

**INDEX.**

	PAGE
Writ or Error .....	1
Answer .....	9
Case .....	9
Motion Made for Directing Verdict (fol. 30) .	159
Court's Charge to the Jury .....	160
Assignments of Error .....	173
Writ of Error to Supreme Court, Filed March 5, 1919 .....	i
Return to Writ of Error, Filed March 5, 1919	iii
Judgment of Affirmance, Entered March 4, 1919 .....	iii
Assignments of Error, Filed March 22, 1919 .	189
Opinion, Filed Feb. 25, 1919 .....	206

TESTIMONY.

Edward Colodinski,		
	Direct .....	12
	Cross .....	21
	Re-direct .....	37
	Cross .....	38
Wasil, Mazku,		
	Direct .....	41
	Cross .....	45
Paul Radu,		
	Direct .....	49
	Cross .....	51
George Somers,		
	Direct .....	62
Joseph H. Derowsky,		
	Direct .....	63
Anton Taitjen,		
	Direct .....	67
	Cross .....	74
Fred Fedodoff,		
	Direct .....	88
	Cross .....	93
	Re-direct .....	101

	PAGE
Nick Matin,	
Direct .....	102
Cross .....	106
John Yusekavicz,	
Direct .....	117
Cross .....	121
Nicholo Siryak (Scelach),	
Direct .....	124
Wasil Veramachik,	
Direct .....	126
Cross .....	128
Dimitri Federitchik,	
Direct .....	130
Cross .....	131
Dimitri Bucanowski,	
Direct .....	132
Cross .....	135
Morris Barislow,	
Direct .....	136
Cross .....	137
Isaac Bogpolovsky,	
Direct .....	137
Cross .....	139
Ivan Czerak,	
Direct .....	140
Charles Recht,	
Direct .....	145
Cross .....	148
Re-direct .....	151
Re-cross .....	153
Henry T. Langtry,	
Direct .....	154
Cross .....	154
Joseph Dorowsky,	
Direct .....	157
Cross .....	158

**Writ of Error to Supreme Court  
Filed March 5, 1919.**

New Jersey, ss.:

THE STATE OF NEW JERSEY.

(Seal)

10

To the Chief Justice and Associate Justices of the  
Supreme Court of the State of New Jersey:

Because in the record and proceedings and also  
in the giving of judgment of the said Supreme  
Court, affirming the conviction in the Court of  
Quarter Sessions of the County of Hudson upon a  
certain indictment against Fred Fedodoff and  
Toney Tachin, of the City of Bayonne, in the  
County of Hudson, for having on the 7th day of  
March, in the year of our Lord, One thousand nine  
hundred and eighteen, with force and arms in the  
City aforesaid, in the County aforesaid, and within  
the jurisdiction of this Court, wilfully, knowingly  
and unlawfully attempted by speech to incite,  
abet, promote and encourage hostility and opposi-  
tion to the Government of the United States, in  
that, in the presence and hearing of divers good  
people then and there assembled the said Fred  
Fedodoff and Toney Tachin did publish, utter, pro-  
nounce, declare and say with a loud voice to the  
persons there assembled in substance that the pres-  
ent war in which the Government of the United  
States is now engaged with Germany, was a war  
for the benefit of the capitalists of the world only,  
that the President of the United States at the be-  
hest of the capitalists was sending our soldiers to  
France to be slaughtered, that we the people of

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the United States did not need any government and that the persons there assembled should arm themselves for the protection against the Government; whereof before said Court of Quarter Sessions of the County of Hudson, the said Fred Fedodoff and Toney Tachin had been indicted and are  
10 thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Fred Fedodoff and Toney Tachin, as it is said, manifest error hath intervened to the great damage of the said Fred Fedodoff and Toney Tachin, as from their complaint we have received information, we being willing in this behalf to correct the error in due manner and form, if any there be and that speedy justice be done to them, the said Fred Fedodoff and Toney Tachin in this behalf, do command  
20 you that if judgment be thereupon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid before you in the said case, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes to be holden at Trenton, on the fifteenth day of March next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws  
30 and customs of New Jersey ought to be done.

WITNESS, EDWIN ROBERT WALKER, Chancellor of the said State of New Jersey and President Judge of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton aforesaid, this 28th day of February, Nineteen hundred and nineteen.

THOS. F. MARTIN,  
Clerk.

OTTO A. STIEFEL,  
Attorney.

**Return to Writ of Error, Filed March  
5, 1919.**

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed, as within we are commanded. 10  
nixed, as within we are commanded.

WILLIAM S. GUMMERE (Seal)  
C. J.

**Judgment of Affirmance, Entered  
March 4, 1919.** 20

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE, Defendant-in-Error,  vs.  FRED FEDODOFF and TONEY TACHEN, Plaintiffs-in-Error.</p>	}	<p>In Error to Hudson Quar- ter Sessions. Rule on Affirm- ance of Judg- ment. 30 Order on Remittitur.</p>
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This cause having been duly argued at the November Term, A. D. 1918, of this Court, by Pierre P. Garven, Prosecutor of the Pleas of the County of Hudson, counsel for the State of New Jersey, defendant-in-error, and by Otto A. Stiefel, counsel for Fred Fedodoff and Tony Tachen, plaintiffs-in-

error, and the Court having considered the same; and having examined the record and proceedings of the Hudson Quarter Sessions therein and finding no error; it is hereby

10 ORDERED AND ADJUDGED that the judgment of the Hudson Quarter Sessions in the above entitled cause be, and the same is, hereby affirmed with costs;

AND IT IS FURTHER ORDERED that the record in the said cause be forthwith remitted to the Hudson Quarter Sessions, there to be proceeded with according to law.

Entered Mar. 4, 1919.

20 On motion of

PIERRE P. GARVEN,  
Prosecutor of the Pleas,  
Attorney for the State of New Jersey.

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### Writ of Error.

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State of New Jersey, Hudson County, to wit: Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City in and for the said County of Hudson, on the second Tuesday of December in the year of our Lord one thousand nine hundred and seventeen, before Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Mark A. Sullivan, and Honorable George G. Tennant, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the statute in such case made and provided, by the oaths of

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- |                           |                         |
|---------------------------|-------------------------|
| 1 John Ferris             | 12 Joseph A. Gleeson    |
| 2 A. Z. Benedict          | 13 William G. Hausche   |
| 3 John Clohessy           | 14 Joseph Lopiano       |
| 4 Walter J. Coleman       | 15 Thomas F. Lynch      |
| 5 P. J. Condon            | 16 James C. Malone      |
| 6 James W. Cranwell       | 17 Wm. J. McGovern      |
| 7 John B. Cusick          | 18 Wm. O'Neill          |
| 8 Mat. A. Donnellan       | 19 Martin F. Quinn      |
| 9 Dennis Dunn, Jr.        | 20 Peter B. Rendall     |
| 10 J. Harry Ertle         | 21 Dr. Francis J. Short |
| 11 Cornelius F. Fitzsimon | 22 Charles Wagner       |
|                           | 23 John G. Woltjen      |

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good and lawful men of said county, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of

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Hudson, it presented in manner and form following, that is to say, that the bills following are true bills.

JOHN FERRIS,  
Foreman.

10 And the foregoing being presented to the said Court on the fifteenth day of March, in the year of our Lord One Thousand Nine Hundred and Eighteen, with bills of indictment Nos. 279 to 305 inclusive, it is ordered by said Court that the said bill of indictment so as aforesaid included as Bill Number 324 for Sedition as charged upon Tony Tachin and Fred Fedodoff should be handed to the Court of Quarter Sessions for trial and disposal according to law, and said bill is in words  
20 as follows:

Hudson Oyer and Terminer  
December Term, A. D. 1917.

Hudson County, to wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, that Toney Tachin and Fred Dedodoff, late of the City of Bayonne in the year of our Lord one thousand nine hundred and eighteen, with  
30 force and arms, at the city aforesaid, in the county aforesaid, and within the jurisdiction of this Court, did wilfully, knowingly and unlawfully attempt by speech, to incite, abet, promote and encourage hostility and opposition to the government of the United States, in that in the presence of divers good people then and there assembled, did publish, utter, pronounce, declare and say with a loud voice to the persons there assembled in substance that  
40 United States is now engaged with Germany, was

a war for the benefit of the capitalists of the world only; that the President of the United States at the behest of the capitalists was sending our men to France to be slaughtered; that we the people of the United States, did not need any government, and that the persons here should arm themselves for protection against the government, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 10

PIERRE P. GARVEN,  
Prosecutor of the Pleas.

ENDORSED:—Bill No. 324 Hudson Oyer and Terminer Term of December 1917. The State vs. Toney Tachin and Fred Fedodoff for Sedition. 20

PIERRE P. GARVEN,  
Prosecutor of the Pleas.

A true bill.

JOHN FERRIS,  
Foreman.

PRESENTED MAR. 19, 1918, AND HANDED DOWN TO THE COURT OF QUARTER SESSIONS. 30

John J. McGovern,  
Clerk.

And afterwards, to wit: on the twenty-first day of March, in the year of our Lord, one thousand nine hundred and eighteen at a sessions of the 40

10 Court of Quarter Sessions of the County of Hudson, aforesaid being now of the term of December, one thousand nine hundred and seventeen, in the said year before the Honorable Mark A. Sullivan, Judge of the Court of Common Pleas in and for the County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Toney Tachin and Fred Fedodoff under the custody of Alexander Stoktilsky their bail in whose custody they had before been committed for the cause aforesaid, who being brought here in their proper persons by their bail aforesaid, to whom they are also here committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above  
20 specified and charge upon them, how they will acquit themselves thereof, they say they are not guilty thereof, and therefore put themselves for good and evil upon the country, and Pierre P. Garven, Esq., Prosecutor of the Pleas of said county, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore let said indictment be continued until April eight, nineteen hundred and eighteen, and let a jury come before the Honorable James W.  
30 McCarthy, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Quarter Sessions for the said county being now of the term of December, one thousand nine hundred and seventeen, of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better

known, and who are not of kin to the defendants to recognize on their oath and whether the said Tony Tachin and Fred Fedodoff be guilty of Sedition as in the indictment aforesaid, is charged against them, or not guilty thereof, because as well the said Pierre P. Garven, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey in this behalf, as the said defendants have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place. 10

At which time, that is to say the twenty-ninth day of April, in the year of our Lord, one thousand nine hundred and eighteen, at Jersey City aforesaid, in the County of Hudson aforesaid, before the Honorable James W. McCarthy, Judge, as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said Pierre P. Garven, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said defendants under the custody of their bail aforesaid, in whose custody they have been hitherto committed and who being brought to the bar in their proper persons by their bail, and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose chosen empanelled and returned, to wit: Eugene Soma, David Connors, Robert Van Buren, Adam Yockle, Charles Epprecht, James Callaghan, Anton Helge, Fred Hoops, William Griffin, George Purdy, Richard Walter, Wm. C. Rode being called come who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and jury, and at which days the evidence of the 20 30

parties is submitted and the attorneys were heard thereupon and the said issue after a charge by the Court was submitted to the said jury, and the said jury, in charge of the said Officers of the Court, duly sworn for that purpose, were taken to a private room to consider of their verdict and afterwards, to wit, at May second, 1918, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said Pierre P. Garven, Esquire, Prosecutor of the Pleas as aforesaid, and of the said defendants, do say that the said defendants are guilty of Sedition as in the aforesaid indictment is charged against them.

20 Therefore that the said indictment be continued until May 16, 1918.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it is by the Court here considered and adjudged, that the said defendant Tony Tachin, be and is hereby sentenced to be confined in State Prison at hard labor for a maximum term of ten years (10) and a minimum term of three (3) years and thence until the costs of prosecution are paid.

30 And the said defendant Fred Fedodoff is hereby sentenced to be confined at hard labor for a maximum term of ten (10) years and a minimum term of five years (5) and thence until the costs of prosecution are paid.

## WRIT OF ERROR.

Judgment entered and signed this eighteenth day of April, 1918, One Thousand Nine Hundred and Eighteen.

JAMES W. MCCARTHY,  
Judge of the Court of Quarter Sessions  
in and for the County of Hudson,  
State of New Jersey. 10

Attest; JOHN J. McGOVERN (signed),  
(L. S.) Clerk.

New, Jersey, to wit:

(L. S.) The State of New Jersey to James W. McCarthy, Judge of the Court of Quarter Sessions of the County of Hudson, of the term of April, in the year of our Lord one thousand nine hundred and eighteen. 20

Because in the recod and proceedings, and also in giving of judgment upon a certain indictment against Fred Fedodoff and Tony Tachin, of the City of Bayonne, in the County of Hudson, for "having on the seventh day of March, in the year of our Lord nineteen hundred and eighteen, with force and arms in the city aforesaid, in the county aforesaid, and within the jurisdiction of this Court, did wilfully, knowingly and unlawfully attempt by speech to incite, abet, promote and encourage hostility and opposition to the government of the United States, in that in the presence and hearing of divers good people then and there assembled did publish, utter, pronounce, declare and say with a loud voice to the persons there assembled in substance, that the present war in which the government of the United States is now engaged with 30 40

Germany, was a war for the benefit of the capitalists of the world only; that the President of the United States at the behest of the capitalists was sending our soldiers to France to be slaughtered; that we, the people of the United States, did not need any government, and that the persons there assembled should arm themselves for protection against the government" whereof before you they have been indicted and are thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Fred Fedodoff and Tony Tachin, as it is said, manifest error hath intervened to the great damage of the said Fred Fedodoff and Tony Tachin, as from their complaint we have received information, we being willing in their behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Fred Fedodoff and Tony Tachin, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justice of our Supreme Court of the State of New Jersey on the 6th day of June next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, Wm. S. Gummere, Chief Justice of our Supreme Court this 17th day of May, in the year of our Lord one thousand nine hundred and eighteen.

ENOCH L. JOHNSON,  
Clerk.

JENNIE RICHER,  
40 Attorney.

### Answer.

The answer of James W. McCarthy, Esquire, Judge of the Court of Quarter Sessions holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within I am commanded. 10

JAMES W. McCARTHY,  
Judge.

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#### HUDSON COUNTY COURT OF QUARTER SESSIONS.

McCARTHY, J. 20

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THE STATE  
vs.  
TONY TACHIN and FRED FEDO-  
DOFF.

---

Indictment  
No. 324.  
December  
Term, 1917.  
Sedition.

30

Trial of the above entitled case, May 1, 1918, before Hon. James W. McCarthy, and a jury.

#### APPEARANCES:

Mr. GEORGE T. VICKERS and Mr. THOMAS H. BROWN, for the State.

Miss JENNIE RICHER and Mr. READY, for the de- 40  
fendants.

Miss Richer: Before the jury is selected, may I ask leave to withdraw the plea of not guilty, in order to make a motion to quash the indictment?

The Court: Yes. The plea of not guilty may be considered as withdrawn in order to make a motion to quash.

10 Miss Richer: The indictment reads that these defendants did publicly utter and pronounce and declare in a loud voice to the persons there assembled "in substance," that the present war—and so forth. That, it seems to me is a conclusion. The exact words that these people said are not stated, and that is the matter in dispute, and it seems to me that the defense ought to be given an opportunity to have the exact words that these people stated. In a case of slander the law re-  
20 quires, and it has been stated several times in several courts, that the exact words that the defendants used must be stated. Here the substance is given. We are not given facts to meet. The issue is not clear. A conclusion is set out and we are not given enough of the facts to put in our defense. I don't know whether the Court is aware that these things were spoken in the Russian language—

The Court: I don't know anything about the case.

30 Miss Richer: Of course, it must have been interpreted into the English language, giving the substance of what was said. It seems to me that it is a requisite of the law to put in the indictment the exact words that were spoken—

The Court: In the Russian language?

Miss Richer: Yes, and translate into English, or a translation of the words that were spoken. This is simply the pleader's conclusion.

The Court: I think, if that is the only ground of your motion, I will deny your motion. Does the Prosecutor care to say anything on that?

Mr. Vickers: No, except, of course, there is nothing before the Court which shows that these utterances were in the Russian language.

The Court: No, I didn't know that.

Mr. Vickers: Therefore, of course, the Court will not take it into consideration, in deciding it one way or the other.

The Court: No; because there is no such proof before the Court. I don't know what language it was spoken in.

Mr. Vickers: The indictment says it was spoken in the English language—so far as can be ascertained.

Miss Richer: May I ask an exception?

The Court: Yes.

Exception Allowed, and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge. (Seal)

The Court: The defendants now plead not guilty?

Miss Richer: Yes.

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The jury was called and sworn.  
Mr. Brown opened to the Jury.

EDWARD COLODINSKY, a witness produced on behalf of the State, was called.

Examination by Mr. Brown:

10                   The Court: You speak English?   A. No.  
                      The Court: What do you speak?   A. Polish.

                      Q. How long have you been in America?   A. Eight years.

                      Q. About eight years?   A. Yes.

                      Q. You understand Russian too, don't you?   A. Yes.

                      Mr. Brown: Let us try him in Russian.

20   By the Court:

                      Q. Where do you work?   A. Copper work.

                      Q. Whereabouts?   A. International Nickel Company.

                      Q. Where is that—the Nickel Works—what city is it in?   A. Bayonne, down at the Hook.

                      Q. How long have you worked there?   A. Maybe four, six years.

30                   Q. Are you married?   A. I got, Old Country.

                      Q. In the Old Country?   A. Yes.

                      Q. How long have you been in this country?   A. This country?

                      Q. Yes.   A. Four years, first time.

                      Q. Four years?   A. Yes.

                      The Court: I suppose we might try him.

                      Mr. Vickers: I don't think so, because it seems to me that if it should turn out that the remarks were made in Russian and we

will have to get their equivalent in the English language, we would be entitled to a more perfect interpretation than this witness could give us.

The Court: He is going to testify that they were in the Russian language?

Mr. Vickers: I anticipate that.

10

The Court: Then we should have a Russian interpreter here. He should speak in the Russian language.

Mr. Vickers: I understand this gentleman (indicating an interpreter) can interpret the Russian language.

The Court: He may be sworn.

Mr. Vickers: Is there any objection to this gentleman, on behalf of the defence? I don't know him. As far as I know, he is entirely impartial. He is provided by the official court interpreter.

20

Miss Richer: No, I have no objection.

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JACOB SCHWARTZ, sworn as Interpreter.

EDWARD COLODINSKI, the witness, sworn, through Interpreter, testified as follows:

30

Direct Examination by Mr. Brown:

Q. Where do you live? A. I live in Bayonne, New Jersey.

Q. What number and street? A. Seventeenth Street, 25, East.

Q. Did you attend a meeting on March 7th, 1918, in the city of Bayonne? A. Yes.

40

Q. Where was that meeting held in Bayonne? A. The seventh of March.

Q. Where? A. Twenty-first Street and—saloon. I don't know the number.

Q. Near what other street? A. Near Broadway.

10 Q. Who did you go to that meeting with? A. I was coming from work. I was going in there, to the meeting.

Q. Who did you go with? Did you go with another man? A. No, I went in with two, altogether.

Q. Who did you go with? A. Pavo Raticavage.

Q. When you went in that hall did you see any man on the platform—yes or no? A. It was two, and altogether two people of the—on the platform, and he said some meeting tonight, a Russian meeting.

20 Q. Did you see anybody on that platform at that time, that you see here in the court room this morning? A. Yes.

Q. Point out to the Court and jury who you saw on that night you see here this morning. A. (Witness indicates the defendants.)

The Court: What are their names?

30 The Witness: I don't know exactly their names. I know one, on the hand bills, it was Brother Fedodoff.

Mr. Vickers: We ask that it be noted on the record that the witness pointed to the defendants with two fingers.

Q. Step down and put your hands on the defendants. A. (Witness leaves the witness chair, and indicates the two defendants.)

40 Q. Which one of these two men was doing the talking? A. The first one, on that corner (indicating Fedodoff).

## EDWARD COLODINSKI—Direct Examination.

Q. What language was Fred Fedodoff talking in?

A. He was speaking in Russian.

Q. Do you understand Russian? A. Yes.

Q. Is that what you are talking with the Interpreter now—Russian? A. Yes.

Q. What did you hear Fred Fedodoff say at that meeting at that time? A. He said that when Kerensky was Prime Minister in Russia, he lock up all the food stuffs, and the people—when the people from Russia were starving from hunger. When the Bolshiviki came into power, the Bolshiviki went away to open all the stores, and force open the stores, they take all the food stuff away, everything that was there, and divided the foods among the people. 10

Miss Richer: Will not the Interpreter please interpret every word that is said, and the exact words, not in substance? 20

The Court: You must interpret, give us the exact equivalent of each of the words, not giving the substance, but the exact equivalent.

The Interpreter: Sure; that is what he says.

The Court: (To Counsel) If you have an interpreter there, you might check it, if you have anybody that understands the language. If you find a mistake, call the Court's attention, and we will correct it right away. They are entitled to have, word for word, what was said, as nearly as the witness can recall. 30

A. (Continuing) He says that the Germany has strong military, strong militarism, and nobody can beat it. After, he speak about England, he 40

says that England put up the war, and it make something out of them, only the rich people make money out of them. He says that when England start to put prescription, take them for the soldiers, and when England make a new law for prescription—

10 Q. Conscription? A. Yes. —take soldiers law, that the time you know, if you don't want to do it, send force into the—Gendarme to force the prescription law.

Miss Richer: If the Court please, I understand that the witness said "in Ireland," and the Interpreter has not mentioned that part of it.

20 Q. Did he say anything about Ireland?

The Interpreter: In England or Ireland. (To the witness—Ireland? England?)

The witness: England; and England try to wipe up Ireland.

30 Mr. Vickers: That is the first time we have had it on the record. I would like to ask whether the witness did not say something about capitalists, in speaking about forcing soldiers to fight, whether he did not say something about capitalists, whether he did not use the term "capitalists."

The Court: (To the Interpreter) Did he say anything to you about capitalists, about rich men?

The Interpreter: He told me, before, first time.

The Court: The same time he talked about Ireland?

40 The Interpreter: No, he did not.

(Mr. Goldram, the official Court Interpreter, standing by, says, "No.")

The Court: I don't want any misunderstanding about it. It is too serious a case. These defendants are entitled to have every word that was uttered, as far as this witness can recall it, in the Russian language, 10  
have it correctly interpreted. If there is any doubt about it, if this interpreter is not interpreting correctly, the Court wants to know it.

Mr. Vickers: I think the Interpreter is entirely conscientious. I think he lacks the experience. He gives us the answer after a long colloquy between himself and the witness. I think if the Court will instruct him 20  
to give this piece-meal, get it on the record here, it is more important than anything else.

The Court: When you ask him a question, put it in the language of the Prosecutor or counsel for the defence, and give us back just exactly what he says, word for word, as you interpret it. Don't take too much of it, don't take a yard of it, give us less than that, when we will get it accurately. Go 30  
ahead. He said that England tried to wipe up Ireland; that was the last.

A. (Continuing) He said that England like the war, before used to make one million a year, today he makes two million.

The Court: Who?

The Interpreter: The capitalists, the England.

A. (Continuing) After, he start to speak about United States America, or Americans.

By the Court:

10 Q. Tell us what he said about the United States of America. A. He said United States is in the war not for only to make money, capitalists to make money.

Mr. Vickers: Why don't you give us the words?

A. He said the United States is in the war, the capitalists to make money on it.

20 Mr. Vickers: That is the thing. That is the thing he said before.

The Court: That the United States went in the war for the capitalists to make money; is that right?

The Interpreter: Yes.

30 A. (Continuing) Gentlemen, you know you are living in United States, and not so rich—he said, Gentlemen, you know you are living in United States, and the man in the White House, in Washington, live at—everybody know his name—

Mr. Vickers: Before we go any further—man or men?

The Interpreter: "Man."

A. (Continuing) He said that everybody know his name.

Q. Go ahead. A. He become frightened.

40 Q. Who become frightened? A. The man from

over there, from the White House, he don't say who, he become frightened, and when he declared war on Germany, and after all, they declared war on Austria. United States do the same thing, only the capitalists to make the money out of it.

The Court: Do what same thing? 10

The Interpreter: The same thing.

The Court: What same thing?

A. (Continuing) That what England does, and the capitalists make money out of it. And say, United States, was speaking from the United States, young men, take them away, on the front, make meat out of them. He says, Gentlemen, we got everybody now be put in arms and fight against capitalism. He said we don't need no capital, we don't need no government. With that the meeting was closed. 20

The Court: Closed how?

Q. How was it closed? A. The saloon keeper ordered—give us an order to close up meeting, he put out the gas.

Q. What happened before the saloon keeper ordered the meeting closed, before he put out the gas? There is always a reason for putting out the gas. A. Nothing was before. 30

Q. After you heard these remarks what did you do? A. He says, he said, we don't want meetings like that, he said, close the meeting because I don't want meetings like this.

Q. Who said that? A. He said it.

Q. Who said it? A. I said, and everybody says it. I said, and everybody says, we don't want such kind of meetings. 40

Q. When you say "everybody" do you mean the people in the audience? A. In the audience.

Q. When you made that remark, "I don't want such meeting as this," what did you do at that time? A. Make lights out the gas, tell them to go out.

10 Q. Who turned off the gas? A. Saloon keeper close the gas.

Q. He turned off the gas? A. Yes, turned off the gas.

By the Court:

Q. Did the place go in darkness? A. Yes.

By the Court:

20 Q. Before the people went out? A. Sure; it was dark, went out in the dark.

Q. When you made that remark, were you sitting down or standing up? A. I stood up.

Q. Did the other people also jump up? A. Because the gases was light out, and we can't see that.

Q. So the rest of them lit out? (No answer.)

30 The Court: Both were put out.

Q. Did this man have anything more to say then, after you got up and spoke to them? A. When he close the meeting he went away.

Q. Who went away? A. Them two defendants. And he said it was the two and it was the third one too, went away.

Q. When they went away which way did the defendants go out? A. I went through the back door,

## EDWARD COLODINSKI—Cross Examination.

so he went away through another door, to Liberty Street.

Q. Did you see anybody go after the two defendants? A. I was inside, I didn't see that.

Cross Examination by Miss Richer:

Q. You speak what language? A. I speak only Russian. 10

Q. You speak Russian? A. Yes. I speak Russian.

Q. Where were you before you came to this meeting? A. I was coming from work.

Q. Where do you work? Where did you work? A. Factory.

By the Court:

Q. What factory? A. Nickel Company—copper work. 20

Q. What day of the week was this?

Mr. Vickers: The meeting.

Q. This day you were coming from work, to go to the meeting? A. Thursday.

Q. Did you go directly from work to the meeting? A. No, I didn't went right. I went before to eat supper. 30

Q. And then where did you go to eat? A. I went on the street.

Q. Went on the street to eat?

The Interpreter: After.

Q. Where did you go to eat? A. I eat in my own house.

Q. You mentioned the names of two people with whom you went to the meeting. Where did you 40

meet these people? A. Yes, I said that I met two men, and I told them I got officials to go to the meeting, got advertisement to go to the meeting, and it is Russian meeting.

Q. What did the advertisement contain? What were the words? A. It was in—right in Russian.

10 Q. What did it say? A. It was in then the date, it was the seventh of March, of this year, it will be a big meeting, it will come best friend Fedodoff from New York, and he will speak on the meeting very important things, why you learn Russian people to went up a revolution.

Q. What? A. Why you learn Russian people to be under a revolution. Learn Russian people to learn Russian people to help be in a revolution, to raise a revolution. And he says that all the Rus-  
20 sian, the all Russian people is going to be invited to be at that meeting, to meet free, free entrance.

Q. Will you repeat just those words that you said about the Russian revolution? A. It was that to teach Russian people to revolution, to raise revolution, to teach, teach the Russian people to raise a revolution.

Mr. Vickers: Before he said "to have," now he says, "to raise." I want to know what it is.  
30

The Interpreter: To raise a revolution.

Miss Richer: I think that is the Interpreter's word—"to raise."

The Court: I think so, too.

Mr. Vickers: We will consent it be taken out. We will take the interpretation of the interpreter for the defence.

Interpreter For The Defence: The real interpretation is "What the Russian revolution teaches the Russian People."  
40

Mr. Vickers: Will you ask this witness whether that was on the advertisement?

Q. Were the words on that advertisement that you speak of, "What the Russian Revolution teaches the Russian People?" A. What will learn you the Russian Revolution.

10

Mr. Vickers: That is not an answer. I have no right to move to strike out because it is not responsive—

Miss Richer: I move to strike it out.

The Court: It may be struck out.

Q. (Repeated by the Stenographer, in English) Were the words on that advertisement that you speak of, "What the Russian Revolution teaches the Russian People?" A. (Given by the witness without the Interpreter). Yes.

20

By the Court:

Q. Were the words on that circular "Learn the Russian People what the Russian Revolution teaches the Russian People?" A. (Given by the witness to the Interpreter, in Russian (phonetically) chemôo—

30

Miss Richer: That requires yes, or no.

The Court: Might I say this—have you a copy of that circular?

Mr. Vickers: No sir, we have not.

Miss Richer: No. We have many witnesses to prove this point.

The Court: Unless there is objection on the part of counsel for the defence, we will take it, as what he says it was—"Learn the

40

Russian People what the Russian Revolution teaches the Russian People." Of course that means the Russian people in the United States.

Miss Richer: Yes.

10 Mr. Vickers: What the gentleman associated with the defence said was "What the Russian Revolution teaches the Russian People."

Q. You spoke about these two men. You said you went up to the meeting with them. Where did you meet them, after you had your supper? A. On the street.

Q. Whereabouts on the street? A. On Eighteenth Street.

20 Q. Did you go with these two people into the meeting? A. I saw him the advertisement.

Q. Whom did you show? A. I saw him.

Q. My question was, did you go into the meeting with these two men whom you met on Eighteenth Street?—yes, or no. A. I went with him, further up. One went right in the meeting.

By the Court:

30 Q. Did you go in the meeting alone or did you go in there with somebody else? A. One went away, and come after, with another fellow.

By the Court:

Q. Did you go in the meeting with another fellow? A. Yes.

By the Court:

40 Q. Who? A. (Stenographer's Note spelled phonetically) Pavo Raticavage.

Q. In your answers you said you went in there with another man—you went with two men; what happened to the other man? A. I met the two men, only I have to go in another place, some place to see somebody. For that reason one went away. After, I go with another man.

Q. Where did you go with this man after you had your supper? A. I went away to see him come from Russia, come one of the priests. I went to see it the priest. 10

Q. Did you go with the other man to see this priest? A. Yes, I went with him to see the priest.

Q. Isn't it true you went into a saloon with this man? A. No. (Witness continues talking in Russian).

Miss Richer: He said something else.

The Court: What did he say? 20

A. I was not in the saloon before the meeting. I was, after the meeting.

The Court: After the meeting he went in the saloon?

The Interpreter: Yes.

Q. Did you have any liquor at all before you went in the meeting? 30

Mr. Brown: I object. It is immaterial.

The Court: I will allow it.

Q. Just before you went to the meeting, did you have any liquor to drink? A. No, I didn't drink.

Q. How long before the meeting did you drink? A. After the meeting I only drink a glass of beer, I went away and sleep.

Q. Didn't you have any liquor at all at your supper? A. No, I didn't drink. I drink water.

Q. Didn't you have any liquor at all when you went with Pavo? A. I said I didn't. If I went to the priest I wouldn't go in a drunken manner.

10 Q. After you came from the priest did you go directly to the meeting? A. Yes.

Q. You didn't stop in any saloon on your way? A. (In English.) No, no saloon, no. Went right upstairs.

Q. What did you do when you came in the meeting room? A. Sitting.

Q. You just sat down, is that all?

The Interpreter: I was sitting, he says.

The Court: Repeat it.

20 The Interpreter: I was sitting.

By the Court:

Q. When you went in, did you sit right down or did you stand up for a while? A. I went in there, I was standing because there was no place. After I catch a place, I sit down.

30 Q. Just what was happening in the meeting at the time you came in? A. He was—everything was close up.

Q. The speaker was just talking when you came in? A. Yes.

Q. In your previous evidence you said when you came in there were two men standing on the platform, one was introducing the speaker is that so?

40 The Court: He said when he went in the meeting he saw these two defendants on the platform, and Fedodoff was talking when he went in. That occurs to me as what he said.

Mr. Vickers: And he began about Kerensky.

The Court: So the meeting was in progress when he went in.

Miss Richer: I would like to have it on the record, he said the two defendants were on the platform, and one introduced it, saying it was a Russian meeting. 10

Mr. Vickers: No.

The Court: No, he said he saw both defendants on the platform and Fedodoff was talking in the Russian language.

Mr. Vickers: And then he said, Kerensky, when he was Prime Minister, locked up all the food.

Q. Fedodoff was talking at the time you came in the hall? 20

The Interpreter: He said he was going in, he didn't hear what he said.

A. When I went in, started to go in, I couldn't hear what was upstairs.

By the Court:

Q. When you went in the meeting, was this man, Fedodoff, talking? A. When I went in I found—

The Court: No, he didn't; he nodded his head. 30

Mr. Vickers: And barked.

The Interpreter: He said, when I went in I found him speaking.

The Court: Will the Stenographer read the question?

Q. (Read by the Stenographer.) Was Fedodoff doing the talking when you came in the hall? A. Yes. 40

Q. Is there a saloon in the hall—in the same building as the hall? A. Yes.

Q. Did you pass through the saloon on your way into the meeting? A. No, I went in right through the hall.

10 Q. Are you speaking Russian now, or Polish? A. I can speak Polish.

Q. What were you speaking? A. I want to show I can speak.

Q. What are you speaking now? A. Rushki.  
A. (By the Interpreter.) Now I speak Russian.

Mr. Vickers: I object to the Interpreter saying "Now I speak Russian." He said simply, "Rushki."

20 By the Court:

Q. What are you speaking when you speak to the Interpreter? A. Russian.

Q. Do you speak Russian usually, amongst your countrymen? A. Yes.

Q. What language do you speak better, Polish or Russian? A. Russian.

Q. What part of Russia do you come from? A. Nizhniy Novgorod.

30 Q. What language do they speak there? A. Nessutch—Town of Nessutch.

Q. What language do they speak there? A. Russian.

Q. Don't they speak any other language but Russian?

Mr. Vickers: I object. It calls for a conclusion.

The Court: Objection sustained. How is it material?

40

Miss Richer: I want to show that he speaks Polish, doesn't speak Russian very well, is liable to make a mistake in his interpretation.

The Court: How can you show that by showing that in this town they speak other languages? How will that affect his ability to speak Russian? 10

Miss Richer: I will withdraw the question.

Q. While you were seated at the meeting just what was spoken?

The Court: Do you want everything he heard?

Miss Richer: Yes.

Q. While you were in the hall what was said? A. 20  
He was speaking about Kerensky.

Q. Who was speaking? A. That small fellow.  
By the Court:

Q. Was there anybody else talking on the platform while you were in the meeting but Fedodoff?  
A. One man, that is all (indicating Fedodoff).

By the Court:

Q. Tell us everything that you remember that Fedodoff said at that meeting. Let us have it all. 30  
A. I said I heard what he said when I went in, I heard, when was Kerensky in his office, at the time he closed up everything, and it was very bad for the poor people, and everybody was starving. After, when the Bolshiviki came in power, they took away all from the rich and give to the poor, and became everything all right. The Russian is ignorant, he don't know how to fight, only the Germans are strong and smart and can fight. After, he went up about England. 40

Q. Tell us what he said about England. A. England went in the war, the capitalists shall make big money. When England then went to start the prescription, he don't want to join the prescription, he don't want to obey, he sent his own soldiers from Ireland, soldiers to shoot, to go after them.

10 Q. Go after whom? A. He said, when the Irish didn't want the prescription.

The Court: That is the evident meaning of the language, when England wanted to conscript the Irish they sent soldiers over there to shoot them.

The Interpreter: Soldiers and gendarme.

20 Q. What is gendarme? A. Military police. Some kind of police on horse back. England is in the war to make big money. Before, he used to make a million, now he makes three.

30 Q. What else did he say? A. After, he went up the United States. America was want the war, the same thing, like, you know, to make money out of it, capital. He said, Gentlemen, we know all everybody, in the White House at Washington, who lives there, I don't want to tell you his name, because everybody knows him. When Germany put in the papers—was put in the papers Germany wants peace, instead to try for that peace, he open war on Austria.

Q. What? A. Declare war on Austria, instead to make peace. In papers was that Germany wants peace, instead to do so, he declare war on Austria.

Q. What else was said? A. United States only make capital.

Q. From what? A. From the war.

40 Q. What else was said? A. He take from poor soldiers or poor people, he takes the poor people or

would send them away to France to make meat of them. He said, We gentlemen, we live in—we need to go in arms and fight against that kind of thing.

Q. To what? A. To fight against it.

Q. Against what?

Mr. Vickers: What does “capitalsky” mean in Russian? 10

The Interpreter: He said, we go against capital, money makers.

Mr. Vickers: All right; put it on the record.

A. (Continuing). We don't need for capital, capital, capitalists, rich people, we don't need no government.

Q. Is that all that was said? A. (No answer). 20

Q. (By the Court). What else? A. When we will go against it everything will go in our hands.

Q. When you go against what, everything will go in whose hands? A. We go against capital, capitalism, at the time, come rich, at the time, everything will come in our hands.

Q. Is that all that was said? A. After, was close the meeting.

Q. Is that all that was said? A. No; close the meeting. 30

Q. Wasn't anything there said about Germany?

Mr. Vickers: I object. What the witness has already said has disclosed the fact that something was said about Germany, and the question implies that nothing was said.

The Court: I will allow the question.

Mr. Vickers: It implies he has not related what was said.

Q. Was there anything else said about Germany?  
 A. Russia—Germans are good. I didn't write everything distinct, what he said. He said Germans are good.

Q. Are those the exact words he said at the meeting—"Germans are good"? A. Yes. He said, civilized people and smart people, and strong people.

The Court: The answer was "Yes." Then he went on to explain it, because he said "Yes."

The Interpreter: He said, yes the people are smart and civilized and strong and nobody can beat them.

Q. What people? A. The Germans.

Q. Was there anybody else speaking at the meeting beside Mr. Fedodoff? A. Only one, only him.

Q. He was the only one that was speaking?

The Interpreter: Speaking.

Q. He was the only one that was speaking? A. Yes.

Q. Did anybody else address the audience before the lights were turned out? A. No.

Q. Wasn't there any discussion from the floor? A. No, they only close up.

By the Court:

Q. Where did the saloon keeper speak from?  
 A. The saloon keeper, he go to the saloon keeper, tell him that he want to hold a meeting only for purpose to organize the organization to make—after, shows up, he speak about the war.

The Court: Repeat the question.

Q. (Repeated by the stenographer) Where did the saloon keeper speak from? A. After, went in the hall.

By the Court:

Q. After what? A. When he heard talking about United States, at that time, he went in, saloon keeper went in hall. 10

By the Court:

Q. Went in the hall? A. Went in the hall.

By the Court:

Q. What did the saloon keeper say when he went in the hall? A. He said nothing, only said, "I close the meeting."

By the Court: 20

Q. "I close the meeting"? A. Yes.

By the Court:

Q. Did he say anything else? A. No, he close up, right close up.

Q. Was the saloon keeper there only once? Did he go in just once? A. I didn't went with him, I don't know. I didn't see him come in. 30

Q. Was there a policeman in the audience at the time you were there? A. I don't know. I have seen it, after, I see a policeman, we see one in there, I don't know who brought him.

By the Court:

Q. Was that before or after the saloon keeper said he would close the meeting? A. Before, close the meeting, the officer. 40

Q. Wasn't there a policeman in the audience all the time the meeting was going on, to keep order?

A. I have seen the policeman was in the time, I have seen the time was speaking on United States, he was policeman there, cop there.

10 Q. Did the policeman make any remarks about the things that were said? A. No.

Q. Did the policeman try to keep order in certain sections of the hall at the time these things were said?

Mr. Brown: I object. It is incompetent and improper.

The Court: I will allow it.

A. Yes.

20 Q. Did you object to any of the things that were said by Mr. Fedodoff? A. Yes, I objected, I says, meeting like that, I wouldn't allow, shouldn't be.

Q. Did you say anything when you objected?

Mr. Vickers: I object. I understand that is what he did say.

By the Court:

30 Q. Who did you say that to? A. I talk to the two people, got to close the meeting.

Mr. Vickers: Pointing at the defendants.

By the Court:

Q. Did you speak to them at the close of the meeting—when the meeting was over? A. I was speaking with the other, with the other people, some of them, we got to close the meeting; after, the saloon keeper come just and close meeting.

40

Q. What did you do? Did you do anything to show you objected? A. No, I have no right to do anythings.

Q. Didn't you get up? A. All went up. Whole meeting went up.

Q. During the time Fedodoff was talking, did the whole meeting get up? A. Yes.

10

Q. Were they standing all the time Fedodoff was talking? A. No, I was sitting. I was sitting. We were sitting then.

Q. When did they get up? A. I can't really just exactly—it is two months ago.

Q. What caused you to get up? What was said that caused you to get up? A. When I heard him start to talk about the going in arms, put in arms, go against the millionaire, then we stood up.

20

The Court: When he talked about being put in arms, going in arms, against the millionaire, he got up.

Q. What did the policeman do around that time, when you all got up? A. When we went up, we went right home, and the meeting was closed.

Q. That was at the end of the meeting, they got up. I mean during the time Fedodoff was talking, and the witness has answered that the people got up during that time.

30

Mr. Vickers: Question objected to, on the ground it implies there is a distinction between the two events. Apparently they were simultaneous, when the defendant said certain things and the people got up, that was the end of the speaking.

The Court: That is the testimony; when he spoke about putting them in arms and

40

going against the millionaires, he got up, the people got up, and the saloon keeper said they would have to close the meeting, and the lights were put out. That is the evidence, isn't it?

10 Mr. Vickers: That is what I understand the situation to be. The question implies there was something happened after that.

Miss Richer: I wanted what happened before that.

Q. Before you went home, before anybody got up to go home, did you get up and make any objection to what this speaker was saying? A. I went up and I says to him, I am against it, and the Germans are no good, they kill my wife there.  
20 That is all.

Q. When did the speaker speak about Germany—before or after he spoke about the United States? A. I told the lady couple of times already. I speak already, I told you couple of times already.

Q. When did the speaker speak about Germany—before or after he spoke about the United States? A. I told you he said that Germany is smart and nobody can beat him.

30 The Court: That is not the question.

By the Court:

Q. The question is—did he speak about Germany before or after he spoke about the United States? A. Yes, when he was start to speak about Russia, after about England, after about the French, after about the Germany, after about America, the United States.

40

Noon recess.

EDWARD COLODINSKI—Re-direct Examination.

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Afternoon session.

LEO SCHLEIN, sworn as Interpreter.

EDWARD COLODINSKI, witness. (Examination resumed.)

Cross Examination by Miss Richer (resumed):

10

Q. Did Fedodoff speak about the United States before or after he spoke about Germany? A. When Kerensky was in power, it was better—

Miss Richer: I object.

The Court: It may be struck out.

Q. (Question repeated). A. First he was talking about Germany, that Germany is good, and after, he was talking about United States.

20

Q. He was talking about the United States last of all? A. They are taken by this country—that this country went in the war to get out the money, to be sure of the money.

Miss Richer: I object. It calls for an answer, yes or no.

The Court: It may be struck out.

30

Q. Was he talking about the United States last?  
A. Yes, after.

Re-direct Examination by Mr. Brown:

Q. You testified that the United States went into the war—that the speaker said the United States went into the war for the capitalists to make money. Did you get up and protest before that

40

utterance was made, or after? A. I made a protest.

Q. Did you make a protest before or after Fedodoff said that? A. After.

Q. Did he also say that the United States went into the war to make money? A. Yes.

10 Q. What did you say in answer to the question asked you, about the Germans killing your wife? Kindly repeat what you said. A. He says that he don't like Germany because he don't know maybe they kill his wife.

Q. Who says? A. I says.

The Court: He said before, "They killed my wife."

20 The Witness: "Maybe they killed my wife."

Further Cross Examination by Miss Richer:

Q. Isn't it true that you and Fedodoff are not good friends because you are a member of the church brotherhood and your ideas are against his?

Mr. Vickers: I object.

The Court: I will allow it.

30 A. I don't know him. He lives in Bayonne; I live in New York. \* \* \* I live in Bayonne; he lives in New York.

The Court: We ought to get it as the witness gives it. If we cannot get it accurately from the Interpreter the Court will suspend the trial. These men are on trial for a serious offence and are entitled to have every word that has been said by this

witness correctly translated into English. The Interpreter said— I heard it, I suppose the Jury did— that this witness lives in New York, and the defendant lives in Bayonne. Is that true or not? We cannot handle this thing loosely or carelessly. Repeat the question.

10

Q. (Repeated by the Stenographer.) Isn't it true you and Fedodoff are not good friends because you are a member of the church brotherhood and your ideas are against his? (No answer.)

By the Court:

Q. Maybe I can help you— Are you and this defendant, Fedodoff, good friends? A. I don't know him at all.

20

Q. Did you ever see him or know him before the night that you met him at this meeting? A. No.

Q. Do you belong to any brotherhood or any organization Fedodoff belongs to? A. No.

Q. Association or club? A. No, I don't belong to nowheres.

Mr. Vickers: The witness pointed to something on the lapel of his coat, appears to be a liberty button. The State desires to know, for the purpose of the record, what it is.

30

By the Court:

Q. What did you mean when you pointed to your button? A. I belong to the St. Kovna Society.

Q. Does this defendant, Fedodoff, belong to the same society or church? A. No, he don't belong there.

40

Mr. Vickers: May we find out what the society is? I want to know. Perhaps it is a Russian Liberty Loan Society.

By the Court:

- 10 Q. What is that button you have on your coat?  
A. (Witness shows the Court the button.)

The Court: It is not a liberty button.  
Mr. Vickers: I withdraw my remarks.

By the Court:

Q. What is that button? A. Russian Society.  
Further Cross Examination by Miss Richer:

- 20 Q. It is opposed to socialism, is it not? A. No.

The Interpreter for the Defence: That is a wrong translation.

The Interpreter: It is a church society.

Q. Is it against socialism? A. They don't talk there about socialism.

The Interpreter for the Defence: That is a wrong translation.

- 30 The Court: Let Mr. Schlein put the questions to this man and Mr. Goldram give us the answers through Mr. Schlein. Mr. Schlein is not interpreting as this man says, and the defendants' own interpreter objects to it, and the Court does not understand the language, but it seems we are not getting it all. We are entitled to it.

- 40 Mr. Vickers: I don't know whether Judge Goldram claims to be a Russian interpreter.

The Court: Yes, he does. But because of his cold, his apparent condition, he cannot talk above a whisper.

By the Court:

Q. Is the society represented by that button opposed to socialism? A. That is an independent Christian Church. 10

By the Court:

Q. Is it opposed to socialism? A. They are against socialism.

Q. Isn't Fedodoff a socialist, to your knowledge? A. I don't know.

20

WASIL MAZKU, a witness produced on behalf of the State, being sworn, through Interpreter Goldram, testified as follows (through interpreter):

Direct Examination by Mr. Brown:

Q. Where do you live? A. (Given without the Interpreter) Eighteenth Street. 30

Q. What number? A. (Without Interpreter) Nineteen.

Q. Eighteenth Street? A. (Without Interpreter) Yes.

By the Court:

Q. Bayonne or New York? A. Bayonne.

Q. How long have you lived there? A. (Through the Interpreter) Seven years. 40

Q. Did you attend a meeting that was held on March 7, 1918, in a hall in Bayonne—yes or no?

A. Yes.

Q. Did you see the defendant, Fedodoff, and the other man, Tachin, there? A. Yes.

10 Q. Where did you see them? What part of the hall did you see them in? A. Twenty-first Street, Bayonne.

Q. Did you see them on the platform? A. In the body of the hall.

Q. Did you hear either one of them talk, and, if so, which one? A. Sure.

Q. Which one? A. The small one.

Mr. Brown: That is Mr. Fedodoff.

20 Q. What did you hear Fedodoff say, if anything? A. When Kerensky was ruling there was nothing to eat in Russia for the public. When the Bolshiviki start to rule, the banks open, there was plenty to eat for the public. Then they start to talk about England, they got the Irish, they start to rule the Irish, their own people to kill the Irish, the Irish people to kill the English.

Q. Yes. Go ahead.

30 The Court: Mr. Witness, speak up loud enough for this gentleman here to hear you (indicating the defendants' interpreter).

By the Court:

Q. What did you say about the English and Irish? Speak out loud. A. He said that Germans are good people, just people, that the German people is all right.

40 Miss Richer: He said something about the Irish and English people.

The Court: (To Interpreter Goldram) Suppose you stand down near the Stenographer there; Mr. Schlein, sit down.

Mr. Vickers: Mr. Goldram cannot make the witness hear, in that position.

The Court: I don't like this relaying of these questions and answers. I think it is very dangerous. 10

Mr. Vickers: We want—if the Court will permit—we want to have the defense satisfied; we are satisfied with the interpreter of the defense, and Mr. Goldram can be here—he is the Court's officer—and check him.

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ISRAEL BLANKSTEIN, sworn as Interpreter. 20

The Court: Put the questions in the exact language in which counsel puts them to you, and translate his exact words back into the English language and give us the whole thing. The question was, what was said about the Irish and English?

A. (Continuing) There was something wrong, the poorer people were treated badly, and in Ireland—I am translating his answer, it is not very clear, I am translating as he gives it—the capitalists are getting rich out of the war, something about the White House, I didn't get it, and making one million before, making three millions now. 30

Q. Who was making one million before, and three millions now? A. Capitalists.

Q. The money power. What did you say about the White House? A. You know who is in the

White House, everybody knows that, then the proprietor started to close up the meeting, say that the meeting ought not to go on, and then he start to put us out, drive us out.

By the Court:

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Q. Who? A. The big fellow.

By the Court:

Q. Who is the big fellow? A. One of those sitting there, he said, we have the hall, we are going to speak here, what we want.

By the Court:

20

Q. Who said that? A. This big fellow, he said, we have the hall, we are going to speak here, if you don't like it you can get out.

By the Court:

Q. Who did he say that to? A. To us.

By the Court:

30

Q. What had you done or said that caused him to say that? A. We said that the meeting ought not to take place, they were speaking against the government, and it ought not to take place.

Q. What did the speaker say against the government of the United States?

Miss Richer: I object. It is leading.

The Court: It is leading.

Mr. Brown: I will withdraw the question.

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Q. What did the speaker say against the government? What government did he refer to? A. He said against all governments, against the American government, and he says we ought to arm ourselves. (The Interpreter: That is all I got.)

Q. Arm ourselves to do what? A. We will arm ourselves, we, ourselves, will arm ourselves, we don't have to—we will rule ourselves, we don't have to have any government. 10

Q. What else did he say? A. After this he didn't say anything. I left the hall and went home, didn't hear anything more.

Cross Examination by Miss Richer:

Q. Do you belong to the same organization Mr. Colodinsky, the last witness, does? 20

Mr. Vickers: I object to this line of cross examination unless the defense is in a position to connect it up. They are trying to inject an issue in this case that is not relevant. It is foreign to the main point in this case. Unless this man knows the defendant in some way, the connection is absolutely too remote.

The Court: I will allow it. It might affect the credibility of the witness. 30

A. Yes.

Q. Before you went to this meeting did you have any drink? A. No. I slept, my wife woke me up at six o'clock, half past five. I was talking about the meeting, I went to the meeting.

Q. Weren't you in that saloon at all, this saloon that was connected with this meeting house? A. No. I didn't go to the saloon. I went to the hall. 40

Q. Weren't you drinking anything at all? Weren't you drinking intoxicating liquors in the saloon which is connected with this meeting hall?

Mr. Brown: I object unless the time is fixed.

10

Q. Just before the meeting. A. No. I only wash myself, and went to the meeting; nothing else.

Q. How long were you in the meeting? A. An hour or more, I don't remember. I had no time, I had to work.

Q. Did you go directly from home to the meeting? A. Yes, I went from the home to the meeting, then home, and had supper and went to work.

Q. Went to work? A. Yes, I went to work after the meeting.

Q. After the meeting? A. Ten o'clock I went to work.

Q. Do you work nights? A. Nights, yes.

Q. Where do you work? A. Standard.

Q. Is that all you heard in the hour and a quarter you were at the meeting—just those few things you have told us? A. Yes, that is all.

Q. Was there somebody there all the time, talking? A. Yes, Fedodoff spoke all the time.

30 Q. Was there anybody else talking beside Fedodoff? A. No, nobody else excepting old fellow who was simply keeping order, nobody should interfere.

Q. Was Mr. Tachin talking at all? A. No, he only said that we should keep order.

Q. Was there any general discussion in the assembly, at the meeting? A. There was about one hundred people.

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Q. Was there any general discussion at the meeting? A. There was about one hundred people in the hall, but he alone was the only one who spoke.

Q. And he spoke all the time, the whole hour and a quarter? A. Yes. He spoke all the time, and the other fellow wouldn't allow us to say anything, said, "If you don't want to hear, you can go out. 10

Q. Did you try to speak? A. No.

Q. Then how do you know they didn't allow you to speak? A. We didn't say anything. The big fellow didn't allow us to speak.

Q. Who is the big fellow?

The Court: He identified him before. He said the first man.

Miss Richer: I think not.

The Court: The Court may be mistaken. 20  
I will ask him.

By the Court:

Q. Who was the one you said, said that we have the meeting, we are going to go ahead and speak?

A. The big one.

By the Court:

Q. Who is the big fellow? Which one? A. 30  
(Witness indicates defendant Tachin.)

Q. What did you mean by saying you were not allowed to speak, when you didn't try to speak? A. We didn't try to speak, we only wanted to listen.

Q. You just said you didn't try to speak. Are you going to change that now? A. We didn't try to speak because we didn't want to listen to speaking against the rich, against America, against everything there. 40

Q. Yet you listened for an hour and a quarter; is that it? A. We listened, were not allowed to speak, then the police came and closed the meeting; that was all.

10 Q. As a matter of fact, didn't you and your friends from this brotherhood go into the meeting to try to break up the meeting? A. No, no.

Q. Didn't you and your friends go there just for that purpose? A. No, no.

Q. Weren't you ordered out of the hall at the time you came in? A. Yes, we started to be out of order, the big fellow told us to leave the hall if we didn't want to listen.

Q. So you were out of order. Is that the reason you were ordered out?

20 The Court: He said the big fellow said they were out of order.

Mr. Vickers: That was a ruling.

The Court: A ruling of the speaker.

Q. You were out of order; is that it? A. We only said we oughtn't to excite—incite the people that was all.

Q. Who said that? A. The one who was sitting here before.

30 Q. Your friend? A. He is my acquaintance, not a friend.

The Court: Go back to where he said about "we shouldn't excite the people."

The Stenographer reads that part of the witness's testimony.

By the Court:

40 Q. Can you recall what the speaker spoke about last? Did he speak about Germany or the United States? A. About the United States.

PAUL RADU—Direct Examination.

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PAUL RADU, a witness produced on behalf of the State, being sworn, testified as follows:

Direct Examination by Mr. Brown:

Q. Where do you live? A. 93 Andrew Street, Bayonne.

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Q. Did you attend this meeting on March 7th, of this year? A. Yes.

Q. Who did you go to the meeting with? A. I was outside, and met Colodinsky, that first witness here, I met him outside.

By the Court:

Q. Did you go in with him? A. Yes.

Q. When you got in the meeting, was the meeting going on? A. Yes. I was a little late, the meeting started before that. We got in about eight o'clock.

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Q. What did you hear when you got in there? A. When I came in the hall, I see a crowd of people and see one small fellow, sitting over there (indicating), he was standing in front, on the platform, talking to the people.

Q. Which one did you see talking to the people? A. Fellow sitting there (indicating).

Q. Little man? A. Yes, the little—(indicating defendant, Fedodoff)—I don't know his name; first time I saw him.

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Q. What did you hear Fedodoff say, if anything? A. When I come in he said about Kerensky, and after, when I come in I hear about Kerensky, well, when Kerensky rule in Russia the people are starving and hungry, and all in bad condition, but Bolshiviki come in, they started to take money, wreck the banks, take the money, wreck the big stores, give the people foods, and the people started to live

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better. He said while Kerensky want the war because the people should go with him and the Bolshiviki should go with working friends, working class don't want war, only money people, Kerensky one of them rich fellows, them fellows want the war, and make one million dollars, now make, after war, three millions. After, he say, was in England, when they come in war, and the England go to war, England promised to protect small nations, like Belgium and Servia, at the same time she want to make money. Our own people don't want to fight, turn around to send money to Ireland to slaughter his own people. After, he said America, rich fellows, man making money in war time, all them big fellows, millionaires, one of them fellows, which one in Washington, White House, I won't mention his name, you fellows ought to know just who I mean, I won't mention his name, he is a—he always promised make peace with Germany, you read good many times in papers, he promise Russia to make good with Germany, and in end he declare war on Austria, that country is supposed to be free country—

Q. What country? A. America. And in end he take from our people, send them to France and slaughter them there.

30 Q. What else did he say? A. After, he say, that Mr.—you know—big fellow, he get up, he say, you stop that meeting.

Q. What big fellow got up? A. The first witness.

Q. He got up and stopped the meeting? A. He said, you stop that meeting, and one fellow, sit next to little fellow, he say, if you don't like to hear, you can get out, we hire the hall, we can keep meeting going. But I said, if you want to get a meeting here, you can go where you came from, 40 you don't have that kind of meetings in Bayonne,

if you don't—to go out and get cop, chase you fellows out. So I did, I go outside, get the cop, and see that fellow sitting there, and I tell him (indicating the policeman)—I don't know his name, I know his face—he was in uniform at that time, and I took him in the hall, there was lot of excitement, all the fellows stood up, one hollering this, and one other, I don't see how he go out. After, I see him come in with detective, Bob Russel, with police, come in, and Bob Russel says, better shut up the meeting. 10

Q. Was the meeting shut up then? A. Bob Russel says, shut up the meeting, and I see lights going out, I was run to go out, try to go out, that fellow, the cop, and the detective, get hold of me, says to me—

Q. Never mind what they said to you. Was the meeting closed? A. As soon as he put out light, detective Russel hold me, dark, the man asked, what fellows you speak English? 20

Q. You can't testify what he said. After he got hold of you, was the meeting then over? A. Meeting was then over.

Q. Did this man, Fedodoff, speak at that meeting in the Russian language? A. Yes.

Q. Do you understand the Russian language? A. So I do. 30

Q. What you have said here to-day, he said, have you correctly translated it into the English language? A. Yes.

Q. How long have you been in this country? A. I come, 1906.

Cross Examination by Miss Richer:

Q. What business are you in? A. I see that advertisement, in meeting there— 40

Q. What business are you in? A. I am not in business. I am working.

Q. What do you work at? A. Babcock & Wilcox Company, Bayonne.

10 Q. What do you work at? A. Worked in blacksmith department at that time; now I work in different department, same company, Babcock & Wilcox.

Q. Did you and these other two men, Colodinsky and the other witness, Mazku, go to the meeting at the same time? A. No, I only come in there with Colodinsky together.

Q. Who was Colodinsky? A. The big fellow, first witness here.

Q. You came to the meeting with him? A. Yes.

20 Q. Didn't Mazku go there with you? A. Mazku was there, and rest men, from Bayonne, I didn't see.

Q. You think he was there when you went in? A. He was there after, when I look around.

Q. He came there after?

The Court: He said he guesses he was there—or came after?

30 Q. You don't know? A. No. He comes before or after, but I see him when we were talking, trying to stop the meeting; I see him there at that time.

Q. How long were you there before you tried to stop this meeting? A. I come in eight o'clock; I stood there about forty-five minutes, more than that.

Q. Four or five? A. Little more than forty-five minutes.

40 Q. Then you tried to stop the meeting? A. After that fellow got up, he says, all jump up, I was against him.

Q. After you were there forty-five minutes you tried to stop the meeting; is that true? A. Yes.

Q. Then, how long after you tried to stop the meeting did you stay there? A. I didn't stay at all; I went outside and looking for the cop.

Q. Did the meeting stop at the time you went out? A. No.

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Q. How long after you went out did the meeting stop, if you know? A. I don't know. Four or five minutes; I get the cop first.

Q. When you brought him back the meeting stopped? A. When the cop comes in, look over, after, go out, he come in, after, Detective Bob Russell, as soon as them police come in, talk four, five, seven minutes, the meeting was stopped.

Q. Everybody went out? A. Everybody went out except that cop hold that little fellow, and Bob Russell ask me, was I stay with him, he could not talk English, I explain to him what that fellow meant.

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Q. You talk very good English. Do you talk as well in Russian? A. Yes, I believe I can Russian just as good as anyone in Russia.

Q. You can hold conversation with the Interpreter there, can you, in Russian? A. Yes, in Russian.

Q. The Judge there (indicating Mr. Goldram, the official interpreter), can you repeat to the interpreter what you have repeated to us in English? A. I don't know that they can speak Russian, but I know I can speak Russian just as good as any man.

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Miss Richer: I think it is an important matter, to find out if he is really qualified to give testimony.

The Court: He says he is.

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Mr. Brown: He says he is.

Miss Richer: I think it might be well to try him with a few Russian questions.

10 The Court: All right. You ask him some questions, what Fedodoff was saying about the American government, tell us in the Russian language, what you heard him say; let him say it, and Mr. Goldram can interpret.

Q. What did you hear Fedodoff say when you went in the hall?

(Question withdrawn).

20 Q. What did you hear Fedodoff say first, to which you objected—answer it in the Russian language.

(Witness answers through interpreter).

A. When I heard he says, one man in the White House, we know him all well, who is he, he is sitting in the White House, you all see in the newspapers, he promise us to make peace with the Germans—

30 The Court: Is that sufficient to show he knows the Russian language?

Miss Richer: Yes.

Q. Was a policeman in the hall when you went there? A. No.

Q. You saw no policeman in the hall? A. No, I go out, and called the policeman.

40 Q. Was there any excitement when you and your friends tried to break up the meeting? A. In the beginning, when they come in there, the hall was

quiet, everything, listen, about four minutes after I come in, then first fellow, the first witness—

Q. That is the party you went in with? A. Yes. Four or five minutes after we come in, he said was the fellows you know, was in the White House, sending all the people to the French, and slaughter them, he got up and he said, we don't want that kind of meeting, you have got to get out of here fellows. 10

Q. Did he say it in a loud voice? A. Loud, yes, he talk loud to those fellows.

Q. Shouted it out loud? A. Shut up that meeting, he says, I don't want to listen to this kind of meeting. Then I got up, said, fellows, you got to get out of here, if you don't get out, we get the cop, chase you out. He said, if you don't like it, get out, we got the hall. 20

Q. Which one said that? A. First this fellow sitting here. (indicating defendant, Tachin) I don't know his name.

Q. How long have you known the first witness, Colodinsky? A. I know him, he was first time in this country, he was six or seven years, he left this country, he come back again, here altogether four years in America.

Q. Where did you meet him the night you went to this meeting? A. About quarter or ten minutes before eight o'clock. 30

Q. Where? A. In Andrew Street, my neighborhood.

Q. How far is that from the hall? A. It aint far, eighteenth to twenty-first street.

Q. How do you know there was a meeting there? A. I see advertisement.

Q. You knew what the meeting was about? A. On advertisement, it was said that all the friends, 40

brothers, come to the meeting, you going to hear speech, to do, learn us, teach us, Russian Revolution.

10 Q. That was the advertisement you read; there was to be a meeting to organize a school for the purpose of teaching Russian to the English? A. There was nothing, advertisement, about school.

Q. There was nothing on there— A. No.

Q. When you went there, did you know what was going to be—what kind of meeting was to be held? A. I don't know it.

Q. Didn't you just tell us the advertisement told you— A. That was first time, I went—

20 Mr. Brown: I object. Manifestly it could not be in contradiction of this previous witness, or this witness's previous answer, he couldn't know what kind of meeting it was going to be, from the advertisement.

The Court: I will allow it.

Q. Didn't you just tell us the advertisement told you what the meeting was going to be?

30 The Court: Didn't tell him exactly what it was going to be.

Q. The advertisement said there was going to be a meeting to teach what the revolution— A. The speaker is going to be there, is going to teach it, teach us, the Russian Revolution.

Q. —what the revolution has taught the Russian people?

40 Mr. Vickers: It is objected to, it is not what the witness says. It is objected to as

not being proper cross examination, it being new matter brought out by the cross examination, I do not think they are entitled to put in incompetent evidence or leading questions. There is nothing asked by the State about the advertisement. The defence, if it desires to prove this advertisement affirmatively, should produce it or explain its absence. It is very different from what the witness says; he said it teaches us what the revolution is, that is one thing. The question asked is quite another proposition. 10

The Court: That is so. I think you will agree with that.

(Question withdrawn).

Q. Are you a member of this same society of which the first witness is a member? A. I didn't belong to no society; I belong to the Russian lodge. 20

Q. What is the name of it? A. I can't explain it.

Q. Give it to us in Russian. A. United Russian Brotherhood.

Q. Isn't it the Brotherhood of St. Nicolo? A. St. Nicolo, Yes.

Q. That is the name of the Russian Czar—Nicolo, was it? A. We didn't go by the name Czar, by the name Czar. 30

Q. The Czar is named after this Russian saint, St. Nicolo? A. I never saw the Czar in my life, think I ain't going to see him.

Q. Your friend, the first witness, and this other man, are members of that same society you are? A. Yes.

Q. All members of the same society. Isn't it what is known as a Royalist society, in favor of the 40

Russian Czar still being on the Russian throne?

A. Suppose we call it Society of Holy Peter.

By the Court:

10 Q. Is the lodge you speak of, which you call a brotherhood, an independent church, a Christian Church? A. Christian Church.

By the Court:

Q. Independent Christian Church? A. Yes.

Q. When you say you belong to the same lodge that Colodinsky belongs to, you mean to say you belong to the independent Christian Church of Russia? A. Of Russia.

20 Q. That independent Christian Church of Russia was in favor of the Czar, and not against him; isn't that so? A. I don't know anything about the Czar, against or with him.

The Court: I don't know that he is qualified to speak of that. I assume the independent Christian Church would be the Church of Christ.

30 Q. Isn't it the Russian Church you are speaking about? A. What?

Q. Isn't it the Russian Church you are speaking about? A. Yes, Russian Church.

Mr. Vickers: I object, unless you mean the Orthodox.

Q. The Orthodox Russian Church? A. Yes.

Q. That is what the Czar is the head of? A. Not the Czar head of. I don't know anything about that.

40

Q. The State Church? A. I don't know anything about the Czar.

Q. Don't you, as a matter of fact, know that as the Russian— A. That is Russian.

Q. —that you and the Czar are members of the same church? A. Czar was never with us.

Q. Is he not the head of your church? A. Czar 10  
no longer. Yes, he was.

Q. That is true? A. Yes, true.

Q. Isn't it true, furthermore, that all the members of that church were in favor of the Czar and not against him? A. No, the church has nothing to do with the Czar.

Q. Still he was the head of it, and he had nothing to do with it?

The Court: That is sometimes true.

Q. As a matter of fact, you know, don't you, that your friends, members of that society— A. Who 20  
is friends of mine?

Q. I am asking you—is Colodinsky a friend of yours? A. Had good many friends.

Q. Is he a friend of yours—the first witness? A. Yes, he belongs to the same lodge.

Q. Isn't it a fact that you members of that lodge are opposed, strongly opposed, to the Bolshiviki, or these independent agitators, such as you believe this man Fedodoff, and Tachin, are? A. I don't 30  
know to that fellow, might live on the same—  
might be on the same lodge, might be in different city.

Q. Are you opposed to him? A. No, no.

Q. Opposed to him in principle? A. Not at all.

By the Court:

Q. Are you in favor of the principles taught by these two men? A. Yes, we are in favor of 40  
them.

By the Court:

Q. Are you in favor or— A. I don't know, we are in favor or not, we got nothing against them people, our lodge.

10 Q. Do you mean to say that you are in favor of the principles being espoused there? A. What favor—didn't go anything against that society.

Q. Then why did you oppose them that evening? A. Our lodge help us, benefit, any fellows sick, or anything like that.

By the Court:

Q. It is a beneficial society, when a fellow gets sick, he needs help? A. Yes.

20 Q. Will you answer my question? I have asked you now, why you opposed the principles you heard espoused at this meeting, if you were in favor of it?

Mr. Vickers: The State objects to that, on the ground that the previous answer was an answer to the question, the answer being that because they are for the benefit of suffering humanity. I think that is the answer.

30

Q. Were you drinking intoxicants that night? Drink any beer or whiskey or wine that night? A. No, I came from work, stop and get my supper, it was about seven o'clock, after seven o'clock, I went on street, met that fellow, go to meeting.

Q. About seven o'clock you went out, picked this fellow up, and went to the meeting? A. After seven o'clock. Seven o'clock I get my supper, after I went on street, about quarter to eight, ten

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minutes to eight, something like that, I met that fellow.

Q. What time did you leave work? A. I leave work five o'clock.

Q. What time did you have supper? A. And started after six.

Q. After six. A. After six.

Q. Where did you have your supper? A. At my house. I got to wait for supper a while.

Q. What did you do after supper? A. I lay in bed for a while.

Q. How long? A. About twenty minutes, something like that.

Q. Weren't you in this saloon with Colodinsky, drinking whiskey, before this meeting? A. No.

Q. Didn't you and he, and this other fellow, Mazku, and some others, go up for the purpose of breaking up the meeting because you were opposed to what they advertised they were going to hold there? A. No, they was going to hold meeting, never was the meeting, first time I was there, no kind of meetings.

Q. Are you opposed to socialism? A. I don't know what socialists are.

Q. You don't know what socialists are? A. No.

Mr. Brown: We have a number of other witnesses, foreigners, whose testimony would be along the same lines, whose testimony is merely cumulative. I have also the saloonkeeper to prove the making of the—

The Court: I don't think you ought to state what you have got.

Mr. Brown: I simply want to get a ruling on the question of whether or not we ought to put in any more testimony that would be merely cumulative. I don't want to take

three or four days putting in such testimony.

The Court: That is a matter entirely with the Prosecutor. When he feels he has proven his case, he ought to stop.

10 Mr. Vickers: We have these witnesses. This is in the discretion of the Court, whether the Court will hear this cumulative testimony or not. We present it in view of the fact it takes so long; we have several of them here. If your Honor will rule, not for the purpose of resting our case, we may leave that branch of the case and go to another branch—

20 The Court: You may start in with the saloonkeeper. Start in with another line of testimony.

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GEORGE SOMERS, a witness produced on behalf of the State, being sworn, testified as follows:

Direct Examination by Mr. Brown:

Q. What is your full name? A. George Somers.

Q. Where do you live? A. 15 East 21st Street.

30 Q. Is your father the owner of the property there? A. Yes.

Q. What does the property consist of? A. Consists of a saloon, dance hall downstairs and meeting room upstairs, and living rooms in front.

Q. Do you know the defendant, Tony Tachin? A. No, sir.

Q. Do you see anybody in this court room you have met before? A. I see Tony Tachman.

40 Q. Did you have any conversation with him in

JOSEPH H. DEROWSKY—Direct Examination.

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the early part of this year? A. The first conversation I had with him was when he hired the hall.

Q. When was that? A. March 7th, I believe.

Miss Richer: Is this to prove this man paid him, hired the hall? We will admit that.

Mr. Brown: That is what we want to prove. 10

Miss Richer: There is no controversy about that.

Mr. Brown: That is the purpose, to prove he is the one that hired the hall.

(Witness withdrawn.)

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JOSEPH H. DEROWSKY, a witness produced on behalf of the State, being sworn, testified as follows:

Direct Examination by Mr. Brown:

Q. You are a detective connected with the Bayonne police department? A. Yes.

Q. On or about the seventh of March of this year, were you present in Bayonne police headquarters when the two defendants were brought in? 30

A. They happened to be in Headquarters before I got there. I came in shortly after they were brought in.

Q. Were you present when they were searched? A. Yes.

Q. I show you a book, and the name of Anton Tachin, and ask you if you can identify that, and tell us from whose person that book was taken. A. 40

I saw Lieutenant Dressel search the taller fellow, and found this on him, put it on the desk, put it in an envelope.

Mr. Brown: I suppose I had better read this for the purpose of the record.

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The Court: Let us see—

Mr. Brown: I am going to offer it in evidence.

The Court: What is the purpose of the offer?

Mr. Brown: The purpose of the offer is to show that the defendant is a member—was a member of the Industrial Workers of the World.

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Mr. Ready: We will admit, if that is all that the prosecutor wants, that Mr. Tachin is a member of this organization, for one month.

Mr. Vickers: Before this meeting took place?

Mr. Ready: Yes.

Mr. Vickers: And at the time the meeting was held.

Mr. Ready: No, he was not at that time.

Mr. Vickers: Had been?

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Mr. Ready: Had been a member for one month.

Mr. Vickers: When did he sever his connection?

Mr. Ready: He is not a member now, was not at the time of the meeting.

Mr. Vickers: When did he sever his connection with the membership?

Mr. Ready: Three months before the meeting, I believe. One month, as shown

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by the book, by the date shown in the book.

Mr. Brown: The date shown by the book shows he went in the membership February 9th, and one month's dues were paid, bringing him down to the ninth of March, and the meeting was held on the seventh.

Mr. Vickers: Is it admitted he was a member of the I. W. W., the Independent Workers of the World, having joined on February 9th, and had paid a month's dues? 10

Mr. Ready: Yes.

Mr. Vickers: February 9th of this year. We offer the book.

(The book is marked in evidence, S. 1, showing the membership of Anton Taetjen.)

Mr. Ready: Mr. Fedodoff is still a member of the Russian Socialist party—the American Socialist Party, and was at the time of this meeting. 20

Mr. Vickers: From the State of Pennsylvania, Erie County, Branch—Russian.

Mr. Ready: The Russian Branch of the American Socialists.

Mr. Vickers: The Socialists Party of America, State of Pennsylvania, Erie County, Local Branch, Russian. We offer the membership card. 30

(Card received in evidence and marked Exhibit S. 2, in evidence.)

Mr. Vickers: The State rests.

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Miss Richer: I ask for the direction of a verdict of not guilty on behalf of Tachin, there being no evidence connecting him at all with the things he is indicted for. 40

The Court: You say "no evidence"?

Miss Richer: No; nothing whatsoever showing he is accused of saying these things, or inciting to riot. That is what he has been indicted for.

10 The Court: The proof is that after these things had been said, as the Court recalls it, and these other men objected, this defendant, Tachin, said they had hired the hall, they were going to continue with the meeting, or words to that effect. Those are things for the jury to say whether or not—

20 Miss Richer: The evidence there is contradictory. The first witness said there was nobody who spoke except Fedodoff. I purposely asked him, two or three times, whether Tachin spoke; he said "No." The other witness mentioned the fact that Tachin had said, "The meeting will go on." That is entirely contradictory to what the first witness said.

The Court: Of course that is something for the jury to say—a question of fact. I will deny your motion.

Miss Richer: I ask an exception.

30 Exception allowed and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge.

Miss Richer opened to the jury on behalf of the defence.

ANTON TAITJEN, a defendant, being sworn, on his own behalf, testified as follows (Through Interpreter):

Direct Examination by Miss Richer: 10

By the Court (Without Interpreter):

Q. How long have you been in this country? A. Five years.

Q. Where do you work? A. Work, Oil Company.

Q. How long have you worked in the Standard Oil? A. Three months.

Q. Three months? A. Yes. 20

Q. Where do you live? A. Nineteenth Street.

Q. Bayonne? A. Yes.

Q. Living in a boarding house down there? A. Yes, boarding house.

Q. How long have you lived there? A. Two.

Q. Two months? A. Yes.

Q. Where did you live before you came to Bayonne? A. Twenty-third Street.

Q. Bayonne? A. Yes. 30

Q. How long have you lived altogether in Bayonne? A. Altogether three months.

Q. Three months? A. Yes.

Q. Where did you live before you came to Bayonne? A. 126 Twenty-third Street.

Q. Where is that? A. East side.

Q. East side, New York? A. No, east side, Bayonne.

Q. How long have you lived in Bayonne? A. Three years, three months. 40

- Q. Three months? A. Yes.
- Q. Where did you live before you lived in Bayonne? A. In New York.
- Q. Where, in New York? A. East.
- Q. East side? A. Yes.
- Q. What street? A. Sixth Street.
- 10 Q. Sixth Street? A. Yes.
- Q. What number? A. 426.
- Q. Are you married? A. Yes.
- Q. Any children? A. No.
- Q. How long have you been married? A. Two years, maybe.
- Q. Did you get married in this country? A. Yes, this country.
- Q. I think you can speak English. A. No, no.
- 20 Q. Try hard now. This jury is a jury of English speaking men, and they are anxious to hear what you have to say. They can understand you a great deal better if you talk to them in their own tongue. It is to your advantage to make it just as plain as you can. Take your time, don't get excited, listen to the questions your counsel puts to you, think them over, then speak in the English language.

By Miss Richer:

- 30 Q. Where do you live? A. Last time?
- Q. Where did you live before you were arrested? A. Bayonne I work this time.
- Q. Where? A. Standard Oil Company.
- Q. Can you tell me what was the cause of this meeting? How did you come to organize the meeting? A. No, I don't understand.

By the Court:

- 40 Q. How did you come to go to the meeting that night? A. I don't understand.

Q. Did you go by yourself to that meeting? A. Yes, by myself.

Q. Do you know Mr. Fedodoff here? A. No, I don't know him before. I don't know.

Q. Did you know him before that night? A. No.

Q. Was it you who went to the saloonkeeper and arranged for this meeting? A. No. 10

Q. Yes, you can; did you go to the saloonkeeper and arrange for the meeting? A. I come here and tell what is matter? We go in that morning, tell me, move there, I say, what is matter?

Q. Wait a minute. Do you know Mr. Somers here, young Mr. Somers here, the man on the stand, the saloonkeeper's son? A. Oh, yes, one time I see him.

Q. You heard the man who said you came up and hired the hall; you saw him, didn't you, the man who hired the hall—who let you have the hall? Did you pay him money for the hall? A. Yes. 20

Q. You paid him money? A. Yes.

Q. How much? A. One dollar.

Q. That was for the night, to have the hall? A. Not at that time.

Q. You paid him one dollar down. How much were you to pay him for the hall? How much were you to give him? A. One dollar. 30

Mr. Ready: I am afraid we will have to go on with the interpreter.

(Through interpreter.)

Q. Will you tell us how you came to arrange for this meeting? A. I work for the Standard Oil. Since there are many workers there who do not know only Russian or English, we talk it over,

40

decided to organize a school, so they could speak Russian and English.

Q. Were you the one who got this up all by yourself? A. There were several people who agreed to that.

10 Q. What people were they? A. People who worked with me together, for the factory, some who worked in other factories, we decided this, we get through work four o'clock, we have nowhere to go, so have a school and use the time.

Q. Were these people able to read and write English and Russian? A. Some of them could read and write; most of them could not.

20 Q. Were you supposed to hire the hall? A. When I came, hall was closed, people were standing outside. I went ahead and took care of it, I went in and spoke to the saloonkeeper, ask him why the hall is not open. He said, "I don't know anything about your meeting." Then I pay him one dollar, and he opened the hall. Then we went in there and waited. The speaker didn't come until about nine o'clock.

By the Court:

30 Q. Was the crowd there? A. Yes. Then the speaker came, and he tell them that I come, it will be to study, tell them to organize this school, until some started to make disturbance.

Q. Did you say anything at the meeting? A. No, I didn't speak until those were drunk there, they tried to make disturbance, then I asked them to allow the speaker to go on.

40 Q. Do you know the condition that these men were in, these men who have testified? A. The younger one I don't know at all. I didn't see the younger one, maybe he was there, but I didn't see

him, but the first one, the one with the—the big, husky fellow, he was drunk, and the other one came late, he was not there at the beginning.

Q. Was he drunk? A. Yes, he too was drunk.

Q. Which one do you mean by the younger one?

Mr. Brown: Stand up, Colodinsky, and Mazku and Radu, stand up here in the center aisle. 10

Q. Which ones—point to them—that you saw were drunk? A. The one, Colodinsky, was drunk. By the Court:

Q. Was the one with the green tie drunk? A. He came late already, when they were disturbing the meeting already.

Mr. Vickers: The one with the green tie is Paul Radu. 20

Q. Was he drunk or sober? A. Yes, he was drunk.

Q. And the other one? A. The other one I didn't notice.

Q. Was there a disturbance at the meeting, while the speaker was talking? A. Yes, there was a disturbance all the time.

Q. Was there a policeman in the hall at the time? A. No; there was a policeman later on, he was brought in. 30

Q. Was there a policeman in the hall at the time, keeping order? A. Not at first; there was no policeman.

Q. Was there a disturbance at first? A. No, no disturbance at first, because there was no drunken people there.

Q. Were you present at the meeting? A. Yes. 40

Q. Can you tell what happened? What did Mr. Fedodoff say? A. Yes.

Q. What did he say? A. First I want to explain what uses a school would be to us.

10 Q. Go on. A. And some of the crowd asked about the advertisement, the meeting was advertised for some purpose, something to be said about revolution, not about the school; then he said, "I will leave the subject a little while," and he started to speak on the Russian revolution. Then he started with the Russian Czar. Then he started the war with Germany, while the Russian people were fighting the Germans, the Russian Czar and the Kaiser were corresponding, they were brothers-in-law, they were related. Then the government was taken away from the Czar, Keren-  
20 sky came to power, and was going to fight same way, there was no help to the people—

Q. Go ahead. A. That the war is capitalist war, the capitalists are fighting—bringing about war for the purpose of enrichment.

30 Q. Go ahead. A. Then he said that England is really not fighting for the small people, small nationalities—Belgium—which of course is good, but the people in Ireland, who also want liberty, cannot get it, but they are sending soldiers there. Then he started to speak about this country, said we—we have the same millionaires, living in rich palaces, these people just in the war for personal—  
40 for wealth, to get rich. Then he started to speak about Germany, said same thing is in Germany. Then he said Germany did the same thing, the people are driven before the war, told they are fighting for humanity, that they are fighting for the nation, and so on. He said that Germany, they want to defeat our Germany, break it up, we have to defend it to the last drop of blood.

Q. What is that? A. In Germany the people are driven into the war, told the same, we are to defend Germany, defend humanity, they want to defeat us and break us up, therefore we have to defend our nationality to the last drop of blood. This the way the German people are told. But it is not quite correct, what the Kaiser tells them. 10  
He said the people, they have no freedom at all; they have no rights at all, they only want to capture everything, just as they did with Belgium, and now with Russia, and so on, he is misleading, deceiving, these other people—the Kaiser.

Q. Ask him if he said anything about America? Did he say anything for or against the United States? Just what did he say about the United States? A. He said that this country is in the same condition, they were living in rich, fine 20  
palaces, and they are just going into the—gotten into the war, fighting the war for in order to get rich, people who are just fighting for enrichment.

Q. Did he speak about Germany before or after he spoke about the United States? A. He first spoke about the United States.

Adjourned to following day.

May 2, 1918. 30

(Case resumed.)

ANTON TAETJEN, resumed.

Direct Examination by Miss Richer (resumed)  
through Interpreter.

Q. Did Fedodoff speak about the United States Government? A. No. 40

Q. When he mentioned the United States, what did he say about the United States? A. He didn't say anything about the American Government. He said that the capitalists, all living in the rich, fine houses, which were built by us, at our hands, they want the war because they are making large profit  
10 out of the war.

Q. Did you say anything at all at the meeting? A. No, I didn't say anything at the meeting.

Q. Did you say some time during the meeting, "We have hired the hall and we shall go on"? A. No, I didn't say that.

Q. Did you say anything at all? A. I only said, when the drunkards came in, they should keep quiet, not disturb the meeting.

Q. What were your intentions in getting up this meeting, being one of the persons who got up this meeting? A. We have agreed, several of us, to  
20 organize a school in order to study.

Q. Did you arrange for a teacher for the school? A. Yes, one promised to be a teacher.

Q. Did you know Fedodoff before the meeting? A. No, sir.

Cross Examination by Mr. Vickers:

30 Q. Was this meeting advertised by circular? A. I didn't advertise it.

Mr. Vickers: I move to strike out the answer as not responsive.

The Court: It may be stricken out, as not responsive.

Q. (Repeated by the stenographer.) Was this meeting advertised by circular? A. Yes, there  
40 were leaflets.

Q. Did you have any of the leaflets or circulars?

A. I had about three of them.

Q. Have you any of them now? A. No, I haven't any now.

Q. Who had the circulars printed? A. Some of the friends who were taking part in arranging this meeting.

10

Q. Why did you pay one dollar for the use of the hall? A. Because there were some people when I came to the hall, there were some people outside, and those who were taking part in arranging this meeting were not there yet.

Q. Were you taking part, too, in arranging the meeting? A. Yes, I took part in it.

Q. Who were your associates in the matter of arranging for this organization meeting, hiring the hall, and procuring a teacher? A. Those who agreed to do it, and some of them printed these leaflets, and also sent something to the newspaper. I don't know whether it was printed there or not.

20

Q. Who agreed with you? I want the names of the persons who arranged with you, as you say to organize a school for the benefit of the Russian people. I want their names. A. I don't know their names; some people with whom I work, and we just talked it over and agreed to do it.

Q. Do you mean to say you don't know the names of the people who were interested with you in organizing a school for the benefit of your countrymen? A. No, I don't know, because there are many people working there. We agreed during the lunch hour, we talked it over, I didn't ask their names. We don't ask each others' names.

30

Q. What is the matter—is that part of the rules of the organization, that you don't ask one another their names? A. Because there was no organization yet, we just talked it over, about or-

40

ganizing this, and we are supposed to be up at that meeting and get their names there.

Q. Who was given the job of getting the circulars printed? A. I don't know that.

10 Q. Wasn't that arranged at this meeting, that you say you agreed to call together the people to organize a school? Wasn't it agreed as to who should hire the hall, who should print the circulars, how the hall and the circulars should be paid for?

Miss Richer: I object. There has been no foundation laid for a meeting. The witness has not told anything about his being in a meeting to arrange for these things.

20 Mr. Vickers: The meeting referred to is the meeting among the workmen, he has referred to in his previous answers. I don't refer to any other meeting.

The Court: The meeting of the workmen before this night?

Mr. Vickers: Yes; the meeting together, that is all.

The Court: I will allow it.

30 Q. (Repeated by the stenographer.) Wasn't that arranged at this meeting, that you say you agreed to call together the people to organize a school? Wasn't it agreed as to who should hire the hall, who should print the circulars, how the hall and the circulars should be paid for? A. There were some there who agreed to do all these things, but I don't know just who they were, because I am only a short time there, I don't know them.

40 Q. Can you give the name and address and place of employment of a single person who was as-

sociated with you in this enterprise of organizing a school? A. Yes, I can give the name of the man who was supposed to do the teaching, whom I asked to do the teaching.

Q. Who was it? A. Nick Martin—Nick Martin.

Q. Spell it. A. Martin—I don't know how to spell it. 10

Q. Is he a person who has American parents, or a naturalized American citizen, you now refer to? A. No.

Q. (Question repeated by the Interpreter.) A. I don't know whether he is or not.

Q. Where did he live at that time? A. He lived in 21st Street. I don't remember the number of the house.

Q. Is he here in court? A. Yes, he is here.

Q. Point him out. A. (Witness indicates) Nick. 20

Mr. Vickers: (To the person indicated)  
Is your name Nick Martin?

The Person Indicated: Yes.

Q. Who authorized you to hire Nick Martin to teach the school? A. I asked Martin whether we have a right to organize the meeting. He said, yes, until we organize the school, then we will have to ask permission to organize a school. 30

Q. Was Mr. Martin at the meeting? A. No, he was not there.

Q. Did you ask him to go there? A. No, I didn't ask him.

Q. Had you asked him to teach this school before you hired the hall—before you held the meeting, had you asked him to teach the school? A. Yes, I asked him.

Q. And you didn't bring him there to show the 40

people who the teacher was going to be? A. There were a few people who wanted to study, and it would be—we would have to pay too much, there was just a few of us, we decided to first organize and have more people, and then have him teach us.

10 Q. Who authorized you to speak to Martin about his teaching the Russian people?

The Interpreter: He wants the question repeated.

Q. (Question repeated.) A. Those who agreed to have the school.

Q. Those who agreed to have the school authorized you to go and get teachers; is that right?

20 A. Nobody authorized us, but several of us spoke to him—or we speak to him, and he promised to do it.

Q. But you don't know who was in the meeting among you, who arranged for a teacher, and you are the only person, so far as you know, that you can mention by name, who went and saw Martin and asked him to be a teacher; is that it? A. There were more people who agreed to organize this school, but I could recognize them if I see them, but I don't know their names.

30 Q. And you don't see any of them here in court, do you? A. No.

Q. Do you know whether the people who arranged for this school, as you call it, lived in Bayonne? A. No, I don't know where they live.

Q. Do you know whether they are I. W. W. members? A. No. I was not a member, I was only once at a meeting, and paid my dues for one month. One came and suggested to me I should become a member and I became a member.

40

By the Court:

Q. What is the I. W. W.? A. I don't know well, I am not very literate, I don't know myself quite.

Q. Is that an organization known as the Independent Workers of the World—Industrial Workers of the World? A. I don't know. I was there at a meeting, and somebody approached me to become a member, and I did it. 10

Q. And you didn't know what you were becoming a member of, did you? A. I didn't know what the aims and purposes of the organization—they propose to me to become a member, they said it was good, so I did.

Q. Before March 7th, had you separated yourself from this organization, whatever it was, that you became a member of? A. Yes, I did. 20

Q. How did you separate yourself? A. I didn't go any more there. I was not there any more, to this.

Q. When you joined the I. W. W., did you know that the slogan of the I. W. W. was "The abolition of the Wage System?"

Mr. Ready: We object. We don't know that; we don't know that the prosecutor knows it. 30

The Court: He is trying to find out if the witness knows it.

Mr. Ready: But he has stated it to be a fact. Is it a fact?

The Court: I think it is competent. I will allow it.

Mr. Ready: I would like to know, is it a fact? Does the prosecutor know it to be a fact? 40

10 Mr. Vickers: From S 1, in evidence, this appears: "Instead of the conservative motto, 'A fair day's wages for a fair day's work,' we must inscribe on our banner the revolutionary watchword, 'The Abolition of the Wage System.'" It is on that that I predicated my question.

The Court: I will allow the question.

A. No, I did not know.

Q. Did you know whether or not the organization which you say you joined was opposed to labor unions, as constituted in this country, on the theory that the labor unions work hand in hand with what you call the capitalists? A. No, I didn't know that.

20 Q. Did you know what you paid your dues for? A. No, he told me that it was good for the workmen, and I did it. I didn't know anything else.

Q. Why did you decide to quit if you believed it was good for the working men? A. I thought, what was the use of that to me?—I have to pay the dues, go to the meetings, what was the use of that to me, what benefit?

30 Q. If you were interested in the Russian working people and you believed that the I. W. W. was for the benefit of the working men, why did you quit? A. Because I didn't know what it was for, and I would have to go to the meetings, when I come from work I am tired, I rest. I didn't know what the organization was for.

Q. Isn't it a fact, you didn't quit until after you were arrested? A. I left it before that.

Q. When did you leave it? A. I was there only that one time, and never again.

40 Q. When did you leave? I am trying to find out. When did you quit the organization? A. I don't

remember the date when I—when I became a member, but I was never there again.

Q. What did you carry the card with you for, at the time that this meeting was going on, at the time you were arrested? A. I had that card since I became a member. When I became a member I put it in my overcoat, and it was there ever since. As I never carried this overcoat to work, I never took it out. 10

Q. Do you know whether or not the I. W. W. in the United States is like the Bolshiviki in Russia? A. I don't know what the Bolshiviki means, and what the I. W. W. means.

Q. You don't. Well, were you to be one of the educators of the ignorant Russian people in Bayonne? A. I myself wanted to study.

Q. Did the circular that you have spoken of, say one word about the organization of a school in Bayonne? A. Yes, it did. 20

Q. What did it say? A. He said then at the beginning, we ought to organize a school in order to study and educate ourselves.

Q. But did the circular say a word about organizing a school? A. No, after he said that, we were—he was interfered with all the time; he didn't speak any more about it.

Q. Did the circular, the printed leaflet, advertising this meeting, you and your colleagues had arranged, did it say anything about organizing a school? A. It mentioned—the leaflet mentioned that that was going to be the subject of it, what the Russian revolution teaches the Russians, because if you advertised about a school, very few would come. Those who were not interested would not come. 30

Q. If you talked—if you advertised that you were 40

going to hold a school, you didn't believe there would be an audience but if you talked about revolution, you knew you would have a crowd; is that it? A. Because those who agreed to have this thought if they advertised a school, there would be only a few, but if they advertised the subject of the revolution, there would be more people who would be interested to hear it, and there would be a larger crowd.

10 Q. At the time you were a member of this I. W. W. did you know whether or not one of the objects of the I. W. W. was to take possession of the earth and the machinery of production, and abolish the wage system? A. No, I didn't know that.

20 Q. You said that the speaker didn't say anything about the United States. Did he talk about the White House? A. No.

Q. He didn't mention about anybody living in the White House, did he? A. No.

Q. He didn't say anything about a man there, whose name you all know, but whose name I will not mention, you see it in the newspapers all the time? Do you remember that? Did you hear anything like that? A. No, he didn't.

30 Q. Did the speaker say anything about this war being conducted by this country for the benefit of the rich and at the expense of the poor? A. No, he didn't say that.

Q. Did he say anything about, that the young men of this country were being taken to France, and made meat of over there, or their being slaughtered there? A. No.

Q. And you were there throughout all the remarks that were made by Fedodoff; is that right? A. Yes.

40 Q. Whatever he did say at that meeting, you say it was all right; is that so? A. I didn't say any-

thing, whether it was good or bad. I was only waiting for him to explain the benefit of the school, and how to organize it.

Mr. Vickers: I ask that the answer be stricken out as not responsive.

Mr. Ready: I object. In the first place, 10  
it was not a proper question to ask, it called for an opinion of the witness. As now he got the question in, and the answer in, it is his own fault. He opened the door and it should be left open.

The Court: It is not responsive, and the answer may be struck out. What have you to say on the question itself?

Mr. Ready: I say the question itself was improper, it calls for a conclusion of this witness—was it right or wrong? 20

Mr. Vickers: I didn't ask whether it was right or wrong. I asked him whether he said it was all right.

Mr. Ready: It calls for a conclusion. We don't want to know whether it was wrong.

The Court: Leave out the word "right," and add, "you agree with."

Q. Whatever Mr. Fedodoff said at that meeting, do you or do you not agree with? A. I didn't quite understand what he said, but on the whole I think it was good. 30

Q. Leaving "the whole" out—did he speak the Russian language? A. Yes.

Q. You speak the Russian language as your native language, do you not? A. No, Lettish is my native language.

Q. A province of Russia? A. Yes.

Q. Do they speak Russian there? A. No, Lettish. 40

Q. Do you now say you did or did not understand what Fedodoff was talking about at that meeting? A. I did not. I was not at school, so I did not understand very well, but I know something.

10 Q. How do you know he didn't say anything about the President of the United States or the government of the United States? A. Because I heard that he didn't say it.

Q. If you heard that he didn't say that, what was he talking about at the time that you say you didn't understand very well, everything? A. If he was saying something about the President, why shouldn't I understand it? I understand anything like that.

20 Q. What was the subject he was talking about, where you found your lack of education interfering with your understanding? A. What I didn't know then I don't know now.

Q. Did you understand what he said about Germany? A. Yes.

Q. Did you agree with it or disagree with it? A. Yes, I agreed with it.

Q. Did you understand what he said about England? A. Yes.

30 Q. Did you agree or disagree with it? A. I don't know enough, I don't know whether it is right or wrong.

Q. Do you mean you don't know whether the question of conscription is right or wrong? A. Yes, if the war is there, I think it is right—if there is war.

Q. Did Fedodoff say that it was right or it was wrong? A. About what?

40 Q. The question of conscription is the thing we are talking about—in England. A. He didn't speak about this question.

Q. What bothered you then? What didn't you understand about his remarks concerning England? A. I understood it all about England.

Q. Did you agree or disagree? A. As I said, I don't know whether it is right or wrong, because I don't know enough about it.

Q. Did he say anything that was objectionable to you? A. No, I don't know. 10

Q. Did you understand him when he spoke about the United States? A. Yes.

Q. Did you understand it all? A. Everything.

Q. Did you agree with him? A. No, because I don't know anything about politics, I can hardly read the newspaper, I don't know anything about politics, I don't know whether I agree or not.

Q. If you agreed about Germany, and you agreed on England, what did he say about the United States that you didn't agree on? 20

Mr. Ready: He didn't say he agreed on England.

The Court: No, he didn't know.

Mr. Vickers: I will withdraw the question.

Q. What was it he said about the United States that you cannot now agree with, or could not then? A. I was interested in this meeting, as far as the school was concerned; I was not thinking about it—did I agree or not agree. 30

Q. You have said that you heard and understood what he said about the United States. Now, I ask you whether he said anything at that time that you then or now object to.

The Interpreter: Whether I agreed with the subject, what he said?—He was just asking me to put the question. 40

Q. (Repeated by the Stenographer). You have said that you heard and understood what he said about the United States. Now, I ask you whether he said anything at that time that you then or now object to? A. I don't know what it means, to agree or not to agree.

10 Q. Do you know what objecting means? A. Yes, I understand it.

Q. Did he say anything about the United States that you objected to? A. No, he didn't say.

Q. Did he say "We need no capital, we need no government"? A. No, he did not.

Q. Did he say "We can run the country for ourselves"? A. No, he did not.

Q. Or words to that effect? A. No, he did not.

20 By the Court:

Q. Did he say that the people in this country were living in fine palaces, and that the war was being fought in order to enrich the capitalists, or words to that effect? A. He said that those who live in rich palaces, those millionaires, want the war because they are making profits out of it.

Q. In the United States?

30 The Interpreter: Yes.

Q. In the United States? A. He said that those—the people who live in—the rich millionaires who live in palaces built by us, they want the war because they make a profit out of it.

By Mr. Vickers:

40 Q. What did he say about "Americanski capitalist?"

The Interpreter: The American capitalists.

Q. That is what you testified to yesterday afternoon in this court room, didn't you? A. What?

(The previous answer re-read by the Stenographer.)

"He said that those—the people who live in—the rich millionaires who live in palaces built by us, they want the war because they make a profit out of it."

10

A. Yes.

Q. And do you agree with that statement? A. I cannot know whether it is so or not so.

By Mr. Vickers:

Q. You mean you won't say? A. No, I cannot know this. I working, I earn my living, I cannot know this questions.

20

Q. Did Fedodoff say, with reference to this war, that the Germans are a just people? A. No, he didn't.

Q. Did he say that the Russians are ignorant and did not know how to fight, but that the Germans knew how to fight, and that nobody could beat them, or words to that effect? A. No, he didn't say that.

30

Q. Did he say anything about the Russian people here in this country, and appeal to his audience to arm themselves and govern themselves? A. No, he did not.

By the Court:

Q. Have you ever been convicted of crime? A. No.

40

Q. Did you ever plead guilty or non vult to crime? A. No, never.

---

Fred Fedodoff, a defendant, called.

10 Examination by the Court:

Q. How long have you been in this country? A. Four years.

Q. Married? A. No.

Q. Single? A. Yes.

Q. Where do you work? A. I work no place now. I am in jail.

20 Q. Before that? A. I worked about two years in coal mine, and two years in dock.

The Court: I think you can get along.  
Witness sworn, in English.

Direct Examination by Miss Richer:

Q. Are you the man that was invited to speak at the meeting that was to be held on March 7th, 1918? A. Yes. Pardon me, if I no understand, I call for help? (indicating the Interpreter).

30 The Court: Yes.

Q. Was the purpose of the meeting told you when you came in there, by the persons who invited you to speak? A. What?

Q. Was the purpose of the meeting told you? A. I cannot say.

40

By the Court:

Q. Before you went to this meeting, did they tell you what you were to say there? A. No.

Q. Did they tell you what the meeting was going to be held for? A. They don't say, the meeting; I have a letter, I have a letter from there.

10

Q. From whom? A. From a man from Bayonne.

Q. What is his name? A. I don't know his name.

Q. Where is the letter? A. I don't know; when I was arrested first time, when I was arrested I had letter, but maybe that letter in Bayonne right now.

Q. What did they say to you about what you were to do at that meeting, what you were to talk about?

(Witness asks for Interpreter.)

20

By Miss Richer (Through the Interpreter):

Q. When you were asked to speak, were you told what the meeting was to be held for? A. Yes.

Q. What was it for? What was told to you? A. They told me that they wanted to organize a school in which they would teach to read and write Russian and English.

Q. What did they tell you to speak about? A. They asked me to explain the benefit of studying.

30

Q. What was said—what did you say about the United States? A. I didn't say anything about the United States government. I only said that the capitalists of the United States were also for war, because they are making—they are profiteers out of the war, and they are not themselves, not going to the war.

40

Q. Is that all you said about the United States?

A. Yes.

Q. Did you say that the United States is sending men to France to be slaughtered? A. No.

Q. Do you believe in law and government? A. Yes.

10 Q. Are you in favor of the Russian republic? A. Yes.

The Court: Which one is that? Which republic

The Witness: One republic.

Mr. Vickers: The one that is rushin' to destruction.

Q. Do you mean the Bolshevic government? A. I believe in the Russian republic.

20 Q. Which is that? A. One republic in Russia.

Q. The one that is there now? A. Yes.

Q. You didn't believe in the Kerensky government, did you? A. No Kerensky government right now.

Q. When it was there, did you? A. No.

Q. Did you say anything about the American capitalists? A. Yes.

30 Q. What did you say? A. I said that the American capitalists are for the war because they are making large profits out of the war, but they themselves are not going to the war.

Q. Did you say anything about the President of the United States in the White House? A. No.

Q. Do you believe in the American government? A. Yes.

Q. Do you believe in the government by the President? A. I didn't study this question.

The Court: Ask him if he believes in the President of the United States.

40

Q. Do you believe in the President of the United States? Do you believe in his ideas?

The Court: I don't think that is altogether fair—you may not intend it—but ideas of what? There are some people who may not believe in the ideas of the President.

10

Q. With reference to the war.

The Court: He might answer that question, he did not believe in some of his ideas. That might create an unfavorable impression.

Mr. Vickers: I will make an objection, on the ground it is immaterial.

The Court: Objection sustained.

Q. While you were talking at the meeting what occurred? A. While I was speaking about organizing a school, some people who were drunk, and came in later, after the beginning of the meeting, started to disturb the meeting, said they wouldn't allow the meeting to run.

20

Q. Who were the people—can you recognize them? A. Maybe I would, I am not certain about it, but maybe I would recognize them; not all of them.

Q. Could you recognize those people who were on the stand yesterday, as being amongst those who came in later? A. Yes.

30

Q. Were they drunk or sober? A. They were drunk.

Q. What caused the ending of the meeting? A. While I was speaking about organizing the school, those drunkards said, "We don't have to have any organization, any school, because there is their organization, they can join their organization.

40

10 Q. What happened then? A. Then they said that if there is to be an organization formed here, they will prevent this from being organized, they will disturb and destroy this organization, wouldn't allow it to be organized. As soon as they came in, before even they knew what I was speaking about, as soon as they heard I was calling them to organize, they began to disturb the meeting. Then my audience, the audience tried to enlighten them, and tell them that if they will keep quiet—they should keep quiet, or if they are drunk they should go home and sleep.

Q. Did Mr. Taetjen say anything at all during the meeting? A. I cannot say whether he spoke or not, because I don't know anybody at the meeting. I didn't know anybody at that time.

20 Q. Did the saloonkeeper put the lights out? A. The saloonkeeper came several times to the hall and tried to quiet the drunkards.

Q. Did he put the lights out? A. (Without the Interpreter) Not the first time.

Q. (Repeated by the Interpreter) Did he put the lights out? A. He turned out the lights when he came there the second or third time.

Q. Why did he turn the lights out?

30 Mr. Brown: I object. It calls for a conclusion.

By the Court:

40 Q. Did he say why he turned the lights out? A. He was telling those drunkards, if they were drunk they ought to go out somewhere else, and not stay there and disturb the meeting. Then the policeman was called, and he noticed who was making the disturbance, he told them to sit down, keep

quiet. The policeman ordered those who called him, were making the disturbance, told them to keep quiet, and left; he smiled at it and left the hall.

Cross Examination by Mr. Vickers:

Q. Where were you living at the time—the 7th of March, 1918? A. 349 East 17th Street, New York. 10

Q. How long had you lived there? A. Four or five months.

Q. Where had you lived before that? A. Bath Beach, Brooklyn—part of Brooklyn.

Q. What was your address at Bath Beach? A. 118 East—118 Twenty-third Street, I guess.

Q. Did you ever live at 77 St. Marks Place, New York City? A. No. 20

Q. Did you have a letter on you at the time of your arrest, addressed to you at 77 St. Marks Place, New York City? A. Yes.

Q. How did you receive that if you had never had an address there? A. That is an office there, there are many people getting letters at that office.

Q. What is the office? A. It is a newspaper office.

Q. I asked you whether you had an address there; you said, no. Did you have an address there? A. I asked for letters that are received there in my name, to be turned over to me. 30

Q. Was that a socialist newspaper office? A. Yes.

Q. Is that the envelope of the letter which you received at that place (indicating)? A. Yes.

Q. Special delivery? A. Yes.

Q. Dated March first, Detroit, March first? A. Yes.

Q. From Mr. Rich, is it? A. Yes.

Q. At the time of your arrest did you have in 40

your possession this letter which I show you? A. Yes.

Q. Addressed to you? A. Yes.

Q. Friend Fedodoff? A. Fred.

Q. Fred—is it? A. Yes, Fred.

10 Q. Did that letter say that the writer and others are in Detroit, organizing a Bolsheviki Red Guard, “according to your trial, I couldn’t make out how I can get you out of trouble”? A. Repeat the question, please.

Q. (Question repeated by the Interpreter.) A. No, the letter doesn’t say that.

Q. What does it say? (Witness reads the letter, inaudibly.)

20 Q. Will you read the letter to the interpreter, and ask the interpreter to interpret it on the record?

The Court: It has not appeared yet what the materiality of this letter is.

Mr. Vickers: It was on his person at the time of the arrest.

The Court: That would not make it material.

Mr. Vickers: I will withdraw the question.

30 Q. Did the letter in question, before you, in any way refer to the meeting, or to the result of the meeting, on the 7th of March, in Bayonne? A. No, it had no relation at all to that meeting.

Q. Had the letter relation to any trouble in which you were?

Mr. Ready: Unless it is confined to this trouble—even then I do not see that it has anything to do with this trial.

The Court: What have you to say to that? Suppose he was in trouble—we all get in trouble some time.

Mr. Vickers: Yes; and it would not be competent if it did not refer to this or a like kind of trouble. From the context—  
for instance—this was a plan to use force  
to get out of trouble, and refers to the char- 10  
acter of the meeting. I think we would be  
entitled to show it.

The Court: Yes, if that were so.

Mr. Vickers: I have indicated by the previous questions that—

The Court: He said it had no relation to that meeting at all.

Mr. Vickers: This was a question of referring to the Bolshevici Red Guard. We  
know what that means from what has hap- 20  
pened. I think the Court will take judicial  
notice of that situation. If his trouble, referred to there, had relation to that subject,  
and the meeting, as contended for by the  
State, under this indictment, or on that  
same line, I think it is relevant. I cannot  
develop it in any other way. The only way  
I can make the letter competent is to find  
out what it is about. If it means domestic 30  
trouble, we don't care anything about it, if  
it means trouble with the Government, we  
are entitled to find out. I don't know—I  
am frank to say to the Court.

The Court: Ask him what the trouble is. You used the word "trouble."

Mr. Vickers: And so does the letter, refer to "trouble."

The Court: —refer to trouble. That may mean domestic trouble, it may mean some 40

other trouble that would not be competent in this case.

Mr. Vickers: I will do as the Court suggests.

10 Q. Does the letter in question refer to any trouble that you were in, connected with the work that you were engaged in, among your countrymen?

Mr. Ready: I think that is objectionable. I think if he put it—does this letter connect in any way with this trouble? I won't object to it—the trouble he is in now.

20 The Court: I don't think that would be competent. I think he may answer the question, whether it refers to the work in which he was engaged among his countrymen.

Mr. Vickers: Of course this letter was written before he spoke at this hall. He had it on him. It can only be competent as showing what led up to this.

The Court: I will allow it.

30 Q. (Repeated by the Stenographer) Does the letter in question refer to any trouble that you were in, connected with the work that you were engaged in, among your countrymen?

The Interpreter: He asked me, what kind of trouble? I will repeat the question.

Q. (Question repeated by the Interpreter) A. No.

Q. Does it refer to your trial?

The Court: Which trial?

40 Mr. Vickers: I don't know.

The Court: I think we are entitled to know that. "Does it refer to your trial?"—surely it couldn't refer to your trial here, if as contended before, it was on his person at the time he was arrested.

Mr. Vickers: I have a right to discover the antecedents of this man, who says he lived in New York, who comes to organize, as he says, a school in Bayonne, who receives a letter, which we contend refers to a revolutionary movement, and which— 10

The Court: Why not ask him point blank on that?

Mr. Vickers: Haven't I done it, and has it not been objected to?

Q. Does the letter in question refer to the formation of a Bolsheviki Red Guard in this country? 20

The Court: Yes or no.

A. No.

Q. Does it say anything about the Bolsheviki Red Guard? A. Yes.

Q. Does it say anything about organizing a Bolsheviki Red Guard?

Mr. Ready: I don't want to take up time, but I think we can save time. Is it contended by the Prosecutor that the Bolsheviki has anything to do with this indictment? 30

Mr. Vickers: Yes.

The Court: Excepting that he was inciting these people at that meeting against the United States Government; if he had made arrangements to organize the Bolsheviki Red Guard before that meeting, it would 40

Q. Did you say "There is a man or a party living in the White House, in Washington, I won't mention any names, but you all know the name from the newspapers," and then refer to the conduct of this war for the benefit of the millionaires or capitalists? A. No.

10 Q. When Mr. Edward Colodinsky spoke from the floor of the meeting, could you understand what he said? A. Yes.

Q. What did he say? A. He said that we don't need any organization, we don't need any school, we ought not to listen to him, he ought to be beaten up.

20 Q. And they had listened to you—those men in this school—had listened to you for upwards of an hour, hadn't they? A. I can't exactly say how long; about an hour.

Q. And during that time did you tell the audience what the Russian revolution had taught the Russian people? A. No, I first spoke about the school, but then I was asked why it was advertised there was going to be speaking, what the Russian Revolution teaches the Russian people. Then I spoke about that.

30 Q. Where did you get your information as to what the Russian Revolution taught the Russian people? A. I answered that, I don't know anything about the circulars, but I can tell that about it.

Q. Where did you get your information? A. From newspapers.

Q. How long have you been in this country? A. Four years and three months; about that.

Q. You have never been across since then, to take any part in either the maintenance or the breaking up of any one of the Russian governments, have you? A. No.

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have some bearing on his conduct at the meeting.

Mr. Ready: —to help Russia. This government has already recognized the Bolsheviki government in Russia. If this letter has any connection with this trial I am willing to have it put in evidence, without knowing what is in it. If it does not apply to this trial, I don't think we should lose time. 10

Mr. Vickers: I won't press it.

Q. You were, at the time of this meeting, were you not, a member of the Socialist Party of America? A. I was not only during the meeting, but right now I am a member of the party.

Q. You were a member of that branch of the party which is against militarism; is that right? A. I believe there is only one party here, there are no branches. There is only one socialist party here. 20

Q. You paid a special anti-militarism assessment tax, didn't you? A. Every member of the socialist party pays for this stamp that is there. This is not anti-military stamp, it is a stamp paid to cover the expenses of the central office and the convention.

Q. Do you refer to the stamp that is marked "anti-militarism" (indicating)? A. Yes. This stamp was supposed to be bought—had to be bought by every member of the party. 30

Q. At the meeting in Bayonne, did you say anything in favor of the government of the United States? A. No.

Q. Did you say anything in favor of the government being in this war under the circumstances? A. I have not mentioned at all the word "government," the United States government, but only the capitalists. 40

Q. What is your occupation or trade? A. I am a workman, working man.

Q. What do you work at when you do work? A. Labor.

Q. Do you mean with a pick and shovel, with your hands, anything you can get to do?

10

The Court: He was in the mines in Pennsylvania, he said.

A. No definite occupation. I work at what I can get, but most of the time I am a miner.

Q. You had not worked for six months before this meeting, had you? A. No.

Q. You had last been employed in Pennsylvania, hadn't you? A. Yes.

20 Q. Why did you leave Pennsylvania? A. Because the wages are small there.

Q. In all the six months following that, were you unable to get a job here in the East? A. Yes.

Q. Try to get work? A. No, I was busy with self education.

Q. How did you support yourself while you were self-educating yourself? A. I worked before that. I worked before that, all the time, without any interruption.

30 Q. Your business is that of an agitator, isn't it—going around and stirring up trouble? A. No.

Q. You are a stranger down in Bayonne, aren't you? A. I was the first time there.

Q. But you knew you were advertised as "Our Own Fedodoff," "Our Best Friend Fedodoff"; did you know that? A. No, I didn't know that.

Q. You didn't see the advertisement? A. No.

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Re-direct Examination by Miss Richer:

Q. Did you ever before give this same lecture?

A. Yes.

Q. How many times? A. I cannot remember how many times.

Q. About? A. Three or four times.

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By the Court:

Q. Where did you give these lectures? A. In the New York Russian branch of the Socialist Party.

Q. And you gave the other three or four lectures in New York? A. No, not all of them. I lectured in Elizabeth, New Jersey.

Q. How many lectures have you delivered in the four months previous to your arrest? A. I cannot remember all.

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Q. About how many? A. About three or four.

By Mr. Vickers:

Q. At the time of your arrest you had one hundred and twenty-three dollars, and fifteen dollars in check, in your possession; didn't you?

Mr. Ready: I object. I cannot see— 30

The Court: That is news to counsel. I will sustain the objection.

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NICK MATIN, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct Examination by Miss Richer:

Q. Do you know Mr. Taetjen? A. Certainly.

10 Q. Can you tell me and tell the court and jury how this meeting came to be held? A. I am secretary from the Russian Mutual Lodge, under our constitution is—our constitution said that we have to have a school from the Russian and English language for our members. So I spoke with the Russian people in the shop about that school, that our lodge going to organize such a school, and then Mr. Taetjen tell me that he want to join that school, and ask me the conditions of which he

20 can join that school.

Q. Go ahead. (No answer.)

By the Court:

Q. Did you tell him the conditions? A. Yes.

By the Court:

30 Q. What were they? A. I told him that we proposed to receive from each member one dollar and twenty-five cents a month.

Q. Did he ask you to be teacher of the school? A. He cannot ask me to be a teacher of the school; our lodge can ask me to be teacher of the school, but not Mr. Taetjen.

Q. He suggested you being a teacher? A. Certainly; because I was teacher last week.

Q. You are a Russian University graduate? A. In the Russian University, graduate.

40 Q. You are competent to teach school in Russian? A. In Russian, in arithmetic.

Q. And translate into English? A. No, we supposed to have a special English teacher for English language.

Q. You put it up to Mr. Taetjen—did you put it up to Mr. Taetjen to help you out in this organization, organizing this meeting? A. I told him we going to call special speaker to organize a school. 10

Q. How was it that Mr. Taetjen paid that one dollar? A. I don't know anything about that.

Q. Were you supposed to go there and hire—go with your friends there and pay for the hall? A. We have nothing to know about.

Q. Do you know Mr. Colodinsky? A. Certainly.

Q. Can you point him out to the Court? Do you see him here in the court room? A. Yes, certainly.

Q. Where is he? A. He is down there (indicating the witness, Colodinsky). 20

Q. Do you know Mr. Mazku? A. Certainly.

Q. Can you point him out to the court? A. He is not here.

Q. Do you know Mr. Radu? A. Certainly.

Q. Can you point him out? A. He is a big fellow.

By the Court:

Q. Is that Radu there, with the green tie? A. Yes; but his name is Radukavicz. 30

Q. Why does he go by the other name, of Radu?

Mr. Brown: I object.

The Court: I will allow it.

By the Court:

Q. Does he go under the name of Radu? A. I never heard that name.

The Court: That is a phonetical pronunciation.

Q. Is that an alias name or does he use the name, Radu? A. I don't know. I cannot tell you.

10 Q. Did you go to the meeting on March 7th? A. I was not at the meeting, but I just go in the saloon, and I saw down there a couple of fellows that are all the time against our lodge.

Q. Who are the two fellows? A. Mr. Colodinsky was down there, and some other fellow of this party.

Q. Who was the other fellow? A. Uralevicz.

20 Q. Were those the only two you saw there, whom you recognized? A. There was lots of people there. It was just one second that I saw those two people, drinking.

Q. You just recognized them? A. Yes.

Q. What were they talking about, when you were in there? Did you hear anything? A. Certainly, they just to speak about me, "That is the main trouble-maker, that is the main trouble-maker."

By the Court:

30 Q. Referring to you? A. Yes.

Q. Did he say anything against your organization? A. Certainly, they are all the time against our organization.

Q. Did they say anything about it then? A. No, nothing.

Q. Why are they against your organization?

Mr. Vickers: I object, unless they stated.

40

The Court: I will allow it.

A. Because they are the Russian black party.

By the Court:

Q. Russian black what? A. Russian black Hundred.

Q. That is not your party? A. We are progressive, we are democratic party. 10

Q. You are Bolshevich party? A. No, we are not Bolshevich party. That is a big mistake.

Q. How do you distinguish yourselves from them? A. If they start to make a trouble in the church, they are Russian Black Hundred; same thing what Russian Black Hundred used to be in 1905 in Russia.

By Mr. Ready:

Q. In favor of the Czar, aren't they? A. Certainly, they want the Czar in the United States, in a free country. 20

Q. You don't want a Czar, do you? A. No, I am democrat, I don't want no Czar.

By Miss Richer:

Q. Why didn't you go to the meeting? A. Because I saw the Black Hundred in the saloon, I know there will be trouble, because they make always trouble there, when go in same place. 30

Q. Do you refer to the Black Hundred? Do you refer to the St. Nicholas Brotherhood? A. Not the whole St. Nicholas Brotherhood; about thirty people of them. If you want to know the gist—the just—the whole things, the whole trouble that they used to make in Bayonne, please call the Chief of Police of Bayonne, he will explain to you what they used to do in Bayonne. 40

Mr. Vickers: There are more than thirty of them, though. He will testify to that.

Q. What was Colodinsky and these other people whom you saw in the saloon, doing? A. They just to drink whiskey.

10 Q. Did you see them drinking whiskey? A. Yes.

Mr. Brown: Confine your question to this date.

Q. On March 7th—what time was it? A. It was half past seven, about half past seven.

Q. Do you know Mr. Fedodoff? A. I never saw him. I see him today first time.

20 By Mr. Vickers:

Q. Yesterday? A. Today.

By the Court:

Q. You were not here yesterday? A. No.

Q. Do you know Mr. Taetjen? A. Certainly.

Q. How do you know him? A. I used to work with him together.

30 Q. And you were the man who arranged this school? A. Certainly, because our lodge picked me out.

Cross Examination by Mr. Vickers:

Q. Where do you live? A. In Bayonne.

Q. Where? A. 38 East Twenty-first Street.

Q. How long have you lived there? A. I lived in this place two years and six months.

40

Q. At that address? A. Yes.

Q. Where do you work? A. In Standard Oil Company.

Q. In what department? A. Canning case department.

Q. Canning case? A. Canning case department.

Q. You went down to this saloon for the purpose of attending the meeting, didn't you? A. No.

Q. What did you go there for? A. I will explain to you why. In the saloon we hold our meetings, we have shelf there with books and papers, applications to new members, and other different things. I go in to take applications—

By the Court:

Q. That is the secretary's office? A. Yes.

Q. What did you go there for, on this 7th of March? A. To take an application.

Q. Did you get it? A. Certainly.

Q. That was the only business you had there? A. That was all. I was just three minutes, I go out.

Q. You knew that the meeting was going to be held, didn't you? A. I had no the meeting was to be held.

Q. You did know? A. I had no.

Q. How did you find out? A. I don't know there was any meeting there at all.

Q. How did you find out the meeting was to be held? A. Because I received application.

Q. Circular, do you mean? A. Yes.

Q. Have you it? A. Yes, certainly.

Q. Have you it with you? A. No.

Q. You knew that the circular referred to a meeting where a school was to be organized, for

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the benefit of the Russian people; is that right?

A. Yes.

Q. You knew that Mr. Fedodoff was to be there to organize it; is that right? A. I don't call Mr. Fedodoff to organize that meeting.

10 Q. I didn't ask you that. When you received the circular— A. No, sir.

Q. —you knew he was to be there to organize that school; is that right? A. Mr. Taetjen tell me this way.

Q. Did the circular say so? A. The circular say nothing about it.

Q. Nothing about it. Had Mr. Taetjen told you before you got the circular? A. He told me just on the same day, when he give me the circulars.

20 Q. You don't know who had the circulars printed, do you? A. No.

Q. You don't know who paid for them, whether they were paid for? A. No.

Q. You didn't do it? A. No.

Bertha Doelle

30 Q. When you got to this hall, to the saloon where the hall was, you knew that the persons assembled there were there for the purpose of attending the meeting; is that right? A. Repeat that.

Q. When you got to this saloon where the hall was, you knew that the persons assembled there were there for the purpose of attending the meeting; is that right? A. Certainly, the people was there.

Q. To go to the meeting? A. Yes, to go to the meeting.

Q. Why didn't you stay? A. Why I don't stay?

40 Q. Yes; why not? A. Because I was busy in some other place. I have a lot—I have seventy

members in my mind, new members, and different other business, you know, to do. I cannot spare my time—

Q. You didn't go away because you knew there was going to be trouble, did you? A. I go out from the saloon, I saw couple of fellows, told them there will probably be trouble in saloon because there is the Black Hundred in there. 10

Q. You saw two men, you call them the Black Hundred—is that right?— and the rest of the progressive Russians, represented by your lodge, and you departed? A. No, because some fellow, couple of fellows told me before, they coming to break up that meeting, and always when we used to make something, they break up.

Q. Broke it up? A. So we need to take every time, policeman. 20

Q. Did you go for a policeman? A. No, that was not my meeting; why I need to go for policeman?

Q. You were going to organize a school; that was your idea? A. Certainly, but I don't call Mr. Fedodoff.

Q. You didn't call him? A. Certainly.

Q. But this was the working out of the plan, you say you knew there was going to be trouble, you had always had to call the police before: I ask you whether you went out then and called the police? A. I will answer you why. Because I don't know, organize that meeting, the first thing. Second, I know only in same day, at twelve o'clock, going to be meeting. That is second thing. And the other reason, I was too busy. 30

Q. Were you too busy to— A. Same time I want—

Q. —to communicate with the Chief of Police— you have referred us to the Chief of Police—were 40

you too busy to communicate with him? A. About what, the Chief of Police?

Q. About the trouble that was going on down there? A. I wasn't at the meeting. Just the fellow told me, next day, what was going on there.

10 Q. Who did organize the meeting? A. I don't know. I can't tell you.

Q. You don't know, do you? A. No, I don't organize this meeting.

Q. I didn't ask you that. Who did? A. I don't know. I can't—

Q. Don't know. It was organized to carry out the scheme you were the father of, but you don't know who organized it; is that right? A. Listen—

20 Q. I am listening, very intently. A. I spoke just with Mr. Taetjen, we going to make a school, but I don't give him no right to organize that meeting. I don't know he got right to organize that school.

Q. So far as you know, then, this meeting was not held to organize your school, was it? Yes or no, now.

The Court: You can answer that.

A. I spoke with Mr. Taetjen—

30 Q. (By the Court) So far as you know, this meeting was not organized—not held to organize your school—so far as you know? A. I know only there was in the circulars, there going to be a speech, going to be a speech, on the—on the—what the Russian Revolution teaches us.

Q. But it didn't say anything about a school in that circular, did it? A. In the circular, had nothing about the school.

40 Q. Then you did not know whether or not that meeting was held for the purpose of organizing

your school? A. Mr. Taetjen told me about—that that meeting will be to organize our school.

Q. He told you. When did he tell you? A. At twelve o'clock, the seventh of March.

Q. Then why didn't you stay there that night?

A. Because our members done—don't—appointed me to collect—to collect all the members and to make a meeting. 10

By the Court:

Q. If you knew there was going to be trouble there, after you saw two members of the Black Hundred in the saloon, why didn't you go and tell Taetjen? A. I didn't see Taetjen.

Q. They were in the meeting, weren't they, around the hall? A. I didn't saw Mr. Taetjen. 20

Q. You were in the building there when the meeting was going on? Weren't you upstairs? A. No, there was no meeting there. That was before the meeting.

Q. You went upstairs after—to your office? A. Before the meeting.

Q. What time did you leave the hall? A. Half past seven.

Q. Although you knew a meeting was going to be held to organize a school you had planned? A. 30  
Yes. We spoke about a school, but I didn't say that our lodge had me to organize the school, on this meeting.

By Mr. Ready:

Q. The meeting was called for eight o'clock? A. Was called, seven o'clock, but I went half past seven, and saw nothing there.

(Noon recess.)

Q. Do you know what the reputation of three men, Colodinsky, Mazku and Radu, is for decency, sobriety and honesty in the community in which they lived?

10 Mr. Vickers: I object. It is incompetent and improper.

The Court: Isn't that so? You have not laid a foundation for it.

Mr. Vickers: Except to show they were drunk that night.

The Court: Not they were drunk that night. That wouldn't make their reputation for drunkenness. A man might get drunk once in his life time.

20 Mr. Ready: We want to show it was not only this one night—their reputation for drunkenness.

The Court: You have not laid any foundation, that he knows where these men lived, and knows their associates in the community.

Miss Richer: Wouldn't that be for the prosecutor to cross examine?

The Court: No.

30 Q. Do you know these men, Colodinsky, Mazku and Radu? A. I know him since five years.

Q. Do you know their friends? A. I know their friends.

Q. Do you know their reputation among their friends—

Mr. Vickers: I object. It is improper.

A. Yes.

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NICK MATIN—Cross Examination.

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The Court: Reputation for what?

Miss Richer: For decency, sobriety and honesty.

The Court: I will let him answer, and you can cross examine afterwards.

A. I saw lots of times—

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The Court: No, no; you are asked as to the general reputation of these three men in the community in which they lived, for sobriety and peaceableness—

Miss Richer: Honesty—

The Court: Honesty. That is what you are swearing to—general reputation.

A. General reputation. Two years ago—

20

Q. (By the Court) No, no. Do you know their general reputation in that community for peaceableness, sobriety and honesty?—the reputation.

A. I understand—the reputation.

Q. (By the Court) If you do, then tell us. Do you know it? A. I know the reputation, certainly. If I know those people five years I ought to know.

Q. (By the Court) Do you know the people they associate with? A. Yes.

30

Q. (By the Court) What is their reputation?

A. Mr. Colodinsky is—

Q. (By the Court) Good or bad? A. It is bad.  
Cross Examination by Mr. Vickers:

Q. What is his reputation bad for? A. Because I saw him lots of times, drunk in the street, first; secondly—

The Court: It may be stricken out. The fact he saw him lots of times in the street wouldn't make their reputation bad.

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Mr. Vickers: I think we are entitled to have it on the record, as indicating what he understands reputation to mean. Then it becomes matter of law for the Court to charge the jury, on the reputation testimony of this witness.

10 The Court: If he has testified to reputation from specific acts the Court will strike out all his testimony on that.

Mr. Vickers: That is what I am preparing for. That is the reason I don't want it off the record at this time. If that is all he testifies to, when he leaves the stand I am going to move to strike out.

20 Q. Does Mr. Colodinsky work? A. He works, yes.

Q. Does he work steadily? A. Steady.

Q. Have you ever known him to have been arrested for the commission of a crime? A. No.

By the Court:

30 Q. Have you based your testimony as to his reputation for honesty, sobriety and peaceableness, on what you have seen yourself, of him, or what you have heard in the neighborhood in which he lives?  
A. He used to break in in the church.

Q. Break in in the church? A. Yes.

Mr. Vickers: He couldn't get in any other way?

40 A. That is a fact, used to break in in the church, and his party, to whom he belongs and is one of the greatest members, one of the greatest leaders, from this party, that party want to take away from the people the property.

The Court: I will let it stand for what it is worth.

By Mr. Vickers:

Q. That is what you base your testimony on, isn't it? A. Yes.

Q. What you have seen him do, yourself; isn't that so? A. Certainly.

Q. And that is all, isn't it? Is that right? A. I know that he belongs to that party.

Q. That is all his reputation? That is what you base his reputation on? A. Certainly. That is reputation, I guess.

By Miss Richer:

Q. Were you ever at the church, and did you hear anybody speaking about Mr. Colodinsky? A. I always hear every one speak of him.

Q. What did they say about him? Was he good or was he bad? A. That he is bad.

Q. Do you know anything about the St. Nicholas Brotherhood? A. Certainly.

Q. What do you know? What do you know about it? A. That St. Nicholas Brotherhood can live between themselves honestly and properly, the members can live between themselves, two parties, they fight always.

Q. Can or cannot? A. Cannot.

Q. Why? A. Because there are two parties. One party, they want to take the whole money out from—want to take the money of that lodge, and the second thing that they always try to do, not what the people wants, but what the society wants.

Q. What is the purpose—what is the purpose of

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the St. Nicholas Brotherhood? A. I cannot understand.

Q. What is the idea upon which they are founded? What do they mean to do? What is their object in life? A. Object in life, it is a mutual association, mutual association, to help.

10 Q. Pay sick benefits? A. Sick and death benefits.

Q. Do they live up to their object, to your knowledge?

The Court: We are not trying the St. Nicholas Society.

Mr. Vickers: It has been in litigation in this State for some time.

20 Further Cross Examination by Mr. Vickers:

Q. This is a church fight, is it not? A. What church fight?

Q. It is a church fight, in this organization? A. Certainly, it is a church fight.

Q. Part of the people are with the priest that happens to be in charge of the church, and part are against him? A. Thirty people from St. Nicholas Lodge don't belong to the church.

30 Q. Don't belong to it at all? A. Don't belong to it at all.

Q. They broke in? A. They broke in.

Q. Tried to belong to the church? A. They tried to take away the property from the people who built the church.

Q. You mean the church, when you say "the property"? A. Yes, certainly; the church.

Q. You have had lawsuits about that, haven't you, down there? A. Certainly.

40 Q. You don't like them? A. Who?

JOHN YUSCKAVICZ—Direct Examination.

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Q. The thirty? A. If they make us troubles, insults us in the streets, every time—

By the Court:

Q. Answer the question—do you like them?—I don't know that it is material.

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Mr. Vickers: I don't know either.  
Witness excused.

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JOHN YUSCKAVICZ, a witness produced on behalf of the defendants, being sworn, testified as follows:

By the Court:

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Q. How long have you been in this country? How long have you been in the United States? A. Five years.

Q. Where do you live? A. Andrew Street, number ninety.

Q. Where is that? A. 90 Andrew Street, Bayonne.

Q. How long have you lived in Bayonne? A. Five years.

30

Q. Are you a citizen of the United States? A. Sure.

Q. Are you a citizen? A. No.

Q. You are not a citizen? A. No.

Q. You have been here five years, though? A. Yes.

Q. Married? A. No.

Q. Whom do you live with? Do you board or own a house in Bayonne? Who do you live with? A. Andrew.

40

Q. You have been in this country five years, and you cannot speak English? Where do you work?

A. Babcock & Wilcox Company.

Q. Babcock & Wilcox Company? A. Yes.

Q. What do you do down there? A. Two weeks.

10 Q. Where did you work before that? A. Standard Oil Company.

Q. How long did you work for the Standard Oil Company? A. Three years.

The Court: I think we can try him in English for a little while.

Direct Examination by Miss Richer:

20 Q. Do you know Colodinsky, the first witness that was on the stand?

Mr. Brown: Stand up, Mr. Colodinsky.

By the Court:

Q. Do you know Colodinsky? A. Sure.

Q. How long do you know him? A. Five years.

The Court: Answer this lady's questions.

30 The Witness: I no speak English.

Q. Did you see Mr. Colodinsky on March 7th?  
A. (No answer.)

The Witness: I no speak English.

Examination through Interpreter:

40 Q. Did you see Mr. Colodinsky on March 7th?  
A. Yes.

Q. Where did you see him? A. See him in saloon where the meeting was held.

Q. How did you come to see him in the saloon?  
A. I was going into the hall, and the door was open; I saw him standing at the bar of the saloon.

Q. What was he doing there? A. He was drinking.

Q. Did you see anybody else there? A. No, I have not seen anybody else there.

Q. That is, did you see anybody whom you recognized there?

10

Mr. Brown: I object. He said he didn't see anybody else there.

The Court: I will allow it.

A. No; there were many people there, but I did not know them.

20

Q. Was Mr. Radu, and Mr. Mazku there, these people who you see here?

Mr. Brown: I object. It is leading.

The Court: Yes. He said he did not recognize anybody there, there was a lot of people.

Q. Did you see Mr. Colodinsky drinking, when you saw him? A. He was drinking beer and whiskey, in front of him.

30

Q. (By the Court) Together or singly? A. They were standing together with him. I don't know else was standing.

Q. Did you go to the meeting? A. Yes.

Q. When you came in, what part of the meeting did you get in? What was going on? A. Nothing was taking place at that time.

Q. When you came in, was Mr. Fedodoff speaking already? A. No, he was not speaking yet.

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Q. How long did you have to wait for Mr. Fedodoff? A. About ten minutes.

Q. Did you hear everything that Mr. Fedodoff said at that meeting? A. Yes.

Q. Did he say anything against the United States government? A. No, didn't say anything.

10 Q. Did he say anything about—against the president of the United States, or the White House? A. No, sir, he didn't say anything.

Q. Did he mention the United States at all? A. No, he didn't say anything. He was only speaking about the capitalists.

Q. When Mr. Fedodoff began to speak what did he say? A. He was speaking about the events in Russia, and about the organizing a Russian English school.

20 Q. What were the things Mr. Fedodoff was speaking about? A. They were speaking about establishing a Russian English school, where we went and educate ourselves, after we get through with work, study.

Q. How did the meeting end? A. When Fedodoff was speaking about establishing a school, about eight or ten drunken people came in, started to disturb the meeting.

30 Q. Can you recognize any of the men in the court room at the present time, who disturbed the meeting? A. Yes, I can recognize two.

Q. Who are they? A. Colodinsky, and the party—I don't know his last name.

Mr. Ready: Radu, he means.

By the Court:

Which do you mean—the man with the green tie? A. Yes.

40 The Court: (Indicating Paul).

Q. Did you see on the witness stand yesterday a man named Mazu? (Mazku). A. Yes; I work two years with him.

Q. Was he one of the men who disturbed the meeting? A. There were some besides, there. There were more people there.

Q. Was he one of them? A. Yes, he was disturbing the meeting too. 10

Q. What was the condition that these men were in? A. They were drunk.

Q. How drunk were they? A. They were staggering, they could not stand.

Q. Did Mr. Taetjen say anything at the meeting? A. Who?

Q. Taetjen? A. I don't know who Taetjen is.

Q. This man. (Indicating). A. Fedodoff.

Q. Taetjen? A. No, he was not. 20

Q. And you were there during the entire meeting, weren't you? A. Sure, yes.

Cross Examination by Mr. Vickers:

Q. Did anybody introduce Mr. Fedodoff? A. I don't know how they themselves went in the hall.

Q. You were there when Mr. Fedodoff came into the hall. I asked you if anybody introduced him to the meeting. A. They all were there. 30

Q. Who introduced him? A. I don't know.

Q. You were there, weren't you? A. I don't know who introduced him.

Q. Did anybody introduce him? A. I don't know who introduced him.

Q. Did anybody? A. I don't know.

By the Court:

Q. Did anybody speak before he spoke? A. I only saw that he started to speak. 40

Q. Did anybody speak before he started to speak? A. Nothing was spoken when he started to make up disturbance.

Q. Did they start to make a disturbance before Fedodoff spoke? A. No.

10 By Mr. Vickers:

Q. How long did Fedodoff speak before they made a disturbance? A. About fifteen or twenty minutes.

Q. What did Fedodoff talk about, during this fifteen or twenty minutes? A. Fedodoff was speaking about that the Russians should organize and establish a Russian English school for education.

20 Q. He talked fifteen or twenty minutes on that before there was any interruption; is that right? A. Yes.

Q. When he was interrupted by these men, who you say were drunk, the meeting broke up; is that right? A. No, it was not yet broken up at that time.

30 Q. When these men objected to his talking about the school, as you say, did he talk about something else? A. He said they should organize and educate themselves in order to help Russia and the United States to fight the Germans.

Q. So, Fedodoff said at the meeting that the Russians should organize themselves to help Russia and United States to fight the Germans; is that right? A. Yes.

Q. When he said that Colodinsky started to make a disturbance and object to it; is that right? A. Yes.

Q. What did Colodinsky say at that time? A. Colodinsky said, "We don't want your organiza-

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tion, we don't want your school, we have our own organization."

Q. Did Wasil Mazu also object to organizing to help Russia and the United States to fight the Germans? A. Yes, they were all together.

Q. Did Paul Radu also object to this? A. Yes, there were about eight people together there. 10

Q. What Mr. Fedodoff was talking about, was to get into this war, was it, and organize the people there to take up arms to help the United States and Russia to lick the Germans; is that right? A. Yes.

Q. And that was after the Bolsheviki had made peace with Germany, wasn't it? A. Yes.

Q. And Fedodoff believed in the then existing Bolsheviki government in Russia; is that right—And said so? 20

Miss Richer: I object.

The Court: He has qualified it.

Mr. Vickers: "And said so."

The Court: I think it is objectionable. what he believed. He might not say what he believed.

Mr. Vickers: I will withdraw the question.

Q. And Fedodoff then said that the persons there were to assist the Bolsheviki government; is that right? A. No, I didn't hear that. 30

NICHOLO SIRYAK (SCELACH)—Direct Examination.

NICHOLO SIRYAK (SCELACH) a witness produced on behalf of the defendants, being sworn (by interpreter), testified as follows: (through interpreter.

Direct Examination by Miss Richer:

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Q. Do you know any of the men who were here on the witness stand yesterday, for the State—these men? A. Yes.

Q. Whom do you know? A. I know Paul. I don't know anybody else.

Q. How long do you know him? A. I know him two years.

Q. Is he a member of the St. Nicholas Society? A. Yes.

20

Q. What is the St Nicholas Society? A. It is a church brotherhood.

Q. What is its purpose? What does it believe in?

The Court: Isn't it practically admitted it is a beneficial society?

Mr. Vickers: It is, by the State. I don't know whether it is, by the defence.

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Mr. Ready: That is what it purports to be—not actually. That is what it purports to be; that is its tenets, but don't seem to live up to their purposes.

The Court: Why should we try it here?

Mr. Ready: Except to show they are members of that, and fighting the other side.

The Court: He says Paul is a member of it.

Mr. Vickers: If counsel for the defence will state what they stand for, we will admit it for the purpose of this case.

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NICHOLO SIRYAK (SCELACH)—Direct Examination.

Q. Does the St. Nicholas Society believe in a republic? A. No, they don't. They believe in the old regime.

By the Court:

Q. That is the monarchy, the Czar?

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The Interpreter: I suppose so.

Q. Were you at the meeting, the 7th? A. Yes.

Q. Did you see Mr. Radu there? A. Yes.

Q. Did you see any of the other members, any of his friends? A. I saw this big one; I didn't know him before, but I recognize him now.

Q. Did you see the other one, that was on the stand yesterday, Mr. Mazu? A. Yes, saw him.

20

Q. What was the condition these men were in when you saw them? A. They could hardly stand on their feet.

Q. Were there others beside these three men, that were in that condition? A. Yes, there were.

Q. How many? A. About eight or nine.

Q. Do you know that all of these eight or nine were members of the St. Nicholas Brotherhood?

A. I don't know whether they members of this brotherhood, but they were all together.

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Q. Did they come at the beginning of the meeting? A. No.

Q. How far did the meeting go on before they came in? A. I didn't come at the beginning of the meeting. I came when Fedodoff was speaking.

Q. Were you there at the time they came in? A. Yes, they were there.

Q. Were you there at the time—were they committing a disturbance when you came in there?

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A. Yes, they were. When Fedodoff was speaking and telling them they ought to organize and establish a school, they said, "We don't need any school, we don't need any education. We have our brotherhood, that is enough for us."

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WASIL VERAMACHIK, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct Examination by Miss Richer (without interpreter):

20 Q. Do you know Mr. Colodinsky, one of the State's witnesses? A. No, we don't know him. I know just one—Paul.

Q. You don't know him by name? A. I know just one—Paul.

Q. You know Paul? A. Yes.

The Court: Paul, stand up.

The Witness: Yes.

The Court: The one with the green tie?

The Witness: Yes.

30 Q. How long do you know him? A. Two years.

Q. Did you get to the meeting on March 7th? A. Yes.

Q. When you came in was the speaker already speaking? A. What?

Q. When you came in was the speaker already speaking? A. No.

Q. You came in at the beginning of the meeting? A. I came in before that, ten minutes before.

40 Q. What occurred at the beginning of the meeting? A. (No answer.)

By the Court:

Q. What was the first thing that went on? A. I don't understand.

By Interpreter:

Q. What was the first thing that went on? A. He was speaking about organization. 10

Q. What kind of organization? A. Speaking about the school, to organize a school, study English and Russian.

Q. Who was speaking? A. Fedodoff.

Q. Was everything peaceful at that meeting when Fedodoff started to speak? A. Before they came in, everything was peaceful, but when they came in, began to disturb the meeting—

Q. Who do you mean by "they"? A. He was speaking about the organization. 20

Q. Who do you mean by "they"? (No answer.)

By the Court:

Q. Who was speaking? A. Fedodoff.

The following question and answer was repeated by the stenographer:

Q. Who was speaking? A. Fedodoff.

Q. Was everything peaceful at that time when Fedodoff started to speak? A. Before they came in, everything was peaceful, but when they came in, began to disturb the meeting— 30

By the Court:

Q. Who came in the meeting? A. These people. I didn't know them all of them, some of those that are there.

By the Court:

Q. How many were there, about? A. About ten.

Q. What condition were they in when they came in? A. They were drunk.

10 Q. Were these three men drunk—Radu, Colodinsky, and Mazu? A. All of them there, they were drunk.

Q. What did Mr. Fedodoff say about the United States? A. He was speaking about the capitalists, that there will be men making a profit out of the war, don't want to participate in it themselves.

Q. Did Fedodoff say anything about the president in the White House? A. (Without the Interpreter) No.

20 Q. Did he say anything about the United States sending men to France to be slaughtered? A. (Without the Interpreter) No.

Q. Do you know what the Brotherhood of St. Nicholas stands for? A. The old regime.

Q. It is against the democratic form of government, isn't it? A. Yes.

Cross Examination by Mr. Vickers:

30 Q. What did you stand for in that meeting? A. (No answer.)

Q. What did you stand for in that meeting, as against the Brotherhood of St. Nicholas? What did you stand for? A. I didn't stand there.

Q. You didn't stand for anything, did you? A. We were assembled, we were assembled for organizing a school.

Q. How many persons were present at that meeting? A. The meeting—there were one hundred or more.

WASIL VERAMACHIK—Cross Examination.

Q. These three men and their associates, five or seven, they were very drunk, weren't they? A. Yes.

Q. They were staggering drunk, weren't they? A. It was seen they were drunk.

Q. They could hardly stand up; isn't that so? A. Yes.

Q. And the rest of you were all sober? A. Yes, the others were. They were seated while they were standing at the bar.

Q. And the rest of you were all sober; is that right? A. Yes.

Q. How many fellows, as husky, did you have, as this last man, as those two fellows—how many in the hundred as big as those two fellows? A. They were a different kinds, some husky, some not.

Q. These few drunken, staggering, fellows broke up the meeting; is that what you want to tell us? A. Yes, we were sitting quiet, they were told once to keep quiet, they were not listening, and they were told again.

Q: You had begun your school, had you? A. No, we didn't start it. They didn't allow us to do it.

Q. Where do you live? A. (Without the Interpreter) Bayonne, Andrew Street, 93.

Q. (Without the Interpreter) How long have you lived in Bayonne? A. Five years.

Q. Where do you work? A. Texas Company.

Q. The Oil Company, Texas Oil Company? A. No—yes—Texas Company. I don't know—

Q. Oil Company? A. Yes.

Q. How long have you worked there? A. About four months.

Q. Where did you work before that? A. Standard Oil Company.

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## DIMITRI FEDERITCHIK—Direct Examination.

Q. How long did you work for the Standard?

A. About three years.

Q. You never tried to organize any school until the 7th of March, did you?

(Witness asks Interpreter.)

10

Q. (Question repeated by the Interpreter.) A. We did once, about two years before, and some people disturb the meeting.

DIMITRI FEDERITCHIK, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct Examination by Miss Richer:

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Q. On the night of the 7th of March, did you see Mr. Colodinsky? A. But I don't know—

Q. The man who said— A. I see old man, the other man, and about—and another man, is can see.

Q. Where did you see them? A. In saloon.

Q. You saw them in the saloon? A. Yes.

Q. Did you hear any conversation going on between them? A. I don't understand English.

30

Q. Did you hear any talk? Did they say anything between them? A. (Through Interpreter) Yes.

The Court: He may answer yes or no. What is your purpose?

Miss Richer: To show that these men pre-arranged to break up this meeting.

The Court: There is no foundation laid for it. They were not asked about any conversation they had in the saloon.

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Mr. Ready: I asked one of the witnesses if he didn't go to the meeting for the purpose of breaking it up. He denied it. I think that lays a foundation.

The Court: I don't think that will lay a foundation—a conversation held with somebody else, as to going to the meeting. 10

Mr. Vickers: I don't think it can do any harm. The State will not object to it unless the Court desires it.

The Court: It will necessitate the State bringing these men back and asking them.

Mr. Vickers: Does the Court rule it out.

The Court: I will let it in.

Q. Did you hear any conversation, any talk between Mr. Colodinsky and Mr. Radu in the saloon? 20

A. Yes, he says I will help you if you only start it.

Q. Start what? A. Fight.

Q. Fight for what? A. (No answer.)

Q. Did he say anything about breaking up the meeting?

Mr. Brown: I object. It is leading.

The Court: Objection sustained.

Q. What else did he say? A. They said, we will break up the meeting, not even allow Mr. Fedodoff speak. 30

Cross Examination by Mr. Brown:

Q. Where do you live? A. 10 West 19th Street.

Q. Where do you work? A. Texas Company.

DIMITRI BUCANOWSKI, a witness produced on behalf of the defendants, being sworn (through Interpreter), testified as follows:

Direct Examination by Miss Richer (through Interpreter):

- 10 Q. Do you know Mr. Colodinsky or Mr. Radu or Mr. Mazu? A. I only know their faces, I don't know their names.
- Q. Did you see these men in the back of the room, who were on the witness stand yesterday? Did you see them on March 7th? A. Yes, I did.
- Q. Where did you see them? A. In the saloon.
- Q. How did you come to see them in the saloon? A. I was going in the hall, and the door to the saloon was open, I look in to see there was any acquaintance of mine, and they were standing there.
- 20 Q. What were they doing in the saloon? A. They were drinking whiskey and beer.
- Q. Did you stop to look in? A. Yes, I stopped about two minutes.
- Q. What did you stop for? A. To see acquaintance of mine.
- Q. Do you know Mr. Fedodoff? A. No.
- Q. Do you know Mr. Taetjen? A. No.
- 30 Q. Did you go into the meeting? A. Yes, I was there about half the time.
- Q. Did you hear somebody speaking? A. Yes, Fedodoff was speaking.
- Q. Did you stay to the end of the meeting? A. No.
- Q. Why didn't you stay? A. Because those drunkards came there, started to make noise, when I left the meeting.
- 40 Q. Why didn't you stay? A. Because there was too great disturbance, I didn't wait to hear any longer.

Q. What was said? What was Mr. Fedodoff talking about during the time you were there? A. Fedodoff said we should get together, and get the school so that we can go there after work.

Cross Examination by Mr. Vickers:

Q. What time did you arrive at the hall? A. I don't know. I didn't look at the time. 10

Q. How long were you there? A. I don't know. I didn't look at the time.

Q. What time did you go away? A. About fifteen minutes to nine, something like that.

Q. Fifteen minutes to nine? A. To nine.

Q. You left fifteen minutes to nine; is that right? A. About fifteen minutes after eight.

Q. Did you leave the hall at fifteen minutes after eight? A. Yes.

Q. How long did you hear Fedodoff talk? A. 20 About ten minutes.

Q. What was Colodinsky drinking in your presence? A. Whiskey.

Q. Anything else? A. Beer.

Q. Was he drinking them both at once, or the beer as a chaser? A. No, he was drinking whiskey.

Q. You didn't see him drink any beer? A. No, the beer was on the bar.

Q. He was a stranger to you, was he? A. No, I 30 didn't know him.

Q. Had you ever seen him before? A. Yes.

Q. How many people were in the bar room? A. About eight or nine.

Q. Where do you live? A. Bayonne.

Q. Where? A. 401 Boulevard.

Q. 401 Boulevard? A. Yes.

Q. How long have you lived there? A. Five months.

- Q. Where do you work? A. Texas Company.  
 Q. How long do you work there? A. One month.  
 Q. Where did you work before that? A. Farm.  
 Q. Farm? A. Yes.  
 Q. Farmer? A. Yes.  
 Q. In Bayonne? A. No. Texas.  
 10 Q. In Texas? A. Yes.  
 Q. Did you come up with the oil? A. No, Texas.

(Witness recalled by the Court.)

By the Court:

- Q. What were you—a farmer or a fireman? A. Farmer.  
 Q. Did Mr. Taetjen say anything at the meeting?  
 A. Taetjen?  
 20 Q. Yes? A. Taetjen didn't say anything except when they were creating a disturbance, they told them, if they disagreed with what Fedodoff says, they can state their objections after, saying what they think after Fedodoff gets through.  
 Q. Was any attempt made by any—by Mr. Fedodoff or by Mr. Taetjen, to quiet down these people? A. Yes.  
 30 Q. Who made the remark? A. They were not trying to quiet them, they were stating that if they didn't like, they can either go or state their objections.  
 Q. Who said that? A. Taetjen.  
 Q. When did Taetjen say that? A. When they were creating the noise, trouble.  
 Q. Did these men ever break up any other meeting you were present at? A. Yes, they did.  
 Q. Where?

40 The Court: Is this material?

DIMITRI BUCANOWSKI—Cross Examination.

Mr. Vickers: I don't believe it is.

Mr. Ready: We want to show—

The Court: I don't want to limit you.

Q. Do you know Mr. Fedodoff? A. No, I don't know him.

Q. Do you belong to any organization he belongs to? A. I don't belong to any organization. 10

Q. Do you know Mr. Taetjen? A. No.

Q. Do you belong to any organization Mr. Taetjen belongs to? A. I don't belong to any organization.

Q. Are you an absolutely disinterested witness?

Mr. Vickers: I think the jury will have to say that.

The Court: That is a matter for the jury to determine. 20

Cross Examination by Mr. Vickers:

Q. You are against Mr. Colodinsky, aren't you? A. Yes.

Q. Your antagonism to Mr. Colodinsky comes because he belongs to the St. Nicholas Brotherhood; is that right? A. No, I am against him because he was disturbing the meeting where we wanted to organize a school for education, our best effort. That is why I am against him. 30

Q. The St. Nicholas Brotherhood is for the protection of the workingman who belong in Bayonne to that particular church; isn't that so? A. No.

Q. It is a church society, isn't it? A. Yes.

Q. And the church is located in Bayonne? A. Yes.

Q. And the members are working people in Bayonne; is that right? A. I don't know. 40

Q. Do you know anything about the St. Nicholas Brotherhood? A. I don't know anything else about the Brotherhood of St. Nicholas.

Q. They don't pay any sick benefits to the Czar, do they? A. What is that?

Q. (Question repeated by the Interpreter) A.  
10 I don't know.

Q. He is a sick man. I guess that is all.

The Interpreter: He worked on a farm.

MORRIS BARISLOW, a witness produced on behalf of the defendants, being sworn, testified as follows:

20 Direct Examination by Miss Richer:

Q. Do you know Mr. Fedodoff? A. I don't know him personally, but I know his face.

Q. Have you attended meetings that he lectured at? A. I attended—it was not that meeting, it was little lectures, some kind of little lectures.

Q. At the meeting—did you attend this meeting? A. No, I did not.

30 Q. What lecture did you attend that he was talking about?

Mr. Vickers: I object. It is immaterial, incompetent and irrelevant.

The Court: How is it material?

Miss Richer: I want to bring out the general ideas of Mr. Fedodoff, by Mr. Barislow, from the lectures he attended.

Mr. Vickers: We object.

40

Q. Do you know Mr. Fedodoff to be a lecturer?

A. No, I don't know him to be a lecturer. I only heard him a few times.

Cross Examination by Mr. Brown:

Q. Where do you live? A. Newark, New Jersey. 525 Eighteenth Avenue. 10

Q. Who are you employed by? A. Hausmann Shoe Company.

Q. Where? A. Springfield Avenue, Newark, New Jersey.

Q. How long have you worked there? A. There I think I worked about—let us see—September or October, I don't know, exactly, how many months.

Q. How old are you? A. Twenty-three or twenty-four, around that; twenty-four, I think, now. 20

Q. Are you a citizen? A. No, I am not a citizen. I am only a declarant.

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ISAAC BOGPOLOVSKY, a witness produced on behalf of the defendants, being sworn (through Interpreter) testified as follows:

Direct Examination by Miss Richer (without Interpreter): 30

Q. Do you know Mr. Fedodoff? A. Yes.

Q. How long? A. About two years.

Q. Do you know his reputation in the community in which he lives for honesty, sobriety and peacefulness?

Mr. Vickers: I object. No foundation has been laid.

The Court: Objection sustained. It does not appear where he lives.

Q. Where do you live? A. New York.

Q. Do you live near him?

10

Mr. Brown: Get his address.

Q. Where do you live? A. 609 East 170th Street.

By the Court:

Q. Where does Fedodoff live? A. In Fourteenth Street.

20

By the Court:

Q. In New York City? A. In New York City.

Mr. Vickers: We object, unless the connection is made—that this witness knows the associates of Mr. Fedodoff in the neighborhood in which Mr. Fedodoff lives.

Q. Do you know the associates and friends of Mr. Fedodoff in the community in which he lives?

30

A. Yes.

Q. In the place where he lives? Do you know what his reputation is amongst those friends, and people in the neighborhood in which he lives? A. Yes.

Q. As for honesty, sobriety and peacefulness? A. Yes.

Q. What is his reputation?

The Court: Good or bad?

40

A. The best reputation.

## Cross Examination by Mr. Vickers:

Q. Have you heard his reputation for peacefulness discussed? Have you heard it discussed—talked about—his reputation for peacefulness? A. I don't understand very much.

Q. Have you heard his reputation for peacefulness, being a law abiding citizen, talked about? A. No. 10

Q. Have you heard anybody say anything about it? A. Please, it is—interpreter.

Q. You understood counsel for the defense all right. I speak the same language. You said that you understood his reputation for peaceableness in the community in which he lives. A. Yes.

Q. Among his friends and associates. You said it was the best. A. So. 20

Q. Now, I ask, have you heard it talked about—his reputation? A. Yes. 20

Q. What is your business? A. I am a tool maker.

Q. Do you belong to any organization or society of which the defendant, Fedodoff, is a member? A. Yes.

Q. What society is that? A. Socialist party.

Q. Is that among the acquaintances of Fedodoff in the neighborhood in which he lives, who are socialists, that you know his reputation? A. (No answer.) 30

Q. (Question repeated by the stenographer.) A. Not all—myself—not all are socialists.

Q. Not all? A. No.

Q. Are you a newspaper man? Do you run a newspaper? A. No.

Q. Have you anything to do with it? A. No, I am working man.

Q. That is all. 40

IVAN CZERAK, a witness produced on behalf of the defendants, being sworn (through Interpreter) testified as follows:

Direct Examination by Miss Richer:

10 Q. Were you at the meeting on March 7th? A.  
(No answer.)

By the Court (without Interpreter):

Q. Don't you speak English? A. Not much.

Q. She wants to know if you were at the meeting down in Bayonne on March 7th. A. Yes.

Q. Listen to the question, see if you can answer her.

By Miss Richer (without Interpreter):

20 Q. Were you at the meeting on March 7th?

The Court: He said yes.

Q. Do you know Mr. Colodinsky? A. Yes, I know Mr. Colodinsky, Paul too, and another guy.

Q. Do you know Mr. Radu? A. Yes.

Q. Do you know Mr. Mazu? A. Yes.

30 Q. Do you know that they belong to the St. Nicholas Brotherhood?

The Court: If my memory serves me, they all admit that they do.

Q. Did you see these men on March 7th? A.  
(No answer.)

By the Court:

Q. Colodinsky, and Paul Radu—did you see them on March 7th? A. Yes.

40

Q. Where did you see them? A. That place, in saloon eight fellows.

Q. You saw them in the saloon? A. Yes.

Q. What were they doing? A. Standing in the bar room, drinking something.

Q. All three of them? A. More bunch.

Q. Were there any more? A. Yes.

10

Q. How many were there? A. About four more; about six or eight altogether.

Q. You don't know how many? A. Yes.

Q. A crowd? A. Door just open, see inside the saloon drinking.

Q. Did you hear any conversation that was going on? Were they talking? A. No, I didn't talk, I just see.

Q. You just saw. Did you go to the meeting? A. Yes, I am going to the meeting, stay about ten minutes. After, come up, that bunch started, want to stop all that meeting.

20

Q. Then what happened? A. Says they don't like it, some fellow says, open—something was said in Russian, open a school, fellow says, I don't want it, I got society, got society, where I want, I don't want no school or nothing.

Q. Do you know what the purpose of the meeting was called for? A. (No answer.)

Q. Do you know why the meeting was called for? A. (No answer.)

30

By the Court:

Q. Do you know what they were going to do at that meeting? A. (No answer.)

Q. (Question repeated by the Interpreter.) A. The meeting—school, Russian English school, was supposed to be established, since we are all in Bayonne and without an organization.

Q. Did Mr. Taetjen say anything at the meeting?

A. (Through Interpreter.) To make an English school.

40

Q. Did Mr. Taetjen say anything at the meeting?  
A. (No answer.)

Q. Do you know Mr. Taetjen? A. No, I don't know him.

Q. Do you know this man? A. No, I don't know that man.

10 Q. Did you ever see him before? A. Yes, I saw him at the meeting.

Q. Did he say anything at the meeting? Did Mr. Taetjen say anything at the meeting? A. No, he didn't say anything at the meeting.

Q. Who was talking at the meeting? A. Fedodoff—Mr. Fedodoff.

20 Q. Did Mr. Fedodoff say anything about the President of the United States, in the White House? A. No, he didn't say anything about the government. He was speaking about the capitalists.

Q. What capitalists? A. All about capitalists, in general, American capitalists, Russian capitalists, English capitalists, and so on.

Cross Examination by Mr. Vickers:

Q. Did he say anything about Kerensky? A. No, he—I didn't hear anything about Kerensky.

Q. Did he say anything about England? A. I didn't hear anything about England.

30 Q. Did he say anything about the United States? A. No, he didn't say anything about the United States.

Q. Just talked about the school, your school? A. He was speaking about the school, we are ignorant, don't know anything, he want to establish a school.

Q. When he said you were ignorant did you believe him? A. What is that?

40 Q. (Repeated by the Interpreter.) A. We believe that we are not organized, and don't know anything, we believe that.

Q. When you went in this hall you went right by the bar room, didn't you? A. I pass through the hall, near the door, pass the door-way, it was open, to the saloon.

Q. You didn't go in the saloon, did you? A. I only looked into the saloon, to see there was any of the Russians there.

Q. You saw eight—about eight men in there, did you? A. Yes, about eight. I don't know their names.

10

Q. There were about two hundred men at the meeting, were there? A. Not two hundred.

Q. One hundred and fifty? A. About one hundred, one hundred and twenty.

Q. All these fellows at the bar in the saloon belonged to the Black Hundred, didn't they? A. Yes.

Q. The rest of you, one hundred and twelve, you didn't go in the saloon, did you? A. No.

20

Q. Where do you live? A. Bayonne.

Q. Big place. What street? A. 476 Boulevard.

Q. Where do you work? A. Newco Butter factory.

Q. How long do you work there? A. Two and one-half years.

Q. How long have you been in this country? A. Five.

Q. Have you lived here in Hudson County all that time? A. Yes, all the time, same place in Bayonne.

30

Q. Did you start that school? A. Started—no, we started it, but that fellow said mix him up.

Q. Mix him up the first time and mix him up again? A. Didn't like the society.

Q. You are still mixed up, aren't you? A. Yes.

Mr. Ready: With an offer of testimony we can close our case. I would like the

40

Court to rule on it, to save time, rather than call the witnesses, and have it objected to. I can state my offer so that the Court can pass on it. If the Court will permit me to state the offer, I will make it.

The Court: You may state it.

10

Mr. Ready: We offer to show by Barislow, he was a member of a school organized by Mr. Fedodoff in Newark, January 27th, he was a teacher of the school organized by Mr. Fedodoff January 27th, the same kind of school that was going to be organized in Bayonne. I would like to have that evidence.

20

Mr. Vickers: There is no objection to admitting that if he took the stand he would testify he is a teacher in a school organized by one of these defendants on January 27th, in the City of Newark. Of course we cannot say, we cannot admit, it was the same kind of a school. That would be a pure conclusion.

30

The Court: The State admits that, it may go in, that he will testify that Fedodoff had organized a school January 27th of this year in the City of Newark, that the witness is a teacher in that school.

40

Mr. Ready: We further offer to explain the anti-military stamp in the book that has been offered in evidence by the prosecution, and the meaning of the Red Guard, that was mentioned here in court, by Mr. Recht, a member of the New York Bar, who is not a socialist, but knows the meaning of that stamp, and the meaning of the Red Guard. I think the jury ought to know.

CHARLES RECHT—Direct Examination.

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Mr. Vickers: We will not admit it, but we will not object to the introduction of the testimony.

The Court: Call your witness.

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CHARLES RECHT, a witness produced on behalf of the defendants, being sworn, testified as follows:

10

Direct Examination by Mr. Ready:

Q. You are a member of the New York Bar?  
A. I am.

Q. Where is your office? A. 110 West 40th Street.

Q. How long have you been a practicing lawyer? A. Since 1910.

20

Q. In New York City? A. In New York City.

Q. What is your nationality? A. I am a Czech.

Q. Are you a socialist? A. I am not. I am not a member of the party.

Q. Are you opposed to the United States being in the war with Germany? A. I am not.

Q. Are you in favor of the United States' war against Germany? A. I am not opposing it.

30

By the Court:

Q. The question is, are you in favor of it? Are you in favor of the United States waging war on Germany? A. I am in favor of concluding it.

Q. You are what? A. I am in favor of seeing it through.

40

By the Court:

Q. It may be stricken out. Are you in favor of the war of the United States with Germany? (No answer).

10 Q. I will withdraw the question, and ask him—  
are you in favor of seeing the war between the United States and Germany through? A. I am.

Q. Do you know what that stamp—anti-military stamp—means, in the book that is now in your hands, and offered in evidence in this case.

Mr. Vickers. I object. The witness is not qualified.

The Court: Objection sustained.

20 Mr. Vickers: If the witness can be qualified I have no objection, but he is not qualified.

Mr. Ready: I don't know of any way I can find out except by asking him if he knows, and let the prosecutor cross examine him.

Mr. Vickers: You are producing him to testify to something that is really matter of opinion.

30 Q. Do you know of your own knowledge what that stamp means? A. I do.

Q. Where did you obtain your information from? A. From reading various socialist publications and discussing the matter with many socialists, of my personal friends.

Q. Have you ever seen this stamp before? A. I have.

40 Q. Were these stamps issued before or after the war was declared by this country against Germany? A. Before the war.

Q. Have they any connection in your opinion or to your knowledge, with anti-militarism now in this country? A. None except the one that is advocated by President Wilson himself.

Q. Do you know of that? A. I do.

Q. What is that? A. I know that the President is opposed to building up a permanent military machine in this country. 10

Q. How do you know that? A. I know it from the statement that he has made in the public press.

Q. Are you a member or have any connection with the National Democratic Committee? A. I was on the National Democratic Committee during Mr. Wilson's first term.

By the Court:

20

Q. Do you know Judge Hudspeth? A. I do not. I was on the foreign newspaper committee.

Q. You were not a member of the National Democratic Committee? A. I was working for the National Democratic Committee, organizing meetings for them, under the foreign newspaper auspices, auspices of the foreign newspaper committee.

Q. You were not a member of the National Democratic Committee? A. I was called a member. The foreign newspaper association were volunteers, they were called members. 30

Q. Do you know Mr. Fedodoff? A. I know him for the past three months.

Q. Is that all? A. That is about all, three or four months.

Q. Do you know if he has given lectures, if he is a lecturer? A. I have heard he was a lecturer.

Q. Have you heard anything about—do you 40

know of his reputation for peaceableness and decency in the neighborhood of New York City, the community in which he resides?

Mr. Vickers: I object.

The Court: I will allow it.

10 A. I know a little bit.

Q. Well, what is it, good or bad? A. As far as I know, it is good.

Cross Examination by Mr. Vickers:

Q. What is your interest in coming over today as a witness? A. To help out Mr. Fedodoff, and to see that he gets justice if possible.

20 Q. Did you have any doubt about his getting justice here? A. I did not. I did not know anything about the form or method of trial, came here expecting he would get justice, I came to assist.

Q. Why didn't you come yesterday? A. I was engaged otherwise. I was out of town.

Q. Did you come here as his legal representative? A. I came here to assist, as legal representative.

30 Q. When you testify that you know the purpose and nature of this anti-militarism stamp, in the book, you have in your hand, the membership card of the Socialist Party of America, you know that purely from hearsay, do you not? A. I know it from the reading of the socialist newspapers, from reading of it in socialist newspapers, and from discussions I have had with members, prominent socialist leaders, including Mr. Hilquit.

By the Court:

40 Q. Morris Hilquit? A. Yes.

Q. You do know, do you not, that the purpose of the revenue which that stamp in fact represents, was to cause propaganda to be set on foot in opposition to the United States entering the war in Europe; is that so or not? A. Part of it was, and part of it was used to build up educational opinions, such as the President himself endorses. 10

Q. What part of it was used in opposing the entrance of the United States into the war? A. I don't know of any division in the fund, which was collected for the purpose. The purpose was purely educational.

Q. The stamp itself tells of the purpose, doesn't it? A. Yes, anti-militarism.

Q. And you understand that that meant, so far as the stamp, the revenue, is concerned, that it was for the purpose of disseminating literature and so forth, opposing the war; isn't that so? A. Opposing the anti-militarism—opposing militarism; not exactly the war. 20

Q. You know, do you not, that at the time of the issuance of this stamp, socialists were opposed to this war in all of its phases, isn't that so? A. I know that socialists are always opposed to war in all its phases.

Q. When was this stamp used for the purposes you have said, you knew of its being used for? A. It was used a short time prior to the entrance of America in the war. 30

Q. What time was it? A. I believe these stamps were issued the early part of 1917, I am not certain of that, possibly the latter part of 1916.

Q. The stamp itself bears the year 1917, doesn't it? A. Yes.

Q. Can you say, then, what part of 1917 it was? A. I cannot unless I can decipher the date on the stamp. 40

Q. Can you? A. I cannot. I don't know who made that in—

Q. Of your own knowledge, do you know what part of 1917 it was? A. I don't, but I know it was used all the time in anti-militarist educational propaganda.

10 Q. Do you associate with the associates of Fedodoff in the neighborhood in which he lives? A. I do not.

Q. Where do you live? A. I live in Park Hill on the Hudson.

Q. Do you know the associates of Fedodoff in the neighborhood in which he lives? A. I do.

20 Q. And knowing them, do you know the reputation of Fedodoff for peaceableness and being a law abiding citizen or otherwise? A. As far as it can be ascertained from the work in which he is engaged.

Q. As a lawyer, you know that that is not reputation, don't you?

Mr. Ready: I object.

The Court: That is so, isn't it? Reputation among his workmen, that would be.

Mr. Vickers: "From the work," he said.

30 Q. Don't you know as a lawyer, that is not reputation? A. I have never heard anything against Mr. Fedodoff's good reputation.

Mr. Vickers: I ask that that be stricken out as not responsive.

The Court: It may be stricken out.

40 Q. Can you answer my question? (Question repeated by the stenographer.) As a lawyer, you know that is not reputation, don't you? A. That question presumes on my knowledge of the law.

Q. We are willing to concede it unless you destroy it under oath. A. Well, that is very nice.

Q. Can you answer it? A. I know I don't know Mr. Fedodoff's reputation from his neighbors. I do know of it from his fellow workmen.

Q. Do you know it from his fellow workmen who associate with him in the neighborhood in which he lives? A. Not in the neighborhood where he lives, but in the neighborhood where his work is conducted. 10

Q. Is his work conducted in the neighborhood in which he lives? A. I don't think so.

Mr. Vickers: I now move that the testimony of the witness be stricken out, as to his reputation.

The Court: I will allow it to stand for what it is worth. 20

Re-direct Examination by Mr. Ready:

Q. Can you testify whether that stamp was issued after this country went into the war, or before? A. I know it was issued before the war.

Q. Do you know what the American—what the Red Guard organization, Russian organization, in this country, means? A. I do.

Q. What is the purpose of it? A. The purpose of the Red Guard was to organize the Russians here to go to Russia and help to fight the German advance. 30

By the Court:

Q. Are you interested in the Red Guard? A. I took up with the State Department the possibility of permitting the recruiting of Russians in this country, of the Red Guard—called the Red Guard 40

here; that was denied. After it was denied we gave it up.

Q. Do you believe in the principles of the Red Guard? A. I believe everything ought to be done to stop the German advance in Russia.

10 Q. As a socialist you are not altogether opposed to war? A. I am not a socialist, your Honor.

Q. You are interested in it? A. I am interested in it. I believe in it.

Q. You say socialists are opposed to war. Does that include yourself? A. I am opposed to war, but not opposed to war against Germany.

Q. Then you are in favor of the United States in its present war against Germany? A. At the present time, yes.

20 By Mr. Ready:

Q. I was going to ask you if that organization of the Russian Red Guard in this country is against any instructions of our President, against any of our laws, you know of, in this country? A. Not at all. It tries to help the government in carrying this war against Germany.

Q. Is it—do you know if it is known to the American government? A. I beg your pardon?

30 Q. Do you know whether it is known and approved of by the American government? A. Yes, because we asked the Department of State to permit the organization of the Russian Red Guard here.

40 Q. Did you get permission? A. We did not, because we were told if we want to join, we ought to join the regular force, but there was nothing said against the Red Guard, simply it would be better to join the regular force, rather than to organize a new regiment.

Re-Cross Examination by Mr. Vickers:

Q. You were given the option of going to Russia to fight, if you wanted to fight? A. I was simply retained as counsel.

Q. I didn't mean you personally. I didn't think you would fight. A. You never can tell. 10

Q. I mean the people you represent. Did you get for the people you represent, the option of going to Russia to fight, if they wanted to fight? A. Yes, because it was their native land.

Q. Their native land. They had the option to go to Russia to fight, or else join the forces of Uncle Sam and fight; is that right? A. Yes.

Q. They wanted to form a Bolshevici Red Guard here? A. They wanted to go to Russia to help in the fight against the Germans. 20

(Defendant rests.)

The Court: I bring this to the attention of the State; nothing was asked of Colodinsky or the other two men, whether they had the conversation in this saloon, which some of these witnesses say they heard.

Mr. Vickers: They said they were not in there. It was only a reiteration. Your Honor will remember, Miss Richer asked them whether they went directly in the hall, and not in the saloon; they said they went directly in the hall, rather than in the saloon. 30

The Court: But they had said nothing about what these witnesses have testified to. If the State is satisfied with that, it is up to the State. 40

## Rebuttal.

HENRY T. LANGTRY, a witness produced on behalf of the State, in rebuttal, being sworn testified as follows:

10 Direct Examination by Mr. Vickers:

Q. You are a member of the Bayonne police department? A. Yes.

Q. On the 7th of March, 1918, did you go to this saloon where this meeting was, and arrest these defendants, either of them? A. Yes.

Q. At that time did you see Edward Colodinsky, Wasil Mazu and Paul Radu? A. Yes.

Q. Were they drunk at that time? A. No.

20 Cross Examination by Mr. Ready:

Q. What time did you see them? A. About half past eight, going on to nine o'clock.

Q. You went in the hall, and went out again, didn't you, before you made any arrest? A. Yes.

Q. How long after that did you go back in the hall? A. About ten minutes.

Q. Wasn't it about half an hour? A. No.

30 Q. Were you stationed at the hall that night?  
A. No.

Q. Were you in the neighborhood? A. Yes.

Q. All night? A. Yes.

Q. Did you know the meeting was being run off there? A. Not until I was informed there was a meeting there.

Q. Did you see the people going there? A. No.

Q. How far away were you when you were called? A. About a hundred feet from the hall.

40 Q. Standing there? A. Yes.

Q. How long? A. Oh, probably ten minutes, five minutes.

Q. You made the arrest at half past eight? A. No, sir, around nine o'clock, a little after nine.

Q. The meeting broke up at half past nine as a matter of fact? A. A short time, sir, after nine o'clock.

10

Q. You made the arrest about nine, and the meeting broke up at half past nine? A. After nine o'clock.

Q. The meeting broke up as soon as you made the arrest? A. When we took the men out, that finished it.

Q. You left people in the hall when you went out? A. No, sir; what, the sec—

Q. Weren't the lights put out? A. I went in there twice.

20

Q. The first time you went in, you made no arrest? A. No.

Q. Why did you go in the first time? A. I did go in.

Q. Why? A. I was informed there was a man in there making a speech against the authorities at Washington.

Q. Who informed you that? A. Paul.

Q. Do you know Paul? A. Yes.

Q. How long? A. About five years.

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Q. Had Paul given any signs of being drunk, or having drunk intoxicants that night? A. No, sir.

Q. Sure of that? A. Positive.

Q. When you went back to the hall, what condition did you find there? A. There was a number of men, all standing up, confused.

Q. Confused? A. Yes.

Q. Did you see this big fellow, Colodinsky, there? A. Yes.

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Q. What was he doing? A. He was in the hall.

Q. What was he doing? A. There was quite a number of them arguing. I didn't understand the language they were talking.

Q. All talking in Russian? A. Everybody was talking.

10 Q. You didn't understand them? A. No.

Q. Colodinsky was talking, too? A. Who?

Q. The big fellow? A. They were all talking. Everybody was talking.

Q. I am asking about him particularly. He was talking, too? A. Every one was talking.

Q. You saw someone trying to put Colodinsky out, or telling him to go out? A. No.

20 Q. Why didn't you make your arrest at that moment? A. I didn't understand the thing thoroughly at the time.

Q. You heard nothing yourself, or saw nothing that caused you to make an arrest at that time? A. No, because I didn't understand the language.

Q. You heard nothing or saw nothing that caused you to make an arrest? You saw no law being broken? A. No.

Q. You went out? A. Yes.

Q. Left them arguing? A. Yes.

Q. After ten minutes you went back? A. Yes.

30 Q. Why? A. With help from police headquarters.

Q. Did you need any help to make an arrest the next time? A. Yes.

Q. Why? A. I didn't understand what they were saying. I wanted to get some one that understood the language.

Q. Did you get that some one that understood the language at headquarters? A. It didn't come. The men we wanted were out on a different case.

## JOSEPH DOROWSKY—Direct Examination.

Q. Who did you go back with the second time?  
A. Detective Russell.

Q. Did he understand the language? A. No.

Q. What were they doing then? A. There was one man out on the floor. We stopped the meeting.

Q. One man was talking? A. Yes, the little man.

Q. This man here (indicating defendant Fedodoff)? A. Yes. 10

Q. Was there any disturbance when you went in the second time? A. No, we put them all out, stopped the meeting.

Q. Why did you stop the meeting when you say there was no disturbance the second time? A. On information got from this man, that this man was running down the government.

Q. Just Paul told you that? A. Paul, yes, and the other man. 20

Q. Two other men? A. Yes.

Q. On their mere say-so you went back and broke up the meeting? A. Yes.

Q. Had the lights turned out? A. Yes.

Q. Everybody put out? A. Yes.

Q. Although at that time there was no disturbance happening in that hall? A. No, sir.

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JOSEPH DOROWSKY, a witness produced on behalf of the State, in rebuttal, being duly sworn, testified as follows: 30

Direct Examination by Mr. Vickers:

Q. Were you at Police Headquarters on March 7th, 1918, when these two defendants were brought in? A. I happened to be in—happened to come in

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five minutes after they were brought in.

Q. At that time did you see Edward Colodinsky, Wasil Mazu and Paul Radu there? A. Yes.

Q. Did you have the opportunity to observe whether these three last named persons were drunk or sober? A. Yes.

10 Q. Did you observe whether they were? A. Yes.

Q. Were they drunk or sober? A. Sober.

Cross Examination by Mr. Ready:

Q. Positive they hadn't drunk at all that night?

Mr. Vickers: I object. It is incompetent.

The Court: How could he tell?

Mr. Ready: By smell.

20 Mr. Vickers: I don't object, if he will ask him.

Q. Did you get close enough to smell their breath? A. Yes.

Q. How close? A. About two feet away from Colodinsky. I was questioning him there at the time.

Q. You know him quite well? A. Not to speak to. I have only seen him.

30 Q. How long had you known him? A. I remember him for the past two years.

Q. Does he go to your father's saloon? A. I have no saloon. My father has no saloon.

Q. Doesn't your father run a saloon? A. No, sir.

Mr. Vickers: Wrong information.

40 Q. You have known him about five years? A. About two years.

Q. Where did you know him from? A. Seen him around the streets.

Q. Ever see him in the police station? A. No, sir, not before then.

Q. Did you ever see him talking to the chief of police down there? A. Not to my knowledge.

Q. You know nothing about that? A. No. 10

By Mr. Vickers:

Q. I don't know whether it appears on the record—you are a member of the police department of the City of Bayonne? A. Yes.

Q. What rank? A. Detective in Captain Griffin's office.

Q. How long have you been in the police department? A. In all, about six years. 20

By Mr. Ready:

Q. Did you make the arrest in this case? A. No, sir.

(Case closed.)

Miss Richer: I make a motion for a direction of a verdict on behalf of the defendant, Taetjen. There is no evidence of words spoken by him. The words testified to were spoken by Fedodoff alone. 30

The Court: I will deny your motion.

Miss Richer: I ask an exception.

The Court: Exception allowed.

It is signed and sealed accordingly.

(Seal) JAMES W. McCARTHY, Judge. 40  
(Summing up by Counsel.)

**Court's Charge to the Jury.**

Gentlemen of the Jury:

10 You have listened long and patiently to the trial of this case which has been presented to you very faithfully and very ably by counsel for the defense and by the learned Prosecutors for the State, and it now becomes the duty of the Court to lay the law before you which is to guide you in the determination of the facts. Of course, the facts in this case are for you and for you alone to decide. Counsel for the defendants made reference to the fact that the Court called your attention to the fact that this was America. The Court did that because of the charge that was made against these defendants, although I suppose it ought not to have been necessary because everyone knows and everyone

20 believes that in this temple of justice nothing but justice is to be obtained and that everybody is getting a square deal before the law, regardless of his nationality, regardless of his creed, regardless of the fact whether he be rich or poor, powerful or weak. It is well, gentlemen of the jury, that you men get fixed firmly in your minds now the precise charge that is made against these defendants in this indictment. They are not being tried for being

30 members of the Bolsheviki or members of the I. W. W., or being Socialists, nor are they being tried for offenses against Germany, against Ireland, against England, or against any country, nation or people. Neither are they being charged and tried for criticising the President of the United States or anybody else. They are being tried under this indictment which charges both of them, in the City of Bayonne, on the seventh day of March of this year, with wilfully, knowingly and unlawfully attempt-

ing by speech to incite, abet, promote and encourage hostility and opposition to the government of the United States in that they, in the presence and hearing of divers good people then and there assembled, did publish, utter, pronounce, declare and say with a loud voice to the persons there assembled, in substance, that the present war in which the government of the United States is now engaged with Germany was a war for the benefit of the capitalists and that the President of the United States, at the behest of the capitalists, was sending our soldiers to France to be slaughtered, that we, the people of the United States, did not need any government, that those assembled should arm themselves for protection against the government. 10

That, gentlemen of the jury, is the precise charge in the indictment and the crime for which these defendants are being tried. That indictment is founded upon chapter 44 of the laws of the present year, section 2 of the said chapter. Now, as to the evidence disclosed in this case, gentlemen of the jury, you should give it your utmost care and attention because it is an important case. All criminal cases are important, they are important first to the State, because the State claims that its law has been transgressed. They are important to the defendants on trial because they are being tried for a serious offense and are entitled, as well as the State, to your most earnest and faithful consideration of all the evidence and circumstances in the case. It seems, as the Court recalls it, that there was a meeting in the City of Bayonne on the night of Thursday, March 7th, of the present year; this meeting was arranged for by Tony Tachin, one of the defendants, who was present on the night of the meeting, and was on the platform with 20  
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the other defendant, Fred Fedodoff, during all the time that Fedodoff was addressing the assemblage and giving utterance to the language complained of. The speech of Fedodoff was in the Russian tongue and it seemed that that was the nationality and language of most of those who made up the audience. Witnesses have testified on behalf of the State that the said Fedodoff audibly and publicly at that meeting addressed the assemblage in language to this effect, saying among other things, that when Kerensky was Prime Minister of Russia he locked up all the foodstuffs and the people were starving from hunger and that when the Bolsheviki came into power they opened all the stores, broke open the banks, took the foodstuffs and divided them among the people; that Germany, the German Empire, with which the government is now at war, had a strong military organization, that no one could beat them, that England, one of our allies in this war with Germany, had put up the war and was making money out of it, that only the rich people were making money out of this world conflict, that when England made its new law for conscription it sent its gendarmes, or military soldiers to Ireland to wipe up that section of the English dominion, that the United States of America, our own country, was in the war only for the capitalists to make money, that the man in the White House, whose name all were said by the speaker to know, and by whom was evidently intended Woodrow Wilson, the Commander-in-chief of our army and navy and President of the United States, had declared war against Germany and Austria because he had become frightened, and that he was taking our young men and sending them to France to slaughter or

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make meat of them, that the United States was doing in this land just what England was doing, waging war for the enrichment of the capitalists and millionaires who lived in palaces, that everybody should take up arms and fight against capitalism and that the people in this country do not need capital, do not need any government; that an audible and public protest or complaint against this language used in relation to Russia and the United States was then and there made by one or more of those present at the meeting, and that the other defendant, referred to as the "big fellow," whose name is Tony Tachin, publicly replied to the protests that we have got the hall and are going to speak. Briefly and in substance, as the Court recalls it, the testimony of the State's witness was to this effect. One of the defendants, Tony Tachin, the man who hired the hall and who was present at the meeting, has testified that the meeting was held for the purpose of opening a school where his countrymen could study English and learn to read and write the English and Russian languages. He has denied that any protest was made at the meeting, as testified to by these same witnesses, and says that two of the said witnesses were drunk and committed disorder. But this defendant did admit, on questioning of his own counsel, that his co-defendant Fedodoff, had declared in the course of his speech, at the meeting, that capitalists are bringing about the war for the purpose of enrichment, that in the United States those who live in fine palaces are fighting the war in order to get rich.

The other defendant, Fedodoff, who took the stand also, denied that he had made any of these utterances which are contended for by the State,

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## COURT'S CHARGE TO THE JURY.

- which its witnesses have testified to here, and he too says that this meeting was held for the purpose of organizing a school in order that the Russians down in Bayonne might be taught how to read and to write not only the Russian language but our own language. Of course, gentlemen of the jury, you
- 10 will see that if that is the truth, if the purpose of this meeting was simply for organizing the school, and if this defendant, Fedodoff, did not make the utterances which the State's witnesses have testified that he made, of course this indictment must fall, and the defendants, both of them, must be acquitted. It is for you to say whether or not you believe their defense. There have been other witnesses who testified, who were present at that meeting, and some who were outside, corroborating Mr.
- 20 Fedodoff and Mr. Tachin in their statements. Some witnesses have testified that the three State's witnesses were drunk and disorderly, that they did not make a protest as they have said they did at that meeting, but that they got up and tried to break up the meeting, that there was some feeling between them and the faction which was holding the meeting because of some differences they had in some lodge or society or church, which you gentlemen must recall from the testimony. Of course
- 30 if that was what happened, if these gentlemen went in there for the purpose of breaking up the meeting and there were no utterances such as the State's witnesses have testified that occurred at that meeting, of course these defendants could not be guilty of any crime because the right of the people peaceably to assemble and discuss anything within the law is, of course, as anyone can see at first glance, a most lawful proceeding.
- 40 It is for you, gentlemen of the jury, to take all the evidence in the case, you are the sole judges of

it, you saw the witnesses as they appeared upon the stand, you had an opportunity to observe them as they testified, you could see their demeanor, it is for you to say where the truth resides. Were the State's witnesses telling the truth? Did they narrate to you a true account of what happened in that meeting? Did this defendant Fedodoff, get up there and in the course of his speech make these utterances which they say he made? And did the State's witnesses get up and protest against them? And after they protested, did the defendant, Tachin make the reply which the State's witnesses say he made? That is, to the effect, that, we have got the hall and we are going to speak? That is for you to say, gentlemen of the jury. You should weigh it very carefully, scrutinize it very carefully, and review it very carefully so that you may get at the truth, because it is the truth and nothing else that we want in this court house and it is the truth and nothing else that ought to aid you in determining and reaching your verdict.

There is some testimony here as to the reputation of one of these defendants for peaceableness and veracity and honesty in the community in which he lives. You will take that evidence and consider it in connection with the other evidence in the case. If it raises a reasonable doubt in your minds, as to the guilt of that particular defendant in whose favor it is given you are to give him the benefit of that reasonable doubt and acquit him.

Gentlemen of the jury, you are to take all the evidence in this case, and as I said before, carefully review and consider it. The guiding star in this case as in all cases which the jury has to consider, is the evidence produced, not what counsel

COURT'S CHARGE TO THE JURY.

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or the Court may say the evidence is, but what the minds of the jurors remember it to be, for counsel and the Court too, for that matter, may be mistaken as to precisely what the several witnesses testified to. Our recollection and statement of what the evidence is must not be substituted by

10 you for your recollection of it, for it is your recollection and not ours that is to govern your deliberation. You are the sole judges of the facts in this case and it is your solemn duty to scrutinize and weigh and review them carefully, giving to them the credit which you believe they deserve. The law applied to those facts you must take from the Court. Ask yourselves, when you retire to the jury room to deliberate upon this case, did these

20 defendants or either of them in public by speech at the meeting held in the City of Bayonne in this County on the night of March 7th, 1918, as charged in the indictment, attempt to incite, abet, promote or encourage hostility or opposition to the government of the United States or of the State of New Jersey? The answer to this question, you must find in the evidence. It is conceded that the meeting was public, was held at the time and place testified to by the State's witnesses, that both of these

30 defendants were present and that the assemblage was addressed by the defendant, Fedodoff. The real question, then, it seems to the Court, for you to consider, is whether in the course of that address or speech the defendant, Fedodoff, used language that from its plain import and effect can be said to have been intended to incite, abet, promote or encourage hostility to the government of the United States, as charged in the indictment? And if you find from the evidence that it has been established, then ask yourselves whether the other

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defendant, Tony Tachin, aided, abetted, counseled, procured or assisted the defendant, Fedodoff, in accomplishing that purpose. I charge you that if you believe it has been established by the State beyond a reasonable doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make the world safe for democracy, as a war being waged for the enrichment of capitalists, and the language as to their being no need for government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged, you may consider that language as being language which tended to incite, aid, abet, promote and encourage hostility and opposition to the government of the United States.

I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America's entry into the conflict was from the purest and highest of motives and that it is not for the enrichment of capitalists, but for human liberty and the most precious and priceless ideals of mankind, ideals symbolized by the flag that hangs in this court-room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one can truthfully say that the flower of our youth is being sent

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- to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law.
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- 20 Ours is a government of law. The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human government is needed; a torch of liberty which penetrates into the darkest places of the most remote recesses of the earth, guiding, yes, beckoning, to our shores all the oppressed of the earth—in the words of Him who said, "Come unto me all ye that labor and are heavy laden, and I will give you rest."
- 30 The right to life, liberty and the pursuit of happiness is guaranteed to all, the rich and the poor, the strong and the weak, all of whom are equal before the law. Every person has a right to instruct his fellow citizens, he may fearlessly advance any new doctrine, he may criticise or give utterance to any opinions he may have, provided he does so with proper regard to the law which he is presumed to know and which he is obliged to respect. That is what is guaranteed to all by our
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constitutional guarantee known as the freedom of speech.

I charge you, as a matter of law, that unless you are convinced by the evidence beyond a reasonable doubt that the defendant Tony Tachin aided, abetted or assisted the other defendant Fedodoff in inciting, promoting or encouraging hostility or opposition to the government of the United States at the meeting, as charged in the indictment, you must acquit him; and on this point I charge you that the mere presence of the defendant, Tachin, at the meeting where the language complained of is alleged to have been uttered by Fedodoff, is not sufficient to render him a participant in the crime, if one was committed. To constitute him a party to the alleged criminal act, he must not only be present upon the scene, but he must have actually participated in the commission of the crime, either as a principal actor or as an aider and abettor. This crime charged being a statutory misdemeanor, all who aid, abet, or participate in its commission are regarded by the law as principals and all are equally guilty as such. In this connection you will review carefully the evidence of the witnesses for the State, who testified that when protest was made against the alleged use by Fedodoff of the language concerning the United States, its President, and the war, that the defendant, Tony Tachin, who had hired the hall for the meeting and who was present throughout the speech of the defendant, Fedodoff, declared to the protestant or protestants that they got the hall and were going to speak. If you are convinced of the truth of this evidence beyond a reasonable doubt, then you may find that the defendant, Tony Tachin, was an aider or abettor in the crime, if you so find that a crime

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was then and there committed, and under the rule which I have just laid down, he would be guilty as a principal.

10 I charge you also, as a matter of law, that the burden of proof rests upon the State in this case, to prove the guilt of both of these defendants beyond a reasonable doubt. Our law aims to be just and humane and whenever a person is accused of crime it interposes a shield by presuming innocence until guilt is established beyond a reasonable doubt. That shield continuously remains with and protects the defendants throughout the entire trial, and is not removed or destroyed until every essential element of the crime charged against them is so established.

20 A reasonable doubt is just what the term indicates—a reasonable doubt. It does not mean a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge, the burden of which is on the prosecution. If upon such proof there be reasonable  
30 doubt remaining, the accused are entitled to the benefit of that reasonable doubt and should be acquitted. In this case you may find both defendants guilty or both defendants not guilty or one of them guilty and the other not guilty, as you may determine that the evidence in the case warrants you in so doing, under the rules which I have laid down.

40 The case is with you. Give it your most earnest and careful attention, so that when you come back to this court-room and pass in your verdict, you

## COURT'S CHARGE TO THE JURY.

may leave the court-room feeling that as men with consciences, men who have taken an oath to render a verdict according to the evidence, so help your God, the verdict which you have rendered is a verdict according to the evidence, not according to passion, not according to prejudice, not according to sentiment, not according to sympathy, but according to the evidence and the evidence alone; and when you have done that you have done your full duty, and when you pass out from this court-room you can look at that panel which ornaments the front of our court-house, "Justice seeks no praise fears no blame," and go to your homes feeling that you have done your full duty. 10

(The jury retired.)

## EXCEPTIONS TO CHARGE. 20

1. The defendants pray an exception to the charge of the Court in that the Court charged the jury as follows:

The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human government is needed.

Exception allowed and signed and sealed accordingly. 30

JAMES W. McCARTHY,  
Judge. (Seal)

2. The defendants pray exception to that part of the Court's charge to the jury in which the Court said:

But this defendant (Tachin) did admit, on questioning of his own counsel, that his co-defendant, 40

Fedodoff, had declared in the course of his speech, at the meeting that capitalists are bringing about the war for the purpose of enrichment, that in the United States those who live in fine palaces are fighting the war in order to get rich.

10 Exception allowed and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge. (Seal)

20 3. The defendants pray an exception to that part of the Court's charge to the jury in which the Court recited or stated or called to the attention of the jury to the testimony of the State's witness, Colodinsky, and the other witnesses for the State, on the ground that the Court should also have as fully called the attention of the jury to the testimony of the various witnesses for the defense.

Exception allowed and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge. (Seal)

4. The defendants pray an exception to that part of the charge in which the Court said:

30 It is for you to say whether or not you believe their defense, on the ground that the real question for the jury is whether or not they believe the State's case, and not the defense.

Exception allowed and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge. (Seal)

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ASSIGNMENTS OF ERROR.

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5. The defendants pray an exception to the charge of the Court, generally.

Exception allowed and signed and sealed accordingly.

JAMES W. McCARTHY,  
Judge. (Seal) 10

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**Assignments of Error.**

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">TONY TACHIN and FRED FEDO- DOFF, Plaintiffs-in-Error.</p>	}	<p style="text-align: center;">On Writ of Error.</p> <p style="text-align: center;">Assignments of Error.</p>	20
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Afterwards, that is to say, on the sixth day of June, in the year of our Lord 1918, in the said New Jersey Supreme Court, come the said Tony Tachin and Fred Fedodoff by Jennie Richer, their attorney, and say that in the record and proceedings aforesaid and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error, in this, to wit: 30

1. That by the record aforesaid it appears that judgment in form aforesaid was given against the said Tony Tachin and against the said Fred Fedodoff, whereas by the law of the land judgment 40

ought to have been given for the said Tony Tachin and Fred Fedodoff.

10 2. There is also error in this, to wit, for that the learned Judge before whom the said indictment was tried, denied the motion of the said defendants to quash the said indictment: to the injury of the defendants.

20 3. There is also error in this, to wit, for that the learned Judge before whom the said indictment was tried, upon the trial thereof, at the close of the direct case on behalf of the State, refused to direct a verdict of not guilty on behalf of Tony Tachin although a proper motion was made at that time for such direction of such verdict; to the injury of the said Tony Tachin; also to the injury of the said Fred Fedodoff.

30 4. There is also error in this, to wit, for that at the close of the production of all the evidence at the trial of said indictment, the learned Judge before whom said indictment was tried, refused to direct a verdict on behalf of the defendant Tony Tachin, although a proper motion was made that such motion be directed; to the injury of the said Tony Tachin; also to the injury of the said Fedodoff.

5. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular, in charging them as follows, namely:

40 "The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human gov-

ernment is needed"; to the injury of the defendants.

6. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows, namely: 10

"But this defendant (Tachin) did admit, on questioning of his own counsel, that his co-defendant, Fedodoff, had declared in the course of his speech, at the meeting that capitalists are bringing about the war for the purpose of enrichment, that in the United States those who live in fine palaces are fighting the war in order to get rich"; to the injury of the defendants.

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7. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in this respect that said learned Trial Judge called to the attention of the jury the testimony of the State's witness, Colodinsky, and the other witnesses for the State without as fully calling the attention of the jury to the testimony of the various witnesses for the defense; to the injury of the defendants. 30

8. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging them that it was for the jury to say whether or not they believed the defense of the defendants, whereas the real question for the jury

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was whether or not they believed the witnesses produced on behalf of the State and the proofs produced on behalf of the State; to the injury of the defendants.

10 9. There is also error in this, to wit, that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed numerous errors in his charge to the jury to the manifest injury of the defendants.

20 10. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in this respect: the learned Trial Judge charged the jury that they were "the sole judges of the evidence and that they are the sole judges of the facts in this case" and that the "law applied to those facts you must take from the Court," but the learned Trial Judge in said charge did not on every occasion distinguish for the jury whether he was charging them with respect to the law or with respect to the facts; on the contrary at various points in his charge, said learned Trial Judge charged said jury with respect to what was really 30 a question or matter of fact or with respect to what was really a mixed question of fact and law, as if he were charging said jury with respect to a question or matter of pure law; to the manifest injury of the defendants.

40 11. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging them as follows:

“No one can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State’s witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W. no matter how mighty or powerful, and not be answerable to the majesty of the law”; to the manifest injury of the defendants.

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12. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging them as follows:

“I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America’s entry into the conflict was from the purest and highest of motives and that it is, not for the enrichment of capitalists, but for human liberty and the most precious and priceless ideals of mankind, ideals symbolized by the flag that hangs in this court-room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one can truth-

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fully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law"; to the manifest injury of the defendants.

13. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging the jury in effect that the jury should convict the defendant Fedodoff if they believed that "it has been established by the State beyond a reasonable doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make the world safe for democ-

racy, as a war being waged for the enrichment of capitalists, and the language as to there being no need for government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged," to the manifest injury of the defendant Fedodoff as well as of the defendant Tachin.

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14. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in that said learned Trial Judge substantially charged the jury to convict both the defendants if they found that the defendant Fedodoff at the meeting in said charge described said, "that the flower of our youth is being sent to France to be made meat out of for the enrichment of capitalists," and if the defendant Tachin at the said meeting "declared to the protestant or protestants that they got the hall and were going to speak"; to the manifest injury of the defendants, each and both of them.

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15. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

30

"Of course, gentlemen of the jury, you will see that if that is the truth, if the purpose of this meeting was simply for organizing the school, and if this defendant Fedodoff did not make the utterances which the State's witnesses have testified that he made, of course, this indictment must fall, and the defendants both of them must be acquitted," to the manifest injury of the defendants,

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and especially in this that the use of the word "simply" in the part of the charge just quoted involves an erroneous limitation.

10 16. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

20 "Of course, if that is what happened, if these gentlemen went there for the purpose of breaking up the meeting and there were no utterances such as the State's witnesses have testified that occurred at that meeting, of course, these defendants could not be guilty of any crime because the right of the people to peaceably assemble and to discuss anything within the law, is, of course, as anyone can see at first glance, a most lawful proceeding;" to the manifest injury of the defendants.

17. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

30 "I charge you that if you believe it has been established by the State beyond a reasonable doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make

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the world safe for democracy, as a war being waged for the enrichment of capitalists, and the language as to there being no need for government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged, you may consider that language as being language which tended to incite, aid, abet, promote and encourage hostility and opposition to the government of the United States;" to the manifest injury of the defendants. 10

18. There is also error in this, to wit, for that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

"In this connection you will review carefully the evidence of the witnesses for the State, who testified that when protest was made against the alleged use by Fedodoff of the language concerning the United States, its President, and the war, that the defendant, Tony Tachin, who had hired the hall for the meeting and who was present throughout the speech of the defendant, Fedodoff, declared to the protestant or protestants that they got the hall and were going to speak. If you are convinced of the truth of this evidence beyond a reasonable doubt, then you may find that the defendant, Tony Tachin, was an aider or abettor in the crime, if you so find that a crime was then and there committed, and under the rule which I have just laid down, he would be guilty as a principal"; to the manifest injury of the defendants. 20 30

19. There is also error in this, to wit, for that the learned Trial Judge before whom said indict-

ment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

10 “A reasonable doubt is just what the term indicates a *reasonable* doubt. It does not mean a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge, the burden of which is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused are entitled to the benefit of that reasonable doubt and should be  
20 acquitted”; to the manifest injury of the defendants.

20. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

30 “That, gentlemen of the jury, is the precise charge in the indictment and the crime for which these defendants are being tried”; to the manifest injury of the defendants.

21. There is also error in this, to wit, for that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

40 “In this case you may find both defendants guilty or both defendants not guilty or one of them guilty and the other not guilty, as you may de-

termine that the evidence in the case warrants you in so doing, under the rules which I have laid down"; to the manifest injury of the defendants.

22. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging in effect that if the defendant Fedodoff did "make the utterances" attributed to him by the witnesses on behalf of the State (who testified with respect to his utterances), then he did wilfully, knowingly and wrongfully attempt by speech to incite, abet, promote and encourage hostility to the government of the United States, to the injury of the defendants; and especially to their injury because, even if the jury found that the defendant Fedodoff "made the utterances" aforesaid, it still remained for the jury to determine whether he was guilty of attempting to incite, abet, promote or encourage hostility to the government of the United States.

23. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

"The real question then, it seems to the Court, for you to consider, is whether in the course of that address or speech, the defendant, Fedodoff, used language that from its plain import and effect can be said to have been intended to incite, abet, promote or encourage hostility to the government of the United States as charged in the indictment? And if you find from the evidence

that it has been established, then ask yourselves whether the other defendant, Tony Tachin, aided, abetted, counseled, procured or assisted the defendant, Fedodoff, in accomplishing that purpose"; to the injury of the defendants, and especially to their injury in this, that in and by such charge and the language quoted, the learned Trial Judge instructed the jury that they might convict the defendants upon the "plain import and effect" of the language which the jury found Fedodoff used, no matter what the intent of said Fedodoff was in using said language; and in that gravamen of the charge against the defendants was attempting to incite, abet, promote and encourage hostility and opposition to the government of the United States, and was not the use of certain language.

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24. There is also error in this, to wit, for that the learned Trial Judge, before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular charged them that they might convict the defendants, to the injury of the defendants and especially to their injury because the indictment aforesaid, does not charge them with a crime, in that while said indictment sets forth that the said defendants did attempt by speech to incite, abet, promote and encourage hostility and opposition to the government of the United States, the theory, structure and purport of said indictment is, that the mere use of the language described in said indictment in and by itself constitutes a crime.

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25. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed

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error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the pertinent portion of the statute upon which the indictment is based (Chapter 44, Laws of 1918) is contrary to the provisions of the Constitution of the State of New Jersey and therefore void and is so contrary because in violation of Section 5 of Article 1 of said Constitution, which reads as follows: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact"; to the manifest injury of the defendants.

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26. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the precise statutory provision upon which said indictment is based involves an attempt upon the part of the legislature of the State of New Jersey to interfere with, restrict and curtail the civil rights of citizens of the United States beyond the power of said Legislature so to do; to the manifest injury of the defendants.

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27. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the precise  
10 statutory provision upon which said indictment is based involves an attempt upon the part of the Legislature of the State of New Jersey to legislate with regard to a subject matter within the jurisdiction and power of the Congress of the United States; and further, with regard to the subject matter heretofore dealt with by existing laws enacted by the Congress of the United States: to the injury of the defendants.

20 28. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in framing his charge so as to confuse opposition to the course pursued by the administration of the government of the United States, and certain citizens of the United States on the one hand, with hostility to the government of the United States on the other hand.

30 Wherefore the said Fred Fedodoff and Tony Tachin pray, that the judgment aforesaid by reason of the aforesaid errors appearing in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in giving the verdict and judgment aforesaid, be reversed, annulled and for nothing holden and that the said Fred Fedodoff and Tony Tachin may be restored to all things they have

ASSIGNMENTS OF ERROR.

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lost on occasion of the said judgment and that the State of New Jersey may rejoin to said errors, etc.

JENNIE RICHER,  
Attorney of Defendants and  
Plaintiffs-in-Error. 10

OTTO A. STIEFEL,  
of Counsel with Defendants  
and Plaintiffs-in-Error.

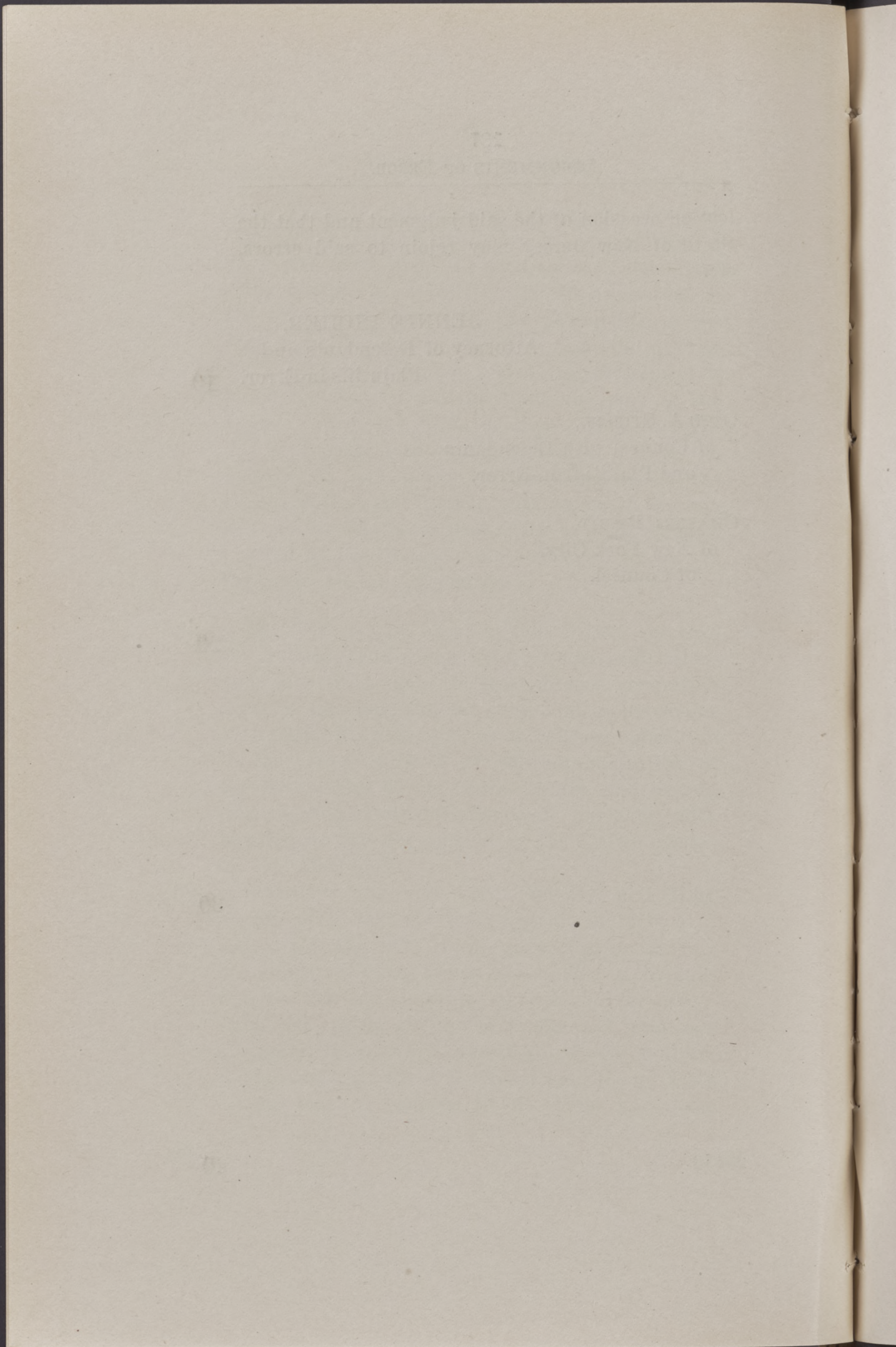
CHARLES RECHT,  
of New York City,  
of Counsel.

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26496.

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**Assignments of Error, Filed March  
22, 1919.**

COURT OF ERRORS AND APPEALS

OF THE STATE OF NEW JERSEY.

<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,  vs. TONEY TACHIN and FRED FEDO- DOFF, Plaintiffs-in-Error.</p>	}	<p style="text-align: center;">On Writ of Error to Su- preme Court. Assignments of Error.</p>	10
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Afterwards, that is to say, on the fifteenth day of March, in the year of our Lord, Nineteen hundred and nineteen, in said Court of Errors and Appeals, in the last resort in all causes, at Trenton, come the said Toney Tachin and Fred Fedodoff, by Otto A. Stiefel, their attorney, and say that in the record and proceedings aforesaid, and also in the matters and things recited and contained in the said bill of exceptions, and also in the conviction aforesaid and in the judgment of the said Supreme Court affirming the said conviction, there is manifest error, to wit: 20

1. That by the record aforesaid it appears that judgment in form aforesaid was given against the said Toney Tachin and against the said Fred Fedodoff, whereas by the law of the land judgment ought to have been given for the said Toney Tachin and Fred Fedodoff. 30

2. There is also error in this, to wit, for that the learned Judge before whom the said indictment 40

was tried, denied the motion of the said defendants to quash the said indictment: to the injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment for the  
10 defendant-in-error.

3. There is also error in this, to wit, for that the learned Judge before whom the said indictment was tried, upon the trial thereof, at the close of the direct case on behalf of the State, refused to direct a verdict of not guilty on behalf of Toney Tachin, although a proper motion was made at that time for such direction of such verdict; to the injury of the said Toney Tachin; also the injury  
20 of the said Fred Fedodoff. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

4. There is also error in this, to wit, for that at the close of the production of all the evidence at the trial of said indictment, the learned Judge before whom said indictment was tried, refused to direct a verdict on behalf of the defendant Toney Tachin, although a proper motion was made that  
30 such verdict be directed; to the injury of the said Toney Tachin; also to the injury of the said Fred Fedodoff. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

5. There is also error in this, to wit, that the  
40 learned Trial Judge before whom the said indict-

ment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular, in charging them as follows, namely:

“The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human government is needed”; to the injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 10

6. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows, namely: 20

“But this defendant (Tachin) did admit, on questioning of his own counsel, that his co-defendant, Fedodoff, had declared in the course of his speech, at the meeting that capitalists are bringing about the war for the purpose of enrichment, that in the United States those who live in fine palaces are fighting the war in order to get rich”; to the injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 30

7. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in this respect that said learned Trial Judge 40

called to the attention of the jury the testimony of the State's witness, Colodinsky, and the other witnesses for the State without as fully calling the attention of the jury to the testimony of the various witnesses for the defense; to the injury of the defendants. This was in the Supreme Court  
10 duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

8. There is also error in this, to wit, that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular  
20 in charging them that it was for the jury to say whether or not they believed the defense of the defendants, whereas the real question for the jury was whether or not they believed the witnesses produced on behalf of the State and the proofs produced on behalf of the State; to the injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against  
30 the plaintiffs-in-error.

9. There is also error in this, to wit, that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed numerous errors in his charge to the jury to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave  
40 judgment against the plaintiffs-in-error.

10. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in this respect: the learned Trial Judge charged the jury that they were "the sole judges of the evidence and that they are the sole judges of the facts in this case" and that the "law applied to those facts you must take from the Court," but the learned Trial Judge in said charge did not on every occasion distinguish for the jury whether he was charging them with respect to the law or with respect to the facts; on the contrary at various points in his charge, said learned Trial Judge charged said jury with respect to what was really a question or matter of fact or with respect to what was really a mixed question of fact and law, as if he were charging said jury with respect to a question or matter of pure law; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

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11. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging them as follows:

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"No one can truthfully say that the flower of your youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America

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any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W. no matter how mighty or powerful, and not be answerable to the majesty of the law"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

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12. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging them as follows:

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"I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America's entry into the conflict was from the purest and highest of motives, and that it is, not for the enrichment of capitalists but for human liberty and the most precious and priceless ideas of mankind, ideals symbolized by the flag that hangs in this court room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one

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can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said Court, but nevertheless said Court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 10

3. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury and in particular in charging the jury in effect that the jury should convict the defendant Fedodoff if they believed that "it has been established by the State beyond a reasonable doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with re- 20

10      gard to the purpose and objects for which we are  
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gard to America sending its young men to France  
to be slaughtered, and the language referring to  
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racy, as a war being waged for the enrichment of  
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as of the defendant Tachin. This was in the Su-  
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30      youth is being sent to France to be made meat out  
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defendant Tachin at the said meeting "declared  
to the protestant or protestants that they got the  
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15. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows: 10

“Of course, gentlemen of the jury, you will see that if that is the truth, if the purpose of this meeting was simply for organizing the school, and if this defendant Fedodoff did not make the utterances which the State’s witnesses have testified that he made, of course, this indictment must fall, and the defendants both of them must be acquitted,” to the manifest injury of the defendants, and especially in this that the use of the word “simply” 20 in the part of the charge just quoted involves an erroneous limitation. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

16. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows: 30

“Of course, if that is what happened, if these gentlemen went there for the purpose of breaking up the meeting and there were no utterances such as the State’s witnesses have testified that occurred at that meeting, of course, these defendants could not be guilty of any crime because the right of the people to peaceably assemble and to discuss any- 40

10 thing within the law, is, of course, as any one can see at first glance, a most lawful proceeding;" to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

17. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

20 "I charge you that if you believe it has been established by the State beyond a reasonable doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make the world safe for Democracy, as a war being waged for the enrichment of capitalists, and the language

30 as to there being no need for government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged, you may consider that language as being language which tended to incite, aid, abet, promote and encourage hostility and opposition to the government of the United States"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court

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affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

18. There is also error in this, to wit, for that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows: 10

“In this connection you will review carefully the evidence of the witnesses for the State, who testified that when protest was made against the alleged use by Fedodoff of the language concerning the United States, its President and the war, that the defendant, Toney Tachin, who had hired the hall for the meeting and who was present throughout the speech of the defendant Fedodoff, declared to the protestant or protestants that they got the hall and were going to speak. If you are convinced of the truth of this evidence beyond a reasonable doubt, then you may find that the defendant, Toney Tachin, was an aider or abettor in the crime, if you so find that a crime was then and there committed, and under the rule which I have just laid down, he would be guilty as a principal”; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 20 30

19. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

“A reasonable doubt is just what the term indicates a *reasonable* doubt. It does not mean a mere 40

possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge, the burden of which is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused are entitled to the benefit of that reasonable doubt and should be acquitted"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

20. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

30 "That, gentlemen of the jury, is the precise charge in the indictment and the crime for which these defendants are being tried"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

40 21. There is also error in this, to wit, for that the learned Trial Judge before whom the said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

“In this case you may find both defendants guilty or both defendants not guilty or one of them guilty and the other not guilty, as you may determine that the evidence in the case warrants you in so doing, under the rules which I have laid down”; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 10

22. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging in effect that if the defendant Fedodoff did “make the utterances” attributed to him by the witnesses on behalf of the State (who testified with respect to his utterances), then he did wilfully, knowingly and wrongfully attempt by speech to incite, abet, promote and encourage hostility to the government of the United States, to the injury of the defendant; and especially to their injury because, even if the jury found that the defendant Fedodoff “made the utterances” aforesaid, it still remained for the jury to determine whether he was guilty of attempting to incite, abet, promote or encourage hostility to the government of the United States. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 20 30

23. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment 40

was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

10       “The real question then, it seems to the court for you to consider, is whether in the course of that address or speech, the defendant Fedodoff used language that from its plain import and effect can be said to have been intended to incite, abet, promote or encourage hostility to the government of the United States as charged in the indictment? And if you find from the evidence that it has been established, then ask yourselves whether the other defendant, Toney Tachin, aided, abetted, counseled, procured or assisted the defendant Fedodoff in accomplishing that purpose”; to the injury of the

20       defendants, and especially to their injury in this, that in and by such charge and the language quoted, the learned Trial Judge instructed the jury that they might convict the defendants upon the “plain import and effect” of the language which the jury found Fedodoff used, no matter what the intent of said Fedodoff was in using said language; and in that the gravamen of the charge against the

30       defendants was attempting to incite, abet, promote and encourage hostility and opposition to the government of the United States, and was not the use of certain language. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiff-in-error.

24. There is also error in this, to wit, for that the learned Trial Judge, before whom said indictment was tried, upon the trial thereof, committed error

in his charge to the jury, and in particular charged them that they might convict the defendants, to the injury of the defendants and especially to their injury because the indictment aforesaid does not charge them with a crime, in that while said indictment sets forth that the said defendants did attempt by speech to incite, abet, promote and encourage hostility and opposition to the government of the United States, the theory, structure and purport of said indictment is, that the mere use of the language described in said indictment in and by itself constitutes a crime. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

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25. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the pertinent portion of the statute upon which the indictment is based (Chapter 44, Laws of 1918) is contrary to the provisions of the Constitution of the State of New Jersey and therefore void and is so contrary because in violation of Section 5 of Article 1 of said Constitution, which reads as follows: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions and indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged

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as libelous is true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact"; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged  
10 before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error.

26. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the precise statutory  
20 provision upon which said indictment is based involves an attempt upon the part of the Legislature of the State of New Jersey to interfere with, restrict and curtail the civil rights of citizens of the United States beyond the power of said Legislature so to do; to the manifest injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction  
30 aforesaid and gave judgment against the plaintiffs-in-error.

27. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error because he submitted the determination of the guilt or innocence of the defendants to the jury notwithstanding the fact that the precise statutory  
40 provision upon which said indictment is based involves an attempt upon the part of the Legislature of the State of New Jersey to legislate with regard

to a subject matter within the jurisdiction and power of the Congress of the United States; and further, with regard to the subject matter heretofore dealt with by existing laws enacted by the Congress of the United States; to the injury of the defendants. This was in the Supreme Court duly assigned for error and was duly urged before said court. but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 10

28. There is also error in this, to wit, for that the learned Trial Judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in framing his charge so as to confuse opposition to the course pursued by the administration of the Government of the United States, and certain citizens of the United States on the one hand, with hostility to the Government of the United States on the other hand. This was in the Supreme Court duly assigned for error and was duly urged before said court, but nevertheless said court affirmed the conviction aforesaid and gave judgment against the plaintiffs-in-error. 20

WHEREFORE the said Fred Fedodoff and Toney Tachin pray that the judgment of the Supreme Court affirming the conviction aforesaid, and said conviction and the judgment of said Court of Quarter Sessions of the County of Hudson, by reason of the aforesaid errors (appearing in the record and proceedings aforesaid, and also in the matters and things recited and contained in said bill of exceptions, and also in the conviction aforesaid and in the judgment of the Supreme Court affirming the said conviction) be reversed, annulled and for noth- 30 40

ing holden and that the said Fred Fedodoff and Toney Tachin may be restored to all things that they have lost on occasion of said conviction and judgment; and that the State of New Jersey may rejoin to said errors, etc.

10 OTTO A. STIEFEL,  
Attorney for and of Counsel with  
Plaintiffs-in-Error.

JOINDER IN ERROR.

Common joinder in error.

**Opinion, Filed Feb. 25, 1919.**

NEW JERSEY SUPREME COURT,

NOVEMBER TERM, 1918.

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STATE
vs.
TONY TACHIN and FRED FEDODOFF.

Argued November 6, 1918.  
Error to Hudson Sessions.

30 Before the Chief Justice, and Justices SWAYZE and  
TRENCHARD.

OTTO A. STIEFEL, for Plaintiffs-in-Error.  
GEORGE T. VICKERS (Pierre P. Garven on the  
brief), for the State.

SWAYZE, J.:

40 The defendants were convicted of the violation  
of section 2 of the supplement of 1918 to the Crimes  
Act (P. L. 1918, 130). The specific charge was

that they attempted by speech to incite, abet, promote, and encourage hostility and opposition to the Government of the United States in that in the presence of divers good people then and there assembled they said with a loud voice to the persons there assembled in substance that the present war in which the Government of the United States is engaged with Germany was a war for the benefit of the capitalists of the world only; that the President of the United States at the behest of the capitalists was sending our men to France to be slaughtered; that the people of the United States did not need any government; and that the persons present should arm themselves for protection against the Government. 10

The case is before us on a strict writ of error. The defendants, for what no doubt they thought good reasons, or at least good policy, have not had the whole record certified under section 136 of the Criminal Procedure Act. This relieves us from a consideration of most of the so-called assignments of error, since they challenge only the somewhat oratorical comments of the learned Trial Judge on the evidence, and present no legal error. 20

The stress of the argument of the plaintiff-in-error was on the constitutionality of the statute itself. It is said to be beyond the jurisdiction of the State and to violate the right of free speech. 30

1. Is it competent for the State to deal with such an offense when directed against the Federal Government alone? It has been held by the United States Supreme Court that a State may make counterfeiting of money and securities of the United States a crime, *Fox vs. Ohio*, 5 How., 410; that the United States may punish the counterfeiting of foreign coin, *State vs. Marigold*, 9 How., 560; that 40

10 a State may pass laws making it a crime to harbor or secrete a fugitive slave, *Moore vs. Illinois*, 14 Hok., 13. A statute of the United States making criminal certain conduct in connection with State elections has been sustained (*Ex parte Siebold*, 100 U. S., 371; *Ex parte Clark*, 100 U. S., 399), but this involves considerations different from those involved in the case of a State statute, owing to the broader sovereignty of the States. It has also been held that a man may be held criminally under a State law for extortion, where the basis of the extortion was a threat to accuse of having committed an act which was a crime exclusively against the United States and made so by a Federal statute (using cigar boxes a second time), *Sexton vs. California*, 189 U. S., 319. On the other hand, a man  
20 may not be held for perjury under the State law because he makes oath before a Notary Public of a State upon a contested election for member of the National Congress. In *re Loney*, 134 U. S., 372. The opinions in these cases make it clear that there is no constitutional objection to a concurrent exercise of jurisdiction, but there must be a crime against the State as distinguished from a crime against the United States alone.

30 In the pending case the crime is sedition. Primarily sedition against the United States is a crime against the Federal Government, which is the direct subject of attack; but under our system the Federal and State Governments are so closely interwoven that an attack on the former may imperil the existence of the latter. The right of suffrage is fundamental. That right is conferred by New Jersey upon every male citizen of the United States who possesses certain qualifications, and the meaning of "citizen of the United  
40 States," certainly since the Fourteenth Amend-

ment, has been defined by Federal authority. If the Federal Government which is a government of delegated powers only, under the tenth amendment to the Federal Constitution, can properly protect by its criminal law, the honesty and purity of elections, as the Siebold case decided, much more can the State Government protect its own existence against sedition which although aimed directly at the Federal Government, must indirectly affect the security of the State Government. The Supreme Court of the United States has said, "it is a vital principle that except as restrained by its own fundamental law, or by the Supreme Law of the Land, a State possesses all legislative power consistent with a republican form of government; therefore each State when not thus restrained and so far as this Court is concerned, may by legislation, provide not only for the health, morals and safety of its people, but for the common good, as involved in the well being, peace, happiness and prosperity of the people." *Halter vs. Nebraska*, 205 U. S., 34, 40. In that case an act of Nebraska making criminal the desecration of the National flag by use in trade and for advertising purposes, was sustained. It is true that there was no act of Congress forbidding such a desecration, and there is an Act of Congress punishing sedition. That fact, however, cannot operate to destroy the power of the State. The act of Congress if inconsistent, supersedes the act of the State legislature; but the cases already cited suffice to show that the two acts may both be in force, one punishing the crime against the National Government, and one punishing the crime against the State Government, though both crimes are con-

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stituted by the same facts. We find nothing inconsistent between the act of Congress and the act of New Jersey.

2. Whether the act of 1918 violates the right of free speech depends upon its proper construction. If, as the plaintiffs in error argue, it forbids all hostility or opposition to the President or the administration of the National Government or to the existence of the Government, the rule established by the Court of Errors and Appeals in *George vs. Braddock*, 45 N. J. Eq. 757, would apply. Within a few months a large plurality of the voters evinced by their ballots hostility and opposition to the President, the Senate, and the House of Representatives in face of a direct appeal for support. Every one would see the absurdity of suggesting that the voters who thus evinced hostility and opposition to the administration of the Government, were guilty of a crime under the act of 1918. If the time should ever come when such a proposition is seriously defended, the end of free government would be near. The statute does not denounce hostility or opposition to those who administer the Government, but hostility or opposition to the Government of the United States itself. The right of citizens to express their sentiments with freedom in a proper way could not constitutionally be taken away, and as long as the Constitution has vigor, men may criticise the administration, even in time of war, as they have criticised without objection during the last two years. They may even go so far, as patriotic supporters of the party in power did in fact go within the last two years, as to advocate an immediate peace and termination of the war, though the terms might not be

favorable, and as some patriotic citizens without regard to party now urge a speedy peace. The statute is not aimed at such expressions of opinion, however critical and hostile they may be. There may, moreover, under this statute, be opposition to the Government itself without crime. The men who framed our present National Government in 1787, necessarily opposed and condemned, and in no uncertain terms, the then existing government of the Confederation. It would have been as monstrous then as now, to condemn them therefor as for a crime, and we suppose no one has ever thought of doing so. The profound changes in our system of government now proposed and pending, evince opposition, perhaps hostility, to the Government as it is, because of what seems to many patriotic citizens its too narrow and insular policy. There are patriotic citizens who favor these changes, and many, equally patriotic, oppose. One party adopt as their watch-word, "America First" and oppose "entangling alliances"; another think that view antiquated and denounce those who hold it as small and untrustworthy, and their patriotism as a selfish patriotism. Every one, however, recognizes that free and open discussion is proper, indeed desirable. We allude to these facts only to show that the broad meaning which the appellants seek to attribute to the statute in order to bring it into conflict with the Constitution could not have been in the contemplation of the legislature. If no other meaning could be attributed to the language of the statute, we should be forced to condemn it as unconstitutional. Our duty, however, is not to seek for a construction which would render the act invalid, but for one which would render it

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valid, and to adopt the latter if the words of the act are susceptible of the construction. Of the numerous authorities we need refer only to the Chatham Drainage Case, 35 N. J. Law, 497, 501; Colwell vs. May's Landing Water Power Co., 29 N. J. Eq., 245, 249; Road Commission vs. Harrington Township, 55 N. J. Law 327; Grenada County Supervisors vs. Brogden, 112 U. S., 261, 268; United States vs. Delaware & Hudson Co., 213 U. S., 366; Plymouth Coal Co. vs. Pennsylvania, 232 U. S., 531. It is easy to give a construction to the statute which will make it valid. The definition of hostility and opposition is contained in the first sentence of the section itself. "Hostility or opposition to the Government of the United States, or of the State of New Jersey" means such hostility or opposition as involves the "subversion or destruction by force" of those governments. The first part of the section condemns advocacy of such subversion or destruction; the last part condemns the attempt to incite, or abet, promote, or encourage hostility or opposition, having a view the same subversion or destruction by force. Thus construed the statute only makes criminal the advocacy or the attempt to bring about the commission of what every one would recognize as crime though they might attempt to justify it as revolution. But revolution is a defense only when it is successful. The right of free speech cannot be properly construed to protect such an abuse of freedom.

3. The next objection is that there was no proof of a criminal intent. It is a sufficient answer to say that the statute does not make criminal intent necessary. Halsted vs. State, 41 N. J. Law, 552. The question, as the Court of Errors and Ap-

peals said in *State vs. Kuehnle*, 85 N. J. Law, 220, 224, is one of statutory construction. In the present case the acts and language charged, necessarily imply a criminal intent. An attempt to incite hostility and opposition (forcible hostility and opposition as we construe it) to the Government of the United States is sedition, and nothing would be added by charging an intent to create such hostility and opposition. The indictment does, however, charge that the defendants acted wilfully, knowingly and unlawfully. 10

4. The judge charged, after stating the position of the defendants, that it was for the jury to say whether or not they believed the defense. The appellants seem to think that the judge thereby imposed upon the defendants the burden of proving their innocence. But the judge could not state the law of the case in a single sentence, and a reading of the whole charge shows that he properly imposed the burden upon the State. Almost his last words were "the burden of proof rests upon the State in this case to prove the guilt of both these defendants beyond a reasonable doubt." Taken by itself this imposed too severe a burden on the State since the jury might convict one and acquit the other, as the judge afterward said. A charge must be read as a whole in the light of a sensible construction, and although an erroneous proposition of law cannot be cured by a correct statement in another portion of the charge, no error is committed by a failure to have every sentence contain the necessary qualifications if upon the whole the jury could not have been misled. 20 30

It is suggested that it was erroneous to charge that both or either of the defendants might be con- 40

victed, because one could not be guilty of abetting the crime of the other was not guilty of committing it. The averment of the indictment, however, is not that Tachin abetted Fedodoff in sedition, but that both attempted by speech to incite, abet, promote and encourage hostility and opposition to the government. The language is the language of the statute, and while the words "attempt" and "abet" are not happy, we find nothing inconsistent with the other words, or with the idea that abetting hostility and opposition to the government may not properly be made a crime without regard to whether there is a person who is abetted. The charge to acquit Tachin unless he aided, abetted or assisted Fedodoff would on this view be erroneous, but as it was too favorable to Tachin, he cannot complain. If we should hold that "abet" necessarily implied a person to be abetted, and that the Trial Judge was in error in saying any one defendant could be convicted without the other, the error would be harmless, since in fact the other defendant was convicted,—both defendants upon evidence that might properly satisfy the jury of their guilt.

5. The exception to that part of the charge quoted in the seventeenth assignment of error cannot be sustained. It overlooks the fact that the Trial Judge included in his statement of Fedodoff's language, the expression that every one should be put in arms to fight against capitalism for which the war is being waged. The Court was therefore, justified in leaving it to the jury to find that the language tended to incite, aid, abet, promote and encourage hostility and opposition to the Government of the United States. The fact that

the judge also quoted other language of the defendant which by itself might not have transgressed the statute, was not improper. It might well be that the whole speech should be quoted. It is not alleged that the Trial Judge's statement of the defendant's language was garbled. We see no reason why he might not quote passages which though harmless in themselves, had a bearing on the language counselling an appeal to arms against what the defendant at that point called capitalism. 10

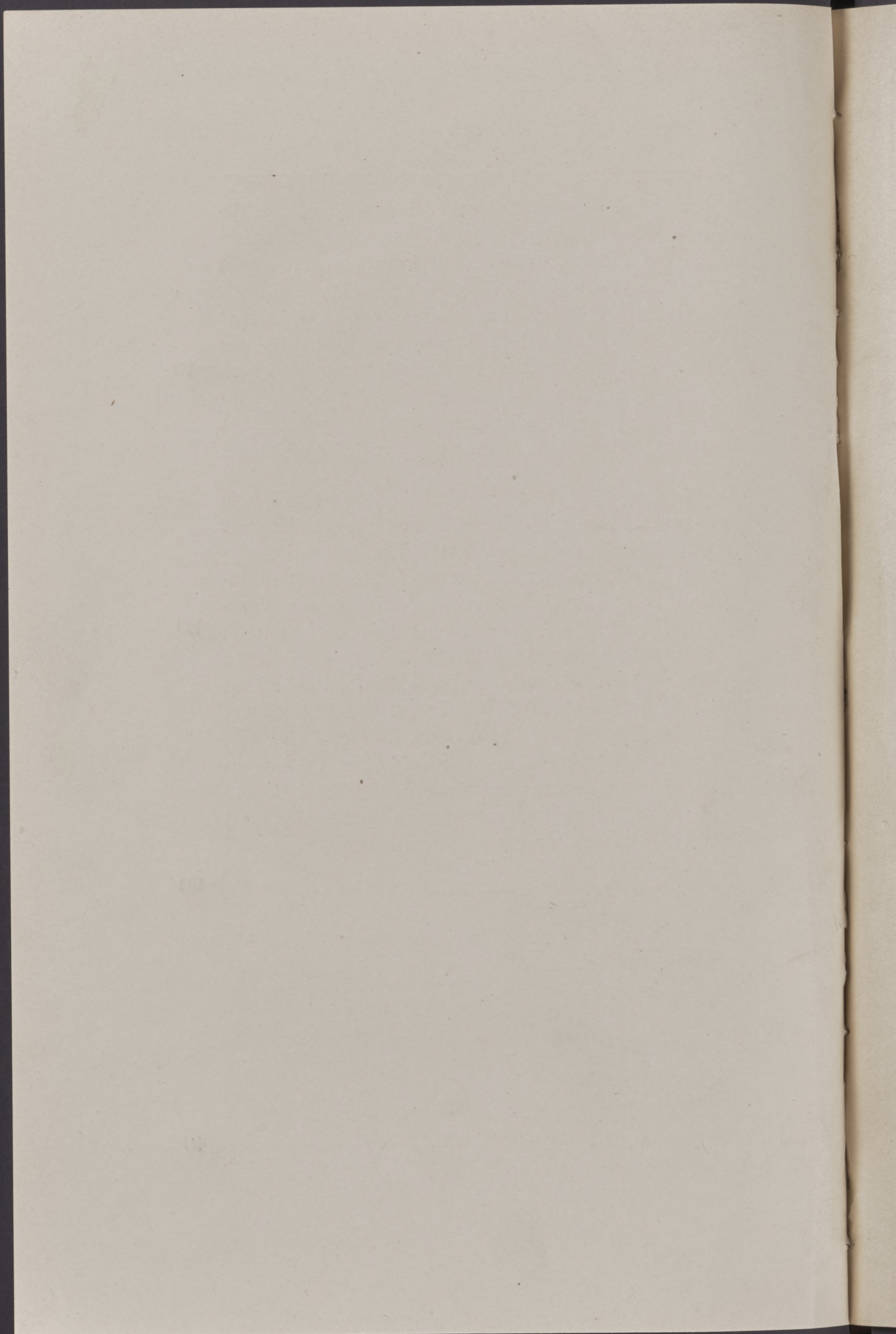
6. Another interesting and important point is argued in the brief. The charge of the indictment was that the defendants uttered in substance certain English words therein set forth. On the motion to quash, the averment was necessarily assumed to be true. At the trial the proof was that the words were uttered in Russian. It is said that this was a fatal variance. We do not doubt that the indictment ought to have averred at the least that the words were uttered in Russian. We are, however, precluded from considering this argument because it was not made in the Trial Court; no exception raises the question specifically, and there is no assignment of error. 20

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**The judgment must be affirmed,  
with costs.**

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## New Jersey Court of Errors and Appeals 10

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	Indictment for Sedition. On Writ of Error to the Supreme Court. Brief for Plain- tiffs-in-Error.	20
VS. TONY TACHIN AND FRED FEDODOFF, Plaintiffs-in-Error.			

### Statement of the Case.

The writ of error in this case brings up a record which discloses that the defendant Fred Fedodoff was sentenced to 10 years at hard labor in State's Prison, and the defendant Tony Tachin to 5 years at hard labor in the same institution (page 6, lines 25 to 35).

The indictment charges that the defendants, at Bayonne, "did wilfully, knowingly and unlawfull attempt by speech, to incite, abet, promote and encourage hostility and opposition to the government of the United States, *in that* in the presence of divers good people then and there assembled, did publish, utter, pronounce, declare and say with a loud voice to the persons there assembled *in substance* that the present war in which the Government of the United States is now engaged with

Germany, was a war for the benefit of the capitalists of the world only; that the President of the United States at the behest of the capitalists was sending our men to France to be slaughtered; that we the people of the United States, did not need any government, and that the persons here should arm themselves for protection against the government”  
 10 (page 2, line 32 to page 3, line 10).

Such indictment is founded upon Chapter 44 of the Laws of 1918, the pertinent portion of which reads as follows:

20 “Any person who shall advocate, in public or private, by speech, writing, printing, or by any other means, the subversion or destruction by force of the Government of the United States, or of the State of New Jersey, or attempt by speech, writing, printing, or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to the Government of the United States, or of the State of New Jersey, shall be guilty of high misdemeanor, and on conviction shall be punished by imprisonment for a term not exceeding ten years, or by a fine not exceeding two thousand dollars, or by both fine and imprisonment, in the discretion of the Court.”

30 The bill of exceptions discloses that a meeting of persons speaking the Russian language was held on March 7th, 1918 (page 13, lines 38-39), at a saloon in Bayonne (page 14, lines 1-10), at which the defendant Fedodoff was the only speaker (page 14, last 3 lines; page 29, lines 20-30; page 32, lines 19-30).

The defendant Fedodoff appears to be a Socialist lecturer (pages 93, 98, lines 15-18; page 65, lines

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20-30). His speech was in the Russian language (page 15, lines 1-10).

The bill of exceptions discloses a great diversity of opinion as to what he actually said. A perusal of the testimony of the various witnesses shows the divergence, usual in cases where friend and foe alike come prepared to believe that the speaker will say what predilection is prepared to accept on the one hand or antipathy to reprobate on the other hand. 10

The defendants and their witnesses deny the use of the language attributed to Fedodoff. The State's witnesses, that were present at the meeting display the remarkable unanimity peculiar to and characteristic of such cases as these.

Moreover, and this is of great importance, the State's witnesses just referred to were all members of the Brotherhood of St. Nicholas (page 57, lines 20-40). This, a Russian "church organization," is more odiously known as the "Black Hundred"—that "Black Hundred," which is generally associated with "pogroms" and is credited with a highly developed faculty of getting rid of the objects of its enmity through criminal prosecutions founded upon fabricated evidence. 20

The meeting at which the defendants were present, "broke up in a row," of the verbal variety (page 155, lines 30-40; page 91, last 5 lines; page 51, lines 1-15). 30

One of the State's witnesses pictures the condition thus: "All the fellows stood up, one hollering this and one another \* \* \*" (page 51, lines 10-11). Fedodoff testified as follows in this regard:

"Q. What caused the end of the meeting?  
A. While I was speaking about organizing the school, those drunkards said, 'We don't have to have any organization, any school, because

there is their organization, they can join the organization" (page 91, last 5 lines).

The State's witnesses who testified did not hear the entire address of Fedodoff—he was talking when they arrived (page 49, lines 20-30; page 26, lines 31-32; page 27, lines 38-40).

10 The purpose of the meeting had been advertised as follows: "What the Russian Revolution Teaches the Russian People" (page 22, line 1, to page 24, line 12).

*What purpose—other than to break up the meeting—could have impelled the members of the "loyal" society of St. Nicholas to attend a meeting of that character, knowing in advance its character (pages 104-105).*

20 This much is clear: *upon the testimony of persons of an opposite political faith*, the defendants were sent to prison for 5 and 10 years respectively—because of the utterance by Fedodoff of his political sentiments.

*Under such circumstances the defendants were entitled—especially in view of the existent state of feeling—to a careful impartial charge to the jury from the lips of the presiding judge.*

The character of that charge may be gauged from this excerpt:

30 "I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America's entry into the conflict was from the purest and highest of motives and that it is not for the enrichment of capitalists, but for human liberty

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and the most precious and priceless ideals of mankind, ideals symbolized by the flag that hangs in this court room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant, Fedodoff, at that public meeting, is to promote hostility to the Government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law."

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Notwithstanding our proper respect for the able and learned judge who presided at the trial of the defendants, our duty to our clients compels us to say that his charge, in its passionate appeals to the jurys patriotism, its florid denunciation of the expressions *attributed* to the defendant Fedodoff, is robbed of all characteristics of a judicial expression.

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The Court will note that the excerpt above quoted concludes by asserting: "No one can *say* these things \* \* \* and not be *answerable* to the majesty of the law." That was virtually a charge to

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the jury to convict—after that the possibility of an acquittal had been eliminated—due regard being had to the existent state of feeling.

The defendant Tachin was indicted as a principal—there being no accessories in the case of a misdemeanor.

10 Nevertheless before he could be convicted as a principal—there being no question that *he* did not *in fact* say the words alleged in the indictment—it was necessary to prove that he was an aider and abettor of Fedodoff.

(That Tachin was not convicted as a principal in fact but simply in theory of law, see page 169, lines 2-40.)

The conviction of Tachin was improper and illegal in every way.

20 There is no evidence to show that he heard the statements attributed to Fedodoff by the State's witnesses.

There is no evidence that in any way he shared "the criminal intent of the principal in the first degree."

There is no evidence of Tachin's "actual participation in the crime."

30 There is no evidence that any words that Tachin uttered at the meeting in question were addressed to or even heard by the principal in the first degree, or that he encouraged or incited his co-defendant.

Tachin does not speak Russian well; the language with which he is familiar is Lettish (page 83, line 30, to page 84, line 20); he gathered some vague and imperfect knowledge of what Fedodoff was saying (line 20, pages 84-88 top).

40 There is not a scintilla of proof to show that Tachin *understood* Fedodoff *to say* what is *attributed to Fedodoff* by the State's witnesses interpretation of Fedodoff's language.

Tachin's interest in the meeting was to secure the foundation of a Russian-English school. "I was only waiting for him to explain the benefit of the school, and how to organize it" (top of page 83; page 102, top).

63, top).

It is true he hired the hall for the meeting (page 63, top).

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But he could not anticipate what Fedodoff was going to say.

When the "row started," he insisted that the disturbers leave, or should keep order.

The States own witness Wazil Maskeu makes that plain (page 46, lines 35-36).

"Q. Was Tachin talking at all? A. No, he only said we should have order."

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At the close of the State's case, and again at the close of the whole case a proper motion to direct an acquittal of Tachin was made by his attorney. The denial of such motions is alleged to be palpable error.

The theory upon which the indictment is framed is plainly this: that the use of the language attributed to the defendant, ipso facto, constitutes a crime. We submit that such theory is without foundation and that the indictment in fact fails to charge a crime.

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A motion to quash was made (pages 10-11) and upon its denial an exception sealed. Error has been assigned and will be urged hereinafter. Such motion rests upon the failure of the indictment to set forth the exact words attributed to the defendant. Given the theory upon which the indictment is founded and the case tried such motion should have prevailed.

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But there is a deeper error on the face of the record, namely, that above noted. Had the pleader stopped with the allegation "did wilfully, knowingly and unlawfully attempt by speech to incite, abet promote and encourage hostility and opposition to the Government of the United States," the pleading would have been lacking in *particularity* but *sound in theory*. When however it is  
 10 alleged that such "attempt to incite" consisted "*in that*" the defendants did publish, utter, pronounce and declare \* \* \* that the present war in which the Government of the United States is now engaged with Germany was a war for the benefit of the capitalists of the world only \* \* \* and that the persons here should arm themselves for protection against the Government," we get upon a different footing. For *then* it appears that the  
 20 pleading discloses a charge *that the mere use of such language constitutes a breach of the statute*. This of course is not the fact.

An *attempt* can only flow from an unlawful *intent*—in this case an intent "to promote and encourage hostility and opposition to the Government."

It is not *pretended* in the indictment that the words were uttered with *that* intent. It is alleged that a crime was committed "in that" the defendant uttered certain words. The distinction is vital.  
 30 The indictment charges no crime.

*When we come to the judge's charge this fundamental error in the theory of the indictment is perpetuated to the grave injury of the defendants.*

This will at once be perceived on reading the following excerpt from the judge's charge, viz.:

"I charge you that if you believe it has been established by the State beyond a reasonable  
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doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make the world safe for democracy, as a war being waged for the enrichment of capitalists, and the language as to their being no need for Government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged, you may consider that language as being language which tended to incite, aid, abet, promote and encourage hostility and opposition to the Government of the United States" (page 167, lines 2-26).

10

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The real question in the case is of course, with what *intent* did Fedodoff use whatever words he did employ. That intent might be present even though the language on its face was most innocent; that intent might be absent even though most objectionable language had been used.

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For example, a man might say, "I hope the White House is destroyed." In these times, and in the hearing of certain persons, the utterance of such words might secure the application of lynch law. And yet the sentiment expressed might well be due to a mere dislike of the character of the architecture of the White House, and not have the slightest political foundation.

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The questions to be argued upon this writ of error are founded upon certain special exceptions taken during the course of the trial and upon a general exception to the judge's charge. (For this general exception see page 173, lines 1-10 of the printed state of the case.)

10 Such general exception is founded upon the provision of statute which reads as follows:

20 "Upon the trial of any indictment it shall be lawful to take a general exception to the charge of the Court to the jury, without specifying any particular ground or grounds for such exception, and without specifying what portions of said charge are excepted to, and it shall be the duty of the judge to settle a bill of such exception, and to sign and seal the same, to the end that the same may be returned with a writ of error to the Court having cognizance thereof" (P. L. 1898, page 916).

"It shall be lawful where such general exception has been taken to assign any error or errors of law upon any portion of the charge so excepted to" (P. L. 1898, page 916). (Comp. Stat. of N. J., Vol. 2, pages 1866-1867, Secs. 140-141).

30 There were assigned in the Court below assignments of error, and these assignments are all repeated in this Court (see pages 189 to 206 of the printed state of the case).

Upon these exceptions and assignments we challenge the conviction upon the following grounds.

1. The Judge's charge was erroneous in that it entirely eliminates the feature of intent as a neces-

sary ingredient of the crime charged. Intent, however, is of the essence of the crime charged.

2. Such charge is erroneous in that it makes the *mere speaking* of certain words necessarily criminal under the statute, notwithstanding that such statute only makes criminal (as far as we are concerned) an "*attempt*" by speech, etc., to incite hostility to the government. 10

In short we say it is the "*attempt*" and not words which are prohibited by the statute.

3. The Judge's charge misinterpreted the statute. His view of the law as made manifest by the charge in no way corresponds with the interpretation of Mr. Justice Swayze in this case below (see 106 Atl. Rep., 145). The latter's characteristically able interpretation in most respects, we accept as binding upon us in this court. But how *that* interpretation and the view of the law *taken by the trial Judge* can be reconciled, we are unable to understand. 20

4. The indictment should have been quashed because it does not set out the words attributed to the defendants but only their substance. An exception upon refusal to quash (on this ground) was sealed below. 30

5. The motions to acquit the defendant Tachin (made respectively at the close of the State's case, and at the close of the whole case), should have prevailed.

6. The Judge's charge eliminates the necessity that Tachin should have shared the criminal intent of his co-defendant, in order to sustain conviction. 40

7. Under the Judge's charge the jury might have found the principal in the first degree innocent, and Tachin, who is only alleged to be an abettor, guilty.

10 8. The Judge, in the course of his charge, frequently failed to distinguish for the jury such of his utterances as were charges with respect to the law and such as were "comments" upon the fact.

9. The character of the Judge's charge, with its highly oratorical passages, makes impossible at the present time a determination of the line of cleavage between these two elements—charge upon the law and comment upon fact.

20 10. The trial Judge in the course of his charge entirely eliminates the essential concept that before words can be said at all, to involve an attempt to incite hostility and opposition to the government, there must be some suggestion by the speaker of *a translation of thought into action on the part of the audience.*

11. The statute is unconstitutional, being in contravention of the 1st and 14th amendments to the United States Constitution.

30 12. Various other questions will be discussed under appropriate heads.

The constitutional question may, with profit, be briefly adverted to or restated here.

The statute makes criminal any "attempt by speech, writing or printing" to "promote or encourage hostility or *opposition* to the Government of the United States. \* \* \*"

What is meant by "opposition"? Mr. Justice Swayze has defined the word. In *State vs. Tachin* (106 Atl. Rep., at 148), he said:

"Hostility or opposition to the government of the United States, or of the State of New Jersey means such hostility or opposition as involves the 'subversion or destruction by force' of those governments." 10

With that definition we have no quarrel.

Had that definition been observed by the trial Court, there possibly would have been no conviction of these defendants.

How did the trial Court define opposition?

It was very specific. It set forth that:

"No man can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object \* \* \* *is to promote hostility to the Government of the United States* \* \* \*." 20

In other words to attack the motives of those who were prosecuting the war was "hostility to the Government." 30

To that construction we demur.

Such a construction makes the statute unconstitutional. And it is upon that construction that the defendants were convicted—*which conviction still stands.*

Therefore the constitutionality of the statute is drawn directly into discussion. 40

Therefore this court is faced by the problem: To what extent, if at all, can "opposition" to the Government of the United States, under our democratic-republican political structure, be made criminal by a State Legislature.

10 In view of the fact that citizenship of the United States from the time of the adoption of the fourteenth amendment to the United States Constitution became *unquestionably national* and not derivative; how can any State with propriety attempt to curtail the political activity of any citizen of the United States, with respect to the Government of the United States? "Opposition" to the Government of the United States—whatever may be the meaning finally attributed to the word "opposition"—is not subject to or within the control of the State legislatures.

20 It is a matter for Congress to deal with. To hold otherwise might make subject to State control, the political activity of citizens of the United States exercised with respect to national affairs; and indeed in such a way as to perpetuate a certain party or class in power at Washington contrary to the national interest.

No State has any power to curtail "opposition" to the National Government on the part of citizens of the Republic.

30 To the extent to which the statute under consideration attempts to curtail the political activities of citizens of the Republic—by prohibiting "opposition" to the "Government"—it transcends the power of the legislature of New Jersey.

IT IS AN ATTEMPT BY A STATE TO  
ABRIDGE THE PRIVILEGES AND IMMUNI-  
TIES OF A CITIZEN OF THE UNITED  
STATES.

SPECIFICATION OF ERRORS.

The Errors have already been set forth in the  
printed book (pages 189 to 206). 10

And in each case where the error complained of  
involves part of the Judge's charge, such part is  
set forth totidem verbis.

Nevertheless, in compliance with the rule of  
Court, we furnish a specification of the errors, as  
follows:

1. The first specification of error is founded upon  
the second assignment of error, which complains 20  
of the judge's refusal to quash the indictment.

2. The refusal to direct a verdict of not guilty  
at the close of the State's case and at the close of  
the whole case are the subject of complaint in as-  
signments of error numbers 3 and 4.

3. The 18th assignment of error deals with the  
judge's failure to point out to the jury that Tachin  
in order to be guilty as a principal must have been 30  
an actual participator in the crime alleged and  
must have shared the criminal intent of the princi-  
pal in the first degree.

4. The 21st assignment of error is founded upon  
this language of the trial court judge:

"In this case you may find both defendants  
guilty or both defendants not guilty or one of

them guilty and the other not guilty, as you may determine that the evidence in the case warrants you in so doing, under the rules which I have laid down."

10 This language would have permitted the jury to find the defendant Tachin guilty and to have acquitted Fedodoff.

5. The 20th assignment of error complains of the following language of the charge:

"That, gentlemen of the jury, is the precise charge in the indictment and the *crime* for which these defendants are being tried."

20 Such language is objectionable because taken in connection with the whole charge it indicated to the jury that the judge had already convicted the defendants in his own mind.

6. That 8th assignment of error is subject to this objection:

30 It made belief by the jury of the defendants a criterion of acquittal and projected into the jury's mind the dangerous thought that the acquittal of the defendants should rest upon whether the jury "believe their defense."

The specific language complained of is as follows:

"Of course, gentlemen of the jury, you will see that if that is the truth, if the purpose of this meeting was simply for organizing the school, and if the defendant, Fedodoff, did not make the utterances which the State's wit-

nesses have testified that he made, of course, this indictment must fall, and the defendants both of them must be acquitted. *It is for you to say whether or not you believe their defense.*"

7. The 15th assignment of error complains of the following language in the judge's charge: 10

"Of course, gentlemen of the jury, you will see that if that is the truth, if the purpose of this meeting was simply for organizing the school, and if this defendant Fedodoff did not make the utterances which the State's witnesses have testified that he made, of course, this indictment must fall, and the defendants both of them must be acquitted."

The use of the word "simply" was, in view of the whole charge, highly prejudicial because it carried with it the implication that if the meeting had some purpose other than that of organizing a school, its character was not that of a lawful meeting. 20

8. That 5th, 10th, 11th, 12th, 13th and 17th assignments of error involve portions of the judge's charge that were highly prejudicial. They are founded upon the following language of such charge: 30

"I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America's entry into the

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10 conflict was from the purest and highest of motives and that it is, not for the enrichment of capitalists, but for human liberty and the most precious and priceless ideals of mankind, ideals symbolized by the flag that hangs in this court room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one can truthfully say that the flower of our youths is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant Fedodoff, at that public meeting is to promote hostility to the Government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law."

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9. The 23rd assignment of error points out the failure of the judge to note that the gravamen of the charge against the defendants was attempting to incite, promote and encourage hostility and opposition to the Government of the United States and was not the use of certain language; said assignment refers specifically to the following language of the judge's charge:

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“The real question then, it seems to the Court, for you to consider, is whether in the course of that address or speech, the defendant Fedodoff, used language that from its plain import and effect can be said to have been intended to incite, abet, promote or encourage hostility to the Government of the United States as charged in the indictment? And if you find from the evidence that it has been established, then ask yourselves whether the other defendant, Tony Tachin, aided, abetted, counseled, procured or assisted the defendant, Fedodoff, in accomplishing that purpose.” 10

10th. The 24th assignment of error re-enforces the 23rd assignment of error.

11. The 25th, 26th, 27th and 28th assignments of error deal with the judge’s construction of the Statute referred to in the indictment, namely, the Sedition Act and points out its unconstitutionality as heretofore explained. 20

## ARGUMENT.

### POINT I.

**Intent is of the essence of the crime charged. The entire elimination from the judge’s charge of the notion of intent, as a necessary ingredient of the alleged crime, vitiates the jury’s conviction founded on that charge.** 30

The indictment sets out that the defendants “did \* \* \* attempt by speech to incite \* \* \*

hostility and opposition to the Government of the United States, in that \* \* \* they did \* \* \* declare with a loud voice \* \* \*.”

The statute makes criminal any “*attempt*” to incite such hostility or opposition.

10 We maintain that there can be no criminal *attempt* to incite hostility without an *intent* to incite such hostility; that the very use of the word “*attempt*” in the statute connotes, implies, necessitates and carries with it the notion of *intent*, as a necessary ingredient of the crime prohibited.

Such a conception—that the use of the word *attempt* connotes an *intent*—is completely absent from the judge’s charge.

Not only is such a conception absent, but it is affirmatively thrust out of the case by the learned trial judge’s trenchant language.

20 He said:

30 “No one can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; and to attribute to America any such base and vile motive or object \* \* \* is to promote hostility to the Government of the United States \* \* \*” “No one can say those things \* \* \* and not be answerable to the majesty of law” (page 167, line 38; page 168, line 20).

The learned Trial Judge there declared that the mere *ascription* to America of any such base motive is *necessarily criminal* under the law involved.

If that be so, is not the *intent* which animated such ascription entirely immaterial—thrust out of the case, as we said before?

Let us seek aid from the authorities.

In *Marley vs. State*, 58 N. J. L., 210, Beasley, C. J., said:

“An intent to commit a crime is not equivalent to an attempt to commit it, for the purpose must be accompanied with some substantive act or series of acts, tending towards its accomplishment.” 10

There we have a recognition that an attempt involves two elements, viz.: first, an intent, secondly, an overt act.

Turning to the text books and reported opinions from other states, it may fairly be stated that there is universal recognition of the necessity for the existence of an intent and an overt act to complete an “attempt.” 20

Mr. Bishop has put the matter thus:

“When we say that a man attempted to do a thing, we mean that he intended to do specifically it, and proceeded a certain way in the doing. The intent in the mind covers the thing in full; the act covers it in part.” 1 *Bish. Crim. Law*, Secs. 511-12. 30

This excerpt is the basis of opinion in *Prince vs. State*, 35 Ala., 367, 369 and *Brown vs. State*, 11 S. W., 412.

In *Graham vs. People*, 181 Ill., 477, at 489, 47 L. R. A., 731, at 734, the Court said:

“All the authorities to which we have been referred describe an attempt to commit a 40

crime as consisting of three elements, to wit, the *intent* to commit the crime, performance of some act towards the commission of the crime, and the failure to consummate its commission."

10 The discussion in *Graham vs. People*, which follows this excerpt, fully covers the point which we now make.

"An attempt is an *intent* to do a particular thing \* \* \* coupled with an act toward the doing, sufficient both in magnitude and in proximity to the fact intended, to be taken cognizance of by the law that does not concern itself with things trivial and small. *State vs. Smith*, 119 Mo., 439, 445; 24 S. W., 1000.

20 "The only distinction between an 'intent' and an 'attempt' to do a thing is that the former implies the purpose only, while the latter implies both the purpose and an actual effort to carry that purpose into execution." *Article Attempt*, 6 C. J., 550, with a host of cases cited in support of the text.

30 The opinions in the following cases may be of aid to this Court, in deciding this point, if examination of further authority be deemed necessary.

*Bunch vs. State*, 58 Fla., 9, 11.

*Griffin vs. State*, 26 Gav., 493, 497.

*Scott vs. People*, 141 Ill., 195, 205, 30 N. E., 329.

*Thompson vs. People*, 96 Ill., 158, 161.

- Flower vs. Continental Casualty Co.*, 140  
 Iowa, 510, 512, 118 N. W., 761.  
*State vs. Johnson*, 19 Iowa, 230, 232.  
*State vs. Hayes*, 78 Mo., 307, 317.  
*Johnson vs. State*, 19 Iowa, 230, 232.  
*State vs. Hayes*, 78 Mo., 307.  
*State vs. Clark*, 32 Nev., 145, 151.  
*Taylor vs. State*, 44 Tex. Cr., 153, 155; 69 10  
 S. W., 149.  
*State vs. Evans*, 27 Utah, 15.

Now what did the Court below have to say on this topic.

Its opinion reads as follows:

“The next objection is that there was no proof of a criminal intent. It is a sufficient answer to say that the statute does not make criminal intent necessary. Halsted vs. State, 41 N. J. Law, 552. The question, as the Court of Errors and Appeals said in *State vs. Kuehnle*, 85 N. J. Law, 220, 224, is one of statutory construction. In the present case, the acts and language charged, necessarily imply a criminal intent. An attempt to incite hostility and opposition (forcible hostility and opposition as we construe it) to the Government of the United States is sedition, and nothing would be added by charging an intent to create such hostility and opposition. The indictment does, however, charge that the defendants acted wilfully, knowingly and unlawfully.”

We beg to submit:

1. *Halsted vs. State*, 41 N. J. L., 552, is not in point (or if in point, supports our contention, as

a perusal of pages 590 to middle of 596 of the report may show). Our point is that the use by the legislature of the word "attempt" connotes and carries with it the necessity of an intent; that there cannot be an attempt without an intent.

2. The Court missed our point when it said:  
 10 "In the present case the acts and language charged, necessarily imply a criminal intent." Our point is that *it should have been submitted to the jury* whether the defendants (and especially Tachin) entertained, when using the language referred to in the Judge's charge had any intent to encourage the "subversion or destruction" by force of the Government of the United States. We claim that the Judge in charging the jury, as we complain, eliminated entirely from the jury's consideration, the question of the *specific intent* necessary  
 20 to constitute an *attempt*.

We claim that the *Judge* below, in *charging* the jury was in *error* when he said:

30 "No one can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists \* \* \* ; and to attribute to America any such base and vile motive or object \* \* \* is to promote hostility to the Government of the United States \* \* \*" (see assignment of error No. 11, page 193, line 30, to page 194, line 20).

We claim that *that* assignment of error is well founded and ask that for the *reason assigned*, the judgment under review be reversed.

We are not so much concerned, at this point, whether there was "*proof* of a criminal intent," as the Supreme Court stated in its opinion. We

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are deeply concerned with the fact that the Trial Judge by his charge eliminated intent from the case.

### POINT II.

**The error discussed in Point I is properly before this court.**

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Such error is founded upon the general exception sealed to the Judge's charge (page 173, lines 1-10 of the printed state of the case).

Under Sections 140 and 141 of the Criminal Procedure Act, such exception permits the assignment of the error referred to.

"It shall be lawful where such general exception has been taken to assign any error or errors of law upon any portion of the charge so excepted to" (*Comp. Stat.*, Vol. 2, page 1867).

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The error involved is assigned in assignments of error Nos. 11, 22, 23 and 24 (pages 193-203 of the printed book).

### POINT III.

**The second assignment of error is well founded. The indictment should have been quashed.**

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An exception was sealed upon refusal to quash the indictment (page 11, lines 20-30); error was properly assigned thereon (page 174, lines 1-10).

The reasons for the motion to quash were thus given by defendant's attorney: "The indictment

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reads that those defendants did publicly utter and pronounce and declare in a loud voice to the persons there assembled 'in substance' that the present war—and so forth. That it seems to me is a conclusion. The exact words that these people said are not stated and that is the matter in dispute, and it seems to me that the defense ought to be given an opportunity to have the exact words that these people stated. \* \* \* We are not given facts to meet. The issue is not clear. A conclusion is set out and we are not given enough of the facts to put in our defense \* \* \*."

The motion was well founded.

In *Webster vs. Holmes*, 62 N. J. L., page 55, at 57, it is said:

"The declaration is bad for not setting out the words verbatim. *Gutsole vs. Mathers*, 1 Mees & W., 495. The averment must profess to set out the very words. *Bagley vs. Johnston*, 4 Rich., 22. *Harris vs. Warren*, 4 C. P. Div., 125. The very words should be set out, *Kenyon vs. Cameron*, 20 Atl. Rep., 233, 234; *New Sland.*, 638; 13 Am. & Eng. Ency. L., 456. The very words complained of must be set out 'in order that the court may judge whether they constitute a ground of action' (4 B. & Ald., 506), 'and also because the defendant is entitled to know the precise charge against him and cannot shape his case until he knows.' *Harris vs. Warren*, supra. The defendant cannot plead the truth in justification unless the charge is made precise. *Odg. Lib. & S.* (2d Eng. ed.), 404. It is not sufficient to give the substance or purport of the words. *Ibid.*; *Ward vs. Clark*, 2 Johns., 10; *Newton vs. Stubbs*, 3 Mod., 71."

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"It has been settled by numerous authorities that the declaration must profess to set out the very words published or spoken, and it is not sufficient to describe them by their substance and effect. Stark. Sland., \*362, \*363; Newton vs. Stubbs, supra; King vs. Bear, 2 Salk., 417; Ford vs. Bennett, 1 Ld. Raym., 415. It is not sufficient to aver that the defendant spoke the words vel his similia. Banning vs. Fryer, Cro. Jax., 159; 1 Vin. Abr., 533; Cook vs. Cox, 3, Mau. & Sel., 110; Wood vs. Brown, 6 Taunt., 169; Wright vs. Clements, 3 B. & Ald., 503." 10

"When it comes to the proof in the case the same strictness is not required. Stark. Sland., \*369, and cases cited."

Also see Cook vs. Cox, 2 Maule & Selwyn, 110, esp. 113 to 117. 20

In the latter case Lord Ellenborough said in part:

"Ten Judges in Dr. Sachaverell's case, 5 State Trials, 828, delivered an unanimous opinion (no others being present) that 'by the law of England and constant practice, in all prosecutions by indictment or information, for crimes or misdemeanors by writing or speaking, the particular words, supposed to be criminal, ought to be expressly specified in the indictment.' There seems to be no reason for any difference in this respect between civil and criminal cases, the action arises ex delicto." 30

A clearer statement of the law on this subject it would be hard to find. In Cook vs. Cox the court reasoned *from* the rule in criminal cases to

the civil suit which he had in mind. In *Webster vs. Holmes* we find the rule, suggested for civil cases by Lord Ellenborough, adopted in New Jersey.

*A fortiori* the exact words should be set out in a *criminal* indictment.

See also *Zenobia vs. Axtell*, 6 Term R., 162 (opinion of Lord Kenyon, Ch. J.).

10 Counsel is aware of the fact that "ordinarily" a motion to quash is addressed to the discretion of the trial judge, and is not reviewable on a strict writ of error (*State vs. Siciliano*, 85 N. J. L., 389).

But that cannot be the rule where injustice would result.

Besides which the trial judge sealed an exception to his refusal to quash. This apparently gives a right to review. See "*State vs. Kelly*," a case cited in Column 1113 of Vol. 8 of the New Jersey Law Digest, which case however does not appear in volume of the reports there mentioned. See also *State vs. Codington*, 80 N. J. L., 496; 78 A., 743.

That injustice would result appears from a consideration of the following.

The theory of the indictment is that the statute is breached by the mere utterance of certain words. That theory is incorrect as hereinbefore pointed out. But what can be more unjust than this: To put to trial and convict two men of transgressing a new statute, upon an unsound theory of the scope and purpose of that statute, *without furnishing to those men even the small solace and benefit of being fully apprised of the particulars of the charge against them to which they would be entitled if that theory were correct.*

The primary principles of criminal trials are that the defendant shall be tried upon a correct theory or conception of the law, which he is alleged

to have transgressed; second, that such transgression shall be so fully indicated to him in advance that he may fully prepare his defense.

The failure in this case to observe the second rule—to set out the exact words—*obscured* the *non-observance* of the first rule. Is it not reasonable to suppose that if the *exact words* had been set out, it might have been perceptible to all that no “hostility” to the government within the meaning of the statute was involved. 10

As it is we have a case of “confusion worse confounded” (page 15, lines 20-38; page 17, lines 1 to 32; page 16, lines 20-40; pages 18-19; page 38, line 35, to page 39, line 10—where the Court suggests suspending the trial).

No man should be convicted for uttering words, upon such testimony as we have just cited. No such testimony would have been received if the court had done its duty with respect to the indictment. If the indictment has set forth the words, it probably would have disclosed that no crime was committed. 20

#### POINT IV.

**There is not the slightest indication in this case that it was within the contemplation of the defendant Fedodoff (or any other person present) that Fedodoff’s words should be translated into action. Hence there was no attempt to incite, promote or encourage hostility and opposition to the Government of the United States.** 30

Montesquieu says in his work, “The Spirit of the Law,” b. 12, c. 13, that words “generally, when

considered by themselves, have no determinate signification for this depends on the tone in which they are uttered. It often happens that in repeating the same words they have not the same meaning. This depends on their connection with other things and sometimes more is expressed by silence than by any discourse whatsoever. As there can be  
 10 nothing so ambiguous and equivocal as all this, how is it possible to convert it into the crime of high treason? Wherever this law is established there is an end not only to liberty, but even to its very shadow." Hawkins, Pl. Cr., Vol., I, page 14.

There is not the slightest indication in this case—neither in the indictment nor the testimony—that it was within the contemplation of Fedodoff or any other person at that meeting or the intention of any one that Fedodoff's words were to be  
 20 *translated into action*—whatever his words may have been.

Upon his words alone—in utter disregard of his intent—he was to be convicted.

May we be permitted to point out again that while it is true that the indictment alleges that the defendants did unlawfully attempt to incite hostility and opposition to the government, nevertheless such attempt is in the indictment said to consist "*in that*" the defendants used certain language the pur-  
 30 port of which is set forth. The theory of the indictment, that the crime alleged in general terms consisted specifically "*in that*" certain language was employed, persists all through the judge's charge.

Not the slightest thought was given by the draftsmen of the indictment or by the trial judge to the fact that unless Fedodoff or some one present at the meeting *contemplated* translating his words in-

to an attempt at the subversion or destruction "by force" of the government, no crime under the statute could be involved.

Upon the words of Fedodoff alone, and the passions of the jury, which those words might arouse, he was to be convicted.

But even his words were not set out in the indictment nor are they given in the proofs of the State. There only appears in the indictment the alleged purport of those words, and in the evidence the personal understanding of those words, by political opponents, given in a foreign language, which personal understanding was "translated" into hideous English by incompetent interpreters. 10

Upon that mockery of a translation combined with the judge's misconception of the law, these defendants were convicted.

Had the learned trial judge quashed the indictment, for its failure—upon the state's own theory of the law—to set forth what was essential under that theory—the exact words of Fedodoff—we would not now be confronted with the miscarriage of justice, which it is submitted, this record presents. 20

#### POINT V.

#### **The initial errors are aggravated in the case of Tachin.** 30

Not only was Fedodoff convicted under the circumstances heretofore indicated but Tachin likewise—Tachin who simply tried to keep order.

Apparently Tachin was presumed to understand Fedodoff as the State's witnesses say they understood him. Notwithstanding that it is trite learning that "the devil himself knows not the thought of man." Year Book, 17 Ed. IV, 1. 40

## POINT VI.

**Assignments of error three and four are well founded. The defendant Tachin should have been acquitted by direction of the Court.**

10 The motions to direct an acquittal were made, one at the close of the State's case, the second at the close of the whole case. The exception sealed in the first instance is shown on page 66 of the printed book (line 30); the second exception on page 159 (lines 30-40).

As heretofore pointed out Tachin insisted that order must be preserved in the hall where the meeting was held; he believed the protestants to be drunk (page 70, line 32, to page 71, line 40; 20 page 74, lines 10 to 20; see also testimony of State's witness Mazkin, page 46, lines 30-40).

He was entitled to suggest that those who were disturbing the meeting should leave the hall; he had hired the hall (page 63, lines 1-20).

To make him out an accessory because he wanted to preserve order is to convert a good deed into a crime.

30 And this is so regardless of what the State's witnesses thought Fedodoff was saying in the course of his address.

Fedodoff if he "abused" the right of free speech (N. J. Const. I, sec. 5) was responsible therefor to the law of the State. He was not responsible to a mob. The conduct of the State's witnesses might have *led* to a breach of the peace and possibly *amounted* to a breach of the peace. A. & E. E. of Law, 2nd Ed., Vol. 4, page 903.

40 Whether Fedodoff was guilty of a crime depended primarily upon his intent, not upon the

use of certain language. Certainly Fedodoff's speech was not *necessarily* criminal. But Tachin's duty certainly was to preserve order.

As heretofore pointed out, there is no proof in the cause that Tachin whose native language is Lettish, understood Fedodoff to say what the State's witnesses impute to him. Indeed Tachin's testimony indicates that his understanding of Fedodoff's address was markedly different from the understanding of Colodinsky and the other members of the "Black Hundred" who broke up the meeting. 10

To make Tachin guilty there must be proved "actual participation in the crime."

*State vs. Fox*, 70 N. J. L. at 355.

It is essential that the aider and abettor share the criminal intent of the principal in the first degree. A. & E. E. of law (2nd Ed.), page 34, Vol. 2. 20

If the assistance is rendered by words of encouragement and incitement, it must be proved that they were addressed to or heard by the actual criminal. A. & E. E. of Law (2nd. Ed.), page 35, Vol. 2.

In this case the proof is that Fedodoff did not know Tachin and did not hear what he said during the course of the row. 30

"Q. Did Taejen (Tachin) say anything at all during the meeting? A. I cannot say whether he spoke or not, because I didn't know anybody at the meeting. I didn't know anybody at the time" (page 92, lines 15-20).

## POINT VII.

**The eighteenth assignment of error is well founded; the Judge's charge as to what constitutes an accessory in this case is incorrect.**

10 The eighteenth assignment covers the following portion of the judge's charge (page 169, line 25 to page 170, line 3), viz.:

20 "In this connection you will review carefully the *evidence of the witnesses for the State*, who testified that when protest was made against the alleged use by Fedodoff of the language concerning the United States, its President, and the war, that the defendant, Tony Tachin, who had hired the hall for the meeting and who was present throughout the speech of the defendant, Fedodoff, declared to the protestant or protestants that they got the hall and were going to speak. If you are convinced of the truth of this evidence beyond a reasonable doubt, then you may find that the defendant, Tony Tachin, was an aider or abettor in the crime, if you so find that a crime was then and there committed, and under the rule which I have just laid down, he would be

30 guilty as a principal."

This assignment is based on the general exception to the judge's charge (173 top).

This excerpt from the charge *eliminates* the necessity of Tachin sharing the *criminal intent* of his co-defendant. It also *eliminates* the necessity of Tachin's alleged statement *reaching Fedodoff's ear, or of being addressed to him*—in short, this

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excerpt eliminate the necessity of actual participation in the "crime" by Tachin, as a foundation for conviction.

The authorities dealing with these features of the law have been cited at the conclusion of Point VI.

*Since this assignment deals with a portion of the judge's charge, no question of discretion can be involved.* For the law is too well settled, to require citation of authority, that the trial judge should instruct the jury as to the elements of fact necessary to constitute a crime. 10

\* \* \* \* \*

Under this head the Court should note that the excerpt, from the judge's charge, now under discussion, begins as follows:

"In this connection you will review carefully the evidence of the witnesses for the State. \* \* \* " 20

*From that point of the judge's charge to the end of the charge the jury were not once instructed that "in this connection" they must also "review carefully" the evidence of the defendants; which evidence is in absolute harmony with that of one of the State's witnesses, who testified that Tachin "only said we should keep order" (page 46, near bottom).* 30

### POINT VIII.

**The twenty-first assignment of error is well founded.**

Such assignment is shown from page 182, line 32 to page 183, line 3 of the printed book and re-

fers to the following portion of the judge's charge, viz.:

10 "In this case you may find both defendants guilty or both defendants not guilty or one of them guilty and the other not guilty, as you may determine that the evidence in the case warrants you in so doing, under the rules which I have laid down" (see page 170, lines 33-70).

That charge permitted the jury to find the defendant Tachin guilty and acquit Fedodoff. That, of course, was not allowable. If Fedodoff was innocent, Tachin could not be guilty.

20 This indiscriminating passage in the judge's charge was highly prejudicial; it occurs practically at the end of the charge; it caps the climax of a multitude of errors; it follows what is virtually a speech for conviction in the body of the charge (page 167, line 25, to page 168, line 20); *it ignored the last opportunity of disclosing to the jury's mind the discrimination which the law requires, when the liberty of a citizen is concerned.* It is therefore as inherently prejudicial as it is formally erroneous.

30 As was said by Werner, J., in *People vs. Davey*, 179 N. Y., 3:

"There are cases \* \* \* in which apparently technical errors may be so prejudicial as to produce the gravest injustice. This may be particularly true of a case in which a defendant, accused of an abhorrent and detestable crime is confronted at the very threshold of the court room with that subtle, per-

vasive and almost ineradicable prejudice which the bare charge of such a crime may engender against him, in the minds of those who are to pass on his guilt or innocence. \* \* \* In such cases reason needs to be safeguarded from prejudice by everything that caution and justice can suggest \* \* \* so that jurors may as far as possible, be unbiased and impartial." 10

### POINT IX.

#### **The twentieth assignment of error is well founded.**

That assignment (see page 182, lines 20-32) rests upon this portion of the judge's charge:

"That, gentlemen of the jury, is the precise charge in the indictment and the *crime* for which these defendants are being tried" (page 161, lines 19 to 21). 20

That passage occurs near the outset of the charge. It speaks of the "crime" for which the defendants are being tried. It uses the language of *judgment* and *sentence*, not the language of *trial* and *presumed innocence of the defendants*. 30

If there were nought else to complain of in the judge's charge, our point might not be well taken. But when we take this circumstance, those heretofore adverted to and those to follow, the impropriety of failing to emphasize at every turn, by appropriate language, the fact that the defendants were only *charged* with having committed crime, *becomes a matter of serious importance*.

The use of the language complained of is like a wink on the part of the judge to the jury, indicative of his real in contrast with his official state of mind.

When we have wink after wink, so to speak, and then the emotion stirring passage, beginning on page 167, line 25 and ending in page 168, line 20,  
10 acquittal becomes next door to impossible.

### POINT X.

**The eighth assignment of error is well founded; the primary question in the case was whether the jury believed the evidence of the state's witness, not whether "they believed the defense."**  
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The pertinent assignment is shown on page 175, line 30 to page 176, line 4.

It refers to that part of the judge's charge which reads as follows:

30 "Of course, gentlemen of the jury, you will see that if that is the truth, if the purpose of this meeting was *simply* for organizing the school, and if this defendant, Fedodoff, did not make the utterances which the State's witnesses have testified that he made, of course this indictment must fall, and the defendants, both of them, must be acquitted. *It is for you to say whether or not you believe their defense*" (page 164, lines 9 to 17). (Italics ours.)

This was the subject of a specific exception (page 172, lines 30-35).

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There are really two errors involved; the one plain and the other subtle.

Does it require argument to support defendants' contention that the Court erred in stating to the jury: "It is for you to say whether or not you believe the defense"?

The object of a trial is not to establish the defense but to establish the truth of the indictment. The use of the language referred to—"It is for you to say whether you believe the defense"—involves an assumption or suggestion that the State's case has been proven or may be taken for granted, unless "you believe the defense." 10

The use of that language *projects* into the jury's mind the dangerous thought that the acquittal of the defendants should *rest* upon whether the jury "believes the defense."

In point of fact it was not for the jury "to say whether or not they believed the defense." It was for the jury "to say" whether the defendants were guilty or not. *If the defense or the prosecution, or the prosecution or defense combined, or any parts of the prosecution or defense alone or in combination operated to produce a reasonable doubt as to the truth of the matters alleged in the indictment*—then it was for the jury "to say" that the defendants *were not guilty*. 20

The vice in the Judge's charge at this point is that it makes a "*belief*" in the "defense" a *criterion*. 30

The vice just emphasized becomes more pointed when we note the first part of the excerpt from the Judge's charge, beginning, "Of course \* \* \* if the purpose of the meeting was simply for organizing a school, and if \* \* \* Fedodoff did not make the utterances which the State's witnesses have

testified that he made, of course this indictment must fall \* \* \*."

10 The statement of this hypothesis is much too limited. The indictment must fall not only if that hypothesis is maintainable, but under many other conditions, which it is possible to predicate on the defense (let alone the prosecution). When, there-  
fore, to this limited statement of the possibilities of or character of the defense, is superadded the statement "It is for you to say whether or not you believe *their defense*," we narrow the scope of the jury's inquiry in a manner hostile and injurious to the defendants.

The inquiry becomes one to establish the defense *affirmatively*—something which the law does not require. It ceases to be one to affirmatively establish guilt.

20 This error is not eliminated by any subsequent definition for the jury of reasonable doubt, in formal phraseology—or by any instruction as to burden of proof, or as to the jury's function as judge of the facts, or the like, in general language intelligible to lawyers, but ineffective or unpersuasive in contrast with such homely, direct and practical language as that of which we complain.

30 *You cannot sear into the jury's mind an erroneous idea, by the potent language of direct illustration, and then claim the error is eliminated by the perfunctory use of the neutral language of legal formulas.*

**POINT XI.****The fifteenth assignment of error is well founded.**

See page 179 of the printed book, lines 28 to page 180, top.

This assignment is founded upon the same portion of the Judge's charge as is the preceding point. 10

We rely upon the plain error pointed out at the top of page 180 of the printed book.

The use of the word "simply" was improper and highly prejudicial. The meeting might have had a two-fold object, viz, to stimulate interest in a school and to inform the audience respecting "what the Russian Revolution teaches the Russian People" (page 24, top); and still have been an eminently lawful meeting. 20

**POINT XII.**

**The inflammatory language employed by the learned trial Judge, referred to in the fifth, tenth, eleventh, twelfth, thirteenth and seventeenth assignments of error was highly prejudicial to both defendants. It was in effect an instruction or recommendation that the jury should convict the defendants.** 30

The assignments of error are found on pages 174 to 181 of the printed book.

The portion of the charge referred to in those assignments reads as follows:

"I charge you that if you believe it has been established by the State beyond a reasonable

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doubt that the defendant Fedodoff at the time and place and in the manner alleged used the language attributed to him concerning the United States and its President and with regard to the purpose and objects for which we are in the present war with Germany and Austria, or either of those countries, and the language in regard to America sending its young men to France to be slaughtered, and the language referring to America's war to make the world safe for democracy, as a war being waged for the enrichment of capitalists, and the language as to there being no need for government, and the language that everybody should be put in arms to fight against capitalism for which the war is being waged, you may consider that language as being language which tended to incite, aid, abet, promote and encourage hostility and opposition to the Government of the United States.

"I scarcely need to say to you men in America, composing an American jury, the bulwark of American liberty, that the present war in which our country is engaged is one of the most righteous ever fought in the whole history of civilization, and that America's entry into the conflict was from the purest and highest of motives and that it is not for the enrichment of capitalists, but for human liberty and the most precious and priceless ideals of mankind, ideals symbolized by the flag that hangs in this court room, ideals which will be sustained as long as the spirit of America inhabits the bosoms of its loyal people. No one can truthfully say that the flower of youth is being sent to France to be made

meat of for the enrichment of the capitalists, thus referring to our young men representing the army of American freedom, fighting for American ideals and American institutions; *and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witnesses as having been uttered by the defendant Fedodoff, at that public meeting, is to promote hostility to the Government of the United States and to drag this high nation to the infamous level occupied by the enemy countries with whom she is at present engaged in war. No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the majesty of the law.*

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"Ours is a government of law. The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human government is needed; a torch of liberty which penetrates into the darkest places of the most remote recesses of the earth, guiding, yes, beckoning, to our shores all the oppressed of the earth—in the words of Him who said, 'Come unto me all ye that labor and are heavy laden, and I will give you rest.'"

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(See page 167, line 3 to page 168, line 30; the italics are our own.)

When the learned Trial Judge declared "No one can say these things, gentlemen of the jury \* \* \* *and not be answerable to the majesty of the law,*" he was in effect instructing the jury to convict—at least if the jury found that the defendants had used the language referred to.

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10 When the learned Judge declared that to "attribute to America any such base and vile motive and object \* \* \* is to promote hostility to the government of the United States \* \* \*," he gave to the word "hostility" a meaning which at once is in violation of its etymology, contrary to the canons of interpretation of penal statutes, and subversive of the constitutional guaranty which assures liberty of expression to political opinion.

When the learned Trial Judge said, "No one can truthfully say that the flower of our youth is being sent to France to make meat of for the enrichment of capitalists \* \* \*," he not only made himself judge of the fact but an arbiter of opinion.

20 When the learned Trial Judge delivered himself of the concluding passage about the "torch of liberty," he discarded, we submit, all judicial restraint and necessarily roused the passion of the patriotic jury to such a pitch that the trial ceased to be an inquiry into the facts charged in the indictment.

30 *After such a deliverance as that above quoted, to charge the jury that they were judges of the fact, that they should do their duty without the influence of "prejudice, not according to sentiment, not according to sympathy" may be compared to a suggestion that the <sup>sherds of</sup> broken pottery again reunite themselves into the form of a vase.* To suggest that an audience should avoid the influence of passion, after that passion has been stimulated, indeed, is one way to assure that such passion will reach its full development.

The expedient of arousing passion by seeming to allay it has its place in the forum; the great dramatist employed it in framing the oration which he gives to Mark Anthony speaking over the dead

body of Caesar; but it has not place in the Judge's instructions to the jury.

In this case the learned Trial Judge whipped the jury into a passion which every admonition that they should do their duty served to augment.

Not only is error written large over the portions of the Judge's charge of which we now complain, to the great prejudice of the defendants; but those errors stand out so pronounced, they so overshadow all other portions of the charge, that we have in this case an instance where the general exception to the Judge's charge taken by the defense can function not only as the liberality of our statute permits, but also in truth as the basis of an attack upon the charge considered as a whole. 10

Leaving aside for the moment all consideration of the passion stirring elements in the features of the Judge's charge referred to, let us turn again to that remarkable sentence: "No one can say those things, gentlemen of the jury, whether he be a Socialist, a member of the I. W. W., no matter how mighty or powerful, and not be answerable to the law." Let us dissect and analyze that statement. 20

Was that a charge as to the law of the case?

Was that a charge as to the facts of the case?

We say it was a charge as to the law; it was an instruction that to "say those things" was ipso facto criminal—criminal in the case in hand—and required conviction. 30

Assume that it was not assuredly a charge as to the law. Then its character is so uncertain, so equivocal that the jurymen might well have understood it to involve a binding instruction as to the law. Even in that posture, the instruction requires condemnation and reversal of the judgment below. 40

For since the jury are judges of the fact, and the Judge determines the law of the case, if an instruction is so given that the jury cannot tell whether it is an instruction as to the law or comment on the facts, it may well be that the jury believed it to be the former and felt themselves bound thereby.

- 10 The vice of the instruction was therefore not cured when the jury were further instructed that they were the sole judges of the facts, etc. For as is pointed out in the tenth assignment of error, to correctly charge the jury that they are judges of the facts, while confusing their minds as to what is fact and what is law, is prejudicially duplicitous. R. R. Co., 87 Atl., Rep., 141, at 144, speaking for

As was said by Garrison, J., in *State vs. Erie* the Court of Errors:

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“Unless we conceive of our trial system as one in which the jury is clothed with the capacity to decide between two judicial statements of the law and unerringly select the correct statement and disregard the incorrect, the error of the charge in the present case was not cured or rendered non-injurious. \* \* \*”

- 30 Going further, we ask what are “those things” which no one may say, without being answerable to the “majesty of the law”?

Those things are indicated in the following two excerpts from the Judge’s charge:

(a) “No one can truthfully say that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists \* \* \*”

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(b) "To attribute to America any such base and vile motive or object, as alleged in the testimony of the State's witness \* \* \*."

The sentiments attributed to Fedodoff may be politically distasteful to us in the last degree. But, we respectfully submit that it has not come to pass in the United States or in the State of New Jersey that any man can of right be held to answer in a criminal court for his political sentiments. Indeed, the "majesty of the law" to which the learned Trial Judge refers, requires full liberty of expression of political sentiment. For no free government can exist without freedom of speech or of the press. 10

As was said by Secretary of State Seward in his communication of January 20th, 1869, to the Turkish Minister:

"I have the honor to inform you in reply, that free discussion by speech and in the press, in public assemblies and in private conversation, of the Cretan insurrection, and of all other political transactions and movements occurring either abroad or at home, is among the rights and liberties guaranteed by the Constitution of the United States to every citizen and even to every stranger who sojourns among us, and is altogether exempt from any censure or inquiry on the part of the Government of the United States. The opponents of Crete and the friends of Turkey exercise very freely the same right. On the other hand, this Government makes no inquiry concerning what is preached, spoken or written in Turkey, or in any other country, by the citizens or subjects thereof, although the matters discussed may be deeply interesting to the American people. 20 30 40

10 The maxim was long since adopted in the United States that even error of opinion may be safely tolerated where reason is left free to combat it. I am therefore so far from being able to accept your suggestions in the matter of the New York meeting that I should rather deem it my duty, if occasion should arise, to commend the liberty of speech, which was exercised in that assembly and of which you complain, to the acceptance of all other nations."

Mr. Seward, Sec. of State, to Balcque Bey, Turkish Minister, Jan. 20, 1869, MS. Notes to Turkey, I. 29.

20 Also as was said in *Respublica vs. Oswald*, 1 Dall., 326, referring to the free speech provision in the Pennsylvania bill of rights, "However ingenuity may torture these expressions, there can be little doubt of the just sense of the sections; they give to every citizen a right of investigating the conduct of those who are entrusted with the public business; and they effectually preclude any attempt to fetter the press by a licenser. *The same principles were settled in England, as far back as the reign of William III. and since that time as we all know, there has been the freest animadversion upon the conduct of the ministers of that nation.*"

30 Besides, it might well be that Fedodoff or any man might "say those things" from the best of motives, believing them to be true, with a benevolent desire to bring about a change in the course of government. In which event to "say those things" might not or would not amount to an attempt to promote hostility to the government of the United States, within the purview of the statute here invoked by the State.

When therefore the learned Trial Judge declared that "to attribute to America any such base and vile motive or object \* \* \* *is to promote hostility to the government of the United States \* \* \**," he begged the whole question in issue in this case, and violated the domain of the jury's function and right.

### POINT XIII.

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#### **The twenty-third assignment of error is well founded.**

That assignment of error reads as follows:

"There is also error in this, to wit, for that the learned trial judge before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in particular in charging them as follows:

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'The real question, then, it seems to the Court, for you to consider, is whether in the course of that address or speech, the defendant, Fedodoff, used language that from its plain import and effect can be said to have been intended to incite, abet, promote or encourage hostility to the Government of the United States as charged in the indictment? And if you find from the evidence that it has been established, then ask yourselves whether the other defendant, Tony Tachin, aided, abetted, counseled, procured or assisted the defendant, Fedodoff, in accomplishing that purpose; to the injury of the defendants, and especially to their injury in this, that in and by such charge and the language quoted, the learned trial judge instructed the jury that

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10 they might convict the defendants upon the "plain import and effect" of the language which the jury found Fedodoff used, no matter what the intent of said Fedodoff was in using said language; and in that the gravamen of the charge against the defendants was attempting to incite, abet, promote and encourage hostility and opposition to the Government of the United States, and was not the use of certain language."

The mere statement of the assignment we trust will be persuasive under this head. The portion of the judge's charge referred to will be found on page 166 of the printed book, lines 30 to 38.

We might however add this single comment:

20 The real question for the jury was not whether the words "*can be said* to have been intended" to promote hostility? The question is rather "*were they intended*" to promote hostility?

The distinction is vital; the failure to observe it—to note the essential feature of the defendants' *intent* upon determination of whether a crime was committed—runs all through the judge's charge.

#### POINT XIV.

30 **The twenty-fourth assignment of error is well founded.**

That assignment reads as follows:

"There is also error in this, to wit, for that the learned trial judge, before whom said indictment was tried, upon the trial thereof, committed error in his charge to the jury, and in

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particular charged them that they might convict the defendants to the injury of the defendants and especially to their injury because the indictment aforesaid, does not charge them with a crime, in that while said indictment sets forth that the said defendants did attempt by speech to incite, abet; promote and encourage hostility and opposition to the Government of the United States, the theory, structure and purport of said indictment is, that the mere use of the language described in said indictment in and by itself constitutes a crime.” 10

In the prefatory discussion, which precedes Point One of this brief, the subject of that assignment has been considered; we rely upon such discussion.

#### POINT XV. 20

**If the construction of the Sedition Act reached by the Court below be adopted here, the conviction of the defendants must be reversed.**

A perusal of Mr. Justice Swayze's opinion and of the charge of the trial judge shows that the construction of the statute adopted by the trial judge in such charge is not in harmony with the construction which Mr. Justice Swayze found was necessary in order that the statute should not be declared unconstitutional. 30

Mr. Justice Swayze found that "hostility or opposition to the Government of the United States, or of the State of New Jersey" meant such hostility or opposition as involves "the subversion or destruction *by force*" of those governments (106 *Atl. Rep.*, page 148). 40

Judge McCarthy however instructed the jury:

10            “No one can truthfully say that the flower of youth is being sent to France to be made meat of for the enrichment of capitalists \* \* \*; and to attribute to America any such base and vile motive or object, as alleged in the testimony of the State’s witnesses as having been uttered by the defendant \* \* \*  
 IS TO PROMOTE HOSTILITY TO THE GOVERNMENT OF THE UNITED STATES.”

Judge McCarthy made criticism of the administration, and of the national course to which the nation had thereby been committed, the measure of hostility and opposition to the “government.”

20            Between such a view and that Mr. Justice Swayze there is an impassable abyss.

We submit that the view of Mr. Justice Swayze carried to its necessary and logical development requires a reversal of the judgment below as well as the initial conviction.

30            Under the next head we shall endeavor to show that the Sedition Act—as far as applicable to this case—is unconstitutional; but such endeavor must necessarily take into consideration Judge McCarthy’s construction of the statute, as made evident in his charge to the jury. *For it was upon that construction that the defendants were convicted.*

**POINT XVI.**

**Chapter 44, Laws of 1918 (as far as it is pertinent) should be declared by this Court to be null and void.**

Under this head we will deal with assignments of error numbered 25, 26, 27, 28 (which appear on pages 184-186 of the printed book).

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Our discussion here, it seems, must start with the learned trial judge's interpretation and construction of the statute.

If that interpretation and construction shall be found to be incorrect, the judgment under review must necessarily be reversed.

If that interpretation and construction shall be found to be correct, then only will it be necessary to pursue the inquiry further and to determine whether the legislation does not conflict with our fundamental law.

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The learned trial judge seems to hold that an attempt to incite hostility and opposition to the Government of the United States by speech may be declared to have been proved in the event that any one should publicly state "that the flower of our youth is being sent to France to be made meat of for the enrichment of capitalists" (page 167, lines 40 to 168, line 2); or in the event that any one should "attribute any such base and vile motive or object, as alleged in the testimony of the State's witnesses" (page 168, lines 9 to 20). Also it appears, from a general perusal of the charge that any language of the character of that described in the indictment shall be deemed to necessarily involve an attempt to incite hostility and opposition to the Government.

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(There is no place in the learned trial judge's charge for the thought that before words can be said, at all, to involve an attempt to incite hostility and opposition to the government, there must be some suggestion by the speaker of a *translation of thought into action on the part of the audience*. A discussion of this fatal omission is, however, not necessary to establish the point which we now make.)

To hold the view of the learned trial judge as to what constitutes "opposition or hostility to the government of the United States," would allow to the Legislature of this State the power to curtail the public expression, by a citizen of the United States, of his opinion regarding the most vital affairs of the Nation.

We do not believe that the State Legislature has any such power.

The President last year made a suggestion to the citizens as to how they should vote. That suggestion was made *after* there had already been written in the prefatory discussion of our brief below the following sentence, which also appears in this brief:

"To hold" that the Legislature had such power "might make subject to state control, the political activity of citizens of the United States, exercised with respect to national affairs; *and indeed in such a way as to perpetuate a certain party or class in power at Washington, contrary to the national interest.*"

The President's political suggestion aroused violent discussion. We are not concerned with the propriety of that discussion. But we are deeply concerned with the right of the Legislature of this State, under any guise, to attempt to curtail such

discussion or any similar discussion of National affairs.

No justification for any attempt to curtail such discussion of National affairs by citizens of the United States, can, we submit, be predicated upon the fact that such discussion is distasteful or deeply obnoxious in character. For, if we once allow to the State, for any reason, power to interfere with the right or duty of a citizen of the United States with respect to the National Government or National affairs, we then open the doors to a *misuse* of that power and to a subtraction from the power of the National sovereignty and the quality of National citizenship, which subtraction in the end may be fatal to that National sovereignty and that National citizenship. 10

The sovereignty of the National Government and the quality of National citizenship cannot be submitted to external control or abridgement. 20

The basis of our views in this regard are well set forth in the following quotation:

“We have here in our political system a government of the United States and a government of each of the several States, thereby making the people of the United States resident within any State, subject to two governments; the one State and the other national. 30 Each of these governments is distinct from the other, and each has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction it must protect. They are established for different purposes and their jurisdiction, while concurrent as to places and persons, is in general, distinct as to subject matter \* \* \*.”

Ency. of U. S. Sup. Court Reports, Vol. 4, page 91, where the cases are collected.

10 That the general government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, and within their respective spheres, appears well settled. U. S. vs. R. R. Co., 17 Wall., 322; Van Brocklin vs. Tennessee, 117 U. S., 151; Pollock vs. Farmers L. & T. Co., 157 U. S., 429.

20 The right and power of the citizens of the United States with respect to the National Government, we submit, cannot be subject to the control of the separate and distinct sovereignty known as the State of New Jersey. If necessary, the citizens of the United States—on last analysis—probably have the power to completely destroy or dispense with the National Government as at present constituted, and substitute another. Without going as far as that, however, but confining ourselves to the necessities of this case, we submit that the State of New Jersey has no jurisdiction to define what constitutes opposition to the Government of the United States, or to prohibit opposition, within any sense of the term by citizens of the United States to such government.

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\* \* \* \* \*

The fourteenth amendment of the United States Constitution provides:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside \* \* \*.”

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From this results that National citizenship is primary and State citizenship is secondary.

See opinion of Mr. Justice Bradley in Slaughter-House cases, 16 Wall., 36, at 112.

The fourteenth amendment further provides:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States  
\* \* \*” 10

One of the “privileges” of a citizen of the United States is that of “the freest animadversion upon the conduct” of those in control of the machinery of the National Government. *Respublica vs. Oswald*, 1 Dall., 326.

One of the “immunities” of a citizen of the United States is immunity from penalty for such “animadversion”; this immunity existed before the first amendment to the constitution of the United States, of which that amendment is declaratory. 20

For the State of New Jersey to attempt to abridge that “privilege” and “immunity” of citizens of the United States is at once prohibited by the fourteenth amendment, and violative of the sovereignty of the United States.

\* \* \* \* \* 30

The National Government, by virtue of the provisions of the “espionage law” and sundry provisions of the Federal penal code, has sought to extend its power of control of expression on the part of its citizens, to limits which are drastically effective for all requirements of the present emergency, and may even have exceeded constitutional limits.

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Congress having exercised its powers in this regard, interference on the part of any state is excluded.

\* \* \* \* \*

10 Our own free speech constitutional guarantee is violated, in the event that the judge's construction of the statute under discussion is well founded.

Respublica vs. Oswald, supra.

\* \* \* \* \*

20 Our National Government is a government of laws, not of men. Those men who manage the government cannot escape (by an attempt at legislation), animadversion upon the course they pursue, or the policy to which they commit the nation. This is true, no matter how popular such course or policy may be. This is true in war and in peace.

In re ex parte Milligan, 4 Wall., page 125, the Court said:

30 "This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the damages to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a

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contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such time, was especially hazardous to freemen. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which time had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the Judiciary disturb, except the one concerning the Writ of Habeas Corpus  
\* \* \*

10

It is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily, it is not so.”

20

Chief Justice Bronson, in *Oakley vs. Aspinwall*, 3 Comst. (N. Y.), 568, said:

“Believing, as I do, that the success of free institutions depends on a rigid adherence to the fundamental law, I have never yielded to consideration of expediency in expounding it. There is always some plausible reason for the latitudinarian constructions which are resorted to for the purpose of acquiring power, some evil to be avoided, some good to be obtained by pushing the powers of the Government be-

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40

10 yond their legitimate boundary. It is by yielding to such influences that Constitutions are gradually undermined, and finally overthrown. My rule has ever been to follow the fundamental law as it is written regardless of consequences. If the law does not work well, the people can amend it; and inconvenience can be borne long enough to await that process. But if the legislature or the courts undertake to cure defects, by forced or unnatural construction, they inflict a wound upon the Constitution which nothing can heal. One step taken by the Legislature or the judiciary in enlarging the powers of Government opens the door for another which will be sure to follow; and so that process goes on until all respect for the fundamental law is lost, and the powers of the Government are just what those in authority please to call them."

20

To attempt to deny to citizens of the United States during war, the right to freely discuss the policy which that war represents, *interferes with the right to freely discuss the most important matter which can engage the attention of a citizen.*

30 If criticism of the most vital acts of our public servants or the policy to which they commit the nation can be prohibited, on any plea or claim, then we submit, the "free institutions" of which we boast have not the characteristics which we proclaim.

Our courts are the designated guardians of those free institutions. Have we not the right to call upon them to see to it that under the guise of patriotic legislation, no attempt can succeed "to drag this high nation to the infamous level occupied by the enemy countries"—to use the very words

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of the learned trial Judge and to take a popular view of conditions which prevailed in the enemy countries.

**POINT XVII.**

**For all the reasons assigned and set forth in the assignment of errors the judgment below should be reversed.** 10

Respectfully submitted,

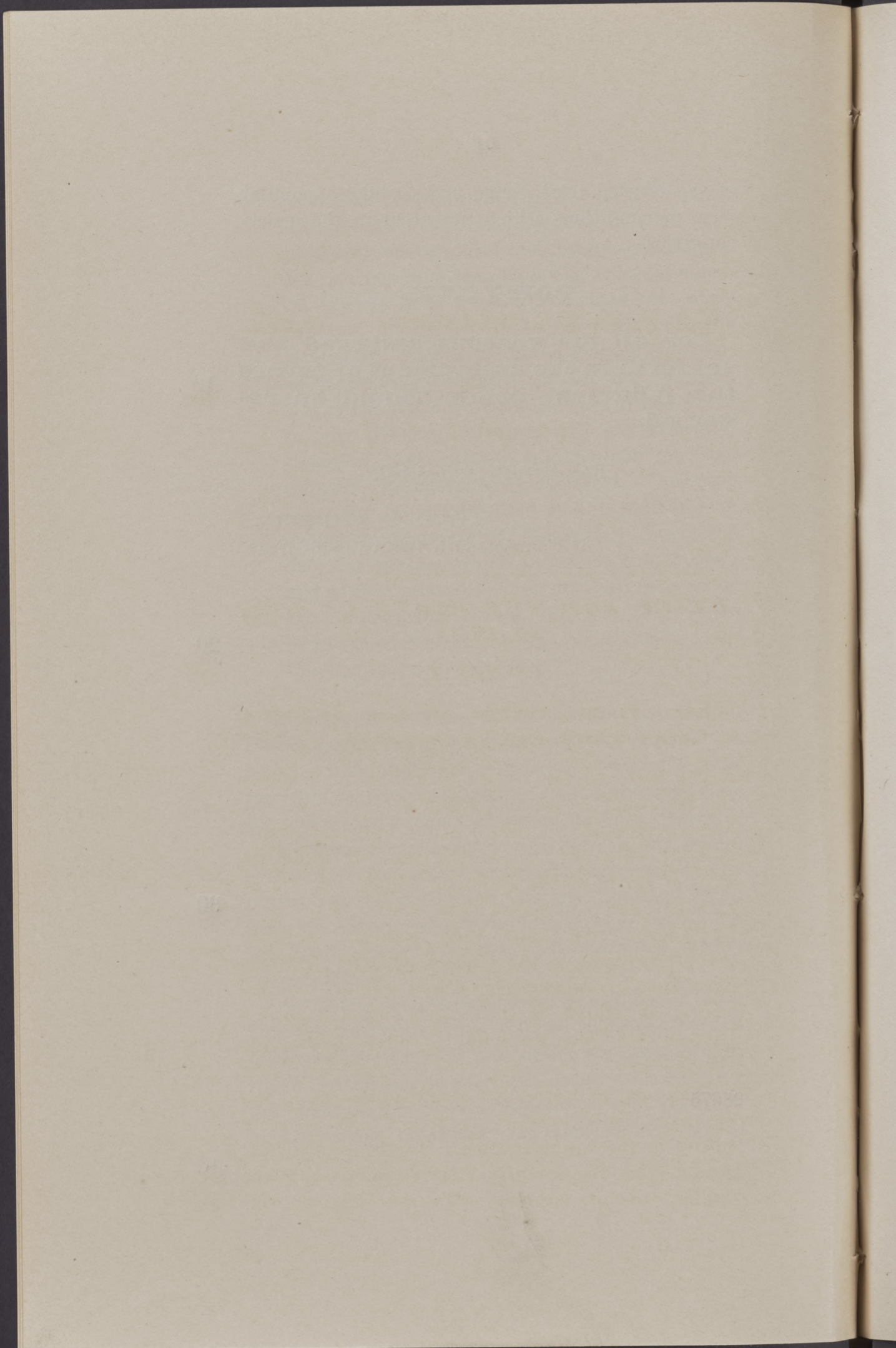
OTTO A. STIEFEL,  
of Counsel with Plaintiffs-in-Error.

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28675.

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## New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> TONY TACHIN and FRED FEDEDOFF, <i>Plaintiffs-in-Error.</i>	In Error to the Su- preme Court.	10
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### **BRIEF FOR THE STATE OF NEW JERSEY.**

#### **POINT I. 20**

#### **There is no record in the Supreme Court which can be reviewed.**

The state of the record in this case discloses the fact, that in contemplation of law, there can be no review of this record in the Court of Errors and Appeals, because at the time of filing the writ of error to the Supreme Court (on March 5, 1919) and return made to said writ of error by the Supreme Court, there was no record of the proceedings of the Hudson Quarter Sessions remaining in the Supreme Court, the said record having on March 4, 1919, been remitted to the Hudson Quarter Sessions (Printed Book, pp. III and IV). 30

There can be no review of the judgment of the Supreme Court, where the record has been remitted to the inferior court. As the record now stands, the Hudson Quarter Sessions has the original record, together with the judgment af- 40

firming the conviction, and an order of the Supreme Court that the judgment *there* (in the Hudson Quarter Sessions) be proceeded with according to law.

The specific reasons assigned for this objection are:

10 FIRST: That the defendants have presented what purport to be the entire record of the case, *but without authentication of any kind by the trial court.*

SECOND: That there is no bill of exceptions consonant with the "functions of a bill of exceptions pointing out to a court of review any alleged erroneous ruling by the trial judge, adhered to by him after his attention was called to the matter by an exception taken at the time."

20 *State v. Zeilman, 75 N. J. L., 359.*

THIRD: That none of these four specific exceptions is sufficiently intelligible to present to the reviewing court any arguable point of law.

## POINT II.

**The questions raised by the assignments of error are not supported by the record.**

30 The case is brought up on strict writ of error. There are twenty-eight so-called assignments of error, these being identical with the assignments presented to the Supreme Court. The State contends that only the *fifth, sixth, seventh and eighth* assignments of error are supported by bills of exceptions; and that these bills of exceptions do not present any arguable question of law. The remaining so-called assignments are wholly unsupported by bills of exceptions and not review-  
40 able on strict writ of error.

The assignments of error *five, six, seven and eight* purport to be supported by the Exceptions to Charge *one, two three and four*; number *five*, the only remaining exception to the charge, cannot support any of the assignments, this being a general exception, and neither the entire charge nor portions thereof being in anywise authenticated.

10

### POINT III.

**In any event, the four exceptions to the Court's charge are without merit in law.**

If these four exceptions allowed and sealed by the trial court, shall be deemed as sufficient to constitute a bill of exceptions, upon which to predicate assignments of error, they must stand by themselves, unsupported by the charge of the court as actually delivered.

20

**This for the reason that the charge itself is not authenticated in the paper book.**

To a consideration of these four exceptions the defendant must be confined, and this by sheer virtue of the fact that beyond the signature of the trial judge and the seal of the court giving authenticity to these particular exceptions, *there is nothing in the paper book certifying its contents as a genuine and authentic record of the case.*

30

We shall first consider the deficiencies of the "paper book" as a proposed judicial record, and then, in their order, the merits of assignments five, six, seven and eight, based upon the four exceptions above referred to.

There is a formal return to the writ of error. But no authentication of what purports to be a transcript of the stenographer's minutes.

40

"The formal return of the record upon a

writ of error will not authenticate the record of the proceedings had upon the trial."

*State v. Clark*, 75 N. J. L., 473;

*State v. Ramage*, (N. J.) 103 Atl. 1043.

10 This "paper book" purports to contain all of the testimony adduced at the trial. (But an inspection of this transcript will disclose that not a single exception was taken, either prayed for or allowed, in the entire one hundred and fifty printed pages of testimony.) Notwithstanding which fact, however, the only objections are those embraced in what were intended to be bills of exceptions.

20 In other words, to all intents and purposes, this case comes up under the 135th Section of the Criminal Procedure Act and not under the 136th Section thereof. None of these so-called bills of exceptions relates in any way to the admission or rejection of testimony at the trial.

#### FIRST EXCEPTION.

The language of the trial court:

"The light which guides our destiny is the torch of liberty and not the flaming brand which guards the fanciful Utopian realm where no human government is needed."

30 The fifth assignment of error is based upon this exception and is manifestly without merit.

#### SECOND EXCEPTION.

40 The language of the trial judge which is made the subject of the 6th Assignment of Error, on its face, is simply a comment on the testimony of one of the defendant's witnesses. It must be borne in mind, however, that the testimony which the trial judge, according to the purport of this extract, appears to have referred to, *is in no way authenticated in the paper book*. What purports to be the testimony stands alone, without the re-

quisite certificate as to its genuineness. The mere formal return to the writ of error is not sufficient to provide this necessary authentication.

*State vs. Clark*, (supra.)

### THIRD EXCEPTION.

With regard to the seventh Assignment of Error for the purpose of considering the assignment, it may be admitted that the facts therein stated are true. But notwithstanding this, there is no allegation in the assignment negating that the "facts in issue as to the \* \* \* defendants' guilt upon the evidence were fairly left to the jury. Where that is done it is the province of the trial judge to comment on the evidence." 10

*State vs. Herron*, 77 N. J. L., 523, at 526,  
and cases cited;

*State v. Spencer*, 1 Zab., 196, 208;

*Donnelly v. State*, 2 Dutch, 463;

*Engel v. State*, 21 Vr., 21;

*Winters v. State*, 32 Vr., 613, 617;

*State v. Hummer*, 44 Vr., 714. 20

The language of the trial court: "It is for you to say whether or not you believe their defense."

This is an entirely proper comment in dealing with the defense as such, and there is no suggestion in the record that it was used in any other sense. 30

*In any event, there is in the "paper book" no certified or in anywise authenticated transcript of the court's charge to the jury which affords to the reviewing court any basis for, or means of, determining the extent or character of the charge in any particular. And the plain corollary of this is that the assignment in question is not accompanied by any authenticated facts to sustain it.* 40

#### POINT IV.

#### **There are no other exceptions reviewable under section 135.**

The "paper book" contains only three other exceptions asked or allowed:

10 1. To the refusal of the trial court to quash the indictment.

2. To the refusal of the trial court to direct a verdict of not guilty as to one of the defendants at the close of the State's case.

3. To the refusal of the trial court to direct a verdict of not guilty as to the same one defendant at the close of the entire evidence.

#### One.

20 A refusal to quash being addressed to the discretion of the court, is not reviewable on error under section 135.

*State v. Hageman*, 13 N. J. L., 314;

*State v. Beard*, 25 N. J. L., 384;

*State v. Siciliano*, 85 N. J. L., 389;

*State v. Hart*, 88 N. J. L., 150.

In *State v. Beard*, supra, at page 385, the court said:

30 "It is in all cases a matter of discretion whether the court will quash an indictment; but when it is manifest that no judgment can be rendered upon the indictment, the motion to quash will be allowed."

It will be noted that the above cases were in the Supreme Court on motion to quash and not on a review of the action of a trial court.

*State v. Dayton*, 23 N. J. L., 49, is in the same status, and further explains the court's dealing with the questions raised as follows:

40 "Inasmuch as the counsel of the State not

only waived all objections to the application, but united with the defendant's counsel in desiring that all the points should be summarily disposed of \* \* \*." The court adding, however, "*The suggestion is necessary to guard against the action of the court being drawn into precedent.*"

The defendants, on the motion to quash, before the trial court raised but two objections to the indictment; first, that the words of the defendants were set forth "*in substance*" to be etc.; second, that the words spoken were in Russian whereas the indictment alleged them to have been in English. **10**

Both, in the Supreme Court and now in this Court, the defendants seek advantage under various assignments of error raising new points not presented to the trial court, either directly or indirectly. Attention is here invited to the fact that the trial court was led to believe that there were no other objections, for the court said: "I think, if that is the only ground of your motion, I will deny your motion.", whereupon the defendants took an exception. (Printed book pages 10 and 11.) It is therefore respectfully urged that the defendants be now confined to the objections originally raised which were not enlarged upon by motion in arrest of judgment or otherwise. **20**

Under this aspect of the case neither the constitutionality of the statute in question, nor the jurisdictional question, is properly before this court for review, although the Supreme Court in its opinion has dealt with these questions. If these matters are not properly before the court, the defendants should not be given the opportunity, by these means, of raising a federal question to further prolong the litigation. **30**

## Two and Three.

There was no error in the refusal of the trial court to direct a verdict of not guilty at the conclusion of the State's case nor in its refusal to so direct at the close of the entire evidence.

- 10 This motion was likewise addressed to the discretion of the court and is not reviewable on error under section 135.

All of the objections now made and applicable to the state of the record, as presented to the Supreme Court, were made to that Court by the State. The rule of waiver referred to in *State vs. Dayton, supra*, is hence, not applicable in the present case.

- 20 **For the reasons herein set forth, the writ of error should be dismissed, and the order of the Supreme Court to the Hudson Quarter Sessions, to proceed according to law upon the affirmed and remitted judgment and record, should be affirmed in this court.**

PIERRE P. GARVEN,  
Prosecutor of the Pleas,  
Attorney and of Counsel for  
30 Defendant-in-Error.

GEORGE T. VICKERS,  
First Ass't Prosecutor,  
Of Counsel with Defendant-in-Error.

on Bond

hmo& sw