Hands up", was it spoken in English or in any other language? A Yiddle and the other man said it in the Russian language, but the one who did the shooting, said it in English.

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Q At the time that you heard Yiddle speak in Russian, and the other man speak in English, did you see a gun, or a revolver, at any time? A Yes, he took it out of his pocket, and held it in his hand (illustrating).

Q Which man was that? A The friend of Yiddle's.

MR. ROSALSKY: One moment. I move to strike that out.

THE COURT: Strike out what? "A friend of Yiddle's"?

MR. ROSALSKY: Yes.

THE COURT: Yes, strike it out, and the jury will disregard it.

BY MR. McDONALD:

Q Do you mean one of the men that came with Yiddle? A Yes.

Q Now when you say that Mazzura started to get out of the door, what happened as he started to go out of the door?

A I went to the wall, and raised my both hands, and he, Mazzura, rushed to the door, and they caught him there, and they killed him.

Q Now, just tell us what they did. A They went after him with a revolver.

Q Well, who caught him at the door? A Yiddle and the other man, and the third man fired a shot.

Q Did you see Yiddle and the other man do anything to Mazzura? A They were looking for money.

Q Well, just tell us what they did.

MR. ROSALSKY: I move to strike that out, that answer,

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as irresponsible.

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THE COURT: Motion granted. Strike it out.

A They went this way (indicating by putting his hands all over his clothing).

BY MR. McDONALD:

Q Over whose clothing? A They held him, and they did it to Mazzura.

Q Now, just stand up, and show what Yiddle and this other man did to Mazzura's clothing? A Two were holding him, and then running their hands over his body (illustrating), and the third one, with a revolver, just shot him.

BY THE COURT:

Q Did this defendant, Yiddle, go over Mazzura's body, like you did with the interpreter? A Yes. He also did that (illustrating).

BY MR. McDONALD:

Q How close to Mazzura was the man who fired the shot? Just show us? A Right close to him. (the witness stands up, and illustrates with the interpreter).

Q Now, after the shot was fired, what happened then? A They went away.

Q Well, did ~~you fall~~ he fall or what? A Yes, he fell to the ground.

Q And where was it that he fell, what part of the room? A Right on the threshold.

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Q Right on the threshold? A Yes.

Q Well, what happened then? A I was standing at the wall, close to the wall, with my hands up (illustrating), and then suddenly, seeing what happened to my friend, then I rushed, stepping over the man on the ground, between the two men, and then a shot was fired at me.

Q Did that shot strike you? A Yes, my right arm (indicating). The bullet went through my right arm, and went through part of my trousers, without touching my body. (indicating).

Q And when was that shot fired at you? A When I rushed between them.

Q Between whom? A Between Yiddle and the others.

Q What happened then? A I fell, and rolled down the stairs; and, when I got out, I made an outcry. I hollered "Help" and the people came, and then I got the policeman, and, while the policeman was coming, they ran away.

Q Did you see them, these three men, as they ran from the building which you had just left? A No, I didn't see them, because I was going for the policeman.

MR. ROSALSKY: I move to strike out the answer, that they ran away.

MR. McDONALD: It is consented to.

THE COURT: Yes, that part of the answer is stricken out, that they ran away, this witness now stating that he did not see them running away.

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BY THE COURT:

Q Where were these three men, including the defendant Yiddle, when you last saw them? A I saw them in the house, the last time.

BY MR. McDONALD:

Q How much money did you have with you at the time that you were there in the house?

MR. ROSALSKY: I object to that, as being immaterial.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A \$1800., sewed in the pocket of the overcoat.

Q And that overcoat you wore at that time, at the time this thing happened? A Yes, sir.

Q Is this the overcoat and undercoat that you wore? (indicating)? A Yes, I wore it while I worked.

MR. McDONALD: I offer them in evidence, if your Honor please, the coat and overcoat worn by this witness, at the time this occurred, when he was shot at. It is almost simultaneous with the shooting of the deceased.

MR. ROSALSKY: I object, sir.

THE COURT: Objection sustained.

MR. McDONALD: Very good, sir.

Q Did anyone of these three men come over to you and do anything to your clothing?

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MR. ROSALSKY: I object to that, as leading and

suggestive.

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THE COURT: Yes, it is rather leading. Sustained.

BY MR. McDONALD:

Q Did any one of these three men come over to you?

MR. ROSALSKY: The same objection.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A One came up to me.

BY THE COURT:

Q What did he do? A He was looking for money, running his hands over my body (illustrating).

Q Which one did that? A Not one of the two that did the shooting, but the otherman.

MR. ROSALSKY: If your Honor please, I move to strike out that he was running his hands over his body looking for money.

THE COURT: Oh, no, it is merely descriptive of what he was doing. Objection overruled.

MR. ROSALSKY: Exception.

BY MR. McDONALD:

Q Was it after you had passed over the body of the deceased, Mazzura, that the shot was fired at you? A Yes, it was after I had stepped over the body of Mazzura.

Q Had you got entirely over the body of Mazzura? A Yes, I had stepped over the body, and one of them raised his revolver, and fired a shot at me.

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Q Now, where was the man who raised the revolver, and fired a shot at you? A He was standing at the door towards the hall; not inside, but outside.

Q Outside of where? A He was in the door near the corridor, near the hall.

Q Was he inside of the room or outside of the room? A The body of Mazzura was lying on the threshold, and that man had one foot on the threshold ~~xxxxx~~ and one foot in the hall, when I was running out, and the shot was fired (illustrating).

MR. McDONALD. I think that is about all.

MR. SHERIDAN: If your Honor please, the cross-examination will take over an hour, and at this time I think it will be a disadvantage to start into the cross examination.

THE COURT: Oh no. Go on, until four o'clock.

CROSS EXAMINATION BY MR. SHERIDAN:

Q How long are you in this country? A Seven years,

Q How long did you know Jacob Mazzura? A Altogether, about eight years.

Q Did you know the defendant, Yiddle, before the 29th day of January, 1921? A No, I didn't know him.

Q Did you ever see him before that day? A About once or twice I saw him in the restaurant, which was kept by his countryman.

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Q And this restaurant is located -- is this restaurant located on Fifth Street, between First Avenue and Avenue A?

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A Yes, sir.

Q Was that restaurant known as Kriner's restaurant? A I don't know.

Q Is that restaurant located on the south side of Fifth Street? On the downtown side or the uptown side of the street?

A When I go to First Avenue, it is on the left hand side.

Q When you go to First Avenue from Avenue A, it is on the left hand side? A Yes, sir.

MR. SHERIDAN: Then it is conceded that it is on the downtown side, or south side; is it not?

MR. McDONALD: I don't know where it is, but if you say so, I will concede it.

BY MR. SHERIDAN:

Q Now, you say you saw the defendant, Tiddle, in that restaurant, on one or two occasions, before the 29th day of January? A Once I saw him before in that restaurant, because he came there to the proprietor, who was a countryman of his, and the second time --

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MR. SHERIDAN: Now, Mr. Interpreter, I don't want any more of that answer. My question has been answered.

THE COURT: Now, address yourself to the Court, if you wish to ~~the~~ object, not to the interpreter.

MR. SHERIDAN: Now, the answer to that question that I put is Yes or no. My question is categorical: "Did you see him there twice before the 29th of January, 1931?"

THE COURT: Well, put that question of counsel, Mr. Interpreter, and let him answer yes or no.

(The question is repeated by the Interpreter).

A I saw him twice, once before, and once when he spoke about his sister.

Q Did you see him on Friday, January 28th? A Yes, sir.

Q That's the time when you say you had a conversation with the defendant Yiddle, and this man Sevak was also present?

A I didn't speak to Yiddle.

Q Yiddle spoke to you? A He didn't address anybody in particular when he said that ~~about~~ about his sister. When he spoke about his sister he made a general remark, not addressing anybody in particular.

Q On Friday, January 28th, the day that you had drawn your money out of the bank, between the hours of 6 and 7 on that day, you were in this restaurant on 5th Street, is that correct?

A Yes, sir.

Q Were you seated at the table with anybody, or were you seated alone? A They are small tables, and I was sitting alone.

Q Was Jacob Mazzura in the restaurant at the time? A No, sir.

Q Did you see Andrew Sevak in the restaurant at that time?

A Yes.

Q Where was he seated, if at all? A He was sitting at another table.

Q He was seated at another table? A Yes, sir.

Q Where was Yiddle, the defendant? A He was standing near the wall, opposite Sevak?

Q How far was the table where Sevak was sitting, from the table where you were sitting? A About three tables away.

Q Were there many people in the restaurant, that night?
A Yes, sir.

Q You never spoke to this man Yiddle before that time?
A No, I had no friendship with him at all.

Q You saw him on one occasion? A In the restaurant, with his countryman. I saw him once before.

Q Once before? A Yes.

Q Can you tell this Court and jury how long before Friday, January 28th, it was, when you saw him in that restaurant, with his countryman? A I can't remember how much time before that it was that I saw him for the first time.

Q When you saw him for the first time, you had no conversation with him? A No, nothing at all.

Q Were there ~~an~~ many in the restaurant at that time?
A Yes.

Q Did you talk to him, to the defendant, the first time you saw him? A No, nothing at all.

Q Can't you tell how long before Friday, January 28th, that time was when you first saw him? A I can't tell you. I only remember I saw him once before.

Q You can't tell whether it was at noonday, or whether it

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was in the evening? A It must have been in the evening, because I used to go to the restaurant in the evening, to have my meal.

MR. SHERIDAN: If your Honor please, I think the answer is speculative. He says it must have been in the evening.

BY THE COURT:

Q Was it in the evening, or do you remember? A Yes, it was in the evening.

BY MR. SHERIDAN:

Q Now, you didn't talk about this defendant Yiddle, the first time you met him, did you? A Nothing at all.

Q How long have you been in New York City? A Going on three years.

Q Now, how long have you been going to that restaurant in Fifth Street? A Only when I was off duty, while working in the hotel.

Q Were you a steady customer of that restaurant for your evening meal? A Not steady, only when I was off duty.

THE COURT: We will suspend here, Mr. Sheridan.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to WEDNESDAY MORNING, JUNE 22nd, 1921, at 10:30 O'CLOCK).

rule

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P gal 17
TRIAL RESUMED:

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New York, June 23rd, 1931.

VASIL GUSTYAK, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. SHERIDAN:

Q You say you met the defendant Yiddle once or twice before January 29th, 1931; is that correct? A Altogether, twice, in the restaurant.

Q Twice? A In the restaurant.

Q You met him on January 28th, on Friday, in the restaurant, between the hours of six and seven o'clock? A Yes, sir.

Q And you were seated alone at a table in that restaurant? A Yes, sir.

Q And Sevak was seated at a table about three tables away from you? A Yes, sir.

Q And where was Yiddle? A He was standing close to the wall.

Q Was he standing near you or was he standing near Sevak? A Sevak was sitting to the right of me and Yiddle was standing to the left, opposite Sevak.

Q Standing between you and Sevak, or was he standing on the other side of you? A He was between me and Sevak, and he was away from me, facing Sevak, opposite Sevak.

Q And Sevak was about three tables from where you were sitting? A Yes, sir.

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Q And did this defendant Yiddle at any time that evening of

January 28th, come to your table where you were sitting, and have any conversation with you? A No, not at all.

Q Now, about how far -- point out in this courtroom -- how far Sevak was sitting from where you were sitting in that restaurant, on the evening of January 28th? A Sevak was sitting at a distance, as far as from the witness chair to where counsel is standing now.

MR. SHERIDAN: Can we agree upon a measurement of that distance?

MR. MC DONALD: Whatever you suggest.

MR. SHERIDAN: 15 feet?

MR. MC DONALD: Yes, let that be the measurement.

BY MR. SHERIDAN:

Q And Yiddle was standing on the other side of the table?

A And Yiddle was standing at the wall, opposite Sevak.

Q Now, how many feet was it from where Yiddle was standing against the wall to the table where Sevak was seated? A Well, that's a very narrow place -- about two steps -- it is a very narrow restaurant.

Q Now, was Yiddle talking to Sevak at that time? A I only heard Yiddle say, "Tomorrow my sister will be at my house."

Q You only heard Yiddle say, "Tomorrow my sister will be at my house"? A Yes, sir.

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Q Was Mazzura with you at that time? A No, sir.

Q Where have you been since January 29th, 1921, where have

you lived? A In the House of Detention.

Q Did you speak to Andrew Sevak in the House of Detention since January 29th up to today? A I talked with him up to the time that Yiddle was caught.

Q Yes. A After that I didn't.

Q Now, do you know when Yiddle was caught? A I don't remember the date, but I remember it was in the night when Yiddle was brought up to our place.

Q Did you speak to Sevak in the month of February, 1921, in the House of Detention? A No.

Q When were you placed in the House of Detention? A On Monday after that happened. That would be the 31st of January.

Q The 31st day of January? A Yes, sir.

Q Have you been there ever since in the House of Detention, or have you been bailed out? A No, I was in the House of Detention since that time. I was in that house two months and twelve days, as appeared when I was out on bail.

Q Yes. And when you refer to that house, you refer to the House of Detention? A Yes, the House for the witnesses.

Q From the first two weeks that you were in the House of Detention, did you speak to Sevak? A Yes, we used to talk to one another.

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Q Didn't you speak to Sevak every day for the first two weeks after you were arrested and placed in the House of Detention? A Not always. We used to sit down on a couch and talk

Q And did you talk about this case? A Not very much, because when we started to talk about the case, I started to cry. Because I was suffering for nothing on account of this case.

THE COURT: One moment. I do not understand that answer.

THE COURT: Does he mean by selling them out, Mr. Interpreter, according to your understanding of his language, that he was supposed to have lured these two men to the place to be robbed?

BY MR. SHERIDAN:

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THE COURT: There does not have to be any such evidence. He is cross examining him. Objection overruled.

A No. He said that Yiddle points towards him, Sevak, that he was the one, and I said, ~~fixidixixhaxexnothing~~ "Didn't you have enough fear of God to do such a thing?"

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Q Did you say to Sevak, "Did you have enough fear of God to do such a thing?" Did you use that language?

A Yes, I said that.

Q Yes. Sevak was the man who went with you, on Friday, January 28th, to the bank? Isn't that the fact? No one in the world knew that you were going to take out that money, on Friday, January 28th, 1921, except Sevak?

(Objected to, sustained; exception.

Q Did you tell anybody but Sevak that you were going to draw your money out of the bank on Friday, January 28th, 1921?

(Objected to; objection overruled.

A Yes, that was a secret.

Q And only Sevak knew it? A Yes, sir.

Q Yes. You had never told Yiddle, the defendant?

A I never had anything to do with Yiddle, and didn't tell him anything about it.

Q Now, how long before Friday, January 28th, did you tell Sevak that you were going to take your money out of the bank, and return to Europe? A About taking out the money, it was only about two days before that Friday.

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Q Did you talk to Sevak about going back to Europe, two or three weeks before January 28th? A Yes, sir.

Q And did you tell him that your friend Jacob Mazzura was also going to go back to Europe? A Why, I and Mazzura and Sevak, the three of us, were talking about going back to

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Europe.

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Q Did you tell Sevak that Jacob Mazzura had money in the bank? A No.

Q Now, two days before the day you drew your money out of the bank, you told Sevak, you told Sevak you were going to take your money out of the bank; is that correct? A Yes, sir.

Q And did he say that he would go to the bank with you? A Sevak said that he would go with me for safety sake.

Q For safety's sake, he would go with you to the bank? A Yes, sir.

Q Did Sevak go to your house on the day of January 28th? A No, we met in the restaurant, in the morning.

Q What time did you meet Sevak in the restaurant, on the morning of January 28th? A About eight o'clock.

Q What time was it that you drew your money out of the bank? A I believe it was about eleven o'clock.

Q And from eight until eleven, were you all that time in the company of Sevak? A Yes, we went together in the restaurant.

Q Were you together with Sevak from eight o'clock until eleven?

MR. McDONALD: Now, that is answered. I object on the ground that it is already answered.

THE COURT: He may have it again. Overruled.

A Yes, we were together in the restaurant.

Q How long were you in the restaurant, that morning of

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January 28th? A I was in the restaurant with Sevak from eight o'clock in the morning, no more than an hour altogether.

Q Where did you go from the restaurant with Sevak, that morning? A We walked slowly on Grand Street. We waited around the bank until about eleven o'clock. We had Mazzura, and he was with us

Q When you withdraw your money from the bank, where did you put the money? A I bundled it up in a handkerchief, and put it under my vest, near the body (illustrating).

Q Did Sevak say anything to you at that time, about being careful about the money? A No, he only looked at the money while I was taking it from the bank, and he said, "Oh, you have a lot of money that you have saved. I haven't got as much."

Q Did Sevak say that he was going to Europe with you and Mazzura? A Certainly, yes.

Q Did he tell you how much money he had? A He said he had no money, but his brother had about \$500.

Q Did Sevak ask you, how much money you had drawn from the bank? A He saw it.

Q Did he count it? A No. I was counting the money, and he saw it.

Q And did he say anything else about the money at that time?

A No.

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Q Did you put it near your body, or did you put it in the inside ~~xxxxx~~ pocket of your vest? A I opened my shirt and put

it right close to my body, m y bare body.

Q Did Jacob Mazzura, at that time, say that he was going to draw his money out of the bank, on the following day? A Yes, he said, "I'll take my money out tomorrow," meaning the next day.

Q When Sevak said to you, "You have a lot of money, more than I have," did Mazzura say how much money he had? A Yes, Mazzura said "Tomorrow I will take out my money, also, about \$2,000."

Q Did Sevak say anything, or did he do anything when Mazzura said that on the following day he would take out his money, to the amount of about \$2,000.? A Nothing at all. He was silent.

Q When were you and Mazzura to sail for Europe, on what date? A We intended to sale on February 1st, but we postponed it because we hadn't bought all the things that we intended to take along to Europe.

Q When did you intend to sail for Europe? A Oh, we postponed it from the 1st to the 15th, because we wanted to buy sewing machines and such things that Russia needs badly, and you cannot get there.

Q Did you tell Sevak that you were not to sail until February 15th? A Yes, sir.

Q And didn't Sevak admonish you and Mazzura to be careful with your money in the meantime? A No; he only said "such old fellows have such a lot of money, and I, a young fellow have very little."

Q When you intended to sail on February 15th, how was it that you drew your money on January 28th? A Because we needed the money to make our purchases of the different things that we intended to take to Russia.

Q Did Sevak tell you that you ought to take out money and buy these things? A We were talking all together, and of course, decided between us that we ought to take out the money in time, so as to make those purchases.

Q When you were all talking together, please just state the language that Sevak used, and what he said? A He didn't say anything, that is, he only said "You have to prepare in time, before you sail."

Q Did he say that you ought to get your money out in time? A Well, I understood that we were going to sail, and we would have had to prepare to sail.

Q After you took your money out of the bank, on January 28th, did Sevak know where you placed the money? A Yes, sir.

Q And after you took the money out of the bank, for the balance of the day Sevak accompanied you? A No. After I drew the money, I went home, and he went to his home.

Q When did you meet him again? A Only in the evening, at supper.

Q Didn't you purchase a ticket at the steamship company? A I had paid for it already.

Q Did you go to the steamship office on January 28th? A Yes,

I went to the office, and I paid for the ticket.

Q And you paid about \$168., is that correct? A \$162.50.

Q Was Sevak with you when you paid that money? A Yes, he was there.

Q Now what time was that? A I can't tell you exactly.

Q And it was after you drew the money out of the bank, wasn't it? A From the bank, we went there.

Q And did Sevak buy a steamship ticket for a return trip to Europe? A Yes, but he only paid \$10. as a deposit.

Q As a deposit? A Yes, sir.

Q Did he tell you on January 28th that he was going to buy a ticket to Europe? A About two weeks before that day when I drew the money, we three, Mazzura, Sevak and I, made arrangements for our tickets, because we had to do something with Washington to get our passports.

Q Did you pay \$162.50, on January 28th, for a steamship ticket? A yes, I paid it to the bank.

Q Did Andrew Sevak pay \$162.50 for a ticket to Europe?

A No, sir, he only paid on account \$10.

Q Did he tell you then why he only paid \$10. deposit? A No.

Q Did he draw his money out of the bank on January 28th?

A No, sir.

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Q Did he go to the steamship ticket office on January 29th up until one o'clock in the day, and purchase a ~~xxx~~ ticket?

A No, he only paid \$10. on account.

Q Did Jacob Mazzura pay for his ticket? A Jacob Mazzura said that he would draw his money on Saturday, and that he would pay for his ticket the following week, some day.

Q What time in the afternoon of January 28th did you again meet Sevak? A Only on the 28th, on Friday, I saw Sevak afterwards, in the evening, at supper time.

Q Did he ask you at that time about the money? A No.

Q Did he ask you if you had the money with you? A I had told him that I had sewed my money in the pocket of my overcoat.

Q Did you have the overcoat on? A Yes, sir.

Q Why did you tell him that you sewed the money in the pocket of your overcoat? A Why, because we three were to travel together to our country, and there were absolutely no secrets between us.

Q Did Sevak ask you anything about the money in the restaurant, on the evening of January 28th? A No.

Q Well, why did you tell him that you sewed the money in your overcoat pocket? A Well, I remember that, on Friday, when we were together, he said that it wouldn't be safe to leave the money at the house, but the money should be sewed in my clothing.

Q When did he say to you that that money would not be safe in the house, but that it should be sewed into the clothing, when did he tell you that? A He told me that on Friday, when we left the bank.

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Q And that night, in the restaurant, he asked you, "Did you

sew the money in your clothes?" A No, he didn't ask me that.

Q But you told him that? A On Friday evening, in the restaurant, I don't believe we spoke anything at all about the money.

Q You said before that there were no secrets among you, Mazzura and Sevak. Is that the fact? A Why, certainly not, because we three were passengers to our home country together. Why should we have secrets between us?

Q You applied for a passport at Washington, did you not?

A The banker attended to it for me.

Q And you ^{sent} ~~said~~ in your photograph, did you not, and made arrangements for a passport? A Yes, sir.

Q And Jacob Mazzoura also sent in his photograph, and made arrangements to get a passport? A I and Mazzura went to the photographer together, and had our pictures taken, and Sevak went alone to the photographer.

Q Did you see the photograph of Sevak, after he came back?

A I saw it on the passport, the picture.

Q Did Sevak try to get a passport? A Yes, sir.

Q Did you see the passport? A Yes.

Q Did he draw his money out on the 28th of January? A Who?

Q Sevak? A No.

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Q Now, on Friday, January 28th, when you were in the restaurant on 5th Street, there were quite a number of people in the restaurant, weren't there, between six and seven? A Yes, many people

were there.

Q About how many people were in that restaurant? A I can't tell you the number.

Q About how many? A About ten, eight or ten.

Q How long had you~~xxx~~ known Sevak? A Two years.

Q Did he visit your house? A No.

Q Did you visit his house? A No.

Q Did Sevak work? A I didn't notice.

Q Did Sevak threaten you within the last two or three months? A What do you mean?

Q Did Sevak say "When you come to the court, don't involve me in any way?" Did he ever tell you that from January 29th up to today? A No, he didn't say anything about that.

Q Weren't you unfriendly with Sevak after the 29th of January? A No, I didn't care for anything. I was crying and crying, because I was suffering for nothing at all.

Q Didn't you say to Sevak after the 29th of January, "You, my friend, you have tricked me." A After I heard that Yiddle had said that he, Sevak, had betrayed us, then I said to Sevak, "How is it that you didn't have enough fear of God to do such a thing as that to us?"

Q When did you say that? "Why didn't you have enough fear of God not to betray us?"

MR. McDONALD: I object to that. That is not the evidence.

THE COURT: Objection sustained.

MR. SHERIDAN: Exception.

Q When you spoke to Sevak about that matter, what language did you use to him at that time? AX After I heard that, I said to Sevak, "You are a friend of mine. How is it that you didn't have enough fear of God to do such a thing to us?"

Q When did you say that to Sevak? A That was in the house of the plaintiff, after Yiddle was brought over there.

Q And that was about the 24th of February, 1931? A I don't know the date when he was brought over.

Q Were you three weeks in the House of Detention, or were you a month, when you had that conversation with Sevak? A About two or three weeks I must have been in the house of Detention at that time.

Q Did you speak to Sevak before that date and say to him, "I see the whole plan. You tricked me."? A Before that it wasn't in my own mind at all, that Sevak had betrayed us.

Q But, after you heard that, what made you think that Sevak was in it?

MR. McDONALD: I object to that. It is indefinite.

MR. SHERIDAN: All right, then, I will withdraw the question.

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Q About three weeks after you were in the house of Detention, you, at that time, charged Sevak with being the man that tricked you and your dead friend, Jacob Mazzura; isn't that a fact?

MR. McDONALD: I object to that, sir.

THE COURT: Overruled.

MR. McDONALD: But that presupposes something that has not been shown to be the evidence.

THE COURT: If it is not so, he may say that he did not do any such thing.

A I had heard that Sevak was the one who was the traitor. People were talking.

Q When did you first hear that? A People were talking about it.

Q You were doing a little bit of thinging yourself, weren't you? A After I heard people talk about it, I started to think in my own mind about it.

Q How old are you? A Fifty.

Q Did you go to school in Europe? A A very short time I was in school in Russia, but I can't read nor write.

Q You knew that there were only two men in the whole world that knew that you had drawn your money out of the bank on January 28th, and that one of those men was Sevak, and the other man was your dead friend; isn't that right?

(Objected to; sustained; exception.

Q Did anybody else besides Andrew Sevak and Jacob Mazzura know that you had drawn out that money on January 28th, or did any of the officials of the bank?

(Objected to; sustained; exception.

Q Did you tell anybody besides Andrew Sevak and Jacob Mazzura that you had drawn out your money on January 28th?

A Nobody.

Q From January 29th, up until the time you entered this man's apartment (indicating the defendant), did you tell anybody that you had drawn out your money, the day before?

THE COURT: We have had that several times, Mr. Sheridan. It is quite plain on this record that he told nobody but these two men, and he has told you that at least four times.

MR. SHERIDAN: All right.

Q When you were in the house of Detention with Andrew Sevak you knew that he was the only man that knew that you had drawn out your money?

Objected to; sustained; exception.

Q Did you talk to Andrew Sevak in the House of Detention and say to him "You knew I had drawn my money. How did these other men get the information?" A I told him, I remember, "Outside of you, nobody else knew about my having money."

Q Did you say to him, "How did it happen that men that you knew tried to rob me and my friend ~~xx~~ Jacob Mazzura?"

MR. McDONALD: I ask that just a categorical answer be given to that question.

THE COURT: Well, it has not the slightest bearing on this case, what this witness said to Sevak. That he believed that he tricked him, does not matter in this case

at all.

MR. SHERIDAN: May I not try to ascertain, if possible, if there was not a meeting of minds on that subject?

THE COURT: Why, you have spent nearly an hour in cross examination on that subject, I think.

MR. SHERIDAN: No, I don't think that I have reached it at all, yet.

THE COURT: Well, that is my impression, but you may go on. You may ~~be~~ start all over again, if you want to, because I am going to give you a great deal of latitude in this cross examination, and I have already given you a great deal.

BY MR. SHERIDAN:

Q After January 31st, 1921, when you reached the House of Detention, did you say to Sevak, "How did it happen that these other men, friends of acquaintances of yours, knew that I and Jacob Mazzura had money on our persons?" A Yes, I did.

Q And what did he say? A He was silent.

Q He was sorry for what? A He was silent.

Q Oh, silent? A Yes, sir.

Q Did you ask him the second time? A After that I didn't talk to him.

Q For how long a period of time did you not talk to him?

A What do you mean, how long a time--

Q Was it a week or two weeks before Yiddle was arrested

that you stopped talking to Sevak, in the House of Detention?⁶⁷

MR. McDONALD: As I understand it, sir, it was after Yiddle was arrested and brought up to the House of Detention.

THE COURT: You want to know for how long a period he and Sevak did not talk?

MR. SHERIDAN: Yes, sir.

THE COURT: But it does not matter when it was. Shall I get an answer for you?

MR. SHERIDAN: Yes, sir.

BY THE COURT:

Q For how long a period did you and Sevak not talk to each other, from the time that Yiddle was arrested? A From that time on, I didn't talk to him.

BY MR. SHERIDAN:

Q Before Yiddle was arrested, as matter of fact, a few days after you were placed in the House of Detention, the early part of February, didn't you ask Sevak, "How did it happen that Yiddle and your acquaintances knew that I and my dead friend, Jacob Mazzura, had money on our persons?"

THE COURT: Now, you have had an answer to that several times, but you may have an answer again, but you must not go into that any further.

MR. SHERIDAN: I respectfully except.

THE COURT: I told you that you could have an answer to that question.

MR. SHERIDAN: Oh, I didn't understand you, sir.

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THE COURT: Put the question to the witness, Mr. Interpreter.

(The question is repeated by the Interpreter).

A Yes, I told him that.

BY MR. SHERIDAN:

Q When? A When we were brought to the House of Detention.

Q Well, will you kindly tell me, was it before or after Yiddle was arrested? A Before.

Q Now, was it a few days after you were placed in the House of Detention? A Yes, sir.

Q And when you said to Sevak, how did it happen that your friends knew of my having money, he became silent; is that right?

MR. McDONALD: Now, that has already been answered.

MR. SHERIDAN: Well, the Court is in confusion, and you are in confusion, with reference to that particular point.

THE COURT: The objection is sustained.

MR. SHERIDAN: I respectfully except. And I want to state on the record this--

THE COURT: No, I have ruled, and I will not permit you to make any statement on the record. Ask your questions, and the Court will rule upon them, and any statement you have to make, you may make them to the jury, in summing up. Ask your next question, Mr. Sheridan.

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BY MR. SHERIDAN:

Q You say that within a few days after you were placed in the House of Detention, and had questioned Sevak about who knew about your having money, that he gave no answer, and was silent; is that a fact?

MR. McDONALD: I object to that, as being already answered.

THE COURT: You may answer the question.

A Yes, I asked him that, and he didn't say anything.

Q And that was after Yiddle was arrested? A Yes, before.

Q And you and Sevak had stopped talking to each other, then, before Yiddle was arrested? A I told him that Yiddle didn't know that I had the money. I said, "You knew it."

Q The question is, how long before Yiddle was arrested was it that you and Sevak were no longer friends, and no longer engaged in conversation? Was it a week, was it ten days, or was it two weeks? A I believe, the next day after we were brought to the House of Detention. I told him that, outside of him, Sevak, no one knew that I had money.

MR. SHERIDAN: Now, if your Honor please, that answer is not responsive. I have made about ten efforts to get the answer.

THE COURT: I will get your answer for you. What do you want to know?

MR. SHERIDAN: I want to know whether this man and

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Sevak, while in the House of Detention had become estranged, about a week, or ten days, or two weeks before the arrest of the defendant Yiddle, and I have tried to get that a dozen times.

BY THE COURT:

Q Do you remember when the defendant Yiddle was arrested?

A I don't remember the date when he was brought up to the house of detention.

Q Do you remember about the time it was? A I believe about three weeks later he was brought up; I think so.

Q Do you mean three weeks after your friend was killed?

A About three weeks after my friend was killed, I believe it was that Yiddle was caught, and he was brought up to the House of Detention.

Q Before Yiddle was brought to the House of Detention, was there a time when you and Sevak were not speaking to each other?

A Well, there were times when we didn't talk at all.

Q What was the longest time that occurred, during which you did not speak to him at all? A I can't tell you that, but I only know that, after this thought was in my mind, I didn't talk to him.

Q And for how long a time did you refrain from talking to him, before Yiddle was arrested? A After this thought was in my mind, I didn't talk to him at all.

THE COURT: Now, there is your answer.

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MR. SHERIDAN: Thank you.

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BY MR. SHERIDAN:

Q After Yiddle was arrested, you then had a conversation with Sevak? A I said to him--

THE INTERPRETER: The witness will not say yes or no, your Honor. He says repeatedly, "I said to him," and then he wants to go on.

BY MR. SHERIDAN:

Q What did you say to him? A Sevak told me at that time that Yiddle said that I/had betrayed you, and then I remember saying to Sevak, "You were in the house at the time. Why did you run away?" I said, "Why didn't you remain there to help us or to save us? Why did you run away, and not stay there to help us?"

BY THE COURT:

Q Who was that said to? Whom did you say that to? A To Sevak,

BY MR. SHERIDAN:

Q Now, after you spoke to Sevak, didn't Sevak come over, and try to be friendly with you? A No, I looked at him like a dog.

Q Well, the next week, or two weeks, or the next month, did Sevak try to talk to you? A No.

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Q Have you spoken to Sevak since the day that you told him, shortly after the arrest of Yiddle, about how he betrayed you?

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MR. McDONALD: I object to the indefiniteness of that question.

MR. SHERIDAN: I will withdraw the question.

THE COURT: The question is withdrawn.

BY MR. SHERIDAN:

Q You spoke to Sevak, in the House of Detention, shortly after the arrest of Middle, about three weeks after the 29th of January? A Yes.

Q Now, after that date, from that date up to this, when was the first time that you again spoke to Sevak? A Only a few words, in the office of the District Attorney, when we were examined.

Q When was that? A It was yesterday. He asked me only whether I was working.

Q What else did he ask you? A I didn't care to talk to him. That's all the conversation we had. He only asked me whether I was working.

Q Did you speak to Sevak in the month of May, April, or March, 1921? A No.

Q Did he try to speak to you?

MR. McDONALD: Now, I object to that, because that doesn't mean anything.

BY MR. SHERIDAN:

Q Well, did he speak to you? A Yes, he tried to talk, but I went away.

Q When he tried to talk to you, what did he say? A I

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didn't know even what he wanted to say. The moment I saw him start to talk to me, I went away from him.

Q Did he talk to you before you were brought down to testify before the Grand Jury? A No.

Q Did anybody speak to you since you have been out of the House of Detention, about this case, other than the District Attorney's office? A I didn't speak about this case to anybody, except the high gentlemen who are asking me questions in this building.

MR. McDONALD: Of course he means you, Mr. Sheridan.

MR. SHERIDAN: Oh, no, of course he means you.

THE COURT: Proceed, gentlemen.

BY MR. SHERIDAN;

Q Do you know friends of Sevak? A Yes, sir.

Q Were you speaking to friends of Sevak, out in the hallway, this morning? A There are no friends of Sevak, and I didn't talk to anybody.

Q Did you go to the restaurant in 5th Street since you have been released from the House of Detention? A No, I went to a hotel, and started to work.

Q On January 29th, when Mazzura drew his money out of the bank, was Sevak also with you? A Yes, sir.

Q And about what time of the day was it when Mazzura withdrew his money from the bank, on January 29th? A Also about 11 o'clock.

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Q And, at 11 o'clock, you, Mazzura and Sevak, where did you go? A After the money was drawn from the bank, we went to 4th Street, to a restaurant, to eat.

Q From 11 o'clock on Saturday, January 29th, up until the time that Mazzura was killed, did Sevak leave you or Mazzura alone?

A Why, from the restaurant, we straightways went to the house of Yiddle.

Q Yes. The night before, on January 28th, in the restaurant, Sevak had told you that Yiddle's sister would be there, at his apartment, on the following day?

MR. McDONALD: I object to that, as not being the testimony.

MR. SHERIDAN: It is cross examination.

MR. McDONALD: No, he cannot misstate the facts even in cross-examination.

MR. SHERIDAN: I will submit to your Honor's ruling.

THE COURT: I think it is just the reverse, that the defendant told the witness that his sister would be at his apartment, on the following day.

MR. ROSALSKY: But this is cross-examination.

THE COURT: But cross-examination does not authorize a counsel to turn a situation in the testimony completely around. The objection is sustained.

MR. SHERIDAN: Exception.

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Q Did Sevak, on January 28th, in the restaurant in 5th Street

tell you that he would take you to this man Yiddle's apartment, on the following day, to see his sister? A He didn't say that on Friday night, but he told us that on Saturday morning, that he had the address which Yiddle had given him.

Q Did he say in the restaurant, on Friday night, "I have the address of Yiddle", did Sevak say to you, on Friday night, in the restaurant, "I have Yiddle's address?" A He didn't say that on Friday evening. He said that on Saturday.

THE COURT: That is an answer to the question. We cannot have this answered indefinitely.

BY MR. SHERIDAN:

Q Did you and Sevak, on Friday night, in the restaurant, have a conversation about a visit to be paid by you and Mazzura to Yiddle's house, on the following day? A As I said before, while I was having my meal, I heard Yiddle say, "Tomorrow, my sister will be at my house. You come over there, and you will hear all about the old country."

BY THE COURT:

Q Did you tell Yiddle, or anybody in Yiddle's hearing, that you were going back to the old country? A I didn't say it to Yiddle. I didn't say it to anybody.

BY R. SHERIDAN:

Q You were seated at a table, and Sevak was seated at another table, fifteen feet away, and all the while this defendant was standing; is that true?

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Objected to; overruled.

MR. McDONALD: But he said that Sevak was on the opposite side of the room.

THE COURT: Well, he is asking him about a position that he narrates as the proper position. The witness may say whether it is the proper position or not. Overruled.

A Yes, that's how it was.

BY MR. SHERIDAN:

Q Yiddle wasn't introduced to you, that night? A No.

Q There was no preliminary conversation about your proposed trip to Europe? A No.

Q You didn't have a word to say to Yiddle up until the time he said "My sister will be at my house tomorrow. She will be there, and you can come and inquire about things in Europe."?

A I hadn't spoken to anybody about going to Europe, before Yiddle said that.

Q Yiddle didn't talk to you, did he? A I never spoke to Yiddle, nor did he speak to me.

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Q Yiddle spoke to Sevak, the man who was sitting opposite him? A I think so. And Sevak answered, "Tomorrow we will come."

Q Did Sevak say anything to you, on that night, about this visit to Yiddle's home, on the following day? A He didn't say anything. After I finished my meal, I got up and went home.

Q On the following morning, Saturday, the 29th of January, what did Sevak say to you and to Mazzura, about making a visit

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to Number 123 Stanton Street? A He said, "Let's go to the house of Yiddle. I have the address. Yiddle has given it to me, and there we will meet his sister."

Q Do you know a man named Theodosi Polinik? That's the best I can do with that name. A Yes, he was the keeper of the restaurant.

Q Theodosi Polinik, and two other men own that restaurant in 5th Street, don't they? A Yes, and Yiddle used to go to them often.

Q Yes. And you met Yiddle at the home of Theodosi Polinik, in 3rd Street, between A and B? A

MR. McDONALD: I object to that question, as to its form.

THE COURT: Yes, it is perhaps in bad form, but he may have an answer.

BY THE COURT:

Q Did you meet him there? A No, not in the house, but in the restaurant on 5th Street.

BY MR. SHIERIDAN:

Q Did Theodosi Polinik live in 3rd Street between A and B?

A I don't know that.

Q Were you ever in the home of Theodosi Polinik? A I was once in his house.

Q Were you in his house before he became the owner of the restaurant in 5th Street? A Much before, long before.

Q Don't you know that Yiddle lived at the home of Theodosi

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Polinik in 3rd Street, between Avenue A and B? A I don't know.

I never had anything to do with Yiddle. I don't know.

Q Were you introduced to Yiddle? A I remember I met Yiddle in the restaurant already, when Polinik said, "This is Yiddle, my countryman."

Q And how many times did you meet Yiddle before January 28th?

A In the restaurant I saw him in my life twice, once on that Friday when he spoke about his sister, and once before; but I never spoke to him, and never had anything to do with him.

Q When you came to the building 123 Stanton Street, on Saturday, January 29th, with Jacob Mazzura and Sevak, did Sevak leave you and Mazzura on the sidewalk, and go upstairs in the building? A yes, sir, he left us on the street, and he said, "I'll go into the house, and find out whether it is the right address."

Q Didn't Sevak tell you, earlier in the morning, that he had the address, that he knew the address of Yiddle?

MR. McDONALD: I object to that, sir, because he might have told them that, and yet not have known the address.

MR. SHERIDAN: Very well. I will withdraw the question.

Q On Saturday morning, Sevak told you that he had the address of Yiddle; is that correct? A Yes; while we were having our lunch in the restaurant he said, "I have the address of Yiddle, let's go."

Q Yes. That was while you were in the restaurant in 4th Street? A Yes, sir.

Q So that, when you and Jacob Mazzura and Sevak came to 123 Stanton Street, he said, "I will inquire if this is the correct address?" A No; he said, "I'm going to find the house of Yiddle, and after I shall have found it, I'll call you."

Q Did he say anything else to you and Mazzura? A Then he came back and said, "I've found the house. Come on, let's go in."

Q Before he went up into that building, did he say anything else to you and Mazzura? A No.

Q He went up into the house? Did he go up into the house?

A He went into the house first.

Q How long -- when he did come down, what did he say to you and Mazzura?

MR. McDONALD: I don't know what that means, that question, sir. I object.

THE COURT: Overruled.

A He said, "I have found the house. Come on."

BY MR. SHERIDAN:

Q Did he say anything to you and Mazzura about Yiddle's sister being in the apartment? A He only said, "Come on, I have found the house." That's all he said.

Q And you and Mazzura went upstairs to the 3rd floor?

A No, the second floor.

Q The second floor? A Yes.

Q You went into Yiddle's apartment? A Yes, sir.

Q When you entered his apartment, who was there? A Only his wife.

Q His wife and baby? A Yes, sir.

Q And did the apartment only consist of two rooms? A Only two rooms, small rooms.

Q So that you could see everybody in that apartment? A Yes.

Q And what did you and Mazzura and Sevak do? A We came into the house, and asked the woman, "Where is the sister of Yiddle?"

Q Now, you speak Russian, don't you? A Yes, Russian.

Q You don't speak Polish? A No.

Q And the defendant's wife doesn't speak Russian, isn't that a fact? A No, she speaks Russian.

Q She speaks Russian? A Yes, she speaks Russian all right.

Q Did you speak to her in Russian? A We asked "Where is the sister?" And she said, "On the street."

Q Now, did you speak to the defendant's wife in Russian? A I didn't speak to her. Mazzura spoke to her in Russian.

Q What else did you do? Did you remain there? A We sat down on two chairs, Mazzura on one, and I on the other.

Q What did Sevak do? A He stood up near the door.

Q Did Sevak tell you that Yiddle's sister was down on the street? A No, his wife, Yiddle's wife told us. 9696

Q Did Yiddle's wife leave the apartment and go downstairs? A She went to the street, ~~xxx~~ as she said, for the sister.

Q When she came back -- how long was Mrs. Yiddle, the defendant's wife, away from that apartment, before the defendant came?

MR. McDONALD: I object to that, as indefinite?

THE COURT: I will allow it.

A She was away about five minutes, and then came back.

Q When she came back, in five minutes, did the defendant come into the room? A And, no more than three or four minutes later, after the wife had come back, Yiddle came, with two other men.

Q Didn't the defendant come upstairs with his wife? A No.

Q When you and Mazzura and Sevak entered the apartment, the defendant's wife was there; is that correct? A Yes.

Q And she left the apartment? A Yes, and went to the street to call the defendant's sister.

Q Now, did she come back into that apartment? A She came back and said, "She will be soon here."

Q Did the defendant's wife come back into that apartment? That is the question.

THE INTERPRETER: He says she came back and said "She will be soon here," and in a few minutes Yiddle came in with two other men.

BY MR. SHERIDAN:

Q The two other men and Yiddle came into the apartment, and his wife was there; is that correct?

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MR. McDONALD: I object to that question, as indefinite.

BY THE COURT:

Q When the defendant and ~~two~~ other men came into the apartment, was the wife there? A She was busy about the baby.

BY MR. SHERIDAN:

Q Did you hear her say that she was going to take the child to the doctor's? A Yes, that's what I heard.

Q Did she say that in Russian? A Yes, she said it in Russian. I heard it. And Yiddle said, "Hurry up, and take the child to the doctor. The child is sick."

Q You are sure that you heard Yiddle say to her, "Hurry up, and take the child to the doctor's?" A Yes, because the child was sick.

Q Did Yiddle and his wife talk in Polish at any time while you were in that apartment? A No, they were talking their own language. What I mean is, Yiddish.

Q Yiddish? A Yes.

Q Did you speak, or did you hear Yiddle speak, in Russian, to his wife? A No, I heard Yiddle say something to his wife in his own language, but in our language he said, "The child is sick. Take the child to the doctor."

BY THE COURT:

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Q Did he speak to you in Russian? A No, sir.

Q Did you say anything to the wife in Russian? A No, sir.
BY MR. SHERIDAN:

Q So that she never said to you in Russian, when you first entered her apartment, that Yiddle's sister was down on the street?

MR. McDONALD: I object to that, sir. That presupposes something, and inferentially misstates the evidence. The evidence is that Mazzura spoke to the wife of the defendant in Russian, and she answered him in Russian.

THE COURT: He may answer whether the wife told him in Russian that the sister was down on the street.

A She said that to both of us.

BY MR. SHERIDAN:

Q Did she make a response in the Russian language in answer to either you or Mazzura, in which she stated that Yiddle's sister was down on the street?

THE COURT: Mr. Sheridan, why don't you shorten your questions to this witness? You lengthen out your questions, it seems to me, unnecessarily, and you add to the burden of the interpreter. Now, I suggest that you try to shorten your questions.

MR. SHERIDAN: Very well, I will do that. I will be pleased to adopt the suggestion of the Court.

THE COURT: Yes, try it, and see if it does not work much better.

BY MR. SHERIDAN:

Q Did you hear the defendant's wife answer in the Russian language, in that apartment, on that day, at any time? A I heard her say, in Russian, that the sister is in the street.

Q When these three men entered -- Yiddle and the other two

men -- where was Sevak standing? A Still near the door.

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Q Right near the door? A Yes, sir.

Q How near the door was he? A At the very door.

Q The very door? A Yes.

Q Was the door open? A No, it was closed.

Q When these two men and Yiddle entered, how long were they in the apartment before the man said "Hands up"? A As soon as the wife left the room, one man said it, and, as soon as the man said, "Hands up", Sevak ran out.

Q Where was the defendant Yiddle when the man pulled out the revolver? A He was standing near the gas stove, where there was a tea kettle on it. He had promised to make tea for us.

Q Yiddle was at a gas stove, making tea for you men?

A He had said before, "I am going to treat you to tea."

Q Was his back towards you and Mazzura, or was he facing you?

A He was facing us.

Q And the men were in the apartment only about a minute, isn't that a fact?

THE COURT: Now, one minute. At what time?

MR. SHERIDAN: I will withdraw the question.

Q How long were these men in that apartment?

THE COURT: You mean from their entrance until the man shot, or do you mean from the time of their entrance until one of them said "Hands up"?

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MR. SHERIDAN: No. But I will make the question simpler.

THE COURT : Yes, it is not quite clear to me.

BY MR. SHERIDAN:

Q How long were these men in the apartment altogether?

MR. McDONALD: He can't answer that question, because he left before they did.

THE COURT: Yes, the question is very difficult to answer

MR. SHERIDAN: Question withdrawn.

Q You say that the defendant's wife returned to the apartment and that, about three minutes after that, the defendant and two men entered that apartment; is that correct? A Yes, sir.

Q Now how long after that did the defendant's wife remain in the apartment? A No more than about five minutes. A long as it takes to bundle up a child.

Q How long after that, namely, the leaving of the apartment by this woman, was it, before the man shouted "Hands up"?

A Right after she left. (illustrating by snapping his fingers).

Q Was it a minute? A As soon as the woman left, immediately the revolver was taken out, and the words said, "Hands up", and Sevak ran out.

Q While the defendant's wife was in the apartment, didn't Sevak have some conversation with those men in that room, with any of them?

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MR. McDONALD: I object to that as indefinite. I don't

know what men he is talking about.

MRE. SHERIDAN: Very well, I will withdraw the question.

Q When Sevak was standing right at the door, and the three men entered the room, and while they stood there for a period of about two minutes, did the man Sevak have a conversation with either Yiddle, or either of the two men that came up with him? A I didn't hear him say anything to anybody. I didn't hear Sevak say anything to any of them.

Q Was there any conversation for a period of five minutes, between you, Mazzura and Sevak, and the defendant Yiddle, or either of the two other men? A Only Yiddle said, at that time, "I will prepare tea for you."

Q Did you hear Yiddle say to his wife, "Don't go to the doctor's. Give these men some tea." A No, I didn't hear that.

Q Did you hear Mazzura ask Mrs. Yiddle during that time, "Where is your sister?" A As soon as we entered the house, we asked where the sister was.

Q When the defendant and the two men came in, and stood there for five minutes, did you at that time, or did Mazzura, or Sevak, ask "Where is your sister?" A When the woman had returned, we asked her "Will the sister come?" And she said "She will come right away."

Q When Yiddle's sister didn't come right away, did you kind of feel nervous? A We didn't notice it.

Q Were you suspicious of these two men and of Yiddle, when

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they came up to that apartment? A I can't say anything about it. But, at the moment, I felt that it was two of his friends who happened to come to the house.

Q When one of these men pulled out a gun, and said "Hands up," then you became very nervous? A Then both of us jumped from our chairs, and Mazzura ran towards the door, and they ran right after him and caught him.

THE COURT: Suppose we suspend here, Mr. Sheridan, if it is convenient?

MR. SHERIDAN: Very well, sir.

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

3 ans.

AFTER RECESS.

R VASIL GUSTYAK, his cross examination being continued, testified as follows:

CROSS EXAMINATION (continued) BY MR. SHERIDAN:

Q When one of these three men pulled out a revolver and said, "Hands up", what happened? A The three had said "Hands up."

Q Was Yiddle at the gas stove, preparing tea, when the man whipped out a revolver and said "Hands up"? A No,

Q Were you and Jacob Mazzura seated on chairs at the time?

MR. McDONALD: At what time?

MR. SHERIDAN: At the time he pulled out the revolver.

A We were sitting.

Q And was Andrew Sevak standing right at the door? A Yes, sir.

Q When they told you to put up your hands, what did you do?

A I jumped up, and raised my hands, (illustrating).

Q Mazzura jumped up from the chair and ran for the door?

A Yes, sir.

Q Before Mazzura ran for the door, did the man who was facing him shoot him in the right part of the chest? A No, the three men caught him right at the door.

Q Now you and Mazzura were seated on chairs? A Yes, sir.

Q The man with the revolver and the other two men said, "Hands up"? A Yes, sir.

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Q And you got up from the chair, and you put your hands up? A Yes, sir.

Q Did Mazzura stand up? A He got up and ran towards the door.

Q Did he turn his back to them? A No, he faced them. And while facing them, he was backing towards the door, and they were holding him.

Q And the man shot him within a minute after he told him that to put his hands up? A No, I believe ~~xx~~ about three or four minutes must have passed in that scramble.

Q Well, after three or four minutes of ~~scrambling~~ scrambling, did you then hear the shot? A Yes.

Q And then after the shot, do you mean to tell this Court and jury that these men bent over the body of Mazzura, to search him? A I think about three times shots were fired.

Q Sevak had left the room about five minutes before? A Not five minutes. Right after the revolver was drawn, Sevak ran out.

Q How long after you heard the first shot, did those men remain in the room? A The shots were fired, one right after the other.

Q But, after those shots were fired, how long did Yiddle and the two strangers, remain in that room? A Why, I ran out.

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Q Did you testify, yesterday, in your direct examination,

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that you were standing alongside of the wall, you saw Mazzura on the ground, and you saw a man in front of him, and subsequently you didn't know what took hold of you, but you made a rush, and you crossed between Mazzura and a man or men who were standing in front of him, and went into the hall? A I stepped over the legs of Mazzura, when I went out.

Q What did you mean in that answer, when you said you suddenly didn't know what happened? A I don't know; I don't know what I felt; I can't describe it.

Q You don't know really what happened there, in that minute or two, do you? A Well, why shouldn't I know it?

MR. SHERIDAN: That's all.

THE WITNESS: I was there. I saw it.

MR. SHERIDAN: That's all.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q Did you ask Sevak to go to the bank with you, at the time you went to draw your money out?

MR. SHERIDAN: I object to the form of the question, as being improper and leading.

THE COURT: Well, Mr. Sheridan, with a witness of this type, certain latitude in the matter of leading questions must be permitted.

MR. SHERIDAN: Why, I wouldn't be technical, but anything in reference to this man Sevak, and anything that might affect whether he asked Sevak to go to the Bank is

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of the utmost importance.

THE COURT: That is very evidence^{to} from the time that you spent in developing the relations of Sevak, if any, with this witness. Objection overruled.

MR. SHERIDAN: Exception.

A I told him I was going to the bank.

BY MR. McDONALD:

Q Did you ask him to go to the bank with you?

(Objected to; allowed; exception.

A I said that I would like to have somebody to go with me to the bank, because I am afraid to go alone.

Q Where were you shot?

THE COURT: He has already stated. In the right arm, near the wrist, and that the bullet went through the left front of his coat.

MR. McDONALD: May I have the witness show where he was shot?

THE COURT: It is not necessary, in view of the testimony already on the record.

MR. McDONALD: But may he show the physical wound upon his body?

THE COURT: Yes, he may do that.

MR. SHERIDAN: I object, and except.

BY MR. McDONALD:

Q Just show us. A (the witness shows his right arm to the jury).

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Q Are these two wounds -- withdrawn. Where did the bullet go into your arm?

MR. SHERIDAN: Just one moment. I fail to see that this is any way material to the issue we are trying.

THE COURT: Objection overruled.

MR. SHERIDAN: Exception.

A It entered into the arm where I am showing (indicating), and went through, and then went through part of my trousers, without touching my body (indicating).

BY MR. McDONALD:

Q Now just point on your arm to where the bullet went in first, and then point out where it came out of your arm?

MR. SHERIDAN: The same objection, if your Honor please.

THE COURT: The same ruling.

MR. SHERIDAN: Exception.

A It went in here, where I am showing, the upper part of the arm (indicating), and went through where the lower wound is, and went downward, and caught part of the trousers on the left side (indicating).

MR. McDONALD: That is all.

MR. SHERIDAN: That is all.

THE FOREMAN: May I ask the witness a question?

THE COURT: Yes.

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BY THE FOREMAN:

Q How many men did you see with pistols, just before the first shot was fired? A Only one.

Q Did you see more than one pistol while you were in the room? A Only one pistol.

THE FOREMAN: I don't know whether I am permitted to ask --

THE COURT: You are permitted to ask any question that you feel impelled to ask, Mr. Foreman.

BY THE FOREMAN:

Q Did you know the man that had the pistol? A No.

BY MR. SHERIDAN:

Q Just another question, before the witness leaves the stand. Did the defendant Yiddle have a pistol at that time? A No.

WILLIAM R. WITTENBERG, of the 15th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Are you a member of the Police Department of the City of New York? A Yes, sir.

Q And you were such on the 29th of January, 1921? A I was.

Q To what post were you attached? A I was attached to a post on Rivington Street, which took in from Orchard to Clinton Street.

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Q And to what Precinct were you attached? A The 15th.

Q Did you have occasion to go to 123 Stanton Street on the 29th of January, 1921? A I did.

Q About what time? A About 3.05 p.m., in the afternoon.

Q Did you see anybody when you got there? A I did.

Q Whom did you see? A I seen a large crowd in front of the premises 123 Stanton Street, and I went upstairs to the third floor, rear, east side.

Q That is, two flights up? A Yes, two flights up. And I seen in the doorway leading from the hall into the kitchen of the apartment, I seen a body lying on the floor, with his back -- he was -- a part of his body was in the room, and the other part, the head, was in the hallway.

I seen Sergeant McNamara, of the 15th Precinct, there, and I also seen another man, who was bleeding from his right hand, and I asked Sergeant McNamara --

Q No, you cannot tell us that. You said something to him; is that right? A Yes.

Q And what did you do then? A I then proceeded in and about the hallway, and in the premises, to see if I could secure any witnesses who had witnessed what happened.

Q Yes. A People that I interviewed, several of the tenants, in relation to seeing if they could tell me who done the shooting, or if they seen anybody run up to the roof. They said that they heard shots--

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MR. ROSALSKY: Objected to.

THE COURT: Objection sustained. You cannot testify to any conversation with anybody, officer, except with the defendant, or any of the persons who were charged with the crime. Just say that you had a talk with some of the tenants, and after you had that talk, you did something else.

A After having a talk, I then went back in the apartment, went into the kitchen, searched the kitchen, searched the bedroom.

By that time, detective Stetter, of the 15th Precinct Detectives, and several detectives of that precinct, homicide detectives, and Captain McNeil, of the 15th Precinct, had arrived, and some one said --

Q No, you can't tell that. And after that, what did you do?

A I searched the body of the party, of the deceased, lying there.

Q That was Jacob Mazzura? A Yes, sir. And from his pockets I took out, from the various pockets of his coat, pants, I took out \$1240.60, several papers, keys, a passport, and I counted the money in the presence of Sergeant McNamara, Captain McNeil and Detective Stetter, and ~~xxx~~ as I was doing that, someone said--

Q No, you can't tell what someone said. A I then left the premises and went to the station house with the report.

Q And have you got a note of what you took from the body of the deceased? A yes, sir, I have.

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THE COURT: There will be no question about that, that he took \$1240.60 from the pockets of the dead man. Now, the denominations of the bills do not make a bit of difference.

MR. McDONALD: Very good, sir.

Q Now, I show you People's Exhibit 2 for Identification, and ask you if that shows approximately the position of the body?

A It does.

Q At the time you went there? A It does.

Q I show you, too, People's Exhibit 3 for Identification.

A It does show the position.

Q And you say you turned that property over to the --

A To the Lieutenant of the 15th Precinct.

Q Did you then go back to Number 123 Stanton Street?

A I did not.

Q You went back to your post? A Well, my tour of duty was up at four, and it was about half past four when I made the report, and I didn't get finished until five.

CROSS EXAMINATION BY MR. ROSALSKY:

Q At the time you searched the body, were the dead man's boots on? A They were, yes.

Q In what pocket did you find the \$1240.? A In various pockets throughout his clothes; his inner coat pocket, and his vest pocket, inner pocket, and he had two pairs of pants on, and I found some money in those pockets.

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Q Were there any large ~~amounts~~ in the \$1340.?

A There were.

Q What was the largest amount you found in any one place?

A There were two packages of \$500. -- \$1,000., in his vest pocket. The package was the same as he drew it out of the bank, with the slip on, that is, in the \$500. packages there were ten and twenty dollar bills.

Q And that was in the inside vest pocket? A Yes.

BY THE COURT:

Q Were those two \$500. packages in the same pocket of the vest? A They were.

BY MR. ROSALSKY:

Q And where did you find the other money? A In the different pockets, from the pants pockets, for instance, I would pull out twenty or thirty from one pocket, and then more from another pocket. I got some money in all the different pockets.

Q Did you find any money tied around the leg of the deceased, with a handkerchief? A I didn't find any money tied with a handkerchief. I was told to stop the searching of the body, for fear we might move the body too much, and I was told another policeman, after the picture of the body was taken, he would continue the search, make it a thorough search.

Q All that you did was to go through the pockets of the dead man? A In a rough way, without causing the body to move.

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P J O H N J. Q U I N N, of the Fifteenth Precinct, called
as a witness on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Department of the City
of New York, and you were such on the 29th day of January, 1921?

A Yes, sir.

Q And you are attached to what division? A Fifteenth
Precinct, Detective Division.

Q And did you have occasion on the afternoon on the 29th
day of January, 1921, to visit the premises 123 Stanton Street,
in the County of New York? A Yes.

Q About what time did you get there? A About 3 p.m.

Q And what did you see when you got there? A I saw a man
shot, laying across the threshold of the door leading from the
hallway into the apartment.

Q Did you see anybody search the body of that man that
was lying across the threshold of the apartment? A I did.

Q And who was with you? A Patrolman Wittenberg and
Patrolman -- another patrolman.

Q Was it McGowan? A Yes, Patrolman McGowan.

Q You saw ~~Officer~~ Wittenberg search the body first? A Yes.

Q And then he left? A Yes.

Q He left -- or, at least, he stopped searching the body,
under instructions? A Yes, sir.

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Q Abd afterwards a photographer came from the Police Department? A He did.

Q And were you present when the photograph was taken?
A Yes.

Q Does that correctly show the position of the body at the time you arrived at the premises 123 Stanton Street (indicating)?
A yes, sir.

Q Showing witness People's Exhibit 2 for Identification, and I am now showing the witness People's Exhibit 3 for Identification. A Yes, sir.

Q Now, after the photograph was taken, was anything else done?
A Yes, sir.

Q Did Doctor Schwartz, the Deputy Chief Medical Examiner of New York arrive at 123 Stanton Street? A He did.

Q Now, what was done while Doctor Schwartz was there?
A I ordered Patrolman McGowan to strip the deceased, to search for the money belt which they generally carry. We took off all his clothes, and on one leg was a handkerchief, with two \$500. bills, that is, \$1,000.

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Q And where was that found? A On one of his legs.
I ain't sure now whether it was the right leg or the left leg.

Q And did McGowan take off the shoes? A Yes, sir.

Q And was that before the photograph was taken? A No, that was after. Patrolman Wittenberg started to undress him, and I ordered him to stop, not to touch him before he was photographed,

and the doctor arrived.

Q By the doctor, you mean the Deputy Chief Medical Examiner, whose duty it was to view the body and give you permission to move it? A Yes, sir.

BY THE COURT:

Q Had Wittenberg loosened either one of the dead man's shoes? A Yes, he had started to pull off one shoe when I told him to leave it alone, and not to move the body, and I stopped him. It was a boot.

BY MR. McDONALD:

Q What was done with the two bills? A Patrolman McGowan took them to the station house, and turned it over to the lieutenant.

Q Oh, by the way, Officer McGowan is on his vacation, is he? A Yes, sir.

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MR. McDONALD: That's all.

MR. ROSALSKY: No questions.

THOMAS M. HEILLY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Force of the City of New York? A Yes, sir.

Q And you are attached to what special division of the Police Department of the City of New York? A Photograph gallery.

Q And how long have you been attached to that department?

A About seventeen years.

Q And during that time you have been taking photographs?

A yes, sir.

Q So that you are perfectly well able to take a photograph?

A Yes, sir.

Qx A fairly correct photograph? A Yes, sir.

BY THE COURT:

Q You have taken many thousands, haven't you? A Well, I have taken quite a few in seventeen years.

Q Well, quite a few, what does that mean? How many photographs do you think you have taken for the Police Department in the last seventeen years? A It's a hard matter to say. Up in the thousands, anyway.

Q Up in the thousands? A Yes.

BY MR. McDONALD:

Q Now, I show you People's Exhibit 2 for Identification, and ask you if you took that photograph? A Yes.

Q And when did you take it? ZA On January 29th, 1921.

Q And where? A At 123 Stanton Street.

Q Does that fairly and correctly represent the position of the body at the time that you arrived there? A It does, yes, sir.

MR. McDONALD: I offer it in evidence.

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MR. ROSALSKY: I object to it, on the ground that it

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is immaterial, irrelevant and incompetent. There is no evidence that the body was in the same condition previous to the taking of the photograph as it was at the time, or that the body of the person was in the same position as when he was alive.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

BY MR. McDONALD:

Q That photograph is not taken with the tripod and the eye of the camera directly over the body, is it? I am now talking of People's Exhibit 2 for Identification? A No, sir.

MR. McDONALD: I offer it in evidence.

THE COURT: It is received.

(It is marked People's Exhibit 2 in evidence)

BY MR. McDONALD:

Q I show you People's Exhibit 3 for Identification, and ask you if you took that photograph? A I did, yes, sir.

Q And how was that photograph taken? A That was taken with the camera up over head, looking down on the body (illustrating).

MR. McDONALD: I offer it in evidence.

MR. ROSALSKY: The same objection.

THE COURT: The same ruling.

MR. ROSALSKY: Exception.

(It is marked People's Exhibit 3 in evidence).

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MR. McDONALD: May I show these, sir, to the jury?

THE COURT: Yes.

MR. McDONALD: That is all with the witness.

THE COURT: Any questions?

MR. ROSALSKY: No questions.

THE COURT: The next witness.

MR. McDONALD: If your Honor please, this money was taken by the Police, and turned over to the Property Clerk, at Police Headquarters, and the Property Clerk turned it over to the Public Administrator of the City of New York, and I understand that the defendant's counsel concede that the money taken from the body by the police officers was turned over. There is no dispute as to that.

THE COURT: There is no question raised as to that?

MR. ROSALSKY: No, sir.

THE COURT: Proceed.

P **J O H N J. O ' D O N N E L L,** a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. O'Donnell, you are a licensed civil engineer ?

A I am a civil engineer.

Q And you graduated from what college? **9896** A Manhattan College.

Q And have you been practicing your profession of draughtsman

and civil engineer since your graduation? A I have.

Q When did you graduate? A 1917..

MR. McDONALD: I understand that counsel concede that Mr. O'Donnell is perfectly well able to draw a diagram.

BY THE COURT:

Q Did you make that diagram? A Yes, sir.

Q Of what premises? A 123 Stanton Street, third floor rear.

Q Now, briefly explain the layout of that apartment? It had but two rooms, had it not? A Yes, sir. There are two rooms situated in the rear, on the east side of the building, 123 Stanton Street. The first room is indicated here by the word "kitchen", and the room adjoining that, into which you pass through a door is known as the bedroom.

There is a door at the front of the bedroom which leads into the apartment in the front, but that is a locked door, and wasn't used by the people who occupied these two rooms.

The entrance into the apartment is a door which leads into the hallway. At the rear of the hall there are two toilets, and, in the front of the small hall, is the larger public hall, showing the stairs, one end going down the hall, and at the other end the stairs leading above, and the two doors at the end of the hall lead into the apartment.

The kitchen, from the north to the south, is thirteen feet eleven and a half inches in length, and 9 feet 3 inches wide at

the widest part.

Q You say, roughly, 9 by 13 are the dimensions of the kitchen; is that right? A Yes, sir.

Q Now what are the dimensions of the bedroom? A The bedroom is 8 feet 4 inches by 9 feet.

Q 8 x 9? A Yes, sir. The width of the hall is 2 feet 10-1/4 inches, -- this narrow hall -- and the larger public hall is 6 feet 3 1/2 inches in width.

BY MR. McDONALD:

Q Have you got the width of the doorway leading from that apartment to the hall? A Yes, sir.

Q What is it? A 2 feet 8 inches.

BY THE COURT:

Q As you enter the apartment from the hallway, through the door whose ~~dimensions~~ dimensions you have just given to us, which is the first of the two rooms that you go into? A The kitchen.

BY MR. McDONALD:

Q Which way did that door swing? A As you enter--

Q That door from the public hall to the kitchen, which way does it swing? A It swings into the kitchen, as you enter.

BY THE COURT:

Q That is, you push the door in ahead of you as you go in? A Yes, sir.

BY MR. McDONALD:

Q And on what scale did you draw that diagram?

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THE COURT: Now, he has given the actual dimensions of the room, and it does not make any difference.

MR. McDONALD: But he may not be here when something else comes up.

A One inch to one foot.

CROSS EXAMINATION BY MR. SHERIDAN:

Q Now this part, indicated by this black line here (indicating), have you the measurement of that down on your notes?

A Yes, sir, 8 feet 5 inches.

Q So that the ~~sixteen~~ dimensions of the kitchen are approximately 13 by 9 except for part of the space where the width is 8 feet 5 inches? A Yes, sir.

Q And was there a stove in that room? A Not when I got there.

Q What was in the room when you made the measurements?

A Why, the apartment was occupied by somebody else at the time.

BY MR. ROSALSKY:

Q When did you make those measurements? A At the end of March.

MR. McDONALD: We offer the diagram in evidence.

THE COURT: Received.

(It is marked People's Exhibit 5).

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IP WILLIAM STETTER, of the Fifteenth Precinct,
a witness called on behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You were a member of the Police Department of the
City of New York, on the 29th day of January, 1931, and you
still are? A I was, and I am.

Q And at that time you were in charge of the detectives
of the Fifteenth Precinct? A I was.

Q Did you have occasion, as a detective in charge of the
detectives in that precinct, to visit the premises at 123 Stanton
Street, on that day? A Yes.

Q About what time did you go there? A About three p.m.

Q Did you there see the body of one Jacob Mazzura? A Yes.

Q And where was the body when you saw it? A Lying on
the floor, with the head and shoulders lying out in the hallway.
And his feet in the kitchen of the apartment of the defendant.

Q And how long did you remain there? A Oh, about an hour
or more.

Q Did you find out whose apartment this was? A I did.

Q Did you see the defendant at any time there, that day?

A I did not.

Q Did you find out -- you say you found out whose apartment
it was? A Yes, sir.

Q Whose apartment was it?

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MR. ROSALSKY: I object to that, on the ground that it is hearsay.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Julius Rothman.

Q That is, the defendant here? A It is.

BY THE COURT:

Q When you say Julius Rothman, do you mean this defendant, now on trial as Julius Rosenwasser? A I do.

BY MR. McDONALD:

Q Did you afterwards visit the apartment of the defendant?

A I did.

Q When? A Oh, a number of times, day and night.

Q Did you also visit other places, looking for the defendant? A I did.

Q When was the first time that you saw the defendant?

A On February 20th, 1921, in the City of Boston, Massachusetts.

Q And where did you see him then? A In the Berwick House, at Causeway Street, Boston, Massachusetts.

Q And do you know what name he was registered under there?

A Under the name of Max Coehn.

Q Now, what time was it that you went to -- withdrawn.

Did you go to a room in this Berwick Hotel? A I did.

Q On what floor? A The third floor.

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Q And did you try the door? Just tell us what you did?

Were you alone? A No, I had the owner of the hotel go up to

the room.

Q And were you with him? A Yes, sir, I and Inspector Joseph Cavagnaro, Inspector of the Boston Police. We went up stairs with the proprietor of the hotel, and I told the proprietor of the hotel to--

(MR. ROSALSKY: Objected to.

Q Never mind that. You had a talk with the hotel proprietor? A Yes, I did.

Q And did the hotel proprietor or you, or Inspector Cavagnaro, do anything? A Yes. Inspector Cavagnaro and I tried to break down the door.

Q Well, did you try the door, before you tried to break it down? A Yes, sir, it was locked.

Q Now, before you tried to break it down, did the landlord, or the proprietor of this hotel, do anything? A Yes, he did.

Q What did he do? A He knocked at the door and asked for this defendant, and he answered him, and he said that he wanted to change the linen on the bed.

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Q That is, the proprietor said that? A Yes, sir; to open the door. And Rosenwasser didn't open the door. And so I told this man to step aside, and we started to break the door open.

Q Well, what happened? A We got the top part of the door broke down, and the bottom part didn't give, and I saw the defendant go out of the window into the yard, in his underwear.

Q He jumped out of the third story window? A Yes, sir, to

the yard.

Q Out of the third story window? A Yes, sir.

Q Was there a fire escape in front of this window?

A No, there wasn't.

Q Did you look out of the window of that room to the yard? A I did.

Q And there was no fire escape protecting that window?

A No, not that window.

Q About what time was that? A That was about twelve o'clock, noon.

Q Now what did you do then? A Why, Cavagnaro and I immediately went to the street, and I covered the Causeway entrance and that street, and Cavagnaro went around to the ~~xxx~~ other street -- I forget the name of that street now, and I met a uniformed officer just then, and I sent him along to assist Cavagnaro, and they made a search of the alleys and yards, and in about five minutes, they brought Rosenwasser out, and Cavagnaro gave him his overcoat to cover him, because he was in his underwear and stocking feet.

Q Was there anyone else in the room? A No, sir.

Q You then brought him back to New York? A No, I brought him to Police Headquarters in Boston, and then, the next day, brought him on to New York.

Q And then you lodged him in the -- A In the Tombs.

MR. McDONALD: That's all.

MR. ROSALSKY: No questions.

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NATHAN BIRCHALL, J R., a witness called
on behalf of the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Where do you live, Mr. Birchall? A 9 Northern Avenue.

Q Now, Mr. Birchall, please talk up loud, because all the
windows are open. What is your business? A Stenographer.

Q And where are you employed? A Homicide Bureau, District
Attorney's office.

Q How long have you been a stenographer? A About 15 years.

Q How long have you been employed in the District Attorney's
office? A 13 years.

Q And how long have you been attached to the Homicide
Bureau of the District Attorney's office? A Not quite eight
years.

Q Have you practiced your profession as stenographer during
the past thirteen years? A I have.

Q At all times? A Yes, sir.

Q And are you able to take down in stenographic form
correctly questions and answers? A I am.

Q Did you take an examination, or at least -- withdrawn.
Did you take in question and answer form an examination of this
defendant, Julius Rosenwasser? A I did.

Q And when? A On February 21st, 1921.

Q And where was that statement taken? A In the detective

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room of the 15th Precinct.

Q And where is that? A It is on Fifth Street, between First and Second Avenues.

Q Did you take that statement, or those questions and answers, down correctly? A I did.

Q Have you your original notes with you? A Yes.

Q Your original stenographic notes? A Yes, sir.

Q Did you afterwards transcribe the stenographic notes in the typewritten form? A I did.

Q And did you transcribe that correctly? A Yes, sir.

Q Did you afterwards compare your typewritten transcript with the original stenographic notes, made by you on the 21st day of February, 1921? A Yes, sir.

Q And did you find them correct? A I did.

Q Now, will you please turn -- withdrawn. Who was the Assistant District Attorney who propounded the questions to the defendant? A Benedict D. Dineen.

Q A Deputy Assistant District Attorney attached to the Homicide Bureau of the District Attorney's office? A Yes, sir.

Q Now, what was the first thing said to the defendant Rosenwasser?

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MR. ROSALSKY: May we have a copy of the statement which was made at that time, as long as it is going to be introduced in evidence?

THE COURT: I will not direct the District Attorney

to give you a copy, Mr. Rosalsky. You will have to follow it in the examination. Are you going to introduce the entire examination?

MR. MC DONALD: Yes, sir.

THE COURT: Have you an extra copy of it?

MR. MC DONALD: I have not.

THE COURT: Then I don't see how we can accommodate you, Mr. Rosalsky.

MR. ROSALSKY: If your Honor please, in order to object to the questions, as we go along, in case there are objections to be made, I would like to have a copy.

THE COURT: Well, the best way would be to listen to the questions.

MR. MC DONALD: And I will aid him as much as possible by letting him look at the transcript as it is read or referred to by the witness.

BY MR. MC DONALD:

Q (Question repeated.) A Mr. Dineen said: "Mr. Dinnen: My name is Dineen, Rosenwasser. I am a Deputy Assistant District Attorney of New York County. You are under no obligation to make any statement to me, Rosenwasser. Anything you do say ^{can be and} may be used against you at any time."

Q Now, what was the first question? A (Reading) "What is your name, Rosenwasser? A Julius Rosenwasser.

"Q Where do you live? A Now I live in the Fifth Street

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Police Station."

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MR. MC DONALD: So as to obviate any question as to question and answer, when you say "Question," do you mean the question propounded to the defendant by Mr. Dineen?

THE WITNESS: Yes, sir.

MR. MC DONALD: And when you say "answer", do you mean the answer given by the defendant to that question of Mr. Dineen?

THE WITNESS: Yes, sir.

MR. MC DONALD: Very well; go on.

THE WITNESS: (Reading):

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"Q Where did you live before you moved here? A I lived in 123 Stanton Street.

"Q How old are you, Rosenwasser? A Twenty-five.

"Q What do you work at? A Leather chopper.

"Q You don't cut letters, like this? Leather like in your shoe? A Leather, sure.

"Q All right. Now, tell me all about this case. A I used to go in the restaurant there on 5th Street, so I knew a few fellows down there in the restaurant, so I used to go in there every night. So one night I come in and I seen a fellow, so he told me -- his name is Andrew, Polish.

"Q Andrew? A Yes; I don't know his second name now.

"Q A big tall fellow? A Big tall fellow. So he told me there was a few fellows going to Europe.

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"Q When did he tell you that? A On that night when I met him in the restaurant. And they got money. And he wants to get the money on them some ways, I don't know how. And I let him go, and I run away, and I went on the third night and on the fourth night I come in again in that restaurant and he started in talking to me again. I couldn't talk to him because, you know, there was a lot of fellows with him, so I was sitting there and I started to go home and he walks out after me and he went out with me in my house and he tells me that he's got to do that job, but I should get him a few fellows that they could do it. I told him that I can't, because I never done a thing like that. And there I was. And then I met him again a night later, something like that, so he tells me if I wouldn't do it he will get somebody else.

You know, he started in talking to me things like that, and he told me a few times I should get him a few fellows. Well, you know how it is, I had a fellow that he lived up in my house, so he brought a fellow that had a gun. And you know, and then they come up my house, he brought them up, that Polak brought them up -- I didn't know they were coming up my house even -- and I come up with those two fellows and that fellow stick them up.

"Q What was the name of the fellow that lived in your house? A Abe Kapiloff.

"Q What floor does he live on? A On the second.

"Q Married? A Yes, sir.

"Q What is the name of the other fellow who had the gun?

A I don't know.

"Q Who brought him? A That fellow.

"Q What fellow? A Abe Kapiloff.

"Q Did you and Abe go away together? A No, we went outside, but then I met him in the street.

"Q This was on Janury 29th? A Yes, sir.

"Q Saturday night, or Saturday afternoon? A Saturday afternoon.

"Q About what time? A About two o'clock.

"Q About two o'clock? A Yes.

"Q Now, you had met this fellow Andrew the night before?

A No, I didn't met him the night before.

"Q You met him that day, Saturday? A Saturday I met him up in my house.

"Q What time on Saturday? A When I come in they were up in my house.

"Q Andrew the fellow who was killed -- A And another fellow.

"Q And your wife was there also? A No.

"Q Where was your wife? A She went away with the kid to a doctor.

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"Q Did your wife come in while these three men and your -

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self were in there? A Yes.

"Q Did you come in with these other two men, or did they come in after you? A They come in with me.

"Q And then you and these other two men that came in with you and Andrew and Houschok, and the man who was killed, were in there before your wife returned from the doctor? A What do you mean?

"Q You say your wife went to the doctor? A She went to the doctor.

"Q And while you six men were in there your wife came back? A No, she didn't come back.

"Q Had you met Andre in the restaurant on that Saturday of the shooting? A No, sir.

"Q When had you met him before that Saturday? A I think on Thursday.

"Q Thursday night? Was it Thursday night? A Thursday night.

"Q What time? A Oh, I can't tell you exactly.

"Q Was it in the night or afternoon? A Night.

"Q Where was it you met him? A In the restaurant.

"Q Whose restaurant is it? A It's a Polish fellow keeps it.

"Q And whereabouts does he keep his restaurant? A On 5th Street between 1st Avenue and Avenue A.

"Q Is it near 1st Avenue? A It's near Avenue A.

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Gal 37⁸ "Q On the same side of the street as this, or the other side? A It's on the left side.

"Q The left side going over toward Avenue A? A The left side going up to 1st Avenue.

"Q You met him there on Thursday. Now, what did you say to him on Thursday, or what did he say to you? A He told me -- that night when I met him, he told me that the deal was off, because the fellows they took out the money and they put it up some place, but we'll never get it. So that's how it was. I went away.

"Q You met him on Thursday night and he said what to you? A He told me the deal is off, so I went away.

"Q Well, how did you know the deal was on again? A I didn't know that the deal was on again, but --

"Q Why did you bring the man with the gun, then, on Saturday? A I didn't bring him exactly.

"Q Well, how did he get there? A I told you that fellow-- I walked on the street and I met that fellow Abey walking there, so he just come up to the house.

"Q You met Abey on Saturday? A Abey on Saturday, yes. The same time, you know, about an hour before that thing happened.

"Q When had you told Abey the job was all right?

A What do you mean?

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"Q Didn't you tell Abey that it was all right, that you

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were going to pull off a job on these two fellows? A Well,
as I told you, the Polish fellow told me that the deal was
off, so I don't know ---

"Q Had you seen Abey between Thursday night and Saturday
afternoon? A Yes, I seen him there, but he slept up in
my house.

"Q Did you tell him Thursday night after you had spoken
to Andre, that the deal was off? A Yes, sir; I did.

"Q How did he happen to get this fellow with the gun on
Saturday? A I don't know; I suppose he knew him.

"Q Why did you bring him up there with a gun if you
thought the deal was off? A Why did --

"Q Why did Abey bring the fellow with the gun up on Sat-
urday if you thought the deal was off? A He didn't
specially bring him up. He come up and had the gun with him.

"Q When was it, on Saturday afternoon when you three
fellows were in the house that you decided to pull the deal
off? A About one o'clock.

"Q How was it you happened to talk about pulling the deal
off at that time?

✓ (Officer Short enters the room.)

A I told you, on Friday night I seen that fellow and he
told me that he is going to bring them up to my house.

"Q What time did he tell you he was going to bring them up
to your house? A He didn't tell me what time, but he

said sometimes in the day time.

"Q Did you find out before you went up to your house that the three Polish fellows were up there? A Yes, I did find out.

"Q How did you find that out? A I walked on the street -- where was it, Sheriff Street? I don't know -- so they sent down my wife, that they wanted to see me, so she told me there was three fellows waiting for me upstairs.

"Q And where did your wife find you? A In the street walking.

"Q With whom? A With those two fellows.

"Q Well, had you made an arrangement with Abey and this other fellow, to meet him on Saturday and pull the job off?

A I didn't make no arrangement with Abey, because I seen him all the time.

"Q Well, didn't you tell him on Friday night again it was all right, you were going to pull the deal off? A No, I didn't tell him on Friday night.

"Q Did you tell him Saturday morning it was all right?

A Saturday I told him.

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"Q And you told him to get the other fellow with the gun?

A I didn't tell him exactly to get a fellow with a gun.

"Q What did you tell him? A I told him to get a fellow he should do something -- I told him not to kill, because I didn't want to be mixed up in a murder case. I told him

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to get a fellow with a blackjack or something like that.

"Q What did you want the blackjack for? A Just to --

"Q Just to what? A I can't explain it exactly.

"Q Well, what were you going to do if he had the black-
with
jack? What was he going to do/~~if~~ the blackjack?

A What was he going to do with the blackjack? If they start
fighting he should lick one of them.

"Q Who should lick one of them? A That fellow with the
blackjack.

"Q What is his name? The fellow with the blackjack?

A I don't know.

"Q But he didn't have a blackjack, he had a gun?

A He had a gun.

"Q When did you find out he had a gun? A When he was
up in the house.

"Q How soon before the shooting did you find out he had
a gun? A Just about two or three minutes before.

"Q Didn't he tell you he had a gun with him before?

A No.

"Q When your wife met you on Sheriff Street and told you
the three men were up there, didn't you find out from this
other fellow that he had a gun? A No, he told me in the
house.

"Q He told you in the house before you pulled off the
job that he had a gun? A Yes, sir.

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"Q Now, how long before he pulled the deal off did he tell you that? A About three or four minutes, something like that.

"Q Did you make some coffee up in the house before the shooting? A No, I didn't make no coffee.

"Q Or tea? A Well, something was cooking there, but I don't know.

"Q Who was doing the cooking? A ~~Rimixwater~~ I did.

"Q How did you do the cooking? A Plain water.

"Q What were you going to make out of the water? A Tea.

"Q Was that just a bluff? A Yes.

"Q Was that just a stall to give them time to look around? A Well, I'll tell you, I didn't figure that at that time. I don't remember.

"Q You didn't figure what? A I don't remember what I done that for.

"Q What happened when you three fellows decided to pull off the job?

(At this point the examination was suspended while defendant was removed to Captain's office, where it was continued with no one present but Mr. Dineen, the Defendant and Office Kee.)

A He pulled out his gun and told them to stick up their hands.

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"Q Who? A That fellow with the gun. And then I don't

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know what happened. The only thing I heard is a shot.

"Q Well, what were you supposed to do after they put up their hands? A They didn't put up their hands.

"Q What did they do? A I'll tell you the truth that I didn't see; I didn't look at it.

"Q Where did this happen, in the kitchen? A It happened in the kitchen.

"Q You say this fellow told the two men to put up their hands? A Yes.

"Q Now, where was Abie at that time? A He was in the same room.

"Q And where were you? A In the same room.

"Q And the two men didn't put up their hands? A No.

"Q What did Andre do? A Andre wasn't there at all.

"Q When did he go out? A He got out before the deal started in; as soon as he seen us come in he stayed there about two minutes and he walked out.

"Q And he left you five men there together? A Yes.

"Q Did he tell you how much these two men had? A Yes.

"Q How much did he tell you? A He told me that the one who got killed has got three thousand dollars, and this one, he said he don't know exactly how much he's got.

"Q Did he tell you approximately how much he had? A No, he didn't tell me.

9696

"Q You say this fellow who had the gun told the two men

to put up their hands and they didn't put up their hands?

A Yes.

"Q Did you make any attempt to go through their clothing? A No.

"Q Did the other fellow, Abie, make any attempt to go through their clothing? A No.

"Q Did the other fellow who had the gun make any attempt to go through their clothing? A No, because they didn't put up their hands.

"Q What did they do when they didn't put up their hands?

A The man that got killed started to go through the door, so he shoot him.

"Q Who shot him? A The fellow with the gun.

"Q Yes, and what happened then? A Then I got scared, so I opened up the door and those two fellows they run out.

"Q What two fellows? A That fellow with the gun and Abie. No, first that Polak, that little fellow, the other fellow started to run, and the fellow with the gun run after him and Abie after them fellows, and I was left all alone in the house.

"Q What happened to the fellow who ran out? A I don't know.

9696

"Q Wasn't there another shot fired at him? A I'll tell you. I was excited, I didn't know where I was.

"Q Now, you say the fellow who was killed started to run

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out? A Not the fellow who was killed. He started to go to the door and he shot him.

"Q What happened to him then? A He fell down on the floor.

"Q Did you go over to him? A No, I did not.

"Q Didn't you go over and frisk his clothing? A No, sir.

"Q Didn't Abie do that? A No.

"Q Didn't the fellow with the gun do that? A The fellow with the gun started in running right away.

"Q What happened to the other fellow who was told to hold his hands up? A He ran out, too.

"Q Did he start to run out before the man who was killed? A He started to run when the fellow was laying on the floor.

"Q And Abie and the other fellow ran after him? A Ran after him.

"Q And you ran after him too? A No, I stayed about two or three minutes.

"Q What did you stay for? A I didn't know what to do, whether to stay or jump or something; I got excited, I didn't know what to do.

9696

"Q Couldn't you find the money? A I didn't look for it.

"Q Wasn't that the idea, for you to stay back and find out if he had any money? A It wasn't the idea. The idea was to stick him up and get the money, but after they shoot I didn't know what I was doing, I didn't look for the money

16
at all.

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"Q Then you ran downstairs after Abie and the other fellow who had the gun? A Yes.

"Q And did you hear any shots while you were going downstairs? A No, sir.

"Q How many shots did you hear altogether? A I heard two.

"Q Where did you meet Abie and the other fellow after you left the house? A The other fellow I didn't meet.

"Q Where did you meet Abie? A Abie I met in Norfolk Street.

"Q Whereabouts on Norfolk Street? A Just on the corner I was standing.

"Q What did you say to Abie? A I didn't say nothing to him. He asked me if I got the money and I told him No, I didn't look in his pockets.

"Q What did he say to that? A Nothing. We started in walking and walked down to 14th Street, and he went to enlist in the Army, that's all.

"Q Whereabouts in 14th Street did you go? A He went over to a sergeant there and he took him down to Delancey and the Bowery.

"Q Whereabouts in 14th Street? A Around where the Park is.

"Q Union Square? A Union Square.

9696

"Q And he took him down where? A Took him down to the address where the examination was.

"Q Did you go down with him? A Yes.

"Q Did you try to enlist? A No.

"Q What name did Abie give? A Abe Kapiloff.

"Q What address did he give? A I don't know.

"Q What happened to him when he went down to the address in Delancey Street? A They examined him and they sent him away.

"Q Where did they send him? A I don't know, he told them that he wants to be shipped out to Ohio.

"Q Have you heard from Abie since? A No, sir.

"Q And where did you go? A I was in New York.

"Q I say, where did you go after you left Abie? A In the street.

"Q Whereabouts in the street? A I walked around the streets, all around;- I can't remember where I was.

"Q When did you stop walking? A When did I stop walking? When I had enough money to go to sleep.

"Q How did you get the money? A I bummed ~~it~~ out.

"Q What do you mean by bumming out? A Asked a fellow for a nickel, and asked a few fellows, and they gave me a half a dollar.

9696

"Q And when did you get enough money to go and go to sleep? A It was about ten o'clock.

"Q Ten o'clock Saturday night? A Yes.

"Q And where did you go to sleep? A Turkish Bath.

"Q Where? A Essex Street.

"Q Whereabouts in Essex Street? A Between Hester and Canal.

"Q And what did you pay for the room, for the bath?

A Forty-five.

"Q And how long did you remain in the Turkish Bath?

A You mean that night?

"Q Yes. A Until about eleven o'clock in the morning.

"Q And where did you go then? A I walked around the streets again.

"Q Whereabouts in the streets did you walk? A I walked all around New York; I didn't have what to do.

"Q When did you stop walking? A The same as the first night.

"Q Ten o'clock? A Ten or eleven, I don't know.

"Q Where did you go then? A Same bath.

"Q How long did you remain there? A On the second day how long I am there? I don't remember, I don't remember.

"Q Where did you go on Monday? A It was the same all over again. The same thing as I done the first day.

"Q How many days did you spend in New York? A I spent till last Tuesday.

9696

"Q Where have you been stopping all the time? A In the

19
same place.

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9 / "Q Communicating with your wife? A No, sir.

"Q Communicating with the fellow who did the shooting?

A No, sir.

"Q Communicating with Abe Kapileff? A No, sir.

"Q Communicating with anybody? A No.

"Q How have you been supporting yourself? A I'm telling you how.

"Q Just roaming around soliciting alms? A Yes, sir.

"Q And you say last Tuesday you left New York? A Yes.

"Q How did you get the money to leave New York? A I seen a fellow, so I told him what conditions I am in.

"Q What is the name of the fellow? A I don't know the name; I knew him when I used to go in a place in Eldridge Street. I knew him personally, but I don't know his name.

"Q Where does he live? A I don't know; I used to meet him there in the tea house.

"Q Edlridge Street and what other street? A Eldridge between Rivington and Delancey.

"Q And you met him there on Tuesday? A No, not Tuesday, on Sunday.

9696

"Q How did you address him? What is his nickname?

A I'm telling you, I don't know nothing about his name.

"Q Don't you say, "Hello, Jakie, or Abie, or Yiddle, or something like that? A I never had any business with

him. He knows me all right and knows my name, but I never had any business with him.

"Q What did you tell him? A I told him what conditions I am, and I ain't got no money and no place where to stay, so he went out and made a collection of twenty dollars.

"Q Did he tell you where he got the twenty? A No, sir.

"Q When did he bring it back to you? A Monday night -- Sunday night. Sunday night.

"Q Where did he give it to you? A On Allen Street.

"Q And what other street? A Allen and Rivington.

"Q On the street or in some tea house? A On the street.

"Q And what did you do then? A Then I stayed until Tuesday.

"Q Where did you stay? A In the bath.

"Q Did you try and communicate with your wife in the meantime? A No, sir.

"Q Did this fellow tell you that he knew you were wanted for this murder? A Well, he told me.

"Q Was that the first thing he said to you when he saw you on Sunday? A Not the first thing. He told me, you know how it is, "Hello, what are you doing, how are you getting along?" and so I thought he don't know about that case, but he told me himself that they are looking for me and they are coming down to the tea house every time and they are looking for me.

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"Q And what did you say to that? You thought it time to get out of town then? A I told him if I had money to get out of town I would beat it.

"Q And what time did you leave New York on Tuesday?

A Five o'clock.

"Q And where did you go? A To Providence on the boat.

"Q Why did you pick out Providence? A I wanted to go to Boston.

"Q Why did you want to go to Boston? A To get a job up there.

"Q Did you know anybody in Boston? A No, sir.

"Q Had you ever been in Boston before? A Yes, I have been once.

"Q How long ago? A Last year.

"Q What time did you arrive in Boston? A On this time?

"Q Yes. A I got to Boston about eight o'clock in the morning.

"Q Wednesday morning? A Wednesday morning.

"Q And where did you go when you arrived in Boston?

A Well, I took a room and bed for a week.

"Q Where? A On Sheshire Street. I don't know, I don't know the names of the streets.

9696

"Q What was the name of the place? A I don't remember.

"Q Hotel? A Hotel.

"Q How much did you pay for the room? A Two and a half.

(Officer Stetter and Captain Busby enter the room.)

MR. DINEEN: What was the name of that street?

OFFICER STETTER: Causeway Street, Hotel Berwick.

"Q Is that the name of the street and hotel? A Yes.

"Q What were you going between Wednesday and the time you were placed under arrest? A Wednesday?

"Q You arrived in Boston, you say, Wednesday morning at eight o'clock? A Yes, sir.

"Q And when were you placed under arrest? A On Sunday morning.

"Q What time? A About twelve o'clock.

"Q That was yesterday? A Yes, sir.

(Officer Stetter leaves the room.)

"Q What were you doing between Wednesday morning and twelve o'clock Sunday afternoon, or midday? A I was looking for a job.

"Q Did you get it? A No, I couldn't get it.

"Q How did you happen to be placed under arrest in Boston?

A I don't know how.

"Q Well, were you in the hotel when you were locked up?

A Yes, sir.

"Q What happened when they tried to lock you up? A They broke in the door.

"Q What did you do? A I tried to get away.

9696

"Q How? A I jumped out through the window.

"Q What story was it? A Third story.

"Q Did anything happen to you when you jumped out the window? A I ripped my leg and my arm.

"Q Did you jump on anything? A No.

"Q How high did you jump? A About thirty feet.

"Q And that's all that happened to you? A Yes, that's all.

"Q Did the officers then come down and lock you up, when they found you on the street? A They didn't find me; I gave ~~m~~ up myself.

"Q Did you ~~me~~ run away after you jumped out the window? A I ran away, I hide myself, but I was in my underwear and I was freezing to death.

"Q Where did you hide? A In the hallway.

"Q What hallway? A In the yard.

"Q How soon after that did you give yourself up? A Oh, about ten minutes.

"Q Where did you give yourself up? A In the yard.

"Q To the men who were looking for you? A To the men who were looking for me.

9696

"Q Did you see them looking for you? A Yes, sir.

"Q And then you told them what you were wanted for?

A I didn't tell them; they knew what they want me for.

"Q Did you tell them that you were mixed up in this af-

fair in Stanton Street, in the killing of that man Mazura?

A After they took me upstairs they asked me and I told them.

"Q Now, you say on the Thursday night before the shooting you had seen this man Andre in the restaurant in 5th Street?

A Yes, sir.

"Q And he told you the deal was off, and then on Friday he told you the deal was on again? A Yes, sir.

"Q Now, when had you seen Andre before Thursday? A I seen him a couple of times, but I can't remember the day exactly.

"Q Was it on Wednesday night that you had seen him?

A I can't remember the day exactly, what day it was.

"Q Was it a couple of days before Thursday? A I used to go in there every day and see him in there every day.

"Q How long before the day of the shooting on Saturday, was it that Andre first told you that he would like to have you hold up these two fellows? A Oh, it took about eight days.

Q How did he happen to first bring the subject up to you? A Because he knew that I was out of work.

"Q Well, how long had you been out of work? A Eight months.

9696

"Q What was the first thing he said to you about holding up these two fellows? A The first thing he said he knew

that I am a chauffeur, so he told me if I could get a taxi, and, you know, when those fellows have got to go to the boat, to take the ship, you know, to go aboard, I should take his things away because his things are worth about two thousand dollars.

"Q Take his things away? A You know, he's got three trunks, suits, clothes, something like that, so I should get it and get away with it. So I told him, 'I don't want to do that.' And that was about three weeks ago, before the deal was, and thenafter I used to go in the restaurant and he used to tell me every time that if I had a good fellow, if I had two or three good fellows I should make the job. And of course he told me that he don't want to be mixed in that case.

"Q Why did he tell you that? A He was some relative to that little fellow what's arrested, what's under arrest now.

"Q Well, did he tell you that he wanted you to get the taxicab so that you could hold them up while they were being taken to the steamship? A Yes, sir.

"Q And rob them that way? A Yes.

"Q And then when was it that he decided to have you go up to the house and rob them there? A That was Friday night.

9696

"Q Well, hadn't you spoken about the subject of you taking

8
2

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and creases. A dark, irregular border is visible along the top edge, possibly indicating the binding or the edge of the scanned page. There is no text or other markings on the page.

1

The image is a dark, high-contrast scan of a document page. It features a vertical line on the left side and a large, dark, irregular shape on the right side, which appears to be a book cover or endpaper. The overall image is very dark and grainy, with some faint, illegible markings visible.

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Q He told you there was three thousand dollars in it as¹³⁷
far as the fellow that was killed, Mazura, was concerned?

A Yes, sir.

"Q What was your share of that? A He didn't make up any
of the shares.

"Q Didn't he tell you how much he was going to take?

A No.

"Q Did he tell you how many men he wanted you to get in
order to pull the deal off properly? A He told me to get
two or three men.

"Q Had he met these other two fellows, Abe and the fel-
low that did the shooting, before Saturday afternoon?

A No, sir.

"Q Well, did you give him any sign when you went up to
the house on Saturday afternoon that it was all right,
that he could go out? A I didn't give him the sign.

"Q Was that the understanding? A He understands it
himself.

"Q How did you know he understood it that way? A Well,
because if he walked out he understood it all right.

"Q Had you told him on Friday night or Saturday that when
you walked in with the two fellows you wanted him to leave?

A I didn't tell him to leave.

"Q Did he suggest anything like that? A No 9696

"Q Was there anything like that said Friday night?

"Q Did you see him on Saturday at all before the shooting? A No, sir.

"Q Well, did he tell your wife to go out after you, go get you? A He told my wife -- I don't know who told her, him or the other fellows. Because they come up to me.

"Q How did your wife know where you were? A She thought that I am in Sheriff Street somewhere, supposed to be in that place there.

"Q How did she know that you were there? A I don't know how she knew.

"Q Did she tell you that she was looking any other place for you? A She was telling me she was looking around the street, because she asked me where I was going and I told her, 'I am just going for a walk around the street.'

"Q Didn't she tell you that this fellow Andre and the other two men were up in the house? A She told me there's three fellows up there.

"Q Did she tell you what they were up there for? A No.

"Q Did she tell you wheether Andre orthe other two men wanted to see you? A She told me they wanted to see me.

"Q Who did she say wanted to see you? Andre or Mazura or Houschok? A She said those three fellows there wanted to see me.

9696

"Q Had you seen either of these two fellows, Mazura or

Houschok, before Saturday? A Yes, Houschok I seen in the ¹³⁹ restaurant.

"Q How soon before Saturday had you seen him in the restaurant? A I used to see him every day.

"Q Who mentioned the fact that you were acquainted with some one of their relatives on the other side? A I didn't.

"Q Well, who was it? A I don't know.

"Q Well, isn't that the reason these two fellows came up to your house? A I didn't tell them to come up.

"Q Well, wasn't it because they were just going to the other side and you were going to give them some information about some person that you knew over there? A No, sir; that the fellow, maybe, Andree told them that.

"Q Well, did Andre tell you that he was going to tell them that in order to get them up to your home? A No, he didn't tell me.

"Q Well, when had you two, Andre and yourself, decided to bring these two men up to your house so you could rob them? A We didn't decide to. I didn't know that they were coming up to my house. Yes, I did know, but I didn't know when.

"Q You knew the deal was going to be pulled off in your house? A Yes.

"Q When had you decided to pull the deal off in your house? A I didn't know when, because I didn't know when they were going to come up to the house.

"Q How were you going to get these two men up into your¹⁴⁰ house? A Andre was supposed to get them up."

THE COURT: Is it understood, Mr. District Attorney, that these references to Andrew or Andre refer to Andrew or Andre Sevak?

MR. MC DONALD: Yes, sir.

THE WITNESS: (Continuing reading):

"Q Didn't these two men talk to you as soon as you came in with the other two men? A Yes.

"Q What did they talk about? A They were asking if they could see my sister, she was coming over.

"Q Who mentioned about your sister? A Who asked me about it?

"Q Yes. A Them two fellows.

"Q Which one of the fellows asked you about your sister? A Mazura and Houschok.

"Q Mazura and Houschok, the other fellow? A Yes.

"Q What was your sister going to tell them? A I don't know, I didn't see my sister.

"Q How long has your sister been over here in this country? A She has been about a week.

"Q Well, wasn't your sister going to tell these men something about a friend that she knew on the other side, and also knew these two men? A No.

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"Q Well, didn't Andre tell you that on Friday night?

A He didn't tell me anything; he told them but he didn't tell me.

"Q How do you know he told them? A Because, as you say, that they were supposed to find out some information. It's only that he told them, that's all.

"Q How did Andre know that you had a sister? A Je knew ~~ex~~ it because that fellow that keeps the restaurant down on 5th Street, he comes from the same place where I come from, so he was up where my sister lived, and she was up by my brother, and so he was up there, and he told them that my sister was here in New York.

"Q When did the restaurant keeper tell Andre that your sister was here in New York? A He didn't exactly tell Andre; they knew, everybody, that my sister was here.

"Q Your sister was only here a week before the shooting?
A Yes.

"Q How did Andre come to know that your sister was here?
A We all come from the same country, what you call from one state.

"Q What is the name of the state? A Podolska, Butchia-koman.

"Q Does Andre come from there? A Yes, sir.

"Q Had you known Andre in the old country? A No, sir.

"Q How did you happen to get acquainted with him here?

A He used to come in the restaurant all the time. 9696

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"Q Did he suggest to you that he would tell these two 142 men about your sister, and that she could give them some information about persons they knew in the old country?

A He didn't tell me anything.

"Q Have you had any communication with Andre at all since the shooting? A No, sir.

"Q Didn't you go and meet him in the restaurant?

A No, sir.

"Q Didn't you go to the restaurant in 5th Street after the shooting? A No, sir.

"Q Didn't you meet Andre there? A No, sir.

"Q How long have you been in this country? A April it will be seven years.

"Q How long are you married? A A year."

MR. MCDONALD: Now, omit the next seven questions.

MR. ROSALSKY: May I see what question it is or questions?

THE COURT: Yes, he will show it to you.

MR. MC DONALD: Counsel has read over the questions and consents to their being omitted.

BY MR. MC DONALD:

"Q Now, begin with the question, 'You hadn't made any arrangement at all about how you were going to divide up the money? A No, sir."

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A (Continuing reading): "Q You hadn't made any arrangement at all about how you were going to divide up the money? A No, sir.

2 "Q Didn't you stay back there for a few minutes so you could go through the fellow's pockets? A No, sir.

Gal 4 "Q Isn't that why Abie asked you whether you got any money? A No.

"Q What else did you talk to Abie about when you met him on the street after the shooting? A We didn't talk anything.

"Q Just walk along, eh? A That's all.

"Q Did he ask you whether the fellow was dead? A I didn't know myself.

"Q Well, didn't he ask you, I say, whether the fellow was dead? A Yes, he did ask me.

"Q What did you tell him? A I told him I don't know.

"Q What else did you say? A That's all I said. I didn't say nothing else.

"Q Didn't you ask him what was the name of the fellow who did the shooting? A No.

"Q Didn't he tell you the fellow's name? A No.

"Q Didn't he tell you he was going to communicate with him? A No.

9696
"Q Where were you three fellows going to meet after the hold up? A We didn't make no arrangement where to meet.

"Q Were you going to meet in your own house? A We didn't make no arrangements no place.

"Q Where were you going to divvy up with Andre?

A I don't know; we didn't make no arrangements at all.

"Q Didn't you have some appointment to meet Andre after the holdup? A No.

"Q How was he going to get his share? A I don't know.

"Q Were you going to try and 'gyp' him out of his share?

A No, we didn't make no arrangements.

"Q Was your sister down there that day in your house?

A No, sir.

"Q When had you seen your sister before the shooting?

A I didn't see her.

"Q You hadn't seen her at all since she arrived here in this country? A No, sir.

"Q Where was she living? A I don't know where she lives now.

"Q Where was she living at the time of the shooting?

A She was at my grandmother's, in 67 -- I don't know the number -- Jackson Street.

"Q What number? A 67 I think it is.

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"Q 67 Jackson Street? A Jackson Street.

"Q The Bronx? A No, right here on the East Side.

"Q Well, had you seen your grandmother at all? A No.

"Q How do you know your sister had arrived in this country if you didn't see her? A Well, I knew because I used to go in the restaurant. And that restaurant keeper, he knew all about it.

"Q He knew all about it? A Yes, sir.

"Q Did he know your sister in the old country?

A Yes, sir.

"Q How old is the restaurant keeper, do you know?

A About forty-five.

"Q How old is your sister? A About twenty.

"Q Is your mother living here in this country?

A No, she's on the other side.

"Q But your grandmother is living here? A Yes, sir.

"Q And you say your sister is living with your grandmother?

A I don't know where she is now.

"Q Well, she was at the time of the shooting? A Yes, sir.

"Q And you hadn't seen your sister in seven years?

A No, sir.

"Q And you didn't go down to see her at all when she arrived? A No.

"Q And you hadn't seen her at all from the time that she arrived up to the time of the shooting? A No, sir.

"Q Did you see her after the shooting? A No, sir. 9696

"Q And you haven't seen her at all since you left the

MR. MC DONALD: Now, wait a minute, please.
Now, there are five questions that counsel and I
have agreed may be omitted at this time.

THE COURT: Very well.

BY MR. MC DONALD:

Q Now, go on. A (Continuing reading):

"Q What were you ~~doing~~ in Bufalo? A I was looking for
a job.

"Q How long were you up in Buffalo? A About two weeks.

"Q Did you find a job up in Buffalo? A No, sir."

MR. MC DONALD: Omit the next question
by consent.

THE WITNESS: (Continuing reading):

"Q Did you tell your wife on Saturday that you were going
to get a job that day handling newspapers? A No, I
didn't tell her that.

"Q Are you sure now you didn't tell her? A I don't
remember.

"Q Did you expect any company at all on Saturday? A No.

"Q Well, didn't you tell your wife that you expected
somebody to come into your House? A No.

"Q Where was it you said you met your wife, Sheriff and
Allen Street? A When?

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"Q Before you went up into the house on Saturday? A I

told you I don't remember where. I think it was on Sheriff Street; I'm not sure.

"Q I thought you said in some tea house? A I don't remember, I can't tell you exactly where she met me. She met me on the street, walking.

"Q How tall was the fellow who did the shooting? A About five - four.

"Q How heavy? A 120.

"Q Clean shaven? Did he have any mustache? A No.

"Q What complexion? A Dark complexion.

"Q What kind of hair? A Brown.

"Q What kind of eyes did he have, do you know? A Black.

"Q Any scars on his face? A No.

"Q Did he have anything the matter with his ears, any cauliflower ear? A No.

"Q Did he have a flat nose, or what kind of a nose did he have? A Straight nose.

"Q Something like your own? A I don't know what mine looks like.

"Q What kind of eyebrows did he have? A I'll tell you, I didn't --

"BY OFFICER KEE:

"Q What nationality? A He's Jewish.

"BY MR. DINEEN:

"Q Speak good English? A Yes, he speaks English..

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"Q How old is he? A I don't know.

"BY MR. DINEEN:

"Q What kind of clothes did he have on? A He wore a hat.

"Q What kind of a hat? A Gray hat.

"Q A fedora like that, a soft hat? A No. A hat, but not that kind.

"Q A regular fedora like that gentleman has there?

A Yes.

"Q What color? A Gray.

"Q What color suit did he have? A I didn't see the color of the suit, because he wore an overcoat.

"Q Did he have an overcoat? A Yes.

"Q What color was the overcoat? A Brown with a red stripe in it.

"Q Did it have a belt in the back? A Yes.

"Q What kind of shoes did he have? A I don't know.

"Q Black or brown? A I don't know, I didn't look at them.

"BY OFFICER KEE:

"Q What did he work at; did he ever say? A No, he didn't say anything.

"BY MR. DINEEN:

"Q You say he was five feet four? A Something like

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that; he was smaller than I was.

"Q How tall are you? A Five-six.

"BY CAPTAIN BUSBY:

"Q How old is he? A Who?

"Q The fellow that did the shooting? A I don't know.

"Q Well, is he thirty-five, or twenty, or what? A No, he looks about between twenty-two and twenty-five, something like that.

"BY MR. DINEEN:

"Q What kind of a gun was it, black, white, or what?

A It was white, but I don't know what kind.

"Q Was it an automatic? A I don't know.

"Q Or was it a revolver? A I don't know. That's the first gun I seen.

"Q Didn't these fellows put up their hands at all?

A No.

"Q Didn't one fellow put up his hands, Houschok, the fellow who wasn't killed? A No.

"Q And wasn't he shot in the arm when he put up his hands?

A I don't know. I didn't see it.

(Mrs. Rothman brought into room.)

"MR. DINEEN: Is this your husband, Mrs. Rothman?

"MR. S. ROTHMAN: Yes.

"Q Was your wife living with you when this fellow Abe

Kapiloff boarded with you? A Yes, sir.

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"Q Then she knows Abe Kapiloff? A Yes, sir.

"Q How many rooms did you have there in Stanton Street?

A Two."

THE COURT: Is the District Attorney, with the consent of counsel,- and do not attempt to do it except with their consent,- is the District Attorney able to explain about names that are used here? That is, Rothman and Rosenwasser. Now, confer with counsel for the defense before you answer my question.

MR. MC DONALD: Well, counsel say that where the name Rothman is used, it was used by the defendant Rosenwasser; that he sometimes went under his mother's maiden name, Rothman.

THE COURT: His mother's maiden name was Rothman?

MR. MC DONALD: Yes, sir.

THE COURT: And was his wife known as Mrs. Rothman or Mrs. Rosenwasser?

MR. SHERIDAN: She was known as Mrs. Rothman, I believe.

THE COURT: Well, Rothman is the name of the defendant Rosenwasser, where it appears in that examination?

MR. MC DONALD: Yes, sir.

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MR. ROSALSKY: If your Honor please, the defendant was known under the name of Rothman, and his wife was known under the name of Rothman. The defendant was married under

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that name.

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MR. MC DONALD: I find, sir, that there is something
else.

BY MR. MCDONALD:

Q Now, afterwards, the defendant was taken to the House of
Detention, was he not? A Yes.

Q And he was confronted by whom? A Sevak and Houschok.

Q And was something said to Sevak in the presence of the
defendant Rosenwasser? A A statement was taken from Sevak and
Rosenwasser was present at the time.

Q And were questions afterwards put to the defendant?

A Yes, sir; by Mr. Dineen.

THE COURT: Then read the questions of Mr. Dineen
and the defendant's answers, and nothing else.

THE WITNESS: (Continuing reading)

"BY MR. DINEEN:

"Q You heard this man deny everything you said about him?

A Yes, sir; I heard. He's a liar. Do you want him to
tell the truth? You know, he won't tell you the truth.

"Q Well, how do I know that you are telling the truth
about his connection with it? A Well, if you get the
fellow Abe Kapiloff, he knows him.

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"Q Does he know Abe Kaliloff? A No, he don't know him
by name.

"Q You heard that other man, Houschok, didn't you?

A Yes, sir.

"Q He said that Sevak remained there until the gun was drawn out and the command 'Hands up' was given? A He don't remember himself; he was excited at the time. He don't remember.

"Q He told everything else, and he remembered you.

A Well, he remembered me because he seen me a few times.

"Q And you said this man Sevak left a few minutes before the gun was drawn out? A Yes, sir.

"Q And Sevak and Houschok say that Sevak remained there until the gun was taken out? A Yes, sir.

"Q You say that is not true? A That is not true.

"Q But you say that je knew all about it and told you to come up there? A Yes, sir.

"Q Didn't you tell me that Sevak knew you for eight months, when I examined you up in the station house? A Not for eight months.

"Q Well, didn't you tell me that he knew that you were out of work for eight months? A Oh, yes; but he didn't know me for eight months.

"Q How did he know you were out of work for eight months? A I told him. I lived in the Polish place where he keeps the restaurant, I stayed up there for two weeks.

"Q Was he ever up in your house before? A Before the shooting? Once.

"Q Didn't you hear him say that he was never up there before? A I heard him say it.

"Q Didn't you hear him say that he had to get the address from you? A He didn't get it from me; he was up before in my house.

"Q Did he know your wife before? A Yes, sir.

"Q Did he know your sister? A I don't know. No, he didn't know her from Europe; maybe he seen her here.

"Q Is your father in this country? A Yes, sir.

"Q And is your sister living over with your father?
A I don't know where she lives.

"Q Well, she was living over with your father before the shooting? A She was living with my grandmother.

"Q Does your father live with your grandmother? A I don't think so; I don't know.

"Q Is that your father's mother? A My mother's mother.

"Q What is the name of the other fellow, who did the shooting? A I don't know.

"Q Well, didn't Abie introduce him to you? A No.

"Q Didn't you call him by some nickname? A No, I didn't call him no name.

"Q Didn't he say, "Here's so and so; he's going to be in the deal with us"? A He told me he is going to be in the deal, but he didn't tell me his name."

THE COURT: Anything further from this witness?

MR. MC DONALD: That is all, sir.

THE COURT: Any cross examination?

MR. ROSALSKY: No, sir.

THE COURT: Gentlemen, we will suspend until tomorrow morning at half past ten o'clock.

(Whereupon, the Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case to tomorrow morning, Thursday, June 23rd, 1931, at ten-thirty o'clock.)

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TRIAL RESUMED.

New York, June 23rd, 1921.

ABRAHAM SMOLEV, of 311 Broome Street, a
witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are employed by the State Bank? A Yes, sir.

Q And where are you employed? A In the foreign department.

Q And the State Bank is where? A On Grand Street corner of
Clinton.

Q Now, did you have a depositor there by the name of
Jacob Mazzura? A Yes, sir.

Q Did you keep those books? A Yes, sir.

Q At least that part of the books containing the account of
Jacob Mazzura? A Yes, sir, we keep ledgers of the accounts.
And did

Q ~~And~~ you keep the ledger containing the account of
Jacob Mazzura? A Yes, sir.

Q Have you got a transcript of the account from that
ledger, of Jacob Mazzura? A Yes, sir.

Q Have you got it with you? A Yes, sir.

Q Is it a correct transcript? A Yes, sir.

MR. ROSALSKY: It is conceded that Jacob Mazzura.

THE COURT: Do you concede that, on the 29th day of
January, 1921, Jacob Mazzura, the deceased, drew from the

State Bank in the County of New York, the sum shown upon that transcript? *

MR. ROSALSKY: Yes, sir.

THE COURT: Is that what you want, Mr. District Attorney?

MR. McDONALD: Yes, sir.

THE COURT: What was the amount?

MR. McDONALD: \$1,035.40, thereby closing out his account at the State Bank.

BY THE COURT:

Q Thereby closing out his account in that bank? A Yes, sir.

X MR. McDONALD: Now, as to Wasil Hoochak, if your Honor please, is also a concession made?

THE COURT: Now, is the same concession made as to the money withdrawn by the man Wasil Hoochak, \$2,018.15, by which check or draft the account of said Hoochak was closed at the State Bank?

MR. ROSALSKY: Yes, sir.

THE COURT: Now, gentlemen, those concessions have the same effect and value as though the witness had testified to those facts. Counsel for the defense very considerably makes the concession that he has made, to save time.

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ANDREW SIVAK, of 253 Houston Street, a witness

called on behalf of the People, being duly sworn, and
examined through the Official Interpreter, Mr. Rosenthal,
testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q How long have you lived at 253 Houston Street? A About
five or six months.

Q Do you mean five or six months before the 19th day of
January of this year? A I mean, before that happened.

Q What do you work at? A I was working at a fur shop on
Broad Street.

Q And when did you work there? A I worked there about
eight months.

Q When did you leave that place of employment? A I left
that work when I was up to go back to Russia.

Q And how was it that you made up your mind to go back to
Russia? A I remember it was the fifteenth of the month; I don't
know the exact date, but that it was.

Q And the shop where you worked, where was it? A On
Broad Street.

Q What was the name of the shop?

A Fur shop -- No, it was a fur shop -- it was a fur shop -- and I
don't know the name.

Q Have you any friends in Russia? A Yes, I know Yiddish.

Q Do you know any more? A (No more).

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MR. McDONALD: Come down from there, and look around the court room.

A Yes, I see him. There he is (indicating the defendant).

Q How long do you know the defendant as Yidlich or Yiddle?

THE COURT: I will call him Yidlich, as he has been called heretofore in this case.

A The first time I saw him on Friday, in the restaurant.

Q Or Friday, when? A The Friday before the day when that happened.

Q About what time was it that you saw Yiddle that day?

A It was in the evening. I don't know exactly the hour.

Q Well, about what is it? A I believe it was about five or five or six o'clock, about that time.

Q Saw anybody in the restaurant besides yourself and Yidlich at the time that you saw him, on the 28th day of January?

A Oh, there were a lot of customers, who were having their meals there.

Q Did you know any of them? A There was one, Simon, and the name of the restaurant, and others unknown to me.

Q Did you see David Hershman there? A Yes, he was there.

Q Where was he? A In the restaurant.

THE COURT: Andrew Olvak, in the course of this trial, certain questions have been made, indicating that you were present at the time before the time that Jacob Hershman was killed.

Tell him that, Mr. Interpreter.

(The Interpreter translates the Court's statement to the witness).

THE COURT: It appears to the Court that during the progress of this trial, you may be charged by the defendant and his counsel with being an accomplice in the killing of Jacob Mazzura. It may further be charged by the defendant and his counsel, and possibly by the People, that you took some part in attempted robbery of Jacob Mazzura.

I wish, therefore, to advise you, and to have you thoroughly understand, certain rights which are yours in this trial.

You may decline or refuse to answer any question that may be put to you, but, if you do refuse, your refusal must be upon the ground that an answer would tend to incriminate and degrade you. And you have no right to refuse to answer any question on any other ground, but you may refuse to answer any question, upon the ground that an answer would tend to incriminate and degrade you. Do you understand what the Court has said to you?

THE WITNESS: I understood.

THE COURT: Now, having been so advised, you may testify, or not testify, as you see fit.

THE WITNESS: I desire to be a witness here.

THE COURT: Proceed, Mr. District Attorney.

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BY MR. McDONALD:

Q How long did you know Wasil Hoochak? A Now, about two years or more.

Q Did you know him in New York? A Yes, sir.

Q Did you see him frequently during those two years?

A I have known him by reputation quite well, because he happens to come from a village not far from mine. We come from the same district, in which there is only one church. My village has no church, and his village has one, and so we used to go to the same church.

Q Did you know him in the old country? A Why, I did know him, but he is so much older than I am. At that time I was a boy.

THE COURT: What language are you speaking now to this witness, Mr. Interpreter?

THE INTERPRETER: Pure Russian.

THE COURT: Is that the language that you spoke to the last witness, Hoochak?

THE INTERPRETER: Yes, sir.

BY MR. McDONALD:

Q Did you see Hoochak at any time on Friday, the 28th of January? A Yes, I saw him.

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Q Where was Hoochak when you first saw him on the morning of the 28th of January, Friday? A We met at the restaurant.

Q And were you talking to him when you met him at the

restaurant? A Yes, sir.

Q What restaurant do you mean? A On 5th Street.

Q What time was it, about, that you met Hoochak? A About nine o'clock.

Q Was anyone with Hoochak? A There were several customers there, but they were unknown to me. I only knew Hoochak.

Q Did you talk to Hoochak? A Yes, sir.

Q Did you go any place? A Yes, sir, we went to a doctor.

BY THE COURT:

Q What kind of a doctor? A A doctor who fixes the teeth. He lived on 10th Street.

BY MR. McDONALD:

Q And who was treated by this dentist who lived on 10th Street? A Hoochak.

Q Now, then, about what time was it that you went to the dentist? A About ten or a little before ten.

Q Did you go any other place with Hoochak? A From the doctor's we went to Jacob's house.

Q Jacob who? A I don't know his family name.

Q Have you heard his name since the 29th of January?

A I can't remember names, because I am illiterate. I can't read or write.

Q Was it Mazzura? A Yes, sir.

Q How long did you know Jacob Mazzura? A I didn't know Jacob Mazzura. I only got acquainted with him through Hoochak, at

a time when we all decided to go back to Russia together.

Q Well, did you see Jacob between the time you decided to go to Europe and Friday, the 28th of January? A He was a working man, and I couldn't see him often, because he was working. And I couldn't see him often.

Q When you and Hoochak went to Jacob's house, how long did you remain in Jacob's house? A Not very long.

Q Did you leave the house then? A We three then went to the bank.

Q What bank? A I don't know the name of the bank.

Q Well, what happened? A And then, on Saturday, after the bank, we went to Yiddle's house.

Q Now, when you went to the bank on Friday, did anybody draw any money out of the bank? A Hoochak drew money, but Mazzura didn't. I couldn't even swear that this was on Friday or on Thursday.

Q Well, you only went with Hoochak and Mazzura once to the bank, didn't you -- question withdrawn. How many times did you go to a bank with Hoochak and Mazzura? A Twice; once with Hoochak and once with Mazzura.

Q Do you mean, when you say once with Hoochak, you mean that you went once with Hoochak and Mazzura, when only Hoochak drew money from the bank? A Yes.

Q Now, then, the second time you went to the bank you went with Hoochak and Mazzura, did you? A Yes.

Q And the second time that you went to the bank, who drew the money from the bank? A The second time, Mazzura drew his money.

Q Was that the day following the day that Hoochak took the money out of the bank? A It was the following day.

Q Do you know how much Hoochak drew from the bank? A He said that he drew out \$2,000. I myself didn't see it.

Q Do you know how much Mazzura drew from the bank? A He Mazzura, also said that he had about \$2,000., but I didn't see it.

Q Do you mean by that, that you didn't count it?

MR. ROSALSKY: One moment. If your Honor please, I object to the District Attorney leading the witness.

THE COURT: Yes, Mr. McDonald, you must not lead the witness, although I understand, of course, that it is difficult for you to examine him, without leading, but try to refrain from leading.

MR. McDONALD: Very good, sir.

BY MR. McDONALD:

Q Did you handle the money? A Whose money?

Q Did you take hold of the money at any time, when it was passed over to Hoochak, when he drew his money at the bank?

A No, I didn't count any money.

Q Did you see the clerk hand over money to Hoochak? A No, I wasn't near enough to see.

Q Where did you go after the money was drawn by Hoochak;

after you left the bank, where did you go? A You mean the first time? *

Q Yes, the first day, Friday the twenty-eighth. A From the bank we went to the agent who was arranging for our passage to Europe.

Q Where is the agent that you went to? A On 8th Street.

Q Did you pay anything for, or engage any passage, at that agent's place of business? A \$10. I paid on account.

Q On account of your passage, your ticket, I mean? A I have the bill here.

Q Do you know where the -- do you know the name of the concern? A I don't remember the name.

MR. McDONALD: May we have this marked for identification, sir?

THE COURT: Yes.

(It is marked People's Exhibit 6 for Identification).

Q So that, on Friday, you went over to this place on 8th Street, and paid \$10.? A No, it was several days before that, that I paid the money.

Q Where did you go, after you left the bank with Hoochak, the day that Hoochak drew the money out of the bank? A We took a walk, and he went home and I went home.

Q Did Mazzura go home, too, as far as you know? A I don't know whether Mazzura went home. I left them when I went home.

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Q Now, then, did you see either Hoochak or Mazzura, the same day that Hoochak drew the money out of the bank? A We went around on the streets, and we bought several things, and then we went home.

Q You and who went home? A I went home alone.

Q Well, you say "We bought several things." Whom? / Do you mean when you say that? A I bought two shirts, and Mazzura bought material for some clothing, and Hoochak also bought some cloth, some materials.

BY THE COURT:

Q Did you only buy two shirts? A I also bought a winter coat.

Q On the same day that you went out with Mazzura and Hoochak? A It seems to me it was the same day.

BY MR. McDONALD:

Q Now, you speak a little bit of English, don't you?

A I know the most ordinary words, like bread and water, and such words.

Q How long have you been in this country? A About eight years.

Q And when Mazzura and Hoochak wanted these goods, was it you that asked for them? A No, they didn't need my help at all. They could do it for themselves.

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Q Now, after those goods, or things, were bought on the same day, as you think, you went home; is that right? A Yes.

Q Home, to your own house ? A I went to my house.

Q By the way, what did Hoochak do with the money he took from the bank? A I didn't notice.

Q Well, did you see where he placed it? A No, sir.

Q Did you ask him where he placed it? A No, sir.

Q How long did you remain with Hoochak on Friday, the day that Hoochak took the money out of the bank? A About two or three hours.

Q What time did you leave your house on that day? A Well, I can't tell you exactly. I went out, and came back again, and took a walk with some other fellows.

Q Did you go into the restaurant on 5th Street? A Yes, sir.

Q About what time was it that you went there? A About four or five o'clock.

Q Now, you have told us that you saw Hoochak there; is that so? A Yes, sir, I found him in the restaurant.

Q Did you meet Hoochak there by appointment? A Well, we said before that we would meet there for supper, because we eat supper there.

Q Now, did you see anybody else there? A Yes, sir, there were customers there. They were having their supper.

Q Did you see the defendant there? A When I came there, I found him in the restaurant.

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Q How did you know that this man was called Yiddle (indicating the defendant)? A He said that his sister came from the old

country, and would come to his house, the next day, and he wanted us to come over, and then I asked him what his name was, and he said his name was Yiddle, and he gave me his address.

Q By the way, had you told anybody about the fact that you and these two other men were going to Europe? A No, I didn't tell anybody about it.

Q But there was no secret in it; was there?

MR. ROSALSKY: I object to it, I object to the form of the question.

THE COURT: Objection sustained.

BY MR. McDONALD: Q You had kept it quiet, the fact that you were going to Europe; had you?

MR. SHERIDAN: I object to the form of the question.

THE COURT: Sustained.

BY MR. McDONALD:

Q Do you know how it was that this man, who called himself Yiddle, came over to you and said something about his sister?

MR. SHERIDAN: If your Honor please, that question is objectionable in form; it calls for a conclusion of the witness.

THE COURT: I will allow it.

MR. SHERIDAN: Exception.

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THE INTERPRETER: He says, "Mr. Interpreter, please tell the Court and jury that I don't know anything about that. I don't know how he came to tell about his ~~ix~~ sister."

I don't know anything about it."

BY MR. McDONALD:

Q Now, just tell us what Yiddle said? A When we were in the restaurant, Hoochak was sittin at one table, and there was no room at that table, and Yiddle came up, and he said, "Well, you are going to Russia, aren't you?" He said, "Then come to my house tomorrow; tomorrow my sister will be at my house, and my sister has just arrived from that part of Russia where you are going."

And, on Saturday, we went from the restaurant to the bank, and then we went in his house.

We came to his house. He wasn't at home, only his wife was at home. She gave us chairs, and those two sat down.

Q Who sat down? A Hoochak and Mazzura, and I remained standing. We inquired about the sister of the husband of the woman. She said, "They went somewhere." We asked her to go after them, and she went, and Hoochak was then playing with a child that remained in the room. I had no watch with me, and there may have passed about fifteen or twenty minutes -- I don't know exactly how long, -- and she came back and a minute or two after the wife had returned, he came, with two murderers.

MR. FO SALSKY: I move to strike that out.

THE COURT: Yes. That seems to be a favorite expression of the Russians. Strike it out, and the jury will disregard it.

A (continued) And then she said, "I have got to go to the doctor's with the child," and she went to the doctor's, and Yiddle said, "I think I ought to make tea for you," and he put the kettle on the gas stove, and he was standing by the gas stove, and he was talking to us.

While I was standing there, I saw one of them, one of the men, who was standing in the corner, take out a revolver. As soon as I saw the revolver, I opened the door and ran away. I heard them say "Hands up", and then I ran away.

Q Now, when Yiddle was talking to you, have you told us all that he said on Friday night? A I told you all he said to us.

Q Now, do you remember his saying that his place in Europe, his home in Europe, was not very far from where you were going to?

A I don't remember that.

BY THE COURT:

Q Did you have any money on your person, on the day you went to Yiddle's house? A About \$25.

Did you have any money any place else? A My money was at my brother's. My brother had my money.

BY MR. McDONALD:

Q By the way, you and your brother were in a little partnership, in a fur store, weren't you? A We were working together.

Q Well, were you in business for yourselves? A Yes, sir, we were working together for a long time, and then the ~~business~~ boss sold out a small place, and we bought it.

Q And where was that place? A 41 Bleecker Street.

Q And what kind of business was it? A Where they sew together small pieces of fur, for capes, and so on.

Q Did you and your brother afterwards sell that business?

A Yes, sir.

Q And the proceeds of that business, who kept them?

The money that you received in the course of that business?

A My brother.

Q And did he keep the money with your consent? A Yes, sir.

I want to tell the jurors, I want them to understand that I am a man who is illiterate, and can't read and write. I don't care to handle the money, but leave it to my brother, who knows more than I do.

Q You don't write or read, do you? A No, sir.

Q You don't read or write Russian? A When I came to this country, I didn't even know the alphabet, but here I learned the alphabet, but I can't read.

Q What alphabet do you mean? A Russian.

Q About what time was it you left the restaurant on Friday night? A About nine or half past nine.

Q Did you leave with anyone? A No, I left with Hoochak, but he left for his house and I left for ~~my~~ mine. 9696

Q Did you meet Hoochak again on the following morning?

A Yes, in the 5th Street restaurant.

Q The restaurant on 5th Street? A Yes.

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Q Now, about what time was it you met Hoochak on Saturday.

A About eight or half past eight in the morning; I had no watch and I couldn't tell you the time, the exact time.

Q Did you remain in the restaurant any particular length of time? A We had our meal there, but didn't stay there very long and left.

Q Where did you go? A To the doctor's, to the dentist's.

Q And then where did you go? A From there we went to Mazzura's house.

Q Did you then meet Mazzura? A Yes, sir.

Q Where did you go then? After you left Mazzura? Did you leave Mazzura's house, and did you afterwards meet him again?

A Yes. Mazzura said to me that he wanted me to go with him to the bank, because he was afraid to draw out the money alone.

Q And then you went to the bank with him? A Yes, sir.

Q And was that the same bank you went to with Hoochak? A Yes.

Q And did you see how much money Mazzura withdrew from the bank? A He told me \$2,000. I didn't see it.

Q After the money was withdrawn by Mazzura, did you go any place? A After he took the money out, we went to a restaurant on 4th Street.

Q And then what did you do? A Then we went to Yiddle's house.

Q By the way, where did you get the address of Yiddle's house? A He gave it to me.

Q Did he write it down? A Yes, he wrote it down.

Q Well, how did you get to the house at 123 Stanton Street?

A We asked people on the street where such a number was, and they told us.

Q What do you mean by that? Just tell us what you mean by that, "We asked people on the street where such a number was"? What do you mean by that? A I showed the people the piece of paper, on which the address was written.

Q I see. Well, now, all right. Did you finally get to the home of Yiddle? A Yes, sir.

Q Well, what happened? A We three went into the house, and we didn't find him in the house.

Q Now what part of the house did you go to? A Upstairs.

Q Did you talk to -- did you go into any room where Yiddle came in after you? A Yes, sir, we all went into the room.

Q Now, that room that you went into, was there anybody in it? A Yes, his wife.

Q Did you talk to this lady that you saw in the room?

A Yes, sir.

Q And after you talked to her, what did she do? A Then she went to get them.

Q You mean by that, that she left the room in which you were with Mazzura and Hoochak? A Yes, sir.

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Q There was also a child there, was there not? A Yes, sir; and Hoochack played with the child while the woman was gone.

Q And how long did she remain away? A About fifteen or twenty minutes, I can't tell you exactly.

Q And when she came back, did she come back alone? A She came alone, but about a minute or two later the defendant came, with two men.

Q Now, when she came back did she say anything to you? Just answer that question yes or no. A Yes.

Q And you say, a minute or two thereafter, the defendant Yiddle came in? A Yes.

Q And two other fellows were with him? A Yes, sir.

Q Did you know either of those two fellows that came in with Yiddle? A No, sir.

Q When Yiddle came in with those two men, did Yiddle say anything? A Yes, he did.

Q What did Yiddle say, or what did either of these two men say? A First, he said to the woman, "Go quickly to the doctor." And then he said to us, "I think I will put on the kettle and prepare tea for you."

Q Was anything else said? A Then he said something -- I don't remember what it was, I don't remember ~~oo~~ and then I saw the revolver. I heard the men there say "Hands up", and I got out.

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Q Now, before you saw the revolver had you, or either of you three men, asked where his sister was? A Yes, sir, we did ask him.

Q And what did he say? A He said "She is now walking

with her father, and she will be here very soon. "

Q Where was the man that you saw take out the pistol? A In that corner (illustrating).

Q How far away from him were you and Hoochak and Mazzura?

A It couldn't be far, because the room is a small room.

Q By the way, how many chairs are there in that room?

A I saw only two chairs, which the woman had given us to sit down on.

Q And Mazzura and Hoochak sat down? A Yes, sir.

Q And you remained standing then? A Yes, sir, because there was no chair to sit down.

Q How soon after you left the room was it that you saw ~~these~~ one of these three men pull out the pistol? A It seemed to me very soon after the woman left, that I saw the revolver.

Q Now, how was this expression used, what were the words used? Were the words "Hands up" used? A I heard distinctly in the Russian language, that words were used in the Russian language, "Hands up". But in the English language I couldn't understand.

Q Where was Yiddle at the time you heard the words "Hands up" in Russian? A He stood there at the wall and also hollered "Hands up", in Russian.

53 / Q And how soon after that -- withdrawn. Now, when the expression "Hands up" was used, and you saw that gun, what did you do? A With all my force, I got hold of the knob of the

door, and I don't know whether I broke it or not, and I ran out.

Q This man that you saw pull out the gun, where did he pull it from? A I didn't see where he took it from. I only noticed it when it was already in his hand.

Q Now, when he had it in his hand, did he have it pointed at anyone? A Can I have a pencil or something to point?

THE COURT: Yes, you may have this mallet. Let the mallet's end be considered the handle of the revolver. Now illustrate).

← 4A I saw the handle of the revolver, but not the barrel.

BY MR. McDONALD:

Q Now show us just exactly what was done with it then?

A I didn't see any more. The moment I saw that I grabbed the knob of the door, and ran out, and I heard the outcry, "Hands up."

Q Did you hear any shots fired? A I was on the steps going down when I heard the shots.

BY THE COURT:

Q Where did you go? A I ran to the street.

Q What did you do? A Three times I called out "Help" "Murder."

Q Did anybody come? A Nobody was there.

Q Did you go back to the room where your friends were?

A No, I was afraid.

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Q Did you look for a policeman? A Yes, sir; and I found one on Houston Street.

Q What did you do when you found him? A I told him, go quickly to that house. There is a murder being committed, and he looked at me, and put his hands to his back (illustrating), and walked on.

Q Then what did you do? A I was frightened, and when I saw that nobody wants to help, I went to the restaurant.

2 Q What restaurant? A On 5th Street, the same restaurant where he had invited us to come to his house.

BY MR. McDONALD:

Q Did you tell anybody in the restaurant what had happened? A I made an outcry there in the restaurant, and told everyone who was there.

Q Did any of them go back to the house with you, the house in Stanton Street? A They didn't believe me right away, and they said "Sit down and tell us all about it," and I sat down, and told them the whole story.

Q Did you ever go back to 123 Stanton Street? A Then Hoochak arrived.

Q At the restaurant? A Yes, sir, he came to the restaurant with the policeman.

Q And then you were taken to the station house, were you?

A Yes, sir.

Q And then, afterwards, on that same day, or Sunday morning, you made the statement to Mr. Dineen, the Assistant District Attorney? A I was very much frightened. I didn't know what I said.

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Q Well, did you make a statement to Mr. Dineen?

A (no answer)

BY THE COURT:

Q Did you say something to Mr. Dineen? Do you know Mr. Dineen?

A Tell me what I said, and then I may remember.

Q Did you say anything, on that night or the following morning, to a man named Dineen, an Assistant District Attorney?

A I remember I was asked questions and I answered.

BY MR. McDONALD:

Q By the way, did you loan any amount of money to Hoochak?

A Yes.

Q When was that? A It was on Saturday.

Q How much did you loan him? A \$10.

Q And did he tell you why he wanted the loan of \$10 from you? A Yes, sir, he did.

Q Now why was it that you loaned that money to him?

MR. SHERIDAN: Just one moment. I object to that as immaterial, irrelevant and incompetent.

THE COURT: I cannot, for the life of me, see any materiality in that question.

MR. McDONALD: Except that the inference can be properly drawn, as to why Hoochak told Sivak, the witness, he wanted the loan of the money, because his own money was sewn up in his coat pocket. That calls for Hoochak telling Sivak that he had his own money sewed up on his clothing, and

53/54 couldn't get at it.

THE COURT: Well, I will allow the question. Objection overruled.

MR. SHERIDAN: Exception.

A He said to me that his money was so concealed that he could not get near it.

BY THE COURT:

Q That is, Hoochak said about his own money, that it was so concealed that he could not get at it? A Yes, sir.

BY MR. McDONALD:

Q Did you tell Yiddle anything about either Mazzura or Hoochak having drawn any money from the bank? A No, I didn't tell him anything.

Q Did you have any other conversation with Yiddle, on Friday night, except that which you have just told us about?

A Outside of that conversation, I had no conversation with him at all.

Q You never talked with Yiddle before that night; is that it? A No, I didn't.

Q Did you tell anyone about Hoochak and Mazzura having drawn money from the State Bank? A I didn't tell anybody.

(MR. McDONALD: He is your witness.

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CROSS EXAMINATION BY MR. SHERIDAN:

Q How old are you? A 31.

Q How long are you in this country? A Eight years.

Q How long are you in New York City? A About two and a half years.

Q Kindly tell the Court and jury the exact language that you used to the policeman, at the corner of Houston Street, when you informed him that a murder had been committed? A I spoke to him in Russian.

Q Did you speak to him in English? A I couldn't tell him that in English. I didn't know how. I told him in Russian, "Go quickly, a murder is ~~being~~ being committed."

Q Did you see that policeman in court yesterday or today, to whom you told in Russian that a murder had been committed? A I can't recognize him. I saw him only once.

Q Do you remember being asked this question --

MR. McDONALD: Now, may it appear upon the record, sir, that Mr. Sheridan is reading from a statement given on January 30th, 1921, given to Mr. Dineen, through an interpreter, a stand keeper, at 5th Street and Second Avenue, Sam Silver, which I gave to Mr. Sheridan at the close of my examination, sir?

THE COURT: Very well.

BY MR. SHERIDAN:

Q Did you make this answer to this question: "Q Well, what happened? A I seen them handling the gun, and I stood by the door, and, as soon as I saw him pull the gun I opened the

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door and ran out on the street, and began to holler. We went out in the street and began to holler, looking for a policeman, and I found a policeman, and I told him to go over there, ~~there~~ was a shooting."

THE COURT: Just one minute. I have the highest admiration for our interpreter, but the man is not born who can carry in his head all that you have read. Let him have the paper from which you read.

MR. SHERIDAN: I will, sir, as soon as I have finished.

BY MR. SHERIDAN:

Q "And the policeman put his hands behind his back, and was going slowly, and he went upstairs, and then I came upstairs with the same policeman, and they took us all in here, and that's all I know."

MR. SHERIDAN: Now, kindly read that again to him, Mr. Interpreter, and ask him whether he made that answer.

THE COURT: One moment, the interpreter knows what to ask him.

Q (the question is repeated by the stenographer). A I can't remember that I said that.

Q Did you work for a man who kept a fur shop in Bleecker Street? A Yes, sir.

Q What is the name of the man who kept the shop? A I know one name is Sues. I don't know the other name.

Q How long did you work for him? A About four months.

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Q And you don't know his name? A No. I know he is a Hebrew.

Q Do you know the number of the house where the business was carried on? A 41.

Q 41? A Yes.

Q Were you working for six weeks prior to January 29th, 1921? A No, I didn't work from the time when we decided to go back to Russia.

Q For how long a period of time before the 29th of January 1921, were you unemployed? A I can't remember. Three or four weeks; perhaps more.

Q Well, might it not have been six weeks? A I can't remember.

Q How long did you work for this man that kept the fur shop in Bleecker Street? A For whom?

Q For the man whose name you can't remember.

MR. McDONALD: He said the name was Sues.

A As I said before, about four months.

Q How long before the 29th of January, 1921, was it when you stopped working for this man at 41 Bleecker Street?

A I can't remember that.

Q How long were you in business with your brother?

A About three months. Then it got slow, and we sold.

Q You were in business with your brother for three months?

A About three months.

Q Did you say, in your direct examination, that you had been employed by a man at 41 Bleecker Street, first giving the name of Fishman, and then afterwards changing it to Sues? And say that you were employed there for a period of eight months?

A That's right. I said it, and I meant it, that for this man I worked for four months, and, when he had no work for me, I worked in the same building for others.

Q Now, give me the name of anyone else in that building that you worked for, during that period? A The first name is London.

Q How long did you work for that man? A Maybe a month or two altogether.

Q Give me the name of anybody else that you worked for? A Also a Hebrew in the same business. I don't remember his name.

Q Do you remember the name of the Hebrew? A Two I know; the third one I don't know.

Q What floor in the building did this Hebrew occupy? A The first time I worked right on the top floor.

Q What salary did you receive? A Sometimes four, sometimes five or six or seven dollars a day.

Q Are you married or single? A My wife died. I lived one year with my wife, and she died.

Q Did she die in this country? A No, she died in Russia.

Q Have you ever been convicted of a crime? A No, never.

Q In Russia? A No.

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Q What is the name of your brother? A Nicholas.

Q Is he in New York now? A Yes, sir.

Q And how much did you pay for the business? A I don't know. I left it all to my brother, because I am illiterate, and he knows how to handle the business.

Q What bank did you have your money in, before you went into business with your brother? A I didn't keep my money in the bank, I had it with my brother.

Q Is your brother single or married? A Single.

Q How old is your brother? A He is younger than I am. I don't know exactly how old is he.

Q About how old is he? A Maybe twentyfour or twentyfive.

Q You never kept your money in any bank? A I never had money in the bank. I always had it with my brother, and when necessary, I sent it to my relatives in Russia, who were suffering.

Q How much money did you have with your brother? A For my share, I had \$500.

Q When did you have \$500.? When you went into business with your brother? A No, when we gave up business, when we sold out.

Q After you sold out, how many weeks were you out of work? A I can't tell you exactly how many weeks it was.

Q Well, was it six weeks? A Maybe it was six weeks.

Q You and your brother sold the business? A Yes, sir.

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Q Did your name appear on the door or any part of the business? A The name of the preceding fellow in that little place remained on the door.

Q Give me the name of the person who purchased the business from you and your brother? A A Hebrew.

Q What is his name? A I forget his name.

Q How much did you sell the business for? A I can't tell you.

BY THE COURT:

Q Is the man still in business in the same place? A I can't tell you that.

Q Did you see the man to whom you sold the business within two months before January 29th, 1921? A I didn't go there.

BY MRQ SHERIDAN:

Q You don't know how much you sold the business for?

A I left it all to my brother, and he told me my share is \$500.

Q Did you have that \$500. in your hands? A He told me, "As soon as you want to go home, I'll give you the money."

Q When did you make up your mind to go home? A It was the 15th, I know, but I don't know what month.

Q The fifteenth of January? A It was on the 15th of the month in which that thing happened.

Q You were to sail on the 15th of February, isn't that a fact? A I know it was on the 15th. I don't the name of the month.

(THE COURT: I don't think he understands.

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BY THE COURT:

Q What day did you intend to sail from New York? A The 15th.

Q Of what month? A I am illiterate. I don't know the names, but I think it was the month coming after that happened.

THE COURT: That would be February.

MR. SHERIDAN: Yes, sir, February.

Q Where did you work before you were employed in Bleecker Street? A On 42nd Street.

Q What place in 42nd Street? A Then I worked at 161.

Q How long did you work in 42nd Street? A That's the same business.

Q Well, what is the name of the business? A I worked around the cars.

Q How long did you work for that concern? A About a year.

Q Where did you work before that? A I worked in an ammunition factory at Hascall, New Jersey.

BY THE COURT:

Q How much did you get a day in the ammunition factory?

A Five or six dollars a day.

BY MR. SHERIDAN:

Q The money that you earned at Hascall, New Jersey, you put in the bank, didn't you? A No, I had it on my person.

Q How long did you work at Hascall, New Jersey? A More than a year.

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Q Didn't you put your money in a bank at Hascall, New Jersey? A No, I didn't.

Q The first time you saw this man Yiddle, was on Friday, January 28th, is that correct? A That was the first time.

Q That was the first time you spoke to him? A The first time.

Q And that is the first time that you saw him? A That was the first time.

Q You didn't know anything at all, either directly or indirectly, about this man, before Friday, January 28th?

A I didn't hear anything about him; I didn't know anything about him.

Q How long did you know Wasil Hoochak? A About two years or more.

Q Is he a relation of yours? A Yes, but very distant. So distant I can't figure it out.

Q When did Hoochak first tell you that he was going to Europe? A I can't remember.

Q About how long before January 28th? A About three weeks, as I can remember, we were talking about going to Russia.

Q You met him nearly every day in Kriner's restaurant, in 5th Street, is that correct? A Yes.

Q You spent a lot of your time in that restaurant in 5th Street, between First Avenue and Avenue A? A Not very frequently, but rather often.

Q Didn't you visit that restaurant at least once a day?

A No.

Q About how often would you visit that restaurant in a week? A Sometimes twice, sometimes three times, sometimes more often.

Q Sometimes you spent two or three hours of the day in that restaurant? A No.

Q Well, on Friday, January 28th, you went into that restaurant about four o'clock, didn't you? A Yes, about.

Q And it was about six o'clock, or between six and seven, when you had this conversation with the defendant Yiddle?

A I can't remember exactly the hour.

Q Was it about six o'clock? A Maybe yes, I can't tell you.

Q Was your brother living in New York City for at least one month before January 29th? A Yes, he was a working man, living in New York.

Q Where did he live? At what address? A On 3rd Street, either 213 or 214.

Q And you never told anybody, on Sunday morning, January 31st, that you were going to get money from your brother, did you?

THE COURT: That was two days after the commission of the crime?

MR. SHERIDAN: Yes, sir, but I will withdraw the question. It is rather complicated.

THE COURT: No, it is not complicated. I just wanted

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to fix the date, and you say it was two days after the crime.

Q When you were questioned, on Sunday morning, January 30th, 1921, did you tell anybody, on that day, that you were going to get money from your brother?

THE COURT: Do you mean, Mr. Sheridan, that he was going to get money on that day, the 31st?

MR. SHERIDAN: On any day.

THE COURT: It is rather ambiguous. I don't really know what you mean.

MR. SHERIDAN: Yes, perhaps it is.

Q When you were examined, on Sunday, January 30th, by the Deputy Assistant District Attorney, Mr. Dineen — A I remember somebody asked me questions, but I was so frightened that I don't remember what he asked me, and what I answered him.

Q Did you tell that man that your money was not in a bank? But that your brother was keeping the money for you? A Yes, I remember I said that.

Q Did you tell him how much money your brother had belonging to you? A I believe I said it.

Q Is your brother married or single? A Single.

Q Is he in New York at the present time? A Yes, sir.

Q Did you ever find out from him what bank it was that he had his money in? A I am illiterate, and I am not interested in that.

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BY THE COURT:

Q Do you know what bank your brother keeps his and your money in? A I don't know.

Q Did you ever go to a bank with your brother? A I did not.

Q Did your brother ever tell you where he kept his and your funds? A He didn't tell me.

BY MR. SHERIDAN:

Q Did your brother ever show you a bank book, and say "This is the amount of money we have in the bank"? A No, he never showed me one.

Q Where did you learn the alphabet in this country?

A A man taught me.

Q Didn't you go to a school for foreigners, studying English, in New York City? A I haven't the time. I came here to work, and I wanted to make as much money as possible.

BY THE COURT:

Q Why were you going back to Russia? A Because I wanted to see my father and mother, who are suffering very hard, at this time in Russia.

BY MR. SHERIDAN:

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Q Do you know Theodore Polinsk? A I don't know him.

Q Do you know Theodosi Polinik? A Yes, I know him.

Q Is he one of the owners of that restaurant? A There were many partners. I don't know whether he is a partner or not.

Q How long have you known that man? A Maybe two years.

Q Did you have your breakfast in the restaurant on many occasions? A Maybe I had my breakfast there, I don't remember.

Q Did you have your noonday meal in that restaurant, for a period of at least six weeks before January 29th? A Not every day.

Q Did you have your noonday meal sometimes in that restaurant? A Yes, sometimes.

Q Did you have your evening meal in that restaurant? A Sometimes.

Q And you never met Yiddle before January 29th — January 28th? A No, I didn't.

Q And you never saw him? A Never saw him.

Q You didn't even see the money that Hoochak drew out of the bank, did you? A I didn't see it.

Q He told you how much money he had? A Yes, he did.

Q Did you ever see Yiddle's wife, before Friday, June 28th?

THE COURT: Did he say on the 28th or the 29th, the day of the killing?

MR. SHERIDAN: Yes, sir, on the 29th.

Q Or on the 29th? A It seems to me I saw her once. I don't remember.

Q You saw Mrs. Rosenwasser on the night that you walked home from the restaurant with the defendant Yiddle, isn't that the fact? A No, I didn't see her.

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Q After the 29th of January, did you see ~~an~~ Abe Kepaloff?

Q Didn't you identify Abe Kepaloff as one of the three men that were in the apartment at 123 Stanton Street on January 29th? A No.

Q Don't you know that I am now referring to Abe Kepaloff?
A I don't know what you mean.

Q Did you ever see a young man, about sixteen years of age, in the House of Detention, or the District Attorney's office, after the 29th day of January? A I can't remember.

Q And did you walk home from Kriner's restaurant, in the early part of the week in which this murder happened, in company with the defendant Yiddle? A No.

Q Well, you went up to his house in Stanton Street, on that night, didn't you? A On what night?

Q The night you walked home with him. A No.

Q Didn't you say, a few minutes ago, that you saw Yiddle's wife before January 29th?

MR. McDONALD: He said he might have seen her.

MR. SHERIDAN: But I am cross-examining.

THE COURT: Well, but, if you are quoting his as testimony, quote it/exactly as you can.

MR. SHERIDAN: But I am trying to elicit the truth from the witness.

THE COURT: That is what everybody connected with the trial is trying to do, Mr. Sheridan; Don't arrogate that to yourself.

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MR. SHERIDAN: No, sir.

Q Now, did you say a few minutes ago, that you had seen, or might have seen, the defendant's wife, before January 17th?
A No, I didn't.

Q Did you ever tell this man (indicating the defendant) "Hire a taxicab, and put the belongings of these two foreigners in the cab, and ride away:"? A Never.

Q Did you ever say to him, "They have almost \$5,000. If you don't rob them, I'll get somebody else"? A No, that isn't true. I didn't say that.

Q Did you go into the house Number 123 Stanton Street before the 29th of January, 1921? Yes or no? A No.

Q Did you go into that house to see Mrs. Rosenwasser, Yiddle's wife? A No.

Q On Friday, January 28th, you didn't know this man (indicating the defendant)? A I didn't know him.

MR. SHERIDAN: Mrs. Rosenwasser. Call her in.

Q Did you see that woman? Do you know that woman (indicating)? A I saw her.

MR. McDONALD: May we have on the record who this lady is?

THE COURT: Sadie Rosenwasser, she says. That is sufficient. Now, step out, Madam.

BY MR. SHERIDAN:

Q Did you see that woman, three or four days before January

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29th? A No, I didn't see her.

Q Did you see her at her home? A No, I wasn't there.
I didn't see her.

Q So you didn't know Yiddle or his wife before January
28th or 29th? A No.

Q And how many people were in the restaurant when you had
your conversation with Yiddle? A I didn't count them.
I can't tell you how many.

Q About how many? A They were customers there.

Q How many were there? Five or eight? A Yes, there were
eight. I can't tell you exactly.

Q Can you count? A I know how to count, yes.

Q How many people were in the restaurant, that night?
A I don't know. About eight, I think.

Q During the past eight years, while you have been in this
country, have you learned to understand the English language
when it is spoken? A I tried very hard to understand fully
when they spoke, but I have a weak head, and I can't do it.

THE COURT: We will suspend here, gentlemen.

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

AFTER RECESS

A N D R E W S I V A K, his cross examination being continued, testified as follows:

CROSS EXAMINATION (continued) BY MR. SHERIDAN:

Q On Friday, January 28th, when you were in the restaurant, about how many people were in the restaurant at that time?

A Maybe seven or eight, more or less.

Q And how many people can be seated in that restaurant?

What is the capacity? A I haven't counted the seats. I can't tell you.

Q Well, give us the best of your judgment. A About thirty or forty, I believe.

Q About thirty or forty? A Yes, sir.

Q Where was Hoochak sitting? A At one of the tables.

Q Was anybody else seated at that table with Hoochak?

A I think, near him, there were other people sitting.

Q You were in that restaurant from four o'clock, that afternoon? A I couldn't tell you the exact time. I have no watch.

Q Well, what time is it not? A I don't know.

Q How long were you in the restaurant before Hoochak came into the restaurant? A We came there together.

Q Didn't you say in your direct examination, that you were in that restaurant about four o'clock in the afternoon? A I can't say the exact time.

Q. Did you use -- did you mention the word four o'clock before? A I don't remember.

Q Do you mean to tell this Court and jury that you don't know, in the English or Russian language, the difference between two o'clock in the afternoon and four o'clock in the afternoon?

A When I look at the clock, I think I can tell the time, but I am not quite sure, and I rely upon others to tell me what time it is.

Q. Look at that clock up there on the wall, and tell us what time it is. A. Two o'clock.

(The clock on the wall showed 3:10 P.M.).

Q. Now, then, what time was it that you were in that restaurant? A. I don't know what time it was.

Q. Was it in the afternoon? A. Oh, yes, it was near the evening.

Q. Q Have you got a watch with you now? A. No.

Q. What time was it when you saw Yiddle that night in the restaurant? A. I know it was evening.

Q. It was the evening? A. Yes, sir.

Q. Now, how long before you saw Yiddle, was it, when you entered the restaurant; was it an hour or two hours? A. I can't tell you, I don't know.

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Q. Do you mean to tell this Court and jury that you have no idea of time, or that you have no recollection of how long you were in the restaurant, before you spoke to Yiddle?

MR. McDONALD: I object to that question. It is a double question, and indefinite.

THE COURT: Will you modify the question, Mr. Sheridan?

MR. SHERIDAN: Yes, sir.

BY MR. SHERIDAN:

Q Have you any idea of time? A What do you mean?

Q Do you know when a half hour has elapsed, about, and when an hour has elapsed? A When I look at the clock, I can tell.

Q Can you count? A Yes, in Russian, I can.

Q You can count, can't you? A In the Russian language, I can.

Q And you know the difference between half an hour and an hour, don't you? A How can I tell that, if I am illiterate?

Q How can you tell that, if you are illiterate? A Yes.

Q Is that your answer? A Yes.

Q Can you tell the difference between half an hour and half a day? A Yes. Half a day, that means around between that time.

Q Can you tell the difference between half an hour and three hours? A Yes, when I look at the watch, I can tell exactly, but, without a watch, I am not sure.

Q Without a watch, you wouldn't tell the difference between half an hour and three hours, is that correct? A No, I am illiterate. I don't know.

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Q Did you tell Hoochak, on the 29th of January, "Don't leave

your money at home. You may be robbed. Sew it in your clothing."

A I didn't tell him that.

Q When you were in the restaurant, that night, January 28th, how did it happen that Yiddle spoke to you? A I really don't know why he did.

Q Well, will you kindly give me the exact words that were used by Yiddle, and were used by you, in the beginning of that conversation? A He didn't directly tell that to me. He told it to both of us, "Tomorrow, my sister will come to my house, and you will come up, and you will find out all about the old country where she comes from," and he gave me the address.

Q Where was Hoochak at the time? A He was sitting at a table.

Q At the same table with you? A No. I was sitting on one side of a little pathway, where the people passed, and he was sitting on the other side. We were on different sides of that aisle.

Q And how far were you from Hoochak? A About that distance (illustrating). I was sitting on one side, and he was sitting on the other side.

MR. SHERIDAN: Will you concede that the witness indicates about three feet?

MR. McDONALD: Yes.

BY MR. SHERIDAN:

Q Hoochak was sitting at one table? A Yes, sir.

Q And there is a pathway, about three feet wide? A Yes, sir.

Q And you were sitting at another table, is that correct?

A Yes, sir.

Q And Yiddle came up, and spoke to you and Hoochak, is that correct? A Yes.

Q Was he standing between where you were seated, and where Hoochak was seated? A Yes, sir.

Q And did he speak partly to you and partly to Hoochak?

A He spoke, and both could hear.

Q Was he standing between the two tables occupied by you and Hoochak? A About that.

Q Now, you remember very distinctly, that conversation, and where this man was standing; isn't that a fact? A I remember.

Q Did he come up and say, "Andrew, tomorrow, come up to my see my house and ~~my~~ sister. She is only a short time over from Europe"? A He spoke to both of us, and said we should come up to his house.

Q Well, how did he greet you? Did he call you "Gentlemen", "Misters", or did he call you Andrew? A ~~He didn't~~ He didn't mentioned "gentlemen", nor did he say "Andrew." He only said "Come up to my house tomorrow."

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Q He never invited you to his house before that night? A No.

Q You never spoke to that man before that Monday? A No, sir.

Q And you never spoke to that man, and told him of the fact that money had been withdrawn from the bank by Hoochak? A No.

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Q You didn't know if he had a sister at that time?

A I didn't know.

Q You didn't know anything about that man at all, before that Monday? A No.

Q And that man came into the restaurant, walked directly to where you and Hoochak were seated, and immediately made an offer for you and your friend to visit his home, on the following day; is that correct? A So it was.

Q He didn't hear any conversation that you and Hoochak had?

A How can I tell that?

Q Well, you saw him come in, you saw Yiddle come into the restaurant? A He was there.

Q You saw him when he came into the restaurant? A Why, he was there when we entered the restaurant.

Q Yes. Was he standing near your table? A Yes.

Q Did he come over to where you and Hoochak were sitting?

A Yes.

Q You and Hoochak were not talking, at that time, anything about your money? A I can't remember.

Q You and Hoochak were not talking about your proposed trip to Europe? A Yes, we were talking about it.

Q Are you illiterate? A I only know the Russian alphabet, which I have learned in this country.

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Q How long did this man Yiddle talk to you? ZA Several minutes.

Q Did you say to him "Who are you? We didn't send for you. Get out of here"? A Well, I wouldn't offend a man. I didn't know him.

Q He told you, in Russian, the address of his home; is that correct? A He wrote it down on a card.

Q And he gave you the card, didn't he? A Yes, sir.

Q And you put the card in your pocket? A Yes, sir.

Q And that was in the presence of Hoochak that he wrote this card? A Yes, sir.

Q And you put the card in your pocket? A Yes, sir.

Q Let me see the card. A I haven't got it now. I threw it away.

Q When did you throw it away? A When that man in the street, to whom I showed that card, showed me the house, and the ~~number~~ number.

Q The next day, when you took that card, you asked some man on the street where was the building; is that correct?

A Yes, sir.

Q Now, if Hoochak says that on Saturday, January 29th, you asked no man where that house was, is he telling the truth or not?

MR. McDONALD: I object to that.

THE COURT: Objection sustained.

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BY MR. SHELDON:

Q When you arrived at 113 S. 1st Street, on Saturday, January

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39th, did you, Hoochak and Jacob Mazzura, the three of you, enter the house at the same time? A The three entered the house together.

Q When you arrived at that house, 123 Stanton Street, did you say to Hoochak and Mazzura, "Stand here, while I go upstairs, to find the apartment"? A No, we three entered together. At the same time.

Q Now, did you come downstairs, and say "Come up, I found the apartment"? A No.

Q You have a good memory, haven't you? A Whatever I remember, I remember.

Q Have you got a good memory? *

MR. McDONALD: I object to that. Now, he may testify whether he thinks he has a good memory.

THE COURT: I will allow the question. I would hate to have it put to me, though.

MR. SHERIDAN: Well, some are gifted with a lapse of memory, sir.

A As much as you can expect from an illiterate man. I've got a good memory.

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Q Now, when you were questioned on January 30th, by Assistant District Attorney Bineen, did you tell him everything that happened on the previous day? A I don't remember what I said, and whether I said all I knew, because I was very much frightened.

Q Why were you frightened? A Because I was frightened from

that moment when I saw the revolver, and heard the shots.

Q Were you frightened because you thought you were going to be put in jail for the commission of a crime? A No, I wasn't afraid for that reason, because I hadn't done anything wrong.

Q Did you talk, in the House of Detention, to Hoochak, about all the facts and circumstances in this case? A No.

Q Did you ever speak one word to Hoochak, in the House of Detention, about this case? A One word, yes.

Q What was the word? A "That Jew tries to mix me up in this trouble."

Q What Jew? A The same Yiddle.

Q Yiddle? A Yes, sir.

Q From January 29th up until February 20th, before the arrest of Yiddle, did you talk to Hoochak about what happened on January 29th? A No.

Q Not a word? A Oh, we certainly spoke a whole lot about our own affairs.

Q About your own affairs? A Yes.

Q But I want to know whether you spoke about this case?

A Before the arrest of Yiddle, I spoke a whole lot to Hoochak, but not about the case.

Q You spoke a lot to him, but not a word about this case?

A No, sir.

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Q About two or three days after you were placed in the House of Detention, and about two weeks before the arrest of

Yiddle, did Hoochak say to you "You were the only man who knew I drew my money out of the bank." Did he say that to you? A I don't remember.

Q Do you remember Hoochak saying to you, "How did it happen that your friend Yiddle knew I and Mazzura had drawn our money from the bank?"

MR. McDONALD: I object to that, sir, as a misquotation-- unintentional, of course-- that Hoochak said -- used the term "Your friend Yiddle."

MR. SHERIDAN: Well, my recollection may not be accurate as to that.

THE COURT: Yes, my recollection is that no such language was used. Will you try to modify your question?

MR. SHERIDAN: Yes, sir.

Q Now, did Hoochak say to you, two or three days after you were placed in the House of Detention, "How does it happen, or how did it happen, that that man Yiddle and the other men knew that I and Jacob had drawn our money from the bank?" A I don't remember that.

Q Did Hoochak say anything like that? A I don't remember.

Q Did he say to you, "You have lured my dead friend and myself to that home"? A No.

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Q Did you remain silent, in answer to that question?

THE COURT: He said he does not remember that it was asked.

MR. McDONALD In fact, he said it was not asked.

THE COURT: Now, you are asking him if he remained silent, after an episode that he does not remember.

MR. McDONALD: May I say that he answered categorically "No," that he did not ask that question?

BY MR. SHERIDAN:

Q Did you have any further conversation with Hoochak, after the period of thirty days when you were confined in the House of Detention, concerning this case? A We didn't talk about the case.

Q On the 20th day of February, when Yiddle was arrested, did Hoochak say to you, "Didn't you have any fear of God to lure my friend Jacob and myself to 123 Stanton Street?"

MR. McDONALD: I object to that.

MR. SHERIDAN: What do you object to? To the characterization of 123 Stanton Street?

MR. McDONALD: No, I am objecting to it, because it leads to the inference that Hoochak said that he did lure him.

THE COURT: I do not remember the word lure, or its equivalent, being used, but Hoochak testified that he did ask this witness if he didn't have enough fear of God not to take his dead friend and himself to this place.

MR. McDONALD: Then I will withdraw my objection, sir.

A He didn't say that.

BY MR. SHERIDAN:

Q He never said that? A No.

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Q Did he ever, during the time that you were in the House of Detention with him charge you with being a part of this crime?

A No.

Q On Friday, January 28th, when you first entered that apartment of Yiddle, whom did you see?

MR. McDONALD: On Saturday?

MR. SHERIDAN: On Saturday, the 29th.

Q Whom did you see? A Only his wife.

Q You saw his wife? A Yes, sir.

Q And you had some conversation with Yiddle's wife, didn't you? A We asked her where the sister of her husband was.

Q And then didn't you go downstairs and tell Jacob and Hoochak to come upstairs? A That is not true.

Q Are you sure it isn't true? A This is not true.

Q When Yiddle's wife went out, how long was it before she came back? A I said before, already, after fifteen or twenty minutes. I don't know exactly.

Q Now, you have a fairly good idea of time, haven't you, fifteen or twenty minutes?

MR. McDONALD: Now, isn't that rather argumentative, if your Honor please?

THE COURT: Yes, it is argumentative. But he may answer.

A I know that, because I heard others speak about it, but I know it wasn't a very long time when she returned.

BY MR. SHERIDAN:

Q You know the difference between fifteen or twenty minutes

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and three hours, don't you? A Yes, sir, I know the difference

~~between minutes~~ between fifteen minutes and three hours.

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Q And you don't need a watch to know the difference between fifteen minutes and half a day? A I don't need a watch, because I am a working man, and when they tell me I am through with ~~the~~ work; I am through; that's all.

Q But you didn't work for about two months before January 29th, did you? A It couldn't be two months that I didn't work.

Q Well, how long was it? A I can't remember, but I hope it wasn't two months.

Q Well, are you so illiterate that you don't know the difference between four weeks, six weeks and eight weeks?

A I know what four weeks means, or what eight weeks means.

Q Now, then, be kind enough to tell this Court and jury how long you were unemployed prior to January 29th?

THE INTERPRETER: He says "Please tell the gentlemen of the jury that I can't remember."

Q Do you remember whether you had any money or whether your brother had given money to you?

THE COURT: When?

MR. SHERIDAN: Prior to the 29th of January.

A At the time when we sold the shop, I know my share was \$500.

Q But you didn't see your brother for two or three weeks before January 29th? A When?

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Q Two or three weeks before January 29th? A Why, I saw him there in that house, in the House of Detention. He received

a pass, and came to see me.

Q You didn't get any money from your brother, did you?

A No.

Q And you didn't get any money from your brother for a month before January 29th, did you? A I had money in my pocket, about \$25., and I received from my brother about \$15.

Q When did you receive the \$15. from your brother? A I can't tell you the time. I don't remember.

Q Was it fifteen or twenty minutes before January 29th, or was it one month, that you received this \$15. from your brother?

THE COURT: You will never get anywhere by asking a question like that, Mr. Sheridan.

MR. SHERIDAN: Well, but I am leading up to it, sir.

THE COURT: You should make it one day before, or twenty days before a certain date; not a few minutes before. You may have the question, but I know precisely where it is going to bring us in the answer.

MR. McDONALD: I object to it.

MR. SHERIDAN: I will withdraw the question.

Q How many days, or weeks, or months, before the 29th of January was it that your brother told you your share of the store was \$500.? A I don't know how many days or how many weeks it was.

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Q All right. Was it a month? A I don't know. I only remember that when he sold the shop, he told me my share was \$500.

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Q Well, I want to know whether it was two months, or one month, before the 29th of January?

BY THE COURT:

Q Was it two months before this man was killed?

THE COURT: We will put it that way?

MR. SHERIDAN: Yes, sir.

A It certainly was before the time the man was killed, but how long before, I don't know.

BY MR. SHERIDAN:

Q Did you say, this morning, that it was about two months before the day that Jacob was killed? A I don't remember.

Q What month was it, according to the Russian calendar, when you gave up your business in Bleecker Street? A I don't know anything about the Russian calendar, because I am illiterate.

Q Can you give us the name of any customer that you had when you conducted your business in Bleecker Street? A I don't know. There were many customers, but my brother attended to their needs. There were certain marks that my brother pointed out to me, by which I knew certain customers, but my brother attended to everything concerning the customers.

Q Have you spoken to anybody during recess about this case?

A No.

Q When did your brother give you the \$15.? A I told you, once before, I don't remember.

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Q Well, was it one week before Jacob was killed? A It was before, but I don't remember how long before.

Q Didn't you say, this morning, that you were employed by a man by the name of Sues, for four months? A Yes, four months.

Q So that you know the difference between one month and two months, don't you? A I know the difference between one month and four months.

Q Now, I ask you to kindly tell this Court and jury when you received this \$15. from your brother, and how long it was before the day that Jacob was killed? A I can't tell you that, no matter how many times you asked me, because I don't remember.

Q Well, how do you know that he gave it to you? A He gave me the money, all right.

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Q Was it a ten dollar bill and a five dollar bill? A I don't remember what denomination the bills were.

Q But you do remember getting the money? A Yes, sir.

Q The \$500. that belonged to you, after the sale of the store, was kept by your brother, is that correct? A Yes.

Q And all the money that you had in the world was invested in that store? A I didn't put all the money that I had, into that business. I only put in an even part with my brother.

Q How much did you put in? A He said to me that \$150. of my money would go into the business.

Q When the business was sold, did you have any other money? A Yes, I had some money in my pocket.

Q How much money did you have? A About \$45., I believe.

Q And all you received from your brother, from the time that the shop or store was sold, up until the day Jacob was killed, was the sum of \$15., is that correct? A Yes.

Q And you were out of work for a period of six weeks, is that correct? A I don't know how long it was that I was out of work, but from the time we all decided to go to Russia together, I didn't work.

Q When you were in the apartment of Yiddle, on Saturday, January 29th, did you stand right at the threshold of the door?

A Not very far from the door.

Q How far were you standing from the door when the man said "Hands up"? A About two and a half or three paces.

Q Do you mean two and a half feet, or three paces?

A Don't ask me about feet. I am talking about paces, the way a man walks.

Q Well, stand up, and indicate the distance in this courtroom? A Maybe as far as from the witness chair to that table (indicating the District Attorney's table).

THE COURT: Mr. Foreman, what is the distance, do you say, that the witness indicates?

THE FOREMAN: Between seven and eight feet.

BY MR. SHRIDAN:

Q You were then in the centre of that room, weren't you?

A Yes, about in the centre of the room.

Q And it has been testified that this room is 13 by 9.

THE INTERPRETER: Your Honor, the witness would never understand that question, those figures.

MR. SHERIDAN: All right, I will withdraw it.

Q Now, will you kindly tell the respective position of Hoochak, Mazzura, yourself, and the other three men in that room?

A I was standing, as I am standing now (illustrating). Hoochak was sitting on my left, on a chair. Mazzura was sitting next to Hoochak, on a chair. Yiddle was standing on the other side there (indicating), near the wall. The man who I afterwards saw take out the revolver, was standing in the corner, in this direction (indicating), and the other man was standing near something -- I don't know what it was -- the sink, or something of that kind, in that corner (indicating).

BY THE FOREMAN:

Q Where was the door where you came in? A There, in that direction (indicating to the right).

BY MR. SHERIDAN:

Q And you were about six feet from that door, is that correct? A I don't know exactly. It might be that distance, or less, I don't know.

Q When the man said "Hands up", did you put your hands up?

A No, I immediately grabbed the knob of the door and ran out.

Q At that time, about how much money did you have in your pocket? A About \$26. or \$27.

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Q And you ran downstairs? A Yes, sir.

Q And while you were running downstairs, you heard a shot fired? A Yes, sir.

Q And this was about 230 in the afternoon, is that correct? A I couldn't tell you what time it was. Around two o'clock.

Q Was it around two o'clock, when you ran out of that building? and was there anybody in Stanton Street? A Nobody was there.

Q What did you do? A I ran.

Q Well, didn't you shout out a few times? A Yes.

Q And you got no answer? A No, sir.

Q And you ran? A Yes, sir.

Q And did you go to a policeman? A Yes, sir, on Houston Street, I saw the policeman.

Q Did you ever see that policeman again, from that day to this? A I couldn't recognize him, if I did.

Q Did you, on January 30th, tell the Assistant District Attorney, Mr. Dineen, that when you left that house, those men were still in the room? A I told you once or twice before that I don't remember anything what I said to the Assistant District Attorney at that time, because I was very much frightened.

Q Well, why were you frightened?

MR. McDONALD: That has been asked before, I submit.

THE COURT: Yes, it was answered before. Sustained.

MR. SHERIDAN: Exception.

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Q How far is it from Stanton Street to 5th Street? A I don't

know.

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 know.

Q Did you walk or run? A First I ran as quickly as I could, and then, not being a very healthy, strong man, I had to stop, and go slower, because my breath gave out.

Q Can you say in English the word "Police"? A "Police, Police".

Q Can you say that word loud?

BY THE COURT:

Q Say it out as loud as you can. A Police.

BY MR. SHERIDAN:

Q Now, that's it, that's good. Now, did you say it that way on the 29th of January, in Stanton Street, when you left the house? A Three times I said "Who should believe in God, go to save. A murder is being committed."

Q Can you say the word in English, the word "Murder"?

MR. McDONALD: I don't recall his saying anything about murder, in English.

THE COURT: Nor do I, but you can ask him whether he can say the word murder in English.

(The question is repeated by the interpreter).

A "Ruder."

THE INTERPRETER: He can't pronounce murder, he says.

BY MR. SHERIDAN:

Q When you arrived at the restaurant, did you tell your

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countrymen in Russian, what had happened? A Yes.

Q Did any of them go out and get a policeman? A At first, they didn't believe me. They said to me "Sit down, and let's hear the whole story."

Q Give me the name of any man in that restaurant, on Saturday afternoon, that you told the story to? A I don't remember the name of one, because there were no customers there.

Q Was the proprietor there? A I don't know. Maybe he was. I was very much frightened.

Q But, at this date, you are unable to give the name of any person in the restaurant, to whom you told the story?

MR. McDONALD: That has already been answered, sir, just a moment ago.

THE COURT: He may answer it again.

A I am almost sure that one man was there, and that was "Mike." I don't know his family name.

BY MR. SHERRIDAN:

Q Do you know where he lived? A I don't know.

Q Was there any waiter there whom you knew? Or who had waited upon you before that day? A If I saw them, I would recognize them.

Q How long before the 29th of January had you been going to that restaurant? A Maybe a month or less; I don't know. 9696

Q Did you say that Hoochak, in the bank, on Friday, January 28th, "My, you have got a whole lot of money. I haven't got quite

so much money"? A No, absolutely not a word about it.

Q Did you tell him on that night, "Be careful of your money, don't leave it in your home, but sew it in your clothing"?

A Not a word about it.

Q Now did you, for a period of one week before the 29th of January, say to Yiddle, "Two men are going back to Europe. They have about \$5,000. You get a taxicab, and when they are about to take the boat, rob them." A No, it isn't true. That is a lie.

(THE COURT: Sit down.

BY MR. SHERIDAN:

Q Did you walk home to Yiddle's house, on any night before the 29th of January, the day on which Jacob was killed, with Yiddle? A No, I didn't.

Q Did you at any time intend to rob Jacob or your relative Hoochak? A No, never in my life.

Q You knew that Yiddle could drive an automobile, didn't you? A No, I didn't know it until his wife said it in court.

Q Where did Yiddle's wife say it in court? A On 5th Street.

Q In what language did she speak? A She speaks Polish.

Q What did his wife say about his driving car? A There was a man who came to court and said that Yiddle could drive an automobile, and his wife then said "Yes, that's true," so I found it out.

Q Didn't you, on January 30th, do or let do, (in testing

the defendant), as Yiddle, to Assistant District Attorney Dineen?

A I then said that I knew him, and the others I couldn't recognize.

Q You told Assistant District Attorney Dineen that one of the three men was Yiddle, didn't you? A Yes.

Q So you knew his name on January 30th, as Yiddle?

(MR. McDONALD: I object to that, sir.

THE COURT: I will allow it; you may ask him that.

A I didn't know until he told me that, at the time when he gave me the address.

(MR. SHERRIDAN: That is all. Just one more question.

Q Do you know whether Yiddle is Yiddish or Jewish for Julius? A (no answer).

(MR. SHERRIDAN: I will withdraw that question.

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RE-DIRECT EXAMINATION BY MR. McDONALD:

Q When you went out at recess, with whom did you go?

A There is a man who is sitting over there (indicating).

MR. McDONALD: Stand up, Officer.

Q Did you go out with that police officer (indicating)?

A Yes, sir.

Q And that is the same officer who brought you from the House of Detention to court, is it not? A I don't know whether it was the same man, but I remember I went away with him.

Q He is the only man you talked to, while you were out at recess, is he? A I didn't speak to anybody.

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MR. McDONALD: The officer's name is William O'Connell.

Q The restaurant at 5th Street is where a number of people from your land or home country congregate or assemble? A Mostly Russians, yes.

Q They speak the same language as you do? A Yes, sir.

MR. McDONALD: I think that is all.

MR. SHERIDAN: Just one question.

RE-CROSS EXAMINATION BY MR. SHERIDAN:

Q Did you, at any time within two or three days before January 29th, say to the defendant Yiddle, the "Deal is off", or words to that effect? A No, I didn't say that.

MR. McDONALD: Your Honor will remember my stating to the Court that Mr. Sheridan was reading from a statement of his witness, given to Assistant District Attorney Dineen, on January 30th, and that he was examining from that statement, that I gave to Mr. Sheridan.

MR. SHERIDAN: Consisting of five pages.

THE COURT: And be seated, Mr. Rosalsky. One counsel on his feet at a time.

MR. McDONALD: And I was under no compulsion to give that statement to Mr. Sheridan, but, as part of the proof, I asked Mr. Sheridan to consent to the putting of that statement in evidence, and he said he would consent to that, and he started to read, then, from the statement, but read only parts of the answers given by his witness.

Now, I
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say that the entire statement should be given in evidence.
Now, Mr. Sheridan says that I handed him only five pages,
but it was cut up, and I evidently was preparing to give
him the other part.

MR. ROSALSKY: But we never received the other part.

THE COURT: Do you offer the statement in evidence?

MR. McDONALL: Yes, sir.

THE COURT: Do you object?

MR. ROSALSKY: Yes. I want to say that as far as the
five pages are concerned--

MR. McDONALL: I withdraw the offer.

MR. ROSALSKY: But I wish to complete my statement.

THE COURT: There is no occasion for that. The District
Attorney withdraws his offer.

MR. ROSALSKY: And I want to say that, whatever my
associate says or does, I stand by; and, as far as the
five pages are concerned--

THE COURT: There is no occasion for any further
discussion. The offer has been withdrawn by the District
Attorney, and that is the end of the matter.

We will now take a recess for three minutes, gentlemen
of the jury, and you may rest yourselves by moving around.

(The court admonished the jury in accordance with
Section 415 of the Code of Criminal Procedure, and took a
recess for three minutes).

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AFTER RECESS.

HENRY F. BUTTS, of the Detective Division,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Department of the City of New York and were called on the 29th of January 1921? A I am, and was.

Q And still are? A Yes, sir.

Q And you are also known as the pistol expert of the Police Department? A Yes, sir.

Q And you have performed a number of experiments with regard to the effects of shots upon different articles? A I have.

Q About how many experiments have you performed? A
A Thousands.

Q And that is to find the effect upon, for instance, cloth, whether it would burn at a certain distance, or whether it could show powder marks at a certain distance? A Yes, sir.

Q Now you have examined this coat, People's Exhibit 4, previous to today? A I have.

Q Up in my room? A Yes, sir.

Q Just take it now, please. Do you find any mark of any shooting there on that coat? A I find two holes; one hole through the collar, and one through the front of the coat, near the right sleeve, a hole which extends from the outer side towards

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 the centre of the coat, a hole which would be in that direction (illustrating).

There is a mark about the body of the coat, not the collar, which is such as is made by burning powder.

There is a mark on the collar of the coat, such as is made by burning powder.

Q Now, how close to the coat would the revolver have to be held, in order to show the result as typified on that coat?

A On this coat alone, without the rest of the garments, I would hesitate to make any positive declaration, because the record on the collar made by the powder has been changed, and without--
 BY THE COURT:

Q By the record, you mean the mark on the collar? A Yes, sir. And, without taking into consideration the other clothing that you showed me, I could not say by the coat alone.

BY MR. McDONALD:

Q How near to an object would the end of the barrel of a revolver have to be held, in order to set fire to an object, for instance, a fur collar like that coat there? A Within six inches.

Q Within six inches? A Yes, sir.

Q You mean by that, that a burning would ensue after the bullet entered that piece of clothing? A Yes, sir.

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Q The flame, does that go from the barrel? A It goes from the muzzle of the barrel.

Q It goes from the muzzle of the barrel? A Yes.

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Q The flame is projected after or before the bullet is thrown out? A After.

Q You said something about without having looked at the other clothing, the other articles, that you can't tell how close the pistol was held? A Yes, sir.

Q How close the muzzle of that revolver was held to that object? A Yes.

Q Do you thin that, by the aid of looking at the other clothing, you would be able to find out? A I have looked at the other clothing, and I can.

BY THE COURT:

Q That is, you can give an opinion on the subject? A Yes, sir.

Q And that is all that you are doing now, giving your opinion? A Yes, sir.

BY MR. McDONALD:

Q Now, after having examined it, is it clear in your mind now how far the muzzle of the pistol was held from the nearest object to it?

THE COURT: It can ~~only~~^{clear} not be only/in his mind, Mr. McDonald. He can only give an opinion as an expert on that subject.

MR. McDONALD: Well, that is what I am asking for.

THE COURT: No, it is not, or I would not call your attention to it. Ask the question in the proper form, and make it plain that he is only giving you his opinion. Put your question in that form.

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BY MR. McDONALD:

Q In your opinion as an expert, are you able to give us, with a reasonable degree of certainty, how far the object was held from the muzzle of the gun? A I can.

Q Will you please give it? A The muzzle of the gun was held within three inches of the collar of this coat.

MR. McDONALD: That is all.

THE COURT: Any questions?

MR. ROSALSKY: No questions.

J O H N J. B R O W, of 1393 Fulton Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Brow? A Steamship ticket business.

Q Were you in the steamship ticket business on the 10th day January 1921? A Yes, sir.

Q Do you know one Andrew Sivak? A Yes, sir.

Q Did he pay you any money?

MR. ROSALSKY: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception. Is this intended as corroboration of the 1st witness' testimony, you Honor?

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THE COURT: It is admitted upon the theory that it may be admissible upon the general situation presented by the assailants of the deceased man, with respect to their knowledge that he was departing for Europe, with a large amount of money in his possession.

MR. McDONALD: But I was asking those questions about Andrew Sivak, your Honor.

THE COURT: I thought it was as to the other two witnesses.

MR. McDONALD: No, sir. It might be called corroborative of my own witness, but it would be enlightening to the jury that Andrew Sivak did apply for a passport, and this man got back the passport for him from Washington, and for the dead man, Mazzura, also.

THE COURT: This witness is called for the purpose of corroborating Sivak upon the subject of paying a deposit on a ticket to Russia?

MR. McDONALD: Yes, sir, and that he got his passport, and that his picture was taken preparatory to getting the passport.

THE COURT: I will allow it. Objection overruled.

MR. ROSALSKY: Exception.

BY MR. McDONALD:

Q Have you got the passport of Andrew Sivak there? A Yes, sir.

Q You have also got something else here, a card? Is that a card kept by your office? A Yes, sir.

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Q This card is not a part of the passport, is it? A No.

Q That is a record kept in your office? A Yes, sir, kept in the office.

Q Underneath that card, there is a billhead? A Yes, sir.

Q That is also a part of the record of your office?

A It is a copy of the bill given to the passenger.

MR. McDONALD: I offer the entire record in evidence.

THE COURT: You have not sufficiently identified it.

BY THE COURT:

Q What are these papers which you have produced? A One is the passport, the other one is a copy of the bill given to the passenger.

Q Copy of what bill? A When the passenger pays the money, we generally give him a receipt, we generally do it this way, make the receipt in duplicate, and the original goes to the passenger, and we retain the copy, as information for what we received the money. And the small card is part of our system. On this card we keep all the records of what was the address, the name, when he applied for the passport, and when it was received, and whether he paid income tax, and how much, and whether he comes from Russia, and what part of Russia he comes from.

Q These are records made in your office, when a man applies for passage to a foreign port? A Yes.

Q And do you know that these records were made in the usual course of your business? A Yes, your Honor.

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Q And, other than the bills which were made in your own office, the only thing you have made by anybody else is the photograph? A Well, they generally took the photograph themselves and brought it to us.

Q Well, everything else among those papers is made in your office, except the photograph? A Except the photograph, and the original passport, which was sent to Washington.

BY R. McDONALD:

Q Is that a copy of the passport (indicating)? A No, sir, it is the original. We take the passenger, with the passport, from our office to the Barge Office, where they are approved by one of the clerks of emigration, and then all the papers are sent to Washington, and Washington approves, and puts the stamp there at the bottom (indicating).

Q And does that passport bear that stamp? A Yes, sir.

Q That approval? A Yes, sir.

Q And is that a valid passport? A Yes, sir.

MR. ROSALSKY: We have no objection.

THE COURT: Very well, it may be marked.

(It is marked People's Exhibit 7).

BY MR. McDONALD:

Q You also have the original passport of Boochak and Mazzura?

A Yes, sir.

THE COURT: Do all those papers which have gone in evidence, relate to the witness Sivak?

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MR. McDONALD: Yes, sir.

THE COURT: Now, I suggest~~ed~~ that you just briefly state what those papers are, and the jury can look at them later.

R. McDONALD: Very well, sir, I will.

(Mr. McDonald explains the exhibit to the jury).

MR. McDONALD: That's all.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Now, out of the \$10. which you received, how much is charged for the passport application? A We charge \$6.50 for the work concerning the passport, and the other work also is done, so that this paper is prepared in four copies.

THE COURT: No, the question is, how much did you charge.

THE WITNESS: \$6.50.

BY MR. ROSALSKY:

Q And on account of the ticket, you received \$3.50? A Yes, sir.

BY THE COURT:

Q And what was the total cost of the ticket that was bought?

A \$145.

Q That is, from New York to where? A To Libau.

BY MR. ROSALSKY:

Q Was a date set for the sailing? A It is very hard for me to recollect all those details. They generally went as soon as they received the passports, and I transmitted in this case--

Q No. Was there a date set for the sailing of Andrew Sivak,

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if you know? If you don't know, say so. A I can't recollect now whether it was definitely set; I presume it was, just like it is always, or most of the time.

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BY THE COURT:

Q No. You don't recollect whether any definite day for sailing was set by Sivak and these other two men? A No, sir, I don't.

BY MR. ROSALSKY:

Q Have you the other passports here? A Yes.

Q Will you let me look at them, please? A Here they are, sir.

MR. ROSALSKY: That is all.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q Just a minute. You brought out the other two passports of Hoochak and Mazzura, and showed them to counsel; did you? A Yes, sir.

Q Let me see them, please. According to your record, all that Mazzura paid you was \$10.? A Yes, sir.

Q And that only left a deposit on the ticket for him of \$3.50? A Yes, sir.

Q And, according to your records, on the 10th day of January, what was paid by Hoochak? A He also paid \$10., on the 11th day of January.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q And when did Hoochak pay the balance? A I don't remember at this time, but I can get the record of that.

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Q Well, when did he pay the balance? A He paid the balance, later.

BY THE COURT:

Q Did Mazzura pay the balance? A No, sir. He never paid more than the \$10.

BY R. ROSALSKY:

Q And Mazzura and Sivak went down on the 23th of January, according to your records? A What's that? I don't understand.

Q Mazzura and Sivak, you received the money from them, on the 26th day of January, 1931?

MR. McDONALD: No, the records speak for themselves.

They show it was the 10th of January.

THE WITNESS: Yes, that's the date of the receipt from Washington.

BY MR. ROSALSKY:

Q I ask you to look at People's Exhibit 7. What does the date on the card mean, received on the 23th of January, 1931?

A Received the approval of the passport from Washington.

BY THE COURT:

Q That does not show anything as to the payment of money, does it? A No, sir, only the approval from Washington.

BY R. ROSALSKY:

Q And do you remember whether Sivak came to your office with Hoochak? A Yes, sir.

Q And did he come to your office with Mazzura? A I don't

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recollect.

Q Did Sivak apply for a passport before January 10th, 1921? A Well, he was together with Hoochak, asking just for information.

Q Is this the first time Sivak ever asked you to get a passport for him? A Well, they were once in the office, and they made an application on this date.

BY THE COURT:

Q How long before the tenth of January did they make any inquiries for information? A Several days, but I don't recall how many, positively.

Q Well, you say several. How many days do you mean?

A Well, maybe a week or ten days, I think.

Q And on that occasion, a week or ten days before the 10th, who came to your office, making inquiries? A Hoochak and Sivak.

THE COURT: Anything further?

MR. ROSALSKY: Nothing further.

MR. McDONALD: I offer the last two passports, produced by the witness, in evidence.

THE COURT: Any objection?

MR. ROSALSKY: I object to them, on the ground that they are immaterial.

THE COURT: Well, they are not very material, but I

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will admit them. Objection overruled.

MR. ROSALSKY: Exception.

(They are marked People's Exhibits 8 and 9 in evidence.

MR. McDONALD: The People rest.

MR. ROSALSKY: The defendant moves to dismiss the indictment, on the ground that the People have failed to make out a case.

THE COURT: Motion denied.

MR. ROSALSKY: Exception.

THE COURT: Gentlemen, we will suspend until tomorrow morning at half past ten.

(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 morning, FRIDAY, JUNE 24th, 1921, at 10:30 o'clock).

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People vs. Rosenwasser

TRIAL RESUMED. *Art*

New York, June 24th, 1921.

THE DEFENSE.

P SADIE ROSENWASSER, of 91 Sheriff Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

THE COURT: Mrs. Rosenwasser, do you speak English?

THE WITNESS: N .

THE COURT: Not at all?

THE WITNESS: No.

THE COURT: Administer the oath to the witness, Mr. Interpreter.

(The witness is duly sworn by the Official Interpreter, Mr. Rosenthal).

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your name? A Sadie Rothman.

Q Where do you live? A 91 Sheriff Street.

Q Mrs. Rothman, you are the wife of the defendant Julius?

A Yes, sir.

Q Under what name were you married to Julius, the defendant? A In the old country his name was Rosenwasser. In this country he assumed the name of Rothman.

Q Is that the name you are known by? A Yes, sir.

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Q What language do you talk? A Yiddish.

Q Where were you born? A In Poland.

Q You talk Polish? A Yes, sir.

Q You understand Polish? A Yes, sir.

Q Do you speak Russian? A No, because in the country I come from they don't speak Russian, only Polish.

Q How old are you? A 24.

Q When were you married to the defendant? A March 14th, 1919.

Q Where? A In New York.

Q Have you any family? A A mother.

Q Have you any children?

MR. McDONALD: I object to that, sir.

THE COURT: You may have it.

Q Have you any children? A One child.

Q How old is the child?

MR. McDONALD: Oh, no, I object to this, sir.

THE COURT: Yes, objection sustained. That is not going to help ~~xxx~~ get at the truth in his case.

MR. ROSALSKY: Exception.

Q Do you remember Saturday, January 29th? A Yes, sir.

Q Do you remember three men coming to your home in the early part of the afternoon, between two and three o'clock?

A Yes, sir.

Q Where did you live on that day? A 123 Stanton Street.

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Q Before the three men -- do you remember whether the three men came in at one time? A Yes, sir.

Q When the three men came in, did they talk to you? A Yes.

Q What did they say to you? A Where Yiddle was.

Q What did you say to them? A I said that Yiddle had gone away to a restaurant, to meet a man, because the man in the restaurant-- because he was to meet in the restaurant a man who owed Yiddle some money, and I said, "If you want to see him, I can go and call him."

Q Yiddle is the Jewish for Julius, is it not? A Yes.

Q What one of the three men asked where Yiddle was? A All asked that question.

Q Did you go out and look for Yiddle? A I knew where he was, and I went.

Q Did you find Yiddle? A Yes, sir.

Q Did you return to the house before Yiddle did? A Yes, sir.

Q How soon after you returned did Yiddle come up? A About ten or fifteen minutes.

Q Did any of these three men ask you about Yiddle's sister? A No, nothing at all. I offered them chairs, and they sat down.

Q Did you tell any of these three men that you would go out and get Yiddle's sister? A No, I didn't talk about it at all.

Q Before your husband had returned, did you go out a second time? A Yes, sir.

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Q Did you then go back with your husband; go in together with him? A ~~He came~~ ~~xx~~ I came up to the house and said that Yiddle would come, and the child was already dressed to take to the doctor's. I took the child, and said, "Yiddle will be here soon," and I went away. As soon as I went down I met Yiddle. Yiddle took the child and started to scold me, why I should leave people alone in the house, and I go away. I said "They are--"

MR. McDONALD: I object to this conversation between the defendant and his wife.

MR. ROSALSKY: It is leading up to something, it is contradicting one of the witnesses.

THE COURT: I do not think that you are entitled, at this time, to that conversation.

MR. ROSALSKY: I submit that I am, sir.

THE COURT: Mr. Rosalsky, she may state that they had a conversation, and then she may state what she did, but I don't think a conversation of this self-serving character is admissible at this time.

MR. ROSALSKY: Exception.

Q Well, after the talk with Yiddle, did you then go back to your apartment with Yiddle? A When?

Q After the conversation. A When I went the first time to find him, or when I went down with the baby?

Q The second time. A Yes, I went upstairs again with him.

Q With Yiddle? A Yes.

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Q And then what did you do after that? A He undressed the child. I started to fight with him about why he had undressed the child, because it was a great bother to dress the child again. He said to me I should wait, and he would go with me.

MR. McDONALD: I object to this, sir, what he said.

MR. ROSALSKY: If your Honor please, this is in the room, in the presence of these Poles.

MR. McDONALD: And, even so, it is a self-serving declaration of the defendant, who is charged with a crime.

THE COURT: I will allow it.

A (continued) He said he would go, after those men would have left.

BY MR. ROSALSKY:

Q Then what happened after that? A I started to fight with him, because, if the sun goes down it is too cold to take the child out.

MR. McDONALD: I object to that.

THE COURT: Overruled.

BY MR. ROSALSKY:

Q And what did you do after that? A I went then to my mother's house.

Q Did you take the child with you? A Yes, sir.

MR. ROSALSKY: That is all.

CROSS-EXAMINATION BY MR. McDONALD:

Q What did Yiddle, your husband, say to you, Madam, when you

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took the child out the second time? A He said that I should go to the doctor's, and from the doctor's I should come back as soon as possible, and see to it that the child didn't catch cold.

Q You talk a little bit of English, don't you? A No.

Q Are you sure? A I can speak a few words, ~~if~~ but here, in a court, where you must use good language, I can't speak.

Q Do you remember talking anything in English to the Assistant District Attorney, on Sunday morning, the 30th of January, at about 2.15 in the morning of that day, at the station house on 5th Street? A I told the gentleman at that time that I couldn't speak English, and I don't know what I said. The detectives wanted to beat me.

BY THE COURT:

Q What detectives wanted to beat you? A The detectives started to pound the table (illustrating), and make so much noise that I didn't know where I was, and what was happening to me.

Q What detectives started to beat you, and what did they do? Pounding the table is not beating you. A They didn't exactly beat me.

Q Then why did you say they started to beat you? A They started to pound the table, and make so much noise that I didn't know where I was.

(THE COURT: Proceed, Mr. McDonald.

BY MR. McDONALD:

Q Do you remember being asked in English, this question by

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Mr. Dineen, and giving this reply: "Q Where do you live?" 337

A 123 Stanton Street." A Yes, I answered 123 Stanton Street, that I lived there.

Q Do you remember the next question being asked you in English, and your making this reply --

(MR. ROSALSKY: One moment.

BY MR. McDONALD:

Q (question continued) "Are you married, Mrs. Rothman?" And your answer was, "Yes."

MR. ROSALSKY: I object to the form of cross examination, if your Honor please. If it is for the purpose of contradicting the witness as to some statement she made, I don't object. But I do object to this mixture of question and answer.

THE COURT: The witness told me that she could not speak English, and, if the District Attorney can show she made a statement in English, he is entitled to do it.

MR. ROSALSKY: Well, but the witness does speak English, she said, in a certain way.

THE COURT: I heard what she said. It is of record. Objection overruled.

MR. ROSALSKY: Exception.

A I understand some English, but I didn't understand what the District Attorney was saying to me.

BY THE COURT:

Q When did you not understand? When the District Attorney

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was speaking to you at that time, or at this time? A I didn't understand it then, and I don't understand it now.

BY MR. McDONALD:

Q (repeated) A The District Attorney didn't speak to me at all, he didn't ask me any questions at all. It was the detective.

Q You say it was the detective who asked you these questions? A I can't remember exactly, because I was so upset. I didn't know what was going on around me.

Q Do you remember this next question, madam: "Q How long?" And your answer, "March 14th." Do you remember that? A No, I can't remember. I don't remember having been asked when I was married.

Q Do you remember the next question--

THE COURT: No. Ask her if she was asked the question and did she make the reply, not whether she remembers it.

BY MR. McDONALD:

Q Were you asked this question, and did you make this answer? "Q How long?" "A March 14th." A I can't remember. The detectives came up. I was crying and fainting, and I don't know what they asked me, or what I said.

Q Were you married on March 14th? A I'm not quite sure, but I think so.

Q Were you married on March 14th, 1920? A I don't know. You may think it over. I have been married two years.

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BY THE COURT:

Q Don't you know the month in which you were married?

A I can't remember.

Q Don't you remember the day of the month on which you were married? A I know it was on a Saturday, but I don't know the date.

BY MR. McDONALD:

Q Do you know how many months you are married? A No.

Q Do you remember being asked this question, and you making this reply: "Q How old are you?" And you answered "A 24."

A Maybe I was asked such a question, but I was so upset that I don't remember.

Q Were you asked that question, and did you make that reply?

THE COURT: She says she does not remember.

BY MR. McDONALD:

Q Well, how old were you on the 30th of January, 1931?

A On the first of Rosh Hashonah, which means the Hebrew New Year, of this year, I will be twenty-four years old.

Q Didn't you tell Mr. Rosalsky here, when he asked your agent, just a few minutes ago, that you were twenty-four years of age? A According to my figure, it means the 24th year old.

In Yiddish we figure it is going on the twenty-fourth year.

Q Was this question put to you, and did you make this reply: "Q Did you see him Saturday night? A No."

MR. ROSALSKY: May it please your Honor, I now again

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object to this line of cross examination. If it is the purpose of the District Attorney to show that this witness talks English, I think we have had enough of this kind of examination to test that question.

THE COURT: Well, what is the result?

MR. ROSALSKY: The objection to this line of cross-examination is that there is nothing which the District Attorney is trying to contradict by this witness. He is merely asking her, "Did you say this or that." That is not proper cross-examination, I protest.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

Q (the question is repeated by the stenographer) A I told you before, I am not sure, I can't remember. Maybe they did ask such questions, and maybe I answered, but I can't remember.
BY MR. DONALD:

Q Was this question put to you, and did you make this reply: "Q You didn't see him at all? A No."

MR. ROSALSKY: The same objection.

THE COURT: Same ruling.

MR. ROSALSKY: Exception.

A I don't remember those ~~xxx~~ questions, but if they asked me the questions, I told them the truth.

Q Was this question asked of you, and did you make this reply: "Q Do you know those men, (indicating Notchuk and

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Sivak)? A Yes, those men were by me."

MR. ROSALSKY: The same objection, if your Honor please.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I remember that there were two men, and that they were told to put on their hats. After that I recognized them.

Q Was this question put to you, and did you make this reply:

"Q What were they doing at the house? A He came up, that man, and another man."

MR. ROSALSKY: The same objection.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception. May it please your Honor, there are a number of questions and answers in the statement. Will your Honor allow an exception as to each of them?

THE COURT: You may have an exception to the Court's ruling as to this line of examination, without making an objection to each question and answer. Your objections go to a statement claimed to have been made to Mr. Dineen in the station house?

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MR. ROSALSKY: Yes, sir, and I specifically object to his examination on the ground, first, that the ~~xxxxxx~~ District Attorney stated that he was cross-examining her as to whether she speaks English or not. He has asked her a number of questions, and the jury are in a position to decide that question, and there is no attempt made to

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contradict the witness in anything that she has said.

THE COURT: Well, I am unable to say whether it has resulted in a contradiction, up to this time. I have not noticed any contradiction up to now, except possibly on the question of whether she speaks English or not. But I am not in a position to say that there is anything in the statement that the District Attorney has, that may not contradict something that she has said. I overrule the objection, and you may have an exception to the entire line of testimony.

MR. ROSALSKY: Thank you, sir. I take the exception.

BY MR. McDONALD:

Q (question repeated) A I wasn't asked such questions.

Q Was the next question asked, and did you make this reply: "Q What did he say? A He said he wanted to meet Yiddle and his sister. I was, Wednesday night, to see his sister, and I told him about the sister, and he was upstairs. He said he was going down to see the sister, and I looked for the lock, and I was waiting for the janitor to come up and fix the lock, and in ten minutes he come up, and I can't speak Russian, and he asked me for Yiddle, and I said 'All right, I will go and bring him up.'"

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MR. McDONALD: Now, Mr. Interpreter, the answer is rather long. Will you take this paper and read it to the witness, and get her answer?

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A I don't remember. I spoke some Yiddish, and some English.
I don't remember what it was I said.

Q Was this question put to you, and did you make this
reply: "Q Who is Yiddle? A That's Julius, in Yiddish .
That's my husband. And I went down, and I just met him, and
I said to him, 'Three men want to see you,' and he said 'All
right, and I'll be up there right away.' When I came up I
started to dress the baby to go to the doctor's, because the
three men was in the house, and he came down with two fellows, and
he says 'Go to the doctor's,'?" A I told you that I don't
remember, and I don't know what I said.

Q By the way, did you see Yiddle's sister on Wednesday night
of the week? A Yes, sir.

Q You say, yes, sir? A Yes, sir.

THE COURT: She answers in English, but you had better
ask her in her own language, so there may be no mistake.

(the question is repeated through the interpreter)

A I saw her during the whole week, every day.

BY THE COURT:

Q Did you see her on Wednesday night, before the shooting?

A I can't remember; she and I are like two sisters; she comes
over, day to see me. She comes now to see me every day.

Q Did your husband go to see his sister? A No, because she
always came to my house.

Q Did his sister come to your house during the week before

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the shooting? A She was there once.

Q When was that? A The middle of the week.

Q Was your husband there at the time? A Yes.

Q Was this next question asked of you by Mr. ~~Dineen~~^{Dineen}, and did you make this reply: "Q Who are the two fellows that came up with him? A I don't know."? A I can't remember.

Q By the way, did you know either of these two fellows that came up with Yiddle? A Abe Kaplan lived in my house.

Q Was this next question asked of you: "Q Young or old fellows? A Young fellows."? A Maybe I was asked that question, and maybe I asked so, but I don't remember.

Q Was this next question asked of you, and did you make this reply: "Q When is the last time you saw these fellows? A I didn't see them just the first time. I didn't know none of his friends"? A I told you before, I can't remember.

Q Was this next question asked of you, and did you make this reply: "Q What did Julius say to these two fellows? A He didn't say anything. He just came in and said 'Why don't you make tea?' He didn't introduce them, because I was mad -- because I was mad on him"? A I told you before, I can't remember.

Q Were you mad at your husband for bringing these two men up with him that day? A I was not mad at my husband for bringing up any friends, but I didn't like people who were speaking the Russian language, because I don't understand their language.

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Q Well, your husband wasn't talking Russian, was he?

A My husband can't speak Russian.

Q Was this question asked of you: "Q What were these two men and the dead man doing in your rooms? A He came up to see Julius, not me"? A I told you before, I don't remember.

Q Was this question asked of you, and did you make this reply: "Q What did he want to see Julius about? A His sister. She came from the same country as that man, I don't know, and he came that she shall tell him about his wife; I don't know; he just told me"? A I don't remember.

Q Was this question asked of you, and did you make this reply: "Q What did those two fellows do when they came up with your husband Yiddle?" "A Nothing. He was sitting, too, and I went down with the baby, I took my coat and I went down."

A No.

Q Was this question asked, and did you make this reply: "Q And where did Yiddle go? A Who the hell knows where he goes?" A I couldn't have answered that way because I always know where he was going to.

Q Was this question asked of you and did you make this reply? "Q No. Where did he go. When these three men came up and he ran them up there in the room, where did he go? A Oh, I met him downstairs, and I said 'Yiddle, three men wants see you, your landsman,' and he said 'All right, go up I will be up right away', and then he came up with the other

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two fellows and I was mad because I didn't like his friends"?

A I can't remember.

Q Was this question asked of you and did you make this reply -- the next question -- "Q Then he came up with two men?

A Yes; and I started to dress the baby. The girl sent for me and I went down, and the detectives came, and I dressed the baby and came up here"? A I can't remember.

Q Now the next question is, were you asked this question, and did you make this reply: "Q Were these three men in your house? You met Yiddle downstairs and told him that these men were upstairs? A yes"? A I can't remember.

Q Were you asked the next question, and did you make this reply: "Q And then Yiddle came with two men? A Yes, sir"? A I don't remember.

Q The next question, were you asked -- did you make this reply -- "Q What were their names? A I know one fellow, when I would see him I would recognize him, but I think they are fellows that he met in the tea house"? A I couldn't have said that, I couldn't have said that.

Q Was the next question asked of you, and did you make this reply: "Q What are their names? A I don't know"?
it
A If I was asked me what their names were, I would have answered that I knew one.

Q Was this question asked of you, and did you make this reply: "Q What were their names? A I don't know"?
A I can't remember.

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Q Was this next question asked of you, and did you make this reply: "Q How often have you met them? A I don't know. I didn't ask him any question because when I saw this was a Jewish fellow, and why should I ask him any questions?" A I can't remember.

Q The next question were you asked, and did you make this reply: "Q What was the other fellow, Italian or Irish? A I don't know. He has got a dark face?" A Maybe he did, but I don't remember.

Q The next question were you asked, and did you make this reply: "Q Italian? A No, he has got a dark face." A I don't remember.

Q Were you asked this next question, and did you make this reply: "Q What did they do when Yiddle came up with the two fellows? A One was standing in the corner, but they was talking, and the baby was crying, and Yiddle said 'Why don't you go down for the doctor?'" A He didn't ask me that; if he had asked me that, I could not have given such an answer.

Q Were you asked the next question and did you make this repl: "Q What did Yiddle do? A Nothing. He makes tea." A I don't know, I don't remember.

Q Was this question asked of you, and did you make this reply: "Q And when did you go to the doctor? A I went down to my mother's. She was give me a dollar." A I don't remember.

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Q By the way, you did take the child down to your mother's?

A Yes, sir.

Q And did you take it to the doctor's? A My mother gave the child castor oil, and said we should wait until the next day and see the result.

Q By the way, you didn't go back to the house 123 Stanton Street that day, at all; did you? A I was taken to the station house. I couldn't go home.

Q What time were you taken to the station house? A It was just about the beginning of the evening.

Q Four o'clock? A This I don't know; I didn't notice the time.

Q Do you remember being asked this question -- were you asked this question, and did you make this reply: "Q Where were you born? A Russian Poland." A Yes, Poland.

Q The next question. Were you asked this question, and did you make this reply: "Q How long have you been in this country? A 1914." A If they asked me such a question, I ~~may~~ have said that in the courtroom.

Did you come here from Russian Poland in 1914? A Yes.

Q Was this question asked of you and did you make this reply: "Q Why didn't you go to the doctor's? A I haven't got did not give the money"? A I ~~xxxxxxxxxxxx~~ ~~xxxx~~ such answer, because I had money.

THE COURT:

Q I give an answer that you didn't make that answer to

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that question? A I don't remember what they asked me, because I was afraid, upset. I fainted several times.

Q Your answer to that last question is, then, that you don't remember being asked that question and making that reply; is that

so? A Maybe they asked me the question. I didn't understand them and I didn't understand what was going on at the time.

BY MR. McDONALD:

Q Do you remember being asked that question, "Q Why didn't you go to the doctor's?" Do you remember being asked that question? A If they had asked me that question, I would have gone to my mother, because she is an old woman, and understands everything about children.

Q Did you tell the District Attorney that the reason you didn't go to the doctor was because you didn't have the money?

A If I had no money for a doctor, my mother would have given me the money.

Q Did you tell the District Attorney that you hadn't the money to go to the doctor's? A I can't remember what I answered.

THE COURT: Now that is an answer. Proceed.

Q Was this question asked of you, and did you make this reply: "Q Where was the man when you came back from your mother's house? A I didn't go back. Detectives came over and got me by my mother's?" A Maybe they asked me that question, but I don't remember.

Q By the way, the detectives did come over to your mother's

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house and get you there, didn't they? A When they came into
my mother's, I was fainting.

Q The detectives did come to your mother's house and get
you, didn't they? A Yes, sir, when they showed me the badge, I
fainted. I don't remember whether two or three came over.

Q Now, where was it that you met Yiddle after these three
men came up to your house on Stanton Street, on the 29th day of
January, the day of the shooting? A I met him standing at the
restaurant, where he told me he would be.

Q Where is that restaurant? A Between Willet and
Cherry Street.

Q And what is the name of the restaurant? A I don't know.

Q When did he tell you that he would be there? A When he
went down, that Saturday, I asked him "Julius, where are you going
to?" And he said, "I'm going down to the restaurant, to meet a
man who owes me a few dollars."

Q And how long afterwards was it that you saw him at the
restaurant there? A I can't remember.

Q Where did you meet your husband? A On Stanton Street,
between Cherry & Willet. The restaurant was on the corner of
~~Cherry~~ Sheriff.

Q Sheriff and what? A Stanton. It might be corner of
Houston and Stanton, because the two streets run in the same
direction.

Q You don't remember, you say, what time it was that your

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husband left the house that morning? A I can't tell you.

He got up and had his breakfast, and had a shave, and sat around for a while, and then went downstairs.

Q Do you remember that time it was that he got up? A No, sir, I don't.

Q Did you go into this restaurant? A No, not inside.

MR. McDONALD: By the way, she said that in English, did she not, "Not inside"?

THE INTERPRETER: Yes, that is also used in Yiddish, "Not inside." She says, I know a few words in English, but when the District Attorney speaks, he speaks such language that I can't understand it.

MR. McDONALD: I don't know whether she is complimenting me or not, sir.

Q Was Yiddle with anybody at the time that you saw him in the front of that restaurant? A He was with the same boy that lived in my house, with Abe.

Q By the way, how long did Abe live in your house? A Not long. But I know Abe for quite some time. I know his mother, his sisters, his brothers.

Q Do they live in the city here? A No, sir, they lived out in Cleveland; but now they live in New York.

Q Well, the time that Abe lived with you, did you know the mother and sisters? A Yes.

Q They lived in Cleveland, did they? A They came to

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New York and took rooms.

Q When? A Last winter.

Q Well, then, was Abe living with you? A No, Abe lived with his folks, but he had a fight with his sister; his sister got married and then he came to live in my house. The sister was about to get married.

Q Now, what was it that you said to Yiddle, when you met him at the restaurant that morning? A I said, "Visitors are up in the house, who want to see you".

Q And then did you leave him, or go back together?

A He said, "I'll go up right away."

Q Did you tell him what these men wanted? A I didn't tell him, no.

Q Did you tell him who they were? A I only said visitors.

Q Did you tell him who they were? A No.

Q Why didn't you? A I didn't care to tell him, because I am afraid to tell him, because they are Christian people there, and therefore, I simply told him visitors were there.

Q Well, how did you know that they were Christian people?

A What do you think I am, that I don't know the difference between a Christian and a Jew? If they were Jews, they would have spoken Yiddish to me.

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Q Just from their appearance and from the fact that they didn't speak Yiddish to you, you judged they were Christians?

A Very easily. It is very easy to recognize a man, whether he is a Jew or a Christian.

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MR. ROSALSKY: I object to this.

THE COURT: I will allow the question.

MR. ROSALSKY: Exception.

A (continued) There is a difference between American people and foreigners. The American people, you can't distinguish at all; they all look alike, Jews and Gentiles, but foreigners you can recognize immediately.

Q It was not because you had known any of these men that you said they were Christians? A I didn't know them at all.

Q Well, had you ever seen them before? A I never had any business with foreign Gentiles.

Q Had you ever seen any of these three men before? A No.

Q Why, hadn't they been up to your house a couple of nights previously? A I hadn't seen them.

Q Are you sure now you hadn't seen any one of these three men before? A No, I didn't see them. No Gentiles came up to my house before.

Q Now, Madam, just look over towards me. When you say that no Gentiles came up, did you say that all these three men that came up first and asked for Yiddle, were they all Gentiles? A They were Gentiles, yes.

Q When you came from this restaurant where you saw your husband and this man Abe, did you go directly back home? A Yes, sir.

Q Did you go upstairs? A Yes, sir.

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Q And where were these three Gentiles? A In the house.

Q Were they in the same position as when you left? A I offered them chairs as soon as they came in, and they were sitting on those chairs.

Q And they were sitting there when you came back? A Yes, sir.

Q Was any one of these three men standing up? A I believe all three were sitting.

Q Now, what was it that you said to them when you came back, after having talked to Yiddle, your husband? A I said "Yiddle is coming."

Q Did they say anything? A They said, "All right."

Q Now, did you speak in English, or what language did you speak in? A In English.

Q And they spoke in English, too, did they? A They only said "All right." That's all they said.

Q Well, when they asked you where your husband was, what language did they speak in then? A They asked in language which may be either Polish, or Russian, because in Polish and Russian ~~xxxxx~~ this appears to be the same thing, where it is the same thing in Polish as in Russian.

Q Well, how do you know that it is the same thing in Russian, if you know nothing about the Russian language, as you have said? A Well, because the words they said in Russian is the same as Polish, and I understood it.

Q Well, it might have been Polish that they were speaking, is it not?

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A They can't speak Polish. When I spoke Polish to them, they looked at me, and I saw that they didn't understand me.

Q Then did you change into Russian? A No, sir, I can't speak Russian.

Q Now, when you came back, what did you do around the house? Anything? A I finished dressing the baby, and put the blanket around the baby.

Q By the way, Yiddle didn't say anything to you when you went over to this restaurant -- where was it? A Sheriff and Willett Street.

Q Did he say anything to you then about leaving the house to these three visitors, leaving it all alone? A No, he said, "Go home, I'll be home right away."

Q How long were you home before Yiddle and the other two men came? A Couple of minutes, ten or fifteen minutes, around that time.

Q And you were working around the house that time? A No.

Q What were you doing? A I don't work on Saturday.

Q Well, what were you doing around the house? Were you dressing the baby, or what? A Why, it takes some time to dress a baby, and put on the hat and put the blanket around. 9696

Q And so that was what you were doing? A Yes, sir.

Q Now, you were talking to these three men at that time? I mean, the three men that came there? A I can't talk with them. If they were Jews, I would have spoken with them; I might

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have spoken to them.

Q Weren't you in the house when Yiddle came up? A No, I was downstairs already with the child.

Q Can you swear to that? A Yes, I can swear.

Q It was already dressed to go to the doctor's, wasn't it?

A I was downstairs with the child when Yiddle came up.

Q Was the child already dressed for the doctor's? When you met Yiddle downstairs? A Yes. That's why I went downstairs.

Q Well, why didn't you go to the doctor's? A Yiddle started to fight with me. He ~~said~~ said, "When you have visitors, you go away and leave them alone."

Q Well, didn't you tell him that the child was very sick, and you were taking him to the doctor's? A Yes, the bowels of the child hadn't moved for three days.

Q Well, didn't you tell him that the child was very sick when you met him downstairs? A He said to me "Go upstairs with the child. When the three men have gone, I will go with you to the doctor's."

Q Did you tell him that the child was very sick, and that you were on your way to the doctor's with the child? A Well, he knew just as much about the child as I did.

Q Did you tell him, when you met him downstairs, that you were on your way to the doctor's with the child? A I told him that, first, I would go to the doctor's, and then I would go to the doctor's.

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Q Is that what you told him when you met him downstairs?

A He wouldn't let me go. He took the child from me, and he took the child upstairs.

Q Did you go upstairs? A Yes.

Q He carried the child into this room, didn't he? A Yes, sir.

Q He laid it on the bed in the bedroom, I suppose? A Yes, sir; and, taking off part of the clothing, so that the child shouldn't have cold.

Q And then did you dress the child again? A He wouldn't let me go, and I went to the bedroom, and I dressed the child, and he said to me, "As soon as the men will have gone, then I will go with you."

Q What was said by your husband or either of those two men that came up with your husband, the Gentiles, as you call them?

A I don't remember, because I started to fight with my husband at that time, because he wouldn't let me go.

Q Well, was your husband talking to those three men, I mean those three Gentiles? A He said "Hello."

Q Is that all? A He said something more than that, but I don't know what he said.

Q Was that spoken in Russian? A Yes, sir.

Q Was that all the conversation that passed between these three Gentiles and your husband, all spoken in Russian? A Yes, sir.

Q How long did you remain there before you took the child away? A Quite some time.

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Q Well, five or ten or fifteen minutes? A Perhaps half an hour or three quarters of an hour.

Q When you left you took the child along with you? A Yes.

Q Did your husband go? A He couldn't leave them there alone, and go with me.

Q What did the two men do who came up with your husband, during the three quarters of an hour they were there? A I don't know. They were in the kitchen, and I was in the bedroom with the child, and I was fighting with my husband during the time.

Q Who did you leave in the kitchen when you left the house entirely, with your child? A All of them.

Q Well, what was Abie and this other man doing in that three quarters of an hour? A I don't know; they were either sitting or standing, or talking partly to me. I don't know.

Q How many chairs do you have there, Madam? A Five chairs.

Q Five? A Yes, sir.

Q Were they all sitting down? A Yes.

Q When these Gentiles first came, did they say anything to you about where was Yiddle's sister?

MR. ROSALSKY: May it please your Honor, I object to the characterization, I object to the District Attorney's continued characterization of these three men as Gentiles.

THE COURT: Well, how do you want them referred to? He will refer to them exactly as you want them referred to.

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The word was used by the witness, and I feel sure that the only reason why the District Attorney is using it, is because she referred to these men in that way. How do you want them referred to?

MR. ROSALSKY: These three visitors.

MR. McDONALD: I have no objection to so referring to them.

THE COURT: Now, do you prefer to have them designated as visitors?

MR. ROSALSKY: They may be called anything, as long as they understand who is referred to.

BY MR. McDONALD:

Q. These three visitors, did they say anything to you about Yiddle's sister, when they came?

MR. ROSALSKY: I object to that as already asked and answered.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A. No, nothing at all.

Q. Well, how do you know, if they spoke in Russian? A. They only asked me about Yiddle, not about any sister.

Q. Well, isn't the word for sister the same in Russian as it is in Yiddish? A. In Polish, it is Syostia, and in Yiddish it is shvester.

Q. Now, do you know what the word for sister is in Russian?

I don't know.

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MR. McDONALD: That's all.

THE FOREMAN: I wish to ask a question, your Honor.

THE COURT: Yes, Mr. Foreman.

BY THE FOREMAN:

Q Do you know when the defendant's sister first came to this country, your husband's sister? A I don't know.

Q Was she in this country on the day of the shooting?

A Oh, yes, she had been here already a long time.

Q How long? A I think she must have been here by that time about two months.

Q Did you know her before she came to this country?

A No, they came from Russia, and I come from Poland.

Q Was it longer than two months that she had been in this country before the shooting? A I am not sure.

Q How many times did you see her before the shooting?

A All that time, up to the present day.

BY THE COURT:

Q How many times before the man was shot in your house, had you seen and talked to your husband's sister? A How can one tell how many times; if you see a person often and talk to him?

Q Did you see her as many as ten times before the shooting?

A It may be ten; it may be more times.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q At the time you made the statement, of January 31st,

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in the police station, was there any policeman there who was speaking Yiddish? A They spoke a few words in German, but I couldn't understand them.

Q Was that the time the statement was being taken from you?

A Yes, sir.

(MR. ROSALSKY: That is all.

BY THE COURT:

Q After the 30th of January, the day the man was shot, when did you next see your husband? A When he came to the station house.

Q When was that? A I don't know what month and what day he was brought there. It wasn't Jewish holiday, but it was an English holiday.

Q Was it several weeks after the shooting? A I think so.

Q How long, about, would you say it was; how many weeks, for instance? A I don't believe it was more than two or three weeks.

Q Did you hear from him between the day of the shooting and the day you saw him in the station house, by letter or message? A He didn't write. I didn't hear from him.

THE COURT: Anything further, Mr. McDonald?

MR. McDONALD: No, sir.

THE COURT: Anything further, Mr. Rosalsky?

MR. ROSALSKY: No, sir.

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FRANK POLONYUK, of 185 East 3rd Street, a
witness called on behalf of the defense, being duly sworn
and examined through the same Official Interpreter,
testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A Carpenter.

Q Are you in the restaurant business, also? A In the
winter time, I am interested in the restaurant business, and in
the summer time, carpenter.

Q Were you in the restaurant business on 5th Street, on
the 28th day of January of this year? A Yes.

Q Where is this restaurant? A On 5th Street.

Q What number? A 432.

Q Is the restaurant open day and night? A No, from seven
o'clock in the morning until nine o'clock in the evening.

Q And are you open as late as ten, eleven or twelve o'clock
at night? A Oh, maybe on a Saturday night when we happen to
keep open a little later, to clean the place.

Q Do you know Andrew Sivak? A Yes, sir.

Q How long have you known him? A Oh, I knew him in Russia.
The old country. I know his folks there.

Q How long have you had this restaurant on 5th Street?
A Three months.

Q From when to when? A I opened it in January.

Q What date in January? A I can't tell you the date.

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Q How many weeks were you open before the day of the shooting? A More than a month, I believe.

Q Now, during this month, was Andrew Sivak a patron of this place? A Yes, he used to come there and have his meals there, and the stuff that he bought for the purpose of taking it along to Russia, he brought it there.

often
Q How often did he come there in January? A Every morning, he used to have his breakfast in my place.

Q How about the evenings? A Every night, about eight o'clock, he used to come for his supper.

Q Were you in the restaurant there every night during the month of January? A Well, I am the cook, at the same time.

Q Do you know Yiddle? A Yes, sir.

Q How long have you known Yiddle? A Oh, I know him from the old country, since he was a little boy.

Q Did he come to your restaurant during the month of January? A Once he came to my place. He came and looked at the place, and went away.

Q When was the first time you ever saw Yiddle in your restaurant? A I can't remember the date.

Q Do you mean to tell this jury that you saw Yiddle in your restaurant only once? A I saw him once when I opened the place, and after that another time, once more.

Q Didn't Yiddle come to your restaurant, every day during the month of January? A No, why he is a Jew, and he wouldn't

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eat in my restaurant, because I don't prepare Jewish dishes.

Q Does Yiddle care much whether you prepare Jewish dishes or not?

MR. McDONALD: Objected to.

THE COURT: How does he know? Sustained.

BY MR. ROSALSKY:

Q Didn't Yiddle come to your restaurant almost every day in the month of January? A How can I tell you he did come, when he didn't?

Q Did Yiddle ever live at your house? A He slept in my house three nights, and his wife slept in my house one night, when he came from Europe.

Q Did you see any of Andrew Sivak's friends before this trial, before today? A Yes, he has a brother. I saw his brother. He is outside there (indicating the corridor).

Q Did you come down here with Sivak's brother? A No, sir, I came first; I came in at ten o'clock, and he came after ten.

Q Were you in the restaurant on Saturday, the day of the murder? A Certainly I was. How could I stay away? I do the cooking there.

Q Do you remember seeing Sivak that afternoon? A Yes, he came after that had happened.

Q And did he say anything as to what had happened, before the policeman came in? A On Saturday morning at eight o'clock Sivak came to me and said--

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BY THE COURT:

Q What did Sivak say when he came back to your store on Saturday afternoon, about the shooting? That is counsel's question. A He told me that he, Sivak, and Gustyak, had gone up to Rosenwasser's house, and that Rosenwasser had taken a revolver and demanded their money. That Rosenwasser said to Gustyak, "Give me your money," and that he thereupon ran out of the house and came to my restaurant.

BY MR. ROSALSKY:

Q After, was the policeman present at the time Sivak told him this story?

MR. McDONALD: I object to that as to form, if your Honor please.

THE COURT: Yes. Put the question directly to him.

BY THE COURT:

Q Was the policeman present when Sivak made that statement to you? A The policeman was n't there at the time. He came there five minutes later.

BY MR. ROSALSKY:

Q Did you speak to any of Sivak's friends about this case during the last week or two weeks? A No.

Q Did you tell Sivak's brother about the testimony that you would give here today? A No, sir.

Q Did his brother ask you what you were going to testify to? A He asked me what I was going to say, and I said "I will

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say everything that I know.

Q Did you have any card games in your restaurant? A No, not at all.

Q Don't your patrons play cards? A No.

Q Did you ever see Sivak and Yiddle play cards together in your restaurant? A No.

Q Did Sivak ever visit you at your house? A Yes, sir.

Q Often? A No, not often.

Q Did you ever see Sivak and Yiddle come together to your house? A No, they were not together.

Q Don't you know that Sivak and the defendant were friends, and had gone into your store many times together?

MR. McDONALD: Isn't this cross-examination, your Honor?

THE COURT: Yes, I think so.

MR. ROSALSKY: But I was surprised by my witness, if your Honor please.

THE COURT: Well, you may have the question.

A I didn't see them together only once.

Q When was that? A Friday evening I saw them together in my restaurant.

Q Did you have anyone living at your house by the name of Nicolai? A I don't know any Nicolai.

Q In the month of January, did you have anyone living at your house; boarding with you, by the name of Nicolai?

A Oh, yes. He went to the country to work.

Q. Was he living at your house? A Yes, sir, but not now.

Q Didn't you see Nicolai playing cards with Sivak and Yiddle? A No.

MR. ROSALSKY: That is all.

CROSS EXAMINATION BY MR. Mc DONALD:

Q Do you know Hoochak? A Yes.

Q Did you know Jacob Mazzura? A No.

Q Did you know that Hoochak and Sivak were going back to Russia? A Yes.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Who told you that Hoochak and Sivak were going to Europe? A Because they came to my restaurant and talked about it, and told me what they were going to take to Europe with them.

Q Did you tell Rosenwasser, the defendant, that Hoochak and Sivak were going to Europe? A No, sir.

THE COURT: Gentlemen, we will suspend until two o'clock.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess until 2:00 o'clock).

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AFTER RECESS.

JULIUS ROSENWASSER, the defendant, called
as a witness in his own behalf, being duly sworn, testified

as follows:

DIRECT EXAMINATION

BY MR. ROSALSKY:

Q. How old are you? A 25.

Q. Talk up loud. A 25.

Q. Where were you born? A. Russia.

Q. How long are you in this country? A. Seven years and
five months.

Q. Are you married? A. Yes, sir.

Q. You have a wife and child in your family? A. Yes, sir.

Q. Do you know Andrew Sivak? A. Yes, sir.

Q. When, before the 29th of January, 1921, did you meet
Andrew Sivak? A Six weeks before that time.

Q. Where did you meet him? A Up to Joseph Polonyuk's
house.

Q. That is the restaurant keeper who was on the stand?
A Yes, sir.

Q. How long, about, before the 29th of January, did you
meet Sivak? A Six weeks before the twentyninth of January,
between six and seven weeks; six weeks before the shooting was.

Q. Now, you must talk up louder. Did you frequent the
restaurant of Theodosi Polinik? A Yes, sir, I used to go there

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every day.

Q Did you ever meet Sivak there? A Yes, sir.

Q About how often did you meet him? A I meet him sometimes four times a week. Some weeks, I met him every day.

Q When was the first time that Sivak ever told you anything about Wasil Hoochak and Jacob Mazzura?

MR. McDONALD: Objected to , as leading.

THE COURT: Objection overruled.

A About a week before that happened.

MR. McDONALD: But that presupposes before any evidence is taken to the contrary, that Sivak did tell him something.

THE COURT: Yes, and you may develop that on cross-examination. I will allow the question.

BY MR. ROSALSKY:

Q About a week before? A Yes, sir.

Q What did he tell you? A He told me that he, Sivak, and Mazzura, that they wanted to go home directly they told him, and they had got about \$5,000. in the bank, so he made up his mind to go with them to Russia, and rob them on their way, while they are going over.

Q When did he tell you that? A A week before that happened.

Q Where? A Monday.

Q Where, where? A In that restaurant.

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Q Did he tell you anything else? A No, sir, he just told me that.

Q Did he tell you about getting anyone else to go into the job with you? A He told me I should get him two fellows to do that for him.

Q Well, before I ask you this -- what did you say to him the first time he spoke with you about it? A I told him he shouldn't tell me anything about a thing like that; that I didn't want even to hear it.

Q When did he tell you about getting two fellows? A At the same time that he told me they are going home to Russia.

Q When did he next ^{tell} to you about the same matter?
A Wednesday.

Q What did he say to you on Wednesday? A On Wednesday he told me that I should hire a taxi, and I should drive it myself, and the day they left to go to take the boat, ~~the day~~ to go to Russia, I should take them on the taxi, and take them away ~~from~~ some place, and I should have some drugs to give them, and I should get their money off them.

THE COURT: Now, Rosenwasser, you know that you must have the jury hear all that you are saying, for your own best interests. Now, speak much louder, so that they can hear you.

BY MR. ROSALSKY:

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Q What did you tell him about that? A I refused it.

Q When did you next see him? A I seen him the same ³⁷¹night, Wednesday, while I was sitting in the restaurant, about three hours, and we were playing cards together on the same table, with another man, one of the partners in the restaurant.

Q Did he talk to you about robbery that evening? A That time, when we were sitting by the table, he didn't talk nothing to me. We were playing cards.

Q Now, did you go home with him that evening? A Yes.

MR. McDONALD: Now, that is leading, I submit, your Honor.

THE COURT: Please do not lead him, Mr. Rosalsky.

BY MR. ROSALSKY:

Q On the way home, did you talk about the proposed robbery of Hoochak and Mazzura? A He told me, but I didn't want to hear him. I told him he must cut out that talking; I didn't want to hear it no more.

Q Did he ask you whether you had another man to do the job?

MR. McDONALD: I object to this all, as leading.

THE COURT: It is very leading, Mr. Rosalsky. I cannot permit you to lead the witness.

BY MR. ROSALSKY:

Q What did he say to you about getting other men to do the job? A He told me I am to get a taxi, and I should watch them that day that they have to go on the boat, and that I should take them some place, and try to rob them of the money.

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Q Did you see him Thursday, the next day? A No, sir.

Q Did you take him to your home? A Yes, sir.

MR. McDONALD: Now, there is more of it, sir; he is absolutely leading.

THE COURT: Now, you cannot testify, Mr. Rosalsky. You must let the witness testify. That is not only leading, but suggestive. Now, let him tell what he has to tell, without putting words in his mouth. I know that you are doing it inadvertently, but don't do it.

BY MR. ROSALSKY:

Q When did you take him to your home? A On Wednesday night.

Q Did you have any talk with him about the robbery?

A He told me once, but I told him he shouldn't mention me any more about it, because I don't want to hear about it.

Q Is that the first time he had ever been to your home? A Yes.

Q When did you next see him? A On Friday night.

Q Where? A In the restaurant.

Q What did he say to you in the restaurant? A I was sitting there about an hour in the restaurant, and then he came over to my table, and he told me he wanted to tell me something. So I didn't even answer him that time, and I was still sitting by the table. Then he walked out in the hallway from the restaurant, and he walked to me I should go out with him (illustrating).

Q Did you go out? A Yes, sir.

Q Did he talk to you when he went outside? A Yes, he told me that he changed his mind; he didn't want no more to rob them.

Q Did he have any other talk with you? A No, sir.

Q Did you tell him -- is that all the talk you remember?

A Well, he told me that, and I answered, "I'm glad that you changed your mind," and one of the owners of the restaurant come into the hallway and seen us both together, and I left the hallway and went into the restaurant.

Q Andrew Sivak testified that you told him that your sister had just come from the old country, where these men were going.

A No, sir, I didn't tell him.

80/
81/ Q And that, if ~~xxx~~ ~~xx~~ he came up to your house with these two men, you would introduce them to your sister; did you have any such conversation with him or them? A No, sir.

Q Andrew Sivak testified that you wrote your address on a slip of paper and gave it to him . A No, sir, I didn't.

Q Did you have any other conversation with Sivak, that Friday night? A No, sir.

Q Did Sivak tell you that Hoochak withdrew his money from the bank? A He didn't tell me, no.

Q Did you know, Friday night, that Sivak had withdrawn any money from the bank? A No, I didn't.

Q Or Hoochak? A No, sir.

Q Did you make any appointment with Sivak to call at your home on Saturday? A No, sir.

Q When was the time on Saturday that you found out that Sivak and two others were at your home? A When I come up to the house.

Q Did you see your wife before you went up into the house? A Yes, sir.

Q And did you have a talk with your wife? A Yes, sir.

Q And then you went up to the house? A Yes, sir.

Q Did you meet Abe Kepaloff? A I went down with him from the house.

Q Did you meet this other party who afterwards came back to your house? A I seen him with a fellow by the name of Konner, walking in the street.

Q How did it happen that this man, this third man, came up to your house? A When I met him on the street with my friend Konner, so I asked Konner to come up in my house, and he told me he ain't got no time, because he has to go to a place, so I told him --

MR. McDONALD: I object to this conversation between the defendant and Konner--this alleged conversation.

THE COURT: Sustained.

MR. ROSALSKY: Exception.

Q You then went home with these two men?

MR. McDONALD: I object to this as leading, sir.

THE COURT: Yes, let him tell what he did thereafter.

BY MR. ROSALSKY:

Q What did you do after you had talked with your wife, on that Saturday morning? A I told her to go upstairs, and I will be upstairs in ten minutes.

Q What did you do after that? A I did go up to my house.

THE COURT: Mr. Rosalsky, I will allow you to ask the question that I excluded, about the conversation with a man named Konner. My previous ruling is withdrawn, and you may have that conversation. I understand that you are asking him to explain how a third man came up to the house, He may explain.

MR. ROSALSKY: He has already explained that, if your Honor please.

THE COURT: Now you had better get from the stenographer the question that you asked then, and which was excluded, and repeat it, and it may be answered.

BY MR. ROSALSKY:

Q What did you tell Konner? A I told him he shall come up in my house and then I will go with him.

BY THE COURT:

his pay?
Q Go with him to get ~~xxxxxxx~~? A Yes, and he refused and said "It will be too late, because the place is open until two o'clock where he can get his pay.

Q Where did he work? A On the dock.

BY MR. ROSALSKY:

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Q And this unknown man was a friend of Konner's?

MR. McDONALD: Objected to as leading.

MR. ROSALSKY: Question withdrawn.

Q With whom was the unknown man when you met him? A The unknown man was with Konner.

Q Had you ever met this unknown man before that day?

A No, sir.

Q When you reached your house, what is the first thing that you did? A Before I come up to my house I met my wife on the stairs, with the baby, going down. I asked her, "Why did you leave the people upstairs, and you went down, and you left the house for people you don't know?" And she said, "I know them; they are your landsman." And I took the baby away from her and took her back in the house.

Q What next happened? A Then I got in the house and I took the baby and undressed it, and she started in hollering at me, why I done that -- and fighting with me for an hour, about an hour, half an hour, and I didn't let her go down. And then those Russian fellows said, "Well, why don't you leave her down? The baby is sick," and so I let her go.

Q What did Sivak say to you when you came into your house? A He didn't say nothing to me. He just told me "Hello", and I told him "Hello."

Q Well, did you have any talk with Sivak? A We were all talking together.

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Q What were you talking about? A The Russians²³⁷² ~~spoke~~.

They told us that they are going home to Russia next week, and they are trying to buy everything to buy that is possible for them to get ready to go home. Then they asked --

Q Who? A These men---

BY THE COURT:

Q Mazzura? A Yes. And he asked me if I seen my sister and I told him I didn't see her yet.

BY MR. ROSALSKY:

Q Had you ever spoken to him about your sister? A No.

Q Did you ever speak to Hoochack about your sister?

A No, sir.

Q What else did Sivak say to you? A Sivak didn't spoke to me at that time.

Q Did you know at that time whether these men had any money with them? A No, sir, I didn't.

Q Did Sivak talk to you about these men? A No, sir.

Q What is the next thing that happened? A The next thing was when my wife was in the bedroom dressing the baby. We were talking about Russia, and then Mr. Mazzura said he is sorry that he ~~is~~ is going to leave the United States and go back to Russia, and the only thing he is going for is he has got children there and he wants to see them once more. And Hoochak said, "No, you are mistaken, we ought to go there long ago, because Russia needs us now."

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Q. Well, your wife was still there at the time? A Yes.

Q. Then your wife went out with the bay, is that right?

A Yes, sir.

Q. And after your wife went out with the baby what was the next thing that happened? A Well, when my wife went out, I went over-- if I can get that (indicating the diagram in evidence).

Q. Do you want to look at that diagram, People's Exhibit 5?

A Yes.

THE COURT: You may use that if you want to.

THE WITNESS: My wife come out from the bedroom, and she went to this door, and went out (indicating on the diagram). Mazzura and Hoochak were sitting near the mantle piece. Over here was a table (indicating), and a chair on the side, and Sivak was sitting on this chair.

On the table was a glass bowl, and I put their tea -- I put on a kettle of tea to warm up.

Q You were making tea? A Yes, sir. When I was -- I would turn around and I would look this way (illustrating), and I heard one of those fellows speak in Russian, "Hands up", and when I heard he said "Hands up", I turned around, and I seen he had a gun. I only seen the end of it, when he hollered out "Hands up." I seen Sivak walk by the door, and he run out.

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Mazzura got up and he got hold of the fellow with the gun. While they were fighting, this little fellow, Sivak -- No, what's

his name? -- Hoochak, I mean, run out, and while he was running I heard a shot, and the man fell down, Mazzura fell down.

When he fell down, the other fellow that done the shooting, he hollered out to "Abie", "Let's get out of here" and they run right after this man Sivak -- no, I always forget his name -- Hoochak, and I heard another shot in the hallway, and I was left all alone in the house with the man that was laying on the floor, dead.

IP I stood there about three minutes. I couldn't believe that this really had happened. That a thing like that had happened; and I seen the man was laying on the floor, but I wouldn't know if he was dead or alive.

Then I was thinking that I should run out after those two fellows, and ~~xxxx~~ ~~xxx~~ run out in the street and holler for help. But when I come down in the hallway on the ground floor, I seen Abie in the hallway, to the back. I asked him "What are you doing here?" And he said, "I'm trying to get away." And I said, "What do you mean, trying to get away?" "Why didn't you run right after the fellow that done the shooting?" And he said, "he run right away", and I said, "Well, we'll go and see if we can find him."

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And I opened the door to the street and there was a big crowd there, and I asked them if they seen where the fellers run, and they said one run this way, and the other that way (illustrating), and when I run out I run out without my hat, and

without my overcoat.

THE COURT: Now, take away the diagram. He does not need it now. Now, talk out loud.

A (continuing) When I asked them which way did they run, they said one feller run this way, and the other run the other way, and I turned to Norfolk Street on the east side, and I couldn't see nobody. I was that time with Abie.

Then Abie told me, "What are we going to do now?" And I said "What do you mean?" "We are going back to the house, because if we run away they will blame us for it." And he said, "No, we ~~xx~~ ain't going back, because anyway they will lock us up for material witnesses."

And when he said that I realized that they would lock me up for a material witness. I didn't seem to realize that I would be charged with murder.

BY MR. ROSALSKY:

Q Now, when you heard someone say "Hands up", and saw some one lying on the floor, did you frisk the person of the deceased? A No, sir.

Q Or put your hands in or on his pockets? A No, sir.

Q Did you make an attempt to help him? A No, sir.

Q Did you put your hands on Hoochak? A No, sir.

Q Or go over the pockets of Hoochak? A No, sir.

Q Or make any attempt at robbery? A No, sir.

Q From the time you heard the words "hands up", and the

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shot was fired, ~~was~~ was there any struggle? A Yes, sir. 281

Q How long did it last? A About two minutes.

Q Who was struggling? A The feller with the gun and Mazzura.

Q Will you indicate in what positions you saw them?

A Mazzura was sitting on the chair right here (indicating), and the fellow was facing him with the gun; and Mazzura got up and he went over to the fellow that had the gun in his hand, and he grabbed a hold -- I don't know if it was on the handle or where, and then they started in to struggle.

Q And while they were struggling, while that struggling was going on, did you lay your hands on Mazzura? A No, sir.

Q Or Hoochak? A No, sir.

Q You say you heard Kaplan say "Let's get out of here". Was that before you heard the shot? A No, sir, after the shot.

Q Did you know, before you heard the words "Hands up" that this unknown man had a gun? A No, sir.

(MR. ROSALSKY: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q What name did you know this man by, who had the gun?

A I didn't know him by no name.

Q Had you ever seen him before that morning or afternoon?

A No, sir.

Q Why did you invite him up to your house? A I didn't invite him. I invited both of them, Konner and this fellow.

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Konner introduced me to him.

Q What name did he introduce him to you by? A I don't remember. I can't tell.

Q Well, Konner wouldn't go upstairs with you, when you invited him up? A He said he has got to go for his pay.

Q And why did the man that you didn't know go up with you to your home? A Because he didn't want to go with Konner on the dock.

Q Did he tell you that was his reason? A Yes, sir; the fellow that done the shooting.

Q Did Konner and this other man know who was upstairs?
A No, sir.

Q Did you introduce this man who came up with you to these three men that you saw there? A No, sir.

Q Well, didn't you say to this unknown man, "These are friends of mine" or acquaintances? A No, sir.

Q By the way, had you ever seen those three men before that day, the Russian men? A Yes, but only two, Hoochak and Sivak.

Q How often had you seen Hoochak before that day? A A couple of times that week.

Q Did you know that he was on his way to Russia? A Yes, sir.

Q Everybody knew about it around there, didn't they?
A No, Sivak told me about it.

Q When? A On Monday.

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Q Monday of the same week? A Yes.

Q And he pointed out Hoochak as one of the men that were going over to Europe? A I knew it before that week.

Q Now, when you say that -- by the way, where was it you met Konner? A On Stanton Street.

Q What time did you leave your house that morning?
A About half past twelve.

Q Half past twelve? A Yes, sir. Between twelve and half past twelve.

Q Did you leave it with Abie? A Yes.

Q You had been in that house all the morning? A Yes, sir.

Q And about what time was it that your wife came to you and told you that there were three men upstairs? A About ten minutes to one.

Q You think about twenty minutes? A Yes, sir.

Q Between twenty minutes and fifty minutes, anyhow, isn't that right? A I couldn't tell you exactly.

Q You were out about twenty minutes? A Yes, sir.

Q You had told her where you were going? A Yes, sir.

Q To this restaurant? A Yes, sir.

Q And that there was a man there that owned you a couple of dollars? A Yes.

Q Who was he? A Abe Fusel.

Q Did you see him there? A No, sir.

Q Now where were you when you saw Konner? A On Stanton

Street.

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Q Well, had you left the restaurant? A I wasn't in the restaurant.

Q Or had you left from in front of the restaurant? A I was standing besides the restaurant on the street.

Q And did you leave the place where you were standing?

A Yes, sir.

Q Where you met Konner? A I met him on Stanton Street,

Q Where did you meet him on that street? A I can't tell you exactly.

Q Well, by what name was the unknown man known to you?

A So e ^{name} known, but I don't remember.

Q Was it a nickname that you called him? A I don't know.

Q Did he mention some name? A Yes.

Q And how far away from your own home were you when you met Konner and this man whom you didn't know? A I can't tell you exactly.

Q Well, about? A About two blocks.

Q Had you started away from the front of the restaurant?

A Yes, sir.

Q And you had gone away about three blocks? A Yes.

Q And how long had you known Konner? A About three months.

Q Before January 24th? A Yes, sir.

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Q Why didn't you go into the restaurant at Sheriff and Willet Street? A I looked in from the outside, and I seen he

wasn't there.

Q Does Fuesel go often into that restaurant? A Yes

Q Now when you left Konner, did this other man go with you? A Yes.

Q Upstairs with you? A Yes.

Q And you say you think you were there a little length of time? A Yes, sir.

Q You took the baby up with you? A Yes.

Q By the way, how long did you know Sivak? A About six or seven weeks.

Q When did he first start to tell you about the robbery, or ask you to commit a robbery? A A week before that happened.

Q About Monday, do you mean? A Yes.

Q And was that the first time he told you about the robbery?

A Yes, sir.

BY THE COURT:

Q How long had you known Sivak at that time when he told you about the robbery he wanted you to help him in? A I knew him then about five weeks.

BY MR. McDONALD:

Q And you knew Hoochak? A Yes, sir.

Q And you knew he was going over to Europe? A Monday was the first time.

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Q You know, of course, that when these Russians are returning, they generally have a lot of money? A I didn't know

that.

Q Didn't you hear in that neighborhood, generally, that when the Russians went back home, they generally carried a lot of money with them?

(Objected to ; sustained.

BY THE COURT:

Q Did you know that these men were going to Russia? A Yes, sir.

Q And didn't you know that it would take some money to take them back to Russia? A No, sir.

Q You didn't know that? A No, sir.

(THE COURT: Put your next question.

BY MR. McDONALD:

Q And what did Sivak tell you about that? A He said that he changed his mind, but he wanted to go to Russia to get the money out of them.

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Q Did Sivak tell you that he was going to Russia? A Yes.

Q And that he was going with Hoochak and Mazzura? A Yes.

But he said he would never go to Russia; he would come back.

Q Yes, did he say anything else then? A Yes, sir.

Q What else did he say? A He told me I should hire a taxi -- he knew that I could drive a taxi -- and when they left to go on the boat I should make for him the job.

Q You should make for him the job? A Yes, sir.

Q What did you understand him to mean when he said to you that you should make for him the job? A He told me that I should rob them of the money, and I refused then. I said, "I don't want to hear about it."

Q Well, you were astonished, weren't you, that this man should come to you and ask you to rob two men? A Yes, sir.

Q You were very much surprised? A Yes, sir.

Q And you were rather surprised that Sivak asked you to do anything like that? A (No answer.)

BY THE COURT:

Q Were you surprised, astonished, that Sivak should ask you to do a thing like that? A Oh, yes.

BY MR. MC DONALD:

Q And did you see Sivak again after that? A Yes, sir.

Q And you saw Hoochak after that, again, after that conversation? A I can't tell tell you whether I seen him again that day.

Q Now, did Sivak tell you how he wanted you to rob these men? A Yes.

Q Did he mention the names of the men? A Yes.

Q And what names did he mention? A Wasil.

Q And you knew whom he meant? A Yes.

Q It was the witness in this case? A Yes.

Q What else did he say? A And he told me another man, but he didn't tell me his name.

BY THE COURT:

Q When did you learn that the other man that he had reference to was Mazzura? A He didn't mention me the name. He just told me another man.

Q When did you first learn that the man he told you about, without mentioning his name, was the man Mazzura? A When I read it in the paper.

Q When Mazzura came to your house, did you not then know that he was the man that Sivak referred to? A No, sir.

Q Or that he was the man who was going to Europe with Hoochack? A No, sir.

BY MR. MC DONALD:

Q Didn't you tell Hoochack what Sivak had said about robbing him, after that Monday night? A No, sir.

Q Why didn't you? A Because I didn't want to believe it. I think he made a joke to me.

Q Who? A Sivak.

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Q Oh, then you didn't really believe that Sivak meant what he said, when he told you to rob these men? A No, I didn't believe it.

Q You didn't believe he meant what he said? A No, sir.

Q You thought it was a joke? A Yes, sir.

Q Now, when you saw him again, did Sivak say anything?

A Yes, I saw him on Wednesday night.

Q Then what did he say? A On Wednesday night he told me again, and he told me the same thing about the taxi.

Q And where were you then when he did? A In the restaurant.

Q Well, right in the restaurant? A Yes, sir.

Q Did he come over to you where you were sitting at a table?

A Yes, sir.

Q What time was it? A About eight o'clock?

Q And did you see Wasil Gustyak? A Yes, sir.

Q And when Sivak came over to where you were sitting in the restaurant, was Wasil there? A No, sir.

Q Did Sivak sit down next to you? A Yes.

Q And was there anybody else at the table? A No, sir.

Q What did he say then? A He told me the same thing what he told me the first time.

Q But that was Sunday night? A Yes.

Q The first time he told you about robbing these men was Monday night? A Yes, sir.

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Q Now, when he sat down, you say there was nobody else at

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the table with you? A No, sir.

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Q And did he sit alongside of you or across the table?

A Across the table.

Q And did he lean over and have the talk with you? A Yes.

Q Was anybody else at that table? A No, sir.

Q How near to your table was he -- withdrawn. How near to the table that you and Sivak were at, were the other persons around there? A We were far away.

Q ~~For~~ ^{from} that place to your chair (indicating post of the jury box)? A Yes, sir.

Q Now, when Sivak spoke to you on Wednesday night -- withdrawn.

When he spoke to you on Wednesday night did he talk to you in a loud tone, or whisper it? A No, not loud.

Q Did he whisper it? A Yes.

Q What did he say? A He said I should hire a taxi and to take them away, and that day they have got to go to take a trip, and I should rob them of the money.

Q Did he say how you were to take the money away from those people? A No, sir.

Q Well, did he tell you where you were to rob them; that you were to let them out of the taxicab, or rob them in the taxicab? A He told me I shall drug them.

Q Did he tell you where you were to get the drugs? A No, sir; he said I should get them.

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Q Well, did he tell you how you were to get the drugs?

A No, sir. When he said that I went away from him.

Q Will that he said was that you were to get a taxicab and take these fellows to the vessel or boat, and that on the way you should give them a drug? A Yes, sir.

Q And rob them of the money? A Yes, sir.

Q And did you say, "Where is their money?" A No, sir.

Q Not a word about it? A No, sir.

Q You didn't even think then that it was a joke, did you?

A I didn't want to believe it even then, because he told me it was a relative of his.

Q When did he tell you that? A Three weeks before that happened, before the shooting took place.

Q And that was Wednesday night, three weeks before, that he had told you Wasil was a relative of his? A Yes, sir.

Q Now, when did you say you didn't want to hear anymore of it, and, after that where did you go? A Over to another table.

Q And with whom did you sit there? A With two fellows from my country.

Q Did you sit down with the proprietor? A No, sir.

Q The proprietor and the cook? A ~~Yes~~ No, sir.

Q Whom did you sit down with? A Simon Marischek.

Q What did you do? A I came over there and I sit with them at their table.

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Q About what time did you leave the table where Andrew Sivak spoke to you of robbing these people, and go over to that table? A About eight.

Q What hour was it? A About eight o'clock.

Q Did you sit down as soon as you went into the restaurant?

A No, sir.

Q You stood up and walked around? A I went to the kitchen.

Q How long did you remain there? A About five minutes.

Q And then where did you go? A I sat down at the table.

Q The same table that Sivak came to? A Yes.

Q And he came and sat down? A Yes, sir.

Q And then he leaned across and whispered this proposition to you? A Yes.

Q And then you left, telling him you would not do it?

A Yes, sir.

Q Now, when you left the table, at that time did you see Wasil in the restaurant? A I don't remember if I did or not; I don't remember.

Q Did you see where Sivak went? A No, sir.

Q Did he go out? A I didn't see him.

Q When you went over to the other table, did you see where Sivak went? You left Sivak at the table at which you had sat yourself, first? A Yes.

Q And went over to this other table where two of your landmen were? A Yes.

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Q And how long did you remain talking to those two townsmen?

A Only a little while, and I walked out, and stood -- and Sivak started to tell me the same thing.

Q Where was that? A On the street. He followed me out. And I told him not to mention it, because I didn't stand for it, I would stand for a thing like that, for any money in the world.

Q Now, did you think then that he really meant what he said?

A Yes.

Q And you hadn't any doubt in your own mind that he wasn't meaning it as a joke, to rob these men? A No, sir.

BY THE COURT:

Q You had no doubt in your own mind that he was in earnest?

A Yes, sir.

BY MR. MC DONALD:

Q Oh, by the way, when was it that he winked at you, and took you out of the restaurant? A That was Friday night, he winked to me and called me out in the hallway.

Q Now, when you say that you knew then that Sivak meant to rob or meant you to rob these people, that he was really serious about it, what did you say to him? A I told him he shouldn't mention it to me, because I didn't want to hear about it.

Q And then what did you do? A Then we were talking, and at the same time we walked in the street, until we come down to my house at Stanton Street.

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Q Well? A And he asked me where I live -- he didn't know

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at that time -- and I told him, "Right here." 294

Q And didn't you bring him right upstairs? A Yes, sir.

Q And this was after you knew that he intended to rob these two men and ~~ask~~ asked you to do it? A Yes.

Q And did you introduce him to your wife? A No, my wife knew him before.

Q You heard your wife testify on the stand that she had never met or known before either of these three men? A Yes.

Q Now, why did you invite this man, who wanted you to commit a grave, a serious crime, up to ~~my~~ your house? A Because I know him. He asked me where I live, and I said, "Right here."

Q No. Why did you bring him up to your house? A For no purpose.

Q But you knew, at that time, that this man intended to rob these two men that were going to Russia? A I didn't know it; he told me.

Q But you believed that he wanted you to rob them? A Yes.

Q And then you took him up to your house? A No, I didn't took him. He went up with me.

BY THE COURT:

Q How long did he stay on that night? A About fifteen minutes.

BY MR. MC DONALD:

Q How long did you remain in the restaurant Wednesday night?

A I can't tell you exactly.

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Q What? A I can't tell you exactly.

Q About how long? A I can't tell you.

Q An hour? A I can't tell you exactly.

Q Two hours? A I don't know. I can't tell you.

Q Three hours? A I can't tell you.

Q Do you know whether you were playing cards that night?

A Yes.

Q You are sure about that? A Yes, sir.

Q When did you play cards? A At the same night.

Q When? After Sivak had asked you to commit this crime, or before? A I don't remember. No, the night before.

Q Did Sivak play cards? A Yes, sir.

Q Did you tell any of these countrymen of yours that Sivak had made a proposition to you? A No, sir.

Q Why didn't you? You really knew at that time that Sivak meant it? A I knew it, but I didn't think he would do it.

Q You didn't/^{even}want to tell these men as a joke? A No, sir.

Q Is that so? A Yes, sir.

Q Did you see him on Thursday, Sivak? A I don't remember. I can't tell you. I don't remember if I seen him. I don't remember what day I seen him, but I seen him during that week.

Q Do you remember whether you saw Wasil on Thursday?

A I don't remember.

Q By the way, how long is it since you are working? A Until the time that the shooting was, that that took place.

Q When did you work last before the 29th of January?

A When I worked?

Q Yes. A About five months before that.

Q Five months? A Yes.

Q What did you work at then? A Leather chopper.

Q Chopper? A Yes, sir.

Q On Friday, what time was it that you saw Sivak? A I think it was about eight o'clock.

Q Do you remember telling Mr. Rosalsky you are sure that you didn't see Mr. Sivak on Thursday? A I don't remember if I seen him.

Q Didn't you tell Mr. Rosalsky, a few minutes ago, that you didn't see Sivak on Thursday? A I did so.

Q Now, did you really see him, or don't you remember whether you saw him or not? A I didn't see him.

Q You didn't see him? A No, sir.

Q Now, you told me that you didn't remember? Did you mean that? A If I seen him I would remember I seen him.

Q When was it -- tell us now about Friday when you first saw Sivak, about what time? A About eight o'clock.

Q At night? A Yes.

Q And was that the first time you had been in the restaurant that day? A Yes.

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Q Had you arranged to meet Sivak that night? A I had not.

Q Now, what did Sivak say to you? A When I come in I didn't

go over to him.

Q Where was he when you came into the restaurant? A I don't remember where he was.

Q Now, what did you do when you came into the restaurant on Friday night? A I seen two fellows that come from the same town where I come from.

Q And those are the two fellows you saw Wednesday night? A One of them was.

Q And did you sit down at a table? A Yes, sir.

Q And did Sivak come over to you? A Yes.

Q How long were you there before he came and sat at the same table with you and those two men? A Very soon.

Q Now, did he say anything to you? A No, sir.

Q Well, did he remain there? A Yes, sir.

Q How long did he stay there, at the same table you were sitting at? A A few minutes.

Q And then what happened? A And then he got up from his chair and walked over to the door, and then he winked to me, and called me out.

Q He called to you? A No, he just winked to me.

Q Well, when he winked, were you watching him, or what, as he left your table -- withdrawn. 9696

Q As he left your table, where did he go? A I didn't see where he went, but after when I looked around the restaurant, I seen he was standing near the door leading from the restaurant

into the hallway.

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Q Into the hallway? A Yes.

Q And did he call in a loud tone of voice? A No, sir.

Q Well, was it in a low tone? A No, he didn't talk at all.

He just winked with the head (illustrating).

Q Is that what you mean when you say he called to you?

A Yes.

Q He just winked at you? A Yes, with his head (illustrating):

Q Now, why did you go over there to him? A Why, he called me over, why shouldn't I go?

Q Now, here is a man who, you believed, had made a very bad suggestion to you. A I didn't feel it in my mind that time.

Q You didn't? A No.

Q Now, when you went over there, what was it he said?

A He didn't say nothing. He just opened the door and he went in the hallway.

Q While he opened the door what did ~~xxxx~~ you say? A It was the door that leads from the restaurant to the hallway, on the side.

Q And was it closed at the time he stood there and winked to you? A Yes, and I wanted to hear what he wants to say to me.

Q And he closed the door, you say? A Yes, when we went into the hall.

Q And then you spoke? Did he speak first? A Yes, sir.

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Q What did he say? A That he had changed his mind.

Q About what? Did you ask him? A No, sir.

Q Well, how did you know what he changed his mind about?

A He told me, "I've changed my mind about what I told you."

Q ,He said, "I've changed my mind about what I've told you?"

A Yes, sir.

Q Or did he say, "I changed my mind about robbing those two fellows"? A Well, I can't tell you exactly how he said it, but the meaning of that was he didn't want to rob them any more; and, while I was talking to him one of the owners of the restaurant came out into the hallway to go into the toilet.

Q By the way, after he told you that, what did you do?

A I asked him that I am glad to hear it.

Q Yes, and after you said that to him, what did he say?

A The owner from the restaurant come out into the hallway, and I seen a man what goes in, and I walked back into the restaurant again.

Q Where did you leave Sivak? A Out in the hallway.

Q And did he come into the restaurant again? A Yes, sir.

Q And what did you do? A I sat down in the restaurant.

Q What did you do? Did you eat there? A No, I never ate there.

Q Why did you go in there? A I used to pass away a couple of hours.

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Q Did you play cards that Friday night? A I can't say

if I did or not, that night, but always we used to play cards³⁰⁰ for the pastime, a Russian game.

Q Did Sivak say that he had been with Hoochak when he drew out his money? A No, sir.

Q By the way, was Wasil there that Friday night? A Yes.

Q And where was Wasil when Sivak called you out? A I didn't see him then.

Q Do you know who Sivak was talking to you about at that time? A He didn't talk to me nothing that night.

Q Didn't you say that on Friday night he called you out in the hallway and told you he changed his mind? A Yes, sir.

Q And did you go over to Wasil and tell him? A Yes, sir.

BY THE COURT:

Q Did you mention your sister to any of these three men --

A No, sir.

Q -- that your sister had lately come from Russia? A No, sir.

Q When did your sister come from Russia? A A week or a week and a half before that happened.

Q Before the killing? A Yes.

Q And did you hear your wife say that she had known your sister for two months before that happened? A Yes, sir.

Q But you say your sister only had come to this country a week before this shooting? A Yes, sir.

Q Did you tell the District Attorney that you had not worked for several weeks before the killing? A Yes, sir.

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Q How did you support your wife and child and yourself?

A I was in business for myself before.

Q What business were you in? A I had a jitney bus for myself, in Connecticut, and I gave that up five months before that happened.

Q How much money did you have when you sold the bus?

A \$600.

Q And you lived on that \$600? A Yes, sir. My father owed me some more money, and sometimes I got \$25 or \$50, from my father.

Q Where did you have this \$600 after you gave up business?

A In my pocket.

Q You never put it in a bank? A No, sir.

Q Or had any bank account? A No, sir.

Q You carried it around on your person, in your pocket?

A Yes, sir.

Q On the 29th of January how much of that money did you have left? A I didn't have any money.

Q You were broke? A I wasn't broke, because I could go over to my father and ask him for money, and he would give it to me.

Q But you didn't have any money of your own? A No, sir.

BY MR. MC DONALD:

Q As matter of fact, you got the money that you used to go out of town with from ~~some~~ whom? A Nobody.

Q Didn't you get your money for the tickets ~~wh~~ to go out of

town from somebody else? A Yes.

Q And what is the name of the man that loaned it to you?

A I don't know his name.

Q Was it Sugarman? A No, sir. I know they call him Joe, by the first name.

Q What is Joe's business? A Joe is a barber.

BY THE COURT:

Q And you didn't have any money to go to Boston, except as you borrowed it from your friend Joe? A Yes, sir.

Q Where did he work last? A In Ludlow Street.

Q What number? A I don't know the number; but I know where the shop is.

BY MR. MC DONALD:

Q And he gave you \$20, he loaned you \$20, didn't he? A Yes.

Q And did you tell him what had happened? A Yes.

Q Everything about it? A Yes.

Q And your reason for borrowing the money was to get out of town? A Yes, sir.

Q Now, do you know where the State Bank is? A No, sir.

Q What? A I think it's on Delancey Street, the State Bank.

Q And how far is Sheriff and Willett Street from the bank?

A Sheriff and Willett Street from the bank?

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Q Yes, from this restaurant where you say you went so much?

A The state Bank is on Delancey Street.

Q How far is that from the restaurant on Fifth Street, or rather, on Sheriff Street? A It is about eight or ten blocks.

Q Eight or ten blocks from what? A The State Bank is eight or ten blocks from the restaurant in Sheriff Street.

BY MR. MC. DONALD:

Q Now, going to the State Bank, would you have to pass that restaurant that you were standing in front of, with Abie?

A No, you don't have to pass the restaurant to go to the bank.

Q Now, in order to get to your house from the State Bank, would you have to pass that restaurant where you were standing?

A No, sir.

Q How would you go from the State Bank to your home, 123 Stanton Street? A I would walk down -- I know the State Bank is on Delancey Street, but I don't remember what streets between it is.

Q Did you see Sivak and Wasil and Mazzura, as they walked along Stanton Street that morning? A No, sir.

Q You hadn't been out of the house for about three hours that morning? A No, sir.

Q The first thing that you knew that anybody was up in your house was when your wife came over? A Yes.

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Q When your wife came over and told you there were three men up in your home. Did you know who they were? A She didn't tell me exactly three men. She said "There is somebody up in

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the house" to see me.

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Q Did you ask her who they were? A No, sir.

Q And she didn't tell you that one of the men up in the house was one of the men who was in your house, two nights before?

A No, sir.

BY THE COURT:

Q What did she say to you? A & She told me I shall come up to the house, that somebody wants to see me.

Q Didn't she tell you whether that "somebody" meant one or two or three? A She didn't tell me.

Q Did you ask her who it was? A I asked her who it is, and she said, "Just come up and you'll see. There is somebody wants to see you and speak to you."

when
Q And you were on your way back, did you see Sivak and and Wasil Mazzura on the street? A No, sir.

Q Didn't you and this unknown man walk together, and Connor and Abe walk together? A Yes.

Q And you saw Sivak and Mazzura and Wasil just ahead of you four? A No, sir; I didn't.

Q When you got upstairs in your own home, these three men were seated, were they? A Yes.

Q And did you introduce the unknown man to these men?

A No, sir.

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Q I think I have asked you that. Well, the men that came with you, Abe and this unknown man, did they sit down on chairs?

✓
8-4-90 A No, sir; they were standing.

Q And did they talk in Russian to Mazzura and the others?

OA The unknown man talked Russian.

Q The unknown man talked Russian? A Yes, sir.

Q Who was there when your wife told you that there were some visitors up in your house? A Where?

Q When your wife came to you, when you were standing beside the restaurant, who was with you? A Abe Kaplan.

Q Is that all? A That's all.

Q Well, Abe was standing alongside of you? A He was standing right near me.

Q And Abie would hear her say that there were visitors upstairs? A I don't know that he heard it. He is a Jew but he can't speak Yiddish. He's American born. He speaks very little Jewish.

Q After you got there did your wife remain in the bedroom?

A When I come up with my wife?

Q When you got there -- you met her downstairs, as I understood you to say? A Yes.

Q Did ~~xxx~~ ^{she} have the baby -- she had the baby in her arms, didn't she? A Yes.

Q And you took the baby from her? A Yes.

Q And carried it upstairs? A Yes.

Q And these two men walked behind? A Yes, sir.

AQ And your wife came up with you? A Yes, sir.

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Q You are sure about that now? A Yes.

Q And you laid the child on the bed in the bedroom? A Yes.

Q And you undressed it partly? A Yes.

Q And then did you go out of the bedroom into the kitchen?

A Yes.

Q And did you start talking to these five men then? A Yes.

Q In Russian? A Yes, sir.

Q Did your wife remain in the bedroom? A Sometimes she was in the bedroom and sometimes she was in the kitchen.

Q And how long was it before she left with the child?

A I can't tell you exactly. We were talking.

Q Well, about how long? A Twenty or 25 or 15 minutes.

I can't tell you that.

Q When she left where were you? A I was ~~in~~ in the kitchen.

Q That's the room where all these five men were? A Yes.

Q And Abie and this unknown man were standing up? A Yes.

Q And where was Mazzura and where was Wasil? A They were sitting in two chairs near the mantelpiece.

Q That is, across the room from the door? A Yes, sir.

Q Were they facing the door? A Yes, sir.

Q Where was Sivak? A Sivak, he was sitting on a chair by the table, this side from the table, near the door (illustrating).

Q How near to the bedroom? A It's right on the door.

Q The doorway of the bedroom? A Yes.

Q Was he between the door of the bedroom -- between the closet and the window of the bedroom? A No, sir.

Q Between the window and your other bedroom? A Yes.

Q Is that where he was? A Yes.

Q Now, when you came in did you close the door? A Yes.

Q The door leading from the hall into the kitchen? A Yes.

Q And where did the two men stand? A One was standing --

Q Abe, I mean, and the unknown man? A I can't remember if Abe was sitting on a chair, because the chair was taken with some of the baby's clothes, or the other man was facing those two men.

Q Where was Abie? A In the middle of the kitchen.

Q Was he standing there in the middle of the kitchen?

A He was standing with his arm on the washtub.

Q He was standing with his arm on the washtub? A Yes.

Q Well, that is on the opposite side of the room to where Wasil and Mazzura were sitting? A Yes.

Q Now, how long had your wife been gone before something happened? A I think about 20 or 25 minutes, something like that, or half an hour, or less than that, because we were doing a little talking in that time.

Q And what were you doing during that time, twenty or 25 minutes? A I can't tell you the time exactly, how long it was.

Q You don't know whether it was five minutes or half an hour? A No, sir.

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Q What were you doing? A I was standing by the table

with a little gas stove on it, and I put the kettle on the gas ³⁰⁸ stove, the kettle of water, and that was the time I was standing near the table (illustrating).

Q And you were not standing there all the time from the time your wife left until something happened, were you? A Yes, I was.

Q What were you doing? A I was watching the kettle.

Q And how far from Mazzura and Wasil were you? A Right alongside of them.

Q And you were facing them all the time? A Part of the time I was facing them, and other times I would turn and watch the gas stove where the water is boiling for the tea (illustrating).

Q Now when you say you were standing near Wasil and near Mazzura, you think that Wasil and Mazzura were where? A Sitting right near the mantel.

Q And that is on the opposite side of the room from where you came in from the hall? A Yes.

Q Where was the table? A This is the door, and when you come in the table was on the left side (illustrating).

Q Now, you asked for the diagram, during the direct examination, didn't you? A Yes.

Q Do you think that you can understand that diagram? A Yes.

Q Now, just point out on that diagram, will you, where the table was? A Right here (indicating).

Q Do you understand that as the window leading from the kitchen to your bedroom? A Yes.

Q And the mantelpiece was there, was it (indicating)? A Yes.

Q Just mark that with an "R". A (The witness does so.)

Q What was the first thing that you heard? A "Hands up,"
in Russian..

Q Who said that? A The man with the gun.

Q How do you know that? A Because I knew it wasn't Abe's
voice.

Q Did only one say it? A Yes.

Q And when only one said it, which way were you turned?

A I was turned to the table, and the gas stove (illustrating).

Q And that would be looking into the window opening into the
bedroom? A Yes.

Q And then what did you do? A I turned around and I seen
the man holding thegun.

Q What kind of a gun was it? A Nickel, white.

Q Do you know the difference between a revolver and an
automatic? A No, sir.

Q Now, when you saw this white gun, where was the man stand-
ing? A Right facing them.

Q Facing whom? A Mazzura and Sivak -- Mazzura and Hoochak.
Sivak had run out of the door when the man said, "Hands up."

Q What did the man do with the gun? A He held it in his hand.

Q Whom did he point it at? A Mazzura and Hoochak, and I was
standing right near them.

Q He pointed it at you too? A Yes.

Q And when he pointed it at you, Hoochack and Mazzura, what happened? A Sivak ran, and Mazzura got up from his chair and he tried to run away; and while he was trying to run out, the man with the gun tried to hold him back and they started in to fight, and while they were fighting that man Hoochak tried to run out, and while he was on his way running out of the room into the hallway, I heard a shot, and the man turned around with the gun and run right after Hoochak. I heard a shot in the hallway.

Q Now, didn't you tell the jury in your direct examination that the old man, Mazzura, ran towards the man with the gun?

A Yes.

Q Well, did he run towards the man with the gun, or run out?

A The man was standing right with the gun pointed to the door.

Q You told us he was leaning on the tubs? A What does that mean,- the tubs?

BY THE COURT:

Q The washtubs. A Well, he was standing there before, but when he pulled out the gun he wasn't there any more.

BY MR. MC DONALD:

Q Didn't you know what I meant when I said Tubs just now?

A No. I understand you when you say washtubs. When he had the gun, he didn't stand by the washtubs.

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Q Where was he? A Across the floor, in the middle of the room.

Q Towards the door? A Yes.

Q Did he stand in front of the door? A Yes, sir.

Q Did he move towards Mazzura, or back towards the door?

A Back towards the door.

Q And what did Hoochak do? A He was struggling with the man with the gun, and Mazzura opened the door to run out.

Q Who did? A Hoochak.

Q And what did Hoochak do when the man said, "Hands up"?

A He was sitting in the chair.

Q (Repeated.) A He was sitting on the chair.

Q He remained seated on the chair, did he? A Yes.

Q Are you sure about that? A Yes.

Q When Mazzura got up and ran to the door, Hoochak remained seated? A No, sir; when Mazzura got up and he got in front of the man with the gun, after that Hoochak got up from his chair, too.

Q And what did he do? A He run towards the door.

Q That wasn't until after the shoot had been fired at Mazzura? A Explain to me plain because I don't understand that.

BY THE COURT:

Q Did Hoochak run over towards the door, before the first shot was fired? A Yes.

Q Was the shot fired before he reached the door, before he got to the door? A Yes, sir.

BY MR. MC DONALD:

Q Had the struggle ceased before Hoochak left your kitchen?

A I don't understand.

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BY THE COURT:

Q You say there was a fight between the two men? A Yes.

Q Had that fight stopped before Hoochak left the kitchen?
or reached the door?

A No, sir.

BY MR. MC DONALD:

Q They were still struggling or fighting? A Yes.

Q Where was Abie at this time? A He was standing on the
other side of the room.

Q He didn't move from the place where you first saw him?

A No, sir.

Q Well now, what sort of a man was this that had the
pistol? Do you remember how tall he was? A He was about
five foot two or three.

Q As tall as you are? A No, sir.

Q Was he as heavy as you are? A No, sir.

Q Lighter than you? A Yes.

Q How much do you weigh? A 140 pounds, I weigh.

Q About 140? A Yes, sir.

Q Now, was he ~~unknown to you~~ younger than you? A I can't
tell you that.

Q Well, did he appear to be younger than you? A Well, he
looked about between 22 and 25.

BY THE COURT:

Q Was he Jewish? A Yes, sir.

Q And he spoke Russian? A Yes, sir.

Q Did he also speak Yiddish? A Yes, sir.

Q He spoke Russian to the three men that came into your place? A Yes, sir.

BY MR. MC DONALD:

Q On your direct examination you said that -- at least, when Mr. Rosalsky was asking you questions, you said that Mazzura fell down in the room? A Yes, sir.

Q You don't mean that, do you? He didn't fall down in the room? A Yes, he fell down in the room.

Q Didn't he fall down in the hall, just out of the door?

A No, sir.

Q Do you know how Mazzura got to be lying there? A Yes.

Q How? A When I left him in the house, he was all in the room.

MR. MC DONALD: I have shown him People's Exhibit 3 in evidence.

THE COURT: Show him the other picture also, Mr. District Attorney. That picture might be a little confusing, taken with the camera directly overhead.

BY MR. MC DONALD:

Q Does that picture, People's Exhibit 2, show the position of the body when you left? A No, sir.

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Q Was he entirely in the kitchen at the time you left him?

A Sure, yes.

Q Did you see the smoke coming from his fur collar? A No, sir.

Q Did you see any flame at all? A No, sir.

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Q Any blood? A No, sir.

Q How long did you remain there? A About three minutes.

Q Do you mean three minutes after the man who did the shooting left? A Yes.

Q Did the man who did the shooting leave directly after he fired at Mazzura? A Yes.

Q Well, was it that he fired at Wasil? A In the hallway.

Q And was it after he fired at Mazzura? A Yes.

Q And after Wasil had crossed over the body of Mazzura?

A Yes, sir.

Q When Mazzura fell where was the man with the pistol?

A Right in front of him.

Q Was he out in the hall? A No, sir.

Q Was he in the room? A Yes, sir.

Q The man who was doing the shooting was in the room?

A Yes, sir.

Q How did Wasil get by the man who was doing the shooting, how did he pass him? A When Hoochak ran out, he was still struggling with him -- Mazzura was struggling with the man that had the gun in his hand.

Wasil

Q The shot had been fired at ~~Mazzura~~ then? A No, he was at the -- when Hoochak opened the door and started to run, then the shot was fired.

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Q When Hoochak opened the door leading from the kitchen

into the hall, a shot was fired? A Yes.

Q At Mazzura? A Yes.

Q How did he point~~ed~~ the pistol when he shot at Mazzura?

A I don't know, they were struggling.

Q Well, did you see him when the shot was fired? A No, sir; I didn't see the gun then, where he had it.

Q When Hoochak left you say that Mazzura and the unknown man were struggling? A Yes.

Q And it was only when Hoochak got to the door that the shot was fired at Mazzura? A Yes.

Q Do you know ^{where} Hoochak went? A I don't know where.

Q Did you see him go downstairs? A I seen him out in the hall, running down.

9ml
93 / Q Didn't Sivak leave the door open when he ran out? A No, sir.

Q Are you sure about that? A Yes, sir.

Q You say you left, after the shooting, your room, your kitchen? A Yes. In about three minutes.

Q And where did you go? A I just happened to think what had happened, and I thought I would go down and see if I could catch those fellows that did the shooting.

Q And what did you do? A I run downstairs.

Q And when did Abie leave? A He left with the fellow that had done the shooting.

Q Did they run? A Yes.

Q Both of them ran? A Yes.

Q And how long did you remain there after Abie and the fellow that had done the shooting ran out of the kitchen?

A When they run out, I stood there about two or three minutes in the house.

Q You were the only person left there? A No, sir; only me and the dead man.

Q The dead man, did you say? A I don't know if he was dead or alive, but he was on the floor, laying there.

Q That was only a slip of the tongue, when you said, You and the dead man?

MR. ROSALSKY: I object to that as a characterization.

THE COURT: Objection sustained.

MR. MC DONALD: The witness has said, sir --

THE COURT: I heard what the witness said. The jury can determine that.

BY MR. MC DONALD:

Q You didn't touch this body at all, did you? A No, sir.

Q You didn't find out whether he was alive or dead?

A No, sir.

Q In order to get out of the kitchen, you had to step over his body, didn't you? A No, sir.

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Q Did you have to go around him? A I was standing right by the table, and I could pass by, even if I didn't touch him.

Q Well, the man that did the shooting was standing right in the door leading from the hall into that kitchen, wasn't he?

A Which man?

Q The man who did the shooting? A He was standing in the room , in the kitchen.

Q In the door leading from the hall into the kitchen? A Yes.

Q And that is where the struggle took place? A Yes.

Q And where was it that Mazzura fell? A He fell -- when he shoot him, when they were struggling, the man was standing by the door.

Q Who? A The man that done the shooting. And Mazzura was to this side, in this room, and when he shoot him he turned around and he fell down (illustrating).

Q Well, how did he fall? With his feet towards you or his head towards you? A With his feet towards me.

Q And so you didn't have to go around the body to get out?

A No, sir.

Q Did you look at him? A Yes, sir.

Q Did you see the flame on the fur collar? A No, sir.

Q And you didn't see any blood during the whole time you were there? A No, sir.

Q You met Abie downstairs? A Yes.

Q In the back of the hall? A Yes.

Q On the ground floor? A Yes.

Q And you had a talk with Abie? A Yes.

Q What had happened upstairs, was something that you didn't know was going to happen? A No, sir.

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Q Then ~~what~~ didn't you goto the police? A I was afraid they would lock me up as a material witness.

Q What do you know about material witnesses? A What I know? I read the papers. I could read English.

Q Well, but what do you know about material witnesses, about people being locked up as material witnesses? A Yes, I know. I read in the paper that a man they hold for a material witness, they lock him up.

Q And is that the reason why you left? A Yes.

Q And the reason why you left your wife for three weeks, and didn't send her word where you were? A Not exactly the same reason. I could leave that same day, if I would run away, but I didn't have it in my mind even to run away. I could try to get in touch with the man that shot Mazzura, and the blame should be taken away from me, and I could prove my innocence.

Q And you wanted to prove your innocence yourself? A Yes.

Q And you didn't want the police to help you? A Yes, I did; but I was afraid they would lock me up.

Q And is that the reason you went under the name of Max Cohen? A Yes. I went to look for a job there in Boston.

Q Well, you were not in Boston for the purpose of looking for the man who did the shooting in your own home? A No, sir; not in Boston, but I was looking for him for three weeks in New York.

Q But you were not three weeks in New York? A Yes, I was.

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Q After the shooting? A Yes, sir.

Q Are you sure about that now? A Yes, sir.

Q Don't you know that you were only three days in New York?

A I was three days in Boston.

Q That's right. When were you arrested? The 24th or 21st, was it? A I don't remember which. I remember I was in the Tombs on the 24th.

Q Well, when you were brought to the Tombs, were you brought right into the Tombs? A No, sir.

Q But you were brought the same day? A How you mean? I don't understand.

Q Those three weeks that you remained in New York, where did you stay? A I stayed in the baths.

Q What name did you give down there? A I didn't give no name. Nobody gave their name at the bath.

Q Did you stay the entire three weeks in the bath? A Yes.

Q Didn't you stay with Pollinik? A No, sir.

Q Any night? A No, sir.

BY THE COURT:

Q What bath did you stay in for three weeks? A On Essex Street, between Canal and Hester.

Q What is the name of the baths? A Russian Turkish baths.

Q Have they a restaurant there? A No, sir.

Q Where did you eat during those three weeks? A In a restaurant.

Q Whereabouts? A In the street.

Q How near the baths is the restaurant? A I didn't eat exactly at that one restaurant.

Q You didn't eat in one restaurant? A No, sir. Wherever I was, if I seen a restaurant, I would eat there.

Q Did you ever go back to your own house? A No, sir.

Q And never sent word to your wife? A No, sir.

Q Where did you get the money to pay your bills at the baths, or your food at the restaurant? A The same fellow what he gives me the \$20, he gives me \$10 more, and then I knew another fellow on Ludlow Street, and he give me \$15.

Q What was his name? A I don't know his name. I just knew him personally.

Q You knew him personally? A Yes, I used to see him a lot of times.

Q But you didn't know his name? A No, sir; but he knows my name, I think, sir.

Q You knew him well enough to get \$10 from him? A Yes, sir.

Q The other man whose name you don't know, you got \$15 from?
A Yes, sir.

Q How much did it cost you to stay at the Turkish baths for three weeks? A It cost me 45 cents a night.

Q That is all you had to pay there? A Yes, sir.

BY MR. MC DONALD:

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Q These baths that you were staying at for three weeks,

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are only a few minutes' walk from 123 Stanton? A No, I think
about ten minutes.

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Q The Turkish Baths is where? A On Essex Street, between
Hester and Canal.

Q And that is only about five or ten minutes from your own
home? A Yes.

Q Now, Rosenwasser, you know Sugarman, don't you? A If
I see him, I might know him.

Q You know Sugarman, who gave you the \$15? A No, sir.
he was

Q Don't you know that ~~man~~/the man who told you the police
were looking for you? A I don't know his second name.

Q What is his first name? A Joe, or Jack, I think, they
call him.

Q Well, don't you know that he is the one that told you the
police were looking for you? A I don't think so. I told him
that myself.

Q Well, didn't he tell you they had been down to the tea
house several times looking for you? A No, sir. I told him the
police were looking for me.

Q Well, how did you know that they were looking for you?
A I read it in the papers.

Q You bought the papers, so as to learn whether the police
were looking for you or not? A Yes.

Q As soon as you found out that the police were looking
for you, why didn't you go to them, and say, "Here I am"?

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A I was afraid.

Q Had you done anything? You hadn't done anything, had you?

A No, sir.

Q Well then, why didn't you go to the police? A Because I wanted to stay out, to find that man that done the shooting. I wanted to find out his name.

Q Well, what efforts did you make to find that man? A The fellow I met with him, he used to go in Eldridge Street in that tea house, the fellow that I met with the fellow that done the shooting. So he told me, when I met him, that this fellow goes in the tea house. I didn't know any other fellow what knew him, and I used to watch Eldridge and Allen Streets, every day, to see if I can find him in those places, but I couldn't see him during that time.

Q You were --you would watch at the tea house every day?

A Yes, sir.

Q Where was the tea house? A On Eldridge Street.

95 / Q On Eldridge Street? A Yes.

Q Were you know at that tea house? A Yes.

Q Is it one that you went to frequently? A Yes, sir.

Q And did you stay there in the day time, looking for him?

A No, in the night.

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Q You knew the police were looking for you then? A Yes.

Q How near the door of the tea house did you stand, during those three weeks? A I didn't stand at the door; I stood half

a block away.

Q On what block is the restaurant? A It is right on the corner of Eldridge and Rivington.

Q And where did you stand, every night, watching? A I was standing on the other side of the street, of Rivington Street, and I could see to the restaurant.

Q And did you speak to anybody during those three weeks?

A No, sir.

Q Did you tell anybody else that you were looking for this man? A No, sir; I didn't tell nobody.

Q And if you had seen the man going into the tea house, what were you going to do? A I was going to call a policeman.

Q You were going to call a policeman? A Yes.

BY MR. MC DONALD:

Q Well, you would be any better off then, would you? A Yes.

Q You would still be arrested as a material witness, wouldn't you? A No, I would be better off.

Q You would be better off? A Yes.

BY THE COURT:

Q Why, after the three weeks, Rosenwasser, did you give up this watching and go to Boston? A I just realized that I didn't do the right thing, that I did go away from the house, that time.

Q You realized that you didn't do the right thing in going away from the house? A Yes, sir.

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Q And because you realized that, is that the reason you

went to another city? A I thought, if the police ever did get the man, I will come back.

Q Did you jump out of the window of the hotel in Boston?

A Yes, sir.

Q You were trying to get away from the detectives? A No.

Q Why did you jump out of the window?

THE WITNESS: Can I say a dirty word, your Honor?

THE COURT: Certainly. Go ahead. We can stand it.

A One of them cops said, "Shoot the cocksucker," and so I ran to the window.

Q Well, you jumped out of the window in order to get away from the cops, as you call them? A No. Just to get away from the shot.

Q You thought the policemen were going to shoot you?

A Yes.

Q Were they in the room when you jumped out of the window?

A No, sir; but they had broke half of the door in.

Q When they knocked at the door, did you open the door?

A No, sir; they didn't knock at the door.

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Q They just started to break it in? A Yes.

Q And you knew they were after you when they started to break in the door? A No, sir; I didn't know they were cops:

Q Who did you think they were? A I don't know; I didn't know. I just thought somebody is after me to shoot me.

Q And you were in your underwear when you jumped out?

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A Yes, sir.

Q And you jumped out of the third story window? A No, sir; there was a little building what comes close to the window, and I got on that and then I got down close to the yard and I jumped down.

BY MR. MC DONALD:

Q You were brought back to New York, weren't you? A Yes.

Q And do you remember making a statement to Mr. Dineen?

A Yes, sir.

Q Did you tell him the truth? A I don't know if I told him the truth. I don't remember what I said that time.

Q Well, you have heard what the stenographer said you said?

A Yes.

Q Is that what you told Mr. Dineen? A I can't tell you exactly what I said, and what I didn't, at that time, because I was dizzy. I didn't know what they were doing with me.

Q This was several weeks after the crime was committed?

A Yes, sir.

Q And you didn't know what you were doing then? A No, sir.

Q Well, you understood the questions that were put to you?

A No, sir.

Q What? A No, sir; I didn't.

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Q You didn't understand any of them? A I knew they asked me but I can't tell you what they asked. I don't remember.

Q Well, but you do remember whether you told the truth,

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when they asked you these questions? A I don't remember if I told them the truth or lied to them.

Q Well, did you have any reason to lie? A Yes; because the cops were sitting all around me, and they said, if I didn't say nothing, it will be against me, and they will kill me down in New York.

Q Down in New York? A No, sir; downstairs, I mean.

Q Mr. Dineen was there? A Yes.

Q And the officer? A Yes.

Q Did they have a stenographer? A Yes.

Q And do you say that you told lies to Mr. Dineen? A Well, some were lies and some were true.

Q How much were the lies? A I don't know.

Q Well, when you said your name was Julius Rosenwasser you were not lying? A No, sir.

Q And when you told him, "Now, I live in the 5th Street police Station," you were not lying, were you? A No, sir. I don't remember if that was done in the 5th Street station or in Police Headquarters.

Q "Q Where did you live before you moved here? A I lived in 123 Stanton Street." That was true, was it not? A Yes, sir.

Q "Q How old are you, Rosenwasser?" And you answered: "Twenty-five." Do you remember saying that? A No, sir.

Q Well, how old are you? A Twenty-five.

Q Were you lying when you said in answer to the question:

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"What do you work at?" And you said, "Leather chopper." You were telling the truth? A Yes.

Q You are a leather chopper? A Yes, sir.

Q Were you lying when you made an answer --

MR. ROSALSKY: If your Honor please, I object to this line of cross examination. This statement by the defendant has been read into the evidence, and is in evidence, and there is no question wherein the District Attorney can impeach the witness as to any particular statement.

THE COURT: He has a perfect right, in view of the statement of the witness, that some of the things he told the District Attorney were lies, and some were true, the District Attorney has the right to ascertain what part was true and what part the witness says was a lie.

MR. ROSALSKY: Exception.

BY THE COURT:

Q Rosenwasser, can you tell what part of the statement you made to Mr. Dineen was false? A No, sir; I cannot.

Q You can't? A No, sir.

MR. MC DONALD: Well then, I don't know how I can obviate going through the entire statement.

THE COURT: Well, pass the matters of little importance, such as employment, address, etc., and go down to the matter affecting 123 Stanton Street.

Gentlemen, it is unfortunate but necessary, that we

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complete the examination of this witness today, although it may take us over the usual hour of adjournment, so that counsel can sum up the first thing on Monday morning, if the defendant has finished the case, which I assume he has.

You may take a recess for five minutes.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess for five minutes.)

AFTER RECESS:

JULIUS ROSENWASSER, the defendant, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. MC DONALD:

Q Did you tell Mr. Dineen a lie when you told him that it was on a Thursday that you met Andrew, and that Andrew told you the deal was off? A I don't remember telling him that.

MR. ROSALSKY: I object to the form of the question, and I ask that the question and answer form be gone through.

THE COURT: Very well.

BY MR. MC DONALD:

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Q Do you remember the question being put to you by Mr.

Dineen and was the answer the truth or was it a lie:

"Q You met on Thursday? A What?

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"Q On Thursday? A He told me the deal was off, and I went away." A I don't remember whether I said that. I remember now he told me on Friday, not on Thursday.

Q Do you remember this question being put to you, and making this reply:

"Q Had you seen Abe between Thursday night and Saturday afternoon?" And your answer was: "A I seen him there, but he slept up in my house." Did you tell Mr. Dineen that?
A I know he slept in my house.

Q Well, did you tell Mr. Dineen that? A I don't remember if I did, because I was dizzy. I still have got marks on my head and everywhere, where I fell down, in Boston.

Q "Q Did you tell him, after speaking to Andrew, that the deal was off? A Yes, I did." A I don't remember that. I don't remember any questions of that kind. I heard the stenographer here tell it over again, but I don't remember it.

Q Do you remember Mr. Dineen -- was this question asked of you: "Q How did he happen to get this fellow with the gun on Saturday? A I don't know. I suppose he knew him." Do you remember that question and answer? A I don't remember a thing what happened that day, what they asked me. I can't remember anything that they asked me down in Police Headquarters or in the station house, because I was dizzy.

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Q You were dizzy every time you answered a question?
A Yes, sir.

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Q You were not dizzy ~~you~~ when you were asked your name and age and where you lived? A Yes, I was.

Q Were you dizzy, too, when -- withdrawn.

Do you remember being asked this question and making this reply:

"Q Why did Abie bring up the fellow with the gun, if you thought the deal was off? A He didn't specially bring him up, he come up, and he had the gun with him."

A I don't know; I don't remember any question that they asked me there.

Q But that is what you say now, that you didn't know that this fellow took the gun with him. A No, but now I remember everything that happened and I am telling it.

Q You didn't know that this fellow had a gun when he came up, did you? A No, sir.

Q Do you remember this question being put to you, and making this reply: "Q When was it on Saturday afternoon when you three fellows were in the house, that you decided to pull the deal off? A About one o'clock." Do you remember that? A No, sir.

Q Do you remember telling anything like ^{that} to Mr. Dineen? A I don't know anything, I don't remember anything, that they ever said to me, or where they said ~~it~~ to me, not a word.

Q Well, how do you know that sometimes you told him the truth, and sometimes a lie? A Because I know I was dizzy that time, and when they asked me questions, I know I didn't answer them right.

Q (repeated) A Because, if a man is guilty, you can take it this way, or you can take it over the other way.

Q I s . . . Do you remember this question being asked you and you making this reply: "Q Where did your wife find you? A In the street, walking"? Do you remember that? A No, sir.

Q Do you remember the next quest on: "Q With whom?" And you answer, "A With those two fellows". A No, sir. 9696

Q Do you remember this question: "Q Well, did you make

any arrangement with Abie and this other fellow, to meet him on Saturday, and pull that job off?" And you answered "A I hadn't made no arrangements with Abie, because I see him all the time." Do you remember that? A I don't remember that, no.

Q Do you remember this question "Q Now, didn't you tell him on Friday night, again, it was alright, you were going to pull the deal off? A No, I didn't tell him on Friday night". A I don't remember anything about it.

Q Did you tell Abie anything at all about anything going to be pulled off in your house? A No, sir.

Q You never did say that? A No, sir.

Q ~~At~~ Do you remember this question: "Q Did you tell him on Saturday morning it was all right? A Saturday, I told him." Do you remember that? A No, sir.

Q Do you remember this question: "Q You told him to get the other fellow with the gun? A I didn't tell him exactly to get the fellow with the gun." Do you remember that? A No.

Q Well, do you know whether that is the truth, or whether-- A I don't know whether it is true or if it is a lie. I don't know what it is.

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Q Do you remember this next question: "Q What did you tell him? A I told him to get a fellow who should do something. I told him not to kill, because I didn't want to be mixed up in a murder case. I told him to get a fellow with a blackjack, or something like that." Now, is that the truth? A I don't know if it is true, or a lie, or even if I said

that.

BY THE COURT:

Q Well, you are asked whether you remember saying that to Mr. Dineen, and you say you don't remember whether you said it or not. A Yes, sir.

Q And now the District Attorney, having read to you what he claims you said, asks you if it is true or not. Do you say now that the statement which you made to Mr. Dineen never happened? A I don't remember if I ever said those words.

THE COURT: Repeat that, Mr. District Attorney.

BY MR. McDONALD:

Q "Q I told him to get a fellow to do something. I told him not to kill."

BY THE COURT:

Q Did you say that to Abie? A No, sir.

MR. McDONALD: "Because I didn't want to be mixed up in a murder case."

BY THE COURT:

Q Did you say that to Abie? A No, sir.

MR. McDONALD: "I told him to get a fellow with a blackjack, or something like that."

BY THE COURT:

Q Did you say that to Abie? A No, sir. Abie is locked up now, he can prove it.

Q But you were being asked at that time whether you said

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these things to Abie, before the killing occurred. A Yes, but I didn't say it; I don't remember it at all. I don't remember a word of it.

Q You don't remember saying a word of it to Mr. Dineen?

A No, sir.

Q But you -- if you did say it, it wasn't true? A The way they told me, it wasn't true.

BY R. McDONALD:

Q Do you remember this question being asked you "Q Well, what were you going to do if he had a blackjack? What was he going to do with a blackjack? A What was he going to do with a blackjack? If they should start fighting he could ~~like~~ lick one of them." Did you make that answer? A No, sir, I don't remember a word of it.

Q Did you make that answer to that question? A I don't remember.

Q Do you remember being asked -- were you asked this question and did you make this reply: "Q When did you find out he had a gun? A When he was up in the house". Do you remember making that answer to that question? A I don't remember a word of it.

Q Did you make that answer to that question? A I don't remember.

Q Do you remember this question being asked you: "Q He told you in the house, before you pulled off the job, that he had a gun" A Yes." A I don't remember.

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Q Did he ask you that question? A I don't remember at all.

Q Did Mr. Dineen ask you this question: "Q Now, how long before you pulled the deal off, did he tell you that? A About three or four minutes, something like that." Did you make that reply to that question? A I don't remember any question that was asked to me at that time. I didn't even know what was done with me --

Q Do you remember being asked -- Did Mr. Dineen ask you what you were cooking, and you answered "Plain water"? A I don't remember what I ever said to him.

Q By the way, it was only plain water in the kettle?
A Yes, it was water, but I don't remember if they asked me, or I answered anything about it.

Q And you were going to make tea out of the water that you were boiling in the kettle? A Yes.

Q And did Mr. Dineen ask you this question, "Q What were you going to make out of the water? A Tea." A I don't remember if he asked me that.

Q Did Mr. Dineen ask you the next question: "Q Was that just a bluff? A Yes, sir." A I don't remember.

Do you remember that? A No, I don't.

BY THE COURT:

Q Well, was it just a bluff at making tea that you were engaged in when these men were in your room? A No, sir, it was no bluff; I really meant it.

Q You intended to make tea? A Yes, sir.

Q And you don't remember having told Mr. Dineen that you did it to make a bluff? A No, sir.

Q Do you remember being asked by Mr. Dineen -- being questioned by Mr. Dineen? A I remember someone asking some questions, but I don't know who it was, because about ten men were sitting around me.

BY MR. McDONALD:

Q Was this question asked of you, and did you make this reply: "Q Now, you say the fellow that was killed started to run out? A Not the fellow who was killed. He started to go to the door, and he shot him". Did you answer that question that way? A I don't remember anything about it.

Q Were you asked this question, and did you make this reply: "Q Wasn't that the idea, for you to stay back, and find out if he had any money? A It wasn't the idea. The idea was to pick him up and get the money, but, after they shoot, I didn't know what I was doing. I didn't look for the money at all." A I don't remember a word of that.

Q After the shooting occurred, you did not, as matter of fact, look for money, or search the body of Mazzura? A No, sir.

THE FOREMAN: May I ask the witness a couple of questions?

THE COURT: Yes.

BY THE FOREMAN:

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Q During the night in the room, after this man pulled a

gun, and said "Hands up", and Mazzura started to run out, and he and the gun man were fighting, did you or Abie try to help either the gun man or Mazzura? A No, sir, I didn't do nothing.

Q What did you do? A I was afraid to get shot. I was standing between the table and the wall, in the corner. I wasn't even near them.

Q Why didn't you help your friend, whom you had brought upstairs with you? A I haven't brought them upstairs; they come up themselves.

Q You didn't stop them from coming up. A I beg pardon. Who do you mean?

Q The man with the gun. A Yes, I come up with him.

Q He came up with you? A Yes.

Q You were willing to have them come up to your house? A Yes, I was willing.

Q When, when he got into a fight, why didn't you help him? A It wasn't mine -- not in a thing like that. When he holds up a man, I shouldn't help him out; I should be supposed to help out the man that got shot, but I was afraid to take apart in it. I was afraid they would shoot me.

Q Then why didn't you help out Mazzura? He was a small man. A Because I was afraid I would get shot.

Q Did Abie try to help Mazzura? A No; he was standing in the corner (indicating).

Q Did Abie try to help the man with the gun? A No, sir.

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Q Do you know why? A I don't know.

Q After everybody had left the room except you and Mazzura, where was Mazzura? A Mazzura was laying right in the room.

Q How far from the door that goes out into the hall?

A About half a foot.

Q Was his head or his feet towards the door? A His head.

Q How was he lying? On his face, or on his back, or on his side? A He was laying on his back.

Q So his head was not outside of the door? A No, sir.

Q Did you see him move? A No, sir.

Q After you had run away, and were in New York for the three weeks, living where you said, did you try to find the man you called Konner, who introduced you to the gun man? A Yes.

Q What did you do to try to find Konner? A I was watching those streets, Allen and Rivington, and Eldridge Street, because I knew they used to hang out there, but I couldn't see none of them.

Q Didn't you know where Konner lived? A No, sir.

Q Did you know where he worked? A He told me he worked on the docks.

Q Did you know what docks? A No, sir.

Q What did you do to try to find him? To find where he lived, or anything, so he could tell you where the gun man was? A ~~NE~~ I couldn't find him at all.

BY THE COURT:

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Q What did you do to try to find him, the gunman asked you?

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A Just watching those streets, what I know he goes through; that he used to go in those places.

BY THE FOREMAN:

Q Did you see Konner during those three weeks? A No, sir.

Q Did you ask anyone if they knew where Konner was?

A No, sir.

BY MR. McDONALD:

Q You didn't see your sister at all, in this country, up to the 29th of January? A No, sir.

Q Was this question asked of you, and did you make this answer: "Q What was the name of the other fellow, who did the shooting? A I don't remember?" A I don't remember if I was asked that at all.

Q Do you remember this question, or was this question asked you, and did you make this reply: "Q Well, didn't Abie introduce you to him? A No." A I don't remember anything what was said.

Q "Q Didn't you call him by some nickname? A No, I didn't call him no name." A I don't remember any question what was asked to me, that time.

Q Was this question asked of you and did you make this reply: "Q Didn't he say, 'This so and so, he is going in the deal with us.' A He told me he was going to be in the deal, but he didn't tell me his name." A I don't remember if I was asked that question, and if I answered it at all, I don't

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remember it at all.

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Q You have been convicted of disorderly conduct, have you?

A No, sir. I have been convicted only for speeding.

Q For spitting on the sidewalk? A No, speeding with the machine. I paid a fine.

Q Speeding in an automobile? A Yes, an automobile.

Q Is that all? A That's all, yes, sir.

MR. McDONALD: That's all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Sivak testified that you said in ~~xxxxxxx~~ Russian, "Hands up", at the time the gun was pulled. Did you use the expression, in Russian? A I didn't say it.

Q Two or three days before this trial started, did you send for Officer Stetter? A Yes, sir.

Q What was your purpose in sending for him?

MR. McDONALD: I object to this, sir.

THE COURT: When was that?

MR. ROSALSKY: Two or three days before this case proceeded, if your Honor please, an inquiry was made as to what efforts were made to locate the man who did the shooting--

THE COURT: Prior to the arrest. You may develop anything up to the time of the arrest in regard to his case, but anything after his arrest, I do not think would be competent.

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MR. ROSALSKY: Exception. That's all.

BY THE COURT:

Q Rosenwasser, you told the District Attorney that when this unknown man pointed the revolver, he was pointing it in your direction? A Yes, sir.

Q Is that true? A Yes, sir.

Q You had never seen that man before you brought him up to your house? A No, sir.

Q And when he said "Hands up" in Russian, you understood him? A Yes, sir.

Q Did you put your hands up? A No, sir.

Q What did you do? A I turned around -- I wasn't speaking at the time he said "Hands up" -- I was looking at the table where the gas stove was.

Q And you turned around A. Yes, and I was standing there. And Sivak ran through the door, and shut the door again, and Mazzura got up from his chair, and he grabbed a hold of the man with the gun while they were struggling.

Q Well, you have told us all that. What did you, ^{do} I am asking? A I am standing by the table, and I turned around when I heard "Hands up".

Q You didn't put your hands up, you say? A No, sir.

Q You didn't do anything? A No, sir.

Q Where were you when the second shot was fired, which you say you heard? A At the same place where I was standing from

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the beginning, when the first shot was.

Q And where was the man with the gun in his hand when the second shot was fired? A In the hallway.

THE COURT: Anything further?

MR. ROSALSKY: That's all.

THE COURT: Anything further?

MR. McDONALD: No, sir.

BY THE COURT:

Q Now, is there anything else that you wish to say to this jury that has not been asked either by your counsel or the District Attorney, about what happened there, that afternoon, or up to the time of your arrest? A I don't think so.

Q You have told all that you want to say? A Yes, sir.

THE FOREMAN: One of the jurors has asked me to ask this question.

Q Why didn't you see your sister in this country from the time she arrived, until the day of the shooting?

MR. ROSALSKY: May it please your Honor, with all due respect to the juror, I submit that it is irrelevant and immaterial. It is rather hard to object to the question of a juror.

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THE COURT: Well, you have a right to it, and if you object to it I will sustain the objection, it calls for a mental operation of the witness. It is objected to as immaterial, and I sustain that objection. Any further

testimony?

MR. ROSALSKY: No, sir, we rest.

THE COURT: Do you rest, Mr. District Attorney?

MR. McDONALD: No, sir, I have Mr. Birchall -- with reference to the statement of Mrs. Rothman, or Mrs. Rosenwasser, which she contradicted, or which she said she didn't remember.

MR. ROSALSKY: Under those circumstances, I don't see how the District Attorney can put the statement in evidence. She says that she doesn't remember at least nine-tenths of the statement.

MR. McDONALD: It is material, I think,--the question of knowledge of English.

THE COURT: If your offer was in connection with the defendant's statement, I would not hesitate to accept the proof, but this is with regard to a witness other than the defendant. If it is offered, and objection made to it, I will sustain the objection.

MR. McDONALD: Well, I will put my proof on, anyway, and offer it by calling my witness, sir, so as to have it on the record. May I do that?

THE COURT: Yes.

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NATHAN BIRCHALL, Jr., being recalled by

the District Attorney, testified as follows:

BY MR. McDONALD:

Q I--

MR. McDONALD: I don't suppose, sir, there is any necessity of going into the expert knowledge of the witness?

THE COURT: No, he has already testified. The record in this case already shows that Mr. Birchall is a stenographer of many years' standing, and in the employ of the District Attorney's office.

BY THE COURT:

Q Now, Mr. Birchall, did you on a certain day, take a statement? A Yes, sir.

THE COURT: Now, proceed, Mr. McDonald, and ask him if he took a statement from Mrs. Rothman.

MR. McDONALD: That is what I intend to do, sir.

BY MR. McDONALD:

Q On the 30th day of January, 1921, did you take a statement from Mrs. Rothman? A I did.

Q And did you take it correctly? A Yes.

Q And were certain questions put to the witness Sadie Rothman? A Yes, sir.

Q And were they in English? A Yes.

Q And did you take these down in stenographic form? A I did.

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Q And did you take them down correctly? A Yes.

Q And were answers made by Sadie Rothman? A They were.

Q And were they made in English? A Yes.

Q And did you take down those answers in stenographic form? A I did.

Q And did you take down those answers correctly? A I did.

Q And did you afterwards transcribe both questions and answers in a typewritten form? A I did.

Q And have you the statement there with you? A Yes.

Q Oh, by the way, did you compare your original stenographic notes with the typewritten copy? A Yes.

Q And did you find them correct? A Yes.

MR. McDONALD: I now offer in evidence the statement of Mrs. Sadie Rothman, taken by this stenographer.

MR. ROSALSKY: I object to it, as incompetent.

THE COURT: Now, do you offer that, Mr. District Attorney, for the purpose of contradicting anything that was said by Mrs. Rothman, or Mrs. Rosenwasser, other than her statement that she did not speak or understand English?

MR. McDONALD: I will offer it for two purposes, sir. I offer it for the purpose of showing that she understood English, by the answers she gave; and to contradict her on certain statements she made here on the stand. 9696

THE COURT: Have you marked the statements which you claim are contained in the stenographer's transcript as

being contradictory of the testimony she gave on the stand? ³⁴⁸

MR. McDONALD: No, sir.

THE COURT: I sustain the objection.

MR. McDONALD: May I ask, sir, what the objection is?

THE COURT: On the ground that it is incompetent.

MR. ROSALSKY: And the statement being already in evidence.

THE COURT: That is, that the statement itself is incompetent. She made a statement, but the details, I sustain the objection to, as being immaterial, irrelevant and incompetent.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Were there any officers present, who spoke Jewish? A Well, if there were any there who spoke Jewish, they didn't speak it, and I don't know whether they were able to speak it or not.

Q Were any of the answers that she made, made in Jewish or Yiddish? A No, sir, in English.

Q Was Officer Wittenberg present? A I have no record of it, but I am quite sure he wasn't; that's my recollection.

BY THE COURT:

Q Do you remember whether he was present or not? A My recollection is that he was not.

Q Nobody did any interpreting or translating? A No, sir.

Q Do you or for you while you were taking the statement of Mr. Rabin? A Yes, sir.

Q Is that correct? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. McDONALD:

Q By the way, was there any pounding on the table while you were taking the statement of Mrs. Rothman? A No, sir.

Q Didn't she have the baby in her arms at the time?

A I believe Sivak was holding the baby.

BY THE COURT:

Q Was the baby in the room? A Yes, sir.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q Wasn't she in the room before you arrived there?

A She was.

Q And you don't know whether, before you arrived there, people there had pounded the table, or treated her harshly; do you? A No, sir, of course not.

THE COURT: Do both sides rest?

R. McDONALD: Yes, sir.

F. ROSALSKY: Yes, sir. And I renew the motion made at the close of the People's case.

THE COURT: Motion ~~is~~ denied.

MR. ROSALSKY: Exception.

THE COURT: Now, gentlemen, we will suspend until half past ten o'clock on Monday morning.

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At this time, when both sides have rested, it is particularly important that you refrain from talking about

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this case among yourselves, or with anyone else; and
refrain from arriving at any conclusion upon any point
in this case. That you must not do, until the case is
finally submitted to you.

Please bear that in mind, and be in your seats promptly
at ten-thirty o'clock on Monday morning, and then we will
proceed with the case, and conclude it at some time on
Monday, if possible.

(ADJOURNED UNTIL Monday, June 27th, 1921, 10:30 A.M.)

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TRIAL RESUMED:

New York, June 27th, 1921.

SUMMATION FOR THE DEFENSE

of

THOMAS I. SHERIDAN, ESQ.,

If the Court please,

Mr. Foreman, and Gentlemen of the Jury:

We are now approaching the close of this case, and, before you take up the consideration of the case, it is my duty to outline to you what I believe are the circumstances most favorable to the defendant, and to take the evidence and argue from that evidence in behalf of the defendant; and, of course, it becomes your duty to determine the all-important thing in this case, whether the defendant is guilty or not guilty.

It may be well to state to you men, that the lawyers who are defending this defendant have been assigned by the Court, and that their labors have been the result of the fact that the Court has assigned them. Small remuneration has been paid to the attorneys, but I say that has not been the inducing influence on the part of my associates and myself; and, to be frank, \$166.66 would not compensate any man for the time and labor given in this case.

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The Court will charge you on all questions of law. You are supreme as to questions of fact. You are to determine the facts from the evidence, and in your deliberation as jurors, I know, and I feel, that you are going to solve this problem without any bitterness, or rancor, or ill feeling towards this de-

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fendant.

This is, without doubt, the most solemn duty that you can be called upon to perform, and for men, good business men, good citizens like you, to be suddenly called from your business, and brought into a court room, to weigh testimony such as you have heard in this case, is to place you in a difficult position. At times, I know it is almost a struggle so that you will not be subconsciously governed by your prejudices and dislikes.

The defendant, no matter how fallen, how depraved, is entitled to a fair trial. The law will assign counsel, if he has no funds, to see that his case is properly presented.

What do we find in this case, gentlemen? But there is one other consideration, before I discuss the evidence, that I would like to impress upon you.

Sometimes, the jurors, when they are called upon to serve, forget and misconstrue certain things that happened in the court room. For instance, a juror must not say, "I think the Judge thinks so and so," or, "I think the Judge has such and such an opinion," or, "The Judge did not believe his story."

That has nothing to do with it. What is the meaning of the situation here? That you are to be supreme in questions of fact, you are to be uninfluenced by the opinion of any one.

His Honor may properly ask questions for his own satisfaction. He does not hold any opinion that he would wish

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to translate to you, the jurors. He will leave the problem of fact to you to solve, and you are to solve it without fear or prejudice. This is no time that a weakling should be in the jury box. The issue is too big. It means a human soul is weighed in the balance, and if you believe that such is the fact, you, and you alone, are to determine, uninfluenced by whether you think it is going to please any one or not.

Now, I make that remark though, not for a second, do I believe that there will be any intrusion or over-reaching by the Court, but jurors, serving for the first time-- we are all human-- are, perhaps, going to be impressed by what they think some one else thinks or wants. But there is no one's opinion that concerns you in the case. It is you who are to be the sole and supreme judges of the facts.

Now, it often comes back to us that the jurors, in the midst of their deliberation, may say, "Oh, the Judge didn't like this or that, and he has an opinion." But that is wrong. Each man is to take this problem, and decide it alone on the evidence.

Now, gentlemen, you have listened very attentively to the evidence in the case. You know the story, and it is unnecessary for me to repeat it in detail.

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The defendant is, you know, Julius Rosenwasser, or Rothman. There was some testimony as to whether Rothman was the name he had in Europe, or Rosenwasser. At all events, Julius Rosenwasser, or "Yiddle", is the defendant, and I am

going to take the story of the Prosecution, and reason it out with you as fast as I can.

The story of the Prosecution is that these three men were going to Europe, Sivak, Hoochek and the deceased man, Jacob Mazzura.

Their story is that, on the night of January 28th, in a restaurant, the defendant approached Sivak, and told him something with reference to his sister, and he invited him and his friends, Hoochek and Mazzura, to come to his home, on the following day. That is the story of the Prosecution.

What next happens? That they did go there on the following day, Saturday, the 29th, and that they came up to that apartment.

We can only gage the truth of that story by analyzing the People's story. And what do we find?

We find, first, that Hoochek testified that, when they approached 123 Stanton Street, he, Mazzura and Hoochek, Sivak said, "Just wait here a minute, and I will go upstairs and see if this is the right place, if he lives here."

Now, I am sure that, at that time, there was no mention of any memorandum of the address, in the possession of Sivak, and, if I unintentionally misquote the evidence in any way, gentlemen, please regard it as absolutely unintentional.

He did say, however, that Sivak went upstairs, to look for the apartment of the defendant, and that the others remained downstairs.

Do you think that Hoochek had any motive for saying that Sivak went up first, or that he did not tell the truth?

I think that he told the truth. If you apply common sense to that situation, you find that Sivak is the man who went, on the 28th of January, to the bank, with Hoochek, and Hoochek says that he said to him, "My, what a lot of money you have. I haven't any."

And Hoochek said that Sivak saw where he put the money, in his pockets, and that night, in the restaurant, he said, "Don't leave all that money in your home. Sew it up in your clothes."

Now, if Sivak wasn't in on this crime, and he had his spare money in his brother's keeping, it is remarkable that that brother was not subpoenaed to testify to what was done with the money. That brother was 28 years of age.

And Sivak says he got no receipt for the money, and he was most vague about that matter, and as to what money he received in reference to the sale of the business in Bleecker Street, in particular.

What bank he put his money into, he could not tell. Just think of that, gentlemen.

And the next thing we must bear in mind is this: That, if "Yiddle" was a total stranger, how was it that he intruded himself, on that Friday night, in the restaurant?

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Now, Sivak knew that these men had this money. Who went to the bank with them to draw the money? Sivak. He ad-

vised Hoochek not to leave his money at home, but to carry it about his person. By whose advice was it that Hoochek had the money sewed up in his clothes? Sivak knew he had this money concealed in that way, when he was in the restaurant.

Men of this kind are very cautious to whom they speak about money, about having money in their possession.

Hoochek was asked: "Did you tell any one in the world that you had taken your money out of the bank?" And he said, no, no one knew it, except his friend Sivak.

He certainly didn't display money in large quantities, in a restaurant of that kind. So, if the defendant knew it, some one must have told him of it, some one who knew it, and that some one was Sivak.

And, the next day, he brought them there to the defendant's apartment. Don't you think that Sivak told this man that these men had money?

Now, take his story. His story is that, when he was apprehended, in the early part of February, he gave a false statement to Assistant District Attorney Dineen. The crime was committed on the 29th of January, and he went to Boston, and remained there for some time in a hotel, and, when the detectives came to arrest him, he jumped out of a window in that hotel, in a very natural attempt to escape.

Well, he told the whole thing, but they claim the story is not quite plausible.

What was it? In substance, it was that Sivak tempted him, asked him to do this, and he refused. He said that Sivak suggested that, as he knew how to drive a taxicab, he could hire a taxicab for the day, to take these men to their ship, and then rob them before they reached the ship; and he refused, and said he would not be concerned in this matter at all.

Why, he did not have to drag in Sivak. Hoochek, who was an ignorant man, suspected the whole thing in the House of Detention; and within three days after he was brought there, he surprised his relative, Sivak, with the question, "How did those men know that we had the money?" And Sivak remained silent.

And then, on the 24th of February, he said, "Didn't you have fear of God, to do such a thing?"

Now, Sivak admits a relationship to Hoochek, but so distant that he cannot tell what it is. You watched him on the stand, shuffling, evasive, with the constant reiteration that he is illiterate. Sivak told us constantly that he is an illiterate man; and he is worse than that, he is a thoroughly bad man, and he is responsible for the position of the defendant at this bar, he is the one who plotted and planned this whole thing.

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Well, of course, you may say, "How does that help you, how does that help your man? Does that help him at all?"

Yes, it does. This man has no former record of crim-

inality. He is seven years here. I know it, because I can see it written on some of your faces, an impatience with him. Sometimes it takes but a little thing to change the whole course of a man's life. You cannot tell what went into the making of his present plight. The whispered word in the ear of a man without money. The constant temptation of that man Sivak, may have made him yield, as he said, on February 24th.

R It is all right, in the calmness of a jury box or jury room, to view that conduct as reprehensible, but I do not think that this poor devil understood the crime of the taking of a human life. It is a most surprising thing that, for the seven years he has spent in New York, he had no criminal record whatever, no crime of any kind charged against him.

Don't you think he told the story correctly to Dineen, to Mr. Dineen, when he told of that point?

Now, in this case, I am not going to attempt to argue something which is, perhaps, to your mind somewhat surprising, but which is the fact.

The Court will charge you that the law is that any one who takes the life of another, while engaged in the commission of a felony or an attempt to commit a felony, is guilty of murder in the first degree. In other words, it is not necessary for the Prosecution to prove two essential things, namely, intent and deliberation, which ordinarily must be found in a case of murder in the first degree.

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Was he engaged in the attempt to commit a felony? That

is all. If a life is lost, it is murder in the first degree, and that will be charged, and you will hear it.

What do we say? That this man was in his own home, and that, if Sivak's story is true, he was not in on the crime. Sivak's story is that he took no part in the crime, but was a bona fide traveler, and was about to go to Europe, with the other men.

Then we asked him, when he did get out of that apartment, why did he not sound the alarm as to what had happened at 123 Stanton Street, on Saturday afternoon.

Had the crime of attempted robbery, if it was attempted, terminated, the attempt to rob Mazzura? If it had terminated, then he was not engaged in the commission of a felony at the time of the killing, and cannot be convicted of murder in the first degree.

The rule of law is that we need not establish, or, rather, make the People establish, the intent and deliberation, where the man is attempting or committing a felony, and, on that rule of law, his whole case centers.

But we say, right here, that, if this man was guilty of anything, it was a robbery, or an attempt to commit a robbery.

He has not fired the gun. No.

Did he know the man who fired had a gun? No.

If you believe that the story that he told, on February 24th, when he tore the mask completely from himself and

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exposed all his wickedness, was true, then you must find that he did not know that the man who shot, had a gun; because he said, if my recollection is correct, that he did not know the man had a gun, and he was not out to save himself then. He was there, and he told the whole story of what happened.

Abe Kepaloff, this boy of sixteen, lived with him, and they met one another many times.

Now, you remember the story, according to the People's witnesses, that, when they entered the defendant's apartment, they found the woman, the wife, and she went out to look for the defendant, and she came back and said, "Yiddle will be back very shortly." And she went out again, and the defendant met her on the stoop, and brought her back. If he had known the identity of the men there, would he have sent her or taken her back to the presence of such men?

Your first question may be, "Well, am I right in thinking he intended to rob him?"

And the next question is: "Is it our belief that he wanted to kill him?"

But was it his hand that pulled the trigger?

Stanton Street is overcrowded. A million of people are crowded into that overcrowded section. Do you believe that the crime, which they had attempted to commit, had terminated? Do you think that men would be so thoughtless, so bold and defiant in their wickedness, in that overcrowded section, when Sivak had got out into the hallway and had run down-

stairs, and had called for help from the police, would persist in their crime? Don't you think that they would have tried to escape? And, if death followed the attempt to escape, the law recognizes a distinction, that, in order to find this defendant guilty, you must find that the death resulted while they were engaged in the commission of a robbery or an attempted robbery. But if the attempted robbery had terminated, and these men were trying to get away, and the unknown man shot the deceased, that does not make this defendant guilty of murder in the first degree.

Now, that is the difficulty with which you will be confronted. You have assumed a sworn duty, and you must take the Court's instructions as to the law; and it makes no difference whether they were miles away, or only inches away, if that crime of attempted robbery was abandoned, then anything that happened is not a part of the crime of robbery or attempted robbery.

I can imagine that, if the place of this crime had been in a section where it is only partially settled, and it would take some time before Sivak could have given warning of the assault, or attempted robbery, that his story as to why he did not give an alarm might be probable.

But, conceding that Sivak was not in on the crime, 9696 but was himself to be a victim, don't you think that the men in there, when he escaped from the room, would have said, "The

jig is up," for if he was a bona fide outsider, himself to be a victim, and not engaged in the job, he could have made that whole building ring with his cries for help.

And, even if you believe that he was in on the crime, and had made his escape, is it not possible that these men had abandoned the crime, and were trying to make their escape?

Now, gentlemen, I urge these considerations upon you for this reason. You have had an opportunity to study the defendant, who is twenty-five years of age, married, and has been here seven years, and who is entitled to every consideration. No feeling of prejudice ought to be entertained against him for his account, you know. Deep down in your hearts, you know that, on the 29th of January, he did not intend to commit the crime of murder. No one claims that the worst phase of the case existed for him, that he went there armed with a pistol, intent upon robbing this man. At the very first mention of the pistol, you can say, perhaps, "Well, he is not a fool. Why, if he was not concerned in the crime, didn't he try to prevent the shooting in his own home, or run out of the room?" But there is no evidence that he did not do, or attempt to do, those very things.

His Honor will charge you in this case, and you are to follow his Honor's instructions as to the law, that it is an awful thing to take a man's life, and that is why courts are

convened, and juries assembled, and it is just as bad for juries not to give proper consideration to the story of the accused man, as it is disregard the testimony of the People.

Do you think, on all the evidence, that he should die in the electric chair for the crime that was attempted to be committed on January 29th, not murder, but an attempted robbery?

Men should be held to a full and strict accountability for the act intended or contemplated. But do you think that he intended to commit murder? I know that it will be argued that it makes no difference whether he intended to commit murder or not, if the other man had a gun, and in the course of the commission of a criminal act, he discharged it, and killed the deceased, and that this defendant, then, is as guilty of murder in the first degree as the man who fired the shot. That, I know, will be the argument of my adversary.

But I am asking you, in all sincerity, do you think, not only that he contemplated, but that he even imagined committing the crime of murder, on that day?

It is a most sudden transformation. If he had been a man with a long record of robberies and burglaries, who had bought and kept about him burglar's tools, if a revolver was a part of his stock in trade, then, yes, because a man acts from his previous experience, takes in the whole range of crime, and he says, "I don't want to kill anybody, but it is possible,

of course, in the commission of this robbery, that some one may be killed."

His Honor will charge you that, if the men were escaping, and realized that, once Sivak got into the hallway, they were lost, unless they could escape, and the loss of life resulted in the effort to escape, then you cannot find the defendant guilty of murder in the first degree.

Now, that is the law, not my statement, or any one else's statement of it.

Now, when they were in that apartment, and Sivak got out, and the deceased wrestled with the man who was holding him, and he was shot by the unknown man, it is for you to determine whether that was part of the crime of robbery, or whether it was part of an effort to escape, and if you so find, then you cannot find this defendant guilty of murder in the first degree.

I will only take a few more moments of your time, gentlemen. You all realize that in an important trial, sometimes lawyers may unconsciously say something that ought not to have been said, or leave something unsaid that should have been said, and I now earnestly say to you, gentlemen of the jury, that if anything occurred that was unpleasant to the jury in this trial, if anything displeasing was said by a lawyer for the defense, please forget it; or, if there was any cross examination that excited your passions, on a warm day, let that be forgotten.

Do not show favor to the Prosecution, nor prejudice to the defendant. Let nothing enter into your deliberations but the evidence. Be fair to this defendant, and do not be affected or prejudiced by any considerations except the evidence.

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Now, there is one thing which the Prosecution will mention, and, therefore, I must refer to it now. They claim, or may claim, that the defendant fled from the state. Now flight is some evidence in a trial, but not evidence from which you can say, "He fled, and, therefore he is guilty." It is only a circumstance, to be taken into consideration with all the evidence in the case.

Perhaps an innocent man may run away. Fear may take hold of him, and he may run away. It may be a consciousness of guilt, and it may be only the timidity of a timid man. But you must not consider it as evidence that he committed the crime charged.

There was some testimony here by Hoochek that they attempted to go through the pockets of the deceased. They were in that apartment only a few minutes, when the order was given, "Hands up," and that man Hoochek had more money on his person than he ever had before, I daresay, and he let the cat out of the bag when he said something possessed him, and he slipped between the two men standing over the wounded man, and got out into the hall.

Now, I don't think it was within his power to describe

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everything that occurred in that room. It would require a keener witness than that ignorant man.

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You may conceive that, where these men were placed in the position of robbing the body of the dead man, it puts them in a very serious position, the attitude of ghouls robbing the dead, and I don't think that happened; because one of the policemen says that he found in various pockets of the deceased over a thousand dollars, and you know that small bills make a large bulk, and the policeman found money in almost every pocket of the deceased's clothing.

There is not a scintilla of proof that the defendant or the other men got any money.

So don't you think that Hoochek, while in the House of Detention with his relative, Sivak, shortly after the crime was committed, when it was stated to him that these things had happened, was right when he said that he was surprised, and did not recollect some of the things mentioned?

An accident occurs. A hundred men may have seen it, and yet their descriptions of it will differ, sometimes radically.

I think that part of the story of Hoochek, not because it is unfavorable to me, not because it does not help the defendant, or not because it is damaging, is true. I say it is a most singular thing that, if these men did rob the deceased, that big bundles of money came from almost every pocket, after they are alleged to have robbed him.

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Don't you think that, when the cry came, "Hands up," his head was swimming, going around, his brain affected by fear? He said that he did not know what was going on as he started to run out.

Now, you must bear in mind that Hoochek and Sivak spent hours together in the House of Detention. I believe that, if that statement was brought into this story, it must have been through Sivak, when he says he heard the defendant shout, in Russian, "Hands up." I do not believe it.

So that is two points in the story that I do not believe, what I have named before, and this one in particular. I think that, if you were to give him the kingdom, he couldn't give you an accurate story of what transpired, and, I daresay, none of us could. Where is the man with such wonderful poise and self-control, finding himself in a situation of that character, who would have acted differently?

That money was millions to that man. It was the savings of a lifetime. He thought so much of it that he had carried it around, tied around his leg, and then suddenly to be deprived of it and the shock coming right there, he could not tell what occurred, but the cunning, lying mind of a Sivak could re-enact the scene. Just think of it. He was asked, "Don't you remember such and such a thing happen?" He was asked by Sivak, and he was ready, and he said, "Yes, it happened."

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He wanted to put the defendant in as deep and as dam-

agingly as he could. Sivak conceived this crime, and yet he may go free, and, since he may go free, he is willing to testify to anything.

But his was the mind that planned, that conceived this crime of robbery, and drew the others into it.

What occult power has this man (indicating the defendant) that he would know that these men had a quantity of money? He was not at the bank with them. He did not have any intimate knowledge of the affairs of Hoochek or Mazzura. How would he know, unless the man that knew all about it told him, and that was Sivak?

Now, gentlemen, I am about to complete my summation. It will be the last time any word can be uttered in behalf of the defendant. The Prosecution has the last word to you men, as jurors, and, no doubt, there will be more questions raised by Mr. McDonald, the Assistant District Attorney, that I have not touched upon, that I have not answered at all, you may say. Was that evasion on my part, or a deliberate omission? Not at all. I assure you that I have taken up every important topic in the case, and tried to discuss it. No omission, no evasion. So will you kindly constitute yourselves friends of the defendant in my place, and answer those attacks?

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You know the evidence, and you are fully competent to discuss it.

In this case, gentlemen, I repeat again, no feeling of

of bitterness, or, worse still, no feeling of righteous indignation, should cause you to bend backward in your endeavor to do your duty.

Don't you think it is the fair thing, in all your actions in regard to a man, to make him responsible only for the thing he contemplates, intends to do? Shouldn't that be the rule, whether it is an infraction of the moral law, or a violation of statutory law?

A man, operating a car in the street, might cause the death of another, but is he to be charged with murder, even if he was going rapidly, if he did not have the intent to take a human life?

It is going to be a hard position for my man, a man only twenty-five years of age, whose life in this city for seven years has been unblemished, who has heretofore never broken a law-- yes, there was a charge of speeding, but we must not count that-- and an older man tempts him to commit a crime, and, assuming, for the sake of argument, that he yielded, and the story he told to Mr. Dineen is true, and he did yield, do you think he is guilty of murder in the first degree? If you do, there is only one punishment.

His Honor has no power to change the penalty. There is only one penalty for it, but that means that his life will be snuffed out for something that he never intended doing.

THE COURT: Mr. Sheridan, the Court will instruct the jury, at the proper time, that the jury is not concerned with

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the result of their verdict, either in this or any other criminal case; that they are the judges of the facts of this case, but have nothing to do, if they find this defendant guilty, with the punishment, and must not be concerned with the consequences of their verdict, whatever that verdict may be.

MR. SHERIDAN: If the Court please, I apologize.

If, gentlemen, following the Court's suggestion, the jury is not to be concerned with the punishment, it may be mentioned, however, to impress upon you men the seriousness of your task, and that is the only condition on which you may consider the penalty, as to the seriousness of your task.

I am about to close with this statement: No character witness has taken the stand. No, most unfortunately, in a way, we, in the last two or three months, since we have been assigned in the case, could not find a man who would come forward, and stand by a friend in trouble. It is rarely that you find a man who is noble enough to come forward to extend his hand even to the most abandoned wretch. There was not a single soul to come to his relief.

You might say that that has nothing to do with it. I know it. But it is a serious case, it is a case where a man who never contemplated an act is to meet with an undeserved punishment.

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The rule may be a wise one, it is a wise one, that, when a man is engaged in the commission of a felony and death

results, that he must pay the penalty. But I say again, if that criminal act had terminated, if they were trying to get away, were escaping from the scene of the crime, and their object was to escape, then this man is not guilty of murder in the first degree. And that is not my statement of the law; that is the statement of the Court of Appeals.

Give him the benefit of that situation, if you find it to exist. Do you believe that those men continued, as I said before, once Sivak got out in the hall, and the alarm was started? If they did not, if they were trying to escape, then they were not engaged in the commission of a crime.

Now, gentlemen, you are all good men, business men, men of family, men grounded in all the moral principles, leaving home with a kiss for your dear ones and returning at night to greet them affectionately, and it is almost an impossibility to require you to come into this court room and take up this proposition, and weigh it, without having some prejudice, some subconscious feeling, but I am going to ask you to do it. I am going to ask you to show a feeling of humanity even to a depraved creature. I am going to do that, and I am going to leave this defendant to your mercy and to your justice.

THE COURT: Gentlemen, you may now have a recess for five minutes. Do not talk about the case, or form or express any opinion concerning it, until it is finally submitted to you.

AFTER RECESS: *see*

SUMMATION FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY JAMES E. MC DONALD.

Your Honor, Mr. Foreman, and Gentlemen of the Jury:

This is a pretty warm day, and I will try to make my address to you, while covering the facts as fully as I ought to, as short as possible.

It will be somewhat shortened by the almost conceded statements of counsel, although not entirely so, that this defendant up to a certain period of this occurrence, was engaged in the act, or attempting to commit the crime, of robbery. That is almost conceded by counsel for the defense. So that end of it we will just pass upon lightly.

What is the defense in this case? What is the defense, as you gentlemen have seen it?

Is it the suggestion offered by counsel for the defendant, or is the story that he told on the stand, or is it the story that he told, on the 21st day of February?

When was he telling the truth? Did he tell the truth to his counsel, since counsel, in his argument here, claimed that they were up there for the purpose of robbery? Or did he tell the truth when he was on the stand, when he said that he did not know a thing about what had gone before, that he had no intention to rob, that this thing came upon him out of a clear sky; that he was making tea, and that the first thing he knew, he heard the cry, "Hands up", and he stood there?

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Now, is that the true story, or is the story as he told us, on the 21st of February, the true story?

Take the counsel's theory, in his defense. It is this: Counsel says he told the truth to the District Attorney. Then he lied here.

Did he tell the whole truth to his counsel, and did his counsel reiterate to you what he said, in his summing up? If he did, then the defendant lied on the stand.

Counsel has said that you gentlemen are judges of men's souls. You have nothing to do with the judgment of men's souls. You are good, hard-headed business men, and if you had a proposition come up in your business, any day, you would use your good common sense, and decide it according to your good common sense. That would be all there was to it, and that is all there is to it here, in this case. Decide it just as you would any important matter in your daily business or domestic life, and that is all, that is the only way to decide it.

We all have a natural sympathy for men placed in the position that this defendant has placed himself in, not you or I. I did not place him there, neither did you; and so we have not, as I say, anything to do with that.

Our duty is plain. We are here to decide the facts-- and when I say, "We", I mean that you gentlemen are to decide the facts-- and the facts alone. You are not to give any place

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whatever to the sympathy that you naturally feel for a man in a serious position, or allow it to sway you, and you are not to entertain prejudice against the defendant because of the untimely taking away of this old man, this old man, with his savings of a lifetime, this old man fifty-five years of age, a hard-working man, saving his money, a decent man, and a law-abiding citizen, and entitled to all the protection of the law, just the same as this defendant.

Now, do not get the idea, and you may get it inferentially, that, when counsel spoke about the defendant not having fired a shot, that, because he did not fire the shot, he is not guilty of any crime.

I asked most, if not all, of you men, "Would you obey the law, would you follow the law as laid down by the Court?" and, while it may appear more drastic to you, nevertheless, your duty as jurymen, under your oaths, requires you to do that. I asked you, "Would you obey the law as laid down by the Court?" and you said, "Yes."

It is a drastic law, formed for a very definite purpose, that men engaged in the commission of crime, in which a killing takes place, that each and every one of those men engaged in the original felony, as, in this case, in the robbery, are each and severally guilty of every act committed by any one of those men.

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Take this special case. These men, four of them, are charged with going there for the definite purpose of stealing;

and they get up there, and only one of them has a gun, and even if they did not know-- if the other three men did not know-- that the fourth man had a gun, according to our law, those other three men are equally guilty with the man who fired the shot.

P There is even a separate subdivision of our law, expressly stating that, because men starting out to commit crime do not know where it is going to end; and, if one of the men comes prepared with a gun, for the purpose of committing crime, what is the gun used for? To accomplish their end, if the deceased, as in this case, shows any resistance.

Not only that, but supposing one, two or three of these men had stayed outside of this room, yea, down in the street, the four of them having gone there for the purpose of robbing Mazzura and Hoochek; that all that they knew was that the man who went upstairs was going to rob Hoochek and Mazzura; and they were acting as a sort of lookout for the man upstairs; and the man upstairs shot Mazzura, then the three men downstairs are equally guilty and responsible for what the man did upstairs, because the very purpose of the law is to defeat men committing violence, and then, in the act of accomplishing their purpose, killing. That is the prime purpose of the law.

Did he know, as a matter of fact, that one of these men had a gun? We will come to that pretty soon.

You remember that his story, on the stand, was that he

did not know the man had the gun, until he heard the words, "Hands up", because he had his back turned towards the door, and that the table at which he was standing was over here (illustrating), so that he had to turn to look where these men were, and that he was supposedly making tea on the gas-stove.

And bear in mind the story that he told us, on the 21st, that his tea-making pose was a bluff, to take up time, to ease the minds of these two victims.

And I say that, too, as allowing for saying that Sivak was in on the deal.

Certainly, his actions were suspicious. Certainly, Hoochek had a right to say, "How did they know I drew this money?"

But does that exculpate him, this defendant?

I did not play any game, and I was not playing any game, when I put the statement of the defendant Rosenwasser in evidence before I called Sivak. I was not trying to fool counsel, nor to fool you, by not putting Sivak on first, so that they could cross examine him on what the statement said. I put him on, so that counsel and the jury should know that they had implicated Sivak.

And yet, outside of Rosenwasser's story, if you eliminate entirely the implication of Rosenwasser in his statement to us, everything that Sivak did is consistent with his innocence.

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Suspicion can be cast upon any man, under some circumstances. Here are three men speaking the same language, in a foreign land, a young fellow and two old men. They talked first about going to Europe, at some period about the 10th of January, because it was on the 10th of January, you will remember, that the three of them paid ten dollars each, on account of the passage ticket. The three of them paid ten dollars. He didn't pay less than the others. He paid the same as the others.

So that was not part of the scheme. If he had paid less, for instance; if Hoochek and Mazzura had paid one hundred dollars or one hundred and fifty dollars, and Sivak had only paid ten dollars, you would have rightly said, "That was only a bluff. He was only insinuating that he was going." But he paid just as much as the others.

Now, when was Sivak concerned in the robbery of these men? When did the idea first occur to him?

It certainly must have occurred on the day before, if it occurred at all, or on Saturday, the day it did occur.

But, up to that time, just notice everything that Sivak did. He went first to the Passport office, before he paid the ten dollars, and, on the 10th of January, he went again, and paid ten dollars, with Mazzura and Hoochek, and had his photograph taken. Meanwhile an application is made for a passport, and he must have had his picture taken, because it is on the

passport here, and it was returned on the 26th.

Now, doesn't that show an earnestness on the part of Sivak to go with them?

And yet, at the same time, it could be possibly construed into the inference that Sivak was ingratiating in their favor, showing himself to be a friend, for the purpose of robbing them.

But, at the same time, the man who does the innocent thing, the man who acts most properly, an accusation could be made against him.

Now, I am not rising to a defense of Sivak; it is not my duty to do so. The Court has knowledge of everything that Sivak has done. The Court even warned him as to his rights, and I warned him as to his rights, and Sivak said, "I am ready, right here, to answer, a stranger in a strange land."

And when the Court instructed him that anything that he said might be used against him, in a charge preferred against him by the People or their counsel, he said that he wanted to answer; and the only other men in the room, speaking his language, were the defendant and the interpreter.

You do not suppose, I hope, that even I could be charged with dereliction of duty as to what is to happen to Sivak. Do not think that the Court will stand idly by, even if I neglect my duty, because the Court is just as much a part of our system of justice as I am. And so I say what happened is consistent

with innocence. Why did he have to run, if this plan was all made up beforehand? If he went there in cahoots with Rosenwasser, as Rosenwasser claims he did, why did he have to run at all?

And what happened? After talking to a policeman in Russian, and I am not surprized at the policeman not being able to understand him, he ran where?

He ran down to the very place where he first met "Yiddle", the restaurant, and told everybody.

And who testified to that? A witness called by the Defense, the restaurant keeper, Polichinik, a witness called by the Defense.

He said that this man Sivak told all about it, and that was before the police came.

He went where a number of men congregated, who spoke his own language, and he told them just exactly what had happened, that these men had been held up in Rosenwasser's house. Does that bear any of the significance of innocence?

Why, you are giving him the mind of an intelligent man, who plans inadvance, and plans to such an extent that he covers himself in every detail. But he is not clever enough for that. He is not clever enough to plan ~~to~~ far ahead, that he has even planned his escape, or the tale to be told some time afterwards.

Did the defendant tell us the truth when he said that the man, this unknown man, pointed the pistol at him, this man

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whom he had invited up there, this man Konner?

Is it not strange that he should happen to run across the man who had the gun, and that Konner just happened to introduce him to the man who had the gun?

He says, in his story on the stand, that he did not see the gun until this unknown man said, "Hands up."

He said he did not say a word, he did not do a thing, but he remained there, but he did see Mazzura, the old man get up, after the cry of "Hands up."

And, by the way, I think he said the cry of "Hands up", was in Russian, and this unknown man spoke Russian.

Mazzura was not going to let them get his money, the money that he had worked so hard for, without a fight, and he says that Mazzura went for the man who held the gun. That is his story.

And he says there was a struggle for two minutes, according to his story on the stand, between Mazzura and this man whom he had invited up to his house, and that this man was smaller than the defendant here, the unknown man, was shorter in height and weighed less; and although there was no fear of height and weight to prevent Rosenwasser from going to the rescue of the man who had been brought to his house by Sivak, there was a struggle of at least two minutes, he said.

And in that time of desperate struggling, Abie, who also lived in the same apartment as the defendant, did not try

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P to help Mazzura. And old Gustyak, who was backed up against the wall, with his hands held up, stood there, frightened almost to death. But there was no holding up of hands on the part of the defendant or Abie; just on the part of Mazzura and Gustyak. He says that the struggle took about two minutes, and then the fatal shot was fired.

Let me read you just exactly what he said:

P "Q And when he pointed it at you, Hoochek and Mazzura, what happened? A Sivak ran, and Mazzura got up from his chair, and he tried to run away; and, while he was trying to run out, the man with the gun tried to hold him back, and they started in to fight; and, while they were fighting, that man, Hoochek, tried to run out, and, while he was on his way running out of the room into the hallway, I heard a shot, and the man turned around with the gun, and run right after Hoochek. I heard a shot in the hallway."

Now, what happened? The only men who could tell us what happened at the time, or just previous to the shooting, are the defendant and Gustyak.

Now, who had the motive to lie? Had Gustyak any motive to lie, or has the defendant a motive to lie, to escape the consequences of his own act? And when I say, "his own act", I mean according to the law.

Did the crime take place? Did they go there for the purpose of robbery, and was there an intent, in case of resis-

tance by any of these men, to use violence?

Let us go to what he told us on the 21st of February.

This statement that he made on the 21st of February is full of meat, as to their intent to commit the crime of robbery, and I can read sentence after sentence.

Is it not strange that the wife should just happen to run across the defendant, or that he should happen to tell his wife that he was going to be at a restaurant at Sheriff and Willet Street, to get some money that was coming to him?

And is it not strange that the wife should run across him and Abe Kepaloff, one of the other defendants in this case, and that they should run across Konner, another defendant in this case, and that Konner should have the man with the gun with him?

"Q When was it, on Saturday afternoon, when you three fellows were in the house, that you decided to pull the deal off? A About one o'clock.

"Q Well, did you make any arrangement with Abie and this other fellow, to meet him on Saturday, and pull that job off? A I hadn't made no arrangements with Abie, because I see him all the time.

"Q Now, didn't you tell him on Friday night, again, it was all right, you were going to pull the deal off? A No, I didn't tell him on Friday night.

"Q Did you tell him, on Saturday morning, it was all right? A Saturday I told him."

Now, there is the intent, there is the idea still in the mind of Rosenwasser, and he had communicated it to Abie on Saturday morning, before this thing occurred.

"Q You told him to get the other fellow with the gun?

A I didn't tell him exactly to get the fellow with the gun.

"Q What did you tell him? A I told him to get a fellow who should do something."

Now, that was Abie that he was talking to, on that very Saturday morning, very shortly before the shooting, because he says he did not leave his house until twelve o'clock, noon.

"I told him to get a fellow who should do something. I told him not to kill, because I didn't want to be mixed up in a murder case, I told him to get a fellow with a blackjack, or something like that."

Now, what was their purpose in getting a blackjack? What was the purpose in his suggesting that somebody had a blackjack, except to offer violence, in case the man to be robbed resisted? That was the purpose of the blackjack.

"Q Well, what were you going to do, if you had a blackjack? What was he going to do with a blackjack? What was he going to do with a blackjack? A If they should start fighting, he could lick one of them."

Start fighting for what? To protect their money. Was it the idea of Rosenwasser to take the money away from Maszura or Hoochek by violence, if necessary?

did he know that he had a gun at the time the thing happened, the unknown man? Let us go a little further.

"Q Who should lick one of them? A The fellow with the blackjack.

"Q When did you find out he had a gun? A When he was up in the house.

"Q He told you in the house, before you pulled off the job, that he had a gun? A Yes.

"Q Now, how long before you pulled the deal off, did he tell you that? A About three or four minutes, something like that."

Now, counsel said that he was telling us the truth, on the 21st of February, and there is the statement of this defendant on the 21st of February, that he knew that this man had a gun. Why, he even goes on to say that he put water in the kettle, and put the kettle on the gas-stove, to lull the sensibilities or divert the suspicion that these men might have, while they were waiting to get the wife out of the room. He was just killing time, to use a slang expression, until the wife and child would leave.

Plan? Plan? It reeks with plan, right there. He admits he made a bluff. He was cool, calm and deliberate. The idea of inviting men that you are going to rob, to take tea.

"Q What were you going to make out of the water? A Tea.

"Q Was that just a bluff? A Yes, sir."

Is it not the coolest and most deliberate plan of robbery that was almost ever perpetrated? Even tricks to lull the mind of the victims.

The defendant says he stood there, that he was scared, that he did not know what had happened. But is it not remarkable that he just happened to run into Abie, downstairs? Nobody in the room but the dead man and himself, with the fur collar of the deceased blazing, or smouldering, rather. And is it not remarkable that Abie should ask the defendant if he got the money. What money?

They had, according to the defendant, desisted from the attempt to commit robbery? Is it not strange that Abie should have waited downstairs? That is his story on the 21st, which counsel says is the truth. Is it not strange that Abie should say, "Did you get the money?"

The only man who could have told us how much money Mazzura had is Mazzura, and his life has paid the forfeit for his having money.

We do not know whether they got anything of Mazzura's or not. We only know that we found money, more money than he drew from the bank on Saturday, just an hour before. I repeat, we found more money than Mazzura drew from the bank an hour before, when he was searched by the police, because he only drew \$1053, I think it was. Hoochek drew about two thousand dollars, that day, and Mazzura a little over a thousand.

sand dollars, and nearly two thousand dollars were found on him, and all that our witnesses can say is that we found a certain amount of money on the person of Mazzura, at the time that the police searched it.

When did the attempt to rob the deceased go out of the mind of the defendant, as counsel would have you believe that he desisted from the attempt? Naturally, his theory is that he desisted from the attempt to commit this robbery at some period before the shooting-- he didn't tell you when it was that the mind of Rosenwasser said, or, at least, that it came into Rosenwasser's mind, "I will cease."

And are you going to take that speculation, or are you going to judge the mind of this individual by his actions?

Now, was anything done, and by whom? Gustyak was there, Gustyak who was shot. He says that, as Mazzura started to go out of the door, as the cry of, "Hands up", came, as Mazzura started to run out of the door-- he says that he opened the door-- these three men grabbed him, and struggled with him.

And then he illustrated what these men did, ran their hands over his clothing, and, as descriptive of what they were doing, he said that they were looking for money, both of these men-- not one, but both-- "Yiddle", who had said "Hands up", in Russian-- the three of them ran and caught Mazzura as he was going out of the door-- Mazzura had already opened the door-- Gustyak a decent, hard-working man, never charged with any crime,

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not seeking to escape any punishment, says that "Yiddle", this other man and the man with the gun went over there and caught Mazzura, and that Mazzura tried to get away.

And don't you believe that this old man, five feet, eight, normal, could have gotten away pretty well from this stripling that they have made out the man who had the gun to be?

They have made him out a stripling, a youngster, an anaemic individual, without any strength, and yet he shot old Mazzura, who was fighting for his money, which he thought more of than his life; for, if he had not, he would have given it up, as I would have done, but he had earned and saved that money, and he was determined not to give it up to those three men without a fight. That is what was going on when he was felled near the door.

They were in a terrible hurry to get the wife out. "Yiddle" said, "Go to the doctors, go to the doctors, with the child. Hurry up to the doctors," so that they would have it free and clear with these men, in their own apartment.

And, almost as soon as she left, "Yiddle" and the two men appeared.

Were they on the watch? Did they know that these men had drawn money from the bank? Were they, really and truly, in cahoots with Sivak? Did they watch these men coming from the bank, and did they go away to provide themselves with a re-

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volver, before they reached the defendant's apartment?

It sounds like a logical inference, because could all these circumstances have arisen almost simultaneously? The defendant meeting his wife and being with Abie, at the same time, in front of this restaurant; and her running across to the restaurant and getting hold of her husband and Abie; and then Abie and the defendant finding Konner right there, with the unknown gunman? Is it not a proper inference that they followed, that they watched these men come from the bank?

It was common knowledge down there in the restaurant that these men were going to Europe. Polichinik, the proprietor, knew it, because the three of them used to buy goods that they were going to take to Russia, and leave them in the store, things that were needed more than money in Russia.

Is it not strange that the wife should happen to run into these three men, and that, as soon as she gets back to the apartment again, they rushed her out?

Gustyak says that, while the wife bundled the child up, "Yiddle" was busying himself near the table, preparing tea, and the two others were standing close to the wall.

I am not trusting to my memory. I am going to read the record for you as to what happened, when the cry of "Hands up" was yelled at these two foreigners. I will read a couple of questions just previous to what I wish to read, to give you a little clearer idea of what I read.

"Q How soon was it that "Yiddle" and these two other men appeared, after the woman came back? A I don't believe it was more than three minutes.

"Q How long did the woman stay before she went out-- I mean after "Yiddle" came? A She only bundled up the child, and immediately left.

"Q Now, when she left, where was "Yiddle", and where were the other two men? A "Yiddle" was busying himself near the table, where he was preparing tea, and the two others were standing close to the wall.

"Q Now, what happened then? A These three, "Yiddle" and the two others hollered, "Hands up."

"Q And what happened? A Then Mazzura and I got up from the chair on which we were sitting, and Mazzura ran towards the door, and opened it, but they caught him.

"Q Who caught him? Those three, "Yiddle" and the two others."

Now, that is Gustyak's story. He has no motive to lie. He is under no charge of murder.

"Q Now, at the time that you heard the cry of "Hands up," was it spoken in English or any other language? A "Yiddle" and the other man said it in the Russian language, but the one who did the shooting said it in English."

Has Gustyak any motive to lie? He says that Rosenwasser spoke in Russian, "Hands up."

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"Q Now, when you say that Mazzura started to get out of the door, what happened as he started to go out of the door? A I went to the wall, and raised my both hands, and he, Mazzura, rushed to the door, and they caught him there, and they killed him.

"Q Now, just tell us what they did. A They went after him, with a revolver.

"Q Well, who caught him at the door? A 'Yiddle' and the other man, and the third man fired a shot.

"Q Did you see 'Yiddle' and the other man do anything to Mazzura?"

But that answer was stricken out, and I will not read it. The next question was:

"Q Well, just tell us what they did. A They went this way (indicating by putting his hands all over his clothing)."

You remember how Gustyak illustrated it on the stand: "As if they were looking for money."

Now, remember that Mazzura is struggling all this time.

"Q Now, just stand up, and show what 'Yiddle' and this other man did to Mazzura's clothing. A Two were holding him, and then running their hands over his body (illustrating), and the third one, with a revolver, just shot him."

When was it that Rosenwasser concluded to desist? Was it after the shooting?

All the evidence of Gustyak is that, up to the very in-

stant of the shooting, Rosenwasser was going over the body of Mazzura, and he and the other man, Abie Kepaloff, and the other man did the shooting.

And you remember Gustyak, on the stand, illustrated how he did the shooting, pointing down, the finger of Gustyak was pointed down, just in the direction that the shot took, the right breast, right down; and the bullet was found just in the middle of the back, the seventh dorsal vertebra. That is where the doctor found it, and if you know anything about anatomy, you will know where the seventh dorsal vertebra is.

And I am giving that as bearing upon whether Gustyak knew what he was talking about. Didn't he just illustrate exactly the position, yea, not only the position but almost the exact track of the bullet, because he was pointing it like that (illustrating)?

Is Gustyak telling the truth, when he says that, at that time, these three men had hold of Mazzura, and that he was struggling?

When had the defendant given up the idea of robbery?

"A Two were holding him, and then running their hands over his body (illustrating), and the third one with a revolver, just shot him."

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That is from the only eye-witness of this crime, outside of this defendant and the other defendants. That is the only eye-witness, without any motive to escape just punishment.

Why, even in cross examination, they touched but light-

ly upon the actual shooting, very little indeed.

The man who did the shooting, shot him within a minute after he was told to put his hands up.

Now, what happened during that minute? These three men coming together, the rushing of Mazzura to open the door, and the opening of that door by Mazzura, the running of the hands over the body, and the shooting.

Why, Gustyak says that, in running out, he had to get between Rosenwasser and Abie Kepaloff, and step over the dead body of his friend, and the man with the gun, the gunman, was in the hallway, just outside of the door, and, as he ran downstairs, the gunman shot him, and the bullet wounded him in the arm, and he tumbled downstairs.

Why, counsel says that "Yiddle" stopped when Sivak ran out. Did he?

Well, if the idea in his mind was to stop, why, in the name of Heaven, did they shoot Gustyak?

Is Rosenwasser, because he is on trial, to successfully offer the plea that he desisted the attempt to rob, at that very instant? Is this false pretense advanced only because he is on trial?

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Take this case, gentlemen. Use your good common sense. Don't let the idea get into your minds that this is the only one of its kind in criminal annals. These things occur frequently, and the bravado with which they are done is not unusual in this case.

We say, the People say, that this defendant is guilty of murder in its first degree in that he, with three others, conspired together, and it is conceded that they conspired together, to rob Hoochek and Mazzura, and their defense is, when you boil it right down, that he ceased his planning, ceased to agree with the other two or three men, at some time previous to the shooting.

Now, all the evidence is that he was holding the deceased, that Abie Kepaloff was holding the deceased, at the time of the shooting, and that almost simultaneously with the shooting of Mazzura, they were passing their hands over his body.

Whether this was an old man that was killed has not any significance. Whether it was a foreigner, a Russian, has not any significance. This old man was entitled to the right to have the money that he had worked so hard for, and to retain it, and to use it legitimately.

There is no theory of sympathy in this case. They say that this young man, up to the time that he committed this crime, was blameless. Why, he is only a young man. Mazzura was fifty-five, and his entire life was blameless and honorable, and not a soul lived on this side of the water to care, or to think about him.

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He had two thousand dollars of hard-earned money that he fought to keep from robbers, men who were hard-up for money, because Rosenwasser was hard-up. He hadn't worked in eight months, he told us; and, on the stand, he said that he had

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been out of work only five months, though, in February, he told us it was eight months, and that statement may be read by you, because it is in evidence, with the exception of five or six questions that were excluded.

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As I have already said, it does not make any difference whether this man fired the shot or not. If he were downstairs, acting as a lookout, a man who would warn those upstairs of the approach of the police, he would be a guilty participant, under the law. Do your duty. That is all that you and I are here to do, our duty, according to the law.

We have no axes to grind, we have nothing to fear. We, in behalf of the People, have presented what we have to present, and everything we have got, and we rely upon the jurors, because, after all, courts and district attorneys may do whatever they can, the police may do whatever they can, but, after all, in the final analysis, the proper administration of the criminal law depends entirely upon the jurors.

Take the question of flight of the defendant; the taking of the name of Cohen, in Boston, on the question of the guilty consciousness of crime on the part of the defendant, as bearing on the fact whether or not he had changed his mind about the robbery. Take all these matters into consideration, and all I ask you to do is to obey the law, as I know you will.

Take the case as it is given to you,, and then weigh the facts with the law, and then, when your verdict is brought

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in, the People must be satisfied.

THE COURT: Gentlemen, we will now take a recess until half-past two o'clock. Bear in mind that you are not ^{to} talk about this case, and that you are not to form or express any opinion upon it, until you are finally charged on the law of this case by the Court.

The Court will take a recess until half-past two o'clock.

AFTER RECESS:

THE COURT'S CHARGE

TALLEY, J.:

Gentlemen of the Jury,

The defendant, Julius Rosenwasser, was indicted by the Grand Jury of the County of New York, charged with the crime of murder in the first degree. With him were indicted three other defendants, not now on trial, and the indictment charged that, on the 29th of January, 1921, this defendant, with the others, was guilty of making an attack upon one Jacob Mazzura with a loaded pistol, which they discharged into the body of Jacob Mazzura, as the result of which Mazzura met his death.

Now, gentlemen, from the mere fact that an indictment has been found against this defendant, you are to presume nothing. You are not to presume that the defendant is guilty because he has been indicted for this crime, because an indictment is nothing more than an accusation in writing, a charge made against the defendant, the primary purpose of an indictment being to bring the defendant into court, and to apprise him of the charge that he is required to meet.

In this case, as in every other criminal case, there are two functions that appear: One is that of the jury; the other that of the Court; and each is distinguished, one from the other.

The province of the Court is to pass upon questions of law; the duty of the jury is to pass upon questions of fact.

With the law, you men have nothing to do; with the facts of this case, you are very much concerned; and, in pass-

ing upon the facts, you are just as much judges as is the Court, and your responsibilities are no less than those of the Court. But your judgment is confined to the facts of this case, and in your domain you are supreme.

During the course of this trial, the Court was called upon to make rulings upon matters of evidence. At the close of the People's case, and again at the close of the entire case, the learned counsel for the defendant made certain motions, asking for a dismissal of the indictment, asking that the matter be taken from the consideration of the jury, and those motions were denied by the Court. But I charge you that you are to infer nothing from those denials. You are, particularly, not to infer that, by reason of those denials, the Court had any opinion upon the guilt or innocence of this defendant, because the denial of those motions meant simply this, so far as you men are concerned, that in this case, in the opinion of the Court, there were presented questions of fact, which required determination by the jury. The action of the Court upon those motions meant nothing more than that.

This defendant is entitled to certain very important privileges and considerations, certain rights which our forms of law throw around, as a measure of protection, every defendant who comes into a criminal court.

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The first of those rights is that the defendant is presumed to be innocent until his guilt is proven, proven to the

satisfaction of the jury by the People, beyond a reasonable doubt; and that presumption of innocence lasts throughout the trial, until the moment arrives when the evidence against him appears to the jury to be such that the presumption of innocence disappears.

Another way of stating that proposition is this. Under our law, a defendant is not required to prove his innocence. The burden of proving his guilt is always upon the People of the State, who present against him their charge and their accusation.

The People must sustain that burden, and they must sustain the burden of proving the guilt of a defendant, beyond a reasonable doubt.

What is a reasonable doubt? Well, it is one of those simple propositions that elude satisfactory definition. It is one of those phrases that the more an attempt is made to define, the more confusion is likely to result. But it is perfectly simple. A reasonable doubt is that kind of a doubt which a reasonable man might entertain, after a fair consideration of all the evidence. It is a doubt that must arise in reason; it is a doubt for which you could give a reason, if you were called upon to give it.

The law does not require that the guilt of a defendant be proven, in every case, or in any case, to a mathematical certainty. So few of the things of life are subject to that kind of proof, that, to require that, would be placing a heavier burden upon the People than they could reasonably be expected to sustain.

Nor is a reasonable doubt something that may be used as an excuse for avoiding the performance of an unpleasant duty. It is not a mere whim, or guess, or surmise; but it is that kind of a doubt which reasonable, intelligent and conscientious men might feel, after weighing all the facts and circumstances in the case, just as they would weigh the important affairs of their business or domestic life. It is proof to a moral certainty, not to a mathematical certainty; and, in this case, unless the People have satisfied your minds, beyond a reasonable doubt, that this defendant is guilty of the crime with which he is charged, then it is your duty to acquit him.

If, on the other hand, the People have satisfied you, beyond a reasonable doubt, that this defendant is guilty of murder in the first degree, as the law will be defined for you in a moment, then, of course, it is your bounden and sacred duty to convict this defendant of the crime with which he is charged, and of which his guilt is proven to you, beyond a reasonable doubt.

When you became a jury in this case, you became a part of this Court. Your duties and your obligations are just as important and as pressing to yourselves as to the People of this State as are the obligations of a Judge, and you must approach the fulfilment of your duties, as jurors, bearing in mind the obligation that is yours, as citizens, the duty that is yours under the oaths which you took, to well and fairly try this case, to do justice, justice to this defendant, and justice to the

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People of the State of New York, who are entitled to equal consideration.

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The theory of the People in presenting this case is that the killing of Jacob Mazzura occurred while this defendant, acting in concert with others, was engaged in the commission of a felony.

It is not contended that this defendant fired the shot that laid Jacob Mazzura dead upon the floor of that apartment at 123 Stanton Street, on the 29th of January, but it is contended by the People, and it is for you to say whether the contention has been sustained by the evidence, that the purpose that this defendant had in being upon those premises was to take part in the crime of robbery of Mazzura and his two fellow countrymen.

It is the law, gentlemen, that a person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal in that crime. In other words, all persons taking part, directly or indirectly, in the commission of a crime, are held to equal responsibility, in the eyes of the law, for the commission of that crime.

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If a man goes into a dwelling for the purpose of committing a crime, and ascends to the third floor, let us say, of that dwelling, and leaves a companion or a confederate on the

sidewalk, standing at the doorway as a lookout, to sound an alarm if persons approach, to sound an alarm if a policeman comes in sight, that person standing on the sidewalk is equally guilty with the person who has ascended the three flights of stairs in that building, and there commits a crime; because the law regards him as a principal in the commission of the crime, even though he never enters the building in which the crime is committed.

So, to repeat, all persons, directly or indirectly, engaged in any manner in the commission of a crime are held to equal responsibility, in the event of that crime being committed.

The contention of the People here is not that the crime of robbery was committed by this defendant and his companions, but that they were engaged in an attempt to commit the crime of robbery, and that their attempt never reached its completion or consummation. But I charge you, and it is important that you should remember, that an attempt to commit a crime is, of itself, a crime, and it does not become less a crime if such an attempt fails, or is abandoned, or is prevented by any means whatever.

An attempt to commit a crime is defined as an act done with intent to commit a crime, and tending but failing to effect its commission. That is the legal definition of an attempt to commit a crime, an act done with intent to commit a crime, and tending but failing to effect its commission.

Did this defendant and the others who were, as the People claim, acting in concert with him, attempt to commit the crime of robbery upon the person of Mazzura and the other two Russians, who were with him?

To determine that, it is important that you understand what constitutes the crime of robbery.

"Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery."

"To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery."

"When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial."

Robbery in the first degree, which the People say was the crime attempted in this case, is defined as follows:

"An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article, is robbery in the first degree, when committed by a person being armed with a dangerous weapon; or being aided by an accomplice actually present."

The contention of the People in this case is that both

of those elements were present in this attempted robbery. There was the man armed with a pistol, a dangerous weapon, and each was aided by an accomplice actually present.

The crime charged here is murder in the first degree. No person can be convicted of murder, unless the death of the person alleged to have been killed, and the fact of the killing by the defendant, are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt. That is, there must be proof, in this case, that Jacob Mazzura came to his death, and that proof appears to be in the case, but it is for you to say whether it is or not, from the testimony that the body was found there by a policeman, was seen there by Dr. Schwartz, the assistant medical examiner, and that it was identified to him by a policeman and others as the body of Jacob Mazzura. That is the direct proof required. The next question that must be established, beyond a reasonable doubt, is the fact of the killing by the defendant, or by his act or procurement, or by such act as, under the law, he is held to be responsible for.

Homicide is the killing of one human being by the act, procurement or omission of another, and homicide is divided into various degrees or classes, with only one of which are you concerned in this case, and that is, whether or not the crime alleged to have been committed by this defendant is murder in the first degree.

Murder in the first degree is defined as the killing of a human being, unless it is excusable or justifiable, when committed from a deliberate and premeditated design to effect the death of the person killed, or of another, or without a design to effect death, by a person engaged in the commission, or in the attempt to commit a felony, either upon or affecting the person killed or otherwise.

Murder in the first degree is the killing of a human being, without a design to effect death, by a person engaged in the commission of, or in the attempt to commit, a felony.

So that it is the law that, if a person either commits or attempts to commit a felony, and I charge you in this case that an attempt to commit robbery in the first degree is a felony, the law is that a person who, in the act of committing, or in the act of attempting to commit, a crime, kills another, or is present, taking part in the crime, or the attempt to commit the crime of robbery, and a person is killed, such a person is guilty of murder in the first degree.

In other words, the law puts a very heavy responsibility upon a man who starts out upon an enterprise of committing a felony, whether it be robbery, or burglary, or any other kind of felony, and the law says to him, "If, in your attempt to commit that crime, a person is killed, then the law will hold you responsible for that killing, even though the shot that resulted in the death of the deceased was not fired by you at all, even

though the revolver, out of which the bullet came that caused the death, was not held by you, or in your possession, nevertheless, if you are engaged in the commission of a felony, or in the attempt to commit a felony, the law holds you responsible for the killing of that victim." That is the law, gentlemen, upon that subject.

I have charged you that all persons concerned in the commission of a crime are regarded as principals, in the eyes of the law. If this defendant was associated with others in the crime of robbery, or attempted robbery, and the homicide was committed in furtherance of their common purpose by one of them, and his associates were present, aiding and abetting in the perpetration of the lesser felony, namely robbery, they would be equally liable for murder in the first degree; and, where a number of persons are acting together in the commission of a felony, a homicide perpetrated in furtherance of the felony is declared to be within the common purpose, and all are alike responsible, in law, therefor.

In this case, the People contend that Mazzura was killed while an attempt was being made to commit a robbery. If you find that such was the fact, and that the defendant was present, and assisted in the attempt to commit the felony of robbery, you would be warranted in finding him guilty of murder in the first degree. Although he did not do the actual shooting, both the defendant and the man who fired the shot would be equally guilty of

murder in the first degree, although neither, at the time, intended to kill Mazzura, or had premeditated or deliberated upon his death.

Now, was a robbery attempted? It is for you to say.

If you find that the defendant was acting in concert and agreement with this unknown man, and that they entered the defendant's apartment for the purpose of committing a robbery therein, and that the defendant's companion was armed with a revolver, that he pointed the revolver at the deceased, or at Hoochek, and said, "Hands up", and that the defendant said, "Hands up", and that they began to search the clothing of the deceased or his companions, and in the presence of the deceased, and against his will, and by the use of force and violence against the person and property of Mazzura, and by placing him in fear of injury to his person, attempted to take the deceased's money from him, and that the unknown man and the defendant were prevented by Mazzura from carrying out their purpose, and did not succeed in obtaining any money, I charge you that such acts constituted the crime of attempted robbery in the first degree, if you are satisfied from the evidence in the case that such acts really took place.

If you further find from the evidence, and beyond a reasonable doubt, that while the unknown man, acting in concert with the defendant, was engaged in an attempt to commit robbery in the first degree, and shot and killed Mazzura, without any design to effect his death, you would then be warranted in find-

ing the defendant guilty of murder in the first degree.

So that, gentlemen, your task in this case is to determine whether or not this defendant was engaged in the attempt to commit robbery in the first degree, at the time that the shot was fired that killed Jacob Mazzura.

If you find that fact, beyond a reasonable doubt, then you would be warranted in convicting him of murder in the first degree. If you find, on the contrary, that the attempt to commit the robbery had ceased; that, at the time the shot was fired, they had abandoned their intention to rob, and that they were not engaged in merely overcoming the resistance of Mazzura, but were simply engaged in an attempt to make their escape from the premises, then you would not be warranted in finding the defendant guilty of murder in the first degree, and he would be entitled to an acquittal at your hands.

So that the issue before you for your determination is simply this: Was murder in the first degree committed in this case, under the definition of murder in the first degree which I have read to you, which says that the killing of a human being, unless excusable or justifiable, is murder in the first degree, whether or not there was an intent to kill, whether or not there was premeditation or deliberation, so long as the killing resulted, with or without a design to effect the death of the person killed, by a person engaged in an attempt to commit a felony?

If you so find, then it is your duty to convict this defendant. If you do not so find, it is your duty to acquit him.

There was evidence in this case which, if believed by you, showed that this defendant, after Mazzura was killed, took to flight, fled, departed from his home, was not thereafter seen or found there, went to another city, and, upon the arrival of the police, leaped from a third-story window of a hotel, in an endeavor, as the People contend, to avoid arrest and apprehension.

Flight is not a confession of guilt. Innocent men may fly from the scene of a tragedy, for good reasons or for bad reasons. But flight is a matter which a jury is entitled to take into consideration in determining the guilt or innocence of a defendant. It may be considered, as any other part of the evidence in the case is considered, as one of the things that the defendant, it is claimed, did, immediately after the commission of this crime, or after the killing of Jacob Mazzura.

You are entitled to scrutinize carefully, in your endeavor to determine his guilt or innocence, the things which he did, immediately after this episode occurred, and flight is one of those considerations.

The defendant took the stand in this case. He was not required to take the stand. If he had remained silent, and his counsel had requested, it would have been my duty to charge that

you should not indulge in any presumption unfavorable to him, because of his failure to take the stand. But he did take the stand, and, having done so, he placed himself in the position of any other witness, and his testimony must be scrutinized and appraised the same as the testimony of any other witness.

Your task is to determine the credibility of every person who testified from this stand, and if you believe that any such person has wilfully, falsely testified to any material fact in the case, you are entitled, but not bound, to disregard his or her entire testimony; and, in weighing the value of the evidence given from this witness chair, you have the right to apply certain tests to all such testimony. You may throw upon that testimony the searchlight of your experience and your common sense, all your practical knowledge of everyday affairs. You may scrutinize the manner in which the testimony was given, and then, putting all these things together, it is for you to determine how much credit and weight you will give to the testimony of any witness who testified.

It is contended in this case by the People that a statement was made, immediately after his arrest, by this defendant. It is claimed that that statement is in the nature of a confession of his guilt in attempting to commit the crime of robbery.

Now, gentlemen, in the matter of confession, let me read this to you, for it is the law:

"A confession of a defendant, whether in the course of

judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed."

It is for you to say, whether, in addition to the confession of the defendant, there was additional proof presented in this case as to the attempt to commit robbery in the first degree in that apartment; the presentation of the gun to those three Russians in that room, or the cry of "Hands up", in which this defendant joined, according to the testimony. If there was such additional proof, you may consider these circumstances, in addition to the confession alleged by the People to have been made by the defendant in this case.

There is another element in this case, the law affecting which I should comment upon. It is contended by the defendant that the witness Sivak was an accomplice of this defendant in the commission of the crime. The defense claims that he took part in this attempted robbery; that he was the one who brought, or caused to be brought, or inspired the bringing of these men, who were about to go back to Europe, into the apartment of this defendant.

It is for you to say, from the evidence in the case, whether Sivak is an accomplice, or was an accomplice of the de-

fendant. That is one of the things for you to determine in this case. If you find that he is an accomplice; that he did participate in the preparations for this crime, then I charge you that a conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, not such other evidence as establishes, beyond any manner of dispute, that the defendant was connected with the crime, but by other evidence which tends, has a tendency, to connect the defendant with the commission of the crime.

Whether or not that rule of law comes into application in this case, depends upon your determination as to whether or not Sivak was an accomplice of this defendant.

Now, gentlemen, it is your recollection of the testimony in this case that must prevail. It is not what the learned counsel for the defendant said the testimony was, it is not what the learned Assistant District Attorney, in his summing up, said that the testimony was, it is not what the Court might have said, in advising you on the law, what the evidence in the case was, if the Court referred to it directly at all, but it is your recollection of the facts that must prevail.

You are not to attempt to reach a verdict in this case, gentlemen, as a result of an endeavor on your part to find out what the Court thinks about the case. The Court has no right, at this or any other stage of the case, to have any opinion upon

the guilt or innocence of this defendant. It would be an abominable thing, if a court, by any means, by voice, or gesture or mannerism, should endeavor to convey to a jury what his opinion as to the guilt or innocence of a defendant might be. That is your task and province, to determine the guilt or innocence of this defendant, from the evidence; and, gentlemen, you must arrive at your verdict after an examination and scrutiny of the evidence, and you must not arrive at your verdict upon any consideration outside of the evidence. I would not be fit to sit upon the Bench of this Criminal Court, if my actions were determined by sympathy or prejudice. They are both human emotions. We are all subject to both of them, no matter how fair we might try to be. But my conduct in having my official actions influenced by sympathy or prejudice would be no more reprehensible than yours would be, as jurors in this case, if your action, as judges of the facts, were influenced by sympathy or prejudice. They are emotions which have no place in a court room or in a jury-box. Every defendant, be he of high or low degree, no matter how abject he may appear, is entitled to a fair trial in these courts; and that fair trial means that his guilt or innocence is determined on the evidence in the case, and not by passion, prejudice or sympathy, either for or against him.

It has been trying, gentlemen, during this past week, because of the intense and unusual heat, to keep our minds entirely upon the case in which we are engaged, but it is quite ap-

parent to me that you, gentlemen, have fully realized the seriousness of your task. It is fully apparent to me that you have paid close, earnest and conscientious attention to all the evidence in this case, and I know you are going to bring to your determination the same conscientious attention, the same regard for your duties of citizenship, which you have manifested throughout the days of this trial.

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It is a great pleasure for me to be able to compliment the learned counsel for the defendant, and each of them, upon the able and courteous manner in which they have conducted their defense, and to say the same for the learned District Attorney. It was a pleasure to see the courtesy extended by counsel to the Court, and I trust that full courtesy has been extended by the Court to counsel. It has made the task easier for all of us. And now comes your task, gentlemen, the doing of absolute and exact justice.

With the consequences of your verdict, you are not concerned. That is a responsibility, no light responsibility, which weighs upon the Court, and the Court is not ready to share that responsibility with you, gentlemen of this jury.

Our tasks are separate and distinct. You are to determine the facts in this case, you are to determine where the truth lies in this case; the law and its enforcement rests upon the Court, after your verdict is entered.

I have received certain requests from the learned coun-

sel for the defendant, requests that I charge you.

With regard to request, No. 1, I decline to so charge.

MR. ROSALSKY: Exception.

THE COURT: I charge request, No. 2, with a slight modification. The request is this: "If this evidence does not show that this shooting occurred while the attempt at robbery was being made, but was after it was over and abandoned by the persons charged, that they cannot find the defendant guilty of murder in the first degree, unless he acted in concert with the person who did the shooting."

If you find that, beyond a reasonable doubt, I charge you that you cannot find the defendant guilty of murder in the first degree.

Request, No. 3, I decline to charge.

MR. ROSALSKY: Exception.

THE COURT: Are there any other requests?

MR. ROSALSKY: None.

THE COURT: Mr. District Attorney, have you any requests?

MR. Mc DONALD: No, sir.

THE COURT: Gentlemen, you may have the exhibits in evidence in this case, if the District Attorney and the counsel for the defendant consent to your having them. I assume that that consent is given by counsel on either side.

MR. Mc DONALD: Yes, sir.

MR. ROSALSKY: Yes, sir.

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THE COURT: Then you may have any of the exhibits, gentlemen, that you desire to have. You have only to send for them, through your foreman, and they will be sent to you.

(The jury retired at 3:20 P. M.; the jury returned to the court room at 3:50 P. M., finding the defendant guilty of murder in the first degree.)

MR. SHERIDAN: If your Honor please, may the motions be reserved until the day of sentence?

THE COURT: They may. Sentence is fixed for Friday, July 1st, the last day on which I shall sit in this Part.

R E Q U E S T S:

No. I If the jury believe from the evidence, that the attempt at robbery was abandoned at the time the shooting occurred, then you must acquit this defendant, unless you find that he aided or assisted in the killing of the deceased from a premeditated and deliberated design.

No. II. If this evidence does not show that this shooting occurred while the attempt at robbery was being made, but was after it was over and abandoned by the person charged, that they cannot find the defendant guilty of murder in the first degree, unless he acted in concert with the person who did the shooting.

No. III. I ask your Honor to charge the different degrees of murder and manslaughter.

COURT OF GENERAL SESSIONS OF THE PEACE,) *encls*
 COUNTY OF NEW YORK, Part 5.

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Julius Rosenwasser

Before
 Hon. Alfred J.
 Talley, J.

New York City, July 1st, 1921.

T H E S E N T E N C E

THE DEFENDANT BEING ARRIGNED FOR SENTENCE

A P P E A R A N C E S

For the People: Assistant District Attorney McDonald.

For the Defendant: Joseph S. Rosalsky, Esq.

P MR. McDONALD: The People move for the imposition
 of sentence, sir.

THE CLERK OF THE COURT: Julius Rosenwasser, have
 you any legal cause to show why judgment of death should
 not now be pronounced against you?

MR. ROSALSKY: May it please your Honor, the defend-
 ant moves for a new trial on the following grounds:

First: Because the verdict is contrary to law.

Second: Because the verdict is against the weight of evidence.

Third: Because the Court erred in denying the defendant's motion to advise the jury to acquit at the close of the People's case, and at the close of the entire case.

Fourth: Because the Court admitted illegal and improper evidence and excluded legal evidence on the trial.

Fifth: Because the Court, during the trial, misdirected the jury in matters of law.

Sixth: Because the Court refused to charge the different degrees of homicide and manslaughter.

The defendant moves in arrest of judgment because of illegal and prejudicial errors appearing in the record of the case.

THE COURT: Motions denied.

MR. ROSALSKY: Exception.

THE COURT: Anything further, Mr. Rosalsky?

MR. ROSALSKY: Nothing further.

THE COURT: Julius Rosenwasser, you have been convicted by a jury of the crime of murder in the first degree. The judgment of the Court is that you, Julius Rosenwasser, for the murder in the first degree of one Jacob Mazura, whereof you are convicted, be, and you hereby are, sentenced to the punishment of death; and it is ordered that,

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within ten days after this day's session of Court, the Sheriff of the County of New York deliver you, together with the warrant of this Court, to the Agent and Warden of the State Prison of the State of New York at Sing Sing, where you shall be kept in solitary confinement until the week beginning Monday, the eighth day of August, 1921, and upon some day within the week so appointed, the said Agent and Warden of the State Prison of the State of New York at Sing Sing is commanded to do execution upon you, Julius Rosenwasser, in the mode and manner prescribed by the laws of the State of New York, and may God have mercy on your soul.

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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART V.

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

against

: B e f o r e:

JULIUS ROSENWASSER,

: Hon. ALFRED J. TALLEY, J.,

impleaded with ABE KEPALOFF,
alias Abe Kaplan,

: and a jury.

BENJAMIN KONNER

and

JOHN DOE
-----X

Tried, New York, June 21st, etc., 1921.

A P P E A R A N C E S:

2x4 Assistant District Attorney James E. McDonald, for the People.

Messrs. Joseph S. Rosalsky, Thomas I. Sheridan and Frank Goldberg,
for the Defense.

EXAMINATION OF THE JURY:

Frank S. Beard,
Official Stenographer,

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EXAMINATION OF THE JURY:

THE CLERK: Julius Rosenwasser, if you desire to challenge an individual juror, you must do so when he appears, and before he is sworn. Do you waive further giving of this notice?

MR. ROSALSKY: Yes.

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ROY E. SABIN, of 25 Vermilyea Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

MR. MC DONALD: May I make an announcement to the panel?

THE COURT: Yes.

MR. MC DONALD: Gentlemen of the Panel, in order to save time, I will make just a general announcement as to certain facts of the case, so that if you know anything about the case, or know any of the lawyers or witnesses whose names I will call, you can save time for us by telling us, when you arrive at the witness chair.

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The defendant, Julius Rosenwasser, was indicted with one Abe Kepaloff, alias Abe Kaplan, Benjamin Konner and John Dee, for murder in the first degree.

The crime is alleged to have been committed on the 29th of January, 1921, at 123 Stanton Street, about two o'clock on the afternoon of that day.

The name of the deceased is Jacob Mazzura. The witnesses called before the Grand Jury were: (Reads the list of witnesses).

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The names of the defendant's counsel are Mr. Joseph S. Rosalsky, Mr. Thomas I. Sheridan and Frank Goldberg.

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Sabin, are you opposed to capital punishment? A No, sir.

Q What is your business? A Electrical engineer.

Q And you are in business for yourself? A No, sir.

Q Employed by whom? A Murie and Company.

Q Where is their place of business? A 74 Broadway.

Q Do you know anything about this case? A I do not.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Do you know either of counsel? A No, sir.

Q Have you sat as a juror in a criminal case, previous to this term? A Yes.

Q How long have you lived in New York, sir? A Eight years.

Q Where did you come from? A Massachusetts.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

Q You will take the law as laid down by the Court, and apply it to the facts as produced before you? A Yes.

Q You will accept the law as laid down by the Court, without question? A Yes, sir.

Q Irrespective of how you feel as to whether it is a harsh or gentle measure or not? A Yes, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

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Q Did you ever hear anything about this case? A No, sir.

Q Did you ever read anything about this case? A No, sir, not that I recollect.

Q Do you know any one connected with the District Attorney's Office? A I do not.

Q Have you ever sat as a juror in a homicide case? A No, sir.

Q How long is it since you sat as a juror in a criminal case? A About two years and a half.

Q Do you know of any reason why you cannot serve as a juror in this case? A I do not.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory to the People.

MR. ROSALSKY: Challenged by the defense.

HAROLD B. ATKINS, of 606 West 116th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Atkins, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A No.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q What is your business? A Accountant.

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Q In business for yourself? A No.

Q Employed by whom, sir? A Metal and Thermit Corporation.

Q Have you sat as a juror in a criminal case, previous to this term? A No.

Q How long have you been in New York, sir? A About fifteen years.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in this case? A No.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A I know Mr. Dineen.

Q How ^{well} ~~all~~ do you know him? A Fairly well.

MR. ROSALSKY: May it please your Honor, I understand that this case was worked up by Mr. Dineen, and he may be called as a witness in this case.

THE COURT: Did Mr. Dineen prepare this case?

MR. MC DONALD: Yes, sir.

THE COURT: Excused by consent.

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WALTER W. BRINKERHOFF, of 80 Maiden Lane, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Brinkerhoff, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q Do you know any of counsel for the defendant? A No, sir.

Q What is your business? A Insurance.

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Q In what special line of insurance are you? A General line;

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particularly, life and accident.

Q In business for yourself? A Practically; an officer of a corporation.

Q Have you sat as a juror in a criminal case, previously? A Some years ago; yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A Very casually.

Q Who? A Mr. Benton.

Q When you say "casually", what do you mean? A I have met him twice at general gatherings, and conversed with him.

Q Well, that fact would not prevent your rendering a fair and impartial verdict in this case; would it? A No, sir.

Q Did you ever read anything about this case? A Not that I recollect.

Q If you have ever read about it, it has left no impression on your mind? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Acceptable to the Defense.

(The juror is sworn).

FREDERICK O. HANKS, of 522 West 183rd Street, being duly sworn:

THE COURT: Mr. Rosalsky and Mr. McDonald, this gentleman has served for five years as warden of a Federal jail, at

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Nome, Alaska. Do you consent to excuse him?

MR. MC DONALD: Yes, sir; certainly.

MR. ROSALSKY: Yes, sir.

THE COURT: Excused, by consent.

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ALBERT C. FISCHER, of 185 Audubon Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

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DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Fischer, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A Nothing.

Q Do you know any of the persons whose names I have mentioned?

A None.

Q Have you sat as a juror in a criminal case, previous to this term? A I have.

Q What is your business? A Clerk.

Q Where are you employed? A Metropolitan Life Insurance Company.

Q How long have you been employed by the Metropolitan Life? A Fifteen years.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in this case? A No.

Q You understand, of course, that you must take the law as laid down by the Court? A Yes.

Q That your oath implies that you will follow the law as laid down by the Court? A Yes, sir.

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CROSS EXAMINATION BY MR. ROSALSKY:

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Q Do you know any one connected with the District Attorney's Office? A No one.

Q Have you ever sat as a juror in a homicide case? A No, sir.

Q Did you ever read anything about this case? A No.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Satisfactory to the defense.

(The juror is sworn).

JULIAN P. LANSING, of 508 West 112th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Lansing, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A I do not.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir; I don't.

Q Have you ever sat as a juror in a criminal case, previous to this term? A No, sir.

Q Or in a civil case? A No, sir.

Q What is your business, sir? A Manufacturing.

Q What special line of manufacturing are you in? A Elevator appliances.

Q And your place of business is where? A 12 West 37th Street.

Q Are you in business for yourself? A No, sir.

Q Member of a corporation or what? A I am serving as sales manager for the company with which I am connected.

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Q And what is the name of the company with which you are connected? A The Kerr Elevator Appliance Corporation.

Q And how long have you lived in this city, sir? A Eight years.

Q Where do you come from, may I ask? A The Pacific coast.
BY THE COURT:

Q Whereabouts? A Seattle, Washington.

BY MR. MC DONALD:

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

Q You understand, of course, that you must follow implicitly the law as laid down by the Court? A I do.

Q And you would do that; would you? A I would.

CROSS EXAMINATION BY MR. ROSALSKY:

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

Q Have you ever sat as a juror in a homicide, outside of the State of New York? A Never.

Q Did you ever do any jury service outside of the State of New York? A Yes.

Q Do you know any one connected with the District Attorney's Office? A I do not.

Q Are you married? A Yes.

Q You will follow the law as laid down by the Court; will you? A I did not catch your question.

Q (Question repeated) If accepted as a juror in this case? A Yes.

Q His Honor will tell you that the mere fact of the finding of an indictment is not to be taken against the defendant . You know that; do you? A Yes.

Q You know that an indictment is a mere complaint? A Yes.

Q And you also know that there is a difference between a criminal trial and a civil cause, in that, in a criminal trial, the People must prove their case beyond a reasonable doubt? And you will follow that rule? A Yes, sir.

Q You will also be told that the People must establish the guilt of the defendant by a preponderance of the evidence, and you will follow that rule?

MR. MC DONALD: I object to that, sir.

THE COURT: He will not be told anything of the kind, and he would not be permitted to follow that rule, under any circumstances. You cannot convict upon a preponderance of evidence, in a criminal trial. You can only convict upon proof, beyond a reasonable doubt.

MR. ROSALSKY: Your Honor is right.

Q You will also be told that the burden of proving the defendant guilty is upon the People, and you will follow that rule? And that the burden of proof, in a criminal case, never shifts. A Yes.

Q And if, on the whole case, you have a reasonable doubt, you will give the defendant the benefit of that doubt; will you? A Yes; I would give him the benefit of that doubt.

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Q If accepted as a juror, and you retire to deliberate, and, after deliberating, you find that there is a majority of jurors against you, will you relinquish your opinion by reason of that majority, or will the majority have to show you that you are in error, before you will give up your opinion? A I would want to be shown that I was in error.

Q In other words, if, after deliberating, you were firmly convinced that you were correct in your opinion, you would not hesitate to say so, and stand by it? A I would stand by my opinion; yes.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Acceptable to the defense.

(The juror is sworn).

REUBEN L. DAVIS, of 50 Horatio Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Davis, are you opposed to capital punishment? A No, sir.

Q What is your business? A Building, contracting and building.

Q And your place of business is where? A 35 Jane Street.

Q How long have you been in that business? A Twenty-three or twenty-four years in the city here.

Q Are you in business for yourself? A Yes.

Q Have you sat as a juror in a criminal case, previous to this trial? A Yes.

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Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned? A No, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.; no, sir.

Q Do you know this neighborhood around 123 Stanton Street? A Well, I am not much acquainted around there; no.

Q You live in Horatio Street? A Yes.

Q About where is that? A Well, that is three blocks below Fourteenth Street.

THE COURT: That is Greenwich Village, Mr. District Attorney.

MR. MC DONALD: Thank you, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A I do not, sir.

Q Have you ever sat as a juror in a homicide case? A No, I don't think I have.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Challenged.

Clarence A. Curtis, of 235 West 71st Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Curtis, are you opposed to capital punishment? A No, sir.

Q What is your business? A Salesman.

Q Employed by whom? A Burns Brothers.

Q Do you know anything about this case? A No.

Q Do you know any of the witnesses whose names I have called?

A No, sir.

Q Do you know any of counsel? A No, sir.

Q Have you sat as a juror in a criminal case, previous to this term? A No, sir.

Q Have you ever sat as a juror in a civil case? A Yes.

Q You understand, of course, that you must take the law as laid down by the Court? A Yes.

Q And follow that law implicitly, irrespective of how you feel about it? A Yes.

Q And you would do that? A Yes.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir:

Q Did you ever read anything about this case? A No, sir.

Q Did I understand you to say that you have never sat in a criminal case? A No.

Q You will be told that the function of the jury, so far as the facts are concerned, is supreme, and you will follow that; will you not? A Yes.

Q In other words, the Court will take care of the law in the case, and the function of the jury is to take care of the facts and apply them to the law. Do you understand that? A Yes, sir.

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Q Do you know of any reason why you cannot act as a fair and impartial juror in this case? A No, sir.

43 MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Satisfactory to the defense.

(The juror is sworn).

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FREDERICK A. BEYER, of 145 West 147th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION: BY MR. MC DONALD:

Q Mr. Beyer, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case; have you read anything about it? A Not that I recollect.

Q Do you know any of the persons whose names I have mentioned as witnesses? A I do not.

Q Or any of the counsel? A I do not.

Q Your business is what, sir? A Well, I am retired from business.

Q What was your business? A My business was in the men's clothing line.

Q How long have you been retired? A Ah, about nine years.

Q Have you sat as a juror in a criminal case, previous to this term? A I have, in an extortion case, but not in a homicide case.

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Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No.

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Q You understand that you must take the law, as laid down by the Court, and apply it to the facts? A Certainly.

Q And you would do that, if you were sworn as a juror? A Yes, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the Dist 1st Attorney's Office? A I do not.

Q Did you ever read anything about this case? A Not to my recollection.

Q If accepted as a juror, you would go into the box with an open mind? A Pardon me?

Q (Question repeated). A Why, certainly.

Q And listen to the fact, and decide the case according to the evidence? A I would.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Satisfactory to the defense.

(The juror is sworn).

John J. Duggan, of 780 Riverside Drive, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Duggan, are you opposed to capital punishment? A No, sir.

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Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned

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as witnesses? A No, sir.

Q Do you know any of counsel? A No, sir.

Q What is your business? A Chemicals.

Q And are you in business for yourself? A No, I am an agent.

Q Agent for a number of concerns in New York City? A No, for one concern, in Massachusetts.

Q Have you sat as a juror in a criminal case, before this term? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q Have you ever sat as a juror in a homicide case? A Yes.

Q More than once? A Twice.

Q How long is it since you sat in the last one? A Six years.

Q Did you ever read anything about this case? A No, sir; not to my knowledge.

433 MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

P Charles B. Ludlow, of 12 West 56th Street, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

433 DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Ludlow, are you opposed to capital punishment? A No,

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sir.

Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Or any of the counsel for the defendant? A No, sir.

Q And what is your business, please? A I am a clerk in a banking house.

Q Have you sat as a juror in a criminal case before this term? A No, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q Have you ever sat as a juror in a criminal case? A I never have.

Q Have you ever been called in a criminal case before this term? A No, I have not.

Q How long have you been a resident of New York County? A Seven years.

Q Where did you come from, before coming to New York? A From New Jersey, New Brunswick.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

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RELMOND U. SHAFFER, of 3647 Broadway, being duly sworn and ex-

amined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Shaffer, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Or any of counsel for the defendant? A No, sir.

Q What is your business? A Lumber.

Q In business for yourself? A Member of a firm, of a corporation.

Q What is the name of the firm? A S. E. Slaymaker and Co.

Q Have you sat as a juror in a criminal case? A No, sir.

Q ~~Or any~~ Have you sat as a juror in a civil case? A No, sir.

Q You understand, of course, that you must accept the law as laid down by the Court? A Yes.

Q And that you must follow the law implicitly, irrespective of how you feel, as to whether it is a good or a bad law? A Yes.

Q And you would do that, Mr. Shaffer? A Yes, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A I know a man by the name of Hastings. I don't know whether he is still connected with it.

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(MR. MC DONALD: Yes, he is still connected with it.
BY MR. ROSALSKY:

Q How well do you know Mr. Hastings? A Well, quite well.

Q And the fact that you know him would not affect you at all in rendering a verdict in this case; would it? A Oh, no, sir.

Q Did you ever read anything about this case? A Not that I remember.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Challenged.

JOHN L. WATTS, of 517 West 113th Street, being duly sworn:

THE COURT: Mr. District Attorney and Mr. Rosalsky, this gentleman was a United States marshal for three years, connected with the United States courts. Perhaps you may want to excuse him.

MR. MC DONALD: Yes, sir; by consent.

MR. ROSALSKY: By consent; yes, sir.

DANIEL W. VAUGHAN, of 565 West 139th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Vaughan, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Any of the persons whose names I have mentioned? A None.

Q Any of counsel? A No, sir.

Q What is your business? A I haven't any. Retired.

Q How long have you been retired? A Seven years.

Q What was your business before you retired? A Real estate.

Q Have you sat as a juror in a criminal case, previous to this

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term? A In New York?

Q Yes. A No, sir.

Q In any other place? A An assault and battery, one time.

Q Where was that? A In Scranton, Pennsylvania.

Q How long have you been in New York? A I came here in 1918.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Where did you live before coming to New York, Mr. Vaughan?

A Scranton, Pennsylvania.

Q Do you know any one connected with the District Attorney's Office? A No, I don't.

Q Do you know anyone connected with this case? A No.

MR. ROSALSKY: Challenge withdrawn.

Mr. Mc Donald: Satisfactory.

MR. ROSALSKY: Satisfactory.

(The juror is sworn).

FREDERICK H. MOORE, of 1 West 81st Street, being duly sworn:

THE COURT: Excused by the Court.

~~DIRECT EXAMINATION BY MR. MC DONALD:~~

LAWRENCE BURNETT, of 70 West 177th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

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Q Mr. Burnett, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned as witnesses? A I do not.

Q Or any of the lawyers for the defendant? A No, sir.

Q Your business is what? A Importer of cotton goods.

Q And in business for yourself? A An officer of a corporation.

Q What corporation? A The David Company.

Q And their place of business is where? A 220 Fourth Ave.

Q Have you sat as a juror in a criminal case previous to this term? A I have.

Q Do you know of any reason why you cannot act as a fair and impartial juror in this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A Not very well, no. I live in the same street with District Attorney Swann, and have met him two or three times.

Q Of course, that would not influence your verdict in this case? A Not at all.

Q Have you ever sat as a juror in a homicide case? A I have.

Q More than once? A No.

Q How long ago? A About a year and a half ago.

Q In this court or in the Supreme Court? A I believe it was in General Sessions. I don't know what part.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Challenged by the People.

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Charles Muhlenfels, of 616 West 147th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination by Mr. McDonald:

Q Mr. Muhlenfels, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q Do you know any of counsel? A No.

Q What is your business, sir? A Retired.

Q How long have you been retired? A Four years.

Q What was your business before you retired? A Piano actions.

Q Were you in business for yourself? A I was secretary of the concern, of the corporation.

Q Have you sat as a juror in a criminal case, previous to this term? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I don't know of any reason.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No.

Q Have you ever sat as a juror in a homicide case? A Yes.

Q More than once? A Yes.

Q How many times? A I think twice, probably three times; I

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don't remember, now.

Q How long ago is the last time you sat? A Six or seven years ago-- or five or six years ago, I think-- I don't remember exactly.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

AUGUSTINE O' CONNOR, of 508 East 88th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. O'Connor, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A I do not.

Q Do you know any of the witnesses? A I do not.

Q Do you know any of counsel, Mr. Goldberg, Mr. Sheridan or Mr. Rosalsky? A No.

Q Have you sat as a juror in a criminal case, previous to this term? A I have not.

Q Have you sat as a juror in a civil case? A I have.

Q What is your business? A I work for Wasserman Brothers, stock brokers, and I am also in business for myself.

Q In what business? A Lighterage, transportation.

Q You are in business for yourself, in addition to being employed by Wasserman Brothers? A Yes, sir.

Q And your place of business is where? A 42 Broadway.

Q How long have you been employed by Wasserman Brothers? A

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A Fourteen years.

Q And do you do business under your own name? A Yes.

Q O'Connor? A O'Connor.

Q Do you continue this business at the same time that you work for Wasserman Brothers? A I do.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q In what capacity do you work for Wasserman Brothers? A Clerk.

Q What kind of work do you do? A Oh, in the Clearing House department.

Q Do you know any one connected with the District Attorney's Office? A I do not.

Q You have never sat as a juror in a criminal case; is that right? A I have not.

Q Have you sat in a civil case? A I have.

Q If accepted as a juror in this case, you would take the law as laid down by the Court? A I will.

Q And, before you could convict, his Honor will charge you, you must find the defendant guilty, above and beyond a reasonable doubt. Would you follow that instruction? A Yes.

Q And, if his Honor charges you that the burden of proof never shifts, in a criminal case, will you also follow that instruction? A Yes.

Q You will also be told that the function of the jury, so

far as the facts of a case are concerned, are its exclusive prerogative. Will you follow that instruction? A I will.

4x3 (MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Challenged by the People.

P HARRY L. BLOW, of 430 West 119th Street, being duly sworn:

THE COURT: Excused by the Court. Doctor's certificate.

P GEORGE T. WOOSTER, of 400 West 152nd Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Wooster, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Or any of the persons whose names I have mentioned as witnesses? A No.

Q Do you know any of counsel? A No.

Q What is your business? A I am selling agent for a Philadelphia textile mill.

Q And your place of business is where? A 366 Broadway.

Q Have you sat as a juror in a criminal case previous to this term? A Yes, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

4x2 Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q Have you ever sat as a juror in a homicide case? A No, sir.

(MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Satisfactory to the Defense.

(The juror is sworn).

LOUIS H. SCHWIERS, of 930 West End Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. MC DONALD:

Q Mr. Schwiers, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir; I don't.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q What is your business, sir? A Importers of groceries.

Q In business for yourself? A A corporation.

Q And the name of the corporation is what? A Neuman and Schwiers Company.

Q Where is their place of business? A 18 Worth Street.

Q Have you sat as a juror, in a criminal case, previous to this term? A No, sir.

Q Do you know of any reason why you could not sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Have you sat as a juror in a homicide case? A Yes, I have.

Q More than once? A Twice.

Q How long is it since you last sat in a homicide case? A About four years.

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Q Do you remember the court? A Sir?

Q Was it in the General Sessions or Supreme Court? A General Sessions.

Q Do you know any one connected with the District Attorney's Office? A No, sir; I do not.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

JOSEPH A. KAVANAGH, of 425 West 160th Street, being duly sworn:

THE COURT: Mr. Kavanagh is a brother-in-law of one of the assistant district attorneys, he informs me, and so he may be properly be excused by consent, if you gentlemen are willing.

MR. ROSALSKY: We are willing, sir.

MR. McDONALD: So are we.

THE COURT: Excused by consent.

JULIUS H. SARNER, of Far Rockaway, Long Island, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Do I understand you to say that you live at Far Rockaway?

A Yes; I have lived here all my life, but I moved last month to Far Rockaway, and it is going to be my permanent residence.

Q You have not just moved there for the summer? A No, sir.

BY THE COURT:

Q Or to avoid jury duty? A No, sir; not for that reason,

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either. I have been serving as a juror for years.

THE COURT: I think the witness is disqualified, if he is a permanent resident of Far Rockaway. You had better inform the Commissioner of Jurors to withdraw his name from the list, Mr. Clerk.

BERNARD M. EWING, of 987 Madison Avenue, being duly sworn:

THE COURT: Excused by the Court.

WILLIAM B. WEBB, of 140 West 69th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Webb, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Do you know any of counsel? A No, sir.

Q What is your business? A In the commission cotton business, commission merchant.

Q And where is your office? A 346 Broadway.

Q Have you sat as a juror in a criminal case, prior to this term? A No, sir.

Q Or in a civil case? A No, sir.

Q How long have you lived in this city, Mr. Webb? A Eight years.

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Q You understand that you must follow the law as laid down by the Court, and apply it to the facts; do you understand that as

part of your duty? A Yes, sir.

Q Irrespective of how you feel about whether it is a good or a bad law, a drastic or an easy ~~and~~ law, would you follow the law as laid down by the Court? A Yes, sir.

Q And follow it implicitly? A Yes, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q If chosen as a juror in this case, and after listening to the evidence, if you believe that the People have failed to prove their case, beyond a reasonable doubt, you will not hesitate to say so; will you? A No, sir.

Q You will be told that the burden of proof in a criminal case is upon the People, and never shifts. You will follow that instruction? A Yes.

Q As well as all other instructions which the Court will lay down for your guidance? A Yes.

Q But, so far as the facts of a criminal case are concerned, the function of a jury is absolute. You know that? A Yes, sir.

Q And you will apply the law to the facts in the case, and decide the case accordingly? A Yes, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

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MR. ROSALSKY: Satisfactory to the Defense.

(The juror is sworn).

RICHARD J. MCGOWAN, of 492 Convent Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. McGowan, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A Nothing.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Do you know any of counsel? A No, sir.

Q Have you sat as a juror in a criminal case previous to this term? A Yes; three years ago.

Q What is your business? A Corn Exchange.

Q And in business for yourself? A Yes, sir.

Q Where is your place of business? A 63 Wall Street.

Q And how long have you been in business for yourself? A Twenty years.

Q And do you know of any reason why you cannot sit as a fair and impartial juror in this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you ever sit in a homicide case? A No, sir.

Q Do you know any one connected with the District Attorney's Office? A Not as I know of.

Q Did you ever read anything about this case? A No.

Q Have you ever been a complaining witness against any one in

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connection with your business? A Do you mean in a criminal case?

MR. ROSALSKY: Yes, sir.

BY MR. ROSALSKY:

Q (Question repeated). Once, yes.

Q How long ago? A Six or seven years ago.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Satisfactory to the Defense.

(The juror is sworn).

CARL H. KIRKENDALL, of 170 West 74th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION
BY MR. McDONALD:

Q Mr. Kirkendall, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Any of the persons whose names I have mentioned as witnesses? A No, sir.

Q What is your business? A Shoe business.

Q Retail or wholesale? A Wholesale.

Q Wholesale? A Yes, sir.

Q In business for yourself? A No, sir.

Q Employed by whom? A W. L. Douglas Shoe Company.

Q And in what capacity are you employed by them? A General Manager.

Q Of one of their branch stores? A No, sir; of the general

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business here.

Q Have you sat as a juror in a criminal case previous to this term? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Have you ever sat as a juror in a homicide case? A No, sir.

Q Do you know any one connected with the District Attorney's Office? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Acceptable to the Defense.

(The juror is sworn).

PHILIP A MOSSMAN, of 611 West 156th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Mossman, are you opposed to capital punishment? A I am not.

Q Do you know anything about this case? A I don't recollect anything about it; no.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q Or counsel? A No.

Q Your business is what? A Metallurgist.

Q And you are in business for yourself? A No, I am employ-

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ed by the American Smelting and Refining Company, 120 Broadway.

Q You have sat as a juror in a criminal case, previous to this term, I think; have you not? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Have you ever sat in a homicide case before? A Yes.

Q How often? A Twice.

Q When was the last time? A Two years ago.

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q Do you know Mr. McDonald? A Only by seeing him in court; that is all.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

ASHBEL H. BARNEY, of 16 East 95th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Barney, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A I do not.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q Any of counsel? A No.

Q Have you sat as a juror in a criminal case, before this term? A No, I have not.

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Q Have you sat in civil cases at all? A Yes.

Q What is your business, Mr. Barney? A Real estate and insurance.

Q In business for yourself? A Yes.

Q Where is your place of business? A 61 Broadway.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A Well, I know Mr. Whitman.

Q Well, he is not now connected with the District Attorney's Office. A Well, I thought he had a special connection with it, just now.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

MYRON H. HILL, of 416 Fort Washington Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Hill, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A No, sir.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Or any of counsel? A No, sir.

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Q What is your business? A Clerk.

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Q Where are you employed? A Metropolitan Life Insurance Company, No. 1 Madison Avenue.

Q Have you sat as a juror in a criminal case, before this term? A No, sir.

Q Or in a civil case? A Yes.

Q And do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q How long have you lived in New York? A Seven years, just lacking a month.

Q Where did you come from? A I lived in Philadelphia two years, before I came here, and Chicago before then.

Q Married man? A Yes.

Q How long have you been connected with the Metropolitan Life? A Fourteen years.

Q Were you connected with that company while in Philadelphia? A Yes.

Q And while in Chicago? A Yes.

Q What was your business before that? A The American Locomotive Company.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

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Walter R. Weiss, of 321 East 84th Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Weiss, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A I do not.

Q What is your business? A Insurance; general insurance.

Q In business for yourself? Yes.

Q And your place of business is where? A 321 East 84th Street,

Q And that is where you live? A Yes, sir.

Q Have you sat as a juror in a criminal case, previous to this term? A No, sir.

Q In a civil case? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q Have you ever sat as a juror in a homicide case? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Challenged by the People.

JOHN M. BARTELS, of Brighton Beach, being duly sworn:

THE COURT: Mr. Bartels says he is a resident of Kings County. Mr. Clerk, will you notify the Commissioner of

Jurors that Mr. Bartels resides at Brighton Beach, and notice should be given to the Commissioner of Jurors of Kings County.

Excused by the Court, for disqualification.

CHRISTIAN INTEMANN, Jr., of 223 West 21st Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Intemann? A Truckman.

Q In business for yourself? A Yes, sir.

Q And your place of business is where? A 152 West 17th St.

Q How long have you been in business for yourself? A About fifteen years.

Q Are you opposed to capital punishment.

Q Do you know anything about this case? A No, sir.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Or any of counsel here? A No, sir.

Q Have you sat as a juror in a criminal case, previous to this term? A No, I have not.

Q Have you sat as a juror in a civil case, previous to this term? A No, sir; never sat on any case, been called three or four times, but never sat.

Q You understand, of course, that you must accept the law as laid down by the Court, and apply it to the facts as produced before you? A I do.

Q And you would apply the law implicitly as laid down by the Court, no matter whether you think it is a bad or a good law? A Yes.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in this case? A No, sir; I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Acceptable to the Defense.

(The juror is sworn).

HENRY M. ROGERS, of 22 Post Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Rogers, are you opposed to capital punishment? A I am not.

Q Do you know anything about this case? A I do not.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Do you know any of counsel? A I do not.

Q Your business is what, sir? A Shoe business, representing the L. B. Evans Company, of Wakefield, Massachusetts.

Q Where is your place of business? A 130 West 42nd Street.

Q Have you sat as a juror in a criminal case, previous to this term? A I have.

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Q And do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir; I do not.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory to the People.

MR. ROSALSKY: Challenged by the Defense.

GERALD P. TOOMEY, of 3044 Kingsbridge Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Are you opposed to capital punishment, Mr. Toomey? A No, sir.

Q What is your business? A Import and export.

Q Of what? A General merchandise.

Q And you are in business for yourself? A I am associated with a Mr. Harry O. Quick.

Q And what is the name of the concern? A Harry O. Quick.

Q And where is your place of business? A 14 West 40th.

Q Have you sat as a juror in a criminal case, before this term? A No, sir.

Q In a civil case? A Yes, sir.

Q And you understand, of course, that you must accept the law as laid down by the Court? A Yes, sir.

Q And you will obey those instructions when given by the Court? A Yes, sir.

Q Do you know of any reason why you cannot sit as a fair

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and impartial juror in the trial of this case? A No, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

Q And, you say, you have sat as a juror in a civil case? A About two years ago.

Q You know that, in a criminal case, the People must prove their case beyond a reasonable doubt; do you not? A Yes, sir.

Q And you will follow that rule? A I will.

Q And do you know that the burden of proving the defendant guilty is upon the People, and never shifts; and you will follow that rule? A Yes.

Q You will follow all the instructions which will be given to you by the Court? A I will.

Q You will be told that, in a criminal case, the jurors are the sole judges of the facts, and you will follow that rule? A Yes, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Challenged by the People.

DAVID DOWS, of 121 East 81st Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Dows, are you opposed to capital punishment? A No.

Q Do you know anything about this case? A Not a thing.

Q Do you know any of the persons whose names I have mentioned as witnesses? A No.

Q Or any of counsel? A No.

Q Your business is what? A The importing business.

Q And you are in business with yourself? A With W. R. Grace and Company.

Q Have you sat as a juror in a criminal case, previous to this term? A No, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

JAMES MULLINS, of 156 Vermilyea Avenue, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Mullins? A Textile printers' supplies.

Q And are you in business for yourself? A No; with Clarence A. Johnson and Company.

Q Where is their place of business? A 25 Walker Street.

Q In what capacity are you employed by Johnson and Company? A As clerk.

Q How long have you been employed by them? A One year.

Q One year? A Yes, sir.

Q And by whom were you employed previous to that time? A The Calumet and Hecla Mining Company.

Q Do you know anything about this case? A No, sir.

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Q Any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Have you sat as a juror in a criminal case previous to this term? A No, sir.

Q Have you sat as a juror in a civil case? A No, sir.

Q You understand, of course, that you must take the law as laid down by the Court, and apply it to the evidence produced before you? A Yes.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No, sir.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Challenged by the People.

Willard G. Ward, of 259 West 92nd Street, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Ward, are you opposed to capital punishment? A No, sir.

Q Do you know anything about this case? A I do not.

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Any of counsel? A No, sir.

Q What is your business? A Sales Manager.

Q Employed by whom? A Harvey, Hubbell and Company.

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Q And their line of business is what? A Electrical devices.

Q And their place of business is where? A Their place of business is here, and their factory is in Frankfort.

Q And have you sat as a juror in a criminal case, previous to this term? A I have.

Q And do you know of any reason why you could not sit as a fair and impartial juror in this case? A I do not.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Have you ever sat as a juror in a homicide case? A I have not.

Q Do you know any one connected with the District Attorney's Office? A I do not.

MR. ROSALSKY: Challenge withdrawn.

MR. McDONALD: Satisfactory.

MR. ROSALSKY: Challenged by the Defense.

11 LOUIS E. CHARNLEY, of 80 Washington Square, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Charley, are you opposed to capital punishment? A No, sir.

Q And your business is what, sir? A Banking business.

Q And are you in business for yourself? A No; I am connected with the Farmers Loan and Trust Company.

Q Have you served as a juror in a criminal case previous to this term? A No, sir.

Q Do you know anything about this case? A No; nothing.44

Q Or any of the persons whose names I have mentioned as witnesses? A No, sir.

Q Or any of counsel? A No, sir.

Q Do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case? A None.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you know any one connected with the District Attorney's Office? A No.

Q Have you ever sat as a juror in a homicide case? A No.

Q If accepted as a juror in this case, will you try the case according to the evidence, and the evidence only? A Yes.

Q And you will take the law as laid down by the Court, and apply the law to the facts in the case? A Yes.

Q You will be told, that in a criminal case, the People must establish its case beyond a reasonable doubt; and you will follow that rule; will you? A Yes, sir.

Q And you will also be told that the burden of proof, in a criminal case never shifts to the defense; in other words, that the burden of proof is upon the People throughout the entire case. Will you follow that rule? A Yes.

Q So far as the facts in a criminal case are concerned, you will be told that the jury's province is sole, that is, supreme. A Yes.

MR. ROSALSKY: Challenge withdrawn.

MR. MC DONALD: Satisfactory.

MR. ROSALSKY: Acceptable to the Defense.

(The juror is sworn).

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I hereby Certify that the
foregoing is a true
and accurate transcript
of the stenographic
minutes of the entire
proceedings had upon
the trial of The
Pro. vs Julius Rosen-
wasser.

Frank S. Bond
Official Stenographer

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