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I hereby certify that the foregoing is a true and accurate transcript of my stenographic notes taken upon the trial of said case.

James Shipuel
Official Stenographer

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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

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

against

CHARLES VITUSKY.

: Before:

: HON. WARREN W. FOSTER, J.,

: and a Jury.

#1607

----- X
New York, February 15, 1912, etc.

Indicted for attempted extortion.

Indictment filed January 16, 1912.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY T. CHANNON PRESS.

For the Defendant, K. HENRY ROSENBERG, ESQ.

James R. Lynch,
Official Stenographer.

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(During the examination of the jury Mr Rosenberg stated as follows:

I ask that this be put upon the record: The District Attorney asked the question, "Did you ever hear of Louis Blumenthal and did you ever hear that he was shot?" And the juryman answered that he read it in a newspaper. Now, I ask that in view of the statement made by the District Attorney that the entire panel of this jury be excused, on the ground that the remark made by the District Attorney is prejudicial, and it is not within the issues raised by this indictment, and proof of that fact would not be admissible upon the trial of this case.

THE COURT: I did not hear the District Attorney make any such statement. Your statement implies that he asked the question. That is not a statement. I will deny your motion.

MR. ROSENBERG: Exception.

The jury was duly impaneled and sworn.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until 2:30 o'clock P. M.

AFTER RECESS. TRIAL RESUMED.

MR. ROSENBERG: May it be understood that either I should object to any statement which I consider prejudicial at the time the statement is made, or shall I wait until

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the conclusion of the opening?

THE COURT: Oh, no, if you feel that your duty is to object, why object.

MR. ROSENBERG: Very well; then I trust the District Attorney will try and not require my objections being made.

THE COURT: Proceed.

Assistant District Attorney Press opened the case for the People as follows:

May it please your Honor, Mr Foreman and Gentlemen of the Jury, the defendant in this case has been indicted by the Grand Jury of this county for the crime of attempted extortion. The facts which the People will prove are these: Louis Blumenthal, on the 9th, 10th and 11th of December, 1911, lived at 202 Henry street, in the county of New York, and had a place of business as a blacksmith at No. 62 Rutgers Slip, in the county of New York. On the 9th day of December we will prove that the defendant met the complaining witness Blumenthal opposite his place of business in Rutgers Slip, and demanded of him \$500, and inquired of the complaining witness if he had received the telephone message that he had sent to him earlier in the day demanding the \$500. We will prove that Blumenthal said that he had received a telephone message, but he knew nothing about the matter, and that thereupon the defendant

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said to him, "Well, what are you going to do about it? Are you going to pay the \$500?" And the complainant refused, and thereupon the defendant said, "If you don't pay it I will blow your head off."

The People will prove that about two o'clock in the morning--

MR. ROSENBERG: (interposing) Now, your Honor, I know exactly what Mr Press is about to state.

THE COURT: Well, I do not, so I cannot rule on it.

MR. ROSENBERG: Then I ask that he state it privately to your Honor, so that it may not prejudice the jury, because the evidence of that which Mr Press is about to state cannot be admitted legally in evidence in this case.

THE COURT: Then I shall pay the jury the compliment of assuming that they are all of sufficient intelligence to disregard Mr Press' statement, because I shall advise them accordingly.

MR. ROSENBERG: The wrong will then be done.

THE COURT: No, no, the wrong will not be done. Go on, Mr Press.

MR. PRESS (continuing:) The People will prove that at 2 o'clock on the morning of the 11th of December, a bomb or some other instrument was exploded in the hall of the residence of the complaining witness at No. 202 Henry street.

DEPARTMENT

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MR. ROSENBERG: I object to the statement made by the District Attorney and ask that your Honor direct the jury to disregard that statement, that it would not be admissible in evidence, and it prejudices the rights of this defendant upon this trial.

THE COURT: Gentlemen, I admonish you that you are to determine this case from the evidence and that alone. You may hearken unto the opening of the District Attorney, which is intended to show you the relation between the testimony and the different bits of it as it is presented, and to enable you to understand the bearing which the testimony has upon his, the District Attorney's contention; but you are to accept no statement made by the District Attorney unless it is supported by evidence hereafter adduced.

MR. ROSENBERG: I except to your Honor's refusal to direct the jury to disregard that statement.

THE COURT: I have told them to disregard it.

MR. ROSENBERG: I also except to your Honor's refusal to direct the District Attorney to state nothing further about that bomb throwing concerning which he has just stated.

THE COURT: I do not know this case. If it seems incompetent or irrelevant I shall exclude it when it is offered, if you object.

EXHIBIT

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MR. ROSENBERG: I take an exception.

MR. PRESS (continuing): And thereafter we will prove that this defendant, on the same day, the 11th, was arrested while he and another were reading an account of this transaction, and on those facts the People will ask for a verdict at your hands.

MR. ROSENBERG: Now, the defendant moves to have the Court direct the District Attorney to elect upon which count of the indictment he intends to proceed to trial.

THE COURT: Mr District Attorney, I do not know what the counts are, but if you can elect, it is well to do so.

MR. PRESS: I cannot at the moment, your Honor. I will, later.

THE COURT: Very well. I will deny your motion at this time.

MR. ROSENBERG: There is another motion I desire to make in connection with that. The defendant demands that the District Attorney state upon which provision of the law, or section of the Code this defendant is being arraigned for trial. The indictment does not state the section of the law under which this defendant is charged with crime, the crime of attempted extortion, and there are two distinct crimes of attempted extortion defined by law.

THE COURT: You have not made a motion to make this.

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indictment more definite and certain in due course, have you? You have not demurred to it; you have made no other motion touching the indictment, have you?

MR. ROSENBERG: No, sir.

THE COURT: Mr District Attorney, of course if you can properly intimate under what section of the law you propose to proceed, or under which count of the indictment you are going to seek a conviction, it would be a very proper thing to do so, but I make no direction.

MR. PRESS: Well, if your Honor please, I think the indictment speaks for itself. I think that if the attorney for the defendant had had any doubts about the indictment that he would have proceeded as you have suggested long before this. I am not at the moment prepared to go into that.

THE COURT: Proceed with your case, then.

MR. ROSENBERG: To which the defendant excepts.

MR. PRESS (calling): Mrs Blumenthal.

MR. ROSENBERG: Now, the defendant admits that Louis Blumenthal is dead and died on the date which Mr Press intends to prove and that he actually did die.

THE COURT: Proceed with the case, Mr District Attorney.

MR. ROSENBERG: Does the District Attorney accept the offer, your Honor?

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THE COURT: I do not know. I have directed the District Attorney to proceed with his case.

MR. PRESS: The District Attorney does not.

ETHEL BLUMENTHAL, called as a witness on behalf of the People, and being duly sworn, testified through Official Interpreter Rosenthal as follows:

Residence, 284 Madison street.

DIRECT-EXAMINATION BY MR. PRESS:

Q Mrs. Blumenthal, what was the name of your husband?

A Louis Blumenthal.

Q What was his business? A Horseshoer.

Q Where did he live on the 11th day of December, 1911?

A 202 Henry street.

Q Did he have a place of business? A He had a shop.

Q Where was his shop on the 9th day of December, 1911?

A In the same place.

Q Had he any place of business at 65 Rutgers street?

A Yes, the same place where the shop is now.

Q Was your husband, the complaining witness in the case of the People against Charles Vitusky?

MR. ROSENBERG: I object. I would like to preliminarily cross-examine the witness as to her personal knowledge of the subject.

Objection overruled. Exception.

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A Yes.

Q Is your husband alive? A No.

Q When did he die? A It is the third week now.

Q Do you remember the date?

MR. ROSENBERG: I object, your Honor, as incompetent, immaterial and irrelevant. I have admitted that.

Objection overruled. Exception.

A No.

Q What day of the week was it that he died? A Sunday.

Q On Sunday? A About six or seven o'clock in the evening.

Q Where did he die?

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

Objection overruled. Exception.

A In the office of Witkin.

Q Where is that, if you know? A In Division street, corner of Canal street.

Q Did you see his dead body?

MR. ROSENBERG: I object upon the ground that the witness has already testified that her husband is dead, and it is not disputed by the defendant.

Objection overruled. Exception.

A Yes.

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CROSS-EXAMINATION BY MR. ROSENBERG:

Q Were you in the Magistrate's Court of the City of New York on December 13, 1911? A No.

Q Were you in the Magistrate's Court of the City of New York, Borough of Manhattan, Third District, on either the 9th, 10th, 11th, 12th or 13th of December, 1911? A No, I was not there.

Q Did you ever see your husband in that Magistrate's Court on either of the dates which I have mentioned? A I don't know, I did not see him.

Q That is all.

MR ROSENBERG: I move to strike out that part of the witness' testimony wherein she stated that her husband was the complainant in a certain case, and it now appears that she was not present, and her information must be surely hearsay.

THE COURT: Well, is there any objection?

MR. PRESS: No objection, your Honor.

THE COURT: Strike it out. The law will presume it from the similarity of names.

PHILIP J. MURPHY, called and duly sworn as a witness on behalf of the People, testified as follows:

Residence 123 Cherry street.

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DIRECT-EXAMINATION BY MR. PRESS:

Q You are a member of the Police Force of the City of New York? A Yes, sir.

Q Did you know Louis Blumenthal? A Yes, sir.

Q Is he alive?

MR. ROSENBERG: I object. The defendant makes no claim--

MR. PRESS: Question withdrawn.

Q What was Louis Blumenthal's home address, or where did he live? A 202 Henry street.

Q Where was his place of business? A 65 Rutgers Slip.

Q What was his business? A Blacksmith.

BY THE COURT:

Q What line? A Horseshoer.

BY MR. PRESS:

Q Did you arrest this defendant? A Yes, sir.

Q On whose complaint did you arrest him?

MR. ROSENBERG: I object. The record is the best evidence.

THE COURT: He may answer the question. It is preliminary.

MR. ROSENBERG: Exception.

A On the complaint of Louis Blumenthal.

Q Louis Blumenthal, whom you have described? A Yes, sir.

Q Were you present in the Police Court when this defend-

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ant was arraigned? A Yes, sir.

Q Were you present when the complaint was verified by Louis Blumenthal? A Yes, sir.

Q Did you see him sign his name to that complaint?
A Yes, sir.

Q I ask you to look at this paper, and see if that is the signature of Louis Blumenthal? A Yes, sir, it is.

Q Did you see him write it on that occasion? A I did, yes, sir.

MR. PRESS: I now offer this complaint in evidence.

MR. ROSENBERG: I object as incompetent, immaterial and irrelevant, and hearsay, and not the deposition contemplated by law, authorizing its admission in evidence.

THE COURT: Where is the law on which you rely, Mr. District Attorney?

MR. PRESS: For the admission of this -- this is only for the purpose of identification as to the individual Louis Blumenthal being the same who is dead, that is all.

MR. ROSENBERG: I will admit that.

THE COURT: We will receive his signature for identification at this time, if that is all you want, but you are asking that I receive in evidence an affidavit?

MR. PRESS: Only for the purpose, if your Honor please, and I so specified, for the purpose of identifying the Louis Blumenthal who is dead, as the Louis Blumenthal who

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was the complainant against this defendant.

THE COURT: You have proved that already. Mark this for identification at this time.

(Marked People's Exhibit 1 for Identification).

BY MR. PRESS:

Q Is Louis Blumenthal alive, the complainant in the case of The People against Charles Vitusky? A No, sir.

Q Did you see his dead body? A Yes, sir.

Q That is all.

(No cross-examination).

A N D R E W O' R O U R K E, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence 480 East 140th street).

DIRECT EXAMINATION BY MR. PRESS:

Q O'Rourke, what is your business? A I am one of the official stenographers connected with the City Magistrate's Court, First Division.

Q Were you the stenographer in the City Magistrate's Court of the 3rd District, on the 13th day of December, 1911?

A I was.

Q Did you take the minutes in the case of The People on the complaint of Louis Blumenthal against Louis Vitusky?

A Louis -- Charles Vitusky.

Q Well, it is Louis on the outside -- Charles Vitusky?

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A I did, yes.

Q Have you got these minutes with you? A Yes, sir.

Q Is this a correct transcript of your stenographic notes made on that occasion at that hearing? A With the exception of those few trivial changes which I made out there.

Q Will you make those changes, please? A All right, sir.

BY MR. ROSENBERG:

Q Will you announce them, Mr. O'Rourke, so that I can make them in mine? A Yes, sir, I will give them to you right after.

BY MR. PRESS:

Q Are those a correct transcript of your stenographic notes made on the occasion of the hearing in the case of The People, etc., on the complaint of Louis Blumenthal against Charles Vitusky, in the City Magistrate's Court, 3rd District, on the 13th day of December, 1911? A They are, sir.

Q On that occasion, can you tell me who the presiding Magistrate was? A According to my notes, the presiding Magistrate on that day was Hon. Robert C. Cornell.

Q Who was the representative of the District Attorney's office present on that occasion? A Mr. Lockhart, I believe his name is.

Q And who represented the defendant on that day? A Mr. K. Henry Rosenberg.

Q And you were the official stenographer, you have said?

A Yes, sir.

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O. S. S.
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Q Was Louis Blumenthal a witness on that occasion? A According to my notes, he was. There was such a witness, the complaining witness.

Q Was he examined by Mr. Lockhart for the People? A He was, according to my notes, yes, sir.

Q Was he cross-examined by Mr. Rosenberg, the attorney for the defendant? A Yes, sir.

Q And that Mr. Rosenberg is the same Mr. Rosenberg who represents the defendant on this occasion? A Yes, sir.

MR. PRESS: Now, if your Honor please, I offer in evidence the testimony of Louis Blumenthal, the direct and cross-examination taken in the City Magistrate's Court, 3rd District.

THE COURT: Now, under what section of the Code do you make that offer?

MR. PRESS: I do it on the authority of the case of The People against Elliott, 172 N.Y. I believe your Honor is thoroughly familiar with the case.

THE COURT: I know the case, but I prefer to look it over to refresh my memory.

MR. PRESS: Your Honor will also recollect --

MR. ROSENBERG (Interposing): One moment, I want to get an objection.

THE COURT: You may note that.

MR. PRESS: Will you wait until I get the other case

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in? The other case I refer to is the case of The People of the State of New York against Charles Herowitz, tried before your Honor, in which the same question was raised and on the same authority, and the testimony was admitted in that case.

THE COURT: Was that case passed upon by the Appellate Courts?

MR. PRESS: No, your Honor.

MR. ROSENBERG: There are several cases. Will your Honor let me get an objection in?

THE COURT: I have told you you could note your objections.

MR. ROSENBERG: The defendant objects to the introduction of the testimony of Louis Blumenthal, given in the Magistrate's Court of the City of New York, 3rd District, referred to by the present witness, upon the following grounds:

First: That the said testimony is incompetent, irrelevant, immaterial and hearsay.

Second: That the said testimony has not been reduced by the Magistrate before whom the said testimony was given, to the form of a deposition in the presence of the defendant, as provided for by Subdivision 3 of Section 8 of the Code of Criminal Procedure, and because of the failure to so reduce the said testimony to the form of a deposition,

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the same cannot be admitted in evidence.

Third: That the said testimony of the witness Louis Blumenthal has not been read to, or signed by the said Louis Blumenthal, as provided by law, and as further provided for by Section 204 of the Code of Criminal Procedure.

Fourth: That the said testimony of Louis Blumenthal is not a deposition within the meaning of law, and there is no proof that the said testimony was ever read by or to the said Louis Blumenthal.

Fifth: That there is no legal evidence before the Court establishing that the charge contained in the indictment herein, was the same charge upon which the defendant was arraigned, and the preliminary examination had before the Magistrates' Court of the City of New York, at which the said testimony of Louis Blumenthal was given.

Sixth: That the defendant is entitled as of right under the laws of the State of New York, to be confronted with the witnesses against him in the presence of the Court, and which right is guaranteed to him under the Third Sub-division of Section 8 of the Code of Criminal Procedure.

Now, if your Honor will turn to Section 8, Sub-division 3 of the Code of Criminal Procedure, you will find among the rights given to the defendant to produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the Court --

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THE COURT (Interposing) Yes, I am quite familiar with that. It has been held that he had that right in the Magistrates' Court, and that if he had it once, the law is complied with.

MR. ROSENBERG: Will your Honor let me say just a few words on that, and I think I can convince your Honor, and I can refer your Honor to the case which you have in your hand and show you the absolute dissimilarity between the two.

THE COURT: Well, I know there is a dissimilarity. I see it myself. It is new and novel, and I may say a nice question of law.

MR. ROSENBERG: Will your Honor let me show you the very case that went to the Appellate Courts, and my contention is ^{supported} ~~the same~~ by those cases?

THE COURT: Yes, I would be glad if you have a case on all fours, to see it.

MR. ROSENBERG: It is a leading case that went to the Appellate Courts.

THE COURT: Let me see it, if you have it before you.

MR. ROSENBERG: Here is the Gilhooly case, The People against Gilhooly, in 108 Appellate Division, page 234. That was the case.

THE COURT: Now, hand it to me, and do not talk when I read. If you do, I will not be able to read.

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MR. ROSENBERG: Very well, then, your Honor will hear me afterwards?

THE COURT: Yes. Why, this Gilhooley case is exactly in line with the statement which I made a moment ago.

MR. ROSENBERG: Well, the point I make is this, as decided by the Gilhooley case, and all the cases to which I want to refer your Honor: There is no doubt in law that if a defendant had the right to cross-examine a witness who appeared at a preliminary examination, that that evidence would be entitled to be read in upon the trial, provided two things concur; first, the identity of the charge, and secondly, that the testimony be reduced to writing in the form of a deposition and signed by the person who testified. If you will look at the Gilhooley case, at the bottom of page 235, you will see that the error was claimed to have been in ^{admitting} the deposition of Minnie Seymour, taken at the preliminary examination, and the Appellate Division of this Department said "The witness Minnie Seymour was sworn, examined by question and answer in the presence of the appellant, and she signed her testimony." That is the point I want to make. She signed her testimony. The case of the People against ^{Fish} ~~Black~~, in 125 N.Y., also, your Honor.

THE COURT: Now, let me see that case.

MR. ROSENBERG: Yes, sir.

THE COURT: I should say the Gilhooley case was not

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MR. ROSENBERG: Very well, then, your Honor will hear me afterwards?

THE COURT: Yes. Why, this Gilhooley case is exactly in line with the statement which I made a moment ago.

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THE COURT: Now, let me see that case.

MR. ROSENBERG: Yes, sir.

THE COURT: I should say the Gilhooley case was not

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a case in your favor.

MR. ROSENBERG: Why, certainly it is.

THE COURT: I understand the point you make, that you distinguish the Gilhooly case by saying that this deposition was never signed?

MR. ROSENBERG: And in the Gilhooly case it was signed, and that is why they admitted it in evidence.

THE COURT: I understand your point.

MR. ROSENBERG: Now, in the Elliott case, let me call your attention to that, The People against Elliott, 172 N.Y. That was the case which was first tried and Dr. Brooks died between the first trial and the second trial.

THE COURT: Well, the only point here is whether or not the failing to sign that affects its reception.

MR. ROSENBERG: The statute itself says, under Sub-division 3, that the testimony so given shall be reduced to the form of a deposition, and Sections 194 and 204 of the Code of Criminal Procedure provide that the deposition must be signed, after its having been read to the witness. Now, the Elliott case, let me just show you the distinction between the Elliott case and the case at bar. In the Elliott case the Court of Appeals distinctly said that the reason they admitted the deposition or the evidence, mark you, given upon the former trial, was based upon Section 830 of the Code of Civil Procedure, which provided that in the

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event of the death, absence or insanity of a person, that testimony may be ^{admitted} given. The Court of Appeals said that Section 3353, which defines what an action ^{is} was, may be applicable to a criminal case, but that ^{was} is a trial. Now, the only way in which ^{testimony} a deposition given in the Magistrates' Court can be introduced in evidence, must be pursuant to the authority given by Sub-division 3, Section 8, because otherwise the section says we are entitled to be confronted with the witnesses except --

THE COURT (Interposing) I understand that. What do you say, Mr. District Attorney, as to the failure to sign this deposition?

MR. PRESS: If your Honor will read the section of the law, you will find that the County of New York is excepted on the question of a deposition.

THE COURT: Well, I shall give you an exception and receive it.

MR. ROSENBERG: All right. Well, is this considered then a deposition, your Honor, as a whole?

THE COURT: I shall receive it in evidence and give you an exception.

MR. ROSENBERG: To which the defendant excepts.

(The testimony of Louis Blumenthal is marked People's Exhibit 2 in evidence)

MR. ROSENBERG: Now, your Honor, if this is a deposi-

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tion and to be read as a deposition, is the whole of this to be read, or ^{am} ~~may~~ I required, under your Honor's ruling admitting this in evidence, to object to any specific part of it, which I consider hearsay or illegal?

THE COURT: If there are objections, I will rule upon the objections as they arise. I have received the deposition. If you desire to object, I will hear your objection.

MR. ROSENBERG: Well, in order that there can be no misunderstanding, in view of the fact that your Honor has admitted this alleged deposition, and testimony, claiming it as a deposition, I rely upon your Honor's ruling, and rely upon the exception before.

THE COURT: well, if you desire to object to any portions of the testimony, you may do so, and I will then rule upon your objection. Now, proceed with your reading.

MR. ROSENBERG: One moment. I would like to have it admitted that this testimony was written out by the stenographer the other day.

MR. PRESS: The stenographer has testified on the witness stand that this is an exact copy of his stenographic notes taken on that occasion.

MR. ROSENBERG: It was written out only yesterday or the day before yesterday. Will you admit that?

MR. PRESS: Yes, I will admit that.

MR. ROSENBERG: Then it is admitted that the stenograph-

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er wrote out these minutes that are now considered a deposition?

MR. PRESS: Mr. O'Rourke, take the stand just one moment.

ANDREW O'ROURKE, a witness recalled on behalf of the people, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. O'Rourke, how long have you been engaged as an official stenographer? A Over four years.

Q Before that what occupation were you in? A Stenographer for about ten years previously.

Q For ten years previously you had been a stenographer? A Yes.

Q And for the last four years you have been an official stenographer of the City Magistrate's Court of New York? A Yes, sir, the Magistrate's Court.

Q When did you transcribe your notes of the testimony of Louis Blumenthal? A Yesterday morning.

Q That was what date? A The 14th.

Q The 14th of February, 1912? A The 14th of February, 1912.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Has Louis Blumenthal ever signed the testimony, in your

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notes or as transcribed? A No, sir, he has not.

Q Were they ever transcribed before yesterday? A Never.

Q That is all.

MR. PRESS (Reading) - "Louis Blumenthal, the complainant, being duly sworn, testifies as follows:

DIRECT EXAMINATION:

Q What is your name? A Louis Blumenthal."

MR. ROSENBERG: Well, I object to that testimony.

The District Attorney has not started in to read the exhibit which is in evidence, not that I ask it to be read, but I tell your Honor that he has not started in to read the deposition.

THE COURT: Well, I supposed he was reading it. What is the matter?

MR. ROSENBERG: There is some other part of it.

THE COURT: You will read it correctly, Mr. District Attorney?

MR. PRESS: Your Honor, I believe I am capable of reading it. I will start again. (Reading) "In the City Magistrate's Court of the City of New York, First Division, Third District,

The People of the State of New York, on the complaint of Louis Blumenthal, against Charles Vitusky.

Charge: Attempted extortion.

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Wednesday, December 13th, 1911.

Hon. Robert C. Cornell, Magistrate,

Mr. Lockhart, Assistant District Attorney, for the
prosecution:

K. Henry Rosenberg, Attorney for defendant.

Andrew O'Rourke, Stenographer, 480 East 140th Street,
New York City.

The Court reads the complaint" --

MR. ROSENBERG: Now, that I object to, as not a deposition contemplated by law, and not the deposition of Louis Blumenthal which has been admitted in evidence, and I take an exception.

MR. PRESS (Continuing reading) "The Court reads the complaint: 'Attempted to extort from him the sum of \$500. by threatening to do him bodily harm. He says that upon the date of the 9th of December, at 65 Rutgers Street, this defendant said to deponent that he would bust his head over to unless he paid him \$500. Deponent refused to comply with the defendant's demand.'

MR. ROSENBERG: One moment. Before the balance is read, I ask that your Honor read that, and clearly it is not within the issues here, and why prejudice this jury with matters which clearly will prejudice the minds of the jury against the defendant, and which cannot be proven?

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THE COURT: I do not quite understand your objection. What is the precise point that you wish stricken out?

MR. ROSENBERG: I object to the District Attorney reading the following paragraph.

THE COURT: What is the following paragraph? Oh, he has not read it yet? Let me see it first.

MR. ROSENBERG: That last paragraph.

(Mr. Press hands the exhibit to the Court.)

MR. PRESS: Your Honor, I have started to read from "Blumenthal" and counsel objected. Now, I am reading it all. I am willing to do anything that he wants done.

THE COURT: Do you want that statement touching the ~~bomb~~ omitted from the reading? I want to understand your objection. Is that your objection?

MR. ROSENBERG: I claim that is absolutely illegal.

THE COURT: Do you wish that omitted?

MR. ROSENBERG: I wish the whole of the deposition omitted.

THE COURT: No, no, I have ruled against you on that. I ask you now the question, do you wish that paragraph touching the bomb omitted?

MR. ROSENBERG: Well, I wish the whole exhibit, the whole of his testimony omitted. Now then ---

THE COURT: Mr. Rosenberg do not spar. I am trying

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to ascertain the precise point of your objection. The District Attorney has read up to the statement touching the bomb. Do you wish the statement touching the bomb omitted and stricken out and not brought to the attention of the jury?

MR. ROSENBERG: I claim that is absolutely illegal and that the jury should not hear it.

THE COURT: Very well. Then, omit that particular statement at this time, Mr. District Attorney.

MR. PRESS: Consented to. (Continuing reading)

*Louis Blumenthal, the complainant, being duly sworn testified as follows:

DIRECT EXAMINATION:

Q What is your name? A Louis Blumenthal.

Q Where do you live? A No. ²⁰²~~206~~ Henry street.

Q What is your business? A Blacksmith.

Q Where is your place of business? A No. 65 Rutgers street.

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

Q How far is your house from your place of business?
A About eight blocks.

Q On the 9th day of December, 1911, were you in your horseshowing place in Rutgers street? A Yes, sir.

Q Did you see this defendant there? A Yes, sir.

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Q What time of the day was that? A Between one and two. Saturday in the afternoon.

Q Did you have any conversation with him? A I never had a conversation.

Q Did he talk to you? A Yes, he talked to me. He asked me for \$500.

Q Just state what the conversation was? A The conversation was, I had a couple of telephones, he telephoned down to me and asked me for \$500."

MR. ROSENBERG: Now, I object to that last answer concerning the telephone call, on the ground that the witness is not shown to have known the defendant's voice.

THE COURT: Well, the opportunity was then and there to have brought that up. Go on.

MR. ROSENBERG: To which the defendant excepts.

MR. PRESS (Continuing reading):

Q Did he say who he was over the telephone?

A No, sir, he says 'I want \$500 from you'. I says 'Why I cannot give you. I want to see the party'. He says 'You got lots of friends, you can find out friends ^{to you} whom can go for it.' I said 'I have no friends, I don't know.' That was Tuesday. Saturday afternoon, about fifteen minutes after one, I see this man come around with a horse and wagon. He said to me, 'Come over here.'

Q Where was he standing when he said that? A Half

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a block from my place, from 65 Rutgers street. He said 'Come over here.' I says 'What is the matter?' I never saw that man. He says 'Don't you know me?' I said 'I don't know you.' He said 'You never heard about the \$500?' I said 'Never.' 'But you had lots of times telephoned about that \$500', he says to me. I says 'I never heard.' Afterwards he said 'What are you going to do about it?'

I said 'For what, I don't know -- \$500.'

Q Were you right there? A He was talking, he was there. He said to me 'What are you going to do about the \$500'. I said 'I will not give you a penny, I don't know.' Then he said 'If you don't sock up \$500 I will blow your head off.'

Q Where did this conversation take place? A Right in my place on the other side.

Q In front of No. 65 Rutgers street? A Half a block from my place on the other side.

Q Who was present at that time? A Sam Cohen was around and John Wilson.

Q On what floor do you live in Henry street?
A Fifth floor.

Q Do you remember the 10th of December, 1911?
A Yes, sir.

Q Sunday? A Yes, sir.

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Q What happened in your place in Henry street?"

MR. ROSENBERG (Interposing) I object to that as incompetent, immaterial and irrelevant, in addition to each of the objections urged on the introduction of the supposed deposition.

THE COURT: Well, the objection to the question now read is overruled.

MR. ROSENBERG: Exception.

MR. PRESS (Continuing reading)

"Defendant's counsel: Objection.

magistrate
THE COURT: Question allowed.

A Ten minutes after two I was all come up."

MR. ROSENBERG: (Interposing) I ask that the answer be stricken out as not responsive.

THE COURT: Go on, finish your reading.

MR. ROSENBERG: Exception.

MR. PRESS (Continuing reading) "Here the official interpreter was called.

magistrate
THE COURT: I want this man to speak in Yiddish whenever a question is put by the District Attorney."

MR. ROSENBERG (Interposing) I object to the statement read as to what the Court said.

THE COURT: Strike out the statement of the Court.

MR. PRESS (Continuing reading) "Some time late a bomb there exploded and damaged the entire house."

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MR. ROSENBERG: (Interposing) I object as incompetent, immaterial and irrelevant and not within the issues in this case, and an attempt to establish a separate and distinct crime in no wise connected with the charge upon trial, and in no wise connected with this defendant.

THE COURT: We will receive it as part of the res gestae.

MR. ROSENBERG: Exception.

MR. PRESS (Continuing reading)

*GROSS EXAMINATION:

Q Mr. Blumenthal, how long are you in the country?

A Seventeen years.

Q You are a citizen, are you? A I am not a citizen, I am a business man. I have not taken out any papers as yet.

Q You understand English, carry on your business in English? A A little bit in English and a little bit in Jewish, always not Jewish and English.

Q You understood every word that was said by the District Attorney? A Yes.

Q Up to the time that you were speaking through the interpreter, you understood everything that was said?

A Yes, sir.

Q Try and talk plainly and slowly so that the Judge can hear you, do you think you can get along without the

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7 interpreter? A Yes, sir. 32

Q If you don't understand my question, please tell the Judge, will you? If you cannot express yourself in English, do it through the interpreter? A All right.

Q On the 10th day of December, that was Sunday, is that correct? A Yes, sir.

Q Did you see this defendant at any time on December 10th, yes or no?

INTERPRETER: He says he does not understand.

MR. ROSENBERG: (Interposing) I ask that the interpreter's statement be stricken out.

THE COURT: Strike it out.

MR. PRESS (Continuing reading):

*A -- through interpreter - No, I have not seen him, not on that day.

Q That was Sunday I am talking about? A Yes, sir.

Q What hour did you say on Sunday morning there was an explosion? A Sunday morning, ten to two.*

MR. ROSENBERG (Interposing): One moment. I object to the question as not part of the issues in this case, and not germane to the issues in this case.

MR. PRESS: It is his own question, your Honor.

Objection overruled. Exception.

MR. PRESS: (Continuing reading)

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Q Two o'clock Sunday morning? A Monday morning.

Q Did you see the defendant at any time between midnight of Sunday and eight o'clock the following Monday morning? A Where could I have seen him, I remained in the house at that time during the night.

Q Did you see him? A I have not seen him, except that about seven or a quarter after seven that morning when I saw him reading a paper on Forsyth street near Delancey street.

Q Isn't that where the defendant has an express wagon with a horse, isn't that where he was standing?

A Yes.

Q He was reading a Hebrew paper, isn't that right?

A He didn't read it himself, but I know that he gave it to another man to read for him.

Q You were not there when he gave the paper to the other man? A I have noticed that the other man has been holding the paper before him. He was talking and this man was listening to him.

Q Is it a fact that from the Saturday when you saw that you saw the defendant until the date of the arrest, you didn't see the defendant; is that a fact? I have not seen him until that morning.

Q What time on Saturday, December 9th, was it that

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you spoke to the defendant and that the defendant spoke to you? A Fifteen after one in the afternoon.

Q That was on the sidewalk of what street? A On Rutgers street, on the other side, across the way from my place.

Q And the defendant was there with his horse and wagon isn't that right? A Yes, about half a block away from my place.

Q Were you alone when you were talking with the defendant? A While he was talking to me about the money at the time I said I would not give him the money, then he said "Well, I am going to take your head off." At that time there were two men near by, John Wilson and Sam Cohen. They are both here in the court room.

DEFENDANT'S COUNSEL: I should like to have Cohen and Wilson excluded.

THE COURT: Yes, if they are within reach. Tell them not to go away.

Q Are Wilson and Cohen connected in your business?

A Yes, Wilson is working for me. He has been and is working for me now yet.

Q What does he do, Wilson? A He takes care of the horses, drives out with the horses and brings them in, does to them in general, and does entering of every-

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thing that is needed in the books.

Q Is Sam Cohen connected with you? A I told him -- he comes to the house occasionally on the Sabbath. When I am too busy he comes up. Used to bring, brings dinner, etc. Does odds and ends in my place.

Q Is he related to you? A No, sir.

Q Was he working for you on that day? A No, he is a tailor by trade. How can he work for me?

Q How far was Cohen and Wilson from you when you were talking with the defendant? A About as far as from me to this gentleman (indicating the stenographer).

Q About three feet? A Just about as we are standing, the three of us together.

Q Cohen and Wilson and you approached the defendant on the opposite side of the street, is that correct?

A No, Cohen and Wilson were on the other side. They were calling me. They were just approaching at the time when I was talking to this man and while the defendant told me that he would take my head off, that he should take my head off.

Q Didn't he say 'Cut his head off?' Didn't he say 'Take his head off?' A I don't know what they could do.

Q Please state in English what words did the defendant use about taking your head off? A He said to me 'If

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you will not sock up the money, I will blow your head off" in English.

Q 'Blow your head off' is that what he said?

A Yes, sir.

THE COURT: Did he tell you that in English?

A Yes, sir, I jumped up on the wagon. He didn't even -- of course, I was on the wagon. The number where he keeps his horse and wagon, 101 and 102 Delancey street. I was on the wagon. That time I came in in the nighttime about five o'clock. I came right to the station house and reported. I just came in at the time. I told the detectives. They said -- After this happened I was to his office. I told him "I will go up and look out for him.

(This last answer in ^{very} broken English.)"

THE COURT: We will stop here, gentlemen.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of this case until Friday, February 16, 1912, at 10:30 o'clock A. M.

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New York, February 16, 1912.

Trial Resumed.

MR. PRESS (Continuing reading):

Q What language did the defendant speak when he said about blowing your head off, English or Yiddish?

A He told me 'I will blow your head off' in English.

Q Didn't you tell the Judge that he spoke Yiddish to you, didn't you tell the Judge that the defendant spoke Yiddish to you?

A Yes, I will blow your head off.

Q Is that Yiddish? Did you tell the Judge that when the defendant spoke to you he spoke in Yiddish? A I know that he said in English to me 'I will blow your head off' -- jumped upon the wagon.

Q In all the other talk he spoke in Yiddish? A A few in English and a few in Yiddish.

Q Did you take Cohen and Wilson over as witnesses?

A No.

Q Have you spoken to Cohen and Wilson about this case? A I never.

Q Did either Cohen or Wilson tell you what they would say in this case? A No.

Q Did Cohen or Wilson talk about the case with you?

A No.

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Q You have never spoken to either Cohen or Wilson about the case? A Spoke with Sam Wilson because he is working for me. I told him to do anything.

Q But not about the case? Did you ask Cohen or Wilson whether they remembered the defendant saying about blowing your head --- A After they see what happened on Monday, so they say what the man done to me.

MR. ROSENBERG (Interposing) Without waiving the objection interposed to the reading of the deposition I move that that be stricken out.

THE COURT: Strike it out.

MR. PRESS (Continuing reading)

Q Did you speak to Cohen or Wilson and ask either of them whether they heard the demand made upon you for money? A Yes, sir, people came around and I told them what he done.

MR. ROSENBERG (Interposing) I ask that the answer from "People came around" be stricken out as not responsive.

MR. PRESS: There was no objection taken at the time, and it was Mr. Rosenberg's own cross examination.

THE COURT: Then I will let it stand. You brought it out, Mr. Rosenberg. Why did you not ask to strike it out then and there? Why did you ~~speak~~ sleep on your

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rights?

MR. ROSENBERG: I have never been accused of sleeping on my rights.

THE COURT: No, except on this occasion. Even great Homer nods.

MR. ROSENBERG: I want that "People came around" etc stricken out.

THE COURT: Well, strike that out.

MR. PRESS (Continuing reading)

*Q Did you ask Cohen or Wilson whether either one of them heard the defendant demand money from you?

A Yes, I have asked them, they told me so, yes.

Q When did you ask them that? A John Wilson he keeps my books. He asked me 'Did you owe any money to him?' And I said no.*

MR. ROSENBERG (Interposing) I ask that that answer be stricken out as not responsive to the question and purely hearsay, without waiving the objection.

MR. PRESS: There was no objection taken at the time, and if your Honor please, it is responsive.

THE COURT: I will deny the motion.

MR. ROSENBERG: Exception.

MR. PRESS (Continuing reading)

*Q Is that all that you said? A Yes, sir.

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Q Did you ask Wilson whether he heard the demand made by him for the money? A Yes, John Wilson asked me 'Have you borrowed any money from him?' I said 'No.'"

MR. ROSENBERG (Interposing) I ask that all the answer after 'Yes' be stricken out, without waiving the original objection.

MR. PRESS: Mr. Rosenberg did not object to it in the police court. It was asked by him.

MR. ROSENBERG: May I just make this one objection?

THE COURT: You have already made an objection to the entire deposition. Now, you will not be deemed to have waived that objection unless you expressly waive it; that objection stands. It is not necessary, therefore, for you to say every time you make an objection that you do not waive the original objection so as to preserve your rights.

MR. ROSENBERG: Suppose I brought out absolutely illegal evidence in that case? Do you mean to say that this jury is entitled to have read on this trial some illegal evidence brought out perhaps by some other lawyer?

THE COURT: I merely say I am going to overrule this objection.

MR. ROSENBERG: To which the defendant excepts.

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MR. PRESS (continuing reading):

"Q. Is that all Wilson asked you? A. I said "This man wants to take my head off if I don't give him \$500."

"Q. What did Wilson say to that? A. He said nothing at all because he does not know what the money would be due him for.

"Q. Did you ask Cohen whether he heard the demand made? A. Yes, sir, after that Cohen also asked me. He said 'What ^{is} was that man demanding money from you for?', and I said 'Well, I don't know what I would send the money, why he should demand it.' Thereupon Cohen went away."

MR. ROSENBERG: I ask that all the answer following "Yes, sir," be stricken out as not responsive to the question, as hearsay and a voluntary statement.

MR. PRESS: There was no objection made by Mr. Rosenberg. He brought it out and it is responsive.

THE COURT: Well, let it stand, then.

MR. ROSENBERG: Exception.

MR. PRESS (continuing reading):

"Q. Is that all you said to Cohen? A. After the accident happened, then I told him what it was.

"Q. Is that all you ever spoke to Cohen on the subject? A. Yes, sir.

"Q. Have you now told the Court everything that this

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defendant told you on Saturday? A I have nothing else to say.

"Q Have you now told the Court all of the talk which you had with the defendant Saturday? A Everything is all right.

"Q On Saturday you say you went to the detective, saw Detective Murphy, is that right? A On Saturday I didn't see Murphy.

"Q Whom did you see? A I have not seen Murphy on that Saturday, but after I have closed my place of business then I went to the 7th Precinct Station, and I told that to the lieutenant, and he said, 'Go over and report to the detective.'"

"Q Whom did you see? A I saw Cohen (?), that was one of them, another one I don't know what his name is.

"Q Is that the Edridge Police Station? A Madison.

"Q You saw a detective, Cohen? A Yes, sir.

"Q You told him your story? A Yes, sir.

"Q That was the talk you had on Saturday? A Yes, sir, I also told him that I had been called up on the telephone on three or four occasions, somebody demanded from me five hundred dollars, and then he came himself at about a quarter after one to the shop, and he said 'What is the matter with this five hundred dollars?' I said 'I don't know what to say.' He said 'Didn't you get any

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telephone message?" I said "Well, I have received several telephone messages, but I don't know to whom I would be owing that money. I don't know what to say about that," and he said "Well, then, I want the five hundred dollars or I will take your head off."

MR. ROSENBERG (interposing): I ask that all following the answer "Yes, sir" be stricken out as not responsive and purely a voluntary statement.

THE COURT: What do you say, Mr. District Attorney?

MR. PRESS: The question asked was "You told him your story? A Yes, sir. Q Was the talk you had on Saturday? A Yes, sir."

I have no objection to it being stricken out, your Honor.

MR. ROSENBERG: Now, your Honor--

THE COURT (Interposing): The incident is closed. Gentlemen, when I strike out testimony it is out of the case and you are not to consider it, and I have paid you the compliment of assuming that you knew that fact, that when it is out, you are to forget it.

MR. PRESS (continuing reading):

"Q What you have just explained through the interpreter you told to Detective Cohen at the Madison Street Station on Saturday, ~~at~~ December 9th? A Yes, sir, I have told all that."

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O. B. O.

MR. PRESS: Now, if your Honor please, I regret to have to do it, but I ask that that be reinstated in view of the following question by Mr. Rosenberg. (Reading):

"Q. You told him your story? A. Yes, sir.

"Q. That was the talk you had on Saturday? A. Yes, sir. I also told him that I had been called up on the telephone on three or four occasions, somebody demanded from me five hundred dollars, and then he came himself at about a quarter after one to the shop and he said 'What is the matter with this five hundred dollars?' I said 'I don't know what to say.' He said 'Didn't you get any telephone message?'"

THE COURT: Who is "he", the defendant?

MR. PRESS: The defendant, yes, sir.

MR. ROSENBERG: He said he didn't know who it was that telephoned, and then he said that he came.

THE COURT: Then he is talking about the defendant?

MR. PRESS: Of course he is.

THE COURT: Very well; if that is understood:

MR. PRESS (continuing reading):

"I don't know to whom I would be owing that money. And he said 'Well, then; I want the five hundred dollars or I will take your head off.'"

"Q. What you have just explained through the inter-

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prefer you told to Detective Cohen at the Madison Street Station on Saturday, December 9th?"

THE COURT: This was stricken out before on the District Attorney's consent. He now desires to withdraw his consent and I will permit him to do so and give you an exception.

MR. ROSENBERG: Yes, sir, the defendant excepts.

MR. PRESS (continuing reading):

"Q Did you ever talk with the defendant before December 9, 1911? A I never spoke to him, never saw him previous to that.

"Q As a matter of fact, you don't know with whom you talked on the telephone before December 9th, do you?

A No. There was one telephone message that I received on Wednesday. He said 'What is the matter with that five hundred?' I said 'To whom shall I give that money, I don't know anything about it.' He said 'You will find out, you can find it out through a party of your friends to whom to give it.' And then because I didn't know what to answer any more to that, so I simply hung up the telephone and stopped altogether."

THE COURT: Strike it all out.

MR. PRESS: One moment, your Honor, the complaining witness states in the testimony here that when this de-

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defendant called for him the first time on the 9th, he said "Did you receive the telephone messages for the five hundred?"

MR. ROSENBERG: I ask that the answer be stricken out, all that follows after "No," as clearly hearsay.

THE COURT: I passed on that precise point recently in a case where kidnapping was the charge. — These telephone conversations I have received as part of the res gestae; I have received them ~~xx~~ with some doubt as to their propriety.

MR. PRESS: The defendant also refers to them in the first conversation.

THE COURT: I shall have to resolve this doubt in favor of the people.

MR. ROSENBERG: The defendant excepts.

MR. PRESS (continuing reading): "Q. Was the telephonic conversation in Yiddish or in English? A. He spoke in Hebrew.

"Q. What I want to know is as a matter of fact you didn't know with whom you were talking over the telephone?

A. How can I know, I cannot know who spoke.

"THE COURT: You say "No"?

"A. No."

MR. ROSENBERG (interposing): I move to strike out the telephonic communications which have been received in

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evidence in this deposition upon the ground that it now appears for the first time that the affiant swears that he did not know with whom he was speaking over the telephone.

Motion denied. Exception.

MR. PRESS (continuing reading):

"Q. Whatever demand was made upon you for money was made by word of mouth and not in writing, is that right?

A. Nothing written.

"Q. It was only by word of mouth? A. Yes, sir.

"Q. Did you know that Cohen and Wilson were immediately behind you or in front of you when you were talking with the defendant? A. Yes, I knew it, that they came up to me, because he called me out.

"Q. Didn't you invite Cohen & Wilson to come over to the other side to act as witnesses?

"DEFENDANT'S COUNSEL: Objection.

"THE COURT: Objection sustained."

MR. ROSENBERG (Interposing): Correct that, that was the District Attorney's objection.

MR. PRESS: All right, I will consent to anything.

(Continuing reading:)

"Q. Didn't you claim that the defendant went to your place of business and in the presence of six or seven men made the demand for money? Didn't you claim that at any time?

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*THE COURT: Did you ever say that?

*A No, he was the only one who came up with his wagon.

*Q Didn't you claim, I am talking about -- didn't you claim that the defendant went into your stable or horse-shoeing place and in the presence of six or eight men demanded this money? Isn't that what you claimed originally? A No, I never said --

*Q Didn't you say there were six or seven men around you when he --? A No, two men only.

*Q After this demand was made for the money, didn't the defendant get on his wagon and drive off? A Yes, sir, he went up on the wagon all by himself, drove away.

*Q Did he talk to you while he was on the wagon?

*A No, he got off the wagon, called me out.

*Q The wagon, I am talking -- I am talking of when he was going away? A He jumped on the wagon and went away.

*Q That was about what time of the afternoon?

A Fifteen minutes after one.

*Q Then you went over to the Madison Street Station House and made your report? A No, I first finished my work and closed up the place. It was between five and six. I then went to Madison.

*Q On the same day, Saturday? A Yes, sir.

*Q Did Wilson and Cohen go with you? A No, sir.

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I was all alone.

"Q Did you tell him, Wilson, that you were going over to the station house? A No, sir.

"Q You knew at the time this demand was being made that it was an unlawful demand, didn't you, at the time you knew it was an unlawful demand? A I knew because I knew that the Black Hand demands money in that manner.

"Q Why didn't you have the defendant arrested at that time?

"DISTRICT ATTORNEY: Objection.

"THE COURT: Objection sustained.

"A He jumped upon the wagon and went away.

"Q Did you cry out, make any outcry at the time?

A Why should I do anything like that? I don't know what the man would intend to do. If a man demands money he might have a pistol in order to shoot me.

"Q Is that the reason why you didn't make an outcry, that you were afraid of being shot? A I didn't know what to say that moment because immediately, as soon as he told me he would blow my head off, he jumped upon the wagon and drove off."

J O H N W I L S O N , called and duly sworn as a witness

in behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

(Residence, 73 Bowery).

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Q What is your business, Wilson? A I am a horse shoer's helper.

Q Where do you live? A I live at 73 Bowery.

Q For whom did you work on the 9th day of December, 1911?

A For Mr. Louis Blumenthal.

Q Mr. Louis Blumenthal? A Yes.

Q The complaining witness in this case? A You call him the complaining witness, I don't know, he is not here in Court.

BY MR. ROSENBERG:

Q Now, do not volunteer anything.

BY MR. PRESS:

Q Is Louis Blumenthal alive? A No, sir, he is not.

Q For whom did you work on the 9th day of December, 1911?

A For Mr. Louis Blumenthal:

Q On that day did you see this defendant? A Yes, sir.

Q How long had you before that been working for Mr. Blumenthal?, A I had been working with him now over six years.

Q On the day in question, the 9th of December, 1911, at what hour of that day was it that you saw this defendant for the first time? A It was shortly after one o'clock, maybe about a quarter past one, it might have been a little bit earlier or later, but around that neighborhood any way.

Q At the time you saw him what were you doing? A I was inside in the shop.

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Q Was he alone or was he with any one? A He drove up in a wagon by himself.

Q At the time you first saw him was he speaking to any one? A When I first saw him he drove with his wagon up to the shop on the other side from the shop, not exactly up to the shop, but across the street near a little Park. He beckoned to Mr. Blumenthal and Mr. Blumenthal walked over to him.

Q You saw that? A Yes, sir.

Q After that what did you do? A I was still attending to my business in the shop, inside.

Q And did you go onto the street at all? A Yes, sir.

Q What was the occasion of you going onto the street? A I had a horse finished, I was taking him in the stable.

Q And in order to go into the stable had you to go onto the street? A I had to go onto the street, yes, sir.

Q Now, how near did you approach to Mr. Blumenthal and the defendant when you went onto the street? A I was within nine feet of them, any way, within nine feet.

Q How long had Mr. Blumenthal been talking to the defendant when you got within nine feet of him? A Between four and five minutes.

Q Did you hear Mr. Blumenthal say anything to this defendant, or this defendant say anything to Mr. Blumenthal, and if so, what was the conversation? A I did.

Q Tell us just exactly what the defendant said and what

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you heard the defendant say to Blumenthal or what Blumenthal said to him? A He said in Jewish to Mr. Blumenthal --

Q Who said? A The defendant sitting here.

Q Yes? A "Ich will Finf hundred dollars."

Q Which being translated means what? A "I want five hundred dollars."

Q What did Blumenthal say to him? A "You can go to hell."

Q What did the defendant say to Blumenthal? A "I will get your head before long."

Q What did the defendant then do? A He jumped on his wagon and drove away.

Q Was that the entire conversation -- question withdrawn.

Q Did the defendant only speak in Yiddish or Hebrew?

A One part was in Hebrew. One question was in Hebrew, the first one.

Q Yes? A And the second one was in English.

Q That is to say, what were the words that were in English? A "I will get your head before long."

Q What did you do, did you still have the horse at that time? A Yes, sir.

Q Then what did you do with the horse? A I put him in the stable.

Q Had you ever seen this defendant before that? A No, sir.

Q Do you know him at all? A No, sir.

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Q And the occasion of the 9th of December was the first time you had ever seen him? A Yes, sir.

Q Do you know where Mr. Blumenthal lived on the 9th of December? A I did.

Q Do you know where he lived on the 10th of December, 1911? A Yes, sir.

Q Do you know where he lived on the 12th of December, 1911? A Yes, sir.

Q Where on those three dates? A At 202 Henry street.

Q Were you in Mr. Blumenthal's house on the 12th of December, 1911? A Early in the morning, yes, sir.

Q What hour of the morning were you there? A About five minutes past five.

Q Five after five? A Yes, sir.

Q Had you been in his house on the 10th of December, 1911? A No, sir.

Q Had you been there on the 9th of December, 1911? A No, sir.

Q What was the condition of the house on the 11th of December, 1911, at five o'clock in the morning?

MR. ROSENBERG: Do not answer until the Court rules.

I object as incompetent, immaterial and irrelevant. Also as not binding upon the defendant and not within the issues raised by the pleading, and not within the charge.

MR. PRESS: Question withdrawn.

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MR. ROSENBERG: Now, I ask the Court to direct the jury that they must not infer anything from the question which the District Attorney puts.

THE COURT: Now, do you think it will have more strength if I say it every time you ask me? I have said it once. If the thing is withdrawn, no inference can be taken from it; if the question is asked and not answered no inference can be taken from the question.

MR. ROSENBERG: Under the law, I am bound --

THE COURT: I do not know any such fool law as that.

MR. ROSENBERG: I except to your Honor's remark.

THE COURT: The remark was for you, not for the jury.

MR. ROSENBERG: I except to your Honor's last statement.

THE COURT: If you wish, I withdraw the remark. Is there anything else?

MR. ROSENBERG: No, sir.

THE COURT: Now, strike out the entire colloquy and the jury will not pay any attention now or any time to anything that is withdrawn from the case.

MR. ROSENBERG: I object to it being stricken from the record. I insist it ^{remain as} a matter of record.

MR. PRESS: That is all.

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CROSS-EXAMINATION BY MR. ROSENBERG:

Q Now, Wilson, did you ever have any trouble with Blumenthal ~~in~~ which resulted in Blumenthal having you arrested for stealing? A Do I have to answer that question?

MR. PRESS: I object, your Honor.

THE COURT: I sustain the objection.

MR. ROSENBERG: To which the defendant excepts.

Q Did Blumenthal cause your arrest, Blumenthal, the complainant, cause your arrest for stealing money from him?

MR. PRESS: I object.

Objection sustained. Exception.

Q Did Blumenthal thereafter cause the complaint to be withdrawn against you, at your request?

MR. PRESS: I object.

Objection sustained. Exception.

Q Did you steal any money from Blumenthal while you were in his employ?

MR. PRESS: Objected to.

THE COURT: You cannot go into the matter of arrest at all.

MR. ROSENBERG: I am asking him whether or not he stole some money from Blumenthal.

THE COURT: If that is your question he may answer that. I have sustained no objection to that question.

Q (question repeated). A Yes, sir.

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Q When was that? A During the month of December, 1910.

Q 1910, is that correct? A Yes, sir.

Q And how long were you in jail because of that arrest?

MR. PRESS: Objected to.

Objection sustained. Exception.

Q How much did you steal from Blumenthal? A Sixty dollars.

Q How much? A Sixty dollars.

Q At one time? A Yes, sir.

Q In cash or by checks? A In cash.

Q And you then falsified the books which you were then keeping for him, is that right? A I did not.

Q You did not mark it up in the book, did you? A No.

THE COURT: Is there any good in going into this? He admits he stole sixty dollars.

Q That was in December, 1910, is that correct? A Yes, sir, that's correct.

Q When did you go back into the employ of Blumenthal?

A In January, 1911.

Q Where were you between December, 1910, and January, 1911?

MR. PRESS: I object to that. How is that material where he was?

THE COURT: Objection sustained. I think that in-

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eident is closed.

MR. ROSENBERG: Exception.

Q And from January, 1910, until January, 1912, you continued to be employed by Blumenthal, is that correct? From January, 1911, until January, 1912, you continued to be employed by ~~Blumenthal~~, Louis Blumenthal, is that correct?

A Yes, sir, at his place of business.

Q Now, you said, you told this jury that you were within nine feet of Blumenthal when you heard the demand for this five hundred dollars made, in Yiddish, is that correct? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q Do you remember testifying in the Police Court, in the Magistrate's Court on December 13, 1911? A I remember testifying, yes, sir.

Q Will you keep your voice up? A I have a very bad cold, if you will excuse me, I will do the best I can.

Q All right. Was Mr. Blumenthal talking with the defendant for any length of time while you were at Blumenthal's shop, on the opposite side of the street? A Yes, sir.

Q That is to say, you were at Blumenthal's shop? A Yes, sir.

Q Holding your horse, is that correct? A I was coming out from the shop with the horse.

Q Coming out from the shop with the horse? A That had

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just been finished being shod.

Q Leading a horse? A Yes.

Q Did you notice Blumenthal and the defendant on the opposite side of the street? A Yes, sir.

Q How far distant was Blumenthal and the defendant when you noticed them? A Well, at a rough guess about forty feet. What do you mean, from me?

Q Yes, you? A About forty feet.

Q Didn't you tell the Court that it was from fifty to sixty feet? A I have never measured it. I am just giving a guess, that is all.

Q I ask you didn't you estimate the distance at about fifty or sixty feet? I ask you whether you said that in the Police Court? A I might have said it, I don't remember.

Q Well, that examination was on December 13th, 1911, isn't that right? You will admit that that was the date? A Yes.

Q And that was two days after you saw Blumenthal and the defendant together, is that right? A No, sir.

Q Well, how many days was it after? A From the 9th to the 13th is a little more than three days.

Q Well, then, four days, is that it? A Yes.

Q Well, the matter was fresher in your mind then than it is now, isn't that right? A Certainly.

Q It was clearer? A Yes, sir.

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Q So if you said it was about fifty feet then, you were more likely to be right than you are now, is that right?

A Well, now exactly, because I have never measured, and just giving a guess at the distance.

Q Well, it was across the street? A Yes.

Q You are sure of that? A Yes.

Q And the street, from sidewalk to sidewalk, or from curb to curb, was at least fifty feet, is that right? A I won't answer that question, because I won't say, because I don't know exactly.

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Q Give the jury some idea? A I would say about forty feet. I will give an estimate at that rate.

Q Was it about half a block? A It is not exactly half a block.

Q Well, is it near half a block? A Well, you can't estimate that as a half a block. It is this way, by the shop, the shop is on Rutgers Slip, if any if you know that, that slip is divided by a small park, and on this side of the park the wagon was standing and on the other side of the park is the shop.

Q And that is at least 40 or 50 feet? A Yes, at least.

Q Now, didn't you hear loud talking between Blumenthal and the defendant while you were holding your horse on the opposite side of the street? A While I was holding my horse on the opposite side of the street?

Q Yes. A I was not holding any horse on the opposite side of the street.

Q Well, while you were on the opposite side of the street at Blumenthal's shop, didn't you hear loud talking between Blumenthal and the defendant? A I did.

Q And that continued for how long? A Between four and five minutes.

Q Are you sure of that? A Yes, sir.

Q And was that talk in English or Yiddish? A I was not close enough to understand what it was.

Q But you know they were talking? A I could see by

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the gesticulations of their hands and by the movement of their mouths that they were talking.

Q Didn't you also hear the noise? A The noise I heard, certainly.

Q You knew they were talking? A Yes, sir.

Q And it was loud enough for you to hear across the street? A Yes, sir.

Q Are you able to tell the jury what was said during that four minutes' talk, loud talking while you were crossing the street? A I cannot, no, sir.

Q Can you tell the jury anything that was said? A Outside of what I have answered already.

Q Can't you tell the jury anything that was said during those four minutes of loud talking? A No, sir.

Q Was it in English or Yiddish? A That I can't say.

Q Well, the defendant and Blumenthal were talking loudly as you say, and didn't you take your horse and let it run up what they call the run of the stable? A Yes, sir.

Q How far was this run in the stable from Blumenthal's blacksmith shop? A It is just exactly by the shop. The shop stands back from the curb or sidewalk a little bit, and the stable is next to it and there is a run goes up. I had to pass, there was two or three horses standing by, because on Saturday we are pretty busy, and I had to pass by, and I went over and got close to them and what I have just testified to, those are

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the sentence I have heard while I was there.

Q But you are sure you heard in Yiddish a demand made for \$500? A I testified to that already.

Q What were those words "Ich will Finf hundred dollars".

Q Translated meaning "I want five hundred dollars"?

A Yes, sir.

Q And you don't know what preceded that talk between them?

A No, I don't.

Q Did not Blumenthal then and there refuse to give \$500, yes or no? A I don't know what he refused. I will use his words, if you want them that way.

Q I ask you, did not Blumenthal refuse to give him any money? A According to his words, yes, sir.

Q Did not Blumenthal say he would not give him any money?

A He didn't use that language.

Q Didn't he say that? A No, sir.

Q You are sure of that? A Yes.

Q At the time you say this demand was made, the defendant had a horse and wagon, is that correct? A Yes, sir.

Q I show you a photograph and I ask you whether this is the horse and wagon, a photograph of the horse and wagon which you then saw on that occasion? A I won't swear to that.

Q Well, can you describe the horse and wagon you saw?

A A wagon similar to that. It was a bay horse with a top wagon similar to that.

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MR. ROSENBERG: I ask to have that marked for identification.

(Marked Defendant's Exhibit A for Identification.)

Q Did you see any name on the wagon? A No.

Q You won't say there was not a name on it? A I won't say that.

Q You know it was a bay horse? A Yes.

Q A bay horse as shown by this Exhibit A for Identification? A I don't know. I can't say by that picture.

Q And the wagon was a covered wagon? A Yes.

Q Covered with canvas? A Yes.

Q A canvas top? A Yes.

Q Something similar to the picture, this exhibit? A Something similar to that, yes, sir.

Q Was the wagon standing at the curb on the opposite side of the street? A Yes, sir.

Q Sure of that? A Yes, sir.

Q Was the defendant on his wagon when he asked, as you claim in Yiddish, for the \$500? A He was not.

Q Where was he? A Standing on the street.

Q In the street? A Yes, sir.

Q That is in the street nearest to where you were, is that correct, nearest to the side where you were? A Explain to me what you mean by that.

Q Was he on the street, in the middle of the street?

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A Not exactly in the middle, closer to the curbstone, on the other side of the street than he was to me.

Q Was he close to his own wagon? A Yes, sir.

Q He was not on the side nearest to the sidewalk, the other side of the street, was he? A No, sir, he was nearest the left hand of the street going towards the river. His wagon was standing on the right hand side and he was on this side (indicating).

Q That is, on which side, left or right? A Left. His wagon was standing her (indicating), here is the park here by Rutgers Slip. I don't know if you have been there. If I am not mistaken his wagon was standing here, and on this side of this, from that wagon, a short distance, he was standing.

Q How far from the wagon was he standing? A Not further than from here to this first juror.

Q About how many feet would you say that is, about five feet? A Well, five feet, yes, I suppose.

Q It was done in broad daylight, wasn't it? A Yes.

Q And there were a number of people around there at the time, weren't there? A Passing by, certainly.

Q Yes, a number of people passing by? A Passing by, but not on that side of the street, because there is no sidewalk on that side of the street. There is only a small, little bit of sidewalk. The park is fenced up by a railing and there is a sidewalk about that side, most of the people use the

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other side to pass by.

Q What street crosses there, Water street or Front street? A Between Water and Cherry this happened. Cherry is one side and Water is the other side.

Q Cherry is to the north and Water to the south? A Cherry is to the west and Water to the east, according to my figure.

Q I think you are right. Yes. Now, Rutgers Slip runs north and south, is that right? A Rutgers Slip runs north and south, yes, sir.

Q And Cherry runs east and west? A Yes.

Q And so does Water, runs east and west, they cross?
A No, you are wrong. If I had to explain this question in this way, here is the East River running here (illustrating); the next street to that is South street, the next is Water street, the next street is Cherry street, Rutgers street comes through then, going down from Canal street to the East River. Now, you can call that north and south or east and west, or whatever you want.

Q Which is it, north and south or east and west, Rutgers Slip? A I wouldn't be able to answer that question. I can't tell you.

Q At any rate, Cherry and Water street cross Rutgers Slip, is that correct? A Yes, they do.

Q Now, there were a number of people in the vicinity?

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A Passing by at that time, certainly.

Q How many people do you estimate were passing by at the time? A I wouldn't say, I couldn't say.

Q Can you give the jury some idea? A People walking on the sidewalk. I couldn't exactly say how many.

Q Can you give the jury some idea how many persons passed by during the four minutes when this loud talking between Blumenthal and the defendant was going on? A There might have been ten or fifteen. I couldn't say exactly about that.

Q Weren't there people driving horses and wagons in the highway during that time? A I didn't notice.

Q You won't say there were not? A I will not.

Q Is that a pretty busy street on Saturday at noon?
A Not on Saturday, no, sir.

Q You said your place was busy on Saturday? A On account of its being a Yiddish holiday, and the horses staying in the stable, this is a Yiddish shop, and we have a chance to shoe them on Saturday.

Q How many people were in Blumenthal's shop at the time?
A Seven men outside of myself.

Q And can you give us the names of those men? A I can't exactly give you their full names. I can give you the name of most every one of them.

Q During the four minutes you heard a loud discussion, you were on the sidewalk on the opposite side of the street?

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A I was not on the sidewalk. I was in the shop during the beginning of the conversation.

Q Then during the beginning of the discussion, which was loud enough for you to hear across the street, you were in the shop? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q And how long were you in the shop while the discussion was going on across the street? A Just as I said, between four and five minutes, and this horse had been finished, we were finished shoeing the horse and it is my business to take him in the stable.

Q How far were you in the shop while this loud talking was going on across the street? A Sometimes I might be in the shop and sometimes I might be--

Q (Interrupting:) How far from the end of the shop, from the entrance? A Maybe 30 feet.

Q During these four minutes you have described this discussion was going on, did you see a young man named Cohen in the shop? A Yes, sir.

Q Where was he during that time? A At what time?

Q During the four minutes of the loud discussion across the street? A He was not there.

Q He was not where? A He came just almost as the conversation was breaking up, he brought down Mr Blumenthal's dinner to him from his house.

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Q That is, he had not been to the shop? A Yes, he had been in the shop and left his dinner in the office.

Q He got there just as the conversation was breaking up?

A Just about breaking up.

Q Is that right? A Yes.

Q And when the conversation was breaking up he was in the shop delivering Blumenthal's dinner? A He was not.

Q Did you talk with Cohen about this case? A In what way?

Q In any way? A He has asked me many a time when we were going to be called here for the jury or what we were to be called for.

Q Haven't you seen him in the District Attorney's office? A Yes, sir.

Q And haven't you talked to him about what you were going to say? A No, not with him, but we talked to the District Attorney.

Q Well, he was there while you talked to the District Attorney? A Yes, he was.

Q He heard what you told the District Attorney you were going to say? A Yes.

Q And you heard what he said he was going to tell the District Attorney? A Yes.

Q How many times were you in the District Attorney's office, did you have a meeting there? A Only once.

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Q Now, when you saw that the defendant--did the defendant at any time get on his wagon and drive off? A After he had finished speaking, yes, sir.

Q You saw that, didn't you? A Yes, sir.

Q And did he say anything to Blumenthal after he got on his wagon and was driving off? A No, sir.

Q You are sure of that? A Yes, sir.

Q Did he say anything to Blumenthal at any time when he was on his wagon? A Not that I heard.

Q You are sure of that? A Yes, sir.

Q When the defendant drove off did he drive fast or slow? A Well, he naturally had to turn his wagon around and he started on a walk and then on a trot.

Q And he walked the same as any other horse would go away? A Yes.

Q And you didn't notice the name on the wagon? A I didn't, no, sir. I didn't pay any attention.

Q Did Mr Blumenthal speak to you at that time? A No.

Q Sure of that? A Certainly.

Q Did he say anything to you about that demand which you say had been made that that time? A Not at that time, no, sir.

Q I am talking now of December 9th, 1911? A I have answered that question.

Q You understand it? A Yes, sir.

Q Did the defendant say while he was on his wagon and

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about to drive off, "I will blow your head off"? A I didn't hear him say it.

Q You did not hear it? A Not while he was on his wagon.

Q You claim you heard the defendant say "I will get your head yet"? A No, he said "I will get your head before long".

Q "I will get your head before long"? A Yes, sir.

Q Now, you are sure those are the exact words he used?

A The exact words.

Q You are sure of that? A Yes, sir.

Q And those words were spoken in English? A English, yes, sir.

Q And the other words you claim were spoken were spoken in Yiddish? A What question?

Q This defendant's? A The first words I heard in Yiddish, Mr Blumenthal's answer was in English, and his retort was in English.

Q Didn't you see Mr Blumenthal on the witness stand on December 13, 1911, in the Magistrate's Court? A I did.

Q Didn't you hear him say that he could not talk English and he had to be spoken to through an interpreter? A I did not.

Q Didn't you, or were you in court when he was examined?

A I was excluded from the court room by your orders.

Q Were you excluded until after Blumenthal had partly

told his story? A He was talking in broken English.

Q Wasn't there an interpreter examining and talking to Blumenthal? A As soon as the interpreter approached him I was excluded from the court room by your orders.

Q By the Judge's order? A Well, by your request, anyway.

Q But it was while Blumenthal was on the witness stand, wasn't it? A Yes,.

Q And it was while he was being interrogated through an interpreter? A Yes, sir.

Q And didn't you before that, before the interpreter got there, didn't you hear Blumenthal say that he could not talk English and he had to speak through an interpreter? A I did not.

Q But you knew that he did speak through an interpreter? A I do.

Q At that hearing? A Partly in English and partly through and interpreter.

Q Well, now, was Blumenthal able to talk English? A Not thoroughly, no, sir.

Q Not as good as you can? A No, sir.

Q How long a time elapsed between, as you claim, the defendant asked for \$500 and the defendant said he would get his head before long? A Not over a second's time, a minute's time, you might as well say. Those are the sentences I heard, and

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then he mounted his wagon and went away.

Q Well, was the statement "I will get your head before long" spoken while the defendant was on the street? A He was just about to mount his wagon. If I can illustrate to you, I will stand up (illustrating). Here is the side of his wagon, he was just putting his foot on the step when he turned around and made that remark.

Q While he was stepping on the wagon? A If you know what the wagon is, the step attached to the shaft for a foothold to get up on the seat.

Q And while he was doing that his back was turned?

A His back was turned, and he turned around to make this remark.

Q While he was in the act of getting on the wagon he turned around to make that remark? A His head was facing me, yes, sir.

Q How far away was Blumenthal at that time? A Blumenthal was closer to him than I was.

Q How far was Blumenthal from him? A Couldn't be more than four feet.

Q How far were you at that time? A I was away from Blumenthal, I just can't say, but about nine feet or so. I have given a guess.

Q Are you sure that the defendant was in full view at the time that you say you heard a remark made? A He certainly was. His face was in full view.

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Q Did you see any one else that you knew outside of Blumenthal while the defendant made that remark and while Blumenthal made his answer? A Yes, sir.

Q You did? A Yes.

Q Sure of that? A Yes, sir.

Q Who else did you see there, who else did you see there while these remarks were being made? A The men in the shop and everything else around there.

Q Men were over in the shop, were they? A Yes.

Q Did you see any person whom you knew at the time ~~that~~ you say the defendant made the demand for \$500, and Blumenthal replied "Go to hell", and the defendant said "I will get your head before long"? A I did, certainly.

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Q Who else? A I will have to mention so many names.
Will I have to mention the names?

Q Whom did you see around Blumenthal? A How close?

Q Whom did you see around Blumenthal at that time while these alleged demands were being made, and alleged replies given?

A You will have to -- I will ask you again, how close do you mean to Blumenthal?

Q How close to you? A There was right near me a man by the name of Cohen.

Q What is Cohen's name? A Sam, if I am not mistaken.

Q And Sam Cohen, whom you say listened to what you were telling the District Attorney what you intended to swear to?

A Yes.

Q And you know his name is Sam, don't you? A Yes.

Q You are sure you saw Cohen? A I certainly did, yes.

Q Are you sure of that? A Yes, sir.

Q Do you remember me asking you this question, and you making this answer in the Police Court on December 13th, 1911:

"Q Were you with Mr. Cohen at the time? A No, sir. Q Where was Cohen at that time? A I don't know myself." Were those questions put to you at the time in the Police Court and did you swear to those answers? A I can't say.

Q Well, wasn't the matter clearer and fresher in your mind on December 13th than it is to-day? A Why, certainly.

Q So that if you said on December 13th you did not see

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Cohen at the time -- A (Interrupting) I don't think I made that remark that I did not see Cohen at the time. If I am not mistaken, it comes to my mind, you asked me where Cohen went after this happened and I said I didn't know where he went.

Q I ask you were these questions put to you and did you make these answers: "Q. Were you with Cohen at the time?

A No, sir. Q. Where was Cohen at the time? A I don't know myself." Now, I ask you, were these questions put to you and did you make those answers? A I don't remember.

Q Now, I ask you was this question put to you and did you make this answer: "Q. You did not see him? A I saw him around there, but who, where he was, I couldn't say." Did you tell the Court on December 13th that? A That I can't answer myself, I don't remember.

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

Q But the Cohen whom I ^{was} referring to in that question refers to the same Cohen, Sam Cohen whom you have referred to in your testimony to-day; is that right? A Yes, sir.

Q Does not this refresh your recollection as to whether or not Cohen was there or in your sight, this question and answer:

"Q. While the defendant was engaged in conversation with Blumenthal -- A Yes, sir. Q. Was Blumenthal alone, he was

alone with him, are you sure of that? A Yes, sir." Now, does that refresh your recollection as to whether or not you did not state in the Police Court that Cohen, that you did not know

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where Cohen was at the time? A No, sir, it does not. I could state now that at the time this man was talking with Blumenthal alone, there was nobody else talking with him.

Q And you did not see Cohen at the time the defendant was talking to Blumenthal? A I did.

Q You did? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Was Cohen in front of you or behind you at the time?

A Behind me a short distance.

Q How much was he behind you? A I wouldn't say exactly. May be three or four feet. I know he had brought the dinner down and put it in the office just as I was bringing out the horse to send it up the run, he came up behind me. I suppose he could have been away from me four feet. I noticed that he was behind.

Q You noticed him on the opposite side of the street behind you? A Yes.

Q And that is the last you saw of him? A He walked across the street behind me.

Q But you didn't see him walking behind you? A I noticed him behind me, certainly.

Q How far behind you, did you notice? A I am just after saying three or four feet.

Q When you noticed him behind you, were you on Blumenthal's shop side of the street? A I just had started across the

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street already.

Q Did you talk to Cohen on that day of what you heard said between Blumenthal and the defendant? A No, sir.

Q Did you make any memorandum of what you claim the defendant said to Blumenthal and what Blumenthal said to the defendant? A Only what I got in my head.

Q Only in your head, is that right? A Yes, sir.

Q Did Blumenthal said anything to you on that day, December 9th, about the talk that he had with the defendant? A No, sir.

Q Sure of that? A Yes, sir.

Q You know Blumenthal's brothers, don't you? A I do.

Q Are you working now? A Yes, sir.

Q For whom? A For one of his brothers in connection with his wife.

Q For one of Blumenthal's brothers? A In connection with Mr. Louis Blumenthal's wife.

Q Which Blumenthal is conducting the business? A He is known as Benny Blumenthal.

Q That is all.

RE-DIRECT EXAMINATION BY MR. PRESS:

Q You gave testimony in the Police Court on the 13th of December, 1911, before you saw the District Attorney; is that true? A Yes, sir.

Q And you gave this testimony after Mr. Blumenthal, and

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after you had been excluded from the room; is that true?

A Yes, sir.

Q And you told your story in full in the Police Court, didn't you? A Yes, sir, what I have been asked I told.

Q Who was the District Attorney with whom you had the conversation, A I can't say.

Q Did you ever see me in the District Attorney's office?

A At what District Attorney's office?

Q It was in this building? A-Yes, sir.

Q Did you talk to me about this case? A Yes, sir.

Q Did I suggest anything to you to say? A No, sir.

Q The testimony that you gave in the Police Court, to the best of your recollection, is the same testimony that you give here to-day? A yes, sir.

MR. ROSENBERG: One moment. I ask that that answer be stricken out, so that I can make an objection. I object to the witness being permitted to characterize his own testimony.

THE COURT: There is no question pending to which the objection is practically applicable?

MR. PRESS: That is all.

BY MR. PRESS:

Q A juror wishes to know what religion are you? A I am a christian.

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BY THE COURT:

Q What does that mean? A I am a Roman Catholic.

BY THE 6TH JUROR:

Q Did you ever learn the Jewish language or Jewish? A I have not thoroughly learned it, but I have been working in a Jewish shop for over six years, and during that time I have picked it up fairly well, not thoroughly, but well enough to get along.

RE-CROSS EXAMINATION BY MR. ROSENBERG:

Q You were asked by the District Attorney whether or not you had given your testimony in the Police Court without seeing the District Attorney. As a matter of fact, didn't you talk to Mr. Lockhart, the Assistant District Attorney in charge of the Magistrate's Court, before you took the witness stand?

A Yes, sir, I did. Now, that recalls it to my mind, but I didn't know who he was at the time. There was some gentleman called me in his office and asked me what I heard.

Q Was Cohen with you at the time? A Yes.

Q Cohen was with you at the same time? A Yes, sir.

Q He told his story at the same time? A Yes, sir, just a few questions were asked, didn't take that much time.

Q In addition to seeing that District Attorney, you have seen Mr. Press in connection with the case being prepared for trial, have you not? A Yes, sir.

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Q And Cohen was there at the same time? A Yes.

Q Who else was up there? A Detective Murphy.

Q He was there at the same time? A Yes, sir.

S A M U E L C O H E N, called and duly sworn as a witness
on behalf of the People, testified through Official Inter-
preter Rosenthal, as follows:

(Residence 113 Broome street).

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business? A Tailor, cutter.

Q A shirt cutter or cloak cutter? A Cloak cutter.

Q Are you in any way related to Louis Blumenthal? A No.

Q Did you know Louis Blumenthal? A Yes, sir, certainly.

Q How long had you known him? A About four years.

Q Four years? A Four or five years, something like it.

Q Did you live at his house? A Never.

Q Did you visit at his house? A Yes, sir.

Q Did you ever work for him? A No, sir.

Q Just simply an acquaintance or a friend? A Just a good
friend, that's all.

Q Now, do you remember the 9th day of December, 1911?

A Yes, sir.

Q On that day were you at Mr. Blumenthal's place of busi-
ness? A Yes, sir.

Q Where is that place? A 65 Rutgers Slip.

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Q At what hour of the day did you go there? A About a quarter past one.

Q Why did you go there? A Well, I brought his dinner to his shop on Saturday.

Q You brought his dinner to the shop? A Yes, sir.

Q Where did you get his dinner? A In his house.

Q Who gave you his dinner? A His wife.

Q And you took it to the shop, you say? A Yes, sir.

Q At Rutgers Street? A Yes, sir.

Q And you arrived there at about what time? A At about quarter past one.

Q What did you do with the dinner when you arrived at his shop? A I put his dinner down in his office, and I went over to him and I told him "Go and have your dinner."

Q In his office? A I put his dinner down in his office and I told him, I walked over to him to tell him.

Q Where was he at the time you put his dinner in his office? A Just across the street.

Q Was he alone? A He was talking with this fellow.

Q He was talking with this defendant here? A Yes, sir.

Q And when you put the dinner down in the store, you say you walked across? A To Mr. Blumenthal.

Q What did you say to Mr. Blumenthal?

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

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Q Well, did you say anything to Mr. Blumenthal in the presence and hearing of this defendant? A yes, sir, I did say it.

Q What did you say to him?

MR. ROSENBERG: I object to that.

A I said "Mr. Blumenthal, go and have your dinner, your dinner is getting cold."

Q Now, did you hear Mr. Blumenthal say anything to this defendant, or this defendant say anything to Mr. Blumenthal?

A I heard this defendant say to Mr. Blumenthal, he said in Jewish "Ich will haben fimf hundert dollars." I want to have five hundred dollars."

Q That is the English of it? A Yes, sir.

Q And what did Mr. Blumenthal say to him? A Mr. Blumenthal said to him "You could go to hell."

Q What did the defendant say to him? A "I will get your head before long."

BY MR. ROSENBERG:

Q What? A "I will get your head before long." Or "I will blow your head off."

BY MR. PRESS:

Q "I will get your head before long" or "I will blow your head off"? A Yes, sir.

Q After that, what did the defendant do? A He jumped on his wagon, he turned around his wagon and he ride out of Rutgers

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Street.

Q You say you did not live with Mr. Blumenthal? A No, sir.

Q Were you at his house on the 9th when you got his dinner from his wife? A No.

Q Where did you get the dinner? A In the shop.

Q I mean that you took to Blumenthal? A I left it in the shop.

Q Where did you get it? A From his house.

Q Then, you were in his house at the time you got the dinner? A Yes, in his house.

Q (In English) What kind of house is that, tenement house or what?

MR. ROSENBERG: I object.

Objection overruled. Exception.

A (Through the interpreter) A tenement house, four tenants on a floor.

Q What floor did Mr. Blumenthal live on? A (In English) The fifth floor.

Q Is that the top floor? A No, there is a floor more.

Q You say it is a four story tenement house? A No, it is five, but with a stoop it is six.

Q How many flights of stairs had you to go up to get in Mr. Blumenthal's apartments? A Four.

Q Did he have the whole floor or only one side? A He had one side only.

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Q Two families on a floor? A No, four families on a floor. They lived in the front, there were two families in the front.

Q Were you in that house and in Mr. Blumenthal's apartments later on the 9th of December, 1911, on the same day?

A Yes, sir, I have been up on one day --

MR. ROSENBERG (Interposing): Just answer questions and do not volunteer anything.

BY MR. PRESS:

Q Yes, do not volunteer anything. What hour of the day was it on the 9th of December, you were in Mr. Blumenthal's house, and got his dinner? A About 12 o'clock.

Q When were you back there again? A I was back there Monday.

Q You were not there on Sunday, were you? A No, I was not there on Sunday.

CROSS EXAMINATION BY MR. ROSENBERG:

Q What is your business? A Cutter, cloak cutter.

Q What was your business on December 9th, 1911? A Well, I was not working that day.

Q I ask you what was your business on that day? A The same thing, cutter.

Q When were you working for on December 8th, 1911? A I was not working that time at all. I was out of work.

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Q When were you last working before December 9th, 1911?

A My place was in 57 & 61 West Houston street.

Q Whom did you work for there? A S. Miller.

Q S. Miller? A No, George Miller.

Q What is his business? A Cloak manufacturer.

Q When were you working for him, in December 1911?

A No, I was not working in December.

Q You were not working at all the whole month of December?

A No.

Q When were you working for Miller? A November.

Q November of 1911? A Yes.

Q Is that right? A Yes.

Q And then you left Miller's employ, is that right? A Yes.

Q When next did you work for anybody? A I worked on the 15th of January.

Q Until the 15th of January you were idle? A I was idle, yes.

Q Where did you go to work on the 15th of January? A The same place.

Q Miller? A Yes.

Q And you are working there now? A No, I ain't working now there.

Q How long did you stay with Miller? A Two weeks.

Q While you worked for Miller, did you work on Saturday?

A Yes, half a day.

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Q That is half a day, you stop work at 12 o'clock on Saturday? A Yes.

Q And where did you live in December, 1911? A 113 Broome street. I lived there for two years.

Q And whom did you live with there? A Glick (spelling) G-l-i-c-k.

Q Mr. Glick? A Yes.

Q Have you got any parents here? A No, sir.

Q Are you married? A No, sir.

THE COURT: Is it necessary to go further into the life history of this individual witness? I think you have perhaps enough to let the jury know what manner of man is testifying.

MR. ROSENBERG: Very well, your Honor.

Q How far is 113 Broome street from Henry street where Mr. Blumenthal lived? A Well, I don't know exactly how far it is.

Q well, can't you give the jury some idea? A Well, I don't know the streets.

Q Where is 113 Broome street near? A Near Willett and Pitt, right in the middle of the block.

Q Where was Mr. Blumenthal? A On the corner of Henry and Clinton street.

Q Can't you tell the jury how far it is? A No, I didn't measure it.

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Q Is it five blocks or ten blocks? A From where?

Q From Broome and Henry street? A Well, it is about eight or nine blocks, something like that.

Q Do you know whether, or did Mr. Blumenthal have a servant in his home on December 9th? A No, sir.

Q Sure of that? A Yes, sir.

Q What is that? A He never had a servant.

Q What? A As far as I know, he never had a servant.

Q When was the arrangement made for you to go to Mr.

Blumenthal's house on Saturday, December 9th, for the purpose of bringing over his dinner? A Well, I didn't make any arrangements at all. I always come up there on Saturday to visit the family.

Q Yes. A That's all, and his wife asked me a favor I should bring his dinner over to him, because he is too busy on Saturday, and I brought his dinner to his shop.

Q And that was on this December 9th, 1911? A Yes, sir, December 9th, 1911.

Q You said you were a good friend of Mr. Blumenthal's in his lifetime? A Not in his lifetime, since I am in America.

Q How long are you in America? A Five years.

Q You are able to talk and understand English, are you?

A Well, not very much.

Q But you have understood everything that Mr. Press asked

you here to-day, didn't you? A Certainly I did.

Q And you understood everything that I asked you to-day, isn't that right? A Not every word. Some the interpreter told me.

Q Well, everything I have asked you you understood, isn't that right? A Yes.

Q And you heard Mr. Wilson on the witness stand to-day, didn't you? A Well, yes, sir.

Q And you heard what he said, didn't you, yes or no? A yes, sir, I heard what he said.

Q So that you are able to have your examination conducted in English? A No, not very well.

Q You are not? A No.

Q When you were in the Police Court on December 13, 1911, didn't you tell the Judge that you could not understand any English, and you wanted an interpreter? A Well, I want now an interpreter.

Q Did you then say that? A Well, I could speak a little English, not very much,

did

Q Will you please answer the question, you on December 13th when you were called as a witness in the Police Court tell the Judge that you couldn't speak English, and you wanted to give your testimony through a Yiddish interpreter? A Yes, sir, I did.

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Q Is that correct? A Yes, sir.

Q You werethen sworn through a Hebrew interpreter?

A Yes, sir.

Q And your whole examination, direct and cross examination was conducted through a Hebrew interpreter? A Yes, sir.

Q Is that right? A Yes.

Q Now, didn't you claim on that day that you couldn't understand English?

THE COURT: Well, I would not bother then with that.

THE WITNESS: I claim here I couldn't speak it.

Q Is the matter about which you have testified, concerning the conversation which you claim you overheard between Blumenthal and the defendant clearer in your mind to-day or was it clear in your mind on December 13, 1911? A Well, this I don't understand very well.

A (Question repeated through the interpreter) And the same thing to-day.

Q Now, have you spoken to Wilson about what you were going to tell on the stand ~~xxx~~ to-day? A (In English) No, sir.

Q Sure of that? A Yes.

Q Did you ever hear Wilson tell anyone what he was going to say when he got on the stand to-day? A No, sir..

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Q Sure of that? A Yes, sir.

Q Did you ever talk to anybody about what you intended to say on the stand here to-day? A No, sir.

Q Did you ever talk to anyone what you were going to say on the stand here to-day, and Wilson was listening to it?

A No, sir.

Q You are sure of that? A Yes, sir.

Q Were you ever with Wilson in this building telling any one what you knew about this case? A No, sir.

Q You are sure of that? A Yes, sir.

Q You understand that question, don't you, do you understand it? A Yes, sir.

Q Now, do you remember the day of the 13th when the case was on in the police court? A Yes, sir, I do remember it.

Q Did you ever tell anyone what you were going to say before you got on the witness stand? A No, sir.

Q Sure of that? A Yes, sir.

Q Did anyone ask you what you knew about the case, before you went on the witness stand? A No, sir.

Q Sure of that? A Yes, sir.

Q Did you go with Mr. Wilson to any one and tell that person in the Magistrate's Court on December 13th what you were going to say, or what you knew about the case? A Well

I ---

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Q (Interrupting) Did you go anywhere ---

MR. PRESS: Let him answer.

A No.

Q You are sure of that? A Yes, sir.

Q Were you with Wilson at any time at which time Wilson told what he knew about the case? A No, sir.

Q Were you with Wilson at any time when you told in the presence of Wilson what you knew about the case? A No, sir.

Q Were you with Wilson at any time with the policeman, Mr. Murphy? A No, sir.

Q You are sure of that? A Yes.

Q You know Mr. Murphy, the policeman, don't you?

A Yes, sir.

Q That is Mr. Murphy, the witness in the case? A Well, I saw him in the Magistrate's Court.

Q And you have seen him in this court? A I don't see him now.

Q Didn't you see him yesterday? A Yes, sir.

Q You saw him the day before yesterday? A The day before yesterday, no.

Q Was yesterday the first time you ever saw him?

A Yes, but the day before yesterday I didn't see him at all.

Q Were you ever in this building, in any room of this building with Mr. Wilson and Mr. Murphy telling any one what you knew about the case? A Yes, we were subpoenaed by the

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District Attorney, Mr. Press.

Q Do you remember telling the jury that you had never spoken about the case in the presence of Wilson or Murphy?

A Yes, we spoke about the case before Mr. Press.

Q You did speak? A Yes.

Q Don't you know what I was asking you before?

A Well, I didn't understand very well.

Q You did not understand it? A No.

Q Didn't I ask you whether you understood the question?

A No, you did not.

Q Didn't you say yes? A No.

Q Now, I ask you now, did you tell Mr. Press, the Assistant District Attorney, what you are telling on the stand to-day? A Yes, sir, the same thing.

Q And was anyone with you when you were telling him?

A Yes, sir, Mr. Murphy and Mr. Wilson, both were inside.

Q Were in the same room while you were doing your talking? A Yes, sir.

Q Were they listening to you? A I don't know if they were listening or not.

Q They were alongside of you, were they? A This I don't understand.

Q Were they sitting down alongside of you? A Well, they were sitting.

Q What? A I don't know how they were sitting there.

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Q Well, how big a room was it in which Mr. Press was talking with you? A Well, I don't know how big that room was.

Q A small room? A Not very large and not very small, a middle room.

Q Didn't you go down to Mr. Press with Mr. Wilson?

A Yes, sir.

Q Didn't you talk over what you were going to tell Mr. Press? A No, sir.

Q When you got to Mr. Press's room, Mr. Press asked you what you knew about the case? A Yes, sir.

Q And you told him? A I told him.

Q Then Mr. Press asked Wilson what he knew about the case? A Yes.

Q Isn't that right? A Yes.

Q And Mr. Wilson told him, is that right? A Yes.

Q And while Wilson was telling his story to Mr. Press you were listening, isn't that right? A Well, I told what I knew, that's all.

Q Well, were you listening when Wilson told his story?

A Well, I was not listening very, because I couldn't understand very good English.

Q You couldn't understand? A Yes, sir.

Q Then you were listening and you couldn't understand?

A Yes, certainly. I suppose he talks better English than I.

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Q Did Wilson tell his story to Mr. Press first or did you tell your story to Mr. Press first? A He told his story first.

Q And after he got through telling his story you told your story, is that right? A Yes, sir.

Q Now, you have testified here to-day that the defendant said, "I will get your head belong long?" Do you remember that? A Yes, sir.

Q You said that here to-day, didn't you? A Yes, sir.

Q Did you ever hear anyone else say those words exceptong the defendant? A No, sir, certainly I never did.

Q Who else? A I only heard him say that.

Q You only heard the defendant? A Yes, sir.

Q Did you ever hear Wilson use those words? A He used it on the stand.

Q Did you write down those words? A No, sir, because I can't write any English.

Q Did you write it in Yiddish? A Yes, sir, I do write it.

Q Well, did you write those words? A No, sir.

Q Now, do you remember in the police court, did you ever say in the police court that you heard the defendant say "I will get your head belong long"? A Yes, sir, he said "I will blow your head off" too.

Q Did you swear in the police court that you heard the

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defendant say "I will get your head belong long"? A Yes, sir, I did swear it.

Q Did you say that in the police court? A Well, I said "I will blow your head off" and I forgot to say "I will get your head before long".

Q Then you forgot to say in the police court "I will get your head before long"? A Yes.

Q Is that right? A Yes, sir.

Q When did you remember that the defendant said "I will get your head"? A Right when I went off from the stand in the police court.

Q You were asked in the police court, weren't you, what the defendant said at the time, in Yiddish through an interpreter, isn't that right? A Yes, sir.

Q And you answered in Yiddish through an interpreter? A Yes sir.

Q But you say you forgot to say "I will get your head before long"? A Yes, sir.

Q Is that right? A That's right.

Q When did you ever repeat those words from that day until this day on the stand? A No, sir, I don't use that language.

Q You don't use that language? A No, sir.

Q Did you ever tell anybody those words? A No, sir, I never told.

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Q Now, when you first heard -- or rather where was the defendant's wagon at the time you claim the defendant and Blumenthal were talking together? A This question you don't understand.

Q You don't understand that? A No.

Q Now, see whether --- (Question repeated through the interpreter) A Standing across the street, right near the park, where the park is.

Q It was across the street from Blumenthal's shop, is that right? A (In English) Yes, that's right.

Q Now you are sure of that? A Yes, I am sure of it.

Q The wagon was across the street? A Across the street.

Q And the defendant and Blumenthal were across the street, is that right? A Well, I can't say across, maybe they were standing not far from the park, there is a small park.

Q How many feet away is that from Blumenthal's place of business? A I have not measured it.

Q You were examined on that subject in the police court, weren't you? A Yes, sir.

Q And you remember what you said in the police court, don't you? A Certainly, I do.

Q Don't you remember saying in the police court that it was on the ~~exit~~ same side of the street that the shot was on,

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that Blumenthal was standing? A Yes, on the same side, but over here is the park and the wagon standing right there (indicating).

Q Didn't you swear in the police court that Blumenthal and the defendant and the wagon were on the same side of the street as Blumenthal's shop, when the demand for the money was made? A Yes, sir.

Q Was that true? A Yes, sir, it is on the same side. It is the same, it is right by the park, and the park is right alongside Mr. Blumenthal's shop, right on the same side, they call that park -- it is two parks there.

Q You remember we spoke of that in the police court examination, you remember that, don't you? A Yes, sir, I do remember it.

Q When you say that you went over to where Blumenthal was standing, did you go right alongside of Blumenthal?

A This I don't understand.

Q (Question repeated through the interpreter) A Yes, near to Blumenthal, close to Blumenthal.

Q How far did you have to walk in order --- from the blacksmith shop -- Blumenthal's blacksmith shop, until you got to Blumenthal and the defendant, where they were standing?

A (Through the interpreter) Not far, I don't know exactly how far.

Q Can't you give the jury some idea? A (In English) No.

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Q Didn't you say half a block away, didn't you say in the police court? A I said might it is half a block or might it is more than half a block. I don't say exactly half a block.

Q Well, it might have been more than half a block?

A It might have been less. I have not measured it. That's what I said.

Q When you got there that day at a quarterpast one you say it was, is that correct? A Yes, sir.

Q Where did you go? I am talking about Blumenthal's shop, where did you go? A This I don't understand.

Q (Question repeated through the interpreter) Well you went to Blumenthal's shop with some dinner, as you claim, is that right? A (In English) Yes.

Q And went with the dinner pail into Blumenthal's shop is that right? A Yes, sir.

Q You put the dishes in Blumenthal's shop? A Yes.

Q Is that right? A That's right.

Q Well, up to that time, did you notice anything wrong, up to that time that you went into the shop? A (Through the interpreter) I didn't notice anything wrong.

Q Was anyone in Blumenthal's shop at the time? A Mr. Wilson.

Q At the time you brought the dishes into the shop was anybody there? A Yes, Mr. Wilson was in there.

Q Wilson? A Yes.

Q Who else? A The wagon man was inside, the wagon people.

Q (In English) While you were in the shop with Wilson, did you notice anything wrong? A I didn't take no notice on it.

Q Did you hear Blumenthal talking while you were in the shop? A No, I haven't seen Mr. Blumenthal before I went to the shop.

Q I know, but did you hear? A Certainly I heard good and I saw.

Q While you were in Blumenthal's shop did you hear Blumenthal talking? A Not in the shop. Outside when I walked out I heard him talking with the defendant.

Q Was Wilson with you in the shop? A Yes.

Q Did you both go out together? A No, sir, I went out first.

Q You went out first? A Yes?

Q And you walked toward Blumenthal? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q When you got to Blumenthal you found Blumenthal talking to the defendant? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q And was not Blumenthal on the sidewalk when you were talking with him? A No, sir.

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Q Are you sure of that? A Yes, sir.

Q Was Blumenthal on the sidewalk when you say the defendant said in Yiddish "I want \$500"? A No, not far from his wagon.

Q Do you remember this question being put to you and you making this answer in the police court while you were being examined and answering through a Yiddish interpreter: "Q. Where was Blumenthal when the defendant was making that demand?

A On the sidewalk". A There is no sidewalk at all.

Q Didn't you swear to that in the magistrate's court?

A No, sir, the interpreter made a mistake.

Q Who made the mistake? A The interpreter.

Q The interpreter? A Yes, sir.

Q Was this question put to you and did you make that answer in Yiddish through a Yiddish interpreter in the police court: "Q Was he on the same side of the street where the shop is? A Yes, sir, not far from it. Q. Was it on

the same side of the street that this took place between Blumenthal and the defendant? A. Yes, that was on the same side where the shop is." Did you swear to that in the police court?

A Yes, sir, it is on the same side where the shop is, positively. Right here is the shop and right here is the street, and he was standing right here (illustrating.)

Q You know what they call the middle of the street, don't you? A (No answer.)

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Q Do you, yes or no? A Certainly I do.

Q You know what we call the sidewalk? A Yes.

Q And you know what we call the same side of the street?

A Yes.

Q And you know what we call the opposite side of the street? A Yes, sir.

Q Now, was there any talk between Blumenthal and the defendant ---

(Question withdrawn.)

Q Did you hear all of the talk between the defendant and Blumenthal? A Yes, I heard it.

Q Well, you heard it? A Yes, sir.

Q And you have now told the jury everything that Blumenthal said to the defendant and the defendant said to Blumenthal at the time you are talking about, is that correct?

A This I don't understand.

Q (Question repeated through the interpreter) A I said everything what I heard myself.

Q Well, did you hear, if anything was said you would have heard it, wouldn't you? A Yes, I heard him say "I will blow your head off".

Q Now, is that what the defendant said "I will blow your head off"? A Yes, he said twice "I will blow your head off too."

Q You are sure of that? A Yes, sir.

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Q Is that all he said? A (In English) That's all.

Q You understand that question, do you? A Yes.

Q You are sure of that? A Yes, sir.

Q You are sure of that?

MR. PRESS: He has said so.

Q Were you in position to hear everything that was said between Blumenthal and this defendant at the time?

(Repeated through the interpreter) A All I heard was the talk about \$500 and "I will blow your head off", that's all.

Q Well, was anything said before the request for the \$500?

A This I did not hear.

Q Well, you were standing there, weren't you, at the time?

A When I came there I found this man talking already.

Q When was the first time that you heard either the defendant or Blumenthal say anything? A When I got near them I heard this man, the defendant say "I want \$500."

Q How far were you from him at that time? A I was close to him.

Q How many feet were you from Blumenthal when that was said? A Perhaps one foot.

Q One foot, and before that nothing else was said between Blumenthal or the defendant, by Blumenthal or the defendant, is that correct? A Before I heard the talk about \$500 I did not hear what they talked about.

Q Well, were they talking before you got there?

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A (In English) Certainly they were talking.

Q Did you hear what they said? A I did not hear it.

Q Were you unable to hear the talk until you got within one foot of the defendant and Blumenthal?

MR. PRESS: Your Honor, we have thrashed this matter out, we have thrashed it out incessantly. The man has stated that he only heard these words, and that he was within a foot when he heard them.

THE COURT: Then why go over it time after time?

The Court hereupon admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until 2:10 o'clock P. M.

After Recess.

Trial resumed.

SAMUEL COHEN, a witness for the People, resumed the witness stand.

CROSS EXAMINATION CONTINUED BY MR. ROSENBERG:

(Last question repeated by the stenographer.)

MR. ROSENBERG: May I have that question answered?

THE COURT: Very well.

(Question again repeated by stenographer.)

A Yes, sir.

Q Were you able to hear what was said until you got within

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a foot of Blumenthal and the defendant?

MR. PRESS: Objected to.

THE COURT: Mr. Rosenberg, it is just possible that your question is not plain to the witness. Change the form of it.

Q Well, what I want to know is this, are you able to tell the jury anything that was said between Blumenthal and the defendant except the demand for the money and the reply of Blumenthal (Repeated through the interpreter)? A Nothing else.

Q Are you a cousin of Mrs. Blumenthal? A (In English) No.

Q Are you in any way related by blood or marriage to Mrs. Blumenthal or to Mr. Blumenthal? A No, sir.

Q What? A No, sir.

Q Do you come from the same country as Mr. or Mrs. Blumenthal came from? A No, sir.

Q Now, do you know how many times you stated in the Magistrate's court in answer to questions put to you, that the defendant said he would blow your head off or blow Blumenthal's head off, or blow your head off (Repeated through the interpreter)? A I heard it twice.

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Q Now, I am talking of how many times did you say in the Magistrate's Court, when you were on the witness-stand, in answer to questions put by the District Attorney or by the defendant's lawyer, that the defendant said "I will blow your head off?" A I can't remember that.

Q Well, wasn't it more than ten times that you answered that question? A Not even five times.

MR. ROSENBERG. Will you agree with me, Mr. Press, the number of times the minutes show?

MR. PRESS: I will agree to the entire minutes in the Police Court being introduced to show any variance in the testimony, I ask all to go in.

MR. ROSENBERG. All I want, Mr. Press -- well, if you will not do that I will have to ask each question.

Q Weren't you asked in the Police Court this question and did you make this answer, page 24: "Q Do you remember anything that you heard this defendant say? A He said 'I will blow your head off.'" Was that question put to you by the District Attorney and did you make that answer? A (In English): I said that way.

Q Now, I ask you whether this question was put to you by the District Attorney, and did you make this answer, at page 24: "Q After Blumenthal said to him "Go to hell," what did the defendant say? A He said 'I will blow your head off.'" Was that question put to you and did you make that answer? A Yes,

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sir.

Q Well, now did you forget to say that "I will get your head sometime", or did the interpreter make the mistake in both of those instances?

MR. PRESS: I submit the witness has answered and he said he did forget to say that.

MR. ROSENBERG: Then he said the interpreter made a mistake.

MR. PRESS: He did not in relation to that.

THE COURT: Well, you may ask the question.

Q (Question repeated through the interpreter). A No, I myself forgot to say it.

Q Was this question put to you on cross-examination and did you make this answer, page 25 of the cross-examination:

"Q And the statement that 'I will blow your head off' was in Yiddish? A English." Did you say that? A Yes, sir.

Q Was this question put to you on cross-examination and did you make this answer: "Q Blumenthal said, 'You can go to hell', after the defendant said, 'I will blow your head off?' A To be sure of it I can't tell, I can't think just now, but as far as I remember and as I know that for sure is that he, Blumenthal, said to him in English, "Go to hell." The other fellow repeated as I said in English to him."

"Q I will blow your head off? A Yes, that's all, and then I went away, more I don't know." Did you say that

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in the Police Court? A (In English) Yes, sir, I did.

Q Now, what language did the defendant speak when he asked for the money, according to your claim? A Yiddish.

Q In Yiddish? A Yes.

Q You are sure of that? A Yes, "Isk will haben."

Q In what language did the defendant speak when he said, according to your claim, "I will get your head yet, I will blow your head off?" A This was said in English.

Q In English? A Yes, sir.

Q You are sure of that? Now, where was the defendant when he said "I will blow your head off?" (Repeated through the interpreter). A He was walking towards his wagon and he said to him "I will blow your head off."

Q Then he was on the sidewalk, or in the middle of the street when he said that, which? A They were on the street.

Q On the street? A Yes.

Q You are sure of that? A Yes.

Q On the street, you mean the middle of the street and not the sidewalk, is that correct? A Yes, the middle of the street.

Q And was the defendant facing you when he said that while walking, or was his back to you? A Well, this I didn't notice, I didn't take any notice, so much.

Q Well, was he walking away from you when he said "I will blow your head off?" (Repeated through the interpreter).

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A I don't remember that.

Q Well, you were how many feet away from the defendant when he said that?

MR. PRESS: I object to that. He already stated he was one foot away from him.

MR. ROSENBERG: No, I beg your pardon.

Q (In English) All right, were you one foot away from the defendant when he said that? A Well, I don't remember this. I guess they was about a foot away or half a foot away. I don't remember it.

Q How far was the defendant from Blumenthal when he said that? A Well, I haven't seen.

Q Didn't you see Blumenthal at that time? A Yes, sir, I did see him.

Q Well, how far was Blumenthal from the defendant when he said "I will blow your head off"? A They were not far, they were about a foot away.

Q How many? A About a foot, or not a foot at all even, about a quarter of a foot.

Q Well, after the defendant said "I will blow your head off," did Blumenthal say to him "Go to hell"? A No, before he said to him "Go to hell," and after he said "I will blow your head off because you refuse to give the money."

Q Have you now told the whole of the conversation that took place between the defendant and Blumenthal at that time (Re-

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peated through the interpreter). A Yes, all that I have heard.

Q Well, if anything else was said you were near enough to hear it, weren't you? A Yes, what I have heard I am saying here.

Q Now, was there perfect quiet between Blumenthal and this defendant, until the defendant as you claim, made the demand for five hundred dollars? A Maybe they had had a conversation with one another, and when I came up to them I heard what I said I heard.

Q Did you hear any talk between the defendant and Blumenthal before you reached the point of one foot from the defendant or Blumenthal?

MR. PRESS: If your Honor please, I respectfully submit, this matter has been gone into, gone over and over, this witness testified that as he approached he saw them talking and all he heard was that he testified here, and he was within one foot of them.

THE COURT: Objection sustained.

MR. ROSENBERG: Exception.

Q Now, before you took the witness stand in the Magistrate's Court, did you talk to any one what you intended to say? A No, sir.

Q You are sure of that? A Yes, sir.

Q You understand that question, don't you? A Yes, sir.

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I do understand it.

Q Did Wilson talk to any one in your presence before he took the witness-stand in the Magistrate's Court (Repeated through the interpreter)? A With the District Attorney, yes.

Q Were you there too? A (In English) Yes, sir.

Q What? A Yes.

Q Did you talk to the District Attorney? A Well, he asked me questions and I then answered them.

Q Didn't you say a moment ago you did not talk to any one in the Magistrate's Court before you took the witness-stand? A Well, they have not talked to me but I talked to the District Attorney.

Q Have you seen Mrs. Blumenthal since December 9th? A Yes, sir.

Q Have you been to her home? A Yes, sir.

Q Have you? A Yes, sir.

Q And have you spoken to Mr. Blumenthal's brother since December 9th? A No, sir, I don't know them very good.

Q You have never seen him? A I didn't have no business with him at all.

Q Have you spoken to him, I ask you? A No, sir.

Q Are you working now? A No, sir.

Q That is all.

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W I L L I A M C O H E N, called and duly sworn as a witness on behalf of the People, testified as follows:

(Residence 1445 Madison avenue).

DIRECT EXAMINATION BY MR. PRESS:

Q You are a member of the Police Force of the City of New York? A Yes, sir.

Q And have been for how long? A Four years.

Q What precinct were you connected with on the 9th day of December, 1911? A Detective Bureau, Seventh Precinct.

Q On that day did you see Louis Blumenthal?

MR. ROSENBERG: I object as not binding upon the defendant.

Objection overruled. Exception.

A Yes, sir.

MR. ROSENBERG: I object also as attempting to corroborate the alleged testimony of Louis Blumenthal and take an exception.

Q Did you? A Yes, sir.

Q And what hour of the day did you see him and where?

MR. ROSENBERG: I object upon the ground that it is incompetent, immaterial and irrelevant, and an attempt to corroborate Louis Blumenthal.

Objection overruled. Exception.

A Around six o'clock, at the Seventh Precinct Station House.

Q Where is that? A 247 Madison street.

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Q Did you have a conversation with him at the time?

MR. ROSENBERG: Same objection and exception.

A I did.

Q You had a conversation? A Yes, sir.

(No cross-examination).

PHILIP J. MURPHY, a witness ^{re} called on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Officer Murphy, did you arrest this defendant? A Yes, sir.

Q When and where? A On the 11th day of December, 1911.

Q The 11th day of December? A Yes, sir.

Q 1911? A Yes.

Q Where? A At about 7:30 A.M., at Forsythe and Delancey streets.

Q Who was with you at the time you arrested him?

A Louis Blumenthal.

Q Was there any person with the defendant at the time?

A There was some other man.

Q At the time you approached him what was he doing?

A Two of them, the defendant here and another man had a newspaper in front of them.

BY MR. ROSENBERG:

Q What kind of newspaper? A A Jewish newspaper.

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Q A Yiddish paper? A Yes.

MR. ROSENBERG: One moment, I object.

BY MR. PRESS:

Q Was it a Jewish newspaper they had in front of them?

A Yes.

Q And you would know Jewish characters if you saw them, wouldn't you, in a newspaper? A Yes, sir.

Q So it was a Jewish newspaper you saw them reading?

A Yes, sir.

Q Did you hear anything that transpired between them, did you hear what one said to the other? A No, sir, I did not.

Q Was the defendant's wagon there at the time? A There was a wagon there which he said was his wagon.

Q Now, did you have any conversation with him at the time you made the arrest? A I did.

Q What did you say to him and what did he say to you?

A I walked over to him with Mr. Blumenthal. I told him I was going to place him under arrest on suspicion of having caused the explosion of a bomb.

Q That is what you said to the defendant? A Yes, sir.

Q Where did you say the bomb had been exploded? A At Mr. --

MR. ROSENBERG: One moment.

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Q Tell us just exactly what you said, Officer?

Objected to. Question withdrawn.

Q Tell us exactly what you said to the defendant and what he said to you?

MR. ROSENBERG: I object upon the ground that it is an attempt to prejudice the defendant by illegal and incompetent evidence, by attempting to prove a separate and distinct crime against the defendant, with which he is not charged.

Objection overruled. Exception.

A I told him I was arresting him on suspicion of having caused the explosion of a bomb at two a.m. on that morning in front of Mr. Blumenthal's apartments, on the fifth floor of 202 Henry street.

Q What did he say to you? A And then I said "For the reason that Mr. Blumenthal said that you went down to his place of business at 65 Rutgers Slip on the 9th day of December and demanded five hundred dollars from him under a threat to blow his head off." I said "Now, did you go down and demand that money and make that threat?" He says, "I did, I was sent down by two men." I said "Who are those men?" He said "I don't know, they gave me a dollar."

Q Did he say anything with respect to the explosion?

A No, I further questioned him as I went along, if he knew anything in regard to the explosion of the bomb, and he said he

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did not, but that he and his friend were just reading it from the newspaper at the time I came up.

Q And you then placed him under arrest? A I had him under arrest all the time. That was while I was on the way to the station house, I was conversing with him.

Q And you took him where? A To the Seventh Precinct Station House.

Q Did you have any further conversation with him at all? A Nothing more, only on the same line as I had all along. I asked him several times if he could tell me who these men were that sent him down there, and he always answered "No," that he didn't know them.

Q When was the last time, if you can recollect, that you asked him who these two men were? A I think it was in the station house.

Q On that same day? A Yes, sir, on the same morning.

Q And he couldn't tell you, is that right? A No, sir, he could not.

Q How far is this station house, or what station house are you connected with or were you connected with on the 9th of December? A The Seventh Precinct, 247 Madison street.

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Q How far is that from 202 Henry street? A It is directly in the back.

Q About how far would you say is the rear wall of 202 Henry street from the rear wall of the station house? A Well, it might be probably 50 or 60 feet, something like that, maybe a little more.

Q Were you in the station house on the morning of December 11, 1911, between the hours of one o'clock in the morning and street o'clock in the morning? A Yes, sir, I was in the back room.

Q On reserve duty, or what kind of duty? A Yes, sir, I was on night duty.

Q While you were in the station house at that time, or between those hours did anything occur? A Yes, sir.

MR. ROSENBERG: One moment.

A (Continuing:) An explosion.

MR. ROSENBERG: Well, I ask that the answer be stricken out. I asked the witness to refrain from answering the question. If that answer is in there I would like to have it stricken out and the jury directed to disregard it.

MR. PRESS: If your Honor please, we might as well thresh this thing out now.

MR. ROSENBERG: I ask that the word "explosion" be stricken out.

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THE COURT: Strike it out. It is not strictly responsive. You may ask what occurred.

Q What occurred?

MR. ROSENBERG: I object as incompetent, immaterial and irrelevant, and not within the issues raised in this case, and not binding upon the defendant, and not shown to be in anywise connected with the defendant.

THE COURT: Well, if it is not, we will entertain your motion to strike it out.

MR. ROSENBERG: But the damage will then be done.

THE COURT: I cannot help it. I am bound to assume by the District Attorney asking it that the question is relevant. If it is not, we will strike it out. We will meet difficulties when they arise.

MR. ROSENBERG: Well, I give notice now to the District Attorney--

THE COURT: Now, I have ruled upon your question. He may answer the question.

MR. ROSENBERG: I except to your Honor's refusal to permit me to make a statement which I claim will guard the rights of this defendant, which I am required to do under the authorities of the courts of this State.

Q (Question repeated by stenographer.) A I heard a loud noise like an explosion.

Q What did you do?

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MR. ROSENBERG: I object as not binding upon the defendant, the same objection as heretofore made.

Objection overruled. Exception.

Q. What did you do? A. I immediately ran up into Madison street, around into Clinton, and Clinton into Henry, and when I got around there I heard a woman--

MR. ROSENBERG: Objected to.

Q. Never mind that. You saw a woman, did you? A. Well, it was on the fifth floor.

THE COURT: Only what was done, not what was said.

Q. Did you see any one when you got into Henry street?

A. Yes, sir, I saw a policeman there.

Q. Did you have a conversation with that policeman or with any one there? A. No, what attracted my attention was a sort of a scream.

MR. ROSENBERG: I object to that.

Q. One moment. Did you see any one when you got into Henry street?

MR. ROSENBERG: I object as not binding on this defendant, not within the issues, the same objection made originally.

THE COURT: We will receive it.

MR. ROSENBERG: Exception.

A. I heard first, and then saw afterwards.

Q. What did you hear when you got into Henry street?

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MR. ROSENBERG: Same objection and exception.

A A scream like "Fire". I looked up and saw a woman looking out a window.

Q Of what house was the woman looking out? A 202 Henry.

Q And did you go into that building? A Yes.

Q Up to what floor did you go? A To the fifth floor where I found all the disorder.

Q What was the condition of the fifth floor when you got there?

MR. ROSENBERG: Objected to upon the same grounds.

THE COURT: Mr District Attorney, will you connect it with this defendant?

MR. PRESS: If your Honor please, the contention of the People here is that this testimony is relevant, in view of the fact that this defendant made the demand, and admitted having made the demand for two men, and that the morning after, or rather on the morning of the 11th--

THE COURT (Interposing): Then your theory is the theory of ratification?

MR. PRESS: Exactly, your Honor, that under the decision in the People of the State of New York against Andrugna, it is relevant and competent testimony.

THE COURT: Well, we will receive it at this time.

MR. ROSENBERG: It is objected to as incompetent, immaterial and irrelevant, not binding upon the defendant,

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not within the issues raised here and in nowise connected, and exception.

THE COURT: Yes.

MR. ROSENBERG: May it be understood that this objection applies throughout the line of this testimony?

THE COURT: Well, I do not believe you will be satisfied with that objection. If you will be, I will take it in general form.

MR. ROSENBERG: All right, then, I will object every time I think proper I must object.

THE COURT: Very well.

Q (Question repeated through stenographer.) A Well, the door to Mr Blumenthal's apartment was blown completely off the hinges, and also at the base of the door was a sort of hole blown into the marble flooring in the hall, and there was in the private hall of the Blumenthal apartment, there were several holes in the ceiling and in the wall, and in the base, and also on the adjoining floor, there was a few holes in that door, and the two flats at the back of them were also a few holes in that from something, and the whole front of the dumb-waiter was all blown off, and the ceiling was down, and the window, the whole window was blown out, and some of the stairs was broken. I found at that time several people coming out of their apartment into the hallway.

Q Did you see Blumenthal on that occasion? A Yes, sir.

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Q. This 65 Rutgers Slip where Blumenthal's place of business, is in the county of New York, isn't it? A Yes.

Q. And his residence, 202 Henry street, that is in the county of New York? A Yes, sir.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q. You had previously spoken to Mr Blumenthal before arresting this defendant? A I spoke to him the same time that I got in the building of that morning, a little while after I was in there, a few minutes after.

Q. And you arrested, according to your statement, the defendant and charged him with suspicion in connection with his blowing up that building? A Yes, sir.

Q. And you took the defendant to the police station, the Madison street police station? A Yes, sir.

Q. And you there arraigned the defendant before the Sergeant at the desk? A Lieutenant, yes, sir.

Q. And you there made the charge against this defendant of suspicion in connection with the blowing up of that building, is that correct? A I did, yes.

Q. And your official note book which you are required to keep by the rules of the Department concerning the arrest of persons, contains an entry of the fact that you arrested this defendant on suspicion of being connected with the blowing up of that building? A I did.

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Q Is that right? A Yes, sir.

Q And when you made the charge before the Lieutenant at the desk, at the time of his arrest, was Blumenthal alongside of you? A He was there.

Q And within your hearing, you made the charge? A He was there to make it himself in that line. He had to be there.

Q Didn't Mr Blumenthal tell you on the morning of the 10th or the 11th, was the date of the arrest? A The 11th, yes.

Q Was that Sunday morning? A Monday morning.

Q Did he tell you on the morning of December 11th where you could find this defendant? A He didn't tell me exactly where, no.

Q Didn't he take you to Delancey and Forsyth street?

A He didn't take me directly to Delancey and Forsyth, he took me to several places all over the East Side where express wagon men could be found.

Q And didn't he tell you the name of this defendant?

A No, he didn't tell me his full name.

Q Didn't he call him Charley the Cripple? A Charley Cripple.

Q A nickname? A That's correct, yes.

Q And he told you he knew where Charley was, didn't he?

A He said if I went with him he might be able to find him.

Q Now, you did find the defendant at the corner of Forsyth and Delancey street? A Yes, sir, near the corner.

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Q With his horse and wagon? A Well, he said it was his horse and wagon.

Q Have you any reason to believe that it was not? A I don't know.

Q Wasn't it a covered wagon? A Yes, a canvas covered wagon.

Q A bay horse? A I don't know what kind of a horse was on it, I don't remember.

Q I show you a photograph and ask you whether or not that is a photograph truthfully representing the horse and wagon at which the defendant was standing at the time of his arrest? A Well, I can't say, because I don't remember seeing that sort of blanket on the horse. The name I didn't notice either; I know the wagon was much the same sort of covered wagon.

Q Now, didn't the defendant tell you in answer to your questions that two men asked him to deliver a message to Louis Blumenthal? A He said he was sent there by two men.

Q Yes, and that's what he told you? A Yes.

Q Then you asked him the names of those men, and he told you he didn't know? A I asked him who they were and he said he didn't know who they were.

Q Didn't he tell you at that time that he got a dollar for going over there? A Yes, sir, he said he got a dollar for going there.

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Q Didn't he tell you he drove over there in the very horse and wagon which you found there? A No, that was not mentioned at all.

Q Well, didn't he tell you he drove over with his horse and wagon? A No, I didn't ask him.

Q Didn't you ask him? A I didn't ask him how he went over.

Q Didn't he tell you he went over with his horse and wagon? A No, sir, not to my recollection.

Q Didn't he tell you that he went there in the middle of the day, in broad daylight? A I didn't put any of those sort of questions to him at all, in reference to that, because Mr Blumenthal had told me the time he went there.

Q Now, the defendant speaks English very poorly, doesn't he? A He spoke it all right with me. I could understand him and he could understand me.

Q Well, you are mixed up pretty much with the Yiddish East Side persons, Yiddish East Side individuals, is that right?

A Yes.

Q And you have been mixed up for a great many years?

A About five years.

Q And you have sort of learned their jargon, isn't that right? A Well, a little of it.

Q Now, isn't it a fact that this defendant speaks very poor English? A Well, I don't know. I wouldn't call it poor.

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I couldn't say. I think any one can understand him.

Q That is all.

MR. PRESS (calling): Mrs Blumenthal.

MR. ROSENBERG: One question, Mr Murphy.

Q At the time of the arrest of this defendant didn't he ask you to take his horse and wagon with him to the station house? A Yes, he did.

Q That is all.

ETHEL BLUMENTHAL, a witness recalled on behalf of the People, testified through Official Interpreter Rosenthal as follows:

DIRECT-EXAMINATION BY MR. PRESS:

Q Do you remember the Monday morning, the 11th of January, 1911? A The 11th of January, 1911?

Q Yes, or the 11th of December, 1911? A I can't remember.

Q Do you remember anything occurring at your house?

MR. ROSENBERG: I object as incompetent, immaterial and irrelevant, and not binding upon the defendant, not within the issues raised by these pleadings, and an attempt to establish a separate and distinct crime not charged in the indictment.

Objection overruled. Exception.

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A Yes, sir.

Q At what hour of the morning did it occur?

Same objection and exception.

A Two o'clock Monday morning.

Q Was your husband in the apartment with you at that time? A Yes.

Q What room were you sleeping in at the time, if you were sleeping?

Same objection, ruling and exception.

A In the last room.

Q What drew your attention, or what did you hear?

MR. ROSENBERG: Same objection and exception.

A I heard something like a crash, a loud crash, I thought it was a fire.

Q And did you get up out of bed? A Yes.

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Q Did Mr. Blumenthal get out of bed? A Yes.

Q Where did you go when you got out of bed? A We went into the dining room.

Q What did you find when you got into the dining room?
Same objection and exception.

A We found pieces of iron in the middle of the room from a bomb.

Q Were any of the doors disturbed, leading into your apartment? A All the doors were in good order.

Q Were any of the doors at all disturbed, leading into your apartment? A The doors were in order.

Q Tell us just exactly what the place looked like in the hall?

Same objection and exception.

A Everything there was torn and broken.

CROSS EXAMINATION BY MR. ROSENBERG:

Q The room that you say you were sleeping with your husband in, was how many rooms away from the dining room? A Three rooms away.

Q And the room in which you were sleeping was, was any damage done to that room? A Yes, a piece of iron came in there.

Q Came in through the three rooms? A Yes.

Q Now, do you know Sam Cohen? A No.

Q You have seen him in court, haven't you? A Yes.

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Q You saw him on the witness stand here to-day, didn't you? A Yes, I did.

Q Did you ever see Sam Cohen before to-day on the witness stand? A Yes.

Q Is he a relation of yours? A No.

Q Is he a friend of yours? A No.

Q Does he call at your house? A He used to come up once in awhile.

Q When was the last time he was at your house? A He was there on that Saturday on which the man came to demand the money.

MR. ROSENBERG: I ask that "the day on which the man came to demand the money" be stricken out as clearly hearsay. I have no objection to its being fixed by consent, on December 9th, is that right, Mr. Press?

MR. PRESS: Quite agreeable.

Q What time of the day was it that Sam Cohen came to your house on December 9th? A I don't remember.

Q Was it in the morning or afternoon? A In the afternoon.

Q What time of the afternoon was it? A I don't remember exactly, but about one, I think one o'clock.

Q Was it later than one o'clock? A I am not sure about it.

Q Well, was Sam working on that day, do you know? A No.

Q Well, was he at your house all of that day? A No.

Q Did he come in accidentally, or did you send for him on

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that day? A He came in so, accidentally.

Q Did you have a servant girl at the time? A No.

Q That is all.

MR. PRESS: I have to recall Officer Murphy, if your Honor please.

PHILIP J. MURPHY, a witness for the People, recalled:

BY MR. PRESS:

Q Officer Murphy, how long have you been on duty in the vicinity of Rutgers Slip? A Well, I was there in that vicinity in fact I broke in there, and I was there for a year and a half in uniform, and then I went to the First Branch of the Detective Bureau, which also took in that district.

Q Are you familiar with 65 Rutgers Slip? A Yes, sir, I have been around there for five years, through that neighborhood.

Q That is Blumenthal's place of business? A Yes.

Q Will you describe that place? A There is a park there extending from Cherry Street to Water Street, then there is another section of the park extends from Water to South street, and on both sides of the park there is a street in the Slip.

Q Now, opposite 65 Rutgers Slip where the complainant's place of business is, is there a sidewalk on the other side?

A Just a small little walk, probably about that wide (indicating).

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BY MR. ROSENBERG:

Q Indicating what? A Well, it might be two feet, may be less.

BY MR. PRESS:

Q And does that run up to a fence or railing or anything?

A Yes, sort of a wall, and then like a railing on top of that.

Q And what is the distance, or what is the width of the street opposite 65 Rutgers Slip? A Well, I should judge it to be about 35 feet, something like that.

Q And was the sidewalk on the same side as the place of business of Blumenthal, the complainant, was there? A Yes.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, officer, how does Rutgers Slip run, north and south, does it run in any other direction? A Well, I don't know what you would call it. It runs, I think I would call it north and south, I wouldn't be sure.

Q Now, Rutgers Slip itself is only 35 feet wide from curb to curb, I am talking of Rutgers Slip, at the point of 65 Rutgers Slip, from curb to curb? A I say I think it is about 35 or may be a little more, I wouldn't be certain.

Q Now, the sidewalk on the Blumenthal shop side is how wide, if you know? A Well, from the curb to Blumenthal's

Q The house line? A The house line I should judge to be at least ten feet.

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Q You are now describing the width of the street opposite 65 Rutgers Slip, is that right? A No, the sidewalk.

Q You are talking -- A (Interrupting) You asked me from the sidewalk.

Q Yes, but you are now describing the point opposite 65 Rutgers Slip? A Yes.

Q Is that correct? A Yes.

Q Now, to the south of 65 Rutgers Slip is a little park, is that correct? A Right opposite.

Q Opposite? Then you call the opposite side of the street the side of the park, is that correct? A Yes, that is one side of the park.

Q One side of the park? A Yes.

Q Well, isn't there one side of Rutgers Slip opposite 65 Rutgers Slip? A One side of it, yes.

Q And then how far distant is it from 65 Rutgers Slip, the house line, to the opposite side of Rutgers Slip? In other words, the west side of Rutgers Slip? A Do you mean the west side of Rutgers Slip, opposite 65?

Q Yes. A Well, judging, as I said before, probably 45 feet.

Q Well, is there a park in the middle of the street?

A No, no.

Q Opposite 65? A The park comes in between the two streets

Q Which two streets? A Rutgers Slip.

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Q And what other street? A It is Rutgers Slip on both sides of the park. There is a park in between the two streets.

Q Well now, is there one continuous sidewalk on the east side of Rutgers Slip? A On the east side of the slip?

Q yes, is there? A Yes?

Q And is that the east side of Rutgers Slip where Blumenthal's place of business was? A Yes, that is -- well --

Q Is that correct? A Well, there is a small sidewalk on both sides of the park.

Q I am talking now, the east side of Rutgers Slip, the place where Blumenthal's place of business was? A Where do you mean, is the sidewalk along the house line or alongside the park, which is it?

Q The house line of Rutgers Slip, on the east side of the street? A Certainly, there is a sidewalk there.

Q About ten or twelve feet wide? A I should judge about that much.

Q And that runs all the way down to Cherry street? A It runs from Cherry street down to South street.

Q And then from South to Water there is another sidewalk of about the same width? A No, from Cherry to Water and from Water to South.

Q Now, on the other side of Rutgers Slip there is also a sidewalk? A Yes, certainly.

Q And that runs parallel with the east side of the street,

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doesn't it? A What do you mean?

Q Does it run in the same direction? A The other sidewalk is on the west side of Rutgers Slip.

Q But it runs in the same direction, A Yes.

Q And there is a sidewalk on that side of the street?

A Yes.

Q And that is about the same width as the east side?

I
A No, think the sidewalk in front of 65 Rutgers Slip, the entrance to the blacksmith shop, is wider than the sidewalk on the west side of the slip.

Q How wide is the sidewalk on the west side of the street?

A It may be a few feet less.

Q Well, it is about eight or ten feet any way? A Not ten, may be eight, may be a little less.

Q That is all.

MR. PRESS: THE PEOPLE REST.

MR. ROSENBERG: The defendant now asks, the defendant now demands that the District Attorney be compelled to elect upon which count of the indictment he intends to submit this case to the jury.

THE COURT: What have you to say, Mr. District Attorney?

MR. PRESS: I will answer it in this way, your Honor, that the People proceed under Section 851, Sub-division 1 of the Penal Law.

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MR. ROSENBERG: That is only a definition.

THE COURT: Well, which count of the indictment?

MR. PRESS: The first count of the indictment, if your Honor please, I believe covers that.

THE COURT: Well, proceed under the first count of the indictment, upon the District Attorney's election.

MR. PRESS: Both counts are practically identical. Just one moment, your Honor.

THE COURT: Well, I will withdraw my ruling until the District Attorney has further looked into it.

MR. PRESS: Just one moment, if your Honor please. The second count of the indictment, if your Honor please, 850 and 851, Sub-division 1.

THE COURT: well, which count?

MR. PRESS: 851, Sub-division 1, the second count of the indictment.

THE COURT: You desire then to go to the jury under the second count?

MR. PRESS: Yes, your Honor.

MR. ROSENBERG: Then does your Honor dismiss the first count of the indictment?

THE COURT: No, no, I say we will go to the jury on the first count. Beyond that I make no ruling at present.

MR. ROSENBERG: Do I understand your Honor, that the District Attorney claims that the second count of the in-

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dictment is the charge against this defendant?

THE COURT: I do not know, I cannot answer that question. I have ruled, and we will proceed.

MR. ROSENBERG: I ask now that the defendant be advised what particular law he is charged violating, and what particular section of that law it is claimed that this indictment is brought upon?

THE COURT: I have ruled as far as I am going to, at present.

MR. ROSENBERG: To which the defendant excepts. The defendant moves to strike out that portion of the testimony given by Officer Murphy and by Mrs. Blumenthal, concerning the explosion, at the home of Mr. Blumenthal.

THE COURT: Motion denied.

MR. ROSENBERG: Will your Honor let me get the grounds in? May it be understood?

THE COURT: Well, is it essential to put the grounds in? You have made your motion broadly. Is it not better for you to have it made in broad terms?

MR. ROSENBERG: Then, if your Honor please, your Honor understands that I direct my attention to all the testimony concerning the explosion of the bomb in the house, and my motion runs to that?

THE COURT: Precisely, and I have ruled upon it broadly.

MR. ROSENBERG: To which I except. The defendant asks,

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in view of the election of the District Attorney, to dismiss the first count of the indictment?

THE COURT: I have ruled on all these points. Now, why bring them up again?

MR. ROSENBERG: But your Honor has not dismissed it?

THE COURT: No, I said I would not. I said we would go to the jury under the second count in the indictment, but beyond that ruling, I made no ruling.

MR. ROSENBERG: The defendant excepts. Now, the defendant asks your Honor to advise the jury to acquit, and ^{for} ~~cause~~ the dismissal of the indictment upon the grounds, first, that the facts proved do not constitute a crime; second, that the facts proved do not constitute the crime charged in the second count of the indictment.

THE COURT: Motion denied.

MR. ROSENBERG: Third, that there is a material variance between the crime charged in the second count of the indictment and the facts proved, that the facts alleged in the second count of the indictment have not been proved, and the facts proved have not been alleged; fourth, that the People have failed to prove the charge contained in the indictment beyond a reasonable doubt, and by competent or legal evidence.

THE COURT: Motion denied.

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MR. ROSENBERG: that the crime proved, if any, is the crime other than that charged, other than that alleged in the second count of the indictment.

THE COURT: Motion denied.

MR. ROSENBERG: Your Honor denies the motions, and the defendant excepts.

Mr. Rosenberg thereupon opened the case on behalf of the defense.

THE DEFENSE:

A N N I E V I T U S K Y, called and duly sworn as a witness on behalf of the defendant, testified through Official Interpreter Rosenthal, as follows:

(Residence 312 Henry street).

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Talk loud in your language so that the last juryman can hear you? A Yes, sir.

Q Do you remember meeting Louis Blumenthal? A Yes.

Q How long are you in the country? A Five years, going on six, about six years.

Q Have you any children? A Yes.

Q Do you know Louis Blumenthal?

A Yes.

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Q. When did you first meet him? A. Before Christmas, at the time when my husband was already a couple of weeks in the Tombs.

MR. ROSENBERG: Is it admitted he went to the Tombs on December 13th?

MR. PRESS: Yes.

MR. ROSENBERG: It is admitted that the defendant was committed to the Tombs on December 13th, the date of the holding by the magistrate.

Q. Was it after December 13, 1911? A. Yes.

Q. Now, when did you first see Louis Blumenthal, the complainant? A. I don't know the day exactly, but it was a couple of weeks after my husband was sent to the Tombs.

Q. Where did you see Louis Blumenthal? A. In the store of Mr. Eisenberg.

Q. Where is Mr. Eisenberg's store? A. Down town, across the way from the Tombs.

Q. Is it right opposite the Tombs on centre street?
A. Yes.

Q. Did you speak to Louis Blumenthal? A. Yes, he called me in.

Q. Who was present when you were called in to see Louis Blumenthal? A. Well, Mr. Eisenberg was there and several others, and they heard what I was talking to Mr. Blumenthal.

Q. What did Mr. Blumenthal tell you? A. Mr. Blumenthal

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told me I should not worry, I should not cry, that he will tell the truth about why my husband was arrested.

Q Did Mr. Blumenthal tell you what he would say? A Yes, he said he would tell the truth, that no money was demanded of him.

Q That who did not demand any money? A That my husband did not demand any money off him.

Q Was that before the indictment of your husband or after? A Yes.

Q What did Louis Blumenthal say about the Grand Jury? A He said he would tell the Grand Jury that my husband didn't ask any money off him, that he said he should stop the fight and take off his hands. He said that my husband came up to him, to Blumenthal, and told him that two men had sent him over to him.

Q What did Mr. Blumenthal say that the District Attorney said to him in the Grand Jury room about what you have just said?

MR. PRESS: I object to that, to anything the District Attorney may have said to Blumenthal and what Blumenthal said.

^{Rosenberg}
MR. ROSENBERG: Well, I am willing to tell your Honor privately exactly as I understand it.

THE COURT: No, it is not the fact I want, it is the legal propriety of your question that I do not see.

MR. ROSENBERG: I want to show that while this Blumen-

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that was in the Grand Jury room, the District Attorney, seeing the change in the testimony, had some argument with Mr. Blumenthal concerning it, and that Blumenthal then told him ---

THE COURT: Well, should you not have asked that question of Blumenthal?

MR. ROSENBERG: Yes, this was long after the police court hearing, your Honor.

MR. PRESS: I have no objection to that testimony going in, provided I can call the assistant in charge of the Grand Jury to rebut the testimony.

THE COURT: Do you consent to that?

MR. ROSENBERG: Will you let me see the minutes of the Grand Jury?

THE COURT: No, no, he could not do that. It is against the law for him to do that. He would be guilty of crime if he did that. As I look at this question it is legally improper, but if you are willing to open wide the doors, so that your testimony may be rebutted, the District Attorney consents. If by consent you gentlemen wish to introduce this evidence which I deem incompetent, you may do so.

MR. ROSENBERG: Well, I want to get the benefit of the testimony, of this woman's testimony.

THE COURT: Now, I have put the matter right before

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you. If you press that question, very well.

MR. ROSENBERG: I want to get the benefit of this woman's testimony, and I therefore consent.

MR. PRESS: Well, your Honor, then I may rebut it, if I see fit?

THE COURT: Yes. Now, if you introduce the testimony he may rebut it.

BY MR. ROSENBERG:

Q Now, what did Mr. Blumenthal tell you the District Attorney told him in the Grand Jury room, about the evidence that he gave there? A Mr. Blumenthal told me that the District Attorney had a fight with him, why Mr. Blumenthal did testify differently in Essex Market Court and differently in the Grand Jury room. So Mr. Blumenthal said that he told the District Attorney that here in the Grand Jury room he tells the truth, that he said he thought in this way he ~~was~~ would in this way he would be able to get out of this man, the defendant, who the two men were who sent him, but seeing that he could not get out of the defendant who the two men were, because the defendant did not know the two men who had sent him, he was going to tell the truth, he was saying the truth.

Q Now, did you have any further talk with Blumenthal on the same subject, concerning which you have just testified, and if so, when and where? A He told me more about it, and he told me I should not cry, should not worry, that my

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my husband would be out and would be, that he would tell the truth and my husband would be all right.

Q Did not Mr. Blumenthal say anything about buying some theatre tickets, and if so what did he say about that?

THE COURT: Now, is that germane? Do not go too far afield?

MR. ROSENBERG: There was some talk that Blumenthal was to buy theatre tickets, one of which was to be for this defendant.

THE COURT: Well, if you think it is germane, go on. The District Attorney does not object.

Q What was said about theatre tickets? A Blumenthal said that he had taken theatre tickets and that he would treat my husband with tickets to the theatre.

Q When was that, if you can recall? A It was on a Sunday, he was then to go to court.

Q When was he to go to court, the next day? A Yes.

Q That is, this case was on for trial the next day?

A Yes, he told me that I should not cry, that my husband will be out of it sure.

Q Do you remember ---

THE COURT: Now, this is not under the stipulation, it is not objected to, but do not go too far afield.

Q Did you have any other talk, and if so when and where and who was present? A He used to send for me many times

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and talk to me.

Q During all the times he sent for you what did he say to you? A The day he went to the Grand Jury he told me not to go to my husband, to wait downstairs, that my husband was coming down, and Mr. Blumenthal was waiting until four o'clock, wondering why my husband didn't come down.

Q Where was Mr. Blumenthal waiting with you? A Mr. Eisenberg's store.

Q Across the street from the Tombs? A Yes, across the street from the Tombs.

Q Was Eisenberg there at the time? A Yes.

Q Did Mr. Blumenthal send any notes or letters to your husband while he was in the Tombs? A Through me and through others he sent a lot of letters to him.

Q What happened to the letters? A They were delivered to my husband.

Q Was Eisenberg there at any time that the letters were received by your husband? A Yes.

Q What happened to the letters? A I don't know. Mr. Blumenthal said that that he should tear them, they should be torn.

Q Now, do you remember the day before Mr. Blumenthal's death, the day he died? A No, I don't know the day.

Q Do you remember the time he died? A Yes, on Sunday.

Q Were you sent for, and if so by whom, on the Sunday

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that Mr. Blumenthal died? A Yes, Mr. Blumenthal sent for me.

Q Whom did he send?

A Witkin's foreman.

Q Did you go in accordance with the request made to you by Witkin's foreman and then meet Mr. Blumenthal?

A Yes, I spoke to Mr. Blumenthal.

Q And what did Blumenthal say to you at that time?

A Mr. Blumenthal told me that perhaps he could find out who the two men were, but as he couldn't find it out he says now that my husband does not know anything about the two men.

Q Go on, this is the last time that you ever spoke to Blumenthal, the day he died?

A Yes.

Q That is what I want to know?

A That is the last time. Witkin heard it and others heard it.

Q Did Blumenthal tell you on the day of his death that he was to appear in court the next day to tell the truth about your husband? A He said the next day he will go to court, and as my husband would surely be out of the trouble, that in the evening we will all go to the theatre.

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Q Is that the last time you ever saw Blumenthal? A Yes.

CROSS-EXAMINATION BY MR. PRESS:

Q You did not call on Blumenthal and ask him to pull off the prosecution in this case, did you? A No.

Q Is it not a fact that you were at Eisenberg's place and that you had Eisenberg bring Blumenthal there, and that in his presence and in the presence of Witkin you asked him to cease the prosecution? A No.

Q You never did that? A No.

Q You never suggested to Blumenthal that your husband was innocent? A He himself told me that he thought my husband was innocent, but that he thought through my husband he could find out who the two men were.

Q And Blumenthal sent to you to tell you of your husband's innocence, and it was not you that went to him to tell him of his innocence? A I didn't call him. He called me.

Q Isn't it a fact that on the day of his death you came up to the premises 137 Division street, and called him out of that place and spoke to him? A No.

Q And isn't it a fact that fifteen minutes after, and while you were there, he was shot?

MR. ROSENBERG: I object as incompetent, immaterial and irrelevant, and an attempt to inject by inuendo that the crime of murder, which this defendant could in nowise

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be a party to or connected with, is brought in.

THE COURT: The question may be answered.

MR. ROSENBERG: To which the defendant excepts, and also as an attempt to establish a separate and distinct offence.

A No, it was several hours before that that he sent for me and I was there.

Q And it was not fifteen minutes before he was shot that you called him out of 137 Division street? A No, I did not call him.

Q And isn't it a fact that the day after he was shot was to be the day of the trial? A Yes.

Q That is all. A The trial--was about, I don't know.

REDIRECT-EXAMINATION BY MR. ROSENBERG:

Q On the Sunday that Blumenthal died, was that the time that you say that Witkin's foreman sent for you? A Witkin's foreman came to me and told me that I am wanted.

Q Who did he say wanted you?

MR. PRESS: I object to any conversation between Witkin's foreman and this witness as not binding.

Objection sustained. Exception.

Q Did you go to 137 Division street on the day of Blumenthal's death, at the request of Mr Witkin's foreman?

MR. PRESS: I object to that. She may state that

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she went there in consequence of what he said.

THE COURT: Well, she may answer yes or no, but beyond that I shall sustain the objection.

MR. PRESS: Very well, your Honor.

BY THE COURT:

Q Yes or no? A On that day I was there early.

BY MR. ROSENBERG:

Q Well, who asked you to go there that day? A Witkin's foreman.

Q When you got to Witkin's stable did you speak to Mr Blumenthal?

MR. PRESS: I submit, your Honor, that has all been covered and I did not cross examine her on those lines. That was all brought out on direct examination.

THE COURT: The question may be answered.

BY THE COURT:

Q Yes or no? A Yes, I did speak to him.

BY MR. ROSENBERG:

Q Do you know exactly what time it was that Mr Blumenthal died? A No.

Q That's all.

CHARLES VITUSKY, the defendant, called and duly sworn as a witness on his own behalf, testified as follows: _____

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Residence 312 Henry street.

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DIRECT-EXAMINATION BY MR. ROSENBERG:

Q You have been in jail since December 13th?

THE COURT: No, no.

Q Well, you have been in the Tombs?

THE COURT: No, no. What if he has been? We are trying him here on the question of whether or not he is guilty of this crime.

MR. ROSENBERG: But it has been brought out that there was a shooting here, and I want to show where this man has been during that time. The jury are entitled to know.

THE COURT: Well, let your question relate to the date alleged.

MR. PRESS: If your Honor please, I will concede that he was in the Tombs on the day that Blumenthal was shot.

THE COURT: Very well. That concession is of record. It is conceded that at the time of the alleged shooting of Blumenthal, the complaining witness, the defendant was locked up in the Tombs.

MR. ROSENBERG: Well, why not let it be from December 13th to the present time?

THE COURT: Because that has no bearing on the present inquiry.

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MR. ROSENBERG: I will ask the question, then.

BY MR. ROSENBERG:

Q Where have you been continuously since December 13, 1911?

MR. PRESS: Objected to.

THE COURT: The question is objected to, the objection is sustained, and the answer if any will be stricken out.

MR. ROSENBERG: Exception.

Q On December 9, 1911, do you understand me, on December 9, 1911, did you ask or demand from Louis Blumenthal the sum of \$500? A No.

Q Yes or no? A No.

Q Did you on that day, after a talk with Louis Blumenthal say that you would blow his head off, yes or no? A No.

Q Did you on that day or any other time say that you would get his head yet, or words to that effect? A No.

Q Did you have on that day or any other day, did you have Mr Blumenthal say to you "Go to hell"? A No.

Q Did Mr Blumenthal say that to you? A No.

Q On December 9, 1911, was Saturday, is that right?
A Yes.

Q Where were you on the morning of December 9, 1911?
A Delancey, corner of Forsyth.

Q Have you got any business there? A Yes.

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Q What is it? A Express business.

Q I show you a photograph and ask you whether this photograph is a true likeness of your horse and wagon which you then owned?

THE COURT: Mr Rosenberg, what are you seeking to prove?

MR. ROSENBERG: I want to show this is the horse and wagon he had, that is the horse and wagon he went down to Blumenthal with, and the jury can see that horse and wagon and it will contradict one of the witnesses on a material point.

MR. PRESS: What is the material point?

MR. ROSENBERG: You will see it later on.

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

THE COURT: He says that you brought out some testimony?

MR. PRESS: I have asked him, if your Honor please, if he will kindly tell me what the material point is.

THE COURT: I am sure I do not know.

MR. ROSENBERG: I will tell you. Your witness Wilson swore that ~~by~~ Vitusky while he was getting on the step of the wagon, he turned his head around and said "I will blow your head off". I want to show there is no such thing as a step on that wagon.

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THE COURT: Well, we will take it.

A Yes, that is my horse and that is the wagon.

Q Is that the wagon? A Yes, sir.

Q Is that the same wagon that you had on December 9th?

A Yes, sir.

MR. ROSENBERG: I offer it in evidence.

MR. PRESS: No objection.

(Marked Defendant's Exhibit A in evidence.)

Q Has that wagon any step?

THE COURT: If you have a photograph the jury can see it.

A There is no steps on that wagon.

Q Well, has that wagon a step on? A No, sir, there is no step on that wagon.

Q How do you get on the wagon? A Jump it up.

MR. PRESS: I object.

THE COURT: I think you have enough on that point.

Q How long have you been an expressman? A Six years.

Q Did you at any time make a demand upon Louis Blumenthal for any money? A No.

Q Did you at any time say to Louis Blumenthal that you would blow his head off or any words to that effect? A No, sir, I never used any language like that.

Q Did you ever say that to him? A No.

Q Were you at Blumenthal's place on December 9th, 1911,

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yes or no? A I don't understand that.

Q Were you at Blumenthal's shop of December 9th, 1911?

A I don't understand that question.

Q (Question repeated through the stenographer.) A Yes.

Q Will you please state the circumstances leading up to your going to Blumenthal's place on December 9th, 1911? A (In English:) I was standing on the corner of Forsyth near Delancey, I was just by my wagon.

Q Talk slowly so the jury can hear you? A I was standing with the wagon at Forsyth near Delancey, near my wagon, and two men were coming over. They asked me if I am the boss of the wagon and I say yes. After they said "Do you know that man Louis, he is a horseshoer?" This name, I say "I know Louis very good." I say, "I like him." They said "How do you know him?" I said "He was making my work, I was shoeing some horses by that man." They said to me--there was coming over another expressman, he would send him over to me, an expressman to ask me did I know Louis, and I say "I know Louis very good." He said "How much you are going to charge to go over near Rutgers Slip," that is from Forsyth near Delancey, about ten blocks or more. I say "You know how much it is worth to go up so far." He said "I will give you a dollar to go over from Forsyth, to go over to Rutgers Slip to Louis, to the shop." I say "What is it, what kind of job is that?" He said "It is a job, going over, me going along with you." I just was going there and he

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was telling me about that, about a fight, if there was ever a fight to tell him to stop the fight, and they just was going over to the shop. Near the shop I was standing with my wagon, and my brother also sitting on the wagon too, he was working for me. He said to me "Hello, Charley", and I said "Hello". I said "You know why I was coming over to you?" He said "Yes," he said, "what is it, to shoe a horse?" I said "No, you see those two gentlemen standing on the corner, they sent me over to you to stop the fight," and I say "They asked me "Do you know the gentleman". I don't know them, I say, "Maybe you know the gentlemen, he is going over." I asked him what kind of fight he had last week or last night and he said "The hell with them". I was going away back to tell the fellows, the fellows right at the corner, and he said "The hell with them," that's all, that's the only words.

Q Is that all that took place? A That is all the truth.

Q Well, is that all that took place? A That's all there was to it.

Q Did you know that any one was demanding any money from Louis Blumenthal?

Objected to. Objection overruled.

Q Did you know that any one was demanding any money from Blumenthal? A I don't know that. If I know anything, I would lock up the fellows myself. I never heard things like

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that, while I am myself in the business.

Q You are in the trucking business? A In the moving business.

Q Who were those two men, do you know them? A I don't know.

Q How much did you get for going over there? A A dollar.

Q Was it in the night time or daytime when you spoke to Blumenthal? A That was in the daytime, just in the afternoon.

Q Did you at any time while you were talking to Blumenthal demand of him \$500? Did you say at any time that you wanted five hundred? A No, I didn't talk to him about \$500.

Q Did you say it to him? A No.

Q Did you at that time or any other time while getting on your wagon before driving off say that you would blow his head off? A No.

Q Or any words to that effect? A No.

Q Or that you would get his head soon? A No.

Q Did you tell the policeman, Murphy, when he arrested you-- A (Interrupting:) I told Policeman Murphy the same time he was coming over and locked me up, he said "I just lock you up for suspicion for a bomb."

Q Were you reading a paper? A No, there was another expressman reading the paper.

Q What kind of paper was the expressman reading? A A Jewish paper.

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Q Were you alone? A I was just with that fellow, just coming over from the stable, it was half past seven in the morning, just was coming over from the stable and covered the horse, and just was asking the other expressman about a job, and the policeman come and locked me up. I asked him "Why you lock me up?" He said "I lock you up for suspicion for throwing a bomb."

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Q What did you say? A I said "I don't know anything about it." I told him, and the same expressman told Officer Murphy, he told him, he said "See them fellows that sent me over Saturday that was asking for that same name Saturday."

Q Well, didn't you tell Murphy that you saw Blumenthal on Saturday, that two men sent you there? A Yes, sir.

Q You are sure of that? A Yes.

Q And that you told Mr. Murphy that you were there? A Yes, I asked Mr. Murphy to take my wagon along near the Police Station, I said I don't got anybody to leave the wagon alone, I can't trust the horse," and he says "You tell another man to watch your horse."

Q Did Mr. Murphy ask you or tell you, going to the station house, or any other time, that he was arresting you for demanding \$500., or for extortion? A No, he didn't make me that.

Q Did Mr. Murphy tell you at that time, or any other time, that he was arresting you because you threatened to blow Blumenthal's head off? A No.

Q So the only statement made about the arrest was that you were arrested on suspicion, in connection with the throwing of a bomb? A Yes.

Q Is that all? A Yes, sir.

Q Do you know whether Mr. Murphy and Mr. Blumenthal told the Lieutenant in charge at the Madison Street station house that they arrested you, or you were arrested for throwing a bomb,

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on suspicion of throwing a bomb? A I don't understand that.

Q (Question repeated through the interpreter) At the police station did you hear Lieutenant Murphy make a charge against you that you were arrested for suspicion in connection with the throwing of a bomb? A I did not hear what was going on. I was in another room there.

Q That is all.

CROSS EXAMINATION BY MR. PRESS:

Q (In English) And if officer Murphy says that he told you that you were being arrested --

MR. ROSENBERG (Interrupting) Now --

MR. PRESS: If your Honor please, I ask that counsel be directed to take his seat. I am about to cross-examine.

THE COURT: Yes, do that.

MR. ROSENBERG: Then do not answer until I object.

Q If officer Murphy says he told you that he was arresting you for having demanded \$500. of Blumenthal, or you would blow his head off, he is stating what is not true?

MR. ROSENBERG: I object.

THE COURT: Mr. District Attorney, I do not think properly you can ask this witness to characterize testimony. Ask him as to the facts.

Q Well, did he say that to you? (Last question repeated through the interpreter) A No, he didn't say anything. He

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just say I look you up just for suspicion for throwing a bomb.
He didn't ^{ask} ~~make~~ me anything about money.

Q (In English) And that was all the officer said to you?

A Yes.

Q And everything else he ^{said} was pure invention on his part?

MR. ROSENBERG: Objected to.

THE COURT: Objection sustained. Do not characterize
or call upon the witness to characterize.

Q You had no quarrel with Blumenthal, had you? A I don't
know what that is.

Q (Question repeated through the interpreter) had you ever
any fight with Blumenthal? A No.

Q Were you intimate with him? A Yes, I was well acquainted
with him because he did the work for me.

Q And he was quite friendly with you? A Yes.

Q Have you ever had any quarrel with Wilson, who is here?

A No, I had no fight with Wilson.

Q Had you ever any fight or quarrel with Cohen, who was
here a witness? A I don't know him at all.

Q That is all.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q Were you ever convicted of a crime? A No.

Q That is all.

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WILLIAM WITKIN, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 207 East Broadway).

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Witkin, what is your father's name? A Harris Witkin.

Q And he keeps a stable at 137 Division street? A Yes.

Q Do you know the defendant has been trying to serve your father with a subpoena for the last four days, do you know that?

A No, sir.

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

Q Was your father home for the last four days? A Yes, sir.

Q Did you see Mrs. Vitusky around your place for the last four days trying to serve your father with a subpoena? A No, sir, I have not seen Mrs. Vitusky.

Q Did you see the brother of Vitusky trying to serve a subpoena on your father? A I know one served me, that's all I know.

Q Didn't you say that your father was in Morristown at a sale? A No, sir, my father is in the city of New York.

Q Where is he now? A He is home, 135 & 137 Division street.

Q Has he been home all the time? A Yes, sir.

Q Didn't you say in the presence of Officer Murphy, that you wished that your father would not be served with a subpoena in this case? A Yes, sir.

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Q You did say that? A Yes, sir.

Q And didn't you say that we could not get your father to serve with a subpoena? A I did not say that.

Q What did you say about that? A I didn't say anything about that.

Q Nothing of that kind? A I said there was somebody around looking for my father, trying to serve him with a subpoena.

Q That somebody couldn't find your father? A My mother was telling me that, but I didn't see the party.

BY MR. PRESS:

Q You did not see that yourself? A No.

BY MR. ROSENBERG:

Q Well, your mother --

MR. PRESS: I object to what his mother said.

Q Now, Mr. Witkin, do you remember the day of the death of Louis Blumenthal? A Yes, sir.

Q What is the name of your foreman? A Max Yenkin.

Q Were you present when Max Yenkin, your foreman, was requested to call Mrs. Vitusky? A No, sir.

Q Did you see Mrs. Vitusky at your father's stable on that Sunday? A No, sir, I had not seen her.

Q Was she there? A No, sir, I have not seen her.

Q Did you see Blumenthal at your father's stable?

A Yes, sir.

Q Didn't you see Mrs. Vitusky talking with Blumenthal?

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A No, sir.

Q Are you sure of that? A Yes, sir.

Q Was Mr. Eisenberg at your father's stable on the day of the death of Mr. Blumenthal? A Yes, sir.

Q Don't you know that Mrs. Vitusky was sent for? A No, sir, I was at that time on the road.

Q You were not home then, were you? A No, sir, I come back about eight or ten minutes before seven, before Blumenthal's death.

Q Did you ever see Mrs. Vitusky talking with Louis Blumenthal? A Yes, sir.

Q How often? A I seen him once.

Q Where? A At my office.

Q On Division street? A Yes.

Q Was your father present? A No, sir.

Q Was any one present? A No, sir, I was the only one.

While I was answering the phone, Mrs. Vitusky came into the office, and while I was talking with her, after she came in, Mr. Blumenthal come in behind her, come walking in the office. When I got done talking over the phone, I seen Mrs. Vitusky crying to Mr. Blumenthal. I went outside after I got through with the phone to see the wagons and horses, and I left Mr. Blumenthal and Mrs. Vitusky in the office.

Q When was that? A That was about in the early part of January.

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Q Was that before the indictment or after the indictment, if you know? A No, I don't know.

Q Well, was it in the early part of January of this year?

A The early part of January.

Q Did you see Mrs. Vitusky with Mr. Blumenthal in your father's stable at any time after that? A No, sir, I have not.

Q Are you sure of that? A Yes, sir, positive.

Q Did you ever talk with Blumenthal on the subject of this case? A No, sir.

Q Are you sure of that? A Yes, sir.

Q Did your father ever talk with Blumenthal about the subject of this case, in your presence? A I don't know, not in my presence.

Q And your father and Blumenthal were pretty good friends, weren't they? A Pretty good friends. They went out together every night and every day as much as they could. As soon as he left business, he come down to my father's place, if he was going to a matinee or at night to a show, and they breakfasted every morning between 8 and 9 o'clock. I don't know, I never went with him anywheres.

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Q Did you ever remember seeing Mr. Eisenberg and your father with Mr. Blumenthal? A Yes, sir.

Q When? A Always was palling together.

Q All of them together? A Yes, sir.

Q Blumenthal and Eisenberg and your father, were they friends? A Yes, sir.

Q Did you ever see Blumenthal in Eisenberg's place on Centre street with Mrs. Vitusky? A No, sir.

Q Did you ever see Mr. Blumenthal and Mrs. Vitusky in Eisenberg's place since the indictment? A No, sir, I didn't go down to Eisenberg's place.

Q Was your father, to your knowledge ever in Eisenberg's place? A Not while I was ~~at~~ present. Maybe he was down there at a time I am away, I don't know.

CROSS-EXAMINATION BY MR. PRESS:

Q The only one occasion that you can remember seeing Mrs. Vitusky talking to Blumenthal was on one occasion in your office at 137 Division street? A Where was that?

Q That was the day you said that Mr. Blumenthal came into your office and immediately after Mrs. Vituskey came in, is that right? A Yes, sir.

Q But he came first, Blumenthal? A I really don't remember. I guess she come in first, while I was answering the phone.

Q And then Blumenthal came in? A Then Blumenthal back

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of her.

Q And you saw Mrs. Vitusky crying to Mr. Blumenthal?

A To Mr. Blumenthal. I heard no conversation. I shut the door and I went out on the floor.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q How long were they together in that room? A I don't remember, because I left the floor, I went to breakfast.

Q Have you any idea how long they were together? A No, sir, I was away about three-quarters of an hour and they were not there, and he went away with my father for breakfast.

I S A A C E I S E N B E R G, called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

(Residence, 42 Norfolk street).

Q Mr. Eisenberg, you knew Louis Blumenthal in his lifetime, did you? A Yes.

Q And you know Mr. Witkin? A Yes, sir.

Q Did you ever have occasion to have Mr. Blumenthal in your place of business? A Yes, sir.

Q Where is your place of business? A 100 Centre street, opposite the City Prison.

Q Did you ever have occasion to see Mr. Louis Blumenthal there in conversation with Mrs. Vitusky? A Yes, sir.

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of her.

Q And you saw Mrs. Vitusky crying to Mr. Blumenthal?

A To Mr. Blumenthal. I heard no conversation. I shut the door and I went out on the floor.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q How long were they together in that room? A I don't remember, because I left the floor, I went to breakfast.

Q Have you any idea how long they were together? A No, sir, I was away about three-quarters of an hour and they were not there, and he went away with my father for breakfast.

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Q Where is your place of business? A 100 Centre street, opposite the City Prison.

Q Did you ever have occasion to see Mr. Louis Blumenthal there in conversation with Mrs. Vitusky? A Yes, sir.

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Q How often did you see Mr. Blumenthal in your office, in your place, in conversation with Mrs. Vitusky? A I seen him in with her about three or four times, in my place.

Q Wasn't it more than that? A I don't think so.

Q On one of those occasions, can you fix the time by the indictment in this case, was it on the day -- A (Interrupting) The day of the indictment, the both of them were in to my store.

Q That is the day that Mr. Blumenthal went before the Grand Jury? A Yes, sir.

Q Sure of that? A Yes.

Q Did Mr. Blumenthal tell you he was going before the Grand Jury on that day? A Yes, sir.

Q Did he tell Mrs. Blumenthal or Mrs. Vitusky to wait in your store? A Yes.

Q How long did she wait in your store on that day? A About three or four o'clock.

Q Three or four o'clock in the afternoon? A Yes.

Q What time did she get there in the morning? A I got there at nine o'clock and I found her in my store. I don't get down to my place of business until nine or half past nine, and I found her in my place already.

Q She was there when you got there in the morning?

A Yes, I came with Mr. Blumenthal. We all had breakfast together and we came downtown.

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Q And did Mr. Blumenthal have a talk with her before he went before the Grand Jury? A They had a talk together.

Q Did he, yes or no? A Yes, sir.

Q And after, did Mr. Blumenthal tell you that he had been to the Grand Jury room? A Yes, sir.

Q And did you afterwards see or hear Mr. Blumenthal talk with Mrs. Vitusky? A Yes, sir.

Q After he came from the Grand Jury room? A Yes, sir.

Q What time was it he got back from the Grand Jury room, according to what he said? A Half past twelve or one o'clock.

Q Did you hear him tell Mrs. Vitusky to wait at your place that afternoon? A Yes, sir.

Q Did Mr. Blumenthal ever send any letter or note to Mr. Vitusky while in the Tombs, if you know? A He told my daughter to write once a note or twice, I couldn't/remember, seeing he could not read or write.

Q Blumenthal did that? A Yes.

Q Do you remember ever seeing Mrs. Vitusky in the company of Blumenthal any place other than at your store? A No, sir, except, up in Division street stable.

Q That is Witkin's stable, is that right? A Yes, sir.

Q How many times did you see Mrs. Vitusky in the company of Blumenthal at Witkin's stable? A I seen her that Sunday morning, on that day on the death of Mr. Blumenthal, she was

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there in the morning, at ten or eleven o'clock.

Q Do you know who sent for her? A I couldn't tell you.

Q Weren't you there when the foreman of Witkin sent for her, went for Mrs. Vitusky? A Not as I know of, if he sent for her or not. I seen her speaking to the foreman.

Q You saw Mrs. Vitusky speaking with the foreman? A Yes, sir.

Q In Witkin's stable? A Outside the stable.

Q Do you know how the foreman, Witkin's foreman happened to be speaking with Mrs. Vitusky? A I couldn't tell you.

Q Weren't you there when the foreman left the stable? A Yes, sir, I was there. He went outside and he spoke to her.

Q But weren't you there in Witkin's stable with Mr. Louis Blumenthal and Mr. Witkin, Sr.? A Yes, sir.

Q Before the foreman left the place? A No, sir, Mrs. Vitusky came there before Mr. Blumenthal ever reached the office, in the morning. She had been waiting there for about fifteen minutes and then Mr. Blumenthal came in and they had a conversation.

Q Were you present at that conversation? A No, sir, I walked right out of the office. I couldn't hear her crying. I walked right out of the office.

Q Did you hear what Blumenthal said to her? A Yes.

Q What did Blumenthal say to her? A He said, "You

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need not worry, he says, "go home, when the case will come up I will try my best to get him out."

Q Are you sure of that? A Yes, sir.

Q That was on the day of his death? A No, in the morning.

Q The morning of his death? A Yes.

Q The morning of the day of his death? A Yes.

Q And his case was on for the following Monday? A Yes, sir.

Q Is that right? A Yes, sir.

Q Was that the last time you saw Mrs. Vitusky talking with Blumenthal? A No, sir. I saw her on the night, about half an hour or twenty minutes before he died.

Q Was that the occasion when Mr. Witkin's foreman went for Mrs. Vitusky? A I don't know.

Q Was Witkin there? A Yes, sir.

Q And you were there? A Yes, sir.

Q And Blumenthal was there? A Yes, sir.

Q Was the foreman there? A I didn't see him.

Q Didn't your talk with Blumenthal result in the foreman going out and calling Mrs. Vitusky? A Not as I know of. They had a conversation outside in the street.

Q Who? A Mr. Blumenthal and Mrs. Vitusky, whatever her name is, and I heard her crying and there was a big crowd of people on the street. I opened the door and I told Mr. Blum-

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enthal to some in the office, that he should be ashamed of himself to have an argument on the street, and he came in the office and about half an hour later --

Q (Interrupting) Did you hear the argument?

MR. PRESS: Wait a moment. Let him finish.

THE COURT: Go on.

A (Continuing) Half an hour later, it might be ten minutes more, I couldn't say, I was sitting just towards the window and the fellow come in and shot him.

Q A fellow came in and shot him? A Yes, a little short fellow.

Q It was not this defendant, was it? A No, sir.

Q It was not Mrs. Vitusky? A No, sir.

THE COURT: We have located the defendant in the Tombs. It is conceded that at the time of the shooting the defendant was in the Tombs.

Q Did you hear the talk between Mr. Blumenthal and Mrs. Vitusky when you called him in? A She had been crying. That's all I heard of it. I couldn't stand outside and listen to her crying. There was a lot of people outside, but she walked away and he come into the office. He was sitting just on one side of the show window and I was sitting on the other side of the show window.

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Q Do you know how Mrs. Vitusky happened to be there that night? A I understood in the morning he told her to come.

BY MR. PRESS:

Q Now, wait, do you know of your own knowledge how she came to be there that night? A Well, he had a talk with her in the morning and he told her to be down to-night. I was out buggy riding with him that day.

BY MR. ROSENBERG:

Q You were out buggy riding with Blumenthal, you say?

THE COURT: You heard him say that. Why ask him again?

Q As a matter of fact did not Blumenthal tell Mrs. Vitusky to come back and see him that night at the stable?

A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Do you know whether Mr. Blumenthal told the foreman of the stable to call Mrs. Vitusky in the evening? A I don't know.

Q Did you hear, do you know what Mrs. Vitusky said to Mr. Blumenthal on that evening? A Outside in the street?

Q Yes? A No, sir, she was crying, that's all I know.

Q Do you know what Mr. Blumenthal said to her that evening? A No, sir.

Q Did you hear the conversation? A No, sir.

Q Did Blumenthal tell you what was said? A No, sir.

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Q Did you ask what was said? A No, sir.

Q Did Blumenthal tell Mr. Witkin what was said? A No, sir. When he came back from the street he was all excited.

Q Do you remember the purchase of four theatre tickets for a Yiddish theatre? A We telephoned --

THE COURT: Now, what do you want to prove by that? What is the incident you want to prove?

MR. ROSENBERG: I understood that it was intended that the defendant was to be one of the party, of that theatre party.

THE COURT: You have it in once. I do not understand it is disputed.

MR. ROSENBERG: Very well, that is all.

(No cross examination)

M O R R I S R I C H M A N, called and duly sworn as a witness on behalf of the defendant, testified as follows:

Residence 71 Ridge street.

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your business? A Expressman.

Q Do you know Charles Vitusky? A Yes.

Q Do you remember when Charlie was arrested, the defendant was arrested (repeated through the interpreter)? A It is about eight weeks ago.

Q Do you remember the time he was arrested? A Yes.

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Q Do you remember the Saturday before the defendant was arrested? A Yes.

Q Do you remember seeing two men, and those men asking you for Louis Blumenthal? A Yes.

Q Was that in the morning or afternoon? A In the afternoon.

Q Are you sure of that? A Yes.

Q What time was it? A About one or two o'clock.

Q Are you sure of the time? A Yes.

Q What did those two men ask of you?

MR. PRESS: I object to that.

MR. ROSENBERG: It will be connected, your Honor.

MR. PRESS: I object to this testimony now.

THE COURT: We will take it subject to the promise to connect.

A They asked me "Do you know where Louis, the blacksmith lives?" I said, "I don't know." He went to Vitusky and he asked him "Do you know where Louis the blacksmith lives?"

Q Who do you mean by Vitusky? A The defendant. I thought it was a job, and then I went on and I wanted to listen.

Q Come right down, what did you do with those two men?

A I said "I don't know" and they went away and went to this defendant.

Q What did they do with this defendant, what did they

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say to him? A I thought it was a job and I went over.

MR. PRESS: I object to what he thought.

THE COURT: Strike it out.

A (Continuing) They told the defendant "You will get a dollar to bring us to Louis, the blacksmith to stop the fight."

Q To bring him, or to go to Louis the blacksmith?

A To bring him there, to go there.

Q What did the defendant do? A He went on to the wagon and rode with them there, that's all I know.

THE COURT: Now, that is all, is it not?

MR. ROSENBERG: That is all.

MR. PRESS: That is all.

J A C O B V I T U S K Y, called and duly sworn as a witness on behalf of the defendant, testified as follows:

Residence 312 Henry street.

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Are you a brother of the defendant? A Yes, sir.

Q Is the defendant your brother? A Yes, sir.

Q What do you do for a living? A I work by him.

Q You work with your brother? A Yes.

THE COURT: Now, get down to the facts.

Q Do you remember the Saturday before your brother was arrested? A Yes, sir.

Q Do you remember two men coming to your brother and

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asking whether he knew Louis the blacksmith? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Who brought those two men to your brother, the defendant? A This Morris Richman.

Q Are you sure of that? A Yes, sir.

Q What did these two men ask your brother to do, the defendant? A They asked him if he knows Louis the blacksmith from Rutgers Slip. So he said yes, then one said "Do you want to make a little job, I will give you a dollar to ride over and tell Louis that he should stop the fight." So he asked "What fight?" And they said "He knows what fight already," and he rode over, come over there and called over Louis and said, told Louis that "Two men sent me over to tell you that you should stop the fight, you know what fight already."

Q What did Louis say? A He says "Leave them go to hell". Then he went away.

Q Are you sure of that? A Yes, sir.

Q Did you hear your brother at that time ask Louis for \$500? A No, sir.

Q Did he ask for \$500? A No, sir.

Q Did he say "That unless you give me \$500 I will blow your head off"? A No, sir.

Q What time of day was that, have you any idea? A It was just around dinner time or after that.

Q If you don't know, say so. What is your present re-

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collection of the time? A It was around in the afternoon.

Q In the early afternoon? A Yes.

Q Was it? A Yes, sir.

Q Were you on the wagon? A Yes, sir.

THE COURT: Now, is there any other fact you want from this witness?

Q Have you seen Mr. Blumenthal since the arrest of your brother? A No, sir.

Q Have you tried to subpoena Mr. Witkin? A Yes, sir.

Q How often have you been to his home within the past week? A I have been there three times trying to serve him, and his wife didn't leave me in. She says he wasn't in.

Q Did you serve a subpoena on the son, Witkin's son?

A Yes, sir.

Q How many times did you serve him with a subpoena?

A Three times.

Q Where did you go to serve the father, Mr. Witkin?

A In the house and in the office, in the stable.

Q Are you sure of that? A Yes.

Q What time of day did you go looking for him? A I went in the morning and in the night and I couldn't find him.

CROSS EXAMINATION BY MR. PRESS:

Q You were under the cover in the wagon at the time that this conversation took place between your brother and the complainant? A Yes, sir, I was sitting on the seat.

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Q Right inside under the cover? A Not inside, just on the seat in front.

Q You did not see Wilson or Cohen there? A No, sir.

Q That is all.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q You do not know Wilson or Cohen, do you? A No.

BY MR. PRESS:

Q Did you see them on the witness stand here?

MR. PRESS: (Calling) Wilson and Cohen, stand up, please.

Q Did you see those two men there (indicating)? A No, sir.

Q That is all.

BY MR. ROSENBERG:

Q Now, the picture which has been offered in evidence, is that a good picture of the horse and wagon? A Yes, sir.

THE COURT: Now, you have proved that once.

MR. ROSENBERG: Your Honor, I would like to have an adjournment now.

THE COURT: I want this case closed.

MR. ROSENBERG: I would like to get Witkin's foreman here.

THE COURT: Where is your proof of service of subpoena?

MR. ROSENBERG: I have served it.

THE COURT: Then proceed with your witnesses.

MR. ROSENBERG: I would like to have an adjournment for the purpose of subpoenaing Mr. Witkin, Sr.

THE COURT: What is he going to prove?

MR. ROSENBERG: Your Honor, I am advised that he will be able to prove that Mr. Louis Blumenthal admitted to him the falsity of his testimony in the Magistrate's Court; that he testified before the Grand Jury similar to that which Eisenberg gave.

THE COURT: How long will it take you to get him here?

MR. ROSENBERG: I have been unable to get him. His

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1 son claims he is here, your Honor.

THE COURT: Well, he is not here, the Court takes cognizance of that. He has been called and has not responded.

MR. ROSENBERG: Well, with that exception, your Honor, I have no other witnesses.

THE COURT: And the only point you want to inquire of him concerning is, as to the falsity of the testimony of Blumenthal?

MR. PRESS: As he is advised.

MR. ROSENBERG: Yes. I do not know that of my own knowledge.

THE COURT: I only wanted to know the point, and with that exception your case is closed?

MR. ROSENBERG: Yes, sir.

THE COURT: Very well, then I will adjourn here with the understanding that no further testimony is to be offered.

MR. ROSENBERG: Yes, excepting the foreman.

THE COURT: No, we must try cases expeditiously.

MR. ROSENBERG: Well, of course if your Honor will not let me produce the foreman on Monday I will have to be satisfied.

THE COURT: What do you want to prove by the foreman?

MR. ROSENBERG: That he went for Mrs. Vitusky and

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brought her to Witkin's stable on that Sunday evening.

THE COURT: Well, there is no dispute about that, is there?

MR. PRESS: As I understand the testimony that is in, Blumenthal said to her on Sunday morning, if that is the day he was shot, that he said to her, "Come here in the evening."

THE COURT: And she came, there is no question about that. What is the difference who brought her there if she was there?

MR. ROSENBERG: I would like to cover whatever I might be able to cover.

THE COURT: Well, she came there, and whether she went in a taxicab or afoot is quite immaterial.

MR. ROSENBERG: Well, that is all I intended.

THE COURT: Then we will not hear that testimony, because its relevancy and materiality does not appear.

MR. ROSENBERG: Then the District Attorney will not be permitted in summing up to say "Why did not we produce this foreman?"

THE COURT: Well, if he does, there is nothing to that, gentlemen.

MR. ROSENBERG: Then with that understanding, I will try and get Mr. Witkin here.

THE COURT: Now, Mr. District Attorney, you have no

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rebuttal at this time?

MR. PRESS: At the moment I have not, your Honor.

(The Court thereupon admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Monday, February 19, 1912, at 10:30 o'clock A.M.)

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Court

THE PEOPLE vs. VITUSKY.

New York, February 19, 1912.

TRIAL RESUMED.

THE COURT: Proceed.

MR. ROSENBERG: Your Honor, I offer in evidence the following questions and answers given by the witness Wilson concerning which I particularly interrogated Wilson. Mr. Press does not object upon the ground that these are not the minutes, your Honor, but he has some other objection. I examined Wilson particularly about the three questions which I offer in evidence.

MR. PRESS: I object, if your Honor please, on the ground that the three questions are not complete of themselves, the two questions that follow explain the answers to the three that he introduced in evidence. In order to be perfectly fair in the matter I am willing to consent that the entire testimony go in.

THE COURT: Very well, by consent take the entire testimony.

MR. ROSENBERG: Well, I object to the entire testimony. I have examined this witness Wilson ---

THE COURT: (Interposing) Well, if you gentlemen will get together I think you may agree.

MR. PRESS: I consent to it being received if the two following questions be put in.

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THE COURT: Very well then, by consent, you read the three you desire and let the District Attorney read his.

MR. ROSENBERG: This is given by Wilson in the Magistrate's court:

Q Was Blumenthal alone? A He was alone with him.

Q Are you sure of that? A Yes, sir.

Q Were you with Mr. Cohen at the time? A No, sir.

Q Where was Cohen at that time? A I don't know myself.

Q You did not see him? A I saw him around there but where he was I could not say.

Q Was he in that stable that morning? A Yes, he brought down dinner to him.

Q He was in the stable when you went outside?
A Yes.

Q When Blumenthal was outside Cohen was outside?
A No, sir" ---

MR. PRESS: (Interrupting) "When Blumenthal was outside Cohen was inside?"

MR. ROSENBERG: All right. "When Blumenthal was outside Cohen was inside? A No, sir, he was, standing outside waiting for him.

Q Outside the stable? A Yes, sir.

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Q The defendant and Blumenthal were on the opposite sides of the street there about half a block away? A Yes, sir."

MR. PRESS: That is all.

MR. ROSENBERG: (Calling) Mr. Witkin.

H A R R I S W I T K I N, called and duly sworn as a witness on behalf of the defense, testified as follows:

Residence 207 East Broadway.

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your business? A Livery business.

Q Your place of business on Division street is what number? A 135 and 137.

Q Division street, Manhattan? A Yes, sir.

Q Did you know Louis Blumenthal in his lifetime?

A Yes, sir.

Q Were you a good friend of his? A Yes, sir.

Q Do you recall when Blumenthal was about to go ^{before} to the Grand Jury in this particular case? A Yes.

Q And ~~go~~ before the indictment? A Yes.

Q Did you have a talk with Blumenthal? A Yes, sir.

Q Will you please talk up so the last gentleman can hear you? A Yes, sir.

Q Did you have such a talk? A Yes, sir.

Q What did Mr. Blumenthal tell you he intended saying in

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the Grand Jury room?

MR. PRESS: I object to any conversation between Blumenthal and this witness.

THE COURT: Objection sustained.

MR. ROSENBERG: I took the adjournment for the purpose of producing this witness.

MR. PRESS: That is quite true, and the reason I object is that Mr. Rosenberg knows perfectly well that I cannot rebut it because anything that transpired in the Grand Jury room is secret.

THE COURT: This is calling for hearsay evidence and is objectionable. On what theory do you offer it?

MR. ROSENBERG: In the first place, the District Attorney consented last Friday to give evidence on this subject and I made a stipulation in open court, against my own interests, in which I consented that Mr. Press could produce the District Attorney, or the Grand Jury minutes if necessary to contradict what we intended to prove, and that was a stipulation made in open court, and it was on that understanding that we got in the evidence the other day concerning testimony given by Blumenthal, alleged to have been given by Blumenthal in the Grand Jury room, what he told Mrs. Vitusky and what he told Mr. Eisenberg.

THE COURT: Is there any stipulation whereby it

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becomes competent to receive this evidence?

MR. PRESS: Your Honor, I said here in court that I would not object to it. We could call -- this being collateral matter, call the District Attorney to contradict it. Your Honor held that it was improper evidence, and then, since Mr. Rosenberg insisted upon opening the door wide, your Honor held that that being the case you would allow us to rebut it. Since that time I have gone into the matter very fully, and I find that I cannot produce the District Attorney, because if I put the gentleman on the stand here, he will be guilty of a crime if he tells what transpired in the Grand Jury room.

MR. ROSENBERG: The Court may of its own motion have the minutes of the Grand Jury here.

THE COURT: Oh yes, I may give you that permission, Mr. District Attorney, and if you desire permission to produce in evidence the testimony given by this deceased witness before the Grand Jury, it being consented to by defendant's attorney, you may have the Court's permission, if that clears up the difficulty.

MR. ROSENBERG: May I not say, your Honor ---

THE COURT: Wait a moment, you understand, Mr. Press?

MR. PRESS: Yes, your Honor.

THE COURT: Now, shall we have this testimony or not?

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MR. PRESS: Well, as to whether I can get the Grand Jury minutes, that is a question. I cannot get them just now.

THE COURT: It is proper for me to give you permission to use them on consent.

MR. PRESS: Well, I have no objection.

THE COURT: Well, by consent, that question is received.

Q (Last question repeated by the stenographer). A He said he would not go against him.

Q I did not hear that? A He says he will not go against him.

BY THE COURT:

Q Do not be afraid, speak up so that these gentlemen can hear you? A He says he would not go against him.

BY MR. ROSENBERG:

Q I do not hear that? A He said he would not go against him.

BY MR. PRESS:

Q He said he would not go against him? A Yes.

BY MR. ROSENBERG;

Q Well, did he go into details of what he was going to say at the Grand Jury? A He did not.

Q Didn't he tell you what? --A (Interrupting) No, sir.

Q Do you want the jury to understand that the only words

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that he ever said to you ^{were} ~~was~~ that he would not go against Vitusky in the Grand Jury room, is that all he said?

MR. PRESS: I object to the form of the question. The jury understands exactly what testimony is being given here. He says "Do you want the jury to understand".

THE COURT: I sustain the objection as to form.

Q Was there any other talk between Blumenthal and you as to what he was going to say in the Grand Jury room? A No, sir, he didn't tell me.

Q Did you ask him what he was going to say? A No, sir.

Q Did he tell you what he was going to say? A No, sir.

Q What? A No, sir.

Q Well, did he say anything else other than "I would not go against him"? A No, sir.

Q Do you remember the day, the case was on before the Grand Jury, don't you remember that? A I know he was a good many times before the Grand Jury.

Q I know, but didn't he tell you he had an argument with the District Attorney because he would not swear to what was in his affidavit? A Nothing of the kind, he did not tell me.

Q Did you talk to him on that subject? A No, sir.

Q Did Blumenthal tell you that on the day he went before the Grand Jury, that Mrs. Vitusky was waiting at Eisenberg's

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store? A No, sir.

Q Did he tell you that afterwards? A No, sir.

Q Are you sure of that? A Yes, sir.

Q Do you remember the day that Mr. Blumenthal died?

A Yes.

Q Do you remember Blumenthal sending your foreman who is in court? A Yes.

Q (Continuing --to bring Mrs. Vitusky to him? A Not as I know.

Q Didn't your foreman tell ^{you} ~~me~~ that? A He didn't tell me nothing.

Q Is your foreman in court? A Yes, sir.

Q Don't you remember that Blumenthal did send for Mrs. Vitusky the day he died? A Not as I know of.

MR. PRESS: Objected to as already answered.

THE COURT: It is answered already. Do not repeat it, Mr. Rosenberg.

Q You did not want to be served with a subpoena in this case, did you?

MR. PRESS: I object.

THE COURT: I sustain the objection to the question.

Q Do you know that the subpoena, or that the defendant was trying to serve you with a subpoena last week?

MR. PRESS: I object.

Objection sustained. Exception.

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Q That is all.

CROSS EXAMINATION BY MR. PRESS:

Q Did you ever see me before to-day? A See who?

Q Me. A No, sir.

MR. ROSENBERG: Your Honor, may I call the foreman for one question?

THE COURT: Let me hear your question.

MR. ROSENBERG: The question is "Did Louis Blumenthal on the Sunday of the day of the death of Louis Blumenthal send you for Mrs. Vitusky and did you bring her?"

THE COURT: Well, ask that one question.

M A X Y E N K I N, called and duly sworn as a witness on behalf of the defendant, testified as follows:

Residence 179 East Broadway.

DIRECT EXAMINATION BY MR. ROSENBERG:

MR. ROSENBERG: Will the stenographer repeat my question as I just stated it to the Court?

(Question repeated by stenographer.)

A Yes, sir.

Q You are the Foreman of Mr. Witkin, are you? A Yes, sir.

MR. ROSENBERG: Your Honor, I want to make two motions with respect to certain evidence which got into this case, to strike it out. First, I move to strike

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out that part of the testimony of Eisenberg, wherein he volunteered the statement that Louis Blumenthal was shot. That did not come from any question which I brought out, but was a volunteered statement, and while he was making that statement I arose and attempted to object, when the District Attorney, I believe, or your Honor asked me not to object while he was testifying.

THE COURT: I cannot conceive of my having made a ruling of that sort.

MR. ROSENBERG: I arose while he was testifying.

THE COURT: The time to object is the time the testimony goes in. If I told you not to then it is my fault, but I do not think I did. Mr. District Attorney, what do you say about it?

MR. PRESS: I object to anything being stricken from the record.

THE COURT: Well, you have some evidence in the case that this man Blumenthal was shot?

MR. PRESS: Yes, sir, brought forth by Mrs. Vitusky.

THE COURT: Well, what is the difference whether it is in once or twice?

MR. ROSENBERG: I do not think Mrs. Vitusky did testify to it.

MR. PRESS: I intend to read it.

THE COURT: Well, why not strike it out? It does

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not prejudice the facts of the case as proved.

MR. PRESS: If your Honor please, the question I presume is this -- this was examination by Mr. Rosenberg (Reading)

*Q Did not your talk with Blumenthal result in the foreman going out and calling Mrs. Vitusky? A Not as I know of. They had a conversation outside in the street.

Q Who? A Mr. Blumenthal and Mrs. Vitusky, whatever her name is, and I heard her crying and there was a big crowd of people on the street. I opened the door and I told Mr. Blumenthal to come in the office, that he should be ashamed of himself to have an argument on the street, and he came in the office and about half an hour later ---

Q (Interrupting) Did you hear the argument?

MR. PRESS: Wait a moment. Let him finish.

THE COURT: Go on.

A (Continuing) Half an hour later, it might be ten minutes more, I couldn't say, I was sitting just towards the window and the fellow come in and shot him."

MR. PRESS: There was no objection interposed at the time, and I submit it should be allowed to stand. There is not a single objection to it. This is in answer to Mr. Rosenberg: *Q It was not Mrs. Vitusky?

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A No, sir."

THE COURT: The only reason I suggested the consent was the fact that it seemed to me to make no difference and on account of the statement made that I interrupted counsel taking an objection. Well, I must deny the motion.

MR. ROSENBERG: To which the defendant excepts. I ask your Honor to strike from the record testimony given by Mrs. Blumenthal, and by Officer Murphy concerning an explosion which took place at the premises in which Mr. Blumenthal lived, upon the ground that it is not part of this case, not in any wise connected with this defendant, and an attempt to establish a separate and distinct crime for which this defendant is not on trial.

THE COURT: I will deny your motion.

MR. ROSENBERG: To which the defendant excepts. Now, the defendant rests. May it be understood that the defendant rests and then make the motion to strike out, and your Honor denies these motions, to which the defendant excepts?

THE COURT: Yes.

MR. ROSENBERG: Now, the defendant moves, asks your Honor to direct the jury to acquit the defendant upon each of the grounds stated before, and the defendant asks that those grounds be repeated at the close of this case,

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and upon the additional ground that the facts set forth in the second count of the indictment have not been proved; that the facts set forth in the second count of the indictment do not establish any crime, and I desire to call your Honor's attention to the fact that the crime of an attempt to commit the crime of extortion is made a crime by a section other than 850 of the Penal Law, and if your Honor will hear me a moment on that, I think I can show you that, if there is any offence of attempting to commit the crime of extortion, it is the crime of a misdemeanor which is not charged in this indictment.

THE COURT: Well, Mr. District Attorney, I do not know that I quite comprehend the point, but this I know, that there has recently been a court decision holding that an attempt at an extortion was a misdemeanor, and quite recently the Legislature seemed to have tried to get over that difficulty. Now, was the date of this crime prior to the act of the Legislature or after, I mean after it became effective?

MR. PRESS: Subsequent, I believe, your Honor, and I took the matter up with Mr. Perkins and he informs me it was under 850 and 851, subdivision 1.

THE COURT: Well, I will deny your motion.

MR. ROSENBERG: Well, will your Honor hear me as to the question, that the crime is not before the Court?

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THE COURT: I am going to give full credit to that act of the Legislature.

MR. ROSENBERG: That is what I want to do. If your Honor will look at section 857 of the Penal Law, you will find that the Legislature has expressly defined what is the crime of attempted extortion, and at the concluding paragraph of that section -- that was the amendment of 1911, -- and I claim that that amendment in no wise interferes with the law as it then existed and as it now exists.

THE COURT: Mr. District Attorney, let me ask you once more under what section do you claim this is?

MR. PRESS: 850 and 851, subdivision 1.

THE COURT: It is subdivision 1 of 851, Mr. District Attorney, I think.

MR. ROSENBERG: Yes, that is what he claims.

MR. PRESS: Yes, your Honor.

MR. ROSENBERG: That only relates to a definition, your Honor.

THE COURT: Now, what do you want to urge?

MR. ROSENBERG: Now, what I urge is this, the concluding paragraph of 857 says, -- that is the amendment of 1911, -- that the provisions of this section, that is ~~making~~ ^{making} a misdemeanor, an oral threat, do not apply to matters governed by 851 of the act. Indeed, the law is still the same excepting to those matters which are governed by

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851 of the act. Now, 851 of the act defines or attempts to define what is fear, or how fear may be induced; fear such as will constitute extortion may be induced by an oral or written threat -- first, that is the section which *The District Attorney* relies on -- to do unlawful injury to the person or property of the individual threatened or to any relative of his or to any member of his family.

Now, your Honor will see that 851 of itself must be read in connection with 850, 850 defines ~~what is~~ the crime of extortion. 851 picks out one of the elements of the crime of extortion and defines what that element consists of. In other words, extortion is the obtaining of property from another with his consent induced by unlawful force or fear or under color of official title.

Now then, fear as defined ^{such} as will constitute extortion, may be induced by an oral or written threat. Then it defines the threat. My claim is this, that 857 merely says that 857 shall not apply to where the matters are governed by 851. 851 only applies to the crime of extortion, which is the completed crime; therefore, if 851 only applies to the completed crime of extortion, then 857 is the law under which this defendant could be prosecuted if at all.

THE COURT: Well, I shall deny your motion, Mr. Rosenberg.

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MR. ROSENBERG: And I refer your Honor to The People
ex rel ^{Perry} ~~Gillette~~ vs. ^{Gillette} ~~the Warden of the Prison at Rochester,~~
200 New York, which was the latest expression of opinion, ^{of the Court of Appeals}
and which resulted in this amendment.

THE COURT: I have ruled. Now, you may go to the jury.

Mr. Rosenberg thereupon closed the case on behalf of the defense.

Mr. Press thereupon closed the case on behalf of the People.

(During Mr. Press's closing address:)

MR. ROSENBERG: Your Honor, I ask that in view of the fact that your Honor ruled that the question I put was a proper question, Mr. Press has no right to say the question I put was improper.

THE COURT: I will instruct the jury to determine this case from the evidence in this case and that alone.

MR. ROSENBERG: But the District Attorney has no right to say your Honor, that the only way of impeaching a witness is by asking if he was convicted, and I except to your Honor's refusal to direct the District Attorney not to say that.

THE COURT: Proceed, I have stated how I shall instruct the jury.

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THE COURT'S CHARGE.

HON. WARREN W. FOSTER, J.

THE COURT:

Gentlemen, in a criminal action, all questions of fact are for the jury to determine. You must weigh the evidence in your own way, and in your own good sense believe that which you think worthy of belief and reject that which, on the contrary, you think unworthy of belief. Be guided by the law as I declare it, and for the purposes of the trial, the law that I declare is the law that must govern and control you. For the purposes of the trial I am infallible in my statement of the law, and you must accept it precisely as I declare it, no matter whether you agree with it or whether you disagree with it, for every word I say is being taken down by the official stenographer, to the end that it may be submitted for review to an Appellate tribunal, an Appellate Court, and if perchance I misstate the law, it can be corrected; but if you gentlemen shall set aside the law as I declare it, and make the law of the case for yourselves, there is no way of reviewing it, and giving this defendant a fair trial under the law.

So, at the outset, I must tell you to forget all statements of law that have been made by counsel in this case,

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either the People's counsel or defendant's counsel, and be guided and controlled only by what I say.

It is my rule in charging a jury, to submit to them in a succinct, clear and brief manner, the question for their determination, not beclouding by any hifalutin language or any eloquence of charge, the issue submitted to the jury, and it is my experience, as well as my wish, that the jury should accept the question submitted, and then at the exercise of their good common sense, in every spirit of fairness, they shall give a square deal to the People on the one hand, and the defendant on the other, taking the question submitted to them, and from the evidence, and that alone, determine it and decide it.

The defendant is not charged with the crime of extortion, but with an attempt to commit the crime of extortion, so that, at the very threshold of your inquiry, you must know what is an attempt to commit crime in the law.

It is conceded that there was no extortion here, merely an attempt at extortion.

An attempt is an act done with the intention of committing a crime, and tending to commit the crime, but yet failing to effect it. I might lunge at you, intending to strike you, Mr. Foreman, and the valiant District Attorney being nearest to me, might stop me before my blow landed on you. You would be unharmed. There would be no assault

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and yet if perchance I have struck at you, I have, with the intention of assaulting you, that is, with the intention of striking you, done an act which tended to the striking, and yet fell short of its accomplishment. That homely illustration will perhaps help you to understand an attempt to commit the crime of extortion.

It is claimed here that the defendant attempted to extort money, that with that intention he did an act tending to commit it, though it did fall short of accomplishment.

Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right. Fear such as will constitute extortion may be induced by an oral or written threat to do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family.

It is contended here that at the time and place charged in the indictment, this defendant came to one Louis Blumenthal and threatened him with dire consequences, to wit, threatened his life if he did not give him money. Blumenthal did not give the money, but the defendant, it is claimed, did all that was in his power to carry out this crime, did it with the intention of committing the crime.

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If you believe this defendant attempted to extort the property of Blumenthal, induced by a wrongful use of force or fear, and that the fear was induced by an oral threat to do an unlawful injury to his, Blumenthal's person, convict him of an attempt to commit the crime of extortion; and if he did not, acquit him. If you entertain any reasonable doubt about it, give the defendant the benefit of that reasonable doubt. That is all there is to the case, gentlemen. I will see if there are any further requests to charge you.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you submitted to the jury the question of an attempt to commit the crime as defined by Section 2 of the Penal Law, an act tending to commit a crime, and claim ~~that if any offense~~, that if there be a crime known as attempted extortion, it must come within Section 857 of the Penal Law. I except to that part of your Honor's charge wherein you said in words or substance that it is admitted that an attempt to commit the crime of extortion was made by --

THE COURT (Interposing): Did I say that it was admitted?

MR. ROSENBERG: You said that it is conceded that the crime of extortion was not completed, but that an attempt was made.

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THE COURT: No, no, it is conceded. I did not mean to say it was conceded.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you state that the jury must forget all the law which was discussed by counsel.

THE COURT: Well, I say to the jury that they must accept the law as I lay it down in my charge, and if anything has been said inconsistent with it, neglect it, but accept the law I declare, gentlemen.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you stated near the opening of your charge, that everything you are saying is being taken down by the stenographer to the end that it may be reviewed by an Appellate tribunal.

THE COURT: Well, what is the matter with that statement? Is it wrong? Is it error, is it false, untrue, bad law or what?

MR. ROSENBERG: It gives the jury the idea that this case is to be reviewed by an Appellate tribunal, in which event --

THE COURT (Interposing): Gentlemen, you must not assume it will be reviewed. I only indicated that to show you the importance of your accepting the law as I declare it. I do not know whether it will be reviewed or not.

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MR. ROSENBERG: I ask your Honor to charge that before the defendant may be found guilty under this indictment, the jury must be convinced beyond reasonable doubt that the threat was made to obtain, that the attempt was made to obtain property from Louis Blumenthal with his consent.

THE COURT: I have already covered that. I repeat it.

MR. ROSENBERG: I ask your Honor to charge the jury that they must not consider the evidence of the shooting of Louis Blumenthal to the prejudice of this defendant.

THE COURT: Well, the jury must consider all the evidence. I may say to them that I do not recall any evidence that the defendant did this shooting, none whatever. It is not fair to the defendant to infer that he did. You must draw no unfavorable inference from that. It is a fact in the case, it is in the case to explain why Blumenthal is not here as a witness.

MR. ROSENBERG: Oh, no, we have admitted he was dead, your Honor, there was other proof that he was dead.

THE COURT: Is there any other request?

MR. ROSENBERG: I ask your Honor to charge the jury that they must not infer or consider the fact of the explosion which occurred on the 10th or 11th of December, at Blumenthal's premises as against this defendant.

THE COURT: I do not remember anything connecting the

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defendant with it. It is part of the res gestae.

MR. ROSENBERG: But there is no legal connection.

THE COURT: I have said I know of no proof connecting the defendant with it.

MR. ROSENBERG: Then why not have the jury disregard that in considering the question of his guilt or innocence?

THE COURT: I have so declared to the jury.

MR. ROSENBERG: I ask your Honor to charge the jury that the defendant is presumed to be innocent of this charge.

THE COURT: Have I not said that?

MR. ROSENBERG: I did not hear your Honor say it.

THE COURT: Then I do say it.

MR. ROSENBERG: I ask your Honor to charge the jury that the People must prove this case beyond a reasonable doubt.

THE COURT: I think I have said that very thing.

MR. ROSENBERG: I ask your Honor to charge the jury that they must not consider, in determining the guilt or innocence of this defendant, anything except the legal evidence which has been adduced upon the trial of this case.

THE COURT: Yes, I have told them that once. I repeat it at your request.

MR. ROSENBERG: I ask your Honor to charge the jury that when the defendant took the witness stand --

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THE COURT (Interposing): Now, have I not charged this jury adequately, fully and sufficiently, in all fairness?

MR. ROSENBERG: Well, I think it is the right of the defendant *to make requests,*

THE COURT: Oh, it is your right to get up and read many requests, but does it add to the clearness with which the jury ^{the decision in} undertake this case?

MR. ROSENBERG: I ask your Honor to charge the jury that when the defendant took the witness stand, the District Attorney could have interrogated the defendant as to any criminal or vicious act in his life which he committed.

THE COURT: Yes, he might have done that, gentlemen, if that will help you.

MR. PRESS: Along certain lines, your Honor.

THE COURT: Yes.

MR. ROSENBERG: Any criminal or vicious act the defendant was guilty of, the District Attorney could have interrogated the defendant about.

THE COURT: Now, why do you ask me to say it twice?

MR. ROSENBERG: Well, Mr. Press says "along certain lines".

THE COURT: Well, I charge it as you ask.

MR. ROSENBERG: Now, I ask your Honor to charge the jury that the question which was propounded to the witness

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Wilson as to whether he had been guilty of stealing \$60. from his employer, was a proper question, in view of the claim made by the District Attorney in his summing up, that that was an improper question.

THE COURT: I decline to tell the jury. They remember the answer, and if it was not proper, I would have excluded it. Use your good sense, gentlemen.

MR. ROSENBERG: Well, your Honor admitted it.

THE COURT: Then it was a proper question. Now, look at the time that would be consumed if you go through the entire list of questions and answers and ask me to rule on them separately?

MR. ROSENBERG: I except to your Honor's submitting ~~the question~~ ^{the charge} to the jury, contained in the second count of the indictment, upon the ground that the facts stated have not been established.

THE COURT: I have submitted to the jury only one question, and they may decide it, unless you have further requests.

MR. ROSENBERG: I except to your Honor's submitting to the jury also the question that under this indictment a threat to kill has been made out. Exception.

THE COURT: You may retire, gentlemen.

The jury retired at 12:27 P.M., and returned to the

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court room at 1 P.M., and rendered the following verdict:

We find the defendant guilty of attempted extortion and we recommend him to the extreme mercy of the Court.

MR. ROSENBERG: Will your Honor postpone sentence until Wednesday or any other day which your Honor fixes?

THE COURT: Any day you want.

MR. ROSENBERG: Reserving the right to make a motion to set aside the verdict upon all the grounds?

THE COURT: Yes.

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COURT OF GENERAL SESSIONS OF THE PEACE
City and County of New York, Part II.

-----x
THE PEOPLE OF THE STATE OF NEW YORK:

against

CHARLES VITUSKY.
-----x

New York, February 23rd, 1912.

Indicted for Attempted Extortion.

Indictment filed January 16th, 1912.

A P P E A R A N C E S:

For the People, ASSISTANT DISTRICT ATTORNEY PRESS.

For the Defendant, K. ROSENBERG, ESQ.

The defendant is arraigned for sentence before
HON. WARREN W. FOSTER, J.

James E. Lynch,
Official Stenographer.

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THE COURT: If there are any witnesses, please have them summoned at once.

MR. ROSENBERG: Will I make my motions now, your Honor?

THE COURT: Just one minute. Have you any witnesses?

MR. ROSENBERG: No, sir.

THE COURT: Then I will hear your motion.

MR. ROSENBERG: The defendant moves to set aside the verdict of the jury and for a new trial, upon the following grounds:

First, that the verdict is contrary to law; second, the verdict is contrary to the evidence; third, that the verdict is against the weight of evidence; fourth, because the facts proved, do not constitute a crime; fifth, because the Court misdirected the jury on matters of law, to which the defendant duly excepted, and because the Court refused to charge as requested by the defendant, to which the defendant duly excepted; seventh, because the Court erred in denying the defendant's motion to advise the jury to acquit made at the close of the People's case, and again at the close of the whole case, to the denial of which motion the defendant duly excepted. Eighth, because the Court erred in admitting evidence given by one Louis Blumenthal in the Magistrate's Court of the City of New York, First Division, 3rd District, on the 13th day of December, 1911, against the objection and exception of the defendant; ninth,

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because the Court admitted illegal, incompetent, irrelevant and immaterial evidence, against the objection and exception of the defendant, and excluded illegally, competent evidence offered on his behalf; because of the misconduct of the Assistant District Attorney in offering illegal and incompetent evidence, and knowingly propounding illegal questions to witnesses, and making statements during the trial, and creating a prejudicial atmosphere against the defendant, all for the purpose of influencing the jury against the defendant.

The defendant moves in arrest of judgment, first, that the facts proved do not constitute a crime; second, that the facts proved do not constitute the crime of an attempt to commit the crime of extortion; third, that the facts charged in the indictment do not constitute a crime; and lastly, that the facts set forth in the second count of the indictment, do not constitute the crime of an attempt to commit the crime of extortion.

THE COURT: Your motion in all respects is denied.

MR. ROSENBERG: To which the defendant excepts.

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THE COURT: Have you anything further to urge, Mr. Rosenberg?

MR. ROSENBERG: Not on matters of law, your Honor.

THE COURT: Very well, I have decided the questions of law. Now, I will hear you on such other subjects as you wish to be heard on.

MR. ROSENBERG: Has your Honor made up your mind as to the application of the law governing the sentence in this case?

THE COURT: I did, I have read both of your suggestions, and I am prepared to dispose of the case.

MR. ROSENBERG: Now, with reference to the merits, your Honor, I believe that if Mr. Witkin, who testified before the Coroner's Inquest on last Wednesday, were to be interrogated by your Honor on the subject of his talks with Blumenthal, the dead man, I am convinced he could convince your Honor with the truth of our defense, and the absolute innocence of this defendant.

THE COURT: That is a matter for you to bring up under the head of a motion for a new trial. You have one year to make your motion for a new trial.

MR. ROSENBERG: I think this case will be disposed of before a year is up.

THE COURT: Well, of course, you may appeal; I have not got to tell you that, but the question is now on the sen-

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tence to be meted out to this defendant, and if you wish to urge anything in that regard, I will be pleased to hear you.

MR. ROSENBERG: No, I would rather not talk on that subject, your Honor. Of course, if this defendant was guilty, and I suppose your Honor is bound to assume that the verdict of the jury establishes that fact, -- though I disagree with the jury's verdict.

THE COURT: Oh, yes, the jury has convicted him, and in law your disagreement is not very weighty.

MR. ROSENBERG: No, of course not, but of course with the prejudicial atmosphere which was created in this case, it would have been a happy accident if a proper verdict should have been rendered, because of the fact that the District Attorney started out, instead of trying this man for extortion, he tried him for either murder or for blowing up this tenement house.

THE COURT: No, no, the test of the issue tried is the Judge's charge; the Judge's charge submits the issue to the jury, and I do not think you will say that my charge submitted any question of murder to this jury.

MR. ROSENBERG: But the trouble is this, the jury had for three days an atmosphere created around this defendant which showed that at 2 o'clock in the morning, in a tenement house filled with women and children, an explosion occurred.

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Now, the jury would have to be other than human not to have been influenced by that evidence, and I say that the introduction of that evidence, although I objected to it from the start, and persisted in my objection, certainly operated to the defendant's prejudice, and I think that will be the main reason why this case will be reversed, if for no other reason, though I believe that the introduction of the deposition, was clearly illegal.

THE COURT: Well, those are questions of law.

MR. ROSENBERG: But on the facts, if this man were guilty, he was entitled to no consideration, and yet the jury who convicted this man, brought in a strong recommendation of mercy.

THE COURT: Oh, yes, I shall listen to that, Mr. Rosenberg, and give it full weight.

Charles Vitusky, you have been tried, I believe fairly tried, and convicted, I believe justly convicted. The jury have recommended you to the extreme mercy of the Court, and I shall hearken unto and give full weight to that recommendation.

Under the law, and the law is complicated in the extreme as regards the punishment for your offense, it is difficult for me to see what legal punishment can properly be meted out. I have had briefs submitted both for the your District Attorney and counsel, and the course that I am

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about to take I think it is agreed, is proper under the law.

Your crime is one that is unfortunately frequent in this community, if we may believe the newspapers. It is of the "Black Hand" nature. It is suggested that you are both a bomb thrower and a horse poisoner, and a "Black Hand" as well. This community has too long, in certain of its elements at least, been terrorized by such as you, and it is meet and it is proper that the extreme penalty of the law should be meted out to such as you. The recommendation of the jury, proper under the circumstances, stays my hand. Elmira Reformatory is available for you. In view of your youth, for you appear from the record to be only twenty-four, in view of the fact that you have never had an education, in view of the fact that if you are ever to become a good citizen, you need to have something of education and something of wholesome discipline administered to you, the Court sentences you to the Elmira Reformatory.

Now, if Miss Jossam can be found, I will take up the matter of looking after this man's family in his absence.

MR. ROSENBERG: Will your Honor stay the execution of sentence until Monday?

THE COURT: You may have a week, if you wish. There are some questions of law here that may properly be reviewed. One week.

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